

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Notice of Kenny M.)	
Tejada Minaya, Apparent Violation)	Case No. 22-0149-TR-CVF
and Intent to Assess Forfeiture.)	

MOTION TO DISMISS

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

Shaun Lyons
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
614.644.8539 (telephone)
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Shaun.Lyons@OhioAGO.gov

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

March 4, 2022

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Kenny M. Tejada)	
Minaya, Notice of Apparent Violation)	Case No. 22-0149-TR-CVF
and Intent to Assess Forfeiture.)	

MOTION TO DISMISS

The Staff of the Public Utilities Commission of Ohio (Staff) hereby moves to dismiss this case for good cause as shown in the memorandum in support below.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Shaun Lyons

Shaun Lyons
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

MEMORANDUM IN SUPPORT

Staff moves to dismiss this case because Respondent Kenny M. Tejada Minaya (Respondent) failed to timely demonstrate why he was not in default pursuant to a Commission order. As shown below, the Commission found the Respondent in default and referred this case to the Attorney General's office for collections. Having presented no good cause to reopen his case, Respondent should not be permitted to now seek a hearing.

On July 3, 2021 a vehicle driven by Respondent was inspected by the Ohio State Highway Patrol. Respondent was issued an inspection report noting violations of 49 C.F.R. 395.8(e) (false report of driver's duty status). Pursuant to Ohio Adm.Code 4901:2-7-12, two Notices of Apparent Violation and Intent to Assess Forfeiture were sent to Respondent, which stated that, within 30 days of the notice, Respondent was required to either pay the \$100 civil forfeiture or request a conference to present mitigating circumstances. The first of these Notices was sent on July 7, 2021, and the second on August 6, 2021. Copies of these notices are attached as Exhibits A and B, respectively. Respondent neither paid nor requested a conference within the thirty-day period. On December 1, 2021, the Commission issued a Finding and Order, which was sent to the Respondent, directing him to pay the forfeiture amount assessed against him or demonstrate why he was not in default by January, 3 2022.¹ On December 3, 2022, Staff

¹ *In re the Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Administrative Code*, Case No. 21-1182-TR-CVF, Finding and Order (Dec. 21, 2021).

sent Respondent a letter notifying him of the Commission's directive.² After the final deadline of January 3, 2022 passed and the Respondent took no action, the case was referred to the Ohio Attorney General's Office for collections. Respondent took no action to dispute the violations within the time allowed.

On February, 25 2022, over a month past the deadline established in the case, Respondent requested an administrative hearing. By attorney examiner Entry issued March 2, 2021, the Staff and Respondent are ordered to attend a prehearing conference, scheduled for March 21, 2022.³

As shown by these facts, Respondent repeatedly ignored notices that were sent to him at the proper address in July and August of 2021, and December 2021. He was afforded ample opportunity to contest the violations and forfeiture, but failed to do so in a timely manner. The Commission's December 1, 2021 Finding and Order was a final order. Upon entry of that decision, Respondent had the statutory right to file an application for rehearing and, if unsuccessful, an appeal to the Court of Appeals for Franklin County. R.C. 4903.10; 4923.99(C). Therefore, the Commission's judgment is now final and Respondent may not use a "back door" to avoid the consequences of his failure to act promptly. See *In re Complaint of Pilkington*, 145 Ohio St.3d 125, 2015-Ohio-4797 at ¶35.

² Letter dated December 3, 2021 from John D. Williams to Respondent (copy attached as Exhibit C).

³ *In re Kenny M. Tejada Minaya, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 22-149-TR-CVF, Entry (March 2, 2022).

In sum, there is already a final Commission decision concerning the same violation at issue here and the case has been referred to the Ohio Attorney General's Office, Collections Enforcement Section. Respondent should not be permitted to now contest that violation. The Commission should dismiss this case.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Shaun Lyons

Shaun Lyons
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

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 counsel via United States mail, this 4th day of March, 2022.

/s/ Shaun Lyons

Shaun Lyons
Assistant Attorney General

Parties of Record:

Kenny M. Tejada Minaya
90 Ellwood St. Apt. 4C
New York, NY 10040
929.321.9833
Manueltejeda96@icloud.com

Pro Se Respondent

July 7, 2021

TEJEDA MINAYA, KENNY M
90 ELLWOOD ST APT 4C
NEW YORK, NY 10040

RE: **Notice of Apparent Violation
And Intent to Assess Forfeiture**
Case No. OH1238005473D
OH1238005473
PIN #: iD0gUKEN

Dear Sir or Madam:

On 07-03-2021, a vehicle operated by LEGENDS CARGO EXPRESS CORP and driven by, TEJEDA MINAYA, KENNY M was inspected in the State of Ohio, resulting in the discovery of the following apparent violation(s) of the Commission's rules. The Commission intends to assess a civil forfeiture against KENNY M TEJEDA MINAYA in the following amount:

<u>Code</u>	<u>Group</u>	<u>Description</u>	<u>Crash</u>	<u>State Citation</u>	<u>Forfeiture</u>
395.8E	1	False report of drivers record of duty status	N		
		Group 1 Violations			\$ 100.00
<u>Total Amount Due:</u>					\$ 100.00

Within 30 days of this notice you must either; 1) pay the assessed civil forfeiture or, 2) submit a written Request for Conference to present mitigating circumstances. * Violations with a "Y" in the "crash" column or any text in the "State Citation" column are not assessed a civil forfeiture. Further, because these offenses are primarily under the jurisdiction of local courts, these violations are not available for a conference.

Failure to comply with either option above shall constitute a waiver of your right to further contest the violation(s) and will conclusively establish the occurrence of the violation(s). Such failure shall also constitute a waiver of your right to further contest liability to the State of Ohio for the civil forfeiture described in the notice and will result in the forfeiture amount being referred to the Ohio Attorney General's Office for collection. In addition, your Ohio operating authority (CPCN) may be sanctioned as permitted by law.

Please consult the enclosed instruction sheet for additional information regarding this "Notice of Apparent Violation and Intent to Assess Forfeiture."

Sincerely,

Michael Hines
Compliance Division
6144666168

Enclosure



Public Utilities Commission

Jenifer French, Chair

EXHIBIT B

Commissioners

M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

August 6, 2021

TEJEDA MINAYA, KENNY M
90 ELLWOOD ST APT 4C
NEW YORK, NY 10040

SECOND NOTICE

RE: **Notice of Apparent Violation
And Intent to Assess Forfeiture**
Case No. OH1238005473D
OH1238005473
PIN #: iD0gUKEN

Dear Sir or Madam:

On 07-03-2021, a vehicle operated by LEGENDS CARGO EXPRESS CORP and driven by, TEJEDA MINAYA, KENNY M was inspected in the State of Ohio, resulting in the discovery of the following apparent violation(s) of the Commission's rules. The Commission intends to assess a civil forfeiture against KENNY M TEJEDA MINAYA in the following amount:

<u>Code</u>	<u>Group</u>	<u>Description</u>	<u>Crash</u>	<u>State Citation</u>	<u>Forfeiture</u>
395.8E	1	False report of drivers record of duty status	N		
		Group 1 Violations			\$ 100.00
<u>Total Amount Due:</u>					\$ 100.00

Within 30 days of this notice you must either; 1) pay the assessed civil forfeiture or, 2) submit a written Request for Conference to present mitigating circumstances. * Violations with a "Y" in the "crash" column or any text in the "State Citation" column are not assessed a civil forfeiture. Further, because these offenses are primarily under the jurisdiction of local courts, these violations are not available for a conference.

Failure to comply with either option above shall constitute a waiver of your right to further contest the violation(s) and will conclusively establish the occurrence of the violation(s). Such failure shall also constitute a waiver of your right to further contest liability to the State of Ohio for the civil forfeiture described in the notice and will result in the forfeiture amount being referred to the Ohio Attorney

General's Office for collection. In addition, your Ohio operating authority (CPCN) may be sanctioned as permitted by law.

Please consult the enclosed instruction sheet for additional information regarding this "Notice of Apparent Violation and Intent to Assess Forfeiture."

Sincerely,

Michael Hines
Compliance Division
6144666168

Enclosure



**Public Utilities
Commission**

Jenifer French, Chair

EXHIBIT C

Commissioners

M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

December 3, 2021

TEJEDA MINAYA, KENNY M
90 ELLWOOD ST APT 4C
NEW YORK, NY 10040

RE: **Unpaid Civil Forfeiture**

Case No: OH1238005473D

PIN #: iD0gUKEN

Docketing No: 21-1182-TR-CVF

Dear Sir or Madam:

As a result of the violations at issue in the case referenced above, you were notified that a civil forfeiture of \$100.00 was assessed against you. Of the civil forfeiture amount assessed, a balance of \$100.00 remains unpaid. Enclosed is a copy of an order of the Public Utilities Commission of Ohio, ordering you to pay, by **01/03/2022**, the forfeiture amount.

You may make payment online at: <https://www.puco.ohio.gov/sc/mcos/>. You will need your case number and PIN located at the top of this document. Otherwise, your payment may be made by check or money order payable to "Public Utilities Commission of Ohio," and may be mailed to the PUCO at:

Public Utilities Commission of Ohio
Attn: CF Processing
180 E. Broad Street, 4th Floor
Columbus, Ohio 43215-3793

In order to ensure proper credit, you must write the case number referenced above on the face of the check or money order. Questions regarding this matter may be directed to the Compliance Division at (614) 466-0351.

Failure to pay the civil forfeiture by the deadline will result in the forfeiture amount being referred to the Ohio Attorney General's office for collection and may result in additional sanctions of your Ohio operating authority and/or driving privileges.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Williams". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John D. Williams, Director
Transportation Department

Enclosure

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/4/2022 9:10:10 AM

in

Case No(s). 22-0149-TR-CVF

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