THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF JENNY TRIPLETT, NOTICE OF APPARENT VIOLATION AND INTENT TO ASSESS FORFEITURE.	**CASE NO. 19-1762-TR-CVF**

ENTRY

Entered in the Journal on February 26, 2020

I. SUMMARY

{¶ 1} The Commission grants Staff's motion to dismiss the case, finding that there is no jurisdiction to further adjudicate this matter.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property 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 (FMCSR) 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 against any person who violates the safety rules adopted by the Commission.

{¶ 3} On September 9, 2019, Jenny Triplett (Ms. Triplett or Respondent) requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-03.

{¶ 4} By Entry issued October 3, 2019, a prehearing conference was scheduled for October 31, 2019. Respondent could not be contacted when Staff called her on October 31, 2019.

{¶ 5} On November 5, 2019, an Entry was issued scheduling a December 13, 2019 hearing. A subsequent December 5, 2019 Entry rescheduled the hearing to January 23, 2020.

{¶ 6} On December 17, 2019, Respondent filed additional comments and information concerning her hearing request. Among other things, Ms. Triplett states that

she was not available for the October 31, 2019 prehearing teleconference because of her travel schedule.

{¶ 7} On December 24, 2019, Staff filed a motion to dismiss the case, after which the attorney examiner issued a January 3, 2020 Entry continuing the date of the hearing to better consider Staff's arguments for dismissal. In its motion, Staff explains that a notice of apparent violation and intent to assess forfeiture (NAV) were sent to Ms. Triplett on March 19, 2019, with instructions on how to request a conference with Staff. Respondent requested a conference with Staff, which was conducted on April 23, 2019. Next, according to Staff, a notice of preliminary determination (NPD) was issued to Respondent on May 3, 2019 and sent to the same address to which the NAV was mailed. The NPD indicated that Ms. Triplett had 30 days to either pay the assessed forfeiture or request an administrative hearing; Staff contends that Respondent did neither. Staff adds that on July 17, 2019, the Commission issued a Finding and Order finding Respondent in default and liable for the full amount of the forfeiture.[1] Staff notes that the Finding and Order provided Respondent with a final opportunity to demonstrate why she was not in default and to show cause in writing by August 6, 2019, why the matter should not be referred to collection. Staff asserts that Ms. Triplett was served at the same address to which all prior notices had been sent, but she did not respond within the time allowed. In addition, Staff states, Respondent was sent a letter on August 8, 2019, advising that the forfeiture remained unpaid, but again she failed to act. Staff points out that not until her letter dated August 29, 2019, did Respondent request an administrative hearing. Staff contends that Ms. Triplett has repeatedly ignored notices that were sent to her correct address and that she has received all her due process rights. Staff requests dismissal of the case but not dismissal of the forfeiture. In closing, Staff emphasizes, the Commission's judgment is

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[1] See *In re Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Administrative Code,* Case No. 19-1175-TR-CVF, Finding and Order, (July 17, 2019).

final, and Respondent should not have further opportunity to contest the violation. Staff urges dismissal of the case.

{¶ 8} Respondent did not respond to Staff's December 24, 2019 motion to dismiss.

{¶ 9} The Commission finds Staff's request to dismiss the case to be reasonable. Initially, we note that the Commission has already found Respondent in default, pursuant to Ohio Adm.Code 4901:2-7-14, in *In re Default of Motor Carriers and Drivers*, Case No. 19-1175-TR-CVF, Finding and Order (July 17, 2019), at p. 38. Ohio Adm.Code 4901:2-7-14 states that respondents found in default are deemed to have admitted the occurrence of the violation and waive all further right to contest liability. The Commission's order directed any respondents to indicate why they are not in default by August 16, 2019. Here, Respondent's request for hearing was not filed until September 9, 2019. While untimely, we note that Respondent has failed to show cause why Respondent should not be found in default. As indicated by Staff, Ms. Triplett did not respond to Staff's May 3, 2019 NPD, the July 17, 2019 Finding and Order, and the August 8, 2019 letter stating that the forfeiture was still unpaid. In addition, Ms. Triplett did not request a rehearing of the July 17, 2019 Finding and Order, nor did she file a response to Staff's December 24, 2019 motion to dismiss. We find that the judgment of the Commission is final and that, therefore, the motion to dismiss should be granted.

III. ORDER

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That Staff's motion to dismiss be granted. It is, further,

{¶ 12} ORDERED, That a copy of this Entry be served upon Respondent and all other interested parties of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/hac

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Case No(s). 19-1762-TR-CVF

Summary: Entry that the Commission grants Staff's motion to dismiss the case, finding that there is no jurisdiction to further adjudicate this matter electronically filed by Docketing Staff on behalf of Docketing