

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Default of Motor)
Carriers and Drivers Pursuant to Rule) Case No. 12-3260-TR-CVF
4901:2-7-14, Ohio Administrative Code.)

FINDING AND ORDER

The Commission finds:

- (1) Section 4923.04, Revised Code, authorizes the Commission to adopt safety rules applicable to the highway transportation of persons or property, and the transportation and offering for transportation of hazardous materials. Pursuant to this authority, the Commission established safety standards in Chapter 4901:2-5, Ohio Administrative Code (O.A.C.), including the adoption of the provisions of the Federal Motor Carrier Safety Regulations (FMCSR) of the U.S. Department of Transportation contained in Title 49 Code of Federal Regulations (C.F.R.), Parts 40, 107, subparts f and g, 367, 380, 382, 383, 385, 386, 387 and 390 to 397, unless specifically excluded or modified by a rule of the Commission, and those portions of the hazardous materials regulations contained in 49 C.F.R. 171 to 180 as are applicable to transportation or offering for transportation by motor vehicle.
- (2) Section 4923.99, Revised Code, authorizes the Commission to determine whether any person has committed a violation of such regulations, and assess a civil forfeiture against such person.
- (3) Accordingly, the Commission adopted the civil forfeiture and compliance proceeding rules contained in Chapter 4901:2-7, O.A.C. These rules require that a respondent be afforded reasonable notice and opportunity for a hearing when the Commission finds a violation of the regulations adopted in Rule 4901:2-5-02, O.A.C. Specifically, Rule 4901:2-7-07, O.A.C., provides that the Commission Staff (Staff) may serve a Notice of Intent to Assess Forfeiture (NIF) upon a respondent within 90 days after the discovery of a violation but no more than one year following the violation. In addition, Rule 4901:2-7-12, O.A.C., states that a Notice of Preliminary Determination (NPD) may be issued to a respondent following the issuance of a NIF.

- (4) Pursuant to Rule 4901:2-7-14, O.A.C., a respondent upon whom a NIF or NPD has been served who, within 30 days, fails to pay the amount of the forfeiture stated in the notice, or serve upon the Commission a request for conference, pursuant to Rule 4901:2-7-10, O.A.C., or administrative hearing, pursuant to Rule 4901:2-7-13, O.A.C., shall be in default. A respondent in default shall be deemed to have waived all further right to contest liability for the forfeiture described in the NIF or NPD. Pursuant to Rule 4901:2-7-14(D), O.A.C., if a respondent is in default, the Commission may, on its own motion and without prior notice, order payment of the amount indicated in the NIF or NPD.
- (5) By finding and order issued on January 9, 2013, the Commission granted each respondent listed in the attachment an opportunity to demonstrate why it should not be held in default. A respondent could have demonstrated adequate cause by establishing that it was not properly served with notice in accordance with Rule 4901:2-7-03, O.A.C., paid the civil forfeiture, or served a request for conference or administrative hearing within 30 days of receipt of the NIF or NPD. Upon Staff review of the responses, numerous civil forfeiture cases were removed from default for adequate cause shown. In addition, 233 civil forfeiture cases that were part of this proceeding have been paid and the total amount collected was \$41,690.00.
- (6) Staff served upon each of the respondents listed in the attachment an NIF and/or NPD, pursuant to Rules 4901:2-7-05, 4901:2-7-07, 4901:2-7-09 and 4901:2-7-12, O.A.C., for the amount indicated in the attachment. Therefore, each respondent is in default, pursuant to Rule 4901:2-7-14, O.A.C., and the Commission finds each respondent liable for the amount indicated and orders the payment of such amount. In accordance with Rule 4901:2-7-15, O.A.C., any respondent found to be in default may file an application for rehearing, pursuant to Rule 4901-1-35, O.A.C. This order finds 1,112 carriers and/or drivers in default and directs those carriers and drivers to pay forfeitures totaling \$265,185.00.

It is, therefore,

ORDERED, That each respondent listed in the attachment to this finding and order is in default in accordance with Rule 4901:2-7-14, O.A.C., and must pay the forfeiture amount indicated by June 3, 2013, to avoid further collection efforts. It is, further,

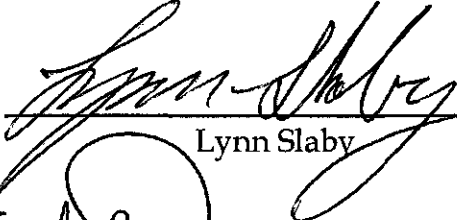
ORDERED, That Staff submit the attachment to this finding and order to the Ohio Attorney General, Collections Enforcement Section after June 3, 2013, with a list of the respondents who have not paid. It is, further,

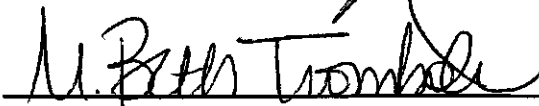
ORDERED, That a copy of this finding and order be served upon each respondent identified in the attachment.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman



Steven D. Lesser


Lynn Slaby


M. Beth Trombold

JST/js
Attachment

Entered in the Journal
MAY 01 2013


Barcy F. McNeal

Barcy F. McNeal
Secretary