

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF BRIAN L. SOULE,  
NOTICE OF APPARENT VIOLATION AND  
INTENT TO ASSESS FORFEITURE.

CASE NO. 19-1858-TR-CVF  
(OH3238013335D)

### ENTRY

Entered in the Journal on February 25, 2020

{¶ 1} On December 20, 2018, Brian Soule (Respondent) was charged with violating Federal Motor Carrier Safety Administration regulation 49 C.F.R. 392.80(A), driving a commercial motor vehicle while texting.

{¶ 2} On December 25, 2018, Staff served upon Respondent a notice of apparent violation and intent to assess forfeiture in the amount of \$250 due to the violation. Staff re-served the notice of apparent violation and intent to assess forfeiture on February 6, 2019.

{¶ 3} On July 17, 2019, having received no communication from Respondent, the Commission issued an order finding Respondent 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, (July 17, 2019). Respondent neither requested rehearing of the Commission's order nor sought judicial review of the decision. As a result, the forfeiture was referred to the Ohio Attorney General in order to pursue collection of the forfeiture.

{¶ 4} On October 2, 2019, the Commission received an undated, mailed joint request from Respondent and Countryside Transportation Service (Countryside) requesting that Respondent's case be reopened. As explained by Respondent, on September 18, 2019, the State of Michigan suspended Respondent's commercial driver privileges for two months as a result of this case. Thereafter, Respondent states that the amount of the civil forfeiture was paid on Respondent's behalf by a representative of Countryside on October 1, 2019.

{¶ 5} The attorney examiner recognized Respondent's correspondence as a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. As set forth

in Ohio Adm.Code 4901:2-7-16(B), a prehearing conference was held on November 5, 2019. At that time, the attorney examiner set this case for hearing on December 19, 2019.

{¶ 6} On December 12, 2019, Staff filed a motion for continuance of the hearing. On December 13, 2019, the case was rescheduled for hearing on March 5, 2020.

{¶ 7} On February 21, 2020, Staff filed a motion to dismiss and to stay proceedings in this case. Staff contends that the case should be dismissed for two reasons: Respondent's failure to formally act in Case No. 19-1175-TR-CVF, and, pursuant to Ohio Adm.Code 4901:2-7-22, the payment of the full amount of the forfeiture that is the subject of this case.

{¶ 8} The attorney examiner finds that Staff's motion to stay proceedings should be denied and the hearing in this matter shall occur as scheduled on March 5, 2020. At the hearing, Respondent will be afforded the opportunity to address the dismissal arguments that Staff raises in its most recent filing.

{¶ 9} In making this decision, the attorney examiner notes that Respondent was purportedly unaware of the notices that were issued in this case prior to receiving notice of his license suspension from the State of Michigan, as issued on September 18, 2019. In addition to explaining the circumstances relating to his mailing address, Respondent will also be afforded the opportunity to describe his claim that he received only a warning on December 20, 2018, such that no further action was anticipated by him as to this matter. Finally, he will be afforded the opportunity to describe the circumstances that led to the payment of his forfeiture by Countryside in October of 2019.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the motion to stay proceedings be denied. It is, further,

{¶ 12} ORDERED, That the hearing scheduled in this matter on March 5, 2020, proceed in accordance with the Entry dated December 13, 2019. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Michael L. Williams

By: Michael L. Williams  
Attorney Examiner

JRJ/hac

**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 19-1858-TR-CVF**

Summary: Attorney Examiner Entry denying motion to stay and ordering that the hearing proceed in accordance with the Entry dated December 13, 2019 electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Attorney Examiner, Public Utilities Commission of Ohio