

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Juan : Case No.
Martinez Notice of Apparent : 19-676-TR-CVF
Violation and Intent to :
Assess Forfeiture. :

- - -

PROCEEDINGS

Before Anna Sanyal, Attorney Examiner, held at
the Public Utilities Commission of Ohio, 180
East Broad Street, Hearing Room 11-D, Columbus,
Ohio, on Wednesday, October 30, 2019, at 10:00
A.M.

- - -

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APPEARANCES:

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On behalf of the Staff of the
Public Utilities Commission
of Ohio.

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1 Wednesday Morning,
2 October 30, 2019.

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4 ATTORNEY EXAMINER: Good morning,
5 everyone. The Public Utilities Commission of
6 Ohio has assigned for hearing Case No.
7 19-676-TR-CVF which is captioned In the Matter
8 of Juan Martinez Notice of Apparent Violation
9 and Intent to Assess Forfeiture.

10 My name is Anna Sanyal, and I am
11 the Attorney Examiner assigned to this case.

12 Just before we take appearances I
13 would like to note for the record that
14 Respondent, Mr. Martinez, is not here at the
15 moment. So what we are most likely going to do
16 is take appearances and then go off the record
17 for about 10, 15 minutes to see if Mr. Martinez
18 appears.

19 So, let's do appearances now.
20 Staff.

21 MR. MARGARD: Thank you, your Honor.
22 On behalf of the transportation Staff of the
23 Public Utilities Commission of Ohio, Werner L.
24 Margard, Assistant Attorney General, 30 East
25 Broad Street, 16th Floor, Columbus, Ohio.

1 ATTORNEY EXAMINER: Thank you, Mr.
2 Margard. And is it okay with you if we take
3 about 10, 15 minutes to go off the record and
4 wait to see if Mr. Martinez joins us?

5 MR. MARGARD: Your Honor, we have
6 had no contact with Mr. Martinez. I have no
7 reason to know that he will not be appearing
8 today. I understand he is traveling from
9 Illinois. I certainly think allowing him a
10 little additional time would not be
11 inappropriate.

12 ATTORNEY EXAMINER: Thank you. So
13 let us go off the record and we will be back
14 around 10:15 A.M.

15 (RECESS TAKEN)

16 ATTORNEY EXAMINER: It is now 10:15
17 A.M. and Respondent is not here yet. So at this
18 time, Mr. Margard, the floor is yours.

19 MR. MARGARD: Thank you, Your Honor.
20 I will respectfully move for a default judgment
21 to be taken against the Respondent for failure
22 to prosecute their request for a hearing.

23 As I am certain that Your Honor will
24 take that under advisement, I would nonetheless
25 like to proceed with at least presenting a case

1 to justify a decision.

2 ATTORNEY EXAMINER: Sure.

3 MR. MARGARD: And so, Your Honor, I
4 would like to call Trooper Dave Smith to the
5 stand, please.

6 (WITNESS SWORN)

7 - - -

8 TROOPER DAVID SMITH
9 called as a witness, being first duly sworn,
10 testified as follows:

11 ATTORNEY EXAMINER: Please be
12 seated. Whenever you are ready, Mr. Margard.

13 MR. MARGARD: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 By Mr. Margard:

16 Q. Sir, will you please state your
17 name?

18 A. My full name is David Simpson Smith.

19 Q. And by whom are you employed and in
20 what capacity, please?

21 A. I am employed by Ohio State Highway
22 Patrol as a Motor Carrier Enforcement Inspector?

23 Q. And what is your business address,
24 route, which Post do you operate?

25 A. I operate out of Post 48 which is

1 the Toledo Post. The street number should be
2 10391, might be 390, I thinks it's 391, Swanton,
3 Ohio 43558.

4 Q. Close enough. Thank you. Could you
5 briefly describe your duties in your position?

6 A. It's my job to enforce motor carrier
7 regulations, and by doing so I pull over trucks
8 along the road and perform inspections.

9 Q. How long have you been doing that,
10 please?

11 A. It's January will be three years.
12 So about two and three-quarter years at this
13 point.

14 Q. Thank you. Do you have any
15 particular training or certification to perform
16 your job?

17 A. There was classes that I had to go
18 through to be federally certified, which is Part
19 A, Part B. There is a I believe two hazmat
20 classes, and also a class for motor coach.

21 Q. And you successfully completed those
22 classes and those certifications?

23 A. Yes, sir.

24 Q. Sir, were you on duty on June 5th of
25 2018?

1 A. Yes.

2 Q. And do you recall what your job
3 assignment and what your duties were on that
4 date?

5 A. That day I was working Wood County.
6 I believe I was at the scales when I was called
7 to a crash up in Sylvania Township.

8 Q. How did you receive that dispatch?

9 A. Over the radio.

10 Q. And you responded to the scene?

11 A. Yes, sir.

12 Q. And before I ask you specifically
13 about the accident or the scene, do you have
14 independent recollection today of that
15 inspection?

16 A. Yes.

17 Q. You remember it?

18 A. Yes.

19 Q. Okay. Good. Thank you. Can you
20 tell me what you discovered upon arriving?

21 A. When I arrived the scene was well
22 established. Because it took me a good half
23 hour to get up there. Might have been 45
24 minutes.

25 The truck was traveling from

1 westbound to southbound. There was a curve,
2 two-lane curve, and the truck had rolled on its
3 side and slide into the guardrail. And it was
4 lying on its side.

5 And they were already in the process
6 of the tow company unloading the load of bottled
7 water from the trailer so that they could
8 upright the unit.

9 Q. When you say that the scene was
10 established, I take it you were not the first to
11 respond to the scene?

12 A. No. I was probably the last or
13 very -- they may have brought another unit for
14 traffic control, but I was if not last almost
15 last.

16 Q. So you were not the Trooper who
17 responded to the crash per se, you were there to
18 support and to carry out whatever motor carrier
19 issues might have been involved?

20 A. Right. They called me in to do an
21 inspection on the vehicle.

22 Q. And did in fact you perform an
23 inspection?

24 A. Yes, I did.

25 Q. And as a result of that inspection

1 did you generate a report?

2 A. Yes, sir, I did.

3 MR. MARGARD: Your Honor, may I
4 approach?

5 ATTORNEY EXAMINER: Yes. And you
6 may do so freely during your examination of this
7 witness.

8 MR. MARGARD: Thank you, Your Honor.
9 Your Honor, may the record reflect I have
10 placed two multi-page documents before
11 the witness marked for purposes of
12 identification as Staff Exhibits 1 and 2.

13 ATTORNEY EXAMINER: They shall be so
14 marked.

15 (EXHIBITS MARKED FOR
16 IDENTIFICATION) .

17 MR. MARGARD: Thank you, Your Honor.

18 Q. Trooper Smith, do you have before
19 you what's been marked as Staff Exhibits 1 and
20 2?

21 A. I am sorry.

22 Q. Do you have before you what's been
23 marked as Staff Exhibits 1 and 2?

24 A. Yes, sir.

25 Q. Can you, let's start with the first

1 one, let's start with Staff Exhibit No. 1.

2 Could you identify that for me, please?

3 A. Yes. This is a report I generated
4 when I was called to the accident for J&R
5 Martinez Trucking. I do want to note one thing.

6 Q. Yes, sir.

7 A. There is a computer glitch, and it
8 shows R. K. Kernik under my badge number, and
9 that somebody else had my badge number before I
10 started doing this.

11 Q. So the badge number on the report is
12 correct?

13 A. The badge number is correct, sir,
14 but my name is not correct.

15 Q. This is in fact your report?

16 A. It is my report other than that.

17 Q. And it was prepared by you at the
18 time of your inspection; is that correct?

19 A. Yes, sir.

20 Q. Have you had an opportunity to
21 review this report prior to taking the stand
22 today?

23 A. Yes.

24 Q. And does it accurately reflect your
25 findings at the time?

1 A. Yes, sir.

2 Q. Do you see any errors, corrections
3 or anything that needs to be modified in this
4 report?

5 A. No, sir.

6 Q. Thank you.

7 ATTORNEY EXAMINER: I have a quick
8 question. Where is the badge number?

9 THE WITNESS: The very bottom,
10 ma'am.

11 ATTORNEY EXAMINER: Got it. Thank
12 you.

13 Q. Now I just want to walk through
14 the report briefly. First all at the top it
15 says inspection level, full inspection. What
16 does that entail, sir?

17 A. That entails an inspection of
18 the driver's paperwork, and it also entails an
19 inspection of lights, tires, condition, overall
20 condition of what we call walk-around.

21 And then the Level 1 part gets into
22 actually measuring the brakes and checking
23 components to see if there is anything broke or
24 missing or moving around.

25 So, it's in our world there is a 3,

1 a 2 and 1. And technically a 1 is all of those
2 combined.

3 Q. And this was necessary because there
4 was an accident and it was important to
5 ascertain possible causes of the collision.
6 Is that the reason?

7 A. Yes. The main reason is the fact
8 that the truck crashed and try to determine if
9 there was any mechanical defects.

10 Q. Did you discover any mechanical
11 defects?

12 A. None other than what was generated
13 by the crash itself.

14 Q. Thank you. Now, that inspection
15 also involved inspection of the driver and the
16 driver's paperwork and qualifications and so
17 forth; does it not?

18 A. It does. Yes.

19 Q. And was the driver, was Mr. Martinez
20 present at the time of your inspection?

21 A. No, he was not.

22 Q. Do you know what became of Mr.
23 Martinez?

24 A. I was told he was transported to the
25 hospital.

1 Q. But he was not present to respond to
2 any questions or queries that you had?

3 A. No, sir.

4 Q. Was there sufficient paperwork
5 available for you to be able to conduct that
6 portion of your inspection?

7 A. Yes.

8 Q. I want to direct your attention now
9 to the vehicle identification portion of
10 the first page of Staff Exhibit No. 1. There
11 are two units identified there; is that correct?

12 A. Yes, sir.

13 Q. And what are these units, please?
14 TT and ST. What are those?

15 A. TT is tracker truck. A truck
16 tracker. And then also ST means a semi-trailer.

17 Q. Very good. Thank you. The make is
18 the manufacturer?

19 A. Yes. That would be for the TT,
20 which is the power unit, it's a Freightliner.
21 And then for the ST it's a Hyundai.

22 Q. Very good. And the year is the year
23 of manufacture for each of these?

24 A. Yes. The Freightliner is 2005 and
25 the Hyundai is 2015.

1 Q. And you have the various license
2 numbers and the unit VINS that identify each of
3 those units as well; correct?

4 A. Yes, sir.

5 Q. Okay. Thank you. I am going to
6 direct your attention now if you would please to
7 the violations section about mid-way down on
8 that first page. There is as I count them six
9 different violations here; is that correct?

10 A. Yes, sir.

11 Q. And in the different columns there
12 are codes and sections and units. And in the
13 units column we have Ds, 1s and 2s. And I
14 presume that the 1 and the 2 relate back to the
15 vehicle, units, that we just described; is that
16 correct?

17 A. Right. Unit 1 would be the power
18 unit, which would be the Freightliner. Unit 2
19 would be the trailer, which would be the
20 Hyundai.

21 Q. Thank you. And then D refers to the
22 driver; is that correct?

23 A. Yes, sir.

24 Q. Now, with respect to at least a
25 couple of these there are citations indicated as

1 well. Does this mean that the driver was issued
2 a citation for these violations?

3 A. Yes, sir. The two that are marked
4 E-Citation, the driver was given a E-Citation,
5 which was issued by the Trooper that was the
6 primary on the accident.

7 Q. And you understand that these two
8 violations are not at issue in the case that's
9 before the Commission today?

10 A. Yes, sir.

11 Q. So we are going to focus simply on
12 the 2nd and the 4th of those violations. Is
13 that your understanding?

14 A. Yes, sir.

15 Q. Okay. So the first that we note is
16 a violation code, and there is a section number,
17 the unit OOS, out of service I assume, is that
18 correct?

19 A. Yes, sir.

20 Q. And then there is also a
21 description. Can you tell me what of that
22 information you input into these fields?

23 A. Okay. We are talking about
24 the second violation?

25 Q. Let's take a look at the second

1 violation, yes.

2 A. Okay. The second, in the violation
3 description on my report is operating a property
4 carrying vehicle without possessing a medical,
5 valid medical certificate.

6 Then my note what I added was driver
7 had no medical certificate, no valid medical
8 certificate, expired on 5-5-2018.

9 Q. Very good. And that is information
10 that you yourself put in. Was the rest of it
11 automatically generated?

12 A. The very first, the description is
13 automatically generated when you type in the
14 violation number. The second part, the driver
15 has no valid medical certificate with
16 the expiration date is what I entered into the
17 report as a note.

18 Q. Very good. Thank you. And how did
19 you determining that he did not have a valid
20 medical certificate?

21 A. Well, when I got to the scene I was
22 given the driver's paperwork. He had a binder
23 with truck information, along with his logbook
24 and his other paperwork. And as I was going
25 through it we looked for the driver's log,

1 record of duty status, valid medical. We also
2 looked for registration for each unit. And we
3 also looked for a valid periodic inspection for
4 each unit.

5 And when I was going through that
6 the paper copy he had with him, which is what I
7 was considering being presented to me as his
8 valid medical, it was expired.

9 Q. Now, you took photographs during
10 your investigation; did you not?

11 A. Yes, sir.

12 Q. And you have before you what's been
13 marked Staff Exhibit No. 2; correct?

14 A. Yes, sir.

15 Q. And are these copies of the
16 photographs that you took at the time of your
17 inspection?

18 A. They are.

19 MR. MARGARD: Thank you. Your
20 Honor, I would like to just note for the record
21 that both with respect to Staff Exhibit 1 and
22 Staff Exhibit 2 that there are certain
23 redactions that have been made to protect
24 the privacy of the Respondent in the copy that
25 has been provided to the court reporter.

1 ATTORNEY EXAMINER: Okay. Thank you
2 for making that clarification.

3 Q. Sir, let me ask you, if you would,
4 please, and I take it you have reviewed these
5 photographs prior to taking the stand today;
6 correct?

7 A. Yes, sir.

8 Q. And these accurately depict
9 the scene at the time of your inspection and
10 accurately depict the documents that you
11 reviewed; correct?

12 A. Yes, sir, they do.

13 Q. Let me ask you if you would, please,
14 to turn to what has been marked page 14 of Staff
15 Exhibit 2.

16 A. Okay.

17 Q. And can you tell me if these are the
18 medical examination certificates that you
19 examined?

20 A. Yes, sir, they are. These were
21 right in his logbook. I am sorry, not his
22 logbook, his we call them a truck book or
23 binder, three-ring binder, that he had with him
24 in the truck.

25 Q. And are we looking at the front

1 and the back of a certificate, or are we looking
2 at two separate documents? Do you recall?

3 A. If I recall correctly it's two
4 separate pages. Some states have multiple
5 pages. I don't recall what this one had.

6 There could have been other copies,
7 but I made pictures of what I felt was pertinent
8 to my investigation and my inspection.

9 Q. Thank you, sir. But the information
10 on these two photographs is consistent, correct,
11 between the two?

12 A. Yes, sir.

13 Q. And how did you ascertain that this
14 certificate had expired?

15 A. I am sorry?

16 Q. How did you ascertain that this
17 certificate had expired?

18 A. I also in our computer program that
19 I had with me in my patrol vehicle, we have what
20 we call CDLIS, which a CDLIS. It's a federal
21 program. And you can enter the driver's license
22 number in that and it will give you information
23 pertaining to his license status and medical
24 information.

25 A lot of times a driver doesn't have

1 this paper copy with him, so we are relying on
2 the computer to ascertain what his medical
3 status is.

4 It also showed that the medical had
5 expired, the dates matched the information in
6 the computer as well as on the paper.

7 Q. And the specific dates that are in
8 issue here, there appears to be a 5-5-2016 that
9 appears to be the date on which this certificate
10 was issued?

11 A. The date it was issued, yes. And
12 normally most of them are two-year, if there is
13 a medical issue, one of which would be he has
14 high blood pressure. There could be others.
15 I am not familiar with -- and then would only be
16 issued one year.

17 Q. And so the date that appears above
18 5-5-2018 would reflect that two-year expiration
19 date; correct?

20 A. Yes.

21 Q. And that is a month prior to this
22 incident; is that correct?

23 A. That's correct.

24 Q. Now, you also mentioned there CDLIS.
25 Is that what's depicted on page 1 of Staff

1 Exhibit 2?

2 A. Actually what's depicted on page 1
3 is what we call a prescreen. We bring up Aspin,
4 a federal program that we have which is an aid
5 to doing an inspection. The prescreen you can
6 type in the DOT number and it will come up with
7 a carrier and information.

8 And then also then the second box
9 for that is driver. And that is what this is
10 depicted on page 1 is -- the top is page -- the
11 top of page 1 is the driver information. And
12 then the bottom of page 1 is the carrier
13 information.

14 Q. I was wanting to make sure we
15 identified all those screens. The other one
16 appears on page 16 of Staff Exhibit 2. If you
17 take a look at that real quickly.

18 A. Okay. Page 16 is a picture I took of
19 the CDLIS website, and it says up in the corner
20 CDLIS DOT.gov. And that is what they were
21 showing at the time of the crash.

22 Q. And so between the paper
23 certificates that he had and the CDLIS system
24 you were able to ascertain that his medical
25 certificate had in fact expired; is that

1 correct?

2 A. Yes. As I am looking at this the
3 paper copy he had with him showed it had
4 expired. I am looking at his license details.
5 This has an issued date of 6-2 of '15

6 Q. That would be his CDL issue date?

7 A. Oh, yes, I am sorry, yes. Okay.
8 Yes. I am looking at the -- yes, I am looking
9 at that -- normally on the CDLIS page when there
10 is medical data displayed it will give you the
11 dates that the medical exam was performed and
12 the date that the medical exam expires.

13 The dates that are listed on the
14 CDLIS webpage is the dates of his license. If
15 you go below that it has his commercial status
16 as not eligible, his non-commercial status is
17 licensed. And normally below that is where you
18 will have the medical information. And there is
19 none, there was none the day that I ran his
20 license.

21 Q. So you had nothing that would
22 indicate that he had a current medical
23 certificate?

24 A. Yes.

25 Q. Very good. Thank you. I want to

1 turn your attention back to Staff Exhibit No. 1
2 again, the examination report. And take a look
3 at that 4th violation. The ELD, no record of
4 duty status.

5 What portion of this violation did
6 you enter on this report?

7 A. Okay. You said the 4th violation?

8 Q. The 4th violation, yes, sir.

9 A. Okay. The beginning ELD, no record
10 of duty status. ELD required. I entered the
11 CMV, which is abbreviation for commercial motor
12 vehicle. Has no ELD, and driver is using paper
13 RODS, which is abbreviation for record of duty
14 status.

15 Q. And thank you for explaining the
16 abbreviations. I think the one we haven't
17 explained so far is ELD. Will you explain that?

18 A. ELD is electronic logging device.

19 Q. Now, drivers are required to keep a
20 record of their duty status; correct?

21 A. Yes, they are.

22 Q. And there are a number of different
23 means by which they can do that; correct?

24 A. Yes.

25 Q. One of these means is this

1 electronic logging device. What is that, how
2 does that work?

3 A. The electronic logging device --
4 there is actually two used at this point in
5 time. The first one is called an automatic
6 onboard recording device. The ELD, electronic
7 logging device, is an extension of that.

8 The older version, which is
9 the automatic onboard recording device, does not
10 record truck mileage, nor does it record engine
11 hours. The feds updated the requirements on
12 what information the device should record, and
13 the ELD is considered the updated version. And
14 depending on -- I can't get into the exact dates
15 of when the automatic and the ELD are required
16 or not required.

17 The older version is still in use,
18 and coming this December 2019 they will be doing
19 away with the older version. The main thing is
20 as far as the date we are dealing with when I
21 did this, when I did this inspection, is
22 the truck is a 2005. It's newer than the 2000
23 model year. And there was a cutoff for
24 having -- the requirement to use a electronic
25 device, which could have been either an

1 automatic onboard recording device, or an ELD at
2 that time, neither of which he had in use. He
3 was using the paper record of duty status.

4 Q. Thank you. Very thorough
5 explanation, and I appreciate that. The
6 automatic onboard recording device, is that a
7 portable device, is that something that
8 the driver carries with him?

9 A. The automatic onboard
10 recording device is normally mounted to the
11 dash, it's normally attached to the truck with a
12 cord. It can be wireless, but most of them are
13 wired to the truck with a cord.

14 Q. And the ELD is something which is --
15 how is it attached?

16 A. The ELD is supposed to be mounted to
17 the dash with the ability to remove it so it can
18 be reviewed outside the vehicle. It also
19 records more information than the older units.

20 Q. Is it your understanding that the
21 regulations require ELDs on vehicles
22 manufactured since 2000; is that correct?

23 A. Yes.

24 Q. And this vehicle, this
25 tractor-trailer, this tractor truck, was I think

1 you testified a 2005; is that correct?

2 A. That's correct.

3 Q. All right. And I think you also
4 testified, I just want to be clear for
5 the record, there was no automatic onboard
6 recording device in this vehicle, was there?

7 A. No.

8 Q. And there was no ELD in this
9 vehicle, was there?

10 A. No. There was no electronic devise
11 at all.

12 Q. But you did find evidence that he
13 had in fact recorded his duty status; correct?

14 A. Yes. He had a paper record of duty
15 status with him.

16 Q. And I am going to refer you back
17 again to the packet of photographs marked as
18 Staff Exhibit No. 2. And beginning on page 2
19 and continuing to page 6, I see a series of nine
20 different days of paper duty status records; is
21 that correct?

22 A. Just a second. Yes. Nine total.
23 There is eight pictures, but he had two days of
24 off duty on one page, which is allowed. It was
25 probably a weekend for him.

1 Q. Okay. So, you determined that he
2 violated this particular regulation by virtue of
3 the year in which the tractor was manufactured
4 and the absence of any kind of electronic
5 recording device?

6 A. That is correct.

7 Q. Thank you. Did you have the
8 opportunity to speak with Mr. Martinez at any
9 point?

10 A. No, I did not.

11 Q. Have you ever?

12 A. To my knowledge, no.

13 Q. Is there anything else that you
14 think is important for the Commission to know or
15 to understand about this vehicle, this driver,
16 or your inspection in rendering its decision?

17 A. No. It pretty well speaks for
18 itself. One of the parts of training is if you
19 are going to make a violation, generate a
20 violation, make sure you are able to document
21 the reason for doing it. And that is the reason
22 for the pictures. With the pictures of his
23 medical, pictures of what I was looking at on
24 the computer, and also pictures of his logbook.

25 MR. MARGARD: Very good. And I

1 thank you for that. Your Honor, I have no
2 further questions for this witness.

3 ATTORNEY EXAMINER: Thank you. I
4 have some questions.

5 EXAMINATION

6 By the Attorney Examiner:

7 Q. So, if you will turn to Staff
8 Exhibit 1. So, is it, you know, in your
9 expertise is it common for the truck tractor and
10 the semi-trailer to be made in different years,
11 to have that 2005 versus that 2015 range?

12 A. Oh, yes.

13 Q. Okay.

14 A. A lot of the times they will -- it's
15 their power unit and they will go to a facility
16 and pick up whoever's trailer. So they call it
17 drop and hook.

18 Q. Okay. And then in the violations
19 section of Staff Exhibit 1, do you know why some
20 of these -- why five of these violations are
21 bolded and why one is not? Is there a specific
22 reason why?

23 A. As far as the printing is in bold,
24 as far as darker, is that your question?

25 Q. Yes.

1 A. Usually what that means is that the
2 bold lettering is an out of service. And if you
3 look under column -- there is a column across
4 the top where you have violation codes, and then
5 a section, drop down, and then a unit and out of
6 service. You will see if it's out of service
7 exist, which is a yes, all the lettering is in
8 bold and darker. It's to kind of bring it to
9 the driver's attention when you give them a
10 report and/or the company, I am assuming too,
11 that it's more serious. That is why they have
12 it highlighted.

13 Q. Okay. Thank you. And then will you
14 flip to Staff Exhibit 2, to page 16. So you
15 have a photo on the bottom of this screen, this
16 CDLIS screen, but this is not the picture of the
17 full screen, right, because there is a scroll
18 bar. So there is presumably some information in
19 the bottom; correct?

20 A. There could be. On this particular
21 one there was not, or I would have taken a
22 separate picture. Normally before license
23 restrictions you start seeing his medical
24 information. That gives the medical, name of
25 the person that did the exam. And then the

1 dates.

2 I see what you are saying, and I can
3 see the fact that it could look like it's an
4 incomplete document. I do try to make sure that
5 I had all the information captured when I took
6 the picture. As I recall the rest of that page
7 was blank.

8 Q. Okay. Then one other question for
9 Staff Exhibit 2. So going back to page 2 you
10 have several pages of these paper records of
11 duty status. So, just so that I understand, so
12 for truck tractors that are produced after 2000,
13 even if the driver keeps paper records, they are
14 still required to have an ELD; correct?

15 A. Yes. In normal circumstances.

16 Q. So the paper records they can keep
17 in conjunction with having the ELD, but it
18 doesn't absolve them of the duty to have an ELD?

19 A. Yes. Most of them will not -- a lot
20 of the companies have told drivers that I have
21 talked to not to do both because if you are in
22 an inspection situation and the ELD and
23 the paper doesn't match you could end up with a
24 potential false log situation, which is one of
25 the reasons that they wanted to do away with

1 the paper because if you have individual sheets
2 you can substitute page 3 and make a new sheet.

3 And that was one of the things you
4 used to sometimes would find that the driver had
5 multiple copies of the same day, or two or three
6 of the same day, and they actually had different
7 information on them.

8 Q. So some having these paper records
9 are still required, even though he had these
10 paper records, he was still required to have the
11 ELD?

12 A. Yes. With the circumstances he was
13 running or operating the vehicle under, yes.

14 ATTORNEY EXAMINER: Okay. Those
15 are all the questions I have.

16 MR. MARGARD: Could I just ask a
17 follow-up question?

18 ATTORNEY EXAMINER: Yes, you may.

19 FURTHER DIRECT EXAMINATION

20 By Mr. Margard:

21 Q. It's about the paper records. And
22 ask you to turn to page 5, if you would please,
23 of the package of photographs. And I believe
24 you testified that there were nine images but
25 eight days, and that there was a day for which

1 there were two log sheets.

2 ATTORNEY EXAMINER: I think there is
3 eight pages and nine days.

4 A. That is my mistake. There is nine
5 images and it's also nine days.

6 Q. And I note on page 5 that the top
7 image is 6-4 of '18 and the bottom image is 6-4
8 of '18, and one shows off duty and one shows
9 driving. Presumably these are not the same
10 days; is that correct?

11 A. Correct.

12 Q. Is it reasonable to believe that at
13 least one of these is likely to be 6-3-18?

14 A. Yes.

15 Q. And most likely the upper image, but
16 it really doesn't matter which one; does it?

17 A. No. I took these in the order that
18 they were in the book.

19 Q. So it is most likely the top image,
20 that would be 6-3?

21 A. Yes. And you do see that from
22 time-to-time. It's just like if you look at
23 page 4, the lower image is -- is that that 6-2
24 or 6-3? You know, the top one is clearly 6-1.

25 And you kind of have to take all

1 factors into consideration. He has got a book
2 that is in order. It wasn't like the whole book
3 was catttywampus, here, there and everywhere
4 else in the truck.

5 Q. But at least in your opinion based
6 on your recollection you photographed sheets
7 documenting nine separate days of duty status?

8 A. Yes.

9 Q. Were there more pages than this in
10 the book?

11 A. Yes, there was.

12 Q. Is there a reason you only
13 photographed these nine?

14 A. Well, when we do an inspection he
15 could have two or three months in there. We are
16 only dealing with eight days, the day of the
17 inspection, and the previous seven.

18 So if I was to see a violation on
19 day nine or ten I am really not allowed to do
20 anything with it.

21 MR. MARGARD: Okay. Very good.
22 Thank you. That is all I have. Thank you, Your
23 Honor.

24 ATTORNEY EXAMINER: Thank you. You
25 may step down. Thank you for coming here.

1 MR. MARGARD: Your Honor, Staff
2 would call Mr. Rod Moser to the stand, please.

3 (WITNESS SWORN)

4 ATTORNEY EXAMINER: Please be
5 seated.

6 - - -

7 ROD MOSER
8 called as a witness, being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Margard:

12 Q. Sir, will you please state your
13 name?

14 A. My name is Rod Moser.

15 Q. And by whom are you employed and in
16 what capacity, please?

17 A. I am employed by the Public
18 Utilities Commission of Ohio. I am the Chief of
19 Compliance for the Transportation Department.

20 Q. Your business address, please, sir?

21 A. 180 East Broad Street, Columbus,
22 Ohio 43215.

23 Q. And how long have you been in this
24 position?

25 A. A little over two and a half years.

1 Q. And can you briefly describe your
2 duties and responsibilities?

3 A. Just in general my job is to oversee
4 the civil forfeiture process for the
5 Transportation Department.

6 Q. Does that include performing
7 calculations of civil forfeitures?

8 A. It does, yes.

9 Q. Does it involve reviewing and
10 confirming that calculations performed by others
11 have been correctly determined?

12 A. Yes, it does.

13 Q. Can you briefly describe how a civil
14 forfeiture is calculated for violations of motor
15 carrier safety regulations?

16 A. Sure. Violations noted on
17 inspection reports are divided into six
18 categories, groups. One category by itself
19 would be hazardous materials violations.

20 Then there are five non-hazardous
21 material violations categories numbered 0, 1, 2,
22 3 and 4.

23 All violations noted on the report
24 are noted on a document of some sort sent to the
25 carrier and/or the driver. Violations that are

1 out of service for Groups 1, 2 and 3, we have a
2 fine system or assessment system for those, and
3 also all violations for Group 4 are assessed.

4 Q. And there is a system for
5 determining the appropriate forfeiture for all
6 violations?

7 A. Our process, except for
8 the hazardous material violations, our process
9 is automated, so all respondents get the same
10 calculation in all cases.

11 Q. Everyone is treated the same?

12 A. That's correct.

13 Q. In the course of your preparation to
14 testify today did you have an opportunity to
15 review the Commission's file with respect to
16 this case?

17 A. I did.

18 Q. Did you have an opportunity to
19 review what was marked Staff Exhibit No. 1, the
20 inspection report?

21 A. I have, yes.

22 Q. Did you have an opportunity to
23 determine which of those violations were at
24 issue in this case?

25 A. Yes.

1 Q. And as a result of that report were
2 notices generated to the Respondent?

3 A. Yes, they were.

4 Q. And those notices identified both
5 the violations and the proposed forfeitures;
6 correct?

7 A. That's correct.

8 MR. MARGARD: Your Honor, may I
9 approach?

10 ATTORNEY EXAMINER: Yes, you may.

11 MR. MARGARD: Your Honor, would the
12 record please reflect that I have handed the
13 Bench, the court reporter, and the witness a
14 packet of four separate documents marked for
15 purposes of identification as Staff Exhibits 3,
16 4, 5 and 6.

17 ATTORNEY EXAMINER: These shall be
18 so marked.

19 (EXHIBITS MARKED FOR THE PURPOSE OF
20 IDENTIFICATION)

21 Q. Mr. Moser, have you had an
22 opportunity to take a look at Staff Exhibits 3,
23 4, 5 and 6?

24 A. Yes, sir.

25 Q. Were each of these documents

1 contained in the Commission's record in this
2 case that you are testifying today?

3 A. Yes, they are.

4 Q. Walk through these real quickly.
5 Would you please identify Staff Exhibit No. 3
6 for me?

7 A. No. 3 would be the initial letter
8 sent to the Respondent, in this case Mr.
9 Martinez. It's formally called a Notice of
10 Apparent Violation and Intent to Assess
11 Forfeiture. It identifies violations for which
12 an assessment has been assigned and the amount
13 of the assessment.

14 Q. Sir, earlier you identified that
15 there are a number of different groups.
16 Presumably the record of duty status, ELD, is
17 identified as a Group 1 violation; correct?

18 A. It is, yes.

19 Q. And the lack of a valid medical
20 certificate is identified as a Group 4
21 violation; correct?

22 A. It is.

23 Q. And, sir, the document appears to
24 indicate that there was a \$100 forfeiture
25 assessed for each of these violations; is that

1 correct?

2 A. That's correct.

3 Q. And is that the proper amount based
4 on the system that is used by the Commission?

5 A. That is the proper amount, that is
6 the amount that these violations all are
7 assessed.

8 Q. Thank you, sir. Will you take a
9 look at Staff Exhibit No. 4 and tell me what
10 that is?

11 A. Sure. It's actually out of order
12 from the chronology how we do business.

13 Q. I am sorry, my mistake. Let's
14 follow the chronology just to keep things clean.
15 And take a look at Staff Exhibit No. 5.

16 A. No. 5 would be next. No. 5 is the
17 second notice, it's also Notice of Apparent
18 Violation and Intent to Assess Forfeiture.
19 That notice goes out, at that time it was 40
20 days after the initial notice if we had not
21 heard anything from the Respondent.

22 Q. Otherwise identical?

23 A. Yes, otherwise exactly the same.

24 Q. All right. My apologies, sir, for
25 placing these out of sequence. If we can return

1 to Staff Exhibit No. 4.

2 A. Then No. 4 is essentially a third
3 notice. This notice is typically called show
4 cause, but the caption on it is Unpaid Civil
5 Forfeiture. This notice is sent to any
6 respondent who is deemed to be in default,
7 meaning they haven't contacted the PUCO in any
8 way to address the case that is against them.

9 Q. Thank you. And Staff Exhibit No. 6?

10 A. Then No. 6 would be a Notice of
11 Preliminary Determination. Again there is
12 actually a couple letters in between here from
13 the prior letter that were after the show cause
14 notice the Respondent requested a conference.
15 We did set up a conference for him in January.

16 That conference was then reset to
17 February, and he would of had notices for both
18 of those alerting him to the date and time.

19 And then after the conference, if
20 the conference is unsuccessful at resolving the
21 issue we send the Respondent what's called a
22 Notice of Preliminary Determination, and
23 basically that says your options are you can
24 either pay the assessment, or you can request an
25 administrative hearing.

1 Q. And in fact he did request a hearing
2 in this case; correct?

3 A. That's correct.

4 Q. But as far as these notices are
5 concerned, the forfeiture amounts are the same;
6 is that correct?

7 A. Yes.

8 Q. I do want to direct your attention
9 with respect to the Staff Exhibit No. 6. There
10 is an indication there that the Group 4
11 assessment is \$50 as opposed to \$100. Can you
12 explain the difference, please?

13 A. Yes. I think that was the -- what
14 they had attempted to arrive at as a compromise
15 during the telephone conference. But then not
16 hearing from the Respondent after that the
17 notice was issued.

18 Q. So no resolution of the case was
19 made and in your opinion the appropriate
20 forfeiture in this case is \$100 for each of the
21 violations for a total of \$200; is that correct?

22 A. That is correct.

23 Q. And that figure is both accurate,
24 reasonable in your opinion; correct?

25 A. Yes.

1 MR. MARGARD: Thank you, Your Honor.

2 I have nothing further for this witness.

3 ATTORNEY EXAMINER: I have no
4 questions for Mr. Moser. Thank you.

5 MR. MARGARD: Your Honor, I
6 respectfully move admission of Staff Exhibits 1
7 through 6.

8 ATTORNEY EXAMINER: They each shall
9 be so admitted.

10 (EXHIBITS ADMITTED INTO
11 EVIDENCE)

12 MR. MARGARD: I have nothing
13 further, Your Honor. I would renew my motion
14 for a default judgment against the Respondent.

15 ATTORNEY EXAMINER: Thank you. And
16 the Commission will take that under advisement.

17 I have no other matters to discuss.
18 So, thank you everyone. The case shall be
19 submitted to the record and the Commission will
20 issue an opinion in due course. So off the
21 record. Thank you.

22 MR. MARGARD: Thank you, Your Honor.

23 (at 11:00 A.M. the hearing was
24 concluded)

25 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
October 30, 2019, and carefully compared with my
original stenographic notes.

Michael O. Spencer
Michael O. Spencer,
Registered Professional
Reporter.

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Summary: Transcript In the Matter of Juan Martinez Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on October 30th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.