

BEFORE THE PUBLIC UTILITIES
COMMISSION OF OHIO

- - -

In the Matter of:)
)
Westbrook Monster Mix, LLC)
)
Notice of Apparent) Case No. 18-1415-TR-CVF
)
Violation and Intent to)
)
Assess Forfeiture.)

- - -

PROCEEDINGS

Before Anna Sanyal, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Hearing Room 11-D, Columbus, Ohio, on
Monday, December 10, 2018, at 10:00 a.m.

- - -

Armstrong & Okey, Inc.
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Columbus, Ohio 43215
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- - -

1 APPEARANCES:

2 Ms. Jodi J. Bair
3 Senior Assistant
4 Attorney General
5 30 East Broad Street
6 Columbus, Ohio 43215

7 On behalf of the Staff of the
8 Public Utilities Commission
9 Of Ohio.

10 Mr. John Martin
11 President
12 Westbrook Monster Mix, LLC
13 152 Westbrook Road
14 Peach Bottom, PA 17563

15 On behalf of James Tucker
16 Appearing Pro se.

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Monday Morning,
December 10, 2018

ATTORNEY EXAMINER: Good morning,
everyone, the Public Utilities Commission of Ohio
has called for a hearing case No. 18-1415-TR-CVF
which is in Re: Westbrook Monster Mix LLC.

My name is Anna Sanyal and I am the
Attorney Examiner assigned to this case. I will
begin with appearances. First the Staff.

MS. BAIR: Thank you, your Honor. On
behalf of the Staff of the Public Utilities
Commission of Ohio, Jodi Bair, Assistant Attorney
General, Mike Dewine Attorney General, 30 East
Broad Street, Columbus, Ohio 43215.

ATTORNEY EXAMINER: And then Mr. Martin,
if you just want to state your name and tell us
whom you're here on behalf of.

MR. MARTIN: My name is John Martin. I'm
president of Westbrook Monster Mix LLC, and I'm
here on behalf of James Tucker that was the driver
at the time.

ATTORNEY EXAMINER: Okay. Thank you. And
just so the record is clear, Westbrook Monster Mix
LLC is not represented by an attorney today. So I
will allow Mr. Martin to, after Staff presents

1 their evidence, to get on the stand and provide a
2 factual summary but that will be all, and then
3 during this time Mr. Martin, if you have any
4 questions just stop me and we can go off the record
5 --

6 MR. MARTIN: Okay.

7 ATTORNEY EXAMINER: -- and answer any
8 questions you may have.

9 ATTORNEY EXAMINER: Okay?

10 MR. MARTIN: Okay.

11 ATTORNEY EXAMINER: Does that work?

12 MR. MARTIN: Yup.

13 ATTORNEY EXAMINER: Ms. Baird -- Ms. Bair,
14 I'm sorry, I always add the extra D, you may
15 proceeded.

16 MS. BAIR: Thank you, your Honor.

17 ATTORNEY EXAMINER: First witness.

18 MS. BAIR: Staff would like to call
19 inspector Bell to the stand, please.

20 ATTORNEY EXAMINER: Sure.

21 (WITNESS WAS SWORN)

22 - - -

23 DOUGLAS ALLEN BELL

24 called as a witness, being first duly sworn,
25 testified as follows:

DIRECT EXAMINATION

BY MS. BAIR:

Q. Good Morning.

A. Good Morning.

Q. Could you please state your full name for the record?

A. Douglas Allen Bell.

Q. Where are you employed?

A. With the State Highway Patrol.

Q. And what is your position with the State Highway Patrol?

A. Motor Carrier Enforcement Investigator.

Q. How long have you been in that position?

A. Since March of 1986.

Q. And what are your duties in that capacity?

A. We pull vehicles over for -- check for Federal Motor Carrier Safety Regulations and the State of Ohio Safety Regulations. We give speeches, details to the public.

Q. And what type of training do you have in that area? Continuing education? Certifications?

A. Yeah, through the Federal Motor Carrier certifications each year, we have to get certified to perform inspections.

Q. And these inspections are conducted to

1 protect the safety of the Ohio traveling public?

2 A. Yes, ma'am.

3 MS. BAIR: May I approach your Honor?

4 ATTORNEY EXAMINER: Yes, and feel free to
5 do so --

6 MS. BAIR: Okay, thanks.

7 ATTORNEY EXAMINER: -- during this
8 hearing.

9 MS. BAIR: Your Honor, I would like to
10 have this marked as Staff Exhibit 1.

11 ATTORNEY EXAMINER: It shall be so marked.

12 MS. BAIR: Thank you.

13 BY MS. BAIR:

14 Q. Do you recognize this document, Mr. Bell?

15 A. Yes.

16 Q. And is this document an official record of
17 the Patrol?

18 A. Yes.

19 Q. Is it kept in the ordinary course of
20 business?

21 A. Yes.

22 Q. Did you report on matters observed
23 pursuant to your duty as an inspector in this
24 report?

25 A. Yes.

1 Q. Is this document in the same condition or
2 substantially in the same condition as when you
3 prepared it?

4 A. Yes.

5 Q. Do you remember the inspection?

6 A. Yes.

7 Q. Who was the driver listed on that report?

8 A. It would be Mr. James Tucker.

9 Q. Does the driver get a copy of that report
10 at the stop?

11 A. Yes.

12 Q. And is there a violation noted in the
13 report?

14 A. Yes.

15 Q. What is that violation?

16 A. Operating in violation of Federal Motor
17 Carrier Safety Operational out of service order for
18 failure to permit a safety audit.

19 Q. Could you explain how you determined that
20 Westbrook Monster Mix was operating a commercial
21 vehicle with that violation?

22 A. Yes. When we stop a vehicle we get all
23 the paperwork and then we go back to our car and we
24 put in the U.S. DOT number and then it comes up
25 with their operating authority and it showed that

1 it was out of service for failure to permit a
2 safety audit or no contact.

3 Q. And at that time what do you do to verify
4 that it's out of service?

5 A. I call our office in Columbus and have
6 them look it up and verify that the out of service
7 order is still active.

8 MS. BAIR: Your Honor, I'd like to have
9 the -- the paper that I just passed out marked as
10 Staff Exhibit 2.

11 ATTORNEY EXAMINER: It shall be so marked.

12 BY MS. BAIR:

13 Q. And do you recognize this, Mr. Bell?

14 A. Yes.

15 Q. And what is that?

16 A. That is a photo of the screen I was
17 looking at when I entered their U.S. DOT number.

18 Q. And how do we get this picture? What do
19 you do to produce that?

20 A. When it comes up on my computer, I just
21 take a photograph of it right then.

22 Q. Okay. So that would have happened at the
23 time of the stop?

24 A. Yes.

25 Q. So this is the screen that came up at the

1 time of the stop and you just took a picture of it?

2 A. Yes.

3 Q. And then what happens after that? How
4 does that become a picture?

5 A. I send it to the State Highway Patrol
6 photo lab and they keep all photos of each stop
7 that we take.

8 Q. So this would have been taken on the day
9 of the stop which was April --

10 A. 23rd.

11 Q. Is that correct?

12 A. Yes.

13 Q. And what is the significance of Staff
14 Exhibit 2?

15 A. That means that the U.S. Department of
16 Transportation put an out of service order on them
17 for -- that they're not allowed to proceed in
18 commerce -- in interstate commerce.

19 Q. And is that the first line of the
20 document?

21 A. Yes, carrier is currently under a federal
22 OOS.

23 Q. That's what OOS stands for, out of
24 service?

25 A. Yes.

1 Q. And what was the reason for that?

2 A. It was new entrant refusal of an audit or
3 no contact with the carrier.

4 Q. And what date was the carrier placed out
5 of the service?

6 A. April 6th.

7 Q. And is that indicated on Staff Exhibit 2?

8 A. Yes.

9 MS. BAIR: I have no more questions, your
10 Honor, and I would move Staff Exhibits 1 and 2 into
11 evidence.

12 ATTORNEY EXAMINER: I have a couple of
13 questions.

14 BY ATTORNEY EXAMINER:

15 Q. So you conducted this traffic stop,
16 correct?

17 A. Yes.

18 Q. Okay. And why did you pull the driver
19 over?

20 A. For his high DOT number.

21 Q. Okay. And what does that mean?

22 A. It means that they're a new entrants --

23 Q. Okay.

24 A. -- things.

25 Q. Okay.

1 A. And we're supposed to check them.

2 Q. Okay.

3 A. Give the information to the Feds.

4 Q. Okay. And then how do you take the
5 photograph of the screen?

6 A. Well, it's on my laptop.

7 Q. Okay.

8 A. Our inspections are on the laptops --

9 Q. Right.

10 A. -- and when you hit the DOT number this
11 comes up.

12 Q. Okay.

13 A. I just take my camera --

14 Q. Okay.

15 A. -- snap a photo --

16 Q. Okay.

17 A. -- and then upload them to the State
18 Patrol Photographic Services.

19 ATTORNEY EXAMINER: Okay. Those are all
20 the questions I have.

21 MS. BAIR: I have nothing else.

22 ATTORNEY EXAMINER: Okay, you may step
23 down.

24 THE WITNESS: Thank you.

25 ATTORNEY EXAMINER: And then Staff

1 Exhibits 1 and 2 are admitted.

2 MS. BAIR: Thank you, your Honor.

3 (WITNESS WAS SWORN)

4 - - -

5 ROD MOSER

6 called as a witness, being first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION
9 BY MS. BAIR:

10 Q. Would you please state your full name for
11 the record?

12 A. My name is Rod Moser, M-O-S-E-R.

13 Q. Where are you employed?

14 A. I work for the Transportation Department
15 within the Public Utilities Commission of Ohio.

16 Q. And what is your position?

17 A. I'm the Chief of Compliance.

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

19 A. About 20 months now.

20 Q. And what was your position before that?

21 A. Prior to that I worked for almost 30 years
22 with the Ohio State Highway Patrol.

23 Q. And what are your duties in your current
24 position at the Public Utilities Commission?

25 A. I oversee the civil forfeiture process

1 related to inspections of motor vehicles roadside,
2 and also compliance reviews done at carrier
3 business addresses.

4 Q. And what are your qualifications or
5 training to allow you to continue this position?

6 A. I am certified both in North American
7 Standards A and B, motor coach, general Hazmat,
8 non-bulk, cargo tank, see if there's anything else,
9 and I have continuing training with the Public
10 Utilities Commission as part of my job.

11 Q. And is it your job duty to determine the
12 amount of forfeitures in transportation cases?

13 A. It is, yes.

14 Q. And does the Commission apply that process
15 of developing a forfeiture, uniformly, to all
16 carriers?

17 A. They -- fines are assessed uniformly, yes.

18 MS. BAIR: Your Honor, I would like to
19 have this document marked as Staff Exhibit 3?

20 ATTORNEY EXAMINER: It shall be so marked.

21 BY MS. BAIR:

22 Q. And do you recognize this document?

23 A. Yes, I do.

24 Q. And what is it?

25 A. It is a notice of preliminary

1 determination. It's a letter that we send to a
2 respondent following an unsuccessful conference to
3 mediate the issues.

4 Q. And is this document sent to the
5 respondent?

6 A. Yes -- yes, ma'am.

7 Q. Is this document a Commission record?

8 A. It is, yes.

9 Q. And could you explain how the civil
10 forfeiture was derived in this case?

11 A. Sure. For a roadside inspection all
12 violations are divided into, actually, six groups.
13 Groups zero through four and then also hazardous
14 materials, are in a group by themselves. Group
15 four violations, which this is one, have forfeiture
16 amounts established depending upon the violation.

17 Q. And is the penalty in this case consistent
18 with the recommended fine schedule, and recommended
19 civil forfeiture adopted by the Commercial Motor
20 Vehicle Alliance?

21 A. It is, yes.

22 Q. And what is the forfeiture amount?

23 A. \$2,750 dollars.

24 Q. Do you believe that this is the correct
25 forfeiture amount for this case?

1 A. I do, yes.

2 Q. And would you recommend this amount to the
3 Commission?

4 A. Yes, ma'am.

5 Q. And are you aware of the violation in this
6 case?

7 A. Yes, ma'am.

8 Q. Which is?

9 A. Operating a CMV after being placed out of
10 service by a federal out of service order for
11 failing to allow a safety audit.

12 Q. And are carriers notified that they need
13 to have a safety audit in order to maintain
14 compliance with their federal registration?

15 A. Yes, ma'am.

16 MS. BAIR: I have quite a few exhibits to
17 present. I guess I'll present them one at a time.
18 And, your Honor, I request this be marked as Staff
19 Exhibit 4.

20 ATTORNEY EXAMINER: So it shall be so
21 marked.

22 BY MS. BAIR:

23 Q. And do you recognize this document?

24 A. I do, yes.

25 Q. What is that?

1 A. It's a letter notifying -- from the
2 Department of Transportation notifying Westbrook
3 Medic -- Westbrook Monster Mix that they required a
4 safety audit before they can begin operations.

5 Q. And what date was this letter addressed?

6 A. It was dated January 3rd, 2018.

7 Q. And where was it sent?

8 A. It was sent to 152 Westbrook Road, Peach
9 Bottom, Pennsylvania.

10 Q. So this is a document letting the carrier
11 know, Monster Mix, that they need to have an audit
12 performed to maintain their certification?

13 A. Yes.

14 Q. It was -- what was the date on that?

15 A. January 3rd.

16 Q. Okay.

17 A. The document also provides a paragraph
18 that explains ramifications if they don't
19 participate in the safety audit.

20 Q. And what are those?

21 A. And that would be that they would be
22 placed out of service if they didn't participate.

23 Q. And the carriers will receive more notices
24 after that; am I correct?

25 A. Yes, ma'am.

1 MS. BAIR: I'd like to have this letter,
2 February 2nd, marked as Staff Exhibit 5, please.

3 ATTORNEY EXAMINER: It shall be so marked.
4 BY MS. BAIR:

5 Q. And what's the date on this letter?

6 A. February 2nd, 2018.

7 Q. And it's addressed to Monster Mix in
8 Pennsylvania, the same address, correct?

9 A. Yes, ma'am.

10 Q. And what would you summarize the content
11 of that letter?

12 A. It's just basically a reiteration of the
13 first letter, and a warning that again, they would
14 be placed out of service if they didn't
15 participate. It's the second notice.

16 Q. Okay. And by participating you mean,
17 having the safety audit performed?

18 A. Yes.

19 MS. BAIR: Thank you. And your Honor, I
20 would ask that the March 26, 2018, letter be marked
21 as Staff Exhibit 6.

22 ATTORNEY EXAMINER: It shall be so marked.

23 MS. BAIR: Thank you.

24 BY MS. BAIR:

25 Q. And Mr. Moser, what is -- what is Staff

1 Exhibit 6?

2 A. It's a warning letter to Westbrook Monster
3 Mix, advising them that if they don't contact the
4 US DOT in writing -- participating in the safety
5 audit that was within 10 days, 10 days from the
6 date of this letter they would be placed out of
7 service.

8 Q. And did you tell me the date of that
9 letter?

10 A. No. It's dated March 26, 2018.

11 Q. Okay. So that's the third letter that the
12 carrier would have received?

13 A. That's correct.

14 MS. BAIR: Okay. Your Honor, I would ask
15 that the April 6th, 2018, letter be marked as
16 Staff's Exhibit 7.

17 ATTORNEY EXAMINER: It shall be so marked.

18 BY MS. BAIR:

19 Q. And what's the date of this letter?

20 A. April 6, 2018.

21 Q. And is the content of this letter the same
22 as the others?

23 A. No. It is not.

24 Q. What does this letter say?

25 A. This one actually has an order to revoke

1 Monster Mix operating authority. It tells them to
2 cease all interstate operations.

3 Q. So this letter actually revokes the
4 authority on April 6, 2018?

5 A. That's correct.

6 Q. And are you aware of any other
7 notifications that carriers get that they might be
8 in jeopardy of losing their registration?

9 A. Well, I know that as part of this process,
10 the investigator who's trying to do the safety
11 audit has an avenue to make notes about their
12 attempts to contact the company. In this case
13 there were several phone calls that were made.

14 MS. BAIR: And, your Honor, I'd ask that
15 this be marked as Staff Exhibit 8.

16 ATTORNEY EXAMINER: It shall be so marked.
17 BY MS. BAIR:

18 Q. Where does this come from? What -- where
19 do you generate this document?

20 A. This is from a federal database known as
21 -- informally as, MCMIS which I believe stands for
22 Motor Carrier Management and Information Systems.

23 Q. And you have access to that in your
24 current position?

25 A. I do, yes.

1 Q. And if we're looking at Staff Exhibit 8, I
2 know the writing is a little bit small, but what
3 did the investigator note in this?

4 A. So what's pertinent about this document,
5 is there were three attempts by investigators to
6 contact Mr. Martin. March the 9th, investigator
7 Blount, left a -- the note is that the investigator
8 left a message for Mr. Martin. March the 14th,
9 investigator Matthew, also left a message and March
10 23rd -- I'm not sure -- investigator Ashley H.,
11 also left a message.

12 Q. Okay. And these messages again, were left
13 with the carrier Westbrook Monster Mix, as
14 indicated on this document?

15 A. Yes, ma'am. Then this also provides a --
16 another emphasis -- there's a warning letter mailed
17 March 26th, and then a revocation letter was dated
18 April 6th, that's also noted on this document.

19 Q. Oh, I see that, so that is just over to
20 the right. And I would like to go back to the
21 letters, Staff Exhibits 4, 5, 6, and 7. And how do
22 you produce these letters? How do you get access
23 to these?

24 A. These are also in MCMIS.

25 Q. Okay. And what did that stand for?

1 A. I believe it's Motor Carrier Management
2 and Information Systems.

3 Q. And who issued these letters?

4 A. These are from the Federal Department of
5 Transportation. The Federal Motor Carriers Safety
6 Administration.

7 ATTORNEY EXAMINER: I have a quick
8 question. So I'm noticing that they're,
9 interchangeably, using two different addresses on
10 -- so this has a different address, as the
11 Quarryville address and then some of these have
12 Peach Bottom.

13 THE WITNESS: I believe the Quarryville
14 address was obtained when Mr. Martin requested the
15 hearing -- phone conference.

16 ATTORNEY EXAMINER: Okay. That's all.

17 MS. BAIR: Thank you, your Honor.

18 ATTORNEY EXAMINER: You may step down.
19 Mr. Martin, before you get on the stand do you have
20 any questions?

21 MR. MARTIN: No.

22 ATTORNEY EXAMINER: Okay. Well, then you
23 may come up here. I will swear you in.

24 (WITNESS WAS SWORN)

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JOHN MARTIN

called as a witness, being first duly sworn,
testified as follows:

EXAMINATION

BY ATTORNEY EXAMINER:

Q. And just tell us what happened and what
you think should be on the record and what I should
consider.

A. Basically, I'm not denying any
allegations. We had -- we bought that -- the truck
and, I don't have the exact date, I'm sorry, but it
was in -- sometime in March we bought the truck,
here in Columbus, at DW Sales and we had numerous
problems with the truck.

We had not hauled anything with it commercial
yet and it was -- and again, it's my negligence, I
did not know the proper -- I was told by the DOT
when I called in there that we did not -- we had to
have a record of all our miles and at that time we
hadn't put any commercial miles on it yet, and
again, that's my negligence.

We're a new company. It's the first time I had
DOT license and a number. So we finally, after
going to three other garages, they couldn't fix the
problem to get the truck running correctly. The

1 gentleman asked us to bring it back out to Ohio to
2 get it fixed.

3 And that's what we had done and then we had
4 picked up, I'm sorry, once we picked up the truck
5 we got it all taken care of. We were then en route
6 to pick up some bags which would have been part of
7 the commercial hauling, I guess you would call it.

8 But our biggest thing here is just, I did talk
9 to a compliance company when we first got our
10 number. I was kind of basing everything on those --
11 those gentlemen, and I'm not blaming anybody except
12 myself, as owner of the company, it's my
13 responsibility to know all of this, you know,
14 everything that's involved with that. But again,
15 we wasn't told, other than, exactly what -- even
16 though, I -- know what it was or anything like that
17 now. Now, I do know because once we got, you know,
18 squared away, they explained to me what all had to
19 be done.

20 So we did that and we got our license back but
21 again, Mr. Trucker, did get pulled other and our
22 license had been revoked at that time, back on
23 April 6th. So all I was asking for is just some
24 leniency, you know, on not knowing what was going
25 on and so on and so fourth.

1 And I think we were offered a couple hundred
2 dollars, and I don't remember the exact amount, I
3 could be wrong with that, but we were offered a
4 couple hundred, you know, in that range less than
5 what the fine was. Again, that's our ignorance for
6 not knowing the rules and regulations that -- for
7 that.

8 Q. Anything else?

9 A. No. The another thing that I had brought
10 with me was completely -- it was to do with just
11 the State of Pennsylvania and not the whole DOT
12 which that was my mistake.

13 ATTORNEY EXAMINER: Ms. Bair, any
14 questions?

15 MS. BAIR: I have no questions.

16 ATTORNEY EXAMINER: Well, I don't have any
17 questions either.

18 THE WITNESS: Okay.

19 ATTORNEY EXAMINER: So you may be seated.
20 Ms. Bair, do you have any other matters?

21 MS. BAIR: I have no other matters. Thank
22 you, your Honor.

23 ATTORNEY EXAMINER: Would you like to
24 admit Exhibits 3, 2 --

25 MS. BAIR: Oh, yeah. I believe that I --

1 you admitted Staff Exhibit 1 and 2 --

2 ATTORNEY EXAMINER: Yes.

3 MS. BAIR: -- and I would move for the
4 admission of Staff Exhibits 3,4,5,6,7 and 8.

5 ATTORNEY EXAMINER: They shall be
6 admitted. So we won't do any closing statements
7 because Mr. Martin, isn't represented. So are
8 there any things -- the let's go off the record for
9 a second.

10 (OFF-THE-RECORD DISCUSSION)

11 ATTORNEY EXAMINER: Neither parties have
12 brought any other issues that need to be addressed
13 at this time. So Staff's Exhibits have been
14 admitted. So I will submit this case to the record
15 and we are adjourned. Thank you.

16 (At 10:48 a.m. the hearing was concluded)

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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 December 10, 2018,
and carefully compared with my original
stenographic notes.

Romaine James
Romaine James,
Court Reporter

- - -



This foregoing document was electronically filed with the Public Utilities

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12/28/2018 10:17:19 AM

in

Case No(s). 18-1415-TR-CVF

Summary: Transcript In the Matter of Westbrook Monster Mix, LLC Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on December 10th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and James, Romaine