

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Auto Plaza, Inc. and) Case No. 14-119-TR-CVF
Dennis E. Hardesty, Notice of Apparent) (OH3247010472C)
Violation and Intent to Assess Forfeiture.) (OH3247010472D)

OPINION AND ORDER

The Commission, considering the evidence of record, the arguments of the parties, and the applicable law, and being otherwise duly advised, hereby issues its opinion and order in this matter.

APPEARANCES:

Dennis E. Hardesty, 539-B North Edison, Kennewick, Washington 99336, on his own behalf.

Mike DeWine, Ohio Attorney General, by Ryan P. O'Rourke, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission.

NATURE OF THE PROCEEDING:

On September 27, 2013, the Ohio Highway Patrol (Highway Patrol) stopped and inspected a commercial motor vehicle (CMV), driven by Dennis E. Hardesty (Mr. Hardesty) in the state of Ohio. Auto Plaza, Inc. (Auto Plaza or Company), Mr. Hardesty's automobile dealership, was listed on the inspection report as the motor carrier operating the truck that was driven by Mr. Hardesty. The Highway Patrol found the following violations of the Code of Federal Regulations (C.F.R.):

Mr. Hardesty

49 C.F.R. 395.8(a) - No log book for 09/20/2013 to 09/27/2013.

49 C.F.R. 383.23(a)(2) - Operating a CMV without a commercial driver's license (CDL) - operating a class A vehicle with a non-CDL license.

Auto Plaza

49 C.F.R. 385.325(c) - Operating in interstate commerce on or after the operational, out-of-service order date for failure of a safety audit.

49 C.F.R. 390.21(a) - Not marked in accordance with regulations - not marked for drive-away/tow-a-way operation.

Mr. Hardesty was served with a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12. In that notice, Mr. Hardesty was notified that the Commission's Staff intended to assess a civil monetary forfeiture totaling \$350.00 for violation of 49 C.F.R. 395.8(a) and 49 C.F.R. 383.23(a)(2). The NPD for Auto Plaza, served on Mr. Hardesty at his business address, stated that Staff intended to assess Auto Plaza a civil monetary forfeiture totaling \$1,100.00 for violation of 49 C.F.R. 385.325(c) and 49 C.F.R. 390.21(a). A prehearing teleconference was conducted in the case. The parties, however, failed to reach a settlement agreement during the conference. Subsequently, a hearing was convened on May 8, 2014.

Background

The inspection in this case took place at Mile Post 12 on Interstate 33 in Auglaize County, Ohio. At the time of the inspection, Mr. Hardesty was driving a truck with an attached trailer from Orlando, Florida to Fort Wayne, Indiana, and then to Kennewick, Washington. The trailer was loaded with two pickup trucks.

Issues in the Case:

Inspector John T. Rammel, a motor carrier enforcement inspector with the Highway Patrol, observed that the truck driven by Mr. Hardesty was not marked in accordance with transportation regulations. Inspector Rammel then stopped and inspected the truck, and cited Mr. Hardesty and Auto Plaza for the violations in this case. Mr. Hardesty argued that neither he nor his company should be held liable because the trailer he was pulling was his personal trailer, and was intended only for his personal use. Mr. Hardesty also contended that he was not at fault because he was unaware of the CDL requirement and the out-of-service order on his Department of Transportation (DOT) registration.

Summary of the Evidence:

After interviewing Mr. Hardesty and conducting his inspection, Inspector Rammel recorded in his inspection notes that he tried to input the number on the trailer's license plate, a dealer's plate, into the computer identification system in his cruiser, but could not get any information in response. Inspector Rammel noted that Mr. Hardesty's truck was purchased in Georgia, and the trailer was purchased in Florida. He stated that he saw the receipt for the truck on the driver's cell phone, but did not see the receipt for the trailer. Further, Inspector Rammel observed that the load inside of the trailer consisted of two pick-up trucks, for which Mr. Hardesty had receipts that both of the vehicles were purchased for Mr. Hardesty's car dealership, and that Mr. Hardesty was on his way to Fort Wayne, Indiana to pick up another truck, then on to his home state of Washington.

Inspector Rammel testified that, according to what Mr. Hardesty told him, Mr. Hardesty was buying vehicles in other states and hauling them back to Washington State for his dealership. (Staff Exhibit 1; Tr. at 9-10.)

Inspector Rammel testified that Mr. Hardesty was driving a Chevrolet pick-up truck, and he was pulling a bumper, pole-style trailer with two pickup trucks on it. He stated that Mr. Hardesty's truck was rated at 11,400 pounds, which put it in the CMV class, because any vehicle weighing over 10,000 pounds is considered a CMV if it is used in the course of operating a business.¹ Moreover, the gross vehicle weight of Mr. Hardesty's truck and trailer combination was in excess of 26,001 pounds.² Inspector Rammel testified that, pursuant to 49 C.F.R. 383.23(a)(2), Mr. Hardesty needed a CDL to drive his vehicle and that he just had a regular driver's license. (Tr. at 9-12.)

Inspector Rammel testified that, when he checked Auto Plaza's DOT number through the internet, he discovered a federal out-of-service order issued against the company for failing a safety audit and that Auto Plaza thus was operating in contravention of that out-of-service order, a 49 C.F.R. 385.325(c) violation. In addition, Inspector Rammel testified that Mr. Hardesty's truck was not marked in accordance with regulations for drive-a-way/tow-a-way operations.³ He noted that, pursuant to 49 C.F.R. 390.21(a), the truck was required to have a sign showing the company name and DOT number, and Mr. Hardesty did not have such a sign displayed. Further, Inspector Rammel testified that, as determined by the receipts that Mr. Hardesty produced for the two pickups, he was performing a drive-a-way/tow-a-way operation as part of his business. (Tr. at 13-18.)

Thomas Persinger, a Staff member, testified that NPDs (Staff Exhibits 3 and 4), were issued to Mr. Hardesty and Auto Plaza notifying Mr. Hardesty and his Company that Staff intended to assess a total forfeiture of \$1,450.00 for the violations in this case. Mr. Persinger testified that the monetary values of the forfeitures for Mr. Hardesty's and Auto Plaza's violations were determined by using an assessment chart, which lists the amount of the forfeiture for each violation. (Tr. at 30-37.)

Mr. Hardesty, a partner in Auto Plaza, testified that the trailer he was pulling was his personal trailer. According to Mr. Hardesty, he thus believed that it was unnecessary to have a posted DOT placard, a CDL, or a log book. Mr. Hardesty also maintained that he

¹ General. Pursuant to 49 C.F.R. 390.5, a truck or a truck and trailer combination weighing 10,001 pounds or more qualifies as a CMV and is subject to the motor carrier regulations contained in the C.F.R.

² Commercial Driver's License Standards. Pursuant to 49 C.F.R. 383.5, a truck or a truck and trailer combination weighing 26,001 pounds or more qualifies as a CMV under this code section and, therefore, a CDL is needed to drive the vehicle.

³ A drive-a-way/tow-a-way operation is an auto dealership that transports vehicles for that dealership or for another company from one place to another, or from a location to a dealership (Tr. at 16).

was unaware his truck/trailer combination qualified as a CMV, that a CDL was necessary to operate the truck/trailer combination, or that his company had not been reinstated after its DOT registration had been revoked for failing a previous safety audit. Mr. Hardesty testified that he believed his application to have his DOT registration reinstated had fallen through the cracks and that the failure of that reinstatement process was not his fault. (Tr. at 38-44.)

Conclusion:

The Commission initially observes that Mr. Hardesty did not deny the occurrence of the violations. He maintains, instead, that neither he nor his Company should be held liable because the trailer he was towing was purchased for his personal use. Therefore, according to Mr. Hardesty, a personal-use exemption applied and both he and Auto Plaza were should have been excused from compliance with the transportation regulations requiring that he possess a CDL and carry a log book, the 49 C.F.R. 383.23(a)(2) and 395.8(a) violations, and the posting of the proper markings on the truck, the 49 C.F.R. 390.21(a) violation. As separate arguments with regard to the CDL violation and the 49 C.F.R. 385.325(c), out-of-service-order violation, Mr. Hardesty first contends that his lack of knowledge of the weight of his truck/trailer combination, should be a factor in excusing his non-compliance with the requirement that he have a CDL to drive the truck. Mr. Hardesty also appears to argue that there should be no liability for the outstanding, federal out-of-service order against Auto Plaza's DOT registration, because he had attempted to have the DOT registration reinstated after the failure of a previous safety audit. Mr. Hardesty contends that his application for reinstatement of the DOT registration must have somehow been lost in the federal bureaucracy.

The Commission disagrees with Mr. Hardesty's contentions. There can be no doubt that Mr. Hardesty was using his truck/trailer combination for a drive-away/tow-away operation. The receipts in Mr. Hardesty's possession, which were issued to Auto Plaza for the two pickup trucks on board the trailer, confirm that the transportation Mr. Hardesty was performing was in furtherance of his auto dealership business and not related to his personal use (Staff Ex. 2; Tr. at 16-18). Moreover, because the weight of the truck/trailer combination exceeded the 10,001 and 26,001 pound weight limits specified in 49 C.F.R. 390.5 and 383.5, respectively, the truck/trailer combination driven by Mr. Hardesty constituted a CMV, one that required Mr. Hardesty to possess a CDL to operate. Therefore, pursuant to 49 C.F.R. 390.21(a), 383.23(a)(2), and 395.8(a), Auto Plaza needed a truck marked in accordance with regulations and Mr. Hardesty needed a CDL and a log book.

The Commission makes no comment with regard to Mr. Hardesty's argument that, because of his attempted reinstatement of Auto Plaza's DOT registration, which was not effective for some reason, Auto Plaza should not be held liable for operating in breach of a

federal out-of-service order. The record in this case does not reveal why Auto Plaza's DOT registration was not reinstated. The fact of the matter is that, on the day of the inspection, the out-of-service order was still in force. Therefore, Mr. Hardesty was in violation of 49 C.F.R. 385.325(c).

The Commission would merely note that a lack of knowledge of the transportation regulations does not constitute an excuse for any measure of non-compliance with those regulations. We expect any driver performing transportation in a CMV to be aware of, and comply with, the transportation regulations contained in the C.F.R. Mr. Hardesty's transportation of automobiles from Florida to Washington places him and his Company under the regulations contained in the C.F.R. Mr. Hardesty's arguments at hearing were not sufficient to demonstrate that he and Auto Plaza should not be held liable for the civil forfeitures assessed for the violations in this case. Accordingly, the Commission finds that Mr. Hardesty and Auto Plaza are liable for the assessed forfeiture amounts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On September 27, 2013, the Highway Patrol stopped and inspected a CMV driven by Mr. Hardesty in the state of Ohio. The Highway Patrol found the following violation of the C.F.R.:

Mr. Hardesty

49 C.F.R. 395.8(a) - No log book for 09/20/2013 to 09/27/2013.

49 C.F.R. 383.23(a)(2) - Operating a commercial motor vehicle (CMV) without a commercial driver's license (CDL) - operating a class A vehicle with a non-CDL license.

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49 C.F.R. 390.21(a) - Not marked in accordance with regulations - not marked for drive-away/tow-a-way operation.

- (2) Mr. Hardesty was served with an NPD that set forth a civil forfeiture of \$350.00 for violation of 49 C.F.R. 395.8(a) and 383.23(a)(2). Auto Plaza was served with an NPD that set forth a civil forfeiture of \$1,100.00 for violation of 49 C.F.R. 385.325(c) and 390.21(a).

- (3) A hearing in this matter was convened on May 8, 2014.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Mr. Hardesty violated 49 C.F.R. 395.8(a) and 383.23(a)(2) and Auto Plaza violated 49 C.F.R. 385.325(c) and 390.21(a).
- (5) Mr. Hardesty's arguments at hearing were not sufficient to demonstrate that he should not be held liable for the civil forfeitures assessed for violation of 49 C.F.R. 395.8(a) and 383.23(a)(2) and that Auto Plaza should not be held liable for the civil forfeitures assessed for violation of 49 C.F.R. 385.325(c) and 390.21(a).
- (6) Pursuant to R.C. 4923.99, Mr. Hardesty must pay the State of Ohio the civil forfeitures assessed for violation of 49 C.F.R. 395.8(a) and 383.23(a)(2), and Auto Plaza must pay the State of Ohio the civil forfeitures assessed for violation of 49 C.F.R. 385.325(c) and 390.21(a). Mr. Hardesty and Auto Plaza shall have 30 days from the date of this order to pay the assessed forfeitures of \$350.00 and \$1,100.00, respectively.

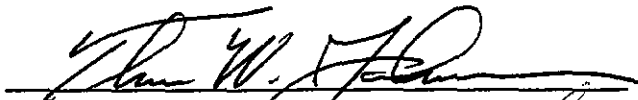
It is, therefore,

ORDERED, That Mr. Hardesty pay the assessed amount of \$350.00 for violation of 49 C.F.R. 395.8(a) and 383.23(a)(2) and that Auto Plaza pay the assessed amount of \$1,100.00 for violation of 49 C.F.R. 385.325(c) and 390.21(a), as set forth in Finding (6). Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Mr. Hardesty and Auto Plaza are directed to write the case numbers (OH3247010472D and OH3247010472C) on the face of the checks or money orders. It is, further,

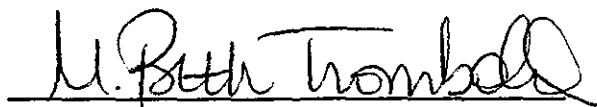
ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this Opinion and Order. It is, further,

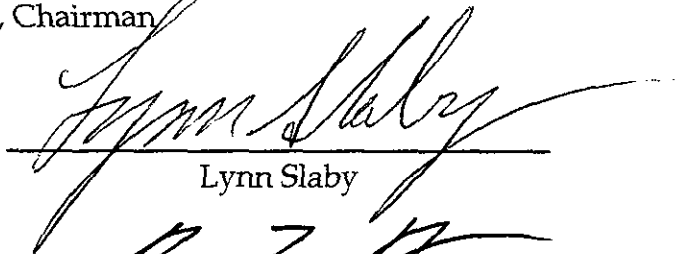
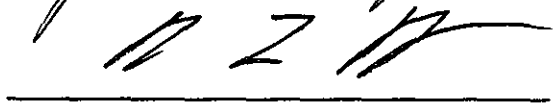
ORDERED, That a copy of this Opinion and Order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

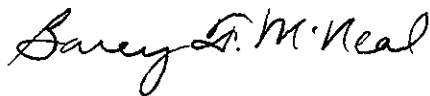

M. Beth Trombold


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Entered in the Journal

JUL 23 2014



Barcy F. McNeal
Secretary