

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Eitel's Towing, LLC,)	
Notice of Apparent Violation and)	Case No. 21-200-TR-CVF
Intent to Assess Forfeiture.)	(OH3212300838)

MOTION TO DISMISS

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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

September 7, 2021

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Eitel's Towing,)	
LLC, Notice of Apparent Violation)	Case No. 21-200-TR-CVF
and Intent to Assess Forfeiture)	(OH3212300838)

MOTION TO DISMISS

The Staff of the Public Utilities Commission of Ohio (Staff) hereby moves to dismiss this case based on Respondent's payment in full of the forfeiture assessed. Under O.A.C. § 4901:2-7-22, full payment terminates all further proceedings regarding the violation.

Grounds for this motion are more particularly set forth in the accompanying Memorandum in Support.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Jodi J. Bair

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MEMORANDUM IN SUPPORT

Staff moves to dismiss this case based on payment of the forfeiture in full. Under O.A.C. § 4901:2-7-22, full payment terminates all further proceedings regarding the violation.

On November 24, 2020, a vehicle driven by Mark Arrasmith and operated by Eitel's Towing, LLC (Respondent) was inspected by a Public Utilities Safety Officer. Respondent was issued an inspection report noting the following violations:

49 C.F.R. 107.620(b) No copy of a US DOT hazardous materials registrations number;

49 C.F.R. 172.334 A prohibited identification number marking;

49 C.F.R. 172.600(C) Transporting without emergency information;

49 C.F.R. 177.817(a) Improper shipping papers; and

49 C.F.R. 177.823(a) No placards or markings as required.

A Notice of Apparent Violation and Intent to Assess Forfeiture was served upon the Respondent pursuant to Ohio Admin. Code 4901:2-7-07. The notice set forth a proposed forfeiture of \$1620.00.

Respondent subsequently paid the \$1620.00 forfeiture in full.

On March 3, 2021, Respondent's attorney filed a request for an administrative hearing. *See* Respondent's Request for Hearing.

Respondent's payment of the forfeiture constitutes an admission of the violation, and completely bars any right to a hearing.

In a recently decided case, the Commission ordered that a case involving a similarly situated respondent be dismissed. *In the Matter of Daniel Anofils, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 19-1792-TR-CVF, Finding and Order (Feb. 13, 2020). As in this case, Mr. Anofils filed a request for a hearing after having paid the proposed forfeiture because “he did not understand the consequences to his CDL that resulted from payment of the forfeiture.” *Id.* at ¶3. After a motion to dismiss was filed by the Commission Staff, the Commission found that:

 [¶9] Ohio Adm.Code 4901:2-7-22 provides, in pertinent part, that payment of a civil forfeiture assessed pursuant to a violation of the Commission’s transportation regulations constitutes an admission of the occurrence of the violation and serves to terminate all further Commission proceedings.

 [¶10] The Commission finds that respondent’s payment of the civil forfeiture . . . concludes jurisdiction over this matter.

..

In another recent case, the Commission again dismissed the Respondent’s request for a hearing based upon the payment of the forfeiture, stating that given “the Respondent’s payment of the civil forfeiture, the Commission finds it reasonable to grant Staff’s motion and dismiss Respondent’s request for hearing.” *In the Matter of Stephanie Fuhrmann, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 20-1231-TR-CVF, Entry (Feb. 21, 2021). By paying the assessed forfeiture, Respondent is deemed, by operation of law, to have admitted to the violation. Further, as the Commission has found, payment of the forfeiture ends the Commission’s jurisdiction to hear this case. Consequently, Respondent’s request for hearing must be dismissed, and this case closed of record.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Jodi J. Bair

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Motion to Dismiss** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named party via United States mail, this 7th day of September, 2021.

/s/ Jodi J. Bair

Jodi J. Bair

Assistant Attorney General

Party of Record:

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*Counsel for Eitel's Towing, LLC and
Mark L. Arrasmith*

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/7/2021 9:14:59 AM

in

Case No(s). 21-0200-TR-CVF

Summary: Motion to Dismiss electronically filed by Mrs. Kimberly M. Naeder on behalf of
PUCO