

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF TONY R. FORD,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 16-1880-TR-CVF
OH1239001985D

ENTRY

Entered in the Journal on August 30, 2017

I. SUMMARY

{¶ 1} The Commission finds that Staff's motion for default judgment should be granted against Tony R. Ford for his failure to appear at a hearing concerning a violation of the Commission's transportation rules, and directs him to pay the assessed forfeiture within 60 days of this Entry.

II. DISCUSSION

{¶ 2} Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 C.F.R. Sections 40, 42, 383, 387, 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Ohio Adm.Code 4901:2-5-03(B) and (C) require all motor carriers engaged in intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission.

{¶ 3} On April 1, 2016, a commercial motor vehicle driven by Tony R. Ford (Respondent) and operated by Domestic Linen Supply & Laundry Co. was inspected within the state of Ohio. As a result of the inspection, Respondent was issued a Driver/Vehicle Examination Report, citing Respondent for three violations: failure to wear a seat belt while operating a commercial motor vehicle (CMV), a violation of 392.16 (\$100); operating a CMV without carrying a valid medical certificate, a violation of 49 C.F.R. 391.41(a) (\$100); and operating a CMV while under suspension, a violation of 49 C.F.R. 391.15(a) (\$100). Staff served a notice of preliminary determination upon Tony R. Ford in accordance with Ohio Adm.Code 4901:2-7-12, alleging violations of the Commission's transportation regulations, assessing a civil forfeiture of \$300 for the alleged violations. On September 14, 2016, Mr.

Ford filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 4} A prehearing conference was held on November 18, 2016; however the parties were unable to reach a resolution. Thereafter, a hearing was scheduled for February 9, 2017. Copies of the Entries scheduling the prehearing conference and hearing were served upon Respondent at the address registered with the Commission and service notices were filed in the case docket.

{¶ 5} Ohio Adm.Code 4901:2-7-14(E), provides that a respondent who requests 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.

{¶ 6} The hearing was held, as scheduled, on February 9, 2017. Mr. Ford was not in attendance at the hearing (Tr. at 4). Staff presented the testimony of Inspector Michael Schneider, Motor Carrier Supervisor with the Ohio State Highway Patrol, and Mr. Alan Martin, the Deputy Director of the Commission's Transportation Department. Inspector Schneider testified that he initially assessed Mr. Ford with three violations: failure to wear a seat belt while operating a commercial motor vehicle (CMV), a violation of 392.16; operating a CMV without carrying a valid medical certificate, a violation of 49 C.F.R. 391.41(a); and operating a CMV while under suspension, a violation of 49 C.F.R. 391.15(a). Inspector Schneider requested, however, to remove the violation for operating a CMV while under suspension because he believed Staff did not have sufficient evidence that Mr. Ford commercial driver's license was suspended at the time of the inspection. (Tr. at 8-9.) In Mr. Martin's testimony, he explained that with the removal of that violation, the recommended forfeiture amount should be reduced from \$300 to \$200. Mr. Martin explained the adjusted forfeiture amount was consistent with the recommended fine schedule and civil penalty procedures adopted by the Commission. (Tr. at 12-13.)

{¶ 7} In light of Mr. Ford's failure to appear at the hearing, Staff moved for a default judgment of the two remaining violations (Tr. at 4-5).

{¶ 8} First, as requested by Staff, the violation of 49 C.F.R. 392.15(a) should be dismissed and removed from Mr. Ford's Safety Net record and history of violations. Further, in view of Mr. Ford's failure to participate in the hearing, Mr. Ford 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 \$200 should be paid by Mr. Ford within 60 days.

{¶ 9} Pursuant to R.C. 4923.99, Mr. Ford is liable to the State of Ohio for payment of the assessed civil forfeiture of \$200. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures 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." Mr. Ford should write the inspection number (OH12390011985D) on the check and shall have 60 days from the date of this Entry to pay the assessed forfeiture of \$200.

{¶ 10} R.C. 4905.57 provides that, at the direction 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.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the alleged violation of 49 C.F.R. 392.15(a) by Mr. Ford be dismissed and removed from his Safety Net record and history of violations. It is, further,

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

{¶ 14} ORDERED, That Mr. Ford pay the assessed civil forfeiture of \$200 within 60 days to the state of Ohio as set forth in paragraphs 8 and 9. It is, further,

{¶ 15} ORDERED, That the Attorney General take the appropriate action to enforce this Entry as provided by law. It is, further,

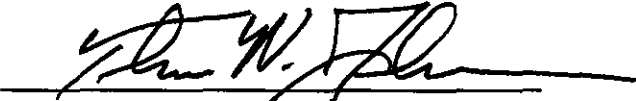
{¶ 16} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

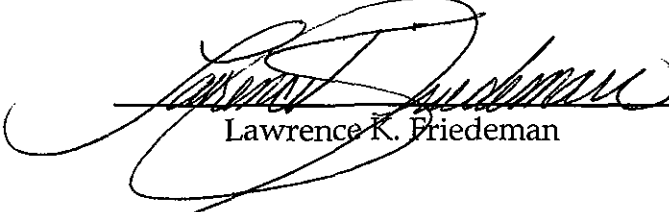
Asim Z. Haque, Chairman



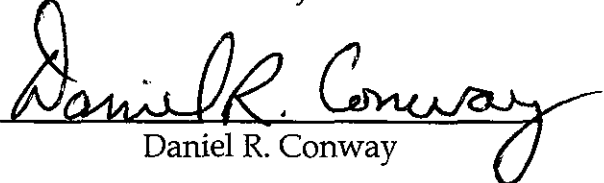
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman




Daniel R. Conway

NW/SD/vrm

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AUG 30 2017



Barcy F. McNeal
Secretary