

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF MICHAEL N.
WHITESIDE, NOTICE OF APPARENT
VIOLATION AND INTENT TO ASSESS
FORFEITURE.

CASE NO. 18-104-TR-CVF
(OH0519000330C)
(OH0519000330D)

ENTRY

Entered in the Journal on January 3, 2019

I. SUMMARY

{¶ 1} The Commission grants Staff's motion for default judgment against Michael N. Whiteside for failure to appear at a hearing concerning a violation of the Commission's transportation rules.

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, per violation, against any person who violates the safety rules adopted by the Commission.

{¶ 3} On April 25, 2017, an inspector inspected a commercial motor vehicle (CMV) operated by Michael N. Whiteside (Respondent). Respondent was driving the vehicle within the state of Ohio. The inspector discovered various driver and carrier violations, including violations for 49 C.F.R. 395.8 (failing to record driver's duty status); 49 C.F.R. 392.16 (failing to use a seatbelt while operating a CMV); 49 C.F.R. 390.21 (failing to display motor carrier name and U.S. Department of Transportation number); and 49 C.F.R. 392.9b (operating a CMV in interstate commerce without USDOT registration).

{¶ 4} Staff served Respondent with a notice of preliminary determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12, regarding the driver violations. This NPD

assessed Respondent a \$200 civil forfeiture for the driver violations. Staff also served Respondent with a second NPD regarding the carrier violations. This NPD assessed Respondent a \$600 civil forfeiture for the carrier violations.

{¶ 5} On January 16, 2018, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 6} By entry dated January 31, 2018, the attorney examiner scheduled a settlement conference in this matter for March 13, 2019.

{¶ 7} On March 13, 2018, the attorney examiner attempted to contact Respondent for the settlement conference, but Respondent was unavailable.

{¶ 8} By Entry dated March 14, 2018, the attorney examiner set this matter for a hearing on May 9, 2018. A copy of the Entry scheduling the hearing was served upon Respondent by regular mail and a service notice was filed in the docket.

{¶ 9} At the hearing, Staff presented, as exhibits, the Driver/Vehicle Examination Report (Staff Ex. 1), a series of photographs taken by the inspector during the inspection (Staff Ex. 2); the NPD issued to Respondent for the driver violations (Staff Ex. 3); and the NPD issued to Respondent for the carrier violations (Staff Ex. 4). Staff also moved for a default judgment against Respondent for the proposed forfeiture of \$800 (Tr. at 5). Respondent did not appear at the hearing or present any evidence as to why he should not be held liable for the forfeiture proposed in this case (Tr. at 4).

{¶ 10} 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 further 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.

{¶ 11} In view of Respondent's failure to participate in the hearing, the Commission finds that, in accordance with Ohio Adm.Code 4901:2-7-14, Staff's motion for default judgment should be granted. Therefore, the Commission finds that Respondent violated 49 C.F.R. 395.8, 392.16, 390.21, and 392.9b and that the recommended civil forfeiture of \$800 should be paid within 60 days.

{¶ 12} Pursuant to R.C. 4923.99, Respondent is liable to the State of Ohio for payment of the assessed civil forfeiture of \$800. 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: PUCO, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Case No. 18-104-TR-CVF and inspection number OH0519000330 should appear on the face of the check or money order. Respondent shall have 60 days from the date of this Entry to pay the assessed forfeiture of \$800.

III. ORDER

{¶ 13} It is, therefore,

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

{¶ 15} ORDERED, That Respondent pay the civil forfeiture of \$800 within 60 days to the state of Ohio as set forth in paragraphs 11 and 12. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



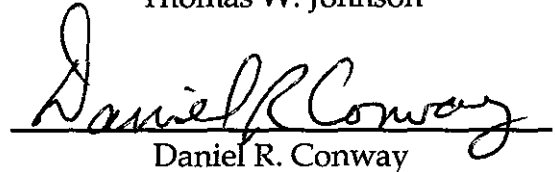
Asim Z. Haque, Chairman



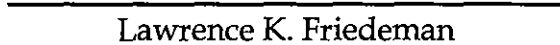
M. Beth Trombold



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Lawrence K. Friedeman

AS/mef

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Tanowa M. Troupe
Secretary