

NC

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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of

:

:

Case No. 14 - 1959 - TR - CVF

Robert Rivera

:

REQUEST FOR ADMINISTRATIVE HEARING

Comes now Respondent, Robert Rivera, by and through its undersigned counsel, and files this Request for Administrative Hearing pursuant to Rule 4901:2-7-13, O.A.C., in PUCO Case No. OH0616002473D. The full name, address and telephone number of Respondent is:

Robert Rivera
P.O. Box 30442
Rochester, NY 14603
(585) 284-6780

Please serve all notices and correspondence in this case to counsel for the Respondent at the following address:

Anthony E. Palmer, Jr., Esq.
AldenLaw
1 E. Livingston Avenue
Columbus, OH 43215
(614) 221-1306 (PH)
(614) 221-3551 (FAX)
tpalmer@aldenlaw.net

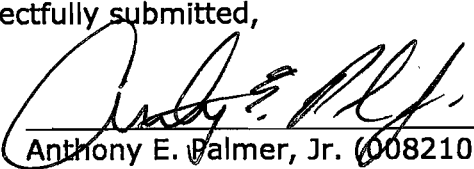
PUCO

RECEIVED-DOCKETING DIV
2014 NOV - 6 PM 12:08

A copy of the Notice of Preliminary Determination is attached hereto.

Respectfully submitted,

By:


Anthony E. Palmer, Jr. (0082108)
AldenLaw
One East Livingston Avenue
Columbus, OH 43215-5700
Telephone: (614) 221-1306
Facsimile: (614) 221-3551
Email: tpalmer@aldenlaw.com
Attorney for Respondent

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Public Utilities Commission

John R. Kasich, Governor
Thomas W. Johnson, Chairman

Commissioners

Steven D. Lesser
Asim Z. Haque
Lynn Slaby
M. Beth Trombold

10/23/2014

OH0616002473D

Anthony E. Palmer, Jr., Attorney
One East Livingston Ave
Columbus, OH 43215-5700

RE: **NOTICE OF PRELIMINARY
DETERMINATION**
Case No. OH0616002473D

Dear Sir or Madam:

On 08/01/2014, a vehicle operated by COLUMBUS FREIGHT INC, and driven by ROBERT RIVERA, was inspected within the State of Ohio. As the result of discovery of the following violations of the Commission's rules, Staff of the Commission timely notified ROBERT RIVERA (Respondent) pursuant to rule 4901:2-7-07, Ohio Administrative Code (O.A.C.), that it intended to assess a civil forfeiture against the Respondent in the following amount:

| CODE | GROUP | VIOLATION | FORFEITURE |
|---------|-------|--|------------|
| 392.4A | 4 | Driver on duty and under the influence of, or using a narcotic drug / amphetamine, which renders the driver incapable of safe operation.=small bag marihua | 500.00 |
| 392.71A | 4 | Using or equipping a CMV with radar detector=cobra 711008299 | 100.00 |
| | | Total of Group 4 | 600.00 |

TOTAL AMOUNT DUE: \$600.00

A conference was conducted pursuant to rule 4901:2-7-10, O.A.C., at which the Respondent had a full opportunity to present any reasons why the violation did not occur as alleged, mitigating circumstances regarding the amount of any forfeiture, and any other information relevant to the action proposed to be taken by Staff.

As a result of the conference, Staff has made a Preliminary Determination that the Commission should assess a civil forfeiture against ROBERT RIVERA in the following amount:

| CODE | GROUP | VIOLATION | FORFEITURE |
|--------|-------|--|------------|
| 392.4A | 4 | Driver on duty and under the influence of, or using a narcotic drug / amphetamine, which renders the driver incapable of safe operation.=small bag marihua | 500.00 |

180 East Broad Street
Columbus, Ohio 43215-3793

(614) 466-3016
www.PUCO.ohio.gov

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| | | | |
|------------------|---|--|--------|
| 392.71A | 4 | Using or equipping a CMV with radar detector=cobra 711008299 | 100.00 |
| Total of Group 4 | | | 600.00 |

TOTAL AMOUNT DUE: \$600.00

Within 30 days of this notice, you must **either**: (1) pay the assessed civil forfeiture **or** (2) file a written request for an administrative hearing pursuant to rule 4901:2-7-13, O.A.C. Failure to file a written request for an administrative hearing within 30 days shall constitute a waiver of your right to further contest the violations and will conclusively establish the occurrence of the violations. Such failure shall also constitute a waiver of your right to further contest liability to the state of Ohio for the civil forfeiture described in the notice and will result in the forfeiture amount being referred to the Ohio Attorney General's office for collection.

Please consult the enclosed instruction sheet for additional information regarding this Notice of Preliminary Determination.

Sincerely,

Milan Orbovich, Director
Transportation Department

Compliance Officer: Cheryl Streets

**ROADSIDE INSPECTION
INSTRUCTION SHEET
NOTICE OF PRELIMINARY DETERMINATION**

Please read this instruction sheet carefully. It contains information about your rights and responsibilities in regard to this Notice of Preliminary Determination.

You have received a "Notice of Preliminary Determination" as described in Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). **Within 30 days of this notice, you must either: (1) pay the assessed civil forfeiture or (2) file a written request for an administrative hearing.** If you do not pay the forfeiture or file a request for an administrative hearing within 30 days of this notice, your case will be placed in our default process. Both procedures are described below.

1. How to Pay the Forfeiture

If you do not wish to further contest the violations described in this notice, you may make payment of the civil forfeiture indicated in this notice via one of the following methods:

Online at <https://omcis.puc.state.oh.us/home.aspx>. You will need your case number and PIN located on the enclosed voucher.

Mail: send a check or money order (no Canadian postal money orders) made payable to "Treasurer, State of Ohio." **In order to assure proper credit, you must write the case number on the face of the check or money order.** Please send payment to the following address:

Public Utilities Commission of Ohio
Attn: CF Processing
180 East Broad Street, 4th Floor
Columbus, OH 43215-3793

2. How to File a Request for an Administrative Hearing

If you wish to further contest the violations described in this notice, **you should file a "Request for an Administrative Hearing"** with the Commission's Docketing Division as described in Rule 4901:2-7-13, O.A.C. Your "Request for an Administrative Hearing" must be **in writing** and must contain the **case number** indicated on this notice. Also, please include the **contact name, address, and telephone number**, of the person to whom further communications regarding this matter should be directed. The request shall be signed by the respondent or its authorized representative. A copy of this "Notice of Preliminary Determination" must be attached to your request.

Your "Request for an Administrative Hearing" must be mailed or hand-delivered **within 30 days of this notice** to the following address:

Public Utilities Commission of Ohio
Attn: Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

3. Failure to Submit a Request for an Administrative Hearing

If you do not serve a timely "Request for an Administrative Hearing" in the manner described above, you will forfeit your right to further contest the violations described in this notice and the occurrence of the violations will be conclusively established. Such failure shall also constitute a waiver of your right to further contest liability to the state of Ohio for the civil forfeiture described in

this notice and will result in the forfeiture amount being referred to the Ohio Attorney General's office for collection.

4. Codes, Violation Groups, and Forfeiture Amounts

"Code" in this notice identifies the rule that was violated. Numbers in a 100 or 300 series refer to specific sections of the Hazardous Materials Regulations or the Federal Motor Carrier Safety Regulations located in Title 49 of the Code of Federal Regulations (C.F.R.). Some section numbers may have suffixes beyond those which appear in the C.F.R. These are used for internal data collection purposes. Codes in other formats refer to violations of Ohio's statutes or regulations.

"Violation Group" identifies the numerical group (1-4) of the violation for purposes of calculating the civil forfeiture. Section 4923.99, Ohio Revised Code, authorizes the Public Utilities Commission of Ohio to assess a civil forfeiture of up to \$25,000 for each day of each violation. The amount of any forfeiture depends upon the nature, gravity, circumstances, and extent of the violation, the offender's degree of culpability for the violation, and the offender's history of violations. "Total Amount Due" is the total amount of the civil forfeiture assessed for all violations described in this notice.

For additional information regarding the civil forfeiture program, please contact the Compliance Division.

5. Violations of 49 C.F.R. 383.51, 391.15, 392.5(c)(2), 392.10, 392.80(a), 392.82(a), 395.13(d), 396.9(c)(2), and rule 4901:2-5-07(D) of the Ohio Administrative Code

If you are "convicted" of violating any of the following: 49 C.F.R. 383.51, 391.15, 392.5(c)(2), 392.10, 392.80(a), 392.82(a), 395.13(d), 396.9(c)(2), or rule 4901:2-5-07(D) of the Ohio Administrative Code, you may be disqualified from operating a commercial motor vehicle for a minimum of 60 days. The federal regulations defines conviction as, "An unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by **an authorized administrative tribunal**, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the **payment of a fine** or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

6. Copies of Inspection Reports

A copy of the inspection report for the violations described in this notice was given to the driver at the time of inspection. You may request additional copies of inspection reports.

Obtain copies at this web site:

<https://www.puc.state.oh.us/secure/OMCIS/public/searchcarrierreports.aspx>

Or you may email your request to:

cmvreports@puc.state.oh.us. Please provide the **inspection number and inspection date** in your request.



The Public Utilities
Commission of Ohio
180 E. Broad St. - Fourth Floor
Columbus, OH 43215

OMCIS VOUCHER

Date: 10/23/2014
Legal Name: ROBERT RIVERA
Address: 183 3RD ST APT#1
City: ROCHESTER
State: NY
Zip: 14605
Case Number: OH0616002473D
PIN: X3U7

| Item | DueDate | Amount |
|-------|-----------|----------|
| 1 | 9/18/2014 | \$600.00 |
| Total | | \$600.00 |

Pay online at <https://omcis.puc.state.oh.us/home.aspx> or enclose this voucher with your check or money order if paying by mail.



OH0616002473D