

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DONALD P.  
CONNELLY, NOTICE OF APPARENT  
VIOLATION AND INTENT TO ASSESS  
FORFEITURE.

CASE NO. 18-1813-TR-CVF  
(CR201802270160)

## FINDING AND ORDER

Entered in the Journal on September 9, 2020

### I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement filed between Commission Staff and Donald P. Connelly regarding violations of the Commission's transportation rules.

### II. DISCUSSION

{¶ 2} R.C. 4923.04(A)(1) mandates that the Commission adopt rules applicable to the transportation of persons or property by 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, published in the Code of Federal Regulations, 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, per violation, against any person who violates the safety rules adopted by the Commission.

{¶ 3} On February 27, 2018, Commission Staff (Staff) conducted a compliance review of a facility located in Warren, Ohio owned or operated by Donald P. Connelly (Respondent). The compliance review resulted in the discovery of the following apparent violations of the Code of Federal Regulations (C.F.R.): failing to maintain driver qualification file on each driver employed in violation of 49 C.F.R. 391.51(a); operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage in violation of 49 C.F.R. 387.7(a); failing to keep minimum records of inspection and vehicle maintenance in violation of 49 C.F.R. 396.3(b); failing to require a driver to prepare a record of duty status using appropriate method in violation of 49 C.F.R. 395.8(a)(l); using a driver not medically examined and certified in violation of 49 C.F.R.

391.45(a); and using a commercial motor vehicle not periodically inspected in violation of 49 C.F.R. 395.17(a). The compliance review additionally resulted in the discovery of an apparent violation of R.C. 4921.03 for transporting passengers and/or property without Commission authority in violation of R.C. 4921.03

{¶ 4} On June 8, 2018, Staff served Respondent with a Notice of Preliminary Determination (NPD) pursuant to Ohio Adm.Code 4901:2-7-12. The NPD notified Respondent that Staff intended to assess a total civil forfeiture of \$5,425 against Respondent, which accounts for the individual assessments for each of the above-cited apparent violations.

{¶ 5} By Finding and Order issued November 14, 2018, the Commission directed Respondent to pay the assessed forfeiture or demonstrate why he was not in default. *In the Matter of the Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Administrative Code*, Case No. 18-1529-TR-CVF, Finding and Order (Nov. 14, 2018) at ¶13, Attachments Part 1, page 4 of 63.

{¶ 6} On December 7, 2018, counsel for Respondent filed a request for an administrative hearing regarding the NPD. In the letter, counsel for Respondent alleged confusion and excusable neglect for the failure to file the request for hearing in the timeframe permitted by Ohio Adm.Code 4901:2-7-13.

{¶ 7} By Entry dated February 7, 2019, the attorney examiner scheduled a prehearing conference for March 12, 2019. Subsequently, the attorney examiner granted a motion for a continuance filed by Respondent and rescheduled the prehearing conference to March 27, 2019. Although the matter was not resolved during the March 27, 2019 conference, counsel for Staff and Respondent continued to engage in settlement discussions. Subsequently, counsel for Staff advised the attorney examiner that a settlement had been reached.

{¶ 8} On January 7, 2020, upon noting that no settlement or joint motion to dismiss had been filed, the attorney examiner issued an Entry setting this matter for a hearing on February 27, 2020.

{¶ 9} On January 21, 2020, counsel for Respondent filed a notice of withdrawal as counsel. The notice of withdrawal was fax-filed a second time on February 10, 2020.

{¶ 10} On February 26, 2020, Staff filed a motion for continuance of the hearing and request for expedited consideration. For cause, Staff indicated that a continuance would allow the parties to finalize a stipulation, for which the parties had reached an agreement in principle. By Entry dated the same day, the attorney examiner granted the motion and, given the anticipated filing of a settlement agreement, vacated the hearing.

{¶ 11} On July 1, 2020, Staff and Respondent filed a settlement agreement which, in the parties' opinion, resolves the issue raised in the NPD. The following is a summary of the conditions agreed to by the parties; it is not intended to replace or supersede the settlement agreement.

- A. Respondent agrees to violations of 49 C.F.R. 391.51(a), 387.7(a), 396.3(b), 395.8(a)(1), 391.45(a), and 396.17(a), as well as R.C. 4921.03, and recognizes that the violations may be included in Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- B. Respondent agrees to pay a civil forfeiture of \$1,000 for the violations, which Respondent may pay in no more than ten (10) equal monthly installments of \$100, with the first such payment to be made within thirty (30) days following Commission approval of the settlement agreement. Respondent has provided sufficient

proof to Staff that it has taken remedial actions to address these violations.

- C. The payments shall be made payable to “Treasurer State of Ohio,” and mailed to PUCO Fiscal, 180 East Broad Street, 4th Floor, Columbus, OH 43215-3793. The case number (CR201802270160) should appear on the face of each check.
- D. The settlement agreement shall not become effective until adopted by an order of the Commission. The date of the entry of the Commission order adopting the settlement agreement shall be considered the effective date of the agreement.
- E. The settlement agreement is made in settlement of all factual or legal issues in this case; it is not intended to have any effect whatsoever in any other case or proceeding.

{¶ 12} The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement shall be approved and adopted in its entirety.

### III. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 15} ORDERED, That Respondent pay the civil forfeiture of \$1,000, in accordance with the settlement agreement. Payment shall be made by check or money order payable to the “Treasurer, State of Ohio” and mailed or delivered to PUCO Fiscal, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to ensure proper credit, Respondent

is directed to write case number CR201802270160 on the face of the check or money order.  
It is, further,

{¶ 16} ORDERED, That a copy of this Finding and Order 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

PAS/hac

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

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**Case No(s). 18-1813-TR-CVF**

Summary: Finding & Order approving the settlement agreement filed between Commission Staff and Donald P. Connelly regarding violations of the Commission's transportation rules. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio