

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|---|---|-------------------------|
| In the Matter of Brian L. Soule, Notice |) | |
| of Apparent Violation and Intent to |) | Case No. 19-1858-TR-CVF |
| Assess Forfeiture. |) | (OH3238013335D) |
| |) | |

**MOTION TO DISMISS
AND TO STAY PROCEEDINGS**

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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

February 21, 2020

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| In the Matter of Brian L. Soule, |) | |
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| Intent to Assess Forfeiture |) | (OH3238013335D) |
| |) | |

**MOTION TO DISMISS
AND TO STAY PROCEEDINGS**

The Staff of the Public Utilities Commission of Ohio (Staff) hereby moves to dismiss this case based on Respondent's payment in full of the forfeiture assessed. Under O.A.C. § 4901:2-7-22, full payment terminates all further proceedings regarding the violation. Inasmuch as hearing has been improvidently scheduled in this matter for March 5, 2020, Staff further moves that all further proceedings be stayed until such time as a decision is rendered on its motion to dismiss.

Grounds for these motions are more particularly set forth in the accompanying Memorandum in Support.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Werner L. Margard III

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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

MEMORANDUM IN SUPPORT

Staff moves to dismiss this case based on payment of the assessed forfeiture in full. Under O.A.C. § 4901:2-7-22, full payment terminates all further proceedings regarding the violation.

On December 28, 2018, a vehicle driven by Respondent Brian Soule (Respondent) was inspected by the Ohio State Highway Patrol. Respondent was issued an inspection report noting a single violation of 49 C.F.R. 392.80(A) (driving a commercial motor vehicle while texting). *See* Respondent's Request for Hearing. A Notice of Apparent Violation and Intent to Assess Forfeiture was served upon the Respondent pursuant to Ohio Admin.Code 4901:2-7-07, as was a Notice of Preliminary Determination pursuant to Ohio Admin.Code 490:2-7-12. No response was received.

On July 17, 2019, the Commission issued an order finding the Respondent to be in default, and directing him to pay the forfeiture. *In the Matter of the Default of Motor Carriers and Drivers Pursuant to Rule 4901:7-14 of the Ohio Administrative Code*, Case No. 19-1175-TR-CVF (Finding and Order) (Jul. 17, 2019). Respondent failed to show cause why he should have been found to be in default, and neither requested rehearing of the Commission's order nor sought judicial review of that decision. The Commission's determination was therefore a final, non-appealable order. The forfeiture was sent to the Ohio Attorney General for collection.

On September 18, 2019, the State of Michigan suspended Respondent's commercial motor vehicle driving privileges for two months. *See* Respondent's Request for Hearing. On October 1, 2019, after receiving notice of the suspension, Respondent's employer paid the

forfeiture for the December 28, 2018 violation in full. *Id.* Only then did Respondent request a hearing at the Commission. Because the Commission had already found the Respondent to be in default, his request for hearing should not have been granted.

Moreover, Respondent's payment of the forfeiture constitutes an admission of the violation, and completely obviates any right to a hearing. In a recently decided case, the Commission ordered that a case involving a similarly situated respondent be dismissed. *In the Matter of Daniel Anofils, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 19-1792-TR-CVF, Finding and Order (Feb. 13, 2020). As in this case, Mr. Anofils filed a request for a hearing after having paid the proposed forfeiture because "he did not understand the consequences to his CDL that resulted from payment of the forfeiture." *Id.* at ¶3. After a motion to dismiss was filed by the Commission Staff, the Commission found that:

[¶9] Ohio Adm.Code 4901:2-7-22 provides, in pertinent part, that payment of a civil forfeiture assessed pursuant to a violation of the Commission's transportation regulations constitutes an admission of the occurrence of the violation and serves to terminate all further Commission proceedings.

[¶10] The Commission finds that respondent's payment of the civil forfeiture . . . concludes jurisdiction over this matter.

. .

By paying the assessed forfeiture, Respondent is deemed, by operation of law, to have admitted to the violation. Further, as the Commission has found, payment of the forfeiture ends the Commission's jurisdiction to hear this case. Consequently, Respondent's request for hearing must be dismissed, and this case closed of record.

The Commission scheduled a hearing in this case unaware that the forfeiture had been paid and that the case had already concluded. That hearing is currently scheduled for March 5, 2020. Proceeding with the hearing in light of these facts before a decision is rendered on this motion would be wasteful and inefficient. Staff further respectfully requests that the hearing be suspended and the case stayed pending a decision on its motion to dismiss.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Werner L. Margard III

Werner L. Margard III

Assistant Attorney General

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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Motion to Dismiss and to Stay Proceedings** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named party via United States mail, this 21st day of February, 2020.

/s/ Werner L. Margard III

Werner L. Margard III
Assistant Attorney General

Party of Record:

Brian L. Soule
5877 N. Lapeer Rd.
North Branch, MI 48461

Respondent

Heide Weber
Safety / Compliance Director
Select Leasing d/b/a Countryside
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Case No(s). 19-1858-TR-CVF

Summary: Motion to Dismiss and To Stay Proceedings electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO