THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CASEY HONN, NOTICE OF APPARENT VIOLATION AND INTENT TO ASSESS FORFEITURE.	**CASE NO. 21-186-TR-CVF (OH000002344D)**

OPINION AND ORDER

Entered in the Journal on January 26, 2022

I. SUMMARY

{¶ 1} The Commission finds that Respondent Casey Honn's default and payment of the civil forfeiture in this matter terminate further proceedings in the case.

II. PROCEDURAL HISTORY

{¶ 2} On February 10, 2020, Trooper Daniel York with the Ohio State Highway Patrol (Highway Patrol) stopped and inspected a vehicle operated by Lefke Tree Experts, LLC and driven by Casey Honn (Respondent or Ms. Honn), in the State of Ohio.

{¶ 3} On March 12, 2020, as a result of the inspection, Ms. Honn was served with a second Notice of Apparent Violation and Intent to Assess Forfeiture (NIA) in accordance with Ohio Adm.Code 4901:2-7-05 and Ohio Adm.Code 4901:2-7-07. The NIA was sent to Ms. Honn at 7734 Bowen Ave., Cincinnati, Ohio 45255 (Bowen Avenue Address). In the NIA, Ms. Honn was cited for violating 49 C.F.R. 383.51(a), driving a commercial motor vehicle (CMV) while her commercial driver's license (CDL) is suspended. The NIA also notified Ms. Honn that Staff intended to assess an $500 civil forfeiture for violating the Commission's transportation rules. The notice provided 30 days for Respondent to request an administrative hearing or pay the assessed forfeiture. (State Ex. 1.)

{¶ 4} Respondent did not pay the forfeiture amount or otherwise respond to the NIA and was thereafter found to be in default in Case No. 20-533-TR-CVF. As part of the proceedings in that case, the matter was referred to the Office of the Ohio Attorney General (OAG) for collections and Respondent was served with a copy of the Finding and Order which directed her to pay the forfeiture amount or to demonstrate why she was not in

default. *See In re Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14*, Case No. 20-533-TR-CVF, Finding and Order (Aug. 26, 2020).

{¶ 5} Respondent subsequently received correspondence dated November 9, 2020, sent to the Bowen Avenue Address, from the OAG, Collections Enforcement Section, notifying Ms. Honn that her account had been certified to their office for collection. In response to this letter, Ms. Honn paid the assessed $500 forfeiture on or about December 3, 2020. (Respondent Ex. 14; Tr. at 31-32.)

{¶ 6} On February 25, 2021, the Commission received correspondence from Respondent requesting that Respondent's case be reopened. The Commission recognized Respondent's correspondence as a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. A prehearing conference was held on March 30, 2021; however, the parties were unable to reach a settlement in the matter.

{¶ 7} On April 15, 2021, Respondent filed a motion for reinstatement, pursuant to which Respondent moved the Commission to reopen this matter and requested that her CDL be reinstated. Staff did not file a timely response to the motion. Thereafter, on May 7, 2021, Staff filed separate correspondence in the docket in which it opposed reopening the case on the grounds that Respondent had paid the civil forfeiture amount, which, pursuant to Commission rules, constitutes an admission of guilt and acceptance of all penalties assessed.

{¶ 8} An evidentiary hearing was held on September 9, 2021. At the hearing, Staff witnesses Trooper York and Rod Moser testified in support of the violation and forfeiture amount, respectively. Ms. Honn was represented by counsel and was called to testify on her own behalf.

III. APPLICABLE LAW

{¶ 9} 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(C) requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to $25,000 per day, per violation, against any person who violates the safety rules adopted by the Commission when transporting persons or property, in interstate commerce, in or through Ohio. Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 10} The specific regulations to which Staff is alleging Respondent violated is 49 C.F.R. 383.51(a). 49 C.F.R. 383.51(a) states that "[a] person required to have a CPL or CDL who is disqualified must not drive a CMV" and 49. C.F.F. 383.51(b) lists a reason for disqualification as driving a CMV while a driver's CDL is suspended.

{¶ 11} 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 an NIA, and the Commission may, on its own motion and without prior notice, order payment of the amount indicated in an NIA.

{¶ 12} Further, 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.

IV. ISSUE

{¶ 13} There are two matters at issue. First, whether Respondent provided sufficient grounds for her case to be reopened and be ruled upon its merits, despite her having

previously been found in default and her having paid the assessed civil forfeiture. The second issue, if Respondent has made such a demonstration, is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent was, in fact, operating a CMV while her CDL was suspended, in violation of C.F.R. 383.51(a).

V. SUMMARY OF EVIDENCE

{¶ 14} At the hearing, Trooper York testified that he works in the Licensing Commercial Standards Division of the Highway Patrol, where his duties include normal road patrol and conducting Department of Transportation inspections. Trooper York stated that he has completed training at the Ohio State Highway Patrol Academy as well as various trainings regarding inspections of CMVs. (Tr. at 15.) Trooper York testified that on February 10, 2020, he stopped and inspected a vehicle owned by Lefke Tree Experts and driven by Respondent. Trooper York explained that Ms. Honn was stopped at that time for an overweight violation and, following the inspection, a violation was issued against Respondent for operating the vehicle while her CDL was suspended. (Tr. at 16-17.) Further testifying, Trooper York explained that when he checked Respondent's licensing through the Law Enforcement Database System (LEDS), he discovered that Respondent's license was suspended at that time. No specific reason for the suspension was provided, but Trooper York testified that it did indicate that it was a "BMV noncompliance suspension." As a result of this information, Trooper York cited Respondent for violation of C.F.R. 383.51(a). (Tr. at 17-18; State Ex. 2.) Trooper York also testified that the address that was used for the inspection was the Bowen Avenue Address, which was different from what was on file in the LEDS report. According to Trooper York, the only way that he would have obtained the Bowen Avenue Address would be from Ms. Honn. (Tr. at 54-55.)

{¶ 15} Staff Witness Rod Moser, the Chief of the Compliance and Registration Sections for the Staff's Transportation Department, testified that he is responsible for the civil forfeiture process for the Transportation Department, which includes processing notices concerning forfeitures (Tr. at 5-6). Mr. Moser testified that the $500 forfeiture listed

in the NIA is an appropriate forfeiture amount and is the amount of forfeiture for the cited violation in all instances (Tr. at 8; State Ex. 1). Mr. Moser stated that typically there is an additional notice that is sent to respondents, called a notice of preliminary determination, but that one was not issued in this case because Respondent never responded to the NIA to request a conference with Staff. Therefore, no notice of preliminary determination was issued, and the matter was referred to collections. (Tr. at 8-9.)

{¶ 16} According to Respondent's testimony, at sometime in 2019 she received a citation in Newtown, Ohio for having expired tags on her personal vehicle. Respondent testified that she was unable to find her registration and proof of insurance during this traffic stop, but she asserted that her vehicle was insured at that time. (Tr. at 22-23, 26; Respondent Ex. 4.) Rather than contest that violation, however, Respondent stated that she simply paid the ticket, as evidenced by a check dated October 22, 2019. Respondent testified that when she went to pay the ticket, she showed her proof of insurance and was told that she was "clear and everything was okay." (Tr. at 23-26; Respondent Ex. 2.) Respondent stated that she was unaware of any suspension of her driver's license until she was stopped for inspection by Trooper York on February 10, 2020 (Tr. at 27). However, Ms. Honn does not dispute that her license was suspended at the time of Trooper York's inspection (Tr. at 33). Ms. Honn testified extensively and, at times, confusingly as to the time periods of her residence at various locations and when she received mailings such as the NIA or other licensing materials (Tr. at 33-43, 47-52). Although Respondent's testimony was in some instances contradictory, it appears that at the time of the Newtown traffic stop that resulted in her license being suspended, she resided at the Bowen Avenue Address. Sometime shortly thereafter, she moved to an apartment at Eastgate Woods, where she resided until about October 2020, before moving to a location in Batavia, Ohio for the remainder of 2020. (Tr. at 49-52.) When and if Respondent properly updated her mailing address with the Bureau of Motor Vehicles (BMV) with each change of residence is unclear, as Ms. Honn was unable to recall those details (Tr. at 38-43). Ms. Honn testified that at the time of Trooper York's inspection, she was often away from home working as a driver throughout multiple

states, and that she had no mechanism in place for regularly collecting and checking her mail (Tr. at 28).

{¶ 17} According to Ms. Honn's testimony, she has no recollection as to when she received the NIA that was sent to the Bowen Avenue Address and could not say whether she received it within the 30-day period to request a conference. Ms. Honn did acknowledge receiving correspondence from the OAG, which was dated November 9, 2020 and mailed to the Bowen Avenue Address, and states that she then immediately paid the assessed forfeiture. (Tr. 29-32; Respondent Ex. 14.)

VI. COMMISSION CONCLUSION

{¶ 18} Initially, we note that the Commission has already found Respondent in violation on this issue in a default judgment entry filed on August 26, 2020, in *In re Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14*, Case No. 20-533-TR-CVF. That order directed the listed respondents, among which Ms. Honn was included, to show cause why they were not in default by September 25, 2020. Here, Respondent did not make a filing with the Commission until February 25, 2021, when Ms. Honn filed correspondence that was treated as a request for an administrative hearing. Respondent's arguments regarding whether she was properly serviced with the NIA are unpersuasive. Ms. Honn's testimony at the hearing regarding her places of residence immediately before and after Trooper York's inspection is, at best, confusing, and at times contradictory (Tr. at 33-43, 47-52). Additionally, Ms. Honn's testimony surrounding if and when she properly updated her address with the BMV and other relevant agencies is equally murky (Tr. at 38-43). Ms. Honn does, however, state that she lived at the Bowen Avenue Address for most of her life, and that address appears on the check she used to pay the Newtown ticket (Tr. at 34-35; Respondent Ex. 4). Further, Trooper York testified that the Bowen Avenue Address was provided to him by Ms. Honn during the February 10, 2020 inspection (Tr. at 54-55). Ms. Honn does not dispute receiving the NIA mailed to the Bowen Avenue Address, only that she could not recall exactly when she reviewed it (Tr. at 29). Additionally, a copy of the

Finding and Order finding her in default was mailed to the Bowen Avenue Address, which she acknowledges receiving (Tr. at Tr. 29-32). While the Commission is sensitive to Respondent's traveling for work and the complications encountered during the COVID-19 pandemic, it does not absolve Ms. Honn from ensuring that she is checking mail at locations where she may be receiving official correspondence. The letter from the OAG Collections Enforcement Division, which Respondent acknowledges receiving, was sent to the Bowen Avenue Address, so Ms. Honn did receive and review mail at this address (Respondent Ex. 14; Tr. at 31-32). Based upon the foregoing, the Commission does not find there were any improper issues regarding service or notice and therefore we do not find our original decision should be reconsidered as to Respondent's default.

{¶ 19} After Respondent was found in default and the matter certified to the OAG, she indisputably received correspondence from the OAG Collections Enforcement Division, notifying her that her account had been certified to Collections Enforcement that she should provide payment for the assessed forfeiture. Ms. Honn freely acknowledges that once she reviewed this correspondence, she paid the forfeiture on or about December 3, 2020. (Respondent Ex. 14; Tr. at 30-32.) Pursuant to Ohio Adm.Code 4901:2-7-22, the 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 terminates all further Commission proceedings. Accordingly, the Commission finds that Respondent's payment of the civil forfeiture constitutes an admission of violation of 49 C.F.R. 383.51(a), and that the case should be considered closed of record.

{¶ 20} An evidentiary hearing was scheduled in this matter after Respondent filed a motion to reopen the case and no timely opposition to the motion was filed. As discussed above, the Commission finds no basis to overturn the default judgment or to reopen the matter after Respondent paid the assessed forfeiture, and, therefore, further assessment of factual evidence offered at the hearing is not required. However, the Commission does note that the evidence presented at the hearing demonstrates that Respondent violated 49 C.F.R.

383.51(a). There is no dispute that Respondent's CDL was suspended at the time of Trooper York's inspection – Ms. Honn herself even acknowledges this fact (Tr. at 17-18, 33). It is not the responsibility of Trooper York or Staff to investigate the basis for the suspension or the particulars surrounding previous traffic citations of Respondent. Trooper York's testimony and inspection report, along with Ms. Honn's own testimony, show that Respondent was operating a CMV while her license was suspended.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 21} On February 10, 2020, Trooper York with the Highway Patrol stopped and inspected a vehicle operated by Lefke Tree Experts, LLC and driven by Respondent, in the State of Ohio. The Highway Patrol found Respondent to be in violation of 49 C.F.R. 383.51(a).

{¶ 22} Staff timely served an NIA on Respondent, alleging violation of FMCSR regulations. In the NIA, Staff stated its intention to assess a civil monetary forfeiture of $500 upon Respondent.

{¶ 23} Respondent was found to be in default for the cited violation and the matter was referred to the OAG for collections in *In re Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14*, Case No. 20-533-TR-CVF. Respondent subsequently received correspondence dated November 9, 2020, from the OAG, Collections Enforcement Section, notifying Ms. Honn that her account had been certified to their office for collection. In response to this letter, Ms. Honn paid the assessed $500 forfeiture.

{¶ 24} On February 25, 2021, the Commission received correspondence from Respondent requesting that Respondent's case be reopened. The Commission recognized Respondent's correspondence as a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. A prehearing conference was held on March 30, 2021; however, the parties were unable to reach a settlement in the matter. An evidentiary hearing was held on September 9, 2021.

{¶ 25} The Commission finds that Respondent was properly found in default in Case No. 20-533-TR-CVF, that there were no issues regarding service or notice with respect to the violation or the default judgment, and that the original decision finding Respondent in default should not be reconsidered.

{¶ 26} Pursuant to Ohio Adm.Code 4901:2-7-22, Respondent's payment of the assessed civil forfeiture concludes jurisdiction over this matter.

VIII. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That this case be closed of record, for the reasons set forth in Paragraphs 18 and 19. It is, further,

{¶ 29} ORDERED, That a copy of this Opinion and Order be served upon Respondent and all other interested parties of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis Deters

DMH/kck

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in

Case No(s). 21-0186-TR-CVF

Summary: Opinion & Order finding that Respondent Casey Honn's default and payment of the civil forfeiture in this matter terminate further proceedings in the case. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio