

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF EMANUEL DAVIS,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 19-1895-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 October 15, 2019, Emanuel Davis (Mr. Davis or Respondent) requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 4} Respondent participated in a settlement conference with Staff on November 18, 2019, but the parties did not resolve the matter.

{¶ 5} On November 26, 2019, an Entry was issued scheduling a January 9, 2020 hearing.

{¶ 6} On December 2, 2019, Staff filed a motion to dismiss the case, after which the attorney examiner issued a January 3, 2020 Entry continuing the hearing in order to consider Staff's arguments for dismissal. In its motion, Staff explains that a

notice of apparent violation and intent to assess forfeiture was sent to Mr. Davis on January 18, 2019, and that he requested a conference with Staff that was conducted on March 21, 2019. Next, Staff explains, a notice of preliminary determination (NPD) was issued on May 3, 2019, informing Respondent that he had 30 days to pay the assessed \$250 forfeiture or request an administrative hearing. Staff asserts that Mr. Davis neither paid the forfeiture nor requested a hearing within the 30-day period. Staff adds that on July 17, 2019, the Commission issued a Finding and Order requiring Respondent to either pay the assessed forfeiture or demonstrate why he was not in default;¹ a response was requested by August 6, 2019, but Staff contends that Mr. Davis did not reply, and the matter was referred to the Ohio Attorney General's office for collections. Staff further notes that on August 8, 2019, Staff sent a letter to Respondent indicating that the forfeiture was unpaid; included with the letter was a copy of the July 17, 2019 Finding and Order. Staff notes that Mr. Davis did not respond for several months, until October 2019, when he requested an administrative hearing. Staff contends that Mr. Davis had “* * * ample opportunity to contest the violation and forfeiture but failed to do so in a timely manner,” and that Respondent could have requested a rehearing of the July 17, 2019 Finding and Order, but he did not. Staff emphasizes that a final Commission judgment has already been made and that Respondent should not have further opportunity to contest the violation. Staff urges dismissal of the case.

{¶ 7} Respondent did not respond to Staff's motion to dismiss.

{¶ 8} The Commission finds Staff's motion 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), att. at p. 38.

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).

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, Respondent did not respond in a timely manner to the May 3, 2019 NPD, or to Commission's July 17, 2019 Finding and Order requiring him to either pay the assessed forfeiture or demonstrate why he was not in default. Mr. Davis did not request a rehearing of the July 17, 2019 Finding and Order, nor did he reply to Staff's August 8, 2019 letter indicating that the forfeiture was unpaid. Finally, Mr. Davis did not respond to Staff's motion to dismiss. Therefore, as there is already a final Commission decision concerning Respondent's default, Staff's motion to dismiss should be granted.

III. ORDER

{¶ 9} It is, therefore,

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

{¶ 11} 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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