

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF ANTHONY K. CULVER
AND RICKY M. SAVOIE, NOTICE OF
APPARENT VIOLATION AND INTENT TO
ASSESS FORFEITURE.

CASE NO. 17-450-TR-CVF
(OH3281014376C)
(OH3281014376D)

ENTRY

Entered in the Journal on February 7, 2018

I. SUMMARY

{¶ 1} The Commission finds, pursuant to Ohio Adm.Code 4901:2-7-14, that Anthony K. Culver and Ricky M. Savoie are in default for failing to appear for the evidentiary hearing.

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} On October 4, 2016, a motor vehicle operated by Anthony K. Culver (Mr. Culver), and driven by Ricky M. Savoie (Mr. Savoie) (collectively, Respondents), was inspected within the state of Ohio. As a result of the inspection, a Driver/Vehicle Examination Report was issued, citing Mr. Culver for violations of the following transportation rules: 49 C.F.R. 392.2, state vehicle registration or license plate violation (no civil forfeiture assessed); 49 C.F.R. 390.21(a), vehicle not marked in accordance with regulations (\$100 civil forfeiture assessed for two violations); 49 C.F.R. 392.2, failure to pay Unified Carrier Registration fee (\$500 civil forfeiture assessed); and 49 C.F.R. 392.9a(a)(1),

operating without the required operating authority (\$500 civil forfeiture assessed). The Driver/Vehicle Examination Report also cited Mr. Savoie for the following violations: 49 C.F.R. 395.8(a), no driver's record of duty status (\$100 civil forfeiture assessed); and 49 C.F.R. 391.41(a), operating a property-carrying vehicle without possessing a valid medical certificate (\$100 civil forfeiture assessed).

{¶ 4} Respondents were timely served with notices of preliminary determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12. The NPDs assessed Mr. Culver a total civil forfeiture of \$1,100, and assessed Mr. Savoie a total civil forfeiture of \$200, for the aforementioned violations.

{¶ 5} On February 13, 2017, Respondents filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. By Entry issued on February 22, 2017, a prehearing conference was scheduled for March 16, 2017.

{¶ 6} The prehearing conference was held as scheduled; however, the parties were unable to settle the matter. By Entry issued on March 16, 2017, the attorney examiner scheduled this matter for an evidentiary hearing on May 25, 2017.

{¶ 7} On May 24, 2017, Respondents requested, by telephone conference with counsel for Staff and the attorney examiner, a continuance of the hearing, in light of a scheduling conflict. On May 25, 2017, the hearing was rescheduled for August 17, 2017.

{¶ 8} On June 12, 2017, Staff filed a motion for continuance due to a scheduling conflict for one of its witnesses. By Entry dated June 29, 2017, Staff's motion was granted and the hearing was rescheduled for September 7, 2017. A copy of the Entry scheduling the hearing was served upon Respondents and a service notice was filed in the docket.

{¶ 9} The hearing was held, as rescheduled, on September 7, 2017; however, Respondents did not appear for the hearing. At the hearing, Staff presented, as exhibits, the Driver/Vehicle Examination Report (Staff Ex. 1), two photographs taken of the vehicle at

the time of the inspection (Staff Ex. 2; Staff Ex. 3), the NPD issued to Mr. Culver (Staff Ex. 4), and the NPD issued to Mr. Savoie (Staff Ex. 5).¹

{¶ 10} On October 10, 2017, Respondents filed a request for a continuance of the hearing. In support of the request, Respondents explained that they were unable to attend the September 7, 2017 hearing due to an illness of one of the Respondents.

{¶ 11} By Entry dated December 1, 2017, the attorney examiner determined that Respondents' request to reconvene the evidentiary hearing should be granted, in order to afford Respondents an additional opportunity to attend the hearing and present testimony and other evidence in the case. The Entry directed that the hearing be reconvened on January 16, 2018. The Entry further directed that, if Respondents intended to question the witnesses that were presented by Staff at the hearing on September 7, 2017, Respondents should file a notice in the docket, no later than December 22, 2017. The Entry also advised Respondents that failure to appear at the hearing on January 16, 2018, may result in a default judgment against Respondents pursuant to Ohio Adm.Code 4901:2-7-14(E). Finally, the Entry noted that, absent extraordinary circumstances, an additional continuance of the hearing would not be granted and that, at the conclusion of the rescheduled hearing, the case would be submitted for the Commission's consideration. A copy of the Entry was served upon Respondents and a service notice was filed in the docket.

{¶ 12} By correspondence dated December 18, 2017, Respondents requested that Staff's witnesses be present at the hearing on January 16, 2018, for the purpose of cross-examination.²

{¶ 13} The hearing reconvened on January 16, 2018. Although Staff's witnesses were present as requested by Respondents, Respondents failed to appear at the hearing.

¹ Mr. Culver was assessed a total civil forfeiture of \$1,100, while Mr. Savoie was assessed a total civil forfeiture of \$200, as noted in Staff Exhibits 4 and 5, respectively.

² Although Respondents' correspondence was not filed in the docket until January 2, 2018, the envelope indicates that delivery was expected to occur at the Commission on December 22, 2017.

{¶ 14} Ohio Adm.Code 4901:2-7-14(E) provides that a respondent who has requested an administrative hearing and fails to appear for the evidentiary hearing shall be in default. The rule further provides that a respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability for the forfeiture proposed in the NPD.

{¶ 15} In light of Respondents' failure to appear for the evidentiary hearing, as reconvened at Respondents' request on January 16, 2018, the Commission finds that Respondents are in default pursuant to Ohio Adm.Code 4901:2-7-14. Accordingly, the recommended civil forfeitures of \$1,100 and \$200 assessed against Mr. Culver and Mr. Savoie, respectively, should be paid within 60 days.

{¶ 16} Pursuant to R.C. 4923.99, Mr. Culver and Mr. Savoie are directed to pay the assessed civil forfeitures for the violations in this matter. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures shall be made by check or money order payable to "Treasurer, State of Ohio" and shall be mailed or delivered to "Public Utilities Commission of Ohio, Transportation Compliance Division, Attn: CF Processing, 180 East Broad Street, Columbus, Ohio 43215-3793." Respondents should write the inspection number (OH3281014376) and the case number (17-450-TR-CVF) on the front of the check or money order and shall have 60 days from the date of this Entry to pay their assessed forfeitures.

{¶ 17} R.C. 4923.99 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 the assessed forfeitures.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Respondents are in default for failure to appear at the evidentiary hearing. It is, further,

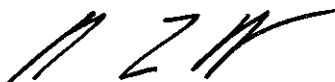
{¶ 20} ORDERED, That Mr. Culver pay the assessed civil forfeiture of \$1,100 within 60 days to the state of Ohio, in accordance with Paragraph 16. It is, further,

{¶ 21} ORDERED, That Mr. Savoie pay the assessed civil forfeiture of \$200 within 60 days to the state of Ohio, in accordance with Paragraph 16. It is, further,

{¶ 22} ORDERED, That the Attorney General take all legal steps necessary to enforce the terms of this Entry. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



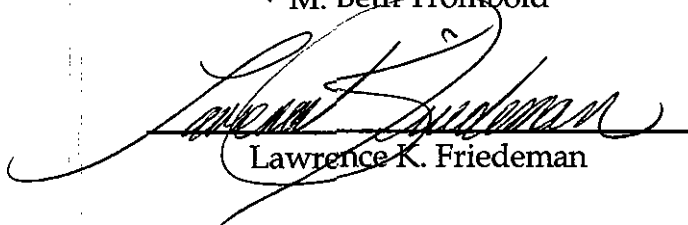
Asim Z. Haque, Chairman



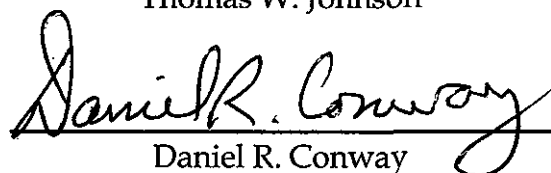
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

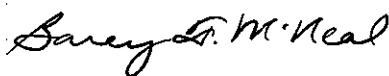


Daniel R. Conway

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Entered in the Journal

FEB 07 2018



Barcy F. McNeal
Secretary