

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF PATRICK GUGGINO,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 21-1073-TR-CVF
(OH3246014858D)

FINDING AND ORDER

Entered in the Journal on June 1, 2022

I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement regarding a violation of the Commission's transportation rules.

DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

{¶ 3} On July 20, 2021, a vehicle operated by Patrick Guggino (Mr. Guggino or Respondent) was inspected, resulting in the discovery of an alleged violation of the Commission's rules. Staff informed Respondent that it intended to assess a civil forfeiture for the following violation: 49 C.F.R. 390.3(e) performing safety sensitive functions prohibited by the Drug and Alcohol Clearinghouse.

{¶ 4} On July 21, 2021, Respondent was served with a Notice of Apparent Violation and Intent to Assess Forfeiture pursuant to Ohio Adm.Code 4901:2-7-07, which assessed Respondent a civil forfeiture of \$3,174 for the violation.

{¶ 5} On August 18, 2021, Respondent requested a conference pursuant to Ohio Adm.Code 4901:2-7-10.

{¶ 6} A conference was conducted on September 9, 2021, but Staff was unable to contact Respondent.

{¶ 7} On September 22, 2021, Staff sent a Notice of Preliminary Determination (NPD) to Respondent in accordance with Ohio Adm.Code 4901:2-7-12, which assessed Respondent \$3,174 for the violation.

{¶ 8} On October 20, 2021, Respondent requested an administrative hearing.

{¶ 9} A prehearing conference was held between Staff and Respondent March 11, 2022.

{¶ 10} On May 10, 2022, Staff and Respondent filed a settlement agreement which, in the parties' opinion, resolves the issues raised in the NPD. The following is a description of the conditions agreed to by the parties and is not intended to replace or supersede the settlement agreement.

- (a) Respondent agrees to a violation of 49 C.F.R. 390.3(e) and recognizes that it may be included in Respondent's history of violations and Respondent's Safety-Net Record, insofar as it may be relevant for purposes of determining penalty actions.
- (b) Respondent has provided sufficient proof to Staff that is has a compliance plan in place to correct the violations found in this inspection. Staff therefore agrees to reduce the forfeiture from \$3,174 to \$500, which Respondent has agreed to pay.
- (c) Respondent shall pay the \$500 forfeiture in two payments, starting 30 days after Commission approval of the

settlement agreement and ending six months after the Commission's Order.

- (d) Payments should be made payable to Public Utilities Commission of Ohio, with Case Number 21-1073-TR-CVF and inspection number OH3246014858D written on the face of each check or money order. Payment of such forfeiture shall be made via the Commission website or by certified check or money order made payable to: "Public Utilities Commission of Ohio" and shall be mailed or delivered to: Public Utilities Commission of Ohio, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, Ohio 43215-3793.
- (e) This settlement agreement shall not become effective until adopted by the Commission. The date of the entry of the Commission order adopting this settlement agreement shall be considered the effective date of the settlement agreement.
- (f) This settlement agreement is made in settlement of all factual and legal issues in this case. It is not intended to have any effect in any other case or proceeding.

{¶ 11} The Commission notes that, in accordance with Ohio Adm.Code 4901:2-7-14(D), if the respondent fails to comply with the provisions of the settlement agreement for a period exceeding 30 days, the respondent shall be in default and shall be deemed to have admitted the occurrence of the violations and waived all further right to contest liability for the forfeiture originally assessed by Staff.

{¶ 12} The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement shall be approved and adopted in its entirety.

II. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 15} ORDERED, That Respondent pay the civil forfeiture of \$500 in accordance with the settlement agreement. Payment shall be made via the Commission website or by certified check or money order payable to: "Public Utilities Commission of Ohio" and shall be mailed or delivered to: Public Utilities Commission of Ohio, Attn: CF Processing, 180 E. Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write Case No. 21-1073-TR-CVF and inspection number OH3246014858D on the face of the check or money order. It is, further,

{¶ 16} ORDERED, That a copy of this Finding 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 P. Deters

JML/hac

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

6/1/2022 2:01:37 PM

in

Case No(s). 21-1073-TR-CVF

Summary: Finding & Order finding reasonable and approving the settlement agreement regarding a violation of the Commission's transportation rules electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio