

68-743-CD

Patrick Reilly vs Comm of PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY, JR.
PETITIONER

vs.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,

RESPONDENT

NO. 08-743-C.D.

Type of Case: CIVIL

Type of Pleading: PETITION OF
APPEAL FROM
DEPARTMENTAL
ORDER OF SUSPENSION OF
CERTIFICATION
AS AN
OFFICIAL SAFETY INSPECTOR

Filed on Behalf of:
PETITIONER

Counsel of Record:
CHRISTOPHER E. MOHNEY,
ESQUIRE

Supreme Court No. 63494

25 EAST PARK AVENUE
SUITE 6
DUBOIS, PA 15801
(814) 375-1044

71-238-191

Original
upstairs

FILED Atty pd. 195.00
03/25/08
APR 23 2008
3cc Atty Mohney
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
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CIVIL DIVISION

PATRICK J. REILLY

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Counsel of Record:
CHRISTOPHER E. MOHNEY,
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Type of Case: CIVIL

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PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,

RESPONDENT

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0/9:39 5/1 Atty/Molney
APR 29 2008
6K

William A. Shaw
Prothonotary/Clerk of Courts

ORDER SETTING HEARING AND ORDER FOR SUPERSEDEAS

AND NOW, this 23 day of April, 2008, upon consideration of the Petition of PATRICK J. REILLY for review of an Order of the Department of Transportation suspending Petitioner's Certification as an Official Safety Inspector, it is hereby **ORDERED AND DECREED** that a hearing is granted to determine whether the action of the Department of Transportation in suspending Petitioner's Certification as an Official Safety Inspector should be set aside.

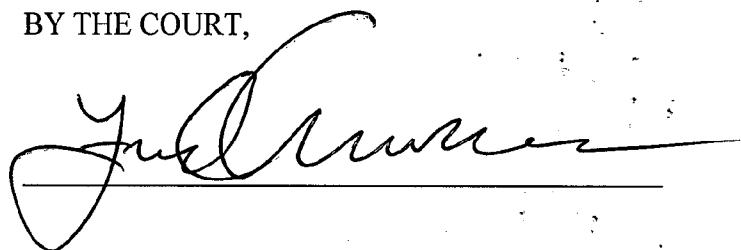
Hearing on the above matter is fixed for the 5th day of August, 2008 at 1:30 o'clock P.M. in Courtroom No. 1 of the Clearfield County Courthouse.

The Petitioners are directed forthwith to serve notice of this appeal by serving a certified true and correct copy of this Order and Petitioner's Petition of Appeal from Departmental Order of Suspension of Certification as an Official Safety Inspector Issued

by the Department of Transportation on the Respondent Commonwealth of Pennsylvania, Department of Transportation at the address shown in the Department's official notice of the suspension letter, by certified mail, return receipt requested.

It is further hereby **ORDERED AND DECREED** that this Order shall act as a supersedeas of the action of the Pennsylvania Department of Transportation seeking to suspend Petitioner's Certification as an Official Safety Inspector, and the Commonwealth of Pennsylvania, Department of Transportation is further directed to stay said suspension pending final adjudication of Petitioner's appeal.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Judge Dennis", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'J' at the beginning.

FILED

APR 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/29/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY : NO. 08 - - C.D.

PETITIONER : Type of Case: CIVIL

vs.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,

RESPONDENT :

**PETITION OF APPEAL FROM DEPARTMENTAL ORDER OF SUSPENSION
OF CERTIFICATION AS AN OFFICIAL SAFETY INSPECTOR ISSUED BY
THE DEPARTMENT OF TRANSPORTATION**

AND NOW, comes the Petitioner, **PATRICK J. REILLY**, by and through his attorney, **CHRISTOPHER E. MOHNEY, ESQUIRE**, who files the within Petition against the above-captioned respondent pursuant to 75 Pa. C.S.A. §4726(b) for review of Order of Suspension of Official Safety Inspector issued by the Respondent, Commonwealth of Pennsylvania, Department of Transportation suspending Petitioner's Certification as an Official Safety Inspector, and in support thereof avers the following:

1. Petitioner is PATRICK J. REILLY, he having mailing addresses at 227 Hamor Street, DuBois, Pennsylvania 15801.
2. Petitioner holds a Certification as an Official Safety Inspector, designated by the Commonwealth of Pennsylvania, Department of Transportation as Mechanic # 21-238-191.

3. Respondent COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION has a mailing address at Department of Transportation, Chief Counsel's Office, Riverfront Office Center, 1101 S. Front Street, 3rd Floor, Harrisburg, PA 17104-2416.

4. By letter from Respondent mailed April 1, 2008, Petitioner was notified in writing by the Department of Transportation of the entry of an Order suspending his Certification as an Official Safety Inspector for the following reasons:

- a. for a period of two (2) months, effective May 7, 2008 as a result of an alleged faulty inspection of equipment or parts; and
- b. for a consecutive period of two (2) months for alleged improper record keeping.

A copy of the Order of Suspension of Official Safety Inspector is attached hereto and marked Exhibit "A".

5. The suspension is improper and unlawful for the following reasons:

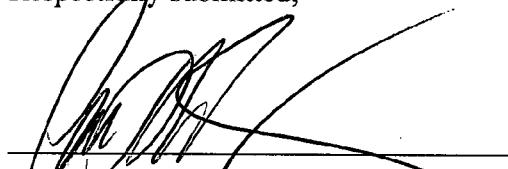
- a. Petitioner believes, and therefore avers, that Respondent cannot meet its burden of proof as to the allegations of faulty inspection of equipment or parts and/or improper record keeping for at least the reason that the alleged deficiencies with the inspection may have manifested themselves between the date of Petitioner's inspection and the date of the Respondent's representative's roadside inspection;
- b. the Respondent failed to consider the volume of inspections conducted by Petitioner and provide the owner or operator of the inspection center the opportunity to correct any inaccurate records;

c. Respondent is seeking to likewise suspend the Certificate of Appointment of the Official Inspection Station Certificate for the same alleged transactions and occurrences, which is the subject of a contemporaneously-filed appeal; and

d. such other reasons that the Court deems just.

WHEREFORE, Petitioner PATRICK J. REILLY respectfully requests that this honorable Court set this matter down forthwith for a hearing pursuant to 75 Pa. C.S.A. §4726(b), and that the Order of Suspension of Official Safety Inspector of the Commonwealth of Pennsylvania, Department of Transportation be set aside.

Respectfully submitted,



Christopher E. Mohney, Esquire
Attorney for Petitioners

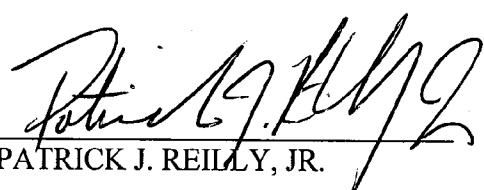
VERIFICATION

I, PATRICK J. REILLY, JR. being duly authorized to make this Verification, have read the foregoing Petition of Appeal from Departmental Order of Suspension of Certification as an Official Safety Inspector Issued by Department of Transportation. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides if I make knowingly false averments I may be subject to criminal penalties.

Date:

4/15/2008



PATRICK J. REILLY, JR.

375-1088



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG, PA 17104

Patrick J. Reilly
227 Hamor Street
Dubois, PA 15801
(P J Reilly Co-OIS#E47)

Vehicle Inspection Division
P. O. Box 69003
Harrisburg PA 17106-9003
Phone: (717) 787-2895
MECHANIC #21-23H-191
CERTIFIED MAIL: 7004 2510 0001 4164 0807
MAIL DATE: April 1, 2008

ORDER OF SUSPENSION OF OFFICIAL SAFETY INSPECTOR

You are hereby notified that your certification as an Official Safety Inspector is suspended, pursuant to Section 4726 of the Vehicle Code. No vehicle safety inspections may be performed during the suspension. Pursuant to Departmental regulations, your certification as an Official Safety Inspector will be suspended for two (2) months for faulty inspection of equipment or parts (on a 1986 GMC, VIN-1GD6D1F1GV535208, sticker#SI7-0227086) and two (2) months for improper record keeping. Further, the Department is including in this offense, the lesser included offense of careless record keeping.

The suspension(s) will run consecutively, for a total suspension of four (4) months. This suspension is to run consecutively with any other suspension(s) imposed by the Department for any violation considered separately. **THE SUSPENSION WILL BE EFFECTIVE May 7, 2008.** At this time, you are ordered to surrender to the Quality Assurance Officer, who is a representative of the Department of Transportation, your Safety Inspector Certification card. Upon completion of your suspension, your inspector certification card will be returned to you.

You have the right to appeal this Departmental Order of Suspension to the Court of Common Pleas of the County in which the above referenced inspection station is located, **WITHIN THIRTY (30) DAYS OF THE MAIL DATE OF THIS ORDER.** If you do file an appeal, a signed and time-stamped copy of the appeal must be served upon the Department at the mailing address listed below. **FILING OF AN APPEAL DOES NOT AUTOMATICALLY STAY THE SUSPENSION.** In order for your privileges to be restored pending appeal, a signed Order of Supersedeas from the Court directing the Department to stay the suspension must be served upon the Department at the mailing address listed below.

MAILING ADDRESS:
Department of Transportation
Chief Counsel's Office
Riverfront Office Center
1101 S. Front Street, 3rd Floor
Harrisburg, PA 17104-2416

Sincerely,

Anita M. Wasko, Director
Bureau of Motor Vehicles

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

PATRICK J. REILLY : NO. 08 - 743 - C.D.
PETITIONER, : Type of Case: CIVIL
vs. : Type of Pleading: AFFIDAVIT
COMMONWEALTH OF : OF SERVICE
PENNSYLVANIA, DEPARTMENT : Filed on Behalf of : PETITIONER
OF TRANSPORTATION :
RESPONDENT : Counsel of Record:
: CHRISTOPHER E. MOHNEY, ESQUIRE
: SUPREME COURT NO.: 63494
: 25 EAST PARK AVENUE, SUITE 6
: DUBOIS, PA 15801
: (814) 375-1044

FILED *09/16/08* NO. *cc*
MAY 15 2008
WM
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY, :
: PETITIONER, :
: vs. : NO. 08 -743- C.D.
: :
COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF TRANSPORTATION :
: :
RESPONDENT :
:

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :
:

I, ***CHRISTOPHER E. MOHNEY, ESQUIRE***, being duly sworn according to law, deposes and says that as attorney for Petitioner in the above-captioned action, did on May 2, 2008, serve Respondent with a certified true and correct copy of Petition of Appeal from Departmental Order of Suspension of Certificate of Appointment as an Official Safety Inspector by certified mail, return receipt requested, said returned receipt is attached hereto.



Christopher E. Mohney, Esquire

Sworn To and Subscribed
before me this 12th day of

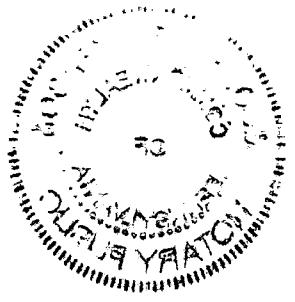
May, 2008.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Nicole A. Fulkerson - Notary Public
CITY OF DUBOIS, CLEARFIELD COUNTY
MY COMMISSION EXPIRES FEB. 25, 2012





1937-1938
1938-1939
1939-1940
1940-1941
1941-1942

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Department of Transportation
Chief Counsel's Office
Riverfront Office Center
1101 S. Front Street

3rd Floor
Harrisburg, PA 17104-2416

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below:
 No **MAY 09, 2008**

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7006 0810 0001 0127 3299

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- **Sender:** Please print your name, address, and ZIP+4 in this box •

CHRISTOPHER E. MOHNEY
25 East Park Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

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7000 0000 0127 3299

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HTTP://WWW.USPS.COM	
OFFICIAL USE	
Postage	\$.58
Certified Fee	\$2.65
Return Receipt Fee (Endorsement Required)	\$2.15
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 5.38
05/30/08	04/30/2008
1580 PA	DUBOIS, PA
Postmark Here	05/30/08
Sent To Department of Transportation, Chief Counsel Office Street, Apt. No.: Riverfront Office Center or PO Box No.: 1101 S. Front Street, 3rd Floor City, State, ZIP+4: Harrisburg, PA 17104-2416	
PS Form 2910 June 2002 www.usps.com for Information	

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- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry.
Internet access to delivery information is not available on mail
addressed to APOs and FPOs.**

FILED

MAY 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY,
Plaintiff

vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendant

*
*
* 08-743-CD
* 08-744-CD
*
*

ORDER

NOW, this 4th day of August, 2008, the Court being in receipt of the Defendant's Motions to Continue Hearing (submitted via facsimile by William A. Kuhar, Jr., Esquire) in the above-captioned cases, with the Court noting that the hearing was scheduled by this Court's Order of April 23, 2008 and all parties were given more than adequate time to prepare; it is the ORDER of this Court that said Motions for Continuance be and are hereby DENIED. Hearing will proceed as scheduled on August 5, 2008 at 1:30 p.m.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
08/04/2008
AUG 04 2008

BS
William A. Shaw
Prothonotary/Clerk of Courts
ACC Attnys: Mohney
Kuhar

Faxed by Danis 8/4/08 to
Attnys Kuhar & Mohney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PATRICK J. REILLY
Petitioner,

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent.**

CIVIL ACTION - LAW

No. 743- CD-2008

MOTION TO CONTINUE

Filed on Behalf of:

**COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION**

Counsel of Record for this Party:

William A. Kuhar, Jr.
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
1209 State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222
(412) 565-7555

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Civil Division

PATRICK J. REILLY
Petitioner,

v.

CIVIL ACTION - LAW
No. 743- CD-2008

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendant.

MOTION TO CONTINUE

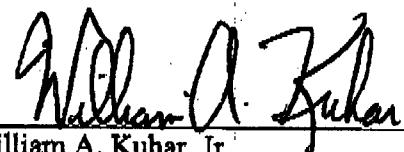
AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (hereinafter "Bureau"), by its attorney, William A. Kuhar, Jr., Esquire, and files this Motion to Continue and, in support thereof, avers the following:

1. This is an appeal by the petitioner, Patrick J. Reilly from suspension of his Certification as Safety Inspector.
2. The hearing on this appeal is currently scheduled for August 5, 2008, before the Honorable Fredric J. Ammetman of this Court.
3. The appealed suspensions of the petitioner's certificate of appointment as an official safety station was imposed based on determinations by the Bureau that the petitioner had committed faulty inspection and improper recordkeeping violations.
4. The Bureau's witness, Trooper Kenneth Hofer of the Clearfield barracks of the Pennsylvania State Police, is unavailable for the August 5, 2008 hearing on this appeal.
5. The Bureau is requesting a continuance of the hearing on this appeal due to the unavailability of its aforementioned witness.

7. Counsel for Petitioner, Attorney Christopher F. Mohney, has consented to the granting of the requested continuance.

WHEREFORE, the Commonwealth of Pennsylvania, Department of Transportation, respectfully requests that the hearing on this appeal be continued to the next available list, for statutory appeals in the Court of Common Pleas of Clearfield County.

Respectfully submitted,



William A. Kuhar
William A. Kuhar, Jr.
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
1209 State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222
(412) 565-7555

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Civil Division

PATRICK J. REILLY
Petitioner,

v.

CIVIL ACTION - LAW

No. 743-CD-2008

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent.**

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, upon consideration of the foregoing Motion to Continue, it is hereby ORDERED, ADJUDGED and DECREED that a hearing on the above captioned statutory appeal shall be continued from the August 5, 2008, to _____, at _____ m., in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Civil Division

PATRICK J. REILLY
Petitioner,

v.

CIVIL ACTION - LAW
No. 743- CD-2008

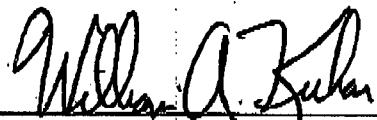
**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendant.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on the date set forth below, she served a true and correct copy of the foregoing Motion to Continue upon the Petitioner by regular United States first class mail, postage pre-paid, addressed as follows and via fax:

Christopher F. Mohney, Esquire
25 East Park Avenue, Suite 6
Dubois, PA 15801

Date: August 4, 2008



William A. Kuhar, Jr., Esq.
Assistant Counsel
Attorney for the Commonwealth

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA : :

VS. : NO. 08-743-CD

PATRICK J. REILLY : License Suspension Appeal

O R D E R

NOW, this 5th day of August, ²⁰⁰⁸ 2004, this being the day and date set for hearing into the above-captioned Appeal from License Suspension; following hearing upon consideration thereof, it is the ORDER of this Court that counsel for both parties be and is hereby given twenty (20) days within which to submit letter brief to the Court.

BY THE COURT,



President Judge

FILED *acc 4458*
01207301 Mohney
AUG 06 2008 Kuhns

William A. Shaw
Prothonotary/Clerk of Courts



FILED

AUG 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/6/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY, JR.,
Petitioner

* NO. 08-743-CD

vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,
Respondent

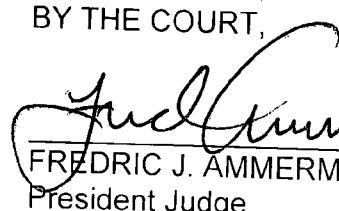
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*
*

O R D E R

NOW, this 29th day of August, 2008, following hearing on the Petition of Appeal from Departmental Order of Suspension, it is the finding of this Court that the Department of Transportation has met its burden of proof to show an improper inspection by the Petitioner. The Petitioner's Appeal is DISMISSED relative the Order of Suspension of Official Inspection Station of two months for faulty inspection of equipment. The Supersedeas previously issued by the Court is hereby vacated.

Upon agreement of the Commonwealth, the Appeal is granted in regard to the Order of Suspension of Official Inspection Status for two months for improper record keeping.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 0140064 ICC
AUG 29 2008 Atty: Mohney
Kuhar
William A. Shaw
Prothonotary/Clerk of Courts
60

FILED

AUG 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/29/08

✓ You are responsible for serving all appropriate parties.

✓ The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) ✓ Plaintiff(s) Attorney Other

 Defendant(s) ✓ Defendant(s) Attorney

 Special Instructions: