

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Kenneth W. Robinson,) Case No. 13-754-TR-CVF
Notice of Apparent Violation and Intent to) (OH3269009388C)
Assess Forfeiture.) (OH3269008982)

ENTRY

The Commission finds:

- (1) On February 25, 2013, a vehicle operated and driven by Kenneth W. Robinson (respondent) was inspected within the state of Ohio. As a result of the inspection, violations of the Code of Federal Regulations (C.F.R.) and the Ohio Administrative Code (O.A.C.) were discovered, including the following violations relevant to this case: 49 C.F.R. §392.9 (Driver may not operate a commercial motor vehicle without proper load securement - unsecure roofing shingles, left side front of truck), 49 C.F.R. §390.21(a) (Not marked in accordance with regulations - interstate carrier with no company name displayed), Rule 4901:2-1-04, O.A.C. (Failure to present a PUCO tax receipt - none found).
- (2) In accordance with Rule 4901:2-7-12, O.A.C., respondent was informed in a Notice of Preliminary Determination (NPD) that Commission Staff (Staff) intended to assess a civil forfeiture of \$300.00 for the apparent violations.
- (3) On March 27, 2013, respondent responded to the NPD and filed a letter requesting an administrative hearing, thereby initiating this matter.
- (4) By entry dated April 17, 2013, a prehearing teleconference was scheduled in the case on May 14, 2013. Thereafter, in response to a request from the respondent to schedule a face-to-face meeting with staff instead of a teleconference, the prehearing teleconference was rescheduled as an in-person conference on June 11, 2013. Further, in the event the case was not settled at the June 11, 2013, prehearing conference, an evidentiary hearing was scheduled to commence on June 11, 2013, immediately following the conference. A copy of the scheduling entry was served upon the respondent at his Oak Hill, Ohio address.

- (5) The respondent did not appear at either the prehearing conference or the subsequently convened hearing on June 11, 2013.
- (6) At the June 11, 2013, hearing, staff initially requested that one of the driver/vehicle inspection reports in this matter (No. OH3269008982) be dismissed. Staff then moved for a default judgment against the respondent with respect to the remaining driver/vehicle inspection report (No. OH3269009388C). In support of its motion, Staff noted the violations listed against the respondent in the NPD (Staff Exhibit 1) and the remaining driver/vehicle inspection report (Staff Exhibit 2).
- (7) Rule 4901:2-7-14(A), O.A.C., provides that a respondent who has requested an administrative hearing and fails to participate in the hearing proceeding shall be in default. The rule additionally states that a respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability to the state for the forfeiture described in the notice.
- (8) The respondent did not appear at hearing and present any evidence to explain why he should not be held liable in this case. Accordingly, because respondent failed to appear at hearing, and because the evidence presented at hearing supports Staff's contention that respondent is liable for the violations charged in this matter, Staff's motion for a default judgment should be granted.
- (9) Pursuant to Section 4923.99, Revised Code, the respondent is liable to the state of Ohio for payment of the forfeiture on the transportation safety rule violation. Rule 4901:2-7-22, O.A.C., provides that payment of such forfeiture be made by certified check or money order made payable to: "Treasurer, state of Ohio" and shall be mailed or delivered to: "Fiscal Division, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793." Respondent shall have 30 days from the date of this entry to pay the assessed forfeiture of \$300.00.
- (10) Section 4923.99, Revised Code, further provides that, upon written request of the Commission, the Attorney General shall

bring a civil action in the Court of Common Pleas of Franklin County to recover an assessed forfeiture.

- (11) As a final matter, Staff's request to dismiss one of the driver/vehicle inspection reports in this case (No. OH3269008982) should be granted. That report, and the violations listed therein, should be removed from the respondent's history of violations.

It is, therefore,

ORDERED, That Staff's motion for default judgment be granted. It is, further,

ORDERED, That Kenneth W. Robinson pay the assessed amount within 30 days to the state of Ohio as set forth in Finding (9). It is, further,

ORDERED, That if payment is not received within 30 days of the date of this entry, the Attorney General of Ohio shall bring a civil action in the Court of Common Pleas of Franklin County, or take any other appropriate action allowed by law, to recover the \$300.00 forfeiture assessed herein. It is, further,

ORDERED, That driver/vehicle inspection report number OH3269008982, and the violations listed therein, be removed from the respondent's history of violations. It is, further,

ORDERED, That this case be closed of record. It is, further,

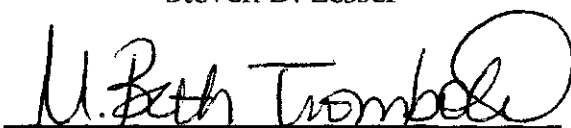
ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

Lynn Slaby


M. Beth Trombold


Asim Z. Haque

KKS/vrm

Entered in the Journal

JUL 10 2013



Barcy F. McNeal
Secretary