

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Auto :  
Plaza, Inc. and Dennis E. :  
Hardesty, Notice of : Case No. 14-119-TR-CVF  
Apparent Violation and :  
Intent to Assess :  
Forfeiture. :

- - -

PROCEEDING

before Mr. Kerry K. Sheets, Hearing Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-C, Columbus, Ohio, called at 10:00  
a.m. on Thursday, May 8, 2014.

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APPEARANCES:

Mr. Dennis E. Hardesty  
539-B North Edison  
Kennewick, Washington 99336

On his own behalf.

Mike DeWine, Ohio Attorney General  
Mr. William L. Wright, Section Chief  
By Mr. Ryan P. O'Rourke  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street  
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On behalf of the staff of the Public  
Utilities Commission of Ohio.

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Thursday Morning Session,  
May 8, 2014.

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HEARING EXAMINER SHEETS: I'll go ahead  
and call the hearing. The PUCO has set for hearing  
at this time and place Case No. 14-119-TR-CVF In the  
Matter of Auto Plaza, Inc. and Dennis E. Hardesty.

My name is Kerry Sheets. I'm an attorney  
examiner for the Commission, and I've been assigned  
to hear this case.

May I now have the appearance of the  
parties, please, starting with staff.

MR. O'ROURKE: Thank you, your Honor.  
Ryan O'Rourke with the Ohio Attorney General's  
office, Public Utilities Section, representing staff  
today. My address is 180 East Broad, 6th floor,  
Columbus, Ohio 43215.

HEARING EXAMINER SHEETS: Thank you.  
Mr. Hardesty, just give your name and  
address.

MR. HARDESTY: It's Dennis Hardesty.  
Business address is 539-B North Edison Street,  
Kennewick, Washington 99336.

HEARING EXAMINER SHEETS: Very good.  
Any preliminary matters to take care of

1 today?

2 MR. O'ROURKE: I don't think so, your  
3 Honor.

4 HEARING EXAMINER SHEETS: You have  
5 witnesses to call?

6 MR. O'ROURKE: I do. I have two.

7 HEARING EXAMINER SHEETS: Go ahead.

8 MR. O'ROURKE: Your Honor, staff calls  
9 John Rammel to the stand.

10 HEARING EXAMINER SHEETS: Please raise  
11 your right hand.

12 (Witness sworn.)

13 HEARING EXAMINER SHEETS: Be seated.

14 - - -

15 JOHN T. RAMMEL

16 being first duly sworn, as prescribed by law, was  
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. O'Rourke:

20 Q. Good morning.

21 A. Good morning.

22 Q. Can you please state your full name for  
23 the record.

24 A. John T. Rammel.

25 Q. Where are you employed?

1           A.    Ohio State Highway Patrol, Motor Carrier  
2           Division, Piqua District.

3           Q.    What's your job title and  
4           responsibilities?

5           A.    Motor Carrier Enforcement Inspector, and  
6           I inspect commercial motor vehicles.

7           Q.    How long have you been in that position?

8           A.    Approximately 15 years now.

9           Q.    What's your training and qualifications  
10          for that position?

11          A.    I had to get certified through the  
12          Federal Motor Carrier Association and we have to do  
13          annual inspections to stay certified through them.

14          Q.    The scope of your jurisdiction?

15          A.    Just to do Federal Motor Carrier  
16          inspections.

17          Q.    And have you received training to enforce  
18          the Federal Motor Carrier Safety Regulations?

19          A.    Yes.  Annually.

20          Q.    About how many times have you enforced  
21          those in the course of doing an inspection?

22          A.    I probably average in the area of 900  
23          inspections a year.

24          Q.    Okay.  And are you familiar with the  
25          facts and circumstances that gave rise to the

1 inspection that we're here today to discuss?

2 A. Yes, I am.

3 MR. O'ROURKE: May I approach, your  
4 Honor?

5 HEARING EXAMINER SHEETS: You may.

6 MR. O'ROURKE: I'm handing the witness  
7 what's been marked as Staff Exhibit 1. I have copies  
8 for everyone.

9 Q. Mr. Rammel, I'm going to ask you to take  
10 a look at Staff Exhibit 1 which you've just been  
11 handed. Do you recognize that document?

12 A. Yes, I do.

13 Q. What is that?

14 A. That's the inspection I did on that  
15 particular truck that day.

16 Q. And are these the type of inspection  
17 reports that are typically conducted in the field --

18 A. Yes.

19 Q. -- by you?

20 A. This is the report I generate out of  
21 every inspection.

22 Q. Okay. Let's walk through some of the  
23 information here. Let's start on the top right  
24 corner, it has a report number and inspection date.  
25 What's the significance of those pieces of

1 information?

2 A. The report number is a unique number  
3 that's identified for each report. The inspection  
4 date is the date that I did the inspection.

5 Q. And what's a walk-around inspection?

6 A. Basically, that just checks the lights,  
7 the tires, and checks credentials for the company.

8 Q. And in the next block of information we  
9 have Auto Plaza, Inc., the U.S. DOT number, and the  
10 driver is Dennis Hardesty. Do you recall that  
11 information?

12 A. Yes, I do.

13 Q. And is the gentleman sitting to your left  
14 Mr. -- do you recognize him as Dennis Hardesty?

15 A. Yes, I do.

16 Q. So let's walk down to the violations. We  
17 have, let's start with the first one, the violation  
18 code is 395.8A. The violation description was "No  
19 logbook for September 20, 2013 to September 27th,  
20 2013." What facts and circumstances caused you to  
21 issue that citation?

22 A. It was a commercial motor vehicle. The  
23 driver of that vehicle is required to have a logbook  
24 for that particular day that he's driving plus seven  
25 previous days. The driver had no logbook that day.



1 Q. Did you ask him to produce it?

2 A. Yes, I did.

3 Q. And what was his response?

4 A. He didn't think he needed one because he  
5 didn't think he was in a commercial vehicle at the  
6 time.

7 Q. And what type of vehicle was he in at the  
8 time?

9 A. It was a Chevy duly pickup truck and he  
10 was pulling a bumper pole style trailer with two  
11 pickup trucks in it. The pickup truck was rated at  
12 11,400 which puts it in the commercial motor vehicle  
13 inspection for our range because he was in  
14 interstate.

15 Q. Let me stop there. What do you mean, he  
16 was in interstate?

17 A. His business that he was in from -- he  
18 was moving from state to state.

19 Q. Okay.

20 A. He had picked some vehicles up in, I  
21 believe, if I remember correctly, in Florida, and he  
22 was hauling them back to Washington state.

23 Q. And the business name being what?

24 A. Basically that's what he was doing. He  
25 told me he was an auto dealer and he was buying

1 vehicles in other states and hauling them back to  
2 Washington state for his dealership.

3 Q. Do you recall what the name of his  
4 business was?

5 A. Auto Plaza, Incorporated.

6 Q. Did you take any pictures on that day?

7 A. Yes, I did.

8 MR. O'ROURKE: Approach, your Honor? I'm  
9 handing the witness what's been marked as Staff  
10 Exhibit 2.

11 Q. Take a moment and flip through those, let  
12 me know when you're ready.

13 A. I'm ready.

14 Q. Do you recognize the pictures that have  
15 just been handed you?

16 A. Yes.

17 Q. What are those?

18 A. Those are pictures that I took that day  
19 as I did the inspection.

20 Q. Okay. Now, in the course of your answers  
21 to my question we may need to be flipping back and  
22 forth so --

23 A. Sure.

24 Q. -- just be cautious about identifying  
25 which page we're referring to.

1                   So previously you identified a particular  
2                   trailer and truck --

3                   A.     Yes.

4                   Q.     -- that was being driven that day. Can  
5                   you point in any of these pictures to that particular  
6                   truck and trailer?

7                   A.     The seventh picture is a picture of the  
8                   trailer that he was pulling. The eighth picture is a  
9                   picture of the front of the truck that he was  
10                  driving. And the seventh [verbatim] picture is the  
11                  rear of the truck that he was driving. It doesn't  
12                  look like I took a picture of the truck.

13                  The third picture is a picture of the  
14                  truck's VIN plate which is where I got the gross  
15                  vehicle weight for the truck.

16                  Q.     And the significance of the gross vehicle  
17                  weight is what?

18                  A.     Any vehicle over 10,000 pounds is  
19                  considered a commercial vehicle if it's used in the  
20                  course of a business, and this particular truck's  
21                  gross vehicle weight was 11,400.

22                  Q.     And Mr. Hardesty was driving this truck  
23                  when you stopped him on that day.

24                  A.     Yes, he was.

25                  Q.     Let's move down to the second violation,

1 the violation code being 383.23A2. If we move along  
2 horizontally, the violation description was  
3 "Operating a CMV without a CDL - operating a class a  
4 vehicle with a non cdl license." What does that  
5 mean?

6 A. Basically, the gross vehicle weight of  
7 the truck with the gross vehicle weight of the  
8 trailer was in excess of 26,001 pounds. The driver  
9 of that vehicle that day just had a regular driver's  
10 license, a regular operator's license. With those  
11 two combination gross vehicle weight, that vehicle  
12 requires a Class A CDL to drive it.

13 Q. And did you ask him to produce a CDL?

14 A. Yes, I did.

15 Q. What was his response?

16 A. He just had a regular driver's license  
17 and that's what he produced for me then.

18 Q. Are there any pictures on here that would  
19 illuminate the violation that you issued?

20 A. No. There are two pictures that I based  
21 this on. The first picture is the actual gross  
22 vehicle weight of the trailer which was 21,000 --

23 Q. Let me stop you there. Which particular  
24 picture are you referencing?

25 A. Picture one in the packet. And then

1 picture three in the packet is the gross vehicle  
2 weight of the truck which the combination of the two  
3 are in excess of 26,001.

4 Q. Okay. Let's move down to the third  
5 violation, the violation code being 385.325C, and if  
6 we move along horizontally, the violation description  
7 "Operating in interstate commerce on or after the  
8 Operational Out of Service order date for failure of  
9 a Safety Audit." What is the significance of that  
10 description?

11 A. That particular company has a DOT number  
12 and when I checked the DOT number through the  
13 internet, which I have a connection to at that  
14 particular time, the credentials for them showed that  
15 they had a federal out-of-service order on them at  
16 that time for failure of a safety audit.

17 Q. What's a safety audit?

18 A. As far as when they obtain a DOT number,  
19 that particular state comes in and does a safety  
20 audit to make sure they have all their insurances,  
21 their drug testing, and all that type of stuff in  
22 order and, evidently, they didn't do something that  
23 they needed to do, and I don't know exactly what they  
24 didn't do, but the Federal Safety Commission ordered  
25 the out-of-service order because they failed the

1 audit.

2 Q. Okay. And the DOT number is issued by  
3 who?

4 A. The Federal Motor Carrier Association.

5 Q. Okay. And then can you be a little more  
6 specific about how you accessed that information?

7 A. There was nothing displayed on the truck  
8 so I asked him if he had a DOT number. He made a  
9 call and got the DOT number from his partner in  
10 Washington state and from there I took that DOT  
11 number and ran it through the Federal Motor Carrier  
12 Safety Association and that's where I found out it  
13 had a federal out-of-service order.

14 Q. Okay. So you're sitting in your truck or  
15 your cruiser that day?

16 A. Yes.

17 Q. And that comes equipped with certain  
18 computer equipment that enables you to access that?

19 A. Yes, that's correct.

20 Q. Okay. And that's customary on the  
21 cruisers?

22 A. Yes. That's a normal inspection process.  
23 If they don't have a DOT number, then we have to find  
24 out if they have one, and we can check by running  
25 that particular name or asking the driver for a DOT

1 number. And he produced a DOT number for -- he gave  
2 it to me.

3 Q. And the DOT number, that's -- if we move  
4 up a couple blocks on that inspection report, the DOT  
5 number 2202629, is that the DOT number that you're  
6 referring to?

7 A. Yes.

8 Q. Okay. And that's a unique number --

9 A. That only pertains to that company, none  
10 other.

11 Q. Okay. Let's move back down to the block  
12 associated with violations. I believe we're now on  
13 our fourth and last violation that you cited that  
14 day, the code being 390.21A. Moving over  
15 horizontally in that block the description is "Not  
16 marked in accordance with regulations - not marked  
17 for drive-away tow a way operation." Can you please  
18 explain what that means?

19 A. For drive-away/tow-away operations, which  
20 is what he was doing that particular day, there are  
21 specific requirements. He's only required to have a  
22 sign with a DOT and the company name on it. He did  
23 not have any displayed.

24 Q. Okay. Let me stop you there and let's  
25 back up. What is a drive-away/tow-away operation?

1           A.     Basically, an auto dealership that has  
2     vehicles that he's transporting for himself or for  
3     another company from one place to another, from a  
4     pickup location to a dealership.

5           Q.     Okay. And how do you determine that he  
6     was doing this as part of his business?

7           A.     He produced for me some receipts that  
8     showed me he had bought trucks and trailers.

9           Q.     Did you take pictures of those?

10          A.     Yes, I did.

11          Q.     Which pages are those identified on?

12          A.     On the second page of the packet there,  
13     there is a receipt there, and then on the fifth page  
14     is another receipt.

15          Q.     And two receipts for two vehicles or two  
16     receipts for one vehicle?

17          A.     Two receipts for two vehicles.

18          Q.     Okay. Let's flip back to the second  
19     picture in the packet. And if you could help  
20     illuminate some of the information in here, who is  
21     the seller?

22          A.     Looks like he bought it at an auction in  
23     Orlando, Florida. If you look, there's a spot about  
24     midway down that says a "V-6 S-10," right below that  
25     it says "Hosting Auction, Manheim Central Florida" I



1 believe is what it says, Orlando, Florida, is where  
2 he purchased it from.

3 Q. Okay. And does it identify Auto Plaza  
4 Sales anywhere on that receipt?

5 A. Yes. At the very top of it, Subject --  
6 in the Subject line, "Confirmation for Auto Plaza  
7 Sales and Leasing."

8 Q. And how about the middle?

9 A. It also has it there.

10 Q. Okay.

11 A. As dealer. Marked as dealer.

12 Q. Let's turn to the next receipt. Can you  
13 tell who the seller is on that or what the vehicle  
14 purchased was?

15 A. Looks like a -- I'm not real sure. A  
16 red, possibly, Chevy I think. Well, no, I can't  
17 really tell for sure.

18 Q. Okay. How about this, can you tell if  
19 Mr. Hardesty's name or Auto Plaza Sales is identified  
20 there as the purchaser?

21 A. Yes. Midway in that receipt it also has  
22 "Purchaser" and it states in there -- has his  
23 address.

24 Q. How did you come about procuring these  
25 two receipts?

1           A.    I asked if he had receipts for any of the  
2 vehicles and he produced these two.

3           Q.    Okay.  So let's go back to the violation.  
4 "Not marked."  What do you mean when you say it  
5 wasn't marked?

6           A.    There were no markings on the truck.  It  
7 was just a truck with no markings.

8           Q.    Markings that associated it with who?

9           A.    With the auto dealership.

10          Q.    So in order to be in conformance it would  
11 need some sort of a --

12          A.    It would have to be marked.  He would  
13 have to have at least one sign that said "Auto Plaza,  
14 Incorporated" with the U.S. DOT that he had provided,  
15 2202629, displayed.

16          Q.    Okay.  And you couldn't identify that  
17 insignia anywhere.

18          A.    No, sir, I could not.

19          Q.    Okay.  And are these pictures accurate  
20 representations of what you saw on that day?

21          A.    Yes, they are.

22          Q.    Okay.  They're true and accurate to the  
23 best of your knowledge?

24          A.    Yes, they are.

25          Q.    And this inspection report, is this a

1 true and accurate representation of what you  
2 completed that day?

3 A. Yes, it is.

4 Q. Let's flip over to page 2. Was he given  
5 a copy of this inspection report?

6 A. Yes, he was.

7 Q. Okay. And then how did you go about  
8 transmitting the report to the PUCO?

9 A. Once the report is completed, I connect  
10 to the internet and upload the inspection to PUCO.

11 Q. Is that something that you customarily  
12 do?

13 A. Yes. I do that after every inspection.

14 Q. Can we flip back to page 1 for a second.  
15 You have some inspection notes there. Are those the  
16 notes that you made on that day?

17 A. Yes.

18 Q. Okay. And at the very last sentence,  
19 "All vehicle were bought for his car dealership."

20 A. That's correct. That's what he told me  
21 that day.

22 MR. O'ROURKE: Your Honor, I don't think  
23 I have any more questions for this witness.

24 I don't think I have any more questions.

25 HEARING EXAMINER SHEETS: No more? Okay.

1                   Do you have any questions for this  
2                   witness?

3                   MR. HARDESTY: Well, a couple of things.  
4                   I've tried to explain as we were there at the  
5                   roadside that I felt because I had bought this  
6                   trailer for my recreational use --

7                   HEARING EXAMINER SHEETS: At this point  
8                   we need you to ask this witness questions. That's  
9                   how we conduct the hearing.

10                  MR. HARDESTY: Okay.

11                  HEARING EXAMINER SHEETS: He asked  
12                  questions and the witness answered, so this is your  
13                  period of cross-examination of this witness. You'll  
14                  have a chance to tell your story later.

15                  MR. HARDESTY: Oh, okay.

16                  MR. O'ROURKE: Your Honor, before we move  
17                  forward can I just -- there are carrier and driver  
18                  violations here today. Mr. Hardesty does not appear  
19                  to be represented by an attorney and I -- he may or  
20                  may not be a licensed attorney in the state of Ohio,  
21                  but I know that the Commission has certain rules  
22                  about allowing nonattorneys to ask questions of  
23                  staff's witness and I just want to make sure we abide  
24                  by those.

25                  HEARING EXAMINER SHEETS: Yeah, he can go

1 ahead.

2 MR. O'ROURKE: Okay.

3 HEARING EXAMINER SHEETS: I mean, he's --

4 MR. HARDESTY: And I'm fine just telling  
5 my story without interrogating.

6 HEARING EXAMINER SHEETS: -- questioning  
7 on behalf of Dennis Hardesty.

8 Go ahead, ask questions.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Hardesty:

12 Q. Did I -- once I was pulled over I made  
13 the comment to you that I had bought this pickup and  
14 trailer for my personal use, that we were going to  
15 use it for some amount of recreation, that we might  
16 be going hunting in it, so on and so forth. And I  
17 didn't -- my direct question to you was I didn't  
18 understand the difference between a guy buying a  
19 motor home and putting a trailer on that that is well  
20 over the weight and that's why I didn't use a DOT  
21 number. I did say that to you. Or, did I say that  
22 to you?

23 A. I don't remember for sure if you did that  
24 particular day. That's been a while ago. You may  
25 have, but I don't recollect you saying that, no.

1           Q.    Did you say to me that even the farmers  
2           in Ohio can run well over 50,000 pounds worth of  
3           trailers and stuff up the highway without a DOT?

4           A.    I may have, there are farm exemptions,  
5           yes.

6           Q.    Did I say to you that I didn't feel that  
7           I was any different than a guy in a motor home with a  
8           trailer who was doing something with --

9           A.    I think I do remember --

10           THE REPORTER:   Excuse me.   If I can have  
11           one person at a time.

12           HEARING EXAMINER SHEETS:   Slow down so  
13           the reporter can hear you and so I can hear you.

14           Q.    I'm sorry.   My question was:   I was clear  
15           in the fact that I didn't feel that I needed a DOT  
16           number for this particular operation because I was  
17           doing something on my own and that a buddy and I had  
18           bought this trailer, it had a little bit of a  
19           sleeping unit, a restroom unit in it, and we were  
20           bringing it back for our hunting purposes and fishing  
21           purposes and it was my personal trailer.

22           A.    As I said a little bit ago, I don't  
23           remember you saying that you were going to use it as  
24           a hunting or recreational vehicle.   Because I'm  
25           pretty thorough about what I do and the questions I

1 ask and what I see, and from what I see here that  
2 particular day, if you would have told me that, I  
3 probably wouldn't have believed you anyway.

4 Q. Okay. Would it make sense to you if I  
5 felt that particular way, that I actually had this  
6 particular unit for my own use, that even though it  
7 had over 26,001 pound vehicle gross, that it actually  
8 only weighed 18,000 pounds totally loaded? Would it  
9 make sense to you by me telling you that, that you  
10 would think that possibly I didn't feel that I needed  
11 a DOT number displayed on the vehicle?

12 A. No, sir. With the two pickup trucks that  
13 you had bought in whatever state it was, and I don't  
14 remember where you told me you bought them, and you  
15 told me you bought those two pickup trucks to take  
16 back to your auto dealership and you bought that  
17 particular trailer to take those two pickup trucks  
18 back to the auto dealership, that led me to believe  
19 that it was not a personal use, it was for the  
20 dealership.

21 MR. HARDESTY: Okay. My point I'm trying  
22 to, I guess this is going to come down to what I try  
23 and explain for myself because I --

24 HEARING EXAMINER SHEETS: It has to be in  
25 the form of a question --

1 MR. HARDESTY: I understand that.

2 HEARING EXAMINER SHEETS: -- for this  
3 witness. Go ahead, ask a question.

4 MR. HARDESTY: What I'm trying to explain  
5 to you, your Honor, is this is the basis for not  
6 using the DOT number.

7 HEARING EXAMINER SHEETS: We need a  
8 question for this witness right at this time. You  
9 can get on the stand later and be sworn in and  
10 provide testimony.

11 MR. HARDESTY: Okay.

12 HEARING EXAMINER SHEETS: You have to ask  
13 a question of this witness based on the -- this is  
14 cross-examination, based on what went before.

15 Q (By Mr. Hardesty) During our hour-long  
16 conversation before we went to the DOT deal was there  
17 any reason in your mind for you to think that  
18 possibly I legitimately felt that I did not have to  
19 display a DOT number from my arguments? There was  
20 never a point to which you thought that possibly I  
21 might be right on this for the fact that I bought  
22 a -- a motor home guy with a trailer, or when you  
23 brought up the fact that there was farming done where  
24 guys didn't have to have a DOT number.

25 A. No, sir. I thought you were going to be



1 required a DOT number as soon as you told me that you  
2 had bought the trucks.

3 Q. My question to you is: Is there any  
4 reason for you to think that possibly I felt that I  
5 was right, not that you were right, I understand that  
6 you feel you're right, but in your -- as you think  
7 about it, if I'm driving up the road, and every state  
8 seems to have a little bit different regulations, so  
9 on and so forth, if my interp- -- would you have  
10 possibly read that my interpretation could have  
11 possibly been that I was completely legal with what I  
12 was doing? Not your interpretation, my  
13 interpretation.

14 A. I can't honestly answer what your  
15 interpretation was because I know what I'm looking  
16 at, okay, so I can't speak for you what you're  
17 thinking.

18 Q. Did you --

19 A. Yes. You thought that you didn't need a  
20 DOT number or a CDL, yes.

21 Q. Did you think I was lying to you?

22 MR. O'ROURKE: Your Honor, asked and  
23 answered. I think this is the third time we've gone  
24 round and round about this.

25 HEARING EXAMINER SHEETS: Okay. Now

1 we've got to keep a single-subject question, and if  
2 he's answered it already, he says he can't know what  
3 your interpretation was, so then you have to move on  
4 to another question.

5 Q. Did you think that I was lying to you?

6 A. No, I didn't think you were lying to me.

7 Q. When you brought up the out-of-order  
8 certificate, did you say "You've been lying to me all  
9 along"?

10 A. I don't remember, to be honest with you.  
11 I might have -- I might have said that, or I know I  
12 was thinking that because for people to do what  
13 you're doing and not display a DOT number and have a  
14 DOT number, there's one of two reasons that they  
15 won't display their DOT number, either they don't  
16 know that they have to, or the DOT number has a  
17 federal out-of-service order, and if I see that and  
18 run that DOT number, I'm going to know that.

19 MR. HARDESTY: Okay. I think I just need  
20 to move on to my own story at this point or whatever  
21 we do next.

22 HEARING EXAMINER SHEETS: Do you have any  
23 other questions?

24 MR. HARDESTY: I don't think I do.

25 HEARING EXAMINER SHEETS: Any on

1 redirect?

2 MR. O'ROURKE: A few.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. O'Rourke:

6 Q. You were asked a question about -- he  
7 gave you a set of facts, that I would note haven't  
8 been established as evidence yet, but perhaps an  
9 intent to use this as a motor home to go hunting.  
10 What would distinguish the legal consequences of  
11 someone doing that versus the legal consequences of  
12 what you found on this day when you issued your  
13 inspection?

14 A. For someone -- for me to see that they  
15 are going to use this as a motor home to go hunting,  
16 they would either have an empty trailer or they would  
17 have camping gear in there that they would be using  
18 to go hunting or go camping, or they would have  
19 four-wheel vehicles, not pickup trucks, in the  
20 trailer. You know, ATV-type vehicles or that kind of  
21 thing.

22 If those type of things would have been  
23 in there, I would have -- I would think I would be  
24 more likely to believe that it was used for a hunting  
25 trip. But he produced receipts and he had two pickup

1 trucks in the trailer that he had bought from another  
2 state and was taking back to his dealership.

3 Q. Okay. And in the hunting/motor  
4 home/leisure activity, it's fair to say that that  
5 wouldn't bring someone within the definition or the  
6 understanding of what it means to be in interstate  
7 commerce?

8 A. That's correct.

9 Q. And why would that be?

10 A. Because as a hunter or a camper in that  
11 operation he wouldn't be required to follow any of  
12 these rules, if it was used strictly as a hunting or  
13 a camping type vehicle, but it would have to be used  
14 for that at that time.

15 Q. Okay. And then to distinguish that  
16 versus what we have here, it was your understanding  
17 of the facts that he made these purchases to  
18 facilitate his business?

19 A. That's correct.

20 Q. And then what's the consequence of that?

21 A. That it's an interstate commerce type  
22 move. It's a business move at that point so then he  
23 has to follow the Federal Motor Carrier Safety Rules.

24 MR. O'ROURKE: Nothing further, your  
25 Honor.

1 HEARING EXAMINER SHEETS: Do you have any  
2 on recross?

3 MR. HARDESTY: I do.

4 HEARING EXAMINER SHEETS: Remember, it  
5 has to be a single-subject question here you've got  
6 to ask him.

7 MR. HARDESTY: Okay.

8 HEARING EXAMINER SHEETS: It's got to be  
9 based on what he --

10 MR. HARDESTY: Is it safe to assume --

11 HEARING EXAMINER SHEETS: Excuse me.  
12 It's got to be based on what he said on redirect,  
13 okay?

14 MR. HARDESTY: Yes. Yes, sir.

15 HEARING EXAMINER SHEETS: All right.

16 - - -

17 RE CROSS-EXAMINATION

18 By Mr. Hardesty:

19 Q. Is it safe to assume that all my hunting  
20 equipment and four-wheelers could be left at home and  
21 that I would pick them up and put them there rather  
22 than buy them on the as-you-go plan, and because I'm  
23 a businessperson there's kind of a fine line between  
24 me buying a couple of cars to make a couple of  
25 dollars on so that's how it happened?

1                   MR. O'ROURKE: I object. Calls for  
2 speculation.

3                   HEARING EXAMINER SHEETS: Do you have any  
4 other questions?

5                   MR. HARDESTY: No.

6                   HEARING EXAMINER SHEETS: All right.  
7 Excused.

8                   (Witness excused.)

9                   MR. O'ROURKE: We have one other witness,  
10 your Honor. Staff calls Tom Persinger to the stand.

11                   HEARING EXAMINER SHEETS: Raise your  
12 right hand.

13                   (Witness sworn.)

14                   HEARING EXAMINER SHEETS: Please be  
15 seated.

16                   - - -

17                   THOMAS PERSINGER  
18 being first duly sworn, as prescribed by law, was  
19 examined and testified as follows:

20                   DIRECT EXAMINATION

21 By Mr. O'Rourke:

22                   Q. Mr. Persinger, can you please state your  
23 full name for the record.

24                   A. Name is Tom Persinger.

25                   Q. Where are you employed?

1           A.    I'm employed with the Public Utilities  
2 Commission of Ohio.

3           Q.    What are your job title and  
4 responsibilities?

5           A.    My job title is Compliance Officer.

6           Q.    How long have you been in that position?

7           A.    Approximately three years.

8           Q.    Okay. And what are your training  
9 qualifications for that position?

10          A.    Some of my training includes taking  
11 Federal Motor Carrier Safety Administration courses  
12 involving vehicle inspections, driver inspections,  
13 and various HazMat courses.

14          Q.    In the customary course of your duties do  
15 you or your office cause notice of preliminary  
16 determinations to be issued to respondents?

17          A.    Yes, sir.

18               MR. O'ROURKE: May I approach, your  
19 Honor? Your Honor, I'm handing the staff witness two  
20 exhibits, Staff Exhibit 3 and Staff Exhibit 4.

21          Q.    Mr. Persinger, you've just been handed  
22 Staff Exhibits 3 and 4. Have you had an opportunity  
23 to look at those?

24          A.    Yes, sir.

25          Q.    And have you ever seen these before?

1           A.    Yes, sir.

2           Q.    Okay.  Previously you testified that your  
3 section causes notices of preliminary determinations  
4 to be sent to respondents.

5           A.    Correct.

6           Q.    Is this an illustration of that?

7           A.    Yes, sir.

8           Q.    What is a notice of preliminary  
9 determination?

10          A.    A notice of preliminary determination  
11 letters, or "NPDs" as I will call them, are sent  
12 after an original notice of violation is sent to a  
13 respondent, a conference has been requested in an  
14 attempt to settle, the violations that have been  
15 listed that result from the inspection report that do  
16 not get settled at conference that are still held in  
17 dispute, violations are still being disputed get sent  
18 this NPD letter after conference.

19          Q.    Let's look at the RE: line.  It says  
20 "Notice of Preliminary Determination," and I'm on  
21 Staff Exhibit 3, "Notice of Preliminary  
22 Determination" and there's a case number, and I won't  
23 read all that, I would just ask you to go to the very  
24 end of that number and there is a "D" there, do you  
25 see that?



1 A. Yes, sir.

2 Q. What does that stand for?

3 A. "D" stands for driver where violations  
4 that come from an inspection report are placed on the  
5 driver.

6 Q. Okay. And let's pivot over to Staff  
7 Exhibit 4 and let's do the same thing here real  
8 quick. The RE: line, at the end of that case number  
9 there is a "C" there. Do you see that?

10 A. Yes, sir.

11 Q. What is the significance of that?

12 A. The "C" stands for carrier where all  
13 violations from an inspection report that are given  
14 the "C" are on the carrier.

15 Q. Okay. Let's go back to Staff Exhibit 3  
16 and just stick with the driver violations. If you  
17 look down to about the middle of the page, we have a  
18 violation 395.8A and the violation is a no logbook.  
19 Was there a forfeiture associated with that?

20 A. Yes, sir.

21 Q. And what was that?

22 A. On the logbook that was a hundred  
23 dollars.

24 Q. And why would that be?

25 A. Because there are -- certain violations

1 are assessed at certain values.

2 Q. And did you review this document to  
3 ensure that the violation merited a \$100 forfeiture?

4 A. Yes, sir.

5 Q. And let's move down to the second  
6 violation, operating a CMV without a CDL, was there a  
7 forfeiture associated with that?

8 A. Yes, sir.

9 Q. And what was that?

10 A. \$250.

11 Q. And why was that imposed?

12 A. Because that violation was -- is set at a  
13 \$250 fine on the assessment chart.

14 Q. And the assessment chart, what is that?

15 A. The assessment chart provides a list of  
16 violations and any applicable fine amounts that are  
17 to be attached to those violations that result from  
18 an inspection report.

19 Q. And who develops or who creates this  
20 assessment chart?

21 A. The Compliance division.

22 Q. Of who?

23 A. Of the Public Utilities Commission of  
24 Ohio.

25 Q. Okay. So this is something that you

1 consult with --

2 A. Yes.

3 Q. -- in imposing forfeitures.

4 A. Correct.

5 Q. Okay. So what was the total amount due  
6 on this driver violation?

7 A. On both violations?

8 Q. On the driver violations.

9 A. Driver violations only was a total of  
10 \$350.

11 Q. So after you get done calculating a total  
12 amount due what do you do with this document?

13 A. After final amounts --

14 Q. Or your office.

15 A. After final amounts are determined a  
16 letter is mailed out to the party.

17 Q. Okay. Let's briefly pivot over to Staff  
18 Exhibit 4 and I'll be asking you the same set of  
19 questions. The first one is code 385.325C. Do you  
20 see that?

21 A. Yes, sir.

22 Q. And the violation was operating in  
23 interstate commerce on or after the operational  
24 out-of-service order date for failure of a safety  
25 audit. What was the forfeiture imposed on that?

1 A. \$1000.

2 Q. And reason being?

3 A. That is the assigned amount on the  
4 forfeiture chart for that violation.

5 Q. Let's go down to the next one, code  
6 390.21A, not marked in accordance with regulations,  
7 not marked for a drive-away/tow-away operation. What  
8 was the violation associated with that?

9 A. \$100.

10 Q. Why is that?

11 A. Because that's the fine amount that's  
12 assigned to that violation on the assessment chart.

13 Q. And the total of the carrier violations  
14 was?

15 A. \$1,100.

16 Q. What did you do after this document was  
17 compiled?

18 A. It was mailed out to the carrier of  
19 record.

20 Q. And are these NPDs, as you referred to  
21 them, customarily kept in the course of the staff's  
22 business?

23 A. Yes, sir.

24 Q. Is this an accurate representation of  
25 those NPDs?

1           A.     Yes, sir.

2                     MR. O'ROURKE: I don't think I have any  
3 more questions, your Honor.

4                     HEARING EXAMINER SHEETS: What was the  
5 total for the driver again?

6                     THE WITNESS: The total for the driver  
7 violations was \$350.

8                     HEARING EXAMINER SHEETS: 350.

9                     THE WITNESS: Yes, sir.

10                    HEARING EXAMINER SHEETS: And for the  
11 company it was 1100.

12                    THE WITNESS: Correct.

13                    HEARING EXAMINER SHEETS: Thank you.  
14 Do you have any questions for this  
15 witness?

16                    MR. HARDESTY: No, sir. Thank you.

17                    HEARING EXAMINER SHEETS: You're excused.  
18 (Witness excused.)

19                    MR. O'ROURKE: We would now seek to move  
20 our documents into evidence, your Honor.

21                    HEARING EXAMINER SHEETS: Okay.

22                    MR. O'ROURKE: Exhibits 1 through 4.

23                    HEARING EXAMINER SHEETS: We'll wait on  
24 the exhibits here.

25                    You're resting, correct?

1 MR. O'ROURKE: We have no further  
2 witnesses to call, correct.

3 HEARING EXAMINER SHEETS: Let's have your  
4 testimony then.

5 MR. HARDESTY: Okay.

6 (Witness sworn.)

7 HEARING EXAMINER SHEETS: Be seated. I  
8 want you to go ahead and tell your story in a  
9 narrative style.

10 MR. HARDESTY: Okay.

11 HEARING EXAMINER SHEETS: Speak up so the  
12 reporter can hear you.

13 - - -

14 DENNIS E. HARDESTY

15 being first duly sworn, as prescribed by law, was  
16 examined and testified as follows:

17 DIRECT TESTIMONY

18 MR. HARDESTY: All right. A friend of  
19 mine and I had watched a trailer down in Pensacola go  
20 through and we were trying to come up with a way to  
21 move our toys from one campsite/hunting area to  
22 another and we thought we might buy it if the price  
23 is right, so we did.

24 And we went down to get it with a truck  
25 that I bought in South Carolina, and then I bought a

1 couple of pickups down in Florida, put them both  
2 together, and we headed home.

3 And we came through Ohio, because my  
4 business partner was up in Columbus at the time when  
5 we were actually pulled over, and I was of the  
6 impression that because this was for our personal  
7 use, that I didn't need to have DOT stickers or  
8 anything to do with DOT, nor did I have to have a CDL  
9 because, to be honest, I didn't know the thing had a  
10 gross vehicle weight of 22,000 pounds but -- number  
11 one, and number two, it was my personal use.

12 In the state of Washington, by being the  
13 owner of a corporation business drive-away, you have  
14 to have certification for a CDL but it's merely a  
15 letter that you write to the state as opposed to  
16 going through the 4000 four-week course. I've since  
17 completed that.

18 When we got pulled over, I was kind of  
19 flat-footed that a officer was extremely polite, and  
20 I was inquisitive because I just questioned  
21 everything about it. I explained to him that I  
22 didn't feel that it was necessary for me to have DOT  
23 compliance as far as having the placards and logbooks  
24 and so on and so forth because it was for my personal  
25 use.

1           He asked me if I had a DOT number, which  
2       I did, and I know the number so I gave it to him. He  
3       mentioned earlier that I had to call my business  
4       partner, but I actually gave him the number. He came  
5       back to the truck and said "You're out of service,"  
6       and I've already elaborated how the conversation  
7       went.

8           I called my business partner who was up  
9       in Columbus at the time and said, "What's going on?"  
10      He says, "I have no idea what's going on because we  
11      have a trail of paperwork that says everything's  
12      fine." And he said, "I will call DOT right now."

13          So he calls DOT and there's a fellow  
14      named Jeff Secrest, and I have the paperwork over  
15      there, that said, "I'm not exactly sure what's going  
16      on, but if you'll just mail me this MC150," which is  
17      kind of a form that you use to -- you mail it in  
18      every two years, it was not due, but you mail it in  
19      every two years, he said, "If you mail that in to me,  
20      I'll put you back on the system, but I don't know how  
21      it fell through the cracks."

22          So we started doing some research on the  
23      whole thing, and in December of 2012 we had --  
24      everything was operational and everything was good  
25      and we mailed in some money. I think on the 7th of



1 January we get this letter that we have been revoked,  
2 and it was from a safety audit because the state of  
3 Washington came in and did their little kind of an  
4 audit thing and we didn't have real good logbooks,  
5 safety issues, drug issues, and so on and so forth.  
6 Not drug issues, but a formalized plan.

7 So we immediately wrote a letter to this  
8 Jeff Secrest, it was a corrective action letter that  
9 indicated what steps we were going to take to be  
10 compliant. And a couple of days after we mailed and  
11 faxed that off to Jeff Secrest he called up, and this  
12 is in the month of January, and said, "This is the  
13 best letter we've ever had written to us. We  
14 generally don't get such detailed letters and they're  
15 normally real sloppy, but I commend you for your  
16 great letter and there's not a reason to have -- for  
17 you to think at all that you're not reinstated."

18 So we went for nine months, apparently,  
19 without being, you know, in service which was -- and  
20 the officer looked at me like I was lying out of my  
21 teeth. And I was flat-footed because I just didn't  
22 realize that we had not been.

23 We had never had an issue. And I made  
24 stops on some of our trips at some of the DOT  
25 stations with our placard and our books in some

1 states, I don't think we're actually required to go  
2 through them, but in some states if we have a dealer  
3 tag, we're required because we're actually hauling  
4 commercially and you have to get a permit to drive  
5 through their states.

6 So my DOT number has been presented in a  
7 number of states during all this and I would think if  
8 they punched the number in, they would certainly see  
9 that something wasn't right.

10 I have a very important job with Lockheed  
11 Martin that I haul their convention equipment that's  
12 worth well over a million dollars, and I do those  
13 various trips, but due to the economy the trips have  
14 been reduced a little bit, but I still have to be  
15 ready to go at any time, and I would never in my  
16 wildest dream have wandered off out of town knowing  
17 that I didn't have a DOT or that my DOT could have  
18 been possibly revoked.

19 I don't get tickets. I haven't had  
20 tickets in years. I don't play above the law. I  
21 honestly feel that somehow the U.S. DOT department  
22 had something fell through the cracks and, without  
23 sounding like a bad guy Republican, the U.S.  
24 government has made a number of mistakes, with Obama  
25 Care and so on and so forth, lately, it's not a

1 surprise to me that I did fall through the cracks.  
2 But, honest to God, I had no clue that I wasn't  
3 active as a DOT member.

4 So that's my story.

5 HEARING EXAMINER SHEETS: Okay. Now, the  
6 day of the stop, do you want to say anything about  
7 that? When you were stopped on the highway.

8 THE WITNESS: You know, I don't -- the  
9 officer was doing his job. It was lighthearted at  
10 first. It got a little bit threatening after I was  
11 told I couldn't drive the rig and if I got into it  
12 again, I could go to jail.

13 And when I was met at the rest stop, they  
14 had a couple of other Ohio State Police members there  
15 like I was going to be like a bad guy, which kind of  
16 caught me flat-footed. I was, you know, outside of  
17 being terribly flat-footed, we were put right back in  
18 business immediately.

19 I had to leave the vehicle behind. It  
20 cost me \$3500 to ship it home. So I don't question  
21 the officer's ability, but somewhere along the line  
22 my name and number had fallen through the cracks and  
23 I would never knowingly, especially with the  
24 association with Lockheed Martin, would never have  
25 let that happen had I known. I had absolutely no

1 knowledge of it.

2 And our compliance office that we use in  
3 Seattle normally gets any kind of revocation or some  
4 notice, and they've never had any either. So I have  
5 a chain of events that say I was, they say I wasn't.  
6 I typed in our number after we left there; we  
7 weren't. I typed it again and we were. So I can't  
8 answer to it.

9 But I don't think it's my mistake. I  
10 seriously do not think it's my mistake. And I  
11 wouldn't come along and fight and take up everybody's  
12 time if I didn't think I was right.

13 HEARING EXAMINER SHEETS: Does that  
14 conclude your testimony?

15 THE WITNESS: Yes, sir.

16 HEARING EXAMINER SHEETS: Do you have any  
17 questions on cross-examination?

18 MR. O'ROURKE: Just a few.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. O'Rourke:

22 Q. What's your position with Auto Plaza?

23 A. I'm an owner.

24 MR. O'ROURKE: That's all I have, your  
25 Honor.

1 HEARING EXAMINER SHEETS: No questions?

2 MR. O'ROURKE: No.

3 HEARING EXAMINER SHEETS: You're excused.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 HEARING EXAMINER SHEETS: I will admit  
7 all exhibits into evidence at this time.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 HEARING EXAMINER SHEETS: Is there  
10 anything more to offer? Staff? No?

11 Mr. Hardesty?

12 MR. HARDESTY: No, sir.

13 HEARING EXAMINER SHEETS: I'll consider  
14 the matter submitted on the record, and I thank you  
15 all for coming.

16 (The proceedings concluded at 11:14 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, May 8, 2014, and carefully compared with my original stenographic notes.

---

Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

My commission expires June 19, 2016.  
(75473-MDJ)

- - -

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Summary: Transcript Transcript from hearing held on May 8, 2014 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.