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Timonium, Maryland 21093

*THE NORTHERN CENTRAL
RAILROAD*



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210624

FROM: James Riffin, CEO
The Northern Central Railroad

TO: Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**BY FAX AND OVERNIGHT
DELIVERY**

RE: James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation
Exemption - Lines of Railroad in York County, Pennsylvania and Baltimore
County, Maryland, Finance Docket No. 34484..

Dear Secretary Brown:

I am enclosing an original and ten (10) copies of a Motion to Impose Sanctions in the
above referenced proceeding.

Thank you for your assistance.

Sincerely,

James Riffin, CEO
The Northern Central Railroad

**ENTERED
Office of Proceedings**

APR 19 2004

**Part of
Public Record**

ENTERED
Office of Proceedings

APR 19 2004

Part of
Public Record

Before the
Surface Transportation Board
Finance Docket No. 34484



**JAMES RIFFIN d/b/a THE NORTHERN CENTRAL RAILROAD-
ACQUISITION AND OPERATION EXEMPTION - LINES OF RAILROAD IN
YORK COUNTY, PENNSYLVANIA AND BALTIMORE COUNTY, MARYLAND**

MOTION TO IMPOSE SANCTIONS

2/0624

Now comes James Riffin d/b/a The Northern Central Railroad ("Riffin") who, pursuant to 49 C.F.R 1102.2 (f), moves this Board to impose sanctions against both the State of Maryland and its counsel, Charles A. Spitulnik, and for reasons states:

Facts Common to All Counts.

1. On March 8, 2004, Riffin filed a Notice of Exemption (FD No. 34484) to acquire and operate 2.9 miles of abandoned rail line located in Baltimore County, Maryland ("Maryland R/W"), and 20.9 miles of line in York County, Pennsylvania.
2. On March 25, 2004, the Board made its decision, which was served on April 7, 2004.
3. On April 2, 2004, Mr. Spitulnik filed a "Petition of the State of Maryland to Revoke the Verified Notice of Exemption" ("Petition") which Riffin had filed on March 8, 2004.
4. The Petition alleged Riffin's statement, that he proposed to acquire the Maryland R/W, was a misleading statement. The Petitioner argued this statement was misleading in that it implied Riffin would be successful in his efforts to acquire the Maryland R/W. The Petitioner then made the unsubstantiated statement that the State of Maryland owned the Maryland R/W. He followed this statement with another statement which said the State of Maryland had no intention of granting Riffin any legal interest in the Maryland R/W.

Count I - Failure to comply with 49 CFR 1121.3 (c).

5. Riffin incorporates by reference the factual allegations contained in paragraphs 1 through 4 above, as if fully set forth herein.

6. Petitioner's failure to provide any supporting information to substantiate its claim of ownership of the Maryland R/W, is a violation of 49 CFR 1121.3 (c), which states a party seeking revocation of a notice of exemption shall provide all of its supporting information at the time it files its petition.

Count II - Failure to comply with 49 CFR 1103.27

7. Riffin incorporates by reference the factual allegations contained in paragraphs 1 through 6 above, as if fully set forth herein.

8. Petitioner omitted from his Petition any mention of the fact that the Maryland R/W consisted of a number of easements, that those easements had been acquired via condemnation in 1836, that the portion of the Maryland R/W between MP 15.1 (Beaver Dam Run) and MP 35.1 (Maryland / Pennsylvania line) had been abandoned in September, 1972, that the portion of the Maryland R/W between MP 14.7 (300 feet south of York Road) and MP 15.1 (Beaver Dam Run) had been abandoned circa 1988, that the portion of the Maryland R/W from a point south of MP 14.5 to MP 14.7, had not been used for rail purposes since circa 1990, and that Maryland law specifically grants a Maryland railroad the right to acquire, via condemnation, any Maryland railroad right-of-way that has been unused for 10 years or more.

9. Petitioner's omission of these highly relevant facts from its Petition, demonstrates a knowing lack of candor and fairness, as required by 49 CFR 1103.27 (a).

Count III - Failure to comply with 49 CFR 1102.2 (c).

10. Riffin incorporates by reference the factual allegations contained in paragraphs 1 through 9 above, as if fully set forth herein.

11. On April 14, 2004, Mr. Spitulnik sent to the Honorable Roger Nober, Chairperson of the Board, via fax and hand delivery, a letter ("Letter") wherein he made the following blatantly false (defamatory) statements:

- A. "He is beginning to construct a new line of railroad (on property to which his claim of ownership is questionable, at best, as we have explained in our Petition to Revoke)."
- B. "... Riffin has begun excavating dirt and filling waters of the State of Maryland that feed the Chesapeake Bay."

12. In that Letter, Petitioner stated on April 13, 2004, the Maryland Department of the Environment ("MDE") had served upon Riffin a Site Complaint ordering Riffin to cease all grading activities at Riffin's 10919 York Road property ("Parcel 193"). Petitioner failed to tell Mr. Nober that when the MDE visited Riffin's Parcel 193 on April 13, 2004, there was no activity at that site. He also failed to tell Mr. Nober that MDE has never alleged Riffin was "excavating dirt and filling waters of the State of Maryland that feed the Chesapeake Bay."

13. As the attached Deed and Property Tax Map photocopies demonstrate:

- A. Riffin purchased Parcel 193 (10919 York Road, Cockeysville, MD) on April 14, 2003. Therefore, Petitioner's statement that Riffin's claim of ownership "is questionable, at best," is blatantly false.
- B. As was stated in Riffin's Notice of Exemption, Riffin proposed to acquire and operate rail line which would be located in the Maryland R/W. Parcel 193 is some distance north of the abandoned Maryland R/W, which was the subject of Riffin's Notice of Exemption.

C. A stream (Beaver Dam Run) flows along / through a portion of the south side of Parcel 193.

14. Attached is an Affidavit executed by Riffin which states Riffin is not constructing rail line on his Parcel 193, nor has he “begun excavating dirt and filling waters of the State of Maryland that feed the Chesapeake Bay.”

15. Petitioner’s Letter to Mr. Nober appears to be an *ex parte* communication with a “Board Member who participates, or who may reasonable be expected to participate, in the decision” to grant Petitioner’s request to revoke Riffin’s Notice of Exemption. 49 CFR 1102.2 (c). This communication was made without the knowledge or consent of Riffin, and “could or is intended to influence anyone who participates or could reasonable be expected to participate in the decision.” 49 CFR 1102.2 (a) (3). Riffin finds this *ex parte* communication to be particularly offensive and egregious, since it contains blatantly false and defamatory statements.

Count IV - Failure to comply with 49 CFR 1103.14.

16. Riffin incorporates by reference the factual allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

17. Petitioner’s Letter to Mr. Nober appears to be an attempt to have a private communication “with a Board Member . . . about a pending case, or to argue privately the merits thereof in the absence of the adversaries.” 49 CFR 1103.14. Such activity is clearly prohibited by 49 CFR 1103.14.

Count V - Failure to comply with 49 CFR 1103.21.

18. Riffin incorporates by reference the factual allegations contained in paragraphs 1 through 17 above, as if fully set forth herein.

19. 49 CFR 1103.21 states in part:

“However, the practitioner shall act within the bounds of the law. A practitioner shall not violate the law or be involved in any manner of fraud or chicanery for any client.”

20. It is unlawful to utter defamatory statements. Uttering a writing accusing a person of violating a law is defamatory, *per se*. Petitioner’s Letter to Mr. Nober accused Riffin of “excavating dirt and filling waters of the State of Maryland that feed the Chesapeake Bay.” If true, this would be a criminal offense. Since it is untrue, it is defamatory, *per se*, and therefore is unlawful. The false statement made in that Letter may also be construed to be “fraud or chicanery.” As such, Mr. Spitulnik’s drafting and uttering of this defamatory material would be outside the “bounds of the law,” and would violate the provisions contained in 49 CFR 1103.21.

WHEREFORE, for the reasons stated above, Riffin would request the Board:

A. Per 49 CFR 1104.8, Order that all irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document, specifically all reference to Riffin’s activities at his Parcel 193 property in Cockeysville, or his 1941 Greenspring Drive property in Timonium, Maryland.

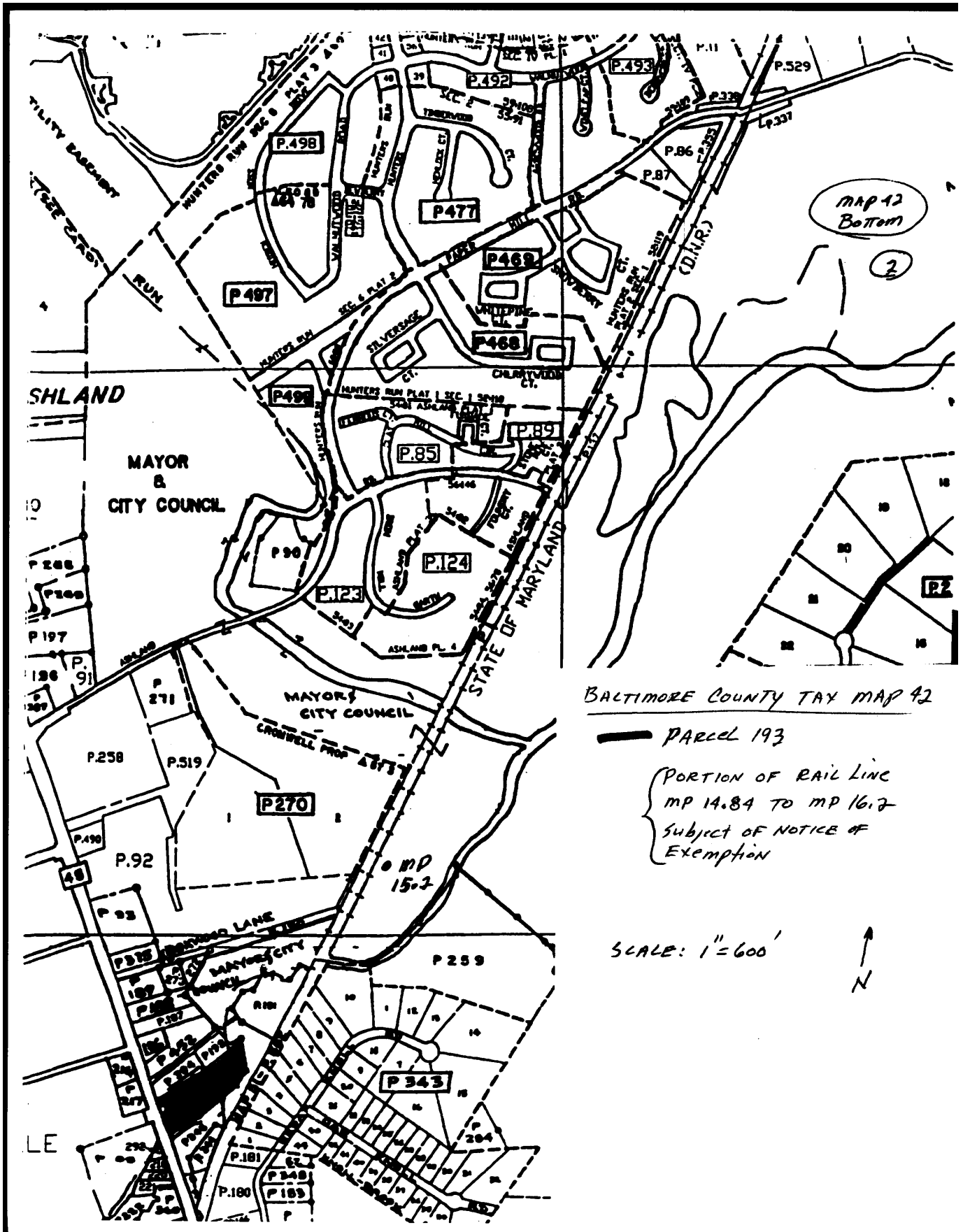
B. Since the acts and representations of the Petitioner were done knowingly, willfully, and repeatedly, were unlawful, and were particularly egregious, per 49 CFR 1102.2 (f) (2), Order the relief or benefit sought by the Petitioner be denied.

C. Since the acts and representations of Mr. Spitulnik were done knowingly, willfully, and repeatedly, were unlawful, and were particularly egregious, and since Mr. Spitulnik has considerable experience practicing before the Board, and should know its Rules of Procedure, per 49 CFR 1102.2 (f) (1), either censure Mr. Spitulnik or suspend, or revoke Mr. Spitulnik’s privilege of practicing before the Board.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J Riffin d/b/a The Northern Central Railroad".

James Riffin d/b/a The Northern Central Railroad



DEED

THIS DEED, made this 14th day of April, 2003, by and between **Steven D. Rosen and Charles Geser, Trustees of The Betty Rosen By-Pass Trust, and Herbert H. Rosen,** Grantors, and **James Riffin,** Grantee,

WITNESSETH, that for and in consideration of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey unto the said Grantee, his heirs, personal representative(s), successors or assigns, in fee simple, all that tract or parcel of ground, situate, lying and being in the 8th Election District of Baltimore County, Maryland, and described as follows, to wit:

See Exhibit A, attached hereto and made a part hereof.

BEING the fourth parcel of land which by Deed dated May 9, 1988, and recorded among the Land Records of Baltimore County in Liber 7858, Folio 001, was granted and conveyed by Herbert H. Rosen and Betty Rosen, husband and wife, to Herbert H. Rosen and Betty Rosen, husband and wife, as tenants in common. Betty Rosen, having died on December 31, 1995, pursuant to the Last Will and Testament of Betty Rosen, filed in the Orphans' Court for Baltimore County, Estate No. 86103, the Orphans' Court for Baltimore County did, on November 13, 1996, Order all of Betty Rosen's right, title, and interest in the property described herein, be conveyed, assigned and disposed unto Steven D. Rosen and Charles Geser, Trustees of The Betty Rosen By-pass Trust, vesting the interest of Betty Rosen, deceased, in The Betty Rosen By-Pass Trust.

BEING the first parcel of land which by Deed dated April 2, 2003, intended to be recorded among the Land Records of Baltimore County prior to the recordation of this deed, was granted and conveyed by Steven D. Rosen, Personal Representative of the Estate of Betty Rosen, to Steven D. Rosen and Charles Geser, Trustees of The Betty Rosen By-Pass Trust.

TOGETHER with the buildings and improvements thereon, and all the rights, alleys, ways, waters, privileges, appurtenances and advantages belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging and appertaining, unto and to the proper use and benefit of the said Grantee, his heirs, personal representative(s) or assigns, in fee simple.

AS WITNESS my hand and Notarial Seal:

Ellenora L. Mackin
Notary Public 11/1/09



TEST:

Anne Foy

[Signature] (SEAL)
Charles Geser, Trustee for
The Betty Rosen By-Pass Trust
Grantor



STATE OF MARYLAND, Baltimore County, to wit:

I HEREBY CERTIFY, that on this 14th day of April, 2003, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Charles Geser, known to me, or satisfactorily proven to be, the person whose name is subscribed to the above deed, and acknowledged that he, being authorized to do so, executed the same on behalf of The Betty Rosen By-Pass Trust, for the purposes therein contained.

AS WITNESS my hand and Notarial Seal:

Merle H. Porter
Notary Public 9/1/2007

This deed was prepared by J. Riffin, one of the parties named in the above deed.

J. RIFFIN
[Signature]

EXHIBIT A
LEGAL DESCRIPTION FOR 10919 YORK ROAD

Beginning at a point on the east side of York Road at the end of the first line of the lot of ground firstly described in a deed dated 12 January 1962 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3954, folio 120 from Heublein, Inc. to Beaver Dam Realty, Inc., thence running and binding on the east side of York Road and on part of the first and all of the second lines of the lot of ground described in a deed dated 17 February 1951 and recorded among the aforesaid Land Records in Liber G.L.B. No. 1937, folio 91, from Ethel Maria Cockey, *et. al.*, to G.F. Heublein & Bro. Inc., the two following courses and distances: (1) South 12-16-30 East 31 feet, more or less, and (2) South 58-48-East 50.12 feet, thence continuing on the east side of York Road, and binding on the fourth line of the lot of ground firstly described in a deed dated 17 February 1951 and recorded among the aforesaid Land Records in Liber G.L.B. No. 1937, folio 93, from Ethel Maria Cockey, *et. al.*, to G.F. Heublein & Bro. Inc., (3) South 12-26-30 East 114 feet to the centerline of Beaver Dam Run and to the outlines of the land which by deed dated 17 June 1930 and recorded among the Land Records of Baltimore County in Liber L. McL. M. No. 849, folio 485, was conveyed by John T. Cockey and wife to the State of Maryland, thence running and binding reversely on part of the aforesaid outlines in the conveyance from Cockey to the State of Maryland, dated 17 June 1930, and on the centerline of Beaver Dam Run, the two following courses and distances, viz: (4) North 69-55-40 East 24.00 feet and (5) North 50-16-40 East 129.43 feet, thence (6) South 55-11-20 East 22 feet to the south side of Beaver Dam Run, thence running and binding on the south and east side of Beaver Dam Run, the seven following courses and distances, viz: (7) North 85-25-40 East 44.00 feet, (8) South 85-49-20 East 96.50 feet, (9) North 48-15-40 East 42.00 feet, (10) North 35-10-40 East 88.00 feet, (11) North 6-00-40 East 122.00 feet, (12) North 09-10-40 East 38.50 feet and (13) North 15-15-40 East 70.33 feet to the end of the third line of the lot of ground secondly described in the deed hereinabove firstly referred to; and running thence and binding reversely on said third line (14) South 60-43-30 West 311.94 feet to the beginning of said third line and the end of the second line of the lot of ground firstly described in the deed hereinabove firstly referred to; running thence and binding reversely on said second line (15) South 67-58-30 West, parallel with and distant 12 feet measured northwesterly at right angle to the northernmost face of the pilasters built along the northernmost wall of the brick distillery warehouse erected on the property of Heublein, Inc., 216.26 feet to the place of beginning. Containing 2 acres of land, more or less.

Being the fourth lot of ground described in the deed dated 9 May 1988 and recorded among the Land Records of Baltimore County in Liber 7850, folio 001, which was granted and conveyed by Herbert H. Rosen and Betty Rosen, husband and wife, to Herbert H. Rosen and Betty Rosen, husband and wife, as tenants in common, the within Grantors.