

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF BENSON TERRELL,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 17-2482-TR-CVF
(OH0499008856D)

ENTRY

Entered in the Journal on May 16, 2018

I. SUMMARY

{¶ 1} The Commission finds that Staff's motion for default judgment should be granted and directs Benson Terrell (Mr. Terrell) to pay the assessed forfeiture of \$100.00 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} Mr. Terrell was served with a notice of preliminary determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12. The NPD informed Mr. Terrell that Staff intended to assess a civil forfeiture of \$100.00 for a violation of 49 C.F.R. 392.16, which is a violation for failing to use a seat belt while operating a commercial motor vehicle.

{¶ 4} On December 11, 2017, Mr. Terrell 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 on January 18, 2018; however, the parties were unable to settle this matter and a hearing was scheduled for March 15, 2018.

{¶ 6} By Entry dated March 2, 2018, the hearing was continued to April 4, 2018, due to a scheduling conflict with one of Staff's witnesses. A copy of the Entry scheduling the hearing was served on Mr. Terrell at the address he provided in his request for an administrative hearing.

{¶ 7} 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.

{¶ 8} The hearing was convened, as scheduled, on April 4, 2018. Mr. Terrell failed to appear at the hearing and, accordingly, Staff moved for a default judgment against Mr. Terrell (Tr. at 5). Staff presented as exhibits the NPD (Staff Ex. 1) and the Driver/Vehicle Examination Report (Staff Ex. 2) issued to Mr. Terrell.

{¶ 9} In view of Mr. Terrell's failure to participate in the hearing, Mr. Terrell 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 \$100.00 should be paid by Mr. Terrell within 60 days.

{¶ 10} Pursuant to R.C. 4923.99, Mr. Terrell is liable to the State of Ohio for payment of the assessed civil forfeiture of \$100.00. 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. Terrell should write the inspection number (OH0499008856D) on the check and shall have 60 days from the date of this Entry to pay the assessed forfeiture of \$100.00.

{¶ 11} 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.

{¶ 12} Accordingly, this case should now be closed.

III. ORDER

{¶ 13} It is, therefore,

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

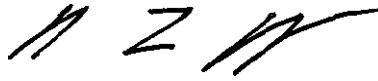
{¶ 15} ORDERED, That Mr. Terrell pay the assessed civil forfeiture of \$100.00 within 60 days to the state of Ohio as set forth in Findings (9) and (10). It is, further,

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

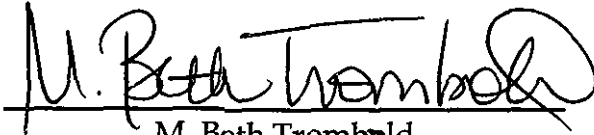
{¶ 17} ORDERED, That the above-captioned case be closed. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



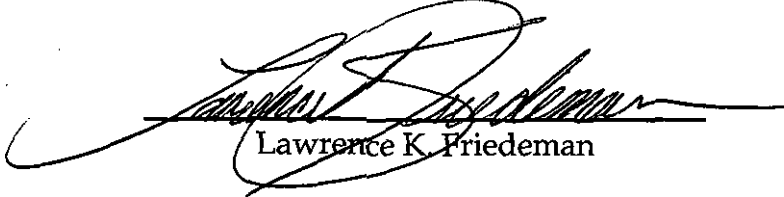
Asim Z. Haque, Chairman



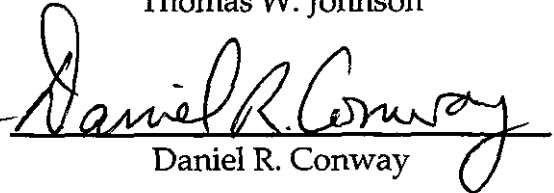
M. Beth Trombold



Thomas W. Johnson



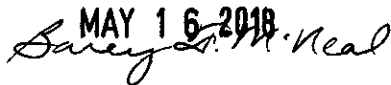
Lawrence K. Friedeman



Daniel R. Conway

KKS/mef

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MAY 16 2018


Barcy F. McNeal
Secretary