

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Andre :
Giden, Notice of Apparent :
Violation and Intent to : Case No. 19-2099-TR-CVF
Assess Forfeiture.

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PROCEEDINGS

before Ms. Anna Sanyal, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at 11:00
a.m. on Tuesday, March 10, 2020.

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1 APPEARANCES:

2 Dave Yost, Ohio Attorney General
3 By Mr. Steven T. Darnell
4 30 East Broad Street, 16th Floor
5 Columbus, Ohio 43215

6 On behalf of the Staff of the PUCO.

7 Mr. Andre Giden

8 On his own behalf.

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STAFF EXHIBIT IDENTIFIED ADMITTED

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RESPONDENT EXHIBIT IDENTIFIED ADMITTED

1 Request for Hearing, Bill of
Sale, Certificate of Gross
Retail or Use Tax, Insurance
Card, and Application for
Certificate of Title for a
Vehicle 32 44

2 Certificate of Title for a
Vehicle 32 44

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1 Tuesday Morning Session,
2 March 10, 2020.

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4 EXAMINER SANYAL: Well, let's go on the
5 record. Good morning, everyone.

6 MR. GIDEN: Good morning.

7 EXAMINER SANYAL: The Public Utilities
8 Commission has called for hearing Case No.
9 19-2099-TR-CVF which is captioned as in the Matter of
10 Andre Giden, Notice of Apparent Violation and Intent
11 to Assess Forfeiture.

12 My name is Anna Sanyal, and I am the
13 Administrative Law Judge -- sorry, the Attorney
14 Examiner assigned to hear this case. At this point I
15 will start with appearances. We will start with
16 Staff.

17 MR. DARNELL: Yes, your Honor. On behalf
18 of Staff, Steven Darnell, Assistant Attorney General,
19 30 East Broad Street, Columbus, Ohio 43215.

20 EXAMINER SANYAL: Thank you.

21 And, Mr. Giden, if you just want to tell
22 us your name and your address for the record.

23 MR. GIDEN: Andre Dwayne Giden, 2844
24 Dietz Street, Indianapolis, Indiana 46203.

25 EXAMINER SANYAL: And, Staff, you may

1 proceed.

2 MR. DARNELL: Thank you, your Honor.
3 Before we get to our case in chief, Staff would just
4 like to make sure we are addressing the proper party
5 in this matter. Pursuant to Rule 4901-1-08(A) in
6 practice before the Commission in the representation
7 of corporations, the rule in brief states that all
8 corporations must be represented by an Attorney at
9 Law.

10 All the violations in this case are
11 carrier violations. They are not directed at the
12 driver himself, and so we just want to make sure that
13 the Company has sent a representative to the case
14 today and is not proceeding in some way which might
15 question the results of this hearing today.

16 And with that if we may voir dire
17 Mr. Giden just to make sure.

18 EXAMINER SANYAL: Well, I think I have
19 some questions before we do that.

20 MR. DARNELL: Certainly, your Honor.

21 EXAMINER SANYAL: Because at this point I
22 don't have -- I don't think the record at least has
23 the Notice of Violation that was issued, so actually
24 at this time if I could just have a copy, that would
25 be great.

1 MR. DARNELL: Certainly.

2 EXAMINER SANYAL: And we can enter it
3 into evidence later on.

4 And then, Mr. Giden, do you understand
5 what's happening here? So the charge -- the
6 violations that were issued, identified against you
7 is against a corporation so --

8 MR. GIDEN: But I don't understand
9 corporation. I don't work for anybody --

10 MR. DARNELL: May I approach, your Honor?

11 MR. GIDEN: -- so I don't understand.

12 EXAMINER SANYAL: Yes. Okay. So I'm
13 just looking at the Notice of Preliminary
14 Determination. And do you have a copy of this,
15 Mr. Giden?

16 MR. GIDEN: I may have. I have copies.
17 I mean, I have so much stuff here.

18 MR. DARNELL: If not, your Honor, I do
19 have an extra.

20 EXAMINER SANYAL: If you could hand
21 Mr. Giden a copy, and just for the record I would
22 like to note that Mr. Giden appears to be --

23 MR. GIDEN: Yes, I have this.

24 EXAMINER SANYAL: Mr. Giden appears to be
25 unrepresented, so I am going to give him a little bit

1 of leeway.

2 MR. DARNELL: Certainly, your Honor.

3 EXAMINER SANYAL: Mr. Giden, I know you
4 want to voir dire, but I do have some questions. Are
5 you -- are you the owner of D&B Auto Sales?

6 MR. GIDEN: No, I'm not.

7 EXAMINER SANYAL: At this time I see your
8 point. Would you like to voir dire Mr. Giden?

9 MR. DARNELL: Just one or two questions.

10 EXAMINER SANYAL: Mr. Giden, would you
11 come up here.

12 MR. GIDEN: Yes, ma'am.

13 EXAMINER SANYAL: And I'm going to swear
14 you in.

15 (Witness sworn.)

16 EXAMINER SANYAL: Please be seated. So,
17 right now, Mr. Darnell has some questions for a very
18 specific purpose.

19 THE WITNESS: Okay.

20 EXAMINER SANYAL: I assume to figure out
21 your relationship with D&B Auto Sales so we will --
22 after this, we will kind of resume our normal course
23 of operation.

24 THE WITNESS: Okay.

25 EXAMINER SANYAL: Okay?

1 THE WITNESS: Yes, ma'am.

2 - - -

3 ANDRE GIDEN

4 being first duly sworn, as prescribed by law, was
5 examined and testified as follows:

6 VOIR DIRE

7 By Mr. Darnell:

8 Q. So good morning, Mr. Giden.

9 A. Good morning.

10 Q. As Attorney Examiner Sanyal said, my name
11 is Steven Darnell. I just have a couple of questions
12 just to make sure you are the right individual we
13 should be talking to today.

14 A. Okay.

15 Q. So, Mr. Giden, you are not an attorney?

16 A. No, I am not.

17 Q. And you have never worked for D&B Auto
18 Sales?

19 A. No, I haven't.

20 Q. You never received a paycheck from D&B
21 Auto Sales?

22 A. No, I haven't.

23 Q. You are here to provide your side of the
24 story as the driver that was stopped by Officer
25 Rammel.

1 A. Yes, sir.

2 Q. And to allow the Attorney Examiner to
3 determine whether the fines that were assessed
4 against D&B Auto Sales, correct?

5 A. Yes, sir.

6 MR. DARNELL: All right. At this point,
7 your Honor, I would renew my motion under 4901:2-7-14
8 as Mr. Giden is not a representative or an attorney
9 who could represent D&B Auto Sales in this matter and
10 move for default of this case as they have not
11 provided an appropriate representative at this time.

12 EXAMINER SANYAL: And have you contacted
13 D&B Auto Sales?

14 MR. DARNELL: Your Honor, I am not aware,
15 but as D&B Auto Sales -- as Mr. Giden represented
16 himself to be the party at interest in this matter
17 and he did receive a copy of the Notice of
18 Preliminary Determination and the Notice of Intent to
19 Assess Forfeiture, from my understanding I could also
20 put a witness up to testify as to that being sent
21 out. It would appear that the Company has waived the
22 right to proceed with the matter, and as they have
23 sent an individual who is not eligible to represent
24 them by law, I would ask that they be held in default
25 in this matter.

1 EXAMINER SANYAL: Okay. But you don't
2 know -- we don't know at this point for sure if the
3 Company was --

4 MR. DARNELL: The Company was served,
5 your Honor. The Company was served the original
6 Intent to Assess Forfeiture, and as they did not
7 respond to that matter and instead sent Mr. Giden in
8 their place, that would be way over the 30-day time
9 limit they have per the rules to move forward with
10 their case had they so desired.

11 EXAMINER SANYAL: Okay. I just don't
12 think I have any information to rule on your motion
13 at this point, so I am going to deny that motion, and
14 we are just going to go ahead and let Staff put on
15 their case and then have Mr. Giden on the stand if we
16 need it.

17 MR. DARNELL: Certainly.

18 EXAMINER SANYAL: Okay.

19 MR. DARNELL: And if I may understand
20 your point, your Honor, is Mr. Giden not going to be
21 allowed to object or act as an attorney on behalf of
22 D&B Auto Sales in this matter as Staff would ask he
23 not be allowed to perform those things or act as a
24 representative in this case?

25 EXAMINER SANYAL: And I would agree.

1 MR. DARNELL: Thank you.

2 EXAMINER SANYAL: Because this is a
3 carrier violation and not a driver violation.

4 MR. DARNELL: Certainly.

5 EXAMINER SANYAL: Mr. Giden, you may step
6 down. What's going to happen right now is Staff is
7 going to go ahead. They have the burden of proof in
8 this case, so they are going to go ahead and present
9 their case, and then I am going to allow you to get
10 on the stand and provide your version of what
11 happened.

12 MR. GIDEN: Yes, ma'am.

13 EXAMINER SANYAL: Okay. Does that make
14 sense?

15 MR. GIDEN: Yes.

16 EXAMINER SANYAL: Do you have any
17 questions?

18 MR. GIDEN: No, ma'am.

19 EXAMINER SANYAL: Okay. Staff, you may
20 proceed.

21 MR. DARNELL: Certainly, your Honor. We
22 would call Inspector Rammel to the stand.

23 (Witness sworn.)

24 EXAMINER SANYAL: Please be seated.

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INSPECTOR JOHN RAMMEL

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Darnell:

Q. Would you please state your name spelling
the last for the record.

A. First name is John. Last name is Rammel,
R-A-M-M-E-L.

Q. And where are you employed, sir?

A. At the Ohio State Highway Patrol Motor
Carrier Division.

Q. And how long have you been there?

A. 17 years.

Q. And what are your duties as an inspector
for the State Highway Patrol?

A. I do DOT inspections.

Q. What sort of training do you have to have
to be a DOT inspector?

A. Go through initial level A and level B
class and then all the other classes that are
associated with that with annual in-services.

Q. And why do you conduct these inspections?

A. For truck safety.

Q. And how many inspections do you do on any

1 year on average?

2 A. On average probably around a thousand.

3 MR. DARNELL: Your Honor, may I approach
4 the witness and the Bench?

5 EXAMINER SANYAL: Yes, you may, and you
6 may do so freely while you examine your witness,
7 Mr. Darnell.

8 MR. DARNELL: Thank you, your Honor. Let
9 the record reflect I have marked this as Staff
10 Exhibit 1.

11 Q. Inspector Rammel, what have I just handed
12 you?

13 A. It's the examination report that I served
14 the defendant.

15 Q. And is this a fair and accurate copy of
16 that report?

17 A. Yes, it is.

18 Q. And is this document a patrol record?

19 A. Yes, it is.

20 Q. Is it kept in the ordinary course of
21 Patrol business?

22 A. Yes, it is.

23 Q. Is it the practice of the Patrol to make
24 these reports?

25 A. Yes, it is.

1 Q. So did you report on matters observed
2 pursuant to a duty imposed by law as to which there
3 was a duty to report when you made this report?

4 A. Yes.

5 Q. And was the reason for you producing this
6 report an inspection of the motor carrier vehicle
7 owned by D&B Auto Sales, Incorporated?

8 A. Yes.

9 Q. Thank you. So do you remember the
10 inspection on August 6, 2019?

11 A. Yes, I do.

12 Q. What do you remember about that report?

13 A. I stopped the truck for markings. There
14 was no markings on the truck and had ghosting. And
15 as I did the inspection, it had a dealer plate with
16 insurance card belonging to D&B Auto Sales. The
17 trailer was registered to David Starks, and according
18 to the driver, he was the owner of D&B, the title to
19 the car that he was hauling was to D&B Auto Sales.
20 The driver had stated to me he had bought the car for
21 his daughter at auto auction in Marion, Ohio, but he
22 didn't have any proof to show me that it was his.
23 Everything that I had saw that day was to D&B Auto
24 Sales.

25 Q. So just to back up a little bit, what

1 exactly do you mean when you say ghosting?

2 A. On the side of the truck it had a place
3 where originally had markings and the markings had
4 been removed.

5 Q. All right.

6 EXAMINER SANYAL: I just have a
7 clarification question. Markings of what?

8 THE WITNESS: For the company name.

9 EXAMINER SANYAL: For D&B.

10 THE WITNESS: For D&B, yes, ma'am.

11 EXAMINER SANYAL: Okay.

12 MR. DARNELL: Let the record reflect I
13 have marked this as Staff Exhibit 3 through 9B.

14 Q. Inspector Rammel, do you recognize these
15 documents?

16 A. Yes. These are the pictures that I took
17 that day of the inspection.

18 Q. And are these a fair and accurate set of
19 copies of the pictures you took that day?

20 A. Yes.

21 Q. Have they been altered in any way?

22 A. Not that I am aware of. They all look
23 like they are the originals.

24 Q. And how do you know these are the
25 pictures you took that day?

1 A. Because I uploaded the pictures myself
2 and these are the pictures that I uploaded.

3 Q. Certainly. So if we would go to what has
4 been marked as Exhibits 3A and 3B, what do these two
5 pictures show?

6 A. So that's what I refer to as the
7 ghosting. If you look on -- right behind the doors,
8 you can see --

9 EXAMINER SANYAL: Could you tell us which
10 picture you are looking at.

11 THE WITNESS: Either one, A or B.

12 EXAMINER SANYAL: 3A or 3B.

13 A. 3A or 3B, yes, ma'am. There is tape
14 markings or some kind of magnetic or adhesive that's
15 on the back half of that door. That's where the
16 markings would have been.

17 Q. And why -- why was this suspect to you?

18 A. The size of the truck and the trailer I
19 suspected it to be an in commerce vehicle.

20 Q. Did you mark how large the truck was on
21 your inspection report?

22 A. Yes, I did.

23 Q. How large was the truck?

24 A. The gross vehicle weight of the truck I
25 believe was 12,800. That's what I had on my report.

1 Q. And did that suspicion you had, did that
2 equate to any of the violations you wrote on that
3 report?

4 A. Yes.

5 Q. Which was that or which were those?

6 A. For me to be able to do a DOT inspection,
7 a commercial vehicle has to be larger than 10,001
8 gross vehicle weight. So that gave me the authority
9 to do the inspection at that point.

10 EXAMINER SANYAL: And what was the weight
11 again?

12 THE WITNESS: 12,800.

13 Q. So moving on to what has been marked as
14 Exhibit 4, what is this a picture of?

15 A. That's the actual registration that was
16 in the truck.

17 Q. And who is the registration made out to?

18 A. D&B Auto Sales LLC.

19 Q. And what did that suggest to you?

20 A. That the truck belonged to them.

21 Q. And moving on to Exhibit 5, what is that?

22 A. That is the title to the car that the
23 driver was hauling.

24 Q. And what did this document say to you?

25 A. That it was titled to D&B Auto Sales LLC.

1 Q. Moving on to Exhibit 6, what is this a
2 picture of?

3 A. That is the dealer plate that was on the
4 truck.

5 Q. And what did that suggest to you?

6 A. The reg -- matched the registration which
7 was, I believe, Exhibit 4 which was to D&B Auto
8 Sales.

9 Q. And taking those three exhibits in
10 conjunction with each other, what violations did you
11 write in response?

12 A. There was no carrier name or USDOT number
13 displayed on the truck and after some research, there
14 was no DOT number in the FMCSA system so they had not
15 registered as an interstate carrier.

16 Q. Could you identify which violations that
17 would be on Staff Exhibit 1.

18 A. So that would be 390.19A1, no reg. A
19 motor carrier failed to register with the FMCSA prior
20 to beginning interstate operations. And then
21 390.21B, carrier name and USDOT number not displayed
22 as required.

23 Q. Thank you. Moving on to what has been
24 marked as Staff Exhibit 7A and 7B, what are these two
25 pictures of?

1 A. Those are the tires that were on the
2 truck.

3 Q. All right. Is it one tire or?

4 A. Two separate tires.

5 Q. And what violation did you observe with
6 those two pictures?

7 A. So both of those tires have little to no
8 tread. That would be 393.75C, tire other than tread
9 depth less than 2/32 of an inch measured in major
10 tread grooves, axle 2 left outside; and tire other
11 tread depth less than 2/32 of an inch measured in
12 major tread grooves, axle 2 right outside.

13 Q. Did you actually measure the treads on
14 those tires?

15 A. I don't think I measured them, but
16 obviously when I looked at them, there is no tread on
17 them.

18 Q. So it was pretty apparent.

19 A. Yes.

20 Q. Thank you. Moving on to what has been
21 marked as Staff Exhibit 8A and B, let's take Exhibit
22 8A first. What does this picture show?

23 A. It shows the trailer hooked to the truck.

24 Q. And is there a problem that you saw?

25 A. Yes. There should be a breakaway cable

1 hooked to the truck also and there should also be two
2 safety chains.

3 Q. Could you identify for us what that
4 breakaway cable looks like.

5 A. It should be a cable that -- that's in a
6 switch on the tongue of the truck so when the -- if
7 the trailer would happen to become unhitched from the
8 truck, the cable unhooks from the truck and the
9 brakes set on the trailer.

10 Q. Now, turning to picture -- or Staff
11 Exhibit 8B, what does this picture show?

12 A. That's the actual pictures of the safety
13 chain wrapped around the tongue and the switch with
14 the breakaway cable that's behind the wench on the
15 tongue.

16 Q. And did you write any violations after
17 observing these two pictures, or the scene as
18 displayed in the two pictures?

19 A. Yes. 393.43, no/improper breakaway or
20 emergency braking and not hooked to the truck, cable
21 not hooked to the truck. And 393.70D8, improper
22 safety chain attachment and, once again, they were
23 not hooked to the truck.

24 Q. And I see on your report there marked as
25 OOS.

1 A. That's correct. That puts the trailer
2 out of service until he fixes those problems.

3 Q. Certainly. So turning to what has been
4 marked as Exhibit 9A and 9B, what do these two
5 pictures show?

6 A. That's the picture of the license plate
7 on the trailer.

8 Q. And what violations did you write in
9 response?

10 A. Part of the plate was broken off, so you
11 couldn't read the first half of the plate. So
12 Exhibit 9A shows the part of the place that was
13 broken off. 9B shows the actual sticker which shows
14 the actual trailer plate number.

15 Q. And then in Exhibit 9A, there is a
16 vehicle on the trailer. Is that the vehicle that
17 corresponded to the documents in Exhibit 5?

18 A. Yes.

19 Q. Turning back to your report, what notes
20 did you make after your stop?

21 A. Inspection notes. Stopped the vehicle.
22 There were no markings, ghosting. Truck had a dealer
23 plate with insurance card in the truck that belongs
24 to D&B Auto Sales LLC. Trailer was registered to
25 David Starks, according to the driver was the owner

1 of the D&B. Title to the car was listed as D&B Auto
2 Sales LLC. Driver had stated he bought the car for
3 his daughter from auto auction in Marion, but he
4 didn't have the proof, and everything that I saw was
5 to D&B Auto Sales.

6 Q. Certainly. Did Mr. Giden say anything to
7 you when you stopped beyond what you noted in your
8 inspection report?

9 A. No, he didn't.

10 Q. And at the end of the report, what
11 happened? Or at the end of the inspection, I should
12 say.

13 A. He fixed -- he hooked up the safety
14 chains and the breakaway cable and then was allowed
15 to continue on with his trip.

16 MR. DARNELL: All right. Thank you,
17 Inspector Rammel. I have no further questions at
18 this time and would save the witness for rebuttal
19 with the court's permission.

20 EXAMINER SANYAL: Sure.

21 MR. DARNELL: Thank you.

22 EXAMINER SANYAL: Give me one moment to
23 see if I have any questions.

24 THE WITNESS: Sure.

25 - - -

EXAMINATION

By Examiner Sanyal:

Q. Just one. Did you issue any violations to the driver, to Mr. Giden?

A. No, I didn't.

Q. So the violations that were issued by you were only to D&B Auto Sales LLC?

A. That's correct.

EXAMINER SANYAL: Okay. That's all I have so you may step down.

And you may present your next witness.

MR. DARNELL: Certainly, your Honor. The Staff would call Rod Moser to the stand.

(Witness sworn.)

- - -

ROD MOSER

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Darnell:

Q. Would you please state your full name spelling your last name for the record.

A. My name is Rod Moser. Last name is M-O-S-E-R.

Q. And where are you employed, Mr. Moser?

1 A. I am the Chief of Compliance for the
2 Transportation Department of the Public Utilities
3 Commission of Ohio.

4 Q. And what exactly does Chief of Compliance
5 entail you to do?

6 A. My job largely is to administer the
7 forfeiture -- civil forfeiture process for the
8 Department.

9 Q. And how long have you been Chief of
10 Compliance?

11 A. About three years.

12 Q. Do you have any expert qualifications in
13 the violations -- of the subject matter of
14 violations, certifications, continuing education,
15 training?

16 A. I am certified to do inspections. I have
17 North American Standard certifications for parts A
18 and B, Hazmat, bulk and nonbulk, and motor coach and
19 cargo tank as well.

20 Q. And would you please explain for us how
21 you determined the amount of forfeiture in a case
22 like this.

23 A. Sure. The violations that are written
24 through roadside inspections are divided into groups.
25 There's actually six groups, Group 0, 1, 2, 3, and 4

1 and then Hazmat. The violations are assessed -- for
2 anything that's not Hazmat violations are assessed in
3 an automated system that we have depending upon the
4 group and whether or not the violation is an out of
5 service violation.

6 Q. And is this process applied uniformly to
7 everyone who is -- comes before you?

8 A. It is, yes.

9 MR. DARNELL: Let the record reflect I am
10 approaching with what has been marked Staff Exhibit
11 2. I believe you already have a copy.

12 EXAMINER SANYAL: I do. Thank you.

13 Q. Mr. Moser, what did I hand you?

14 A. It's a copy of a letter titled "Notice of
15 Preliminary Determination."

16 Q. Is this a fair and accurate copy of that
17 document?

18 A. Yes, sir, it is.

19 Q. And is this kept in the course of
20 Commission business?

21 A. It is.

22 Q. And the document does not appear to be
23 altered in any way?

24 A. No, sir.

25 Q. So what exactly does this document show?

1 A. Well, this document is sent to a
2 Respondent following an unsuccessful attempt to
3 resolve matters from a roadside inspection. And it
4 generally shows the beginning forfeiture amount and
5 then an ending forfeiture amount. In this case
6 because there was no agreement, those two amounts are
7 the same.

8 Q. And what is the amount listed on the
9 document?

10 A. The total amount due is \$850.

11 Q. And would you explain how the civil
12 forfeiture in this case was derived?

13 A. You want me to just go by each violation
14 down there?

15 Q. If you wouldn't mind.

16 A. All right. So the first violation is
17 390.21B. That's not having your carrier name or
18 number displayed properly. That is what's considered
19 a Group 4 violation. It is always a \$100 civil
20 forfeiture assessment.

21 The next one is 393.75. Actually that's
22 the next two. Those are both considered Group 2
23 violations. In this case those were non-marked as
24 being out of service violations and for that reason
25 there is no fine assessed on those.

1 The next one down is 393.43 Group 1
2 violation. This is marked as out of service and at
3 the bottom you'll see it says Group 1 violation,
4 group total to the right of 250. So 393.43 and
5 393.70 combined to make that total of 250. Our Group
6 1 violations are -- initial violation on an
7 individual inspection is \$100. Each subsequent on
8 the same inspection is 150 additional, so in this
9 case it would be 250.

10 The next violation is 392.2R. That's a
11 Group 0 so there is never a fine on that.

12 And the last one is 390.19. It's a Group
13 4 and that's for failing to have FMCSA authority
14 prior to beginning your operations. That is always a
15 \$500 fine.

16 Q. Are the penalties consistent with the
17 recommended fine schedule and recommended civil
18 penalty procedure adopted by the Commercial Motor
19 Vehicle Alliance?

20 A. Yes, sir, it is.

21 Q. And what is the forfeiture amount?

22 A. The total amount is \$850.

23 Q. Would you recommend this amount to the
24 Commission?

25 A. I would, yes.

1 Q. And is there anything else important to
2 note that we have not discussed with you in this
3 matter?

4 A. No, sir.

5 Q. And one last thing, is this document
6 considered a Commission record?

7 A. It is.

8 Q. And it is kept in the ordinary course of
9 business?

10 A. It is, yes.

11 MR. DARNELL: Thank you. I have no
12 further questions for this witness, your Honor.

13 - - -

14 EXAMINATION

15 By Examiner Sanyal:

16 Q. I do have some questions. I do. Don't
17 go.

18 So I know that this Notice of Preliminary
19 Determination was sent to Mr. Giden in Indiana. Was
20 it also sent to the place of business for D&B Auto
21 Sales?

22 A. No. Letters that we send out pursuant to
23 settlement -- to a conference which would either be a
24 settlement or an NPD always go to the person who
25 requested the conference. So in this case we believe

1 Mr. Giden to be a representative of the Company, and
2 he requested the conference, so the conference
3 summary, the NPD in this case was mailed to him.

4 Q. Okay. And so subsequently any other
5 conferences that you had, you've never actually
6 spoken to any other representative of D&B Auto Sales?

7 A. Not to my knowledge.

8 Q. Okay. So just to clarify, you have only
9 spoken to Mr. Giden?

10 A. Correct.

11 Q. And in the course of these conferences,
12 have you determined if Mr. Giden is an employee of
13 the Company?

14 A. From -- from what I saw from the
15 conference information that was in the file, there
16 was no discussion of that.

17 Q. Okay.

18 A. I think we just assumed he was.

19 Q. But so Staff does not know whether he
20 is --

21 A. Correct.

22 EXAMINER SANYAL: -- an employee or not.

23 Okay. I think those are all the
24 questions I have. Thank you.

25 And, Mr. Giden, I just want to help

1 you -- make sure you understand. The reason why you
2 weren't -- usually you would be able to ask questions
3 of Staff's witnesses but here because Staff considers
4 you a representative of a corporation we need a
5 corporation to be represented by an attorney.

6 MR. GIDEN: Right, right.

7 EXAMINER SANYAL: So that is the reason
8 why you have not been able to ask questions. But at
9 this point Staff -- Mr. Darnell, do you have any
10 other witnesses?

11 MR. DARNELL: Not at this time.

12 EXAMINER SANYAL: Okay. So at this point
13 you can come up to the stand and if you could let us
14 know your version of what happened.

15 MR. GIDEN: Yes, ma'am.

16 EXAMINER SANYAL: And it looks like you
17 are bringing up some papers.

18 MR. GIDEN: Yes, ma'am.

19 EXAMINER SANYAL: Do you have copies for
20 everyone?

21 MR. GIDEN: No, ma'am, I don't.

22 EXAMINER SANYAL: So let's go off the
23 record.

24 (Discussion off the record.)

25 EXAMINER SANYAL: Let's go back on the

1 record.

2 I would like the record to reflect that
3 we have marked two exhibits, or Respondent Exhibit 1
4 and 2.

5 - - -

6 ANDRE GIDEN

7 being previously duly sworn, as prescribed by law,
8 was examined and testified further as follows:

9 DIRECT EXAMINATION

10 EXAMINER SANYAL: And then, Mr. Giden,
11 you can go ahead and give us your version of events,
12 and you can let us know what these exhibits are.

13 THE WITNESS: Right. Okay. Like I was
14 trying to tell the officer at the scene, you know,
15 the truck belongs to my ex-wife, and the car I was
16 towing belongs to my daughter. But once he seen the
17 dealer tag, he said if something has a dealer tag,
18 that is commercial. If it looks like a duck, it's a
19 duck.

20 He wouldn't let me show him the paperwork
21 for this and that's why we are here now. I mean,
22 like I told him, you know, you can see the insurance.
23 The truck is in my ex-wife's name. The insurance is
24 in my ex-wife's name.

25 EXAMINER SANYAL: Okay. Can you tell me

1 what you are looking at?

2 THE WITNESS: I am looking at the first
3 one. Did you call it Exhibit A?

4 EXAMINER SANYAL: Exhibit 1, yes.

5 THE WITNESS: Exhibit 1, right, where I
6 am looking at. It shows that the truck was purchased
7 from the dealer, but it shows also that it was
8 insured personally to Vanessa Brown. And, I mean,
9 it's her truck. The reason it was never titled was
10 because the engine went out of the truck, and D&B
11 never got a copy of the title. And that's why it
12 took so long for my daughter to register because when
13 the title came in, she registered the car. That's
14 why I have the original title to the car. But, you
15 know, that's how it is. I have been going through
16 this for a while, but I don't work for D&B.

17 EXAMINER SANYAL: Okay. So the truck
18 belongs to whom?

19 THE WITNESS: Vanessa Brown.

20 EXAMINER SANYAL: Okay. And the trailer?

21 THE WITNESS: The trailer belongs to
22 David Starks.

23 EXAMINER SANYAL: Which is?

24 THE WITNESS: David Starks is the owner
25 of D&B.

1 EXAMINER SANYAL: Okay. And then the car
2 that was --

3 THE WITNESS: Belonged to Barbara
4 Robinson, that's my daughter.

5 EXAMINER SANYAL: Okay. And you have no
6 relationship --

7 THE WITNESS: No, ma'am.

8 EXAMINER SANYAL: -- to D&B Auto Sales?

9 THE WITNESS: No, ma'am. Never worked
10 for them at all. No, ma'am.

11 EXAMINER SANYAL: Okay. And do you
12 understand why you were pulled over?

13 THE WITNESS: Yes. He said I was pulled
14 over for a DOT inspection because when he seen it, it
15 looks like something that's been taken off of there,
16 off the truck. So he said the signs had been taken
17 off, and he gave me the DOT inspection but, you know,
18 since the dealer tags were on there it was just a
19 done deal, that I was D&B, and he didn't want to
20 discuss it or nothing. So that's why. There was no
21 discussion. It was over. I'm D&B.

22 EXAMINER SANYAL: So have you contacted
23 D&B?

24 THE WITNESS: No. D&B contacted me when
25 they got this paperwork. Yeah, they called me, and

1 he is like what's going on? I said what do you mean?
 2 And they gave me the paperwork, and I called -- when
 3 I called in, that's why I've been doing all the
 4 hearings and everything because it was all in my
 5 name. D&B had nothing to do with this. I just
 6 borrowed his trailer, and I had his tag because she
 7 couldn't get the title to it.

8 EXAMINER SANYAL: Who is she?

9 THE WITNESS: Vanessa Brown. He let her
 10 use the dealer tag because she was buying the truck.
 11 Instead of giving the truck back, he let me use the
 12 tags until the title company, she could drive on the
 13 tag, but she had her own individual insurance.
 14 That's why the truck was insured in her name.

15 EXAMINER SANYAL: And can you explain why
 16 D&B is not here today?

17 THE WITNESS: I have no idea. Because
 18 really it has nothing to do with D&B, you know.
 19 Everything -- I have been dealing with this case
 20 since -- from the start.

21 EXAMINER SANYAL: So they are aware of
 22 what is happening.

23 THE WITNESS: No. They are aware of the
 24 first -- when they first got the letter. When they
 25 first got the letter, they called me and gave me the

1 letter and I have been dealing with it ever since.

2 He had no idea what was going on.

3 EXAMINER SANYAL: Okay.

4 THE WITNESS: So I don't know if anybody
5 talked to them or not, but like the attorney was
6 saying they haven't got ahold of D&B. I have been
7 dealing with this from the start.

8 EXAMINER SANYAL: Okay. And do you
9 understand that hauling over 10,000 may put you in
10 interstate commerce, what we call interstate
11 commerce?

12 THE WITNESS: Right. I understand that,
13 yes. But I have a license to tow up to 26,000
14 pounds. I have a license I can tow up to 26,000
15 pounds. 12,000 plus 3,000 is 15,000. I am
16 underweight. I wasn't in violation of weight, and I
17 am not running DOT. I was working personally. I was
18 towing a car for my daughter in my ex-wife's truck.

19 EXAMINER SANYAL: Okay. At this time do
20 you have questions?

21 MR. DARNELL: No questions, your Honor.

22 EXAMINER SANYAL: Okay. You may step
23 down.

24 THE WITNESS: Yes, ma'am.

25 MR. DARNELL: If I may, your Honor? I

1 would call Inspector Rammel on rebuttal.

2 EXAMINER SANYAL: Sure. Sure. Go ahead.

3 MR. DARNELL: Thank you.

4 EXAMINER SANYAL: And, Inspector, I am
5 just going to remind you you are still under oath.

6 THE WITNESS: Yes, ma'am.

7 - - -

8 INSPECTOR JOHN RAMMEL

9 being previously duly sworn, as prescribed by law,
10 was examined and testified as follows on rebuttal:

11 DIRECT EXAMINATION

12 By Mr. Darnell:

13 Q. Inspector Rammel, did you review what has
14 been marked as Respondent's Exhibit 1 and 2?

15 A. Yes.

16 Q. Did Mr. Giden show you those when you
17 pulled him over?

18 A. No, he didn't.

19 Q. Did he make any reference to these
20 documents when he pulled you over?

21 A. No, he didn't.

22 Q. So why did you write the violations you
23 did on that day?

24 A. So when I made the stop that particular
25 day, I did ask him for registration, and the only

1 thing he could find in the truck was the registration
2 that I took a picture of.

3 Q. And was there anything else on that stop
4 that led you to believe he was operating on D&B's
5 auspices?

6 A. Just the registration and the title that
7 showed that the car was titled to D&B. That's what
8 led me to do the inspection.

9 MR. DARNELL: Certainly. I have no
10 further questions for this witness, your Honor.

11 EXAMINER SANYAL: Okay. You may step
12 down.

13 Mr. Moser, I have one question for you if
14 you will come back over here.

15 - - -

16 ROD MOSER

17 being previously duly sworn, as prescribed by law,
18 was examined and testified further as follows:

19 FURTHER EXAMINATION

20 By Examiner Sanyal:

21 Q. And I would also like to remind you you
22 are still under oath. So I am still trying to wrap
23 my head around a few things. So this violation that
24 was issued, whose record does it go on?

25 A. They are all carrier violations.

1 Q. Okay.

2 A. So it would go against the motor carrier.

3 Q. So it would be D&B --

4 A. Correct.

5 Q. -- Auto Sales?

6 A. That's right.

7 Q. Does it affect Mr. Giden's licensure?

8 A. None of those violations are attributable
9 to the driver, so no.

10 Q. Okay. And I think, refresh my memory, I
11 think you testified that D&B Auto Sales never
12 participated in any of these?

13 A. To the best of my knowledge, no,
14 everything was directed to Mr. Giden.

15 EXAMINER SANYAL: Okay. Those are all
16 the questions I have. Thank you.

17 And I didn't ask you, did you have any
18 questions? Don't go.

19 MR. DARNELL: One question for Mr. Moser.

20 EXAMINER SANYAL: I'm sorry.

21 - - -

22 DIRECT EXAMINATION (Continued)

23 By Mr. Darnell:

24 Q. One question and then motion. I am
25 approaching with what we have marked as Staff Exhibit

1 10.

2 MR. DARNELL: I apologize I didn't make
3 extra copies, your Honor.

4 EXAMINER SANYAL: Sure. May I look at
5 it --

6 MR. DARNELL: Certainly.

7 EXAMINER SANYAL: -- real quick and then
8 you will have to make a copy for the court
9 reporter --

10 MR. DARNELL: Certainly.

11 EXAMINER SANYAL: -- at some time. And
12 how is Staff Exhibit 10 different from Staff Exhibit
13 2?

14 MR. DARNELL: If I may ask Mr. Moser,
15 your Honor.

16 EXAMINER SANYAL: Okay. I am going to
17 look at it real quick.

18 MR. DARNELL: Certainly.

19 EXAMINER SANYAL: Go ahead.

20 Q. Mr. Moser, do you recognize the document
21 I handed you?

22 A. I do, yes.

23 Q. What is it?

24 A. It is what we call a Notice of Apparent
25 Violation and Intent to Assess Forfeiture, NIO

1 Forfeiture.

2 Q. And what does this document do in the
3 overall forfeiture process before the Commission?

4 A. So this is the initial letter advising
5 the carrier that there are violations and that we
6 intend to assess a monetary fine for those.

7 Q. Are these documents exclusively sent to
8 carriers?

9 A. No. They're sent to whoever is deemed to
10 be the Respondent.

11 Q. And who was this document sent to?

12 A. In this case the carrier.

13 Q. And that is?

14 A. The carrier in this case was the
15 Respondent on all of the violations on that
16 inspection.

17 Q. Certainly. And is this document kept in
18 the regular course of Commission business?

19 A. It is.

20 Q. Is this a Commission record?

21 A. It is.

22 Q. Has it been altered in any way, shape, or
23 form?

24 A. It doesn't appear so.

25 Q. And is that a fair and accurate copy of

1 the Notice of Intent, Notice of Apparent Intent to
2 Forfeiture?

3 A. Yes, sir.

4 Q. Mr. Moser, if a carrier never responds in
5 a case like this, what typically happens?

6 A. Well, our next step in the process if
7 nobody responded would be to send a second notice of
8 the same letter. And then after that, if nobody
9 responded, we would go to what's called show cause
10 which is basically a default process. And then after
11 that, the case will be referred to collections with
12 the Attorney General's Office.

13 Q. And you obviously didn't go through that
14 process in this case. Was there a particular reason?

15 A. Because we had a conference request for
16 the case.

17 Q. And who was that from?

18 A. It was from Mr. Giden.

19 MR. DARNELL: I have no further questions
20 at this time, your Honor.

21 - - -

22 FURTHER EXAMINATION

23 By Examiner Sanyal:

24 Q. Okay. I do have one question. So help
25 me get this timeline straight, so Staff Exhibit 10,

1 which is the Notice of Apparent Violation which was
2 issued sometime in August of 2019 and sent to D&B
3 whatever, I'm forgetting the full name, D&B Auto
4 Sales LLC, correct?

5 A. Correct.

6 Q. And between that time and when the Notice
7 of Preliminary Determination was issued on October
8 30, 2019, Mr. Giden requested a conference.

9 A. Correct.

10 EXAMINER SANYAL: That helps. That is
11 all the -- those are all the questions I have. You
12 may step down.

13 - - -

14 ANDRE GIDEN

15 being previously duly sworn, as prescribed by law,
16 was examined and testified further as follows:

17 FURTHER EXAMINATION

18 By Examiner Sanyal:

19 Q. And then, Mr. Giden, I'm sorry, I failed
20 to ask you this. I don't think you identified for
21 the record your Exhibit 2. Could you tell us what
22 this is.

23 A. Oh, that's the title to the car I was
24 towing.

25 Q. Okay. The car that was on the trailer.

1 A. Right.

2 Q. Belongs to your daughter.

3 A. Yes, ma'am.

4 EXAMINER SANYAL: Got it. Would you like
5 to admit any exhibits?

6 MR. DARNELL: If I may, your Honor.

7 EXAMINER SANYAL: Yes.

8 MR. DARNELL: All of Staff Exhibits 1
9 through 10.

10 EXAMINER SANYAL: Okay. And those shall
11 be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER SANYAL: And then, Mr. Giden,
14 would you like to admit the two exhibits?

15 MR. GIDEN: Yes, ma'am.

16 EXAMINER SANYAL: Do you have any
17 objection?

18 MR. DARNELL: No, your Honor.

19 EXAMINER SANYAL: Okay. Those are
20 admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER SANYAL: Do we have anything we
23 want to discuss before we go off the record?

24 MR. DARNELL: I don't believe so, your
25 Honor.

1 MR. GIDEN: No, ma'am.

2 EXAMINER SANYAL: I assume we don't want
3 briefing.

4 MR. DARNELL: No, your Honor.

5 EXAMINER SANYAL: Okay. Any questions,
6 Mr. Giden?

7 MR. GIDEN: No, ma'am.

8 EXAMINER SANYAL: Okay. Well, in that
9 case the case will be submitted to the record, and
10 the Commission will issue an opinion in due course.
11 We do try to get these out in about three months.

12 Thank you, everyone. We are off the
13 record.

14 (Discussion off the record.)

15 (Thereupon, at 11:49 a.m., the hearing
16 was adjourned.)

17 - - -

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, March 10,
2020, and carefully compared with my original
stenographic notes.

Karen Sue Gibson

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6897)



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in

Case No(s). 19-2099-TR-CVF

Summary: Transcript In the Matter of Andre Giden, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on March 10th, 2020. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.