

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF MARCOS JAMES,  
NOTICE OF APPARENT VIOLATION AND  
INTENT TO ASSESS FORFEITURE.

CASE NO. 19-451-TR-CVF  
(OH1687004560D)

## ENTRY

Entered in the Journal on July 14, 2021

### I. SUMMARY

{¶ 1} The Commission grants Staff's motion for default judgement, finding the respondent in default for failure to participate in the hearing proceeding.

### 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 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} Staff served a notice of preliminary determination upon Marcos James (Respondent) in accordance with Ohio Adm.Code 4901:2-7-12, alleging a violation of the Commission's transportation regulations.

{¶ 4} On February 22, 2019, Respondent filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 5} On April 16, 2019, the parties participated in a prehearing conference, in accordance with Ohio Adm.Code 4901:2-7-16(B). At that time, Respondent requested an extension to obtain legal counsel.

{¶ 6} On May 30, 2019, the attorney examiner scheduled a second prehearing conference to convene on June 27, 2019.

{¶ 7} On June 27, 2019, the attorney examiner attempted to contact Respondent to initiate the prehearing conference; however, he did not answer his telephone, and his voicemail was full.

{¶ 8} Subsequently, on July 3, 2019, the attorney examiner scheduled a hearing for August 5, 2019, at 11:00 a.m. at the Commission offices.

{¶ 9} On August 2, 2019, Respondent filed his first request to continue the hearing scheduled for August 5, 2019. In support of his request, Respondent stated that there was a conflict with the hearing date and his work schedule. The attorney examiner granted Respondent's request by Entry dated August 9, 2019 and rescheduled the hearing to convene on September 19, 2019.

{¶ 10} On September 18, 2019, Respondent informally requested to reschedule the hearing in this case. In support of his request, Respondent stated a work conflict. Additionally, although the request was not docketed until September 30, 2019, Respondent informed both the attorney examiner and Staff, on September 18, 2019, that he would not attend the September 19, 2019 hearing.

{¶ 11} The hearing was convened, as scheduled, on September 19, 2019. Respondent did not appear at the hearing and, accordingly, Staff moved for a default judgment (Tr. at 3-4). Additionally, the attorney examiner granted Respondent's request to continue the hearing but clarified that this request would be the last continuance she would grant (Tr. at 4).

{¶ 12} On April 5, 2021, the attorney examiner issued an entry stating that if Respondent wishes to reschedule the hearing, he should notify the attorney examiner by April 21, 2021, of his availability for a hearing in either May or June 2021. The entry stated that if Respondent does not reply by April 20, 2021, then the Commission may consider Staff's motion for default judgment.

{¶ 13} To date, Respondent has not filed anything in the docket or contacted the attorney examiner regarding his availability for the hearing.

{¶ 14} 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 additionally 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.

{¶ 15} The Commission finds Staff's motion for default judgement to be reasonable. Initially, we note that Respondent did not attend the prehearing conference on June 27, 2019 and provided delayed notice that he would not attend the hearing on August 5, 2019 and the rescheduled hearing on September 19, 2019. Additionally, Respondent did not respond to the April 5, 2021 Entry directing him to notify the attorney examiner of his availability for hearing. Finally, Respondent did not respond to Staff's motion for default judgement. Therefore, Staff's motion for default judgement should be granted.

### III. ORDER

{¶ 16} It is, therefore,

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

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

#### COMMISSIONERS:

##### *Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

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**Case No(s). 19-0451-TR-CVF**

Summary: Entry granting Staff's motion for default judgement, finding the respondent in default for failure to participate in the hearing proceeding. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio