

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Jeffrey H. Clingerman,)
Notice of Apparent Violation and Intent to) Case No. 13-426-TR-CVF
Assess Forfeiture.) (OH1251000584D)

ENTRY

The Commission finds:

- (1) On October 5, 2012, a vehicle operated by 3D Recreation, LLC and driven by Jeffery H. Clingerman (Mr. Clingerman or respondent) was inspected within the state of Ohio. As a result of the inspection, violations of the Code of Federal Regulations (C.F.R.) were discovered, including the following violations relevant to this case: 49 C.F.R. §392.16 (Failing to properly wear seat belt while operating a commercial motor vehicle.) and 49 C.F.R. §391.11(b)(4) (Driver not physically qualified. Medical Card requires driver to wear corrective lenses while driving, and driver was not using corrective lenses.).
- (2) In accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.), respondent was informed in a Notice of Preliminary Determination (NPD) that Commission staff (Staff) intended to assess a civil forfeiture of \$350.00 for the apparent violations.
- (3) On February 14, 2013, Mr. Clingerman responded to the NPD and filed a letter requesting an administrative hearing, thereby initiating this matter.
- (4) By entry dated February 27, 2013, a prehearing teleconference was scheduled in the case on March 26, 2013. The parties, however, were unable to resolve the matter during the conference, and the case was scheduled for hearing on April 25, 2013.
- (5) At Mr. Clingerman's request, the hearing was continued three times and rescheduled, first on May 30, 2013, then on July 18, 2013, and finally on August 29, 2013. In support of his requests to continue the hearing, Mr. Clingerman cited the imminent birth of a grandchild and medical reasons that did not permit him to travel.

- (6) In a July 18, 2013, entry in this matter, the attorney examiner noted that, at the time he contacted Staff to request the third continuance of the hearing, Mr. Clingerman agreed to an August 29, 2013, hearing date. Further, Mr. Clingerman agreed to submit documentation in support of his third request for a continuance of the hearing. To date, however, no such documentation has been received by the Commission.
- (7) The hearing was convened as rescheduled on August 29, 2013. The respondent did not appear at the hearing.
- (8) At the August 29, 2013, hearing, Staff moved for a default judgment against the respondent.
- (9) Rule 4901:2-7-14(E), O.A.C., 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 NPD.
- (10) The respondent did not appear at hearing and present any evidence to explain why he should not be held liable in this case. Accordingly, Staff's motion for a default judgment should be granted.
- (11) Pursuant to Section 4923.99, Revised Code, the respondent is liable to the state of Ohio for payment of the forfeiture on the transportation safety rule violations. Rule 4901:2-7-22, O.A.C., provides that payment of such forfeiture be made by certified check or money order made payable to: "Treasurer, state of Ohio" and shall be mailed or delivered to: "Fiscal Division, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793." Respondent shall have 30 days from the date of this entry to pay the assessed forfeiture of \$350.00.
- (12) Section 4923.99, Revised Code, further provides that, upon written request of the Commission, the Attorney General shall bring a civil action in the Court of Common Pleas of Franklin County to recover an assessed forfeiture.

It is, therefore,

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

ORDERED, That Jeffrey H. Clingerman pay the assessed amount within 30 days to the state of Ohio as set forth in Finding (11). It is, further,

ORDERED, That if payment is not received within 30 days of the date of this entry, the Attorney General of Ohio shall bring a civil action in the Court of Common Pleas of Franklin County, or take any other appropriate action allowed by law, to recover the \$350.00 forfeiture assessed herein. It is, further,

ORDERED, That this case be closed of record. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

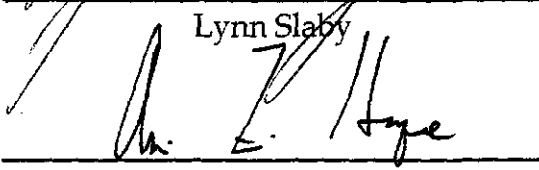
Steven D. Lesser



M. Beth Trombold



Lynn Slaby

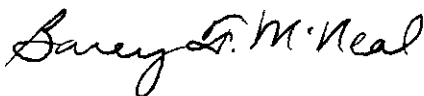


Asim Z. Haque

KKS/vrm

Entered in the Journal

SEP 18 2013



Barcy F. McNeal

Barcy F. McNeal
Secretary