

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Kenneth McCardle, Notice)
of Apparent Violation and Intent to Assess) Case No. 15-112-TR-CVF
Forfeiture.) (OH3293007226D)

ENTRY

The Commission finds:

- (1) 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 4901:2-5-02(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.
- (2) On October 22, 2014, a commercial motor vehicle (CMV) driven by Kenneth McCardle and operated by Freedom Transport, Inc., was inspected within the state of Ohio. As a result of the inspection, Mr. McCardle was issued a Driver/Vehicle Examination Report citing him for using a hand-held mobile telephone while driving a CMV, in violation of 49 C.F.R. 392.82(A)(1), \$250.
- (3) Mr. McCardle was timely served with a notice of preliminary determination (NPD) pursuant to Ohio Adm.Code 4901:2-7-12, at his business address registered with the Commission. The NPD assessed Mr. McCardle a total civil forfeiture of \$250.
- (4) On January 21, 2015, Mr. McCardle filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. By Entry issued on February 5, 2015, a settlement conference was scheduled for February 26, 2015. A copy of the February 5, 2015 Entry was served upon Mr. McCardle at the address registered with the Commission.

- (5) The prehearing settlement conference was held as scheduled; however, the parties were unable to settle this matter. Thereafter, by Entry issued on March 31, 2015, the attorney examiner scheduled this matter for hearing on April 28, 2015. A copy of the Entry scheduling the hearing was similarly served upon Mr. McCardle at the address registered with the Commission and a service notice was filed in the case docket.
- (6) The hearing was held as scheduled on April 28, 2015; however, Mr. McCardle failed to appear for the hearing or present evidence to explain why he should not be charged with the violation in this case. At the hearing, Staff presented, as exhibits, the Driver/Vehicle Examination Report (Staff Ex. 1), and the NPD issued to Mr. McCardle (Staff Ex. 2). Additionally, at the hearing, Staff moved for a default judgment against Mr. McCardle in the amount of \$250 (Tr. at 5-6).
- (7) Ohio Adm.Code 4901:2-7-14(A) 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.
- (8) In view of Mr. McCardle's failure to participate in the hearing, the Commission finds that he is in default in accordance with Ohio Adm.Code 4901:2-7-14. Accordingly, Staff's motion for default judgment should be granted and the recommended civil forfeiture of \$250 against Kenneth McCardle should be paid within 60 days.
- (9) Pursuant to R.C. 4923.99, Kenneth McCardle is liable to the state of Ohio for payment of the assessed civil forfeiture for the violation in this matter. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures shall 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." Kenneth McCardle should write the case number (OH3293007226D) on the front of the check and shall have 60 days from the date of this Entry to pay the assessed forfeiture.

- (10) R.C. 4923.99 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,

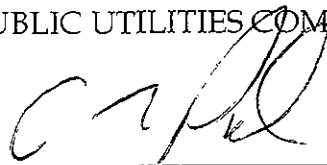
ORDERED, That Staff's motion for default judgment be granted. It is, further,

ORDERED, That Kenneth McCardle pay the assessed civil forfeiture of \$250 within 60 days to the state of Ohio, in accordance with Finding (9). It is, further,

ORDERED, That if payment is not received within 60 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 assessed forfeitures. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



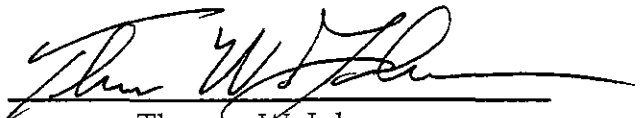
Andre T. Porter, Chairman

Lynn Slaby



M. Beth Trombold

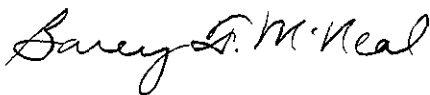
Asim Z. Haque



Thomas W. Johnson

BAM/sc

Entered in the Journal **DEC 02 2015**



Barcy F. McNeal
Secretary