

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF RODNEY E DEMMITT
JR., NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 17-2174-TR-CVF
(OH3235004821C)

ENTRY

Entered in the Journal on January 3, 2019

I. SUMMARY

{¶ 1} The Commission grants Staffs motion for default judgment against Mr. Rodney Demitt Jr., for failing to appear for the evidentiary hearing concerning violations of the Commission's transportation rules.

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 4901:2-5-03(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 September 5, 2017, a motor vehicle operated by Mr. Rodney Demmitt Jr., (Respondent) was inspected within the state of Ohio. As a result of the inspection, a Driver/Vehicle Examination Report was issued, citing Mr. Demmitt for several violations of the transportation rules. Specifically, Mr. Demmitt was cited for a violation of 49 C.F.R. 392.10(A)(1), failure to secure cargo; 393.48(A), inoperative/defective brakes; 393.9 inoperable required lamp; 393.81, horn inoperative; 393.95(A), fire extinguisher not secured and empty; 393.95(F), no warning devices; 390.21(A), not marked in accordance

with regulations; 392.2, state insurance violation; and 391.41(A), operating a property-carrying vehicle without possessing a valid medical certificate.

{¶ 4} On October 23, 2017, Mr. Demmitt filed a request for an administrative hearing. However, Ohio Adm.Code 4901:2-7-13 states that a request for administrative hearing cannot be made until after receipt of a Notice of Preliminary Determination (NPD) under Ohio Adm.Code 4901:2-7-12.

{¶ 5} Thereafter, on January 9, 2018, Mr. Demmitt was served with an NPD alleging a violation of the Commission's transportation regulations.

{¶ 6} On May 7, 2018, Staff filed a request for administrative hearing and motion for waiver of the requirements to request an administrative hearing. Staff requested a waiver of Ohio Adm.Code 4901:2-7-13, which requires an NPD be served before a request for administrative hearing can be made.

{¶ 7} On May 22, 2018, the attorney examiner granted Staff's waiver and scheduled the matter for a prehearing conference.

{¶ 8} A prehearing settlement conference was held on June 29, 2018; however, the parties have not been able to reach a resolution. By entry issued August 21, 2018 and amended September 5, 2018, the attorney examiner set the matter for an evidentiary hearing on October 18, 2018.

{¶ 9} The hearing was held on October 18, 2018; however, Respondent did not appear for the hearing (Tr. at 4). At the hearing, Staff presented, as exhibits, the Driver/Vehicle Examination Report (Staff Ex. 2) and the NPD issued to Mr. Demmitt (Staff Ex. 1).

{¶ 10} Ohio Adm.Code 4901:2-7-14(E) provides that a respondent who has requested an administrative hearing and fails to appear for the evidentiary hearing shall

be in default. The rule further provides that a respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability for the forfeiture proposed in the NPD.

{¶ 11} In light of Mr. Demmitt's failure to appear for the evidentiary hearing, the Commission finds that the Respondent is in default pursuant to Ohio Adm.Code 4901:2-7-14. Accordingly, the recommended civil forfeitures of \$400 assessed against Mr. Demmitt should be paid within 60 days.

{¶ 12} Pursuant to R.C. 4923.99, Mr. Demmitt is directed to pay the assessed civil forfeitures for the violations in this matter. Ohio Adm.Code 4901:2-7-22 provides that payment of such forfeitures shall be made by check or money order 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 (OH3235004821C) and the case number (17-2174-TR-CVF) 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.

III. ORDER

{¶ 13} It is, therefore,

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

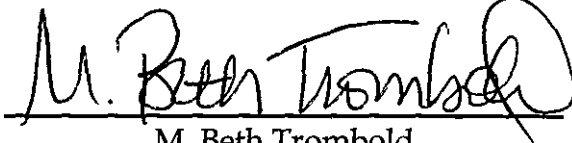
{¶ 15} ORDERED, That Mr. Demmitt pay the assessed civil forfeiture of \$400 within 60 days to the state of Ohio, in accordance with paragraphs 11 and 12. It is, further,

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

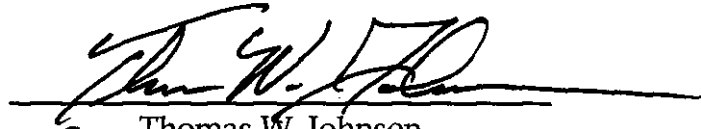
THE PUBLIC UTILITIES COMMISSION OF OHIO



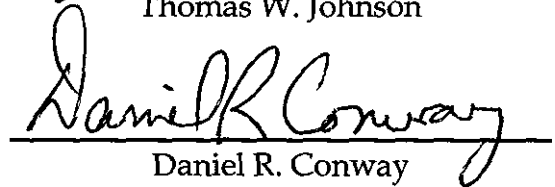
Asim Z. Haque, Chairman




M. Beth Trombold



Thomas W. Johnson



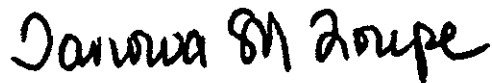
Daniel R. Conway



Lawrence K. Friedeman

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Tanowa M. Troupe
Secretary