

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of

KARL D. NAGGATZ,  
Respondent

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Case No. 21-0082-TR-CVF  
(OH3231022182D)

**MOTION TO VACATE FINDING AND ORDER**  
**ENTERED BY THE COMMISSION ON AUGUST 26, 2020**

Now comes Respondent, by and through his undersigned counsel, and respectfully moves the Commission for an Order vacating the previous Finding and Order (attached hereto as Exhibit A). This Motion is being filed in an attempt to correct a **manifest injustice** that occurred as a result of a State of Ohio Officer mistakenly categorizing Mr. Naggatz license as being suspended as opposed to merely downgraded. Respondent respectfully requests that this matter be scheduled for a hearing so that Respondent may present his arguments in support of this Motion. The reasons for this Motion are set forth the following memorandum, which is attached hereto.

Respectfully submitted,



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Attorney for Respondent

## MEMORANDUM IN SUPPORT

Karl D. Naggatz is a commercial truck driver from Mayfield, Kentucky. Mr. Naggatz only means of supporting himself and his family is driving a commercial vehicle.

In November 2019, Mr. Naggatz was stopped in Ohio for a roadside inspection. During the inspection it was discovered that Mr. Naggatz license was downgraded from a Class A commercial license to a Class D “regular” license. At the time of the stop, Mr. Naggatz discovered that the medical facility where he completed his physical exam failed to send the Commonwealth of Kentucky his new Medical Certificate. **Unfortunately, at the time of the stop, the officer mistakenly categorized this license downgrade as a suspension.** (See attached Exhibit B from the Commonwealth of Kentucky indicating that Mr. Naggatz license was downgraded and NOT suspended.) Also, see attached is Exhibit C showing that Mr. Naggatz CDL was reinstated two days after the downgrade and on the same day of the inspection.

Following the inspection, Respondent turned the inspection into his safety department. Unfortunately, Mr. Naggatz safety department “dropped the ball” and failed to respond to the Intent to Assess a Civil Forfeiture, which resulted in the Commission issuing its August 26, 2020 Finding and Order.

Nevertheless, as a result of the mistaken classification (suspended vs. downgraded), Mr. Naggatz CDL is now disqualified for 12 months. See attached Exhibit D. This should NEVER have occurred. This manifest injustice must be corrected. This Commission has the ability under Title 4901 of the Ohio Administrative Code to waive any defects in the timing of the Respondent’s Motion for the good cause set forth herein.

Therefore, Respondent respectfully requests that the Commission vacate its previous Order and either correct the misreported status of Mr. Naggatz license at the time of the

inspection or permit this case to go forward so that the Respondent can set forth his case before an Administrative Judge. Failure to act will result in continued unnecessary financial hardship for the Respondent.

Respectfully submitted,



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Attorney for Respondent

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE DEFAULT  
OF MOTOR CARRIERS AND DRIVERS  
PURSUANT TO RULE 4901:2-7-14 OF THE  
OHIO ADMINISTRATIVE CODE.

CASE NO. 20-533-TR-CVF

FINDING AND ORDER

Entered in the Journal on August 26, 2020

I. SUMMARY

[¶ 1] The Commission directs each identified respondent to pay the forfeiture amount indicated or demonstrate why it is not in default.

II. APPLICABLE LAW

[¶ 2] R.C. 4923.04 authorizes the Commission to adopt safety rules applicable to the highway transportation of persons or property, and the transportation and offering for transportation of hazardous materials. Pursuant to this authority, the Commission established safety standards in Ohio Adm.Code 4901:2-5, including the adoption of the provisions of the Federal Motor Carrier Safety Regulations (FMCSR) of the U.S. Department of Transportation contained in 49 C.F.R. 40, 107, subparts f and g, 367, 380, 382, 383, 385, 386, 387 and 390 to 397, unless specifically excluded or modified by a rule of the Commission, and those portions of the hazardous materials regulations contained in 49 C.F.R. 171 to 180 as are applicable to transportation or offering for transportation by motor vehicle..

[¶ 3] R.C. 4923.99 authorizes the Commission to determine whether any person has committed a violation of such regulations, and assess a civil forfeiture against such person. Accordingly, the Commission adopted the civil forfeiture and compliance proceeding rules contained in Ohio Adm.Code 4901:2-7. These rules require that a respondent be afforded reasonable notice and opportunity for a hearing when the Commission finds a violation of the regulations adopted in Ohio Adm.Code 4901:2-5-02.

[¶ 4] Ohio Adm.Code 4901:2-7-07 provides that Staff may serve a Notice of Intent to Assess Forfeiture (NIF) upon a respondent within 90 days after the discovery of a

Columbus, Ohio 43215-3793

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violation, but no more than one year following the violation. In addition, Ohio Adm.Code 4901:2-7-12 states that a Notice of Preliminary Determination (NPD) may be issued to a respondent following the issuance of a NIF.

{¶ 5} Ohio Adm.Code 4901:2-7-11 permits Staff and a respondent to enter into a settlement agreement regarding the amount of a forfeiture to be assessed.

{¶ 6} Ohio Adm.Code 4901:2-7-14 provides that a respondent upon whom an NIF or an NPD has been served who, within 30 days, fails to pay the amount of the forfeiture stated in the notice, or serve upon the Commission a request for conference, pursuant to Ohio Adm.Code 4901:2-7-10, or administrative hearing, pursuant to Ohio Adm.Code 4901:2-7-13, shall be in default.

{¶ 7} Pursuant to Ohio Adm.Code 4901:2-7-14(D), a respondent who has failed to comply with the provisions of a settlement agreement for a period exceeding 30 days shall be in default.

{¶ 8} Pursuant to Ohio Adm.Code 4901:2-7-14, a respondent in default shall be deemed to have admitted the occurrence of the violation(s) and waived all further right to contest liability for the forfeiture described in the NIF or NPD, and the Commission may, on its own motion and without prior notice, order payment of the amount indicated in the NIF or NPD.

### III. DISCUSSION

{¶ 9} The respondents listed in the attachment have been served with either an NIF or an NPD and have neither: paid the forfeiture indicated in the notice, served a request for conference pursuant to Ohio Adm.Code 4901:2-7-10, served a request for administrative hearing pursuant to Ohio Adm.Code 4901:2-7-13, nor complied with the provisions of a settlement agreement. Each respondent therefore is in default, pursuant to Ohio Adm.Code 4901:2-7-14, and is liable for the amount indicated in the attachment.



[¶ 10] Before the Commission forwards the attachment to the Ohio Attorney General's Office so that it may undertake further collection efforts against the identified respondents, each respondent will be granted a final opportunity to pay the civil forfeiture or demonstrate why it is not in default. A respondent may serve upon Staff a response to this finding and order demonstrating that it was not properly served with the NIF, it previously paid the civil forfeiture, it served a request for conference or administrative hearing within 30 days of receipt of the NIF or NPD, or is in compliance with the terms of a settlement agreement. This response shall be made in writing, by September 25, 2020, and addressed to the Public Utilities Commission of Ohio, Transportation Compliance Department Show Cause, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215.

[¶ 11] Staff shall review the responses and remove cases from this proceeding for which a respondent has demonstrated that it is not in default. After September 25, 2020, Staff shall forward a list of all respondents that remain in default to the Ohio Attorney General, Collections Enforcement Section.

#### IV. ORDER

[¶ 12] It is, therefore,

[¶ 13] ORDERED, That by September 25, 2020, each respondent listed in the attachment to this finding and order pay the forfeiture amount indicated or demonstrate why it is not in default. It is, further,

[¶ 14] ORDERED, That Staff remove from this proceeding cases for which a respondent demonstrates that it is not in default. It is, further,

[¶ 15] ORDERED, That after September 25, 2020, Staff submit a list of all respondents that remain in default to the Ohio Attorney General, Collections Enforcement Section. It is further,

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{¶ 16} ORDERED), That a copy of this Finding and Order be served upon each respondent.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

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COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
DIVISION OF DRIVER LICENSING  
200 MERO STREET  
FRANKFORT, KENTUCKY 40622

To: Mr. KARL D. NAGGATZ  
183 MCCUR ST  
MAYFIELD, KY 42066-8207

DLN: N01-521-139  
DOB: 05/30/1970

From: Division of Driver Licensing  
<http://drive.ky.gov/>

Date: November 19, 2019

CFR 383.71 and 601 KAR 11:050 require all CDL holders provide a copy of a valid certification card signed by a certified medical examiner on the National Registry found at <https://nationalregistry.fmcsa.dot.gov/> to the Division of Driver Licensing to maintain a valid CDL.

As of the date of this letter, the information required to update your CDLIS record has not been received. Therefore, the CDL in your possession is Not Active. You are no longer legal to operate a commercial motor vehicle.

The medical examiner's certificate may be uploaded and submitted through MY CDL/Kentucky CDL Document Portal at <http://mycdl.ky.gov> or mailed to Division of Driver Licensing, 200 Mero St. Frankfort, KY 40622.

If you submit the required documents by mail, you will receive a letter in a few days once the documents are processed to your CDLIS driving record. If you submit your documents through MY CDL/Kentucky CDL Document Portal <http://mycdl.ky.gov>, you will receive an immediate response via email when your documents have been received. You will also receive an immediate email when your documents have been processed to your CDLIS driving record. If your documents can not be verified and your CDLIS driving record updated, you will receive an email informing you that the documents were rejected. You may resubmit your documents once all the corrections are made.

Failure to comply within one (1) year from date of being not valid will require you to pay the CDL application fee, pass the vision and written CDL test and pay the license fee. If you have not held a CDL for five (5) years or more, you must start over. This includes the vision, written, issuance of the CDL permit, skill test and all fees.

If you no longer want your CDL, you must surrender the license at the circuit court clerk's office in your county of residence, complete a Voluntarily Surrendered License Affidavit, TC 94-14 and have a duplicate operator license issued at a cost of \$12.00 or renewal for \$20.00

If you have any questions, please contact the Division of Driver Licensing, CDL Section at 502-564-1257.

KRS 186.540-You MUST get duplicate license within 10 days of address/name change.





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COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
DIVISION OF DRIVER LICENSING  
200 MERO STREET  
FRANKFORT, KENTUCKY 40622

To: Mr. KARL D. NAGGATZ  
183 MCCUR ST  
MAYFIELD, KY 42066-8207

DLN: N01-521-139  
DOB: 05/30/1970

From: Division of Driver Licensing  
<http://drive.ky.gov/>

Date: November 21, 2019

The Division of Driver Licensing, CDL Section has received your medical certification and has now updated your CDLIS record. If your CDL is within 6 months of expiring and you have completed and forwarded a copy of the Self Certification form, TC 94-169 to this office, and you are not suspended on your operator or CDL for any reason then you are now eligible to be issued a renewal CDL. If you are suspended, you must comply with the requirements for reinstatement prior to renewing your operator and CDL. You must be within 6 months of your expiration date to renew your license. Otherwise, you are not eligible for renewal.

If you have any questions concerning your commercial license, please contact the CDL Section at 502-564-1257.

INFORMATION BELOW IS ONLY FOR CDL HOLDERS WITH S (school bus) ENDORSEMENT

KRS 281A.175 (e) requires you to submit to have an annual medical exam and forward a copy of the new medical examination card to The Division of Driver Licensing.

Failure to comply with the above regulation annually will result in the loss of your CDL privileges until the requirements are met.

The Division of Driver Licensing will modify your driving record to reflect a one year expiration date on your medical information in accordance with KRS 281A.175 (e).

If you no longer wish to have the S Endorsement, you may surrender the endorsement at the circuit court clerk's office in your county of residency. There will be a fee associated with the issuance.

KRS 186.540-You MUST get duplicate license within 10 days of address/name change.

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COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
DIVISION OF DRIVER LICENSING  
200 MERO STREET  
FRANKFORT, KENTUCKY 40622

To: Mr. KARL D. NAGGATZ  
183 MCCUR ST  
MAYFIELD, KY 42066-8207

DLN: N01-521-139  
DOB: 05/30/1970

From: Division of Driver Licensing  
<http://drive.ky.gov/>

Date: October 29, 2020

Your commercial driving privilege is hereby suspended. This action is a result of your conviction of CDL DISQUALIFIED/DRIVING WHILE SUSP

You must immediately surrender the commercial driver's license in your possession to this office. If eligible, you may apply for a duplicate operator's license at the Circuit Court Clerk's Office. You are also required to contact your employer of this action. There is no provision for an occupational license.

If you experience no further difficulty you may apply for reinstatement of your commercial driving privilege October 29, 2020 by complying with the following:

- \* Mail this office a \$50 fee for reinstatement of your commercial motor vehicle driving privilege.

Any fees required must be in the form of a money order, cashier's check or certified check made payable to the Kentucky State Treasurer. When making payment or corresponding with this office, please list your driver license number, full name, and birth date, or return this letter.

You will be notified when you have met the requirements for reinstatement. If your commercial driving privilege has been suspended for one (1) year or more, you will be required to start over with the issuance process. This will include completing the CDL application, written and vision test, the issuance of a CLP (permit) and the skill test. Any questions should be addressed to the CDL Section at 502-564-1257.

If you have a hearing impairment, please call the Kentucky Relay Service at 711. This line is for hearing impaired use only.

# 11  
You have 10 days to notify this division of any error(s) in our records.  
KRS 186.540-You MUST get duplicate license within 10 days of address/name change

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Respondent

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Case No. 21-0082-TR-CVF  
(OH3231022182D)

**NOTICE OF APPEARANCE OF COUNSEL**

The undersigned hereby enters his appearance as counsel of record in the above-styled case.

Respectfully submitted,



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Delaware, Ohio 43015  
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Attorney for Respondent

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 21-0082-TR-CVF**

Summary: Motion Motion to Vacate finding and Order by the Commission on August 26, 2020 and Memorandum in Support electronically filed by Mr. Michael J Yemc on behalf of Naggatz, Karl D Mr.