

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF JMS TOWING, NOTICE OF
APPARENT VIOLATION AND INTENT TO
ASSESS FORFEITURE.

CASE NO. 16-1714-TR-CVF
(OH06003868C)

IN THE MATTER OF PEDRO J. MIRANDA
SANTOS, NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 16-1715-TR-CVF
(OH06003868D)

ENTRY

Entered in the Journal on July 5, 2017

I. SUMMARY

{¶ 1} The Commission finds that Staff's motion for default judgement against JMS Towing and Pedro J. Miranda Santos should be granted.

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 4901:2-5-02(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.

{¶ 3} On April 14, 2016, a commercial motor vehicle (CMV) driven by Pedro J. Miranda Santos (Mr. Santos), and operated by JMS Towing (JMS) (collectively, Respondents), was inspected within the state of Ohio. As a result of the inspection, Mr. Santos was issued a Driver/Vehicle Examination Report, citing JMS for violations of the following Commission transportation rules: 49 C.F.R. 393.60(c), for a damaged or discolored windshield (no civil forfeiture assessed); 49 C.F.R. 393.83(g), for an exhaust leak under the truck cab and/or sleeper (no civil forfeiture assessed); 49 C.F.R. 396.17(c), for operating a CMV without proof of a periodic inspection (no civil forfeiture assessed); Ohio Adm.Code 4901:2-1-04, for failing to

present Commission tax receipt when operating for-hire intrastate (\$100.00 civil forfeiture assessed); Ohio Adm.Code 4901:2-21-06, for failing to register with the Commission as an intrastate carrier (\$500.00 civil forfeiture assessed); and R.C. 4921.03, for operating without required Commission intrastate authority (\$500.00 civil forfeiture assessed). The Driver/Vehicle Examination Report also cited Mr. Santos for a violation of 49 C.F.R. 391.41(a), for failing to possess a valid medical certificate while operating a property-carrying vehicle. The vehicle was placed out of service due to the alleged violation of 49 C.F.R. 393.83(g).

{¶ 4} Respondents were timely served with notices of preliminary determination (NPD), pursuant to Ohio Adm.Code 4901:2-7-12. The NPDs assessed JMS a total civil forfeiture of \$1,100.00, and assessed Mr. Santos a total civil forfeiture of \$100.00, for the aforementioned violations.

{¶ 5} On August 11, 2016, counsel for Respondents filed requests for administrative hearings in their respective cases in accordance with Ohio Adm.Code 4901:2-7-13. By Entry issued on September 28, 2016, a prehearing settlement conference for both matters was scheduled for October 13, 2016.

{¶ 6} The prehearing settlement conference was held as scheduled; however, the parties were unable to settle these matters. Thereafter, by Entry issued on March 27, 2017, the attorney examiner scheduled these matters for hearing on May 23, 2017. A copy of the Entry scheduling the hearing was served upon Respondents at their counsel's address and a service notice was filed in both case dockets.

{¶ 7} The hearing was held as scheduled on May 23, 2017, however; Respondents failed to appear at the hearing or present evidence to explain why they should not be charged with the violations in these cases. At the hearing, Staff presented, as exhibits, the Driver/Vehicle Examination Report (Staff Ex. 1),¹ the NPD issued to Mr. Santos (Staff Ex. 2),

¹ Staff Ex. 1 is applicable to both proceedings and contains the alleged violations discovered at the time of inspection for both Mr. Santos and JMS.

and the NPD issued to JMS (Staff Ex. 3). Additionally, at the hearing, Staff moved for a default judgement against Respondents in the total amount of \$1,200.00.² (Tr. at 5-7.)

{¶ 8} Ohio Adm.Code 4901:2-7-14 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.

{¶ 9} In view of Respondents' failure to participate in the hearing, the Commission finds that Respondents are in default in accordance with Ohio Adm.Code 4901:2-7-14. Accordingly, Staff's motion for default judgement against Respondents should be granted and the recommended civil forfeitures of \$100.00 and \$1,100.00 against Mr. Santos and JMS, respectively, should be paid within 60 days.

{¶ 10} Pursuant to R.C. 4923.99, Mr. Santos and JMS are directed to pay the assessed civil forfeitures for the violations in these matters. 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: "Public Utilities Commission of Ohio, Transportation Compliance Division, Attn: CF Processing, 180 East Broad Street, Columbus, Ohio 43215-3793." Respondents should write the inspection number (OH0616003868) and the respective case number on the front of the check or money order and shall have 60 days from the date of this Entry to pay their assessed forfeitures.

{¶ 11} 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 the assessed forfeitures.

² Mr. Santos was assessed a total civil forfeiture of \$100.00, while JMS was assessed a total civil forfeiture of \$1,100.00, as noted in Staff Exhibits 2 and 3, respectively.

III. ORDER

{¶ 12} It is, therefore,

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

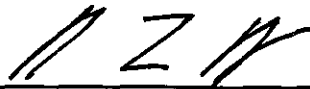
{¶ 14} ORDERED, That Mr. Santos pay the assessed civil forfeiture of \$100.00 within 60 days to the state of Ohio, in accordance with Paragraph 10. It is, further,

{¶ 15} ORDERED, That JMS pay the assessed civil forfeiture of \$1,100.00 within 60 days to the state of Ohio, in accordance with Paragraph 10. It is, further,

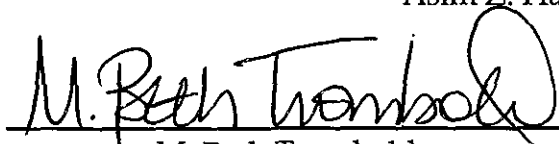
{¶ 16} ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this Entry. It is, further,

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

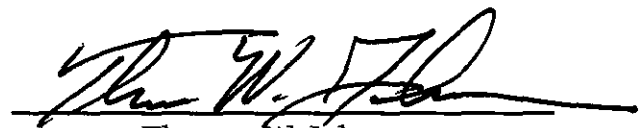
THE PUBLIC UTILITIES COMMISSION OF OHIO



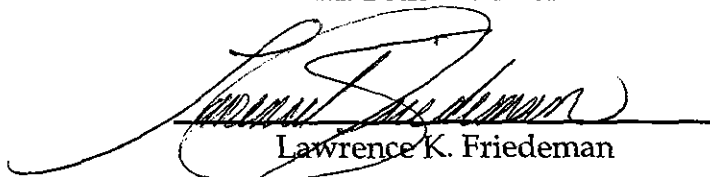
Asim Z. Haque, Chairman



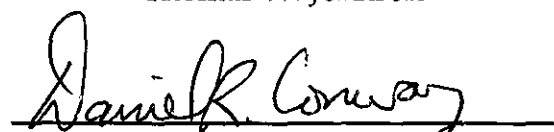
M. Beth Trombold



Thomas W. Johnson



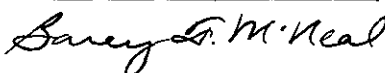
Lawrence K. Friedeman



Daniel R. Conway

MJA/sc

Entered in the Journal JUL - 5 2017



Barcy F. McNeal
Secretary