

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF ROBERT D. KYSER,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 19-1898-TR-CVF
(OH3238013967D)

ENTRY

Entered in the Journal on December 16, 2020

I. SUMMARY

{¶ 1} The Commission grants Staff's motion for default judgment against Robert D. Kyser for failure to appear at a hearing concerning a violation of the Commission's transportation rules.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall 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 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 July 25, 2019, Ohio State Highway Patrol Inspector Michael Byrne (Inspector Byrne) inspected a commercial motor vehicle (CMV) operated by Robert D. Kyser (Respondent). Respondent was driving the vehicle within the state of Ohio. Inspector Byrne discovered a violation of 49 C.F.R. 392.16(a), which is a failure to use a seatbelt while operating a CMV.

{¶ 4} Staff served a notice of preliminary determination (NPD) upon Respondent, in accordance with Ohio Adm.Code 4901:2-7-07, regarding the driver violation. This NPD assessed Respondent a \$100 civil forfeiture for the driver violation.

{¶ 5} On October 15, 2019, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 6} By Entry dated October 1, 2019, the attorney examiner scheduled a prehearing conference in this matter. During the conference, the parties were unable to settle this matter.

{¶ 7} By Entry dated October 26, 2019, the attorney examiner scheduled a hearing in this matter for January 23, 2020.

{¶ 8} At the hearing on January 23, 2020, Staff presented, as exhibits, the Driver/Vehicle Examination Report (Staff Ex. 1); a series of photographs taken by Inspector Byrne during the inspection (Staff Ex. 2 and 5); a transcription of an audio recording of the traffic stop between Inspector Byrne and Respondent (Staff Ex. 3 and 4); and a notice of apparent violation and intent to assess forfeiture that Staff issued to Respondent for the driver violation (Staff. Ex. 6). Staff also presented the testimony of Inspector Byrne in support of the violation, and the testimony Rod Moser in support of the proposed forfeiture of \$100 (Tr. at 6-16; 16-20). Respondent did not appear at the hearing or present any evidence as to why he should not be held liable for the forfeiture proposed in this case (Tr. at 5-6). In response, Staff moved for a default judgment against Respondent for the proposed forfeiture of \$100 (Tr. at 21).

{¶ 9} Ohio Adm.Code 4901:2-7-14(E) provides that a respondent who has requested an administrative hearing and fails to participate in the hearing proceeding shall be in default. The rule further states that a respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability to the state for the forfeiture described in the notice.

{¶ 10} Upon review of the evidence presented at the hearing, we find Inspector Byrne's testimony persuasive in that Respondent did not wear a seatbelt while operating a CMV, pursuant to 49 C.F.R. 392.16(a) (Tr. at 10-11; Staff Ex. 3 and 4). Furthermore, in view

of Respondent's failure to participate in the hearing, the Commission finds that, in accordance with Ohio Adm.Code 4901:2-7-14, Staff's motion for default judgment should be granted. Therefore, the Commission finds that Respondent violated 49 C.F.R. 392.16(a) and that the recommended civil forfeiture of \$100 should be paid within 60 days.

{¶ 11} Pursuant to R.C. 4923.99, Respondent is liable to the State of Ohio for payment of the assessed civil forfeiture of \$100. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures be made by certified check or money order made payable to: "Treasurer, State of Ohio" and shall be mailed or delivered to: PUCO, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Case No. 19-1898-TR-CVF and inspection number OH3238013967D should appear on the face of the check or money order. Respondent shall have 60 days from the date of this Entry to pay the assessed forfeiture of \$100.

III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That Staff's motion for default judgment be granted. It is, further,

{¶ 14} ORDERED, That Respondent pay the civil forfeiture of \$100 within 60 days to the state of Ohio as set forth in Paragraph 11. It is, further,

{¶ 15} ORDERED, That a copy of this Entry be served upon each party of record.

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

LLA/hac

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Case No(s). 19-1898-TR-CVF

Summary: Entry granting Staff's motion for default judgment against Robert D. Kyser for failure to appear at a hearing concerning a violation of the Commission's transportation rules. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio