

1-28-02

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

FILED
02 APR 29 PM 4:49
DIVISION OF
ADMINISTRATIVE
HEARINGS

LEISURE TYME RV and
KARL A. NESSAMAR,

AT

PMR-CLOS

Petitioners,

vs.

DOAH CASE NO.: 01-2829
DOT CASE NO.: 01-021

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

This proceeding was initiated by the filing of a Petition for Formal Hearing on February 6, 2001, by Petitioners, LEISURE TYME RV and KARL A. NESSAMAR (hereinafter LEISURE TYME), pursuant to Section 120.57(1), Florida Statutes, in response to a Driver Vehicle Inspection Report (hereinafter Inspection Report), issued on January 22, 2001, by the Respondent, DEPARTMENT OF TRANSPORTATION (hereinafter DEPARTMENT). The Inspection Report was issued to Karl Nessamar while he was operating a private motor coach owned by his employer, Leisure Tyme RV, Inc. On July 17, 2001, the matter was referred to the Division of Administrative Hearings (hereinafter DOAH) for assignment of an Administrative Law Judge and a formal hearing.

A formal administrative hearing was held in this case on September 26, 2001, in Pensacola, Florida, before P. Michael Ruff, a duly appointed Administrative Law Judge.

Appearances on behalf of the parties were as follows:

For Petitioner: Julius P. Parker, III, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 South Monroe Street, Suite 200
Post Office Box 10095
Tallahassee, Florida 32302-2095

For Respondent: Scott A. Matthews, Esquire
Assistant General Counsel
Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

At the hearing, the **DEPARTMENT** presented the testimony of Officer Bryant Gay of the Motor Carrier Compliance Office. **LEISURE TYME** presented the testimony of Karl A. Nessamar, an employee of Leisure Tyme RV, Inc. Official recognition was taken of Chapters 207, 316, 320, and 322, Florida Statutes (2000), and Title 49, Code of Federal Regulations, Parts 383, 390, 391, 392, and 395. The transcript of the hearing was filed on October 12, 2001. On November 13, 2001, the **DEPARTMENT** and **LEISURE TYME** filed their respective Proposed Recommended Orders. On January 28, 2002, the Administrative Law Judge issued his Recommended Order.

STATEMENT OF THE ISSUE

As stated by the Administrative Law Judge in his Recommended Order, the issue presented was: "[W]hether a recreational vehicle with a gross vehicle weight in excess of 10,000 pounds meets the definition of 'commercial motor vehicle' under relevant Florida law when driven by an employee of a licensed recreational vehicle dealer, rather than by the ultimate consumer."

BACKGROUND

On January 22, 2001, the **DEPARTMENT** issued Inspection Report Number FL60500669, to Karl Nessamar, who was operating a private motor coach owned by his employer, Leisure Tyme RV, Inc., on Interstate 10 at milepost 205 in Leon County, Florida. The Inspection Report was issued because there was "no USDOT number and/or name, city, and state displayed on the vehicle" (not registered as an interstate carrier), the driver had no commercial driver's license, no log book, or medical certificate, and was driving at an excessive speed.

FINDINGS OF FACT

After a review of the record in its entirety, it is determined that the Administrative Law Judge's Findings of Fact 1 through 6 of the Recommended Order are supported by the record and are accepted and incorporated as if fully set forth herein.

CONCLUSIONS OF LAW

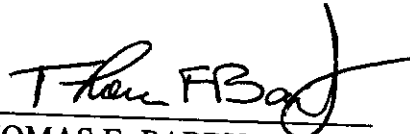
1. The **DEPARTMENT** has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapters 120 and 479, Florida Statutes.
2. The Conclusions of Law in paragraphs 7 through 23 of the Recommended Order are fully supported by law. As such, they are adopted and incorporated as if fully set forth herein.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Administrative Law Judge's Recommended Order is hereby adopted. It is further

ORDERED that the violations charged against **Petitioners, LEISURE TYME RV and KARL A. NESSAMAR**, in Driver Vehicle Inspection Report, Number FL60500669, for failure to comply with the statutory requirements for commercial motor vehicles and drivers of commercial motor vehicles, are hereby void.

DONE AND ORDERED this 29th day of April, 2002.



THOMAS F. BARRY, JR., P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

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NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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Honorable P. Michael Ruff
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