

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF FARUK KACAR,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.**

**CASE NO. 16-766-TR-CVF
(OH1663003626D)**

ENTRY

Entered in the Journal on December 14, 2016

I. SUMMARY

{¶ 1} The Commission grants Staff's motion for default judgment against Faruk Kacar for his failure to appear at a hearing concerning an alleged violation of 49 C.F.R. 395.8A, for failure of a driver to maintain a record of the driver's duty status, and directs him to pay the assessed forfeiture of \$100 within 60 days of this Entry.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

{¶ 3} Faruk Kacar, the driver, was served with a notice of preliminary determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12. The NPD informed Mr. Kacar that Staff intended to assess a civil forfeiture of \$100 for a violation of 49 C.F.R. 395.8A, which is a violation for failure of the driver to maintain a record of the driver's duty status for each 24-hour period.

{¶ 4} On April 11, 2016, Mr. Kacar filed a request for an administrative hearing in the above-captioned case in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} A prehearing settlement conference was held as scheduled on July 1, 2016; however, the parties were unable to settle this matter. Thereafter, the attorney examiner scheduled this matter for hearing to take place on October 17, 2016.

{¶ 6} Ohio Adm.Code 4901:2-7-14(E) 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.

{¶ 7} The hearing was convened, as scheduled, on October 17, 2016. Mr. Kacar failed to appear at the hearing and, accordingly, Staff moved for a default judgment against Mr. Kacar (Tr. at 11). Staff presented as an exhibit the NPD (Staff Ex. 1) issued to Mr. Kacar.

{¶ 8} In view of Mr. Kacar's failure to participate in the hearing, Mr. Kacar is in default, in accordance with Ohio Adm.Code 4901:2-7-14. Accordingly, Staff's motion for default judgment should be granted and the recommended civil forfeiture of \$100 should be paid by Mr. Kacar within 60 days.

{¶ 9} Pursuant to R.C. 4923.99, Mr. Kacar is liable to the State of Ohio for payment of the assessed civil forfeiture of \$100. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures 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." Mr. Kacar should write the inspection number (OH1663003626D) on the check and shall have 60 days from the date of this Entry to pay the assessed forfeiture of \$100.

{¶ 10} R.C. 4905.57 provides that, at the direction 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.

III. ORDER

{¶ 11} It is, therefore,

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


{¶ 13} ORDERED, That Mr. Kacar pay the assessed civil forfeiture of \$100 within 60 days to the state of Ohio as set forth in Paragraphs 8 and 9. It is, further,

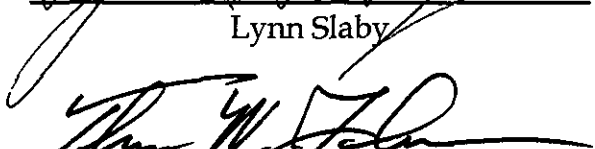
{¶ 14} ORDERED, That the Attorney General take the appropriate action to enforce this Entry as provided by law. It is, further,

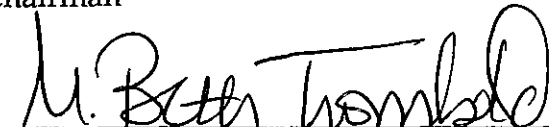
{¶ 15} ORDERED, That a copy of this Entry be served upon each party of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby


Thomas W. Johnson

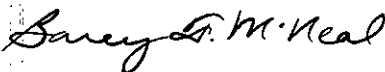

M. Beth Trombold


M. Howard Petricoff

BAM/sc

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DEC 14 2016



Barcy F. McNeal
Secretary