

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF KENNY MINAYA,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 22-149-TR-CVF
(OH1238005473D)

ENTRY

Entered in the Journal on June 1, 2022

I. SUMMARY

{¶ 1} The Commission dismisses, at Staff's motion, Respondent's request for an administrative hearing.

II. DISCUSSION

{¶ 2} Staff served a notice of preliminary determination upon Kenny Minaya (Mr. Minaya or Respondent) in accordance with Ohio Adm.Code 4901:2-7-12, alleging a violation of the Commission's transportation regulations.

{¶ 3} On February 28, 2022, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13. In the request, Respondent stated that he had changed his U.S. Mail address and therefore had "never received a response to my plea and my request for a hearing." Respondent asked that the case be reopened.

{¶ 4} On March 2, 2022, the attorney examiner issued an Entry informing Respondent of a prehearing conference on March 21, 2022.

{¶ 5} On March 4, 2022, Staff filed a motion to dismiss and memorandum in support. Staff contends that Respondent did not timely demonstrate why he was not in default pursuant to a Commission order. Staff notes that Mr. Minaya was sent two Notices of Apparent Violation and Intent to Assess Forfeiture (NAVs) after the July 3, 2021 roadside inspection, yet Respondent never paid the civil forfeiture or replied to either notice. Staff further asserts that Respondent also did not reply to a December 1, 2021 Commission Finding and Order directing him to pay the forfeiture or demonstrate why he was not in default, nor did he respond to a December 3, 2021 letter from Staff notifying him of the

Commission's December 1, 2021 directive. Staff notes that, after the final deadline of January 3, 2022, passed and Respondent had not replied, the case was referred to the Ohio Attorney General for collections. Staff emphasizes that Respondent has repeatedly ignored notices sent to him at the address that he provided, and in addition, he did not file for rehearing after the Commission's December 1, 2021 Finding and Order. Staff concludes that the Commission's judgment is now final and that Respondent cannot avoid the consequences of his failure to act promptly.

{¶ 6} In a March 9, 2022 Entry, the attorney examiner postponed the prehearing conference and directed Respondent to reply no later than March 31, 2022, as to why his request for a hearing should not be dismissed. Mr. Minaya did not reply by March 31, 2022, or at any time thereafter.

{¶ 7} The Commission takes notice of Staff's assertions, as described in Paragraph 5 above, that Respondent did not reply to two NAVs, or to the December 1, 2021 Finding and Order directing him to pay the forfeiture or demonstrate why he was not in default. The Commission takes administrative notice of our December 1, 2021 decision in Case No. 21-1182-TR-CVF, *In re the Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Administrative Code (Default Order)*. Therein, the Commission found each of the identified drivers, including Respondent, in default for failing to timely respond to an NAV or other correspondence, consistent with Ohio Adm.Code 4901:2-7-14 (*Default Order* at ¶ 9). Thus, the Commission has already issued a final order finding the Respondent in violation of the Commission's transportation regulations

{¶ 8} In addition, we observe Staff's contention that Respondent did not file for rehearing of the December 1, 2021 Finding and Order, nor did he reply to Staff's December 3, 2021 letter notifying him of December 1, 2021 Finding and Order. We do not overlook Mr. Minaya's remarks in his February 28, 2022, letter that his U.S. Mail address had changed and that, consequently, he had not received Commission correspondence via U.S. Mail. However, it is significant that the attorney examiner's March 9, 2022 Entry ordering

Respondent to state why his hearing request should not be dismissed was sent to the Respondent's current address, as indicated in his February 28, 2022 hearing request, yet Mr. Minaya did not reply.

{¶ 9} Given all the aforementioned factors, we find that Respondent's request for an administrative hearing is improper and shall, therefore, be denied.

III. ORDER

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That Staff's motion to dismiss be granted. It is, further,

{¶ 12} ORDERED, That this case be closed of record. It is, further,

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

COMMISSIONERS:

Approving:

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

JML/hac

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

Summary: Entry dismissing, at Staff's motion, Respondent's request for an administrative hearing electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio