

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CARMEN FAUSTINO
AND PRIME ELECTRICAL CONTRACTING
LLC, NOTICE OF APPARENT VIOLATION
AND INTENT TO ASSESS FORFEITURE.

CASE NO. 21-1018--TR-CVF
(OH3225014775D)
(OH3225014775C)

ENTRY

Entered in the Journal on July 13, 2022

I. SUMMARY

{¶ 1} The Commission denies Applicant and Carrier's request to reopen the case.

II. DISCUSSION

{¶ 2} R.C. 4923.04(A)(1) mandates that the Commission 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, published in the Code of Federal 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, per violation, against any person who violates the safety rules adopted by the Commission.

{¶ 3} Staff served a notice of intent to assess forfeiture upon Carmen Faustino (Applicant) and Prime Electrical Contracting, LLC (Carrier), alleging violations of the Commission's transportation regulations.

{¶ 4} On September 30, 2021, Applicant filed correspondence seeking to reopen Applicant's and Carrier's cases. In this filing, Applicant argues that he was unaware of the laws governing his and the Carrier's actions and that the fines paid by them in accordance with the assessed forfeitures hurt his fledgling business. Accordingly, he would like the payments refunded, together with the interest and collection fees.

{¶ 5} On October 7, 2021, Staff filed a response to Applicant's case reopening request. Staff described that Applicant and Carrier were served a notice of intent to assess a forfeiture (NIF) for violation of the Commission's transportation regulations as a result of a

vehicle inspection that occurred on January 6, 2021. According to Staff, the NIF was served on January 8, 2021, and stated that Applicant and Carrier could either request an administrative hearing or pay the assessed forfeiture. Also, it advised Applicant and Carrier that failing to respond to the NIF would result in the admission of the violation. Further, it stated that payment of the forfeiture would act as an admission of the violation. Staff asserted that no forfeiture was paid, and no conference was requested by Applicant or Carrier. Staff stated that, on February 7, 2021, a second NIF was sent to Applicant and Carrier, and neither Applicant nor Carrier responded to the notice. On March 25, 2021, Applicant and Carrier were served with notices of unpaid civil forfeitures, along with a copy of the Commission's Finding and Order directing recipients to pay the amounts assessed by April 23, 2021. *In re the Default of Motor Carriers and Drivers Pursuant to Rule 4901:2-7-14 of the Ohio Admin. Code*, Case No. 21-215-TR-CVF, Finding and Order (Mar. 24, 2021). According to Staff, Applicant and Carrier failed to pay the amounts assessed or otherwise contact the Commission by the above deadline; consequently, on May 7, 2021, both Applicant's and Carrier's cases were sent to the Ohio Attorney General's Office (OAG) for collections. On September 27, 2021, Applicant and Carrier made payment in full to the OAG.

{¶ 6} Staff maintained that Applicant and Carrier were provided multiple opportunities to respond to the NIFs by either paying the forfeiture or requesting a conference. Staff further asserted by failing to timely respond to the notices, Applicant and Carrier are in default and have effectively admitted the violations. Staff also stated that by ultimately paying the fine, Commission rules hold that this payment amounts to a conviction. Therefore, Staff claimed that the request to re-open the case should be denied.

{¶ 7} On April 7, 2022, the attorney examiner issued an Entry ordering that Applicant and Carrier had until April 27, 2022 to file a response to Staff's correspondence in opposition to reopening the case.

{¶ 8} No response to Staff's correspondence was filed.

{¶ 9} After review, the Commission finds that Applicant and Carrier's request to reopen the proceeding be denied. This case should be dismissed and considered closed of record.

III. ORDER

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That Applicant and Carrier's request to reopen the proceeding be denied. It is, further,

{¶ 12} ORDERED, That this case be dismissed and 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

MJS/CAQ/hac

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Case No(s). 21-1018-TR-CVF

Summary: Entry denying Applicant and Carrier's request to reopen the case electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio