

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of David Grass, Notice of) Case No. 22-0085-TR-CVF
Apparent Violation and Intent to) (OH1777003089D)
Assess Forfeiture.)

**MEMORANDUM CONTRA RESPONDENT’S MOTION TO DISMISS
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

The Staff of the Public Utilities Commission of Ohio (Staff) files this Memorandum Contra in opposition to Respondent’s Motion to Dismiss, filed on August 12, 2022, pursuant to Ohio Administrative Code (Ohio Adm.Code) Rule 4901-1-12(B)(1).

Respondent’s Motion to Dismiss should be denied, as more fully explained in the accompanying Memorandum in Support.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Sarah Feldkamp

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pursuant to Ohio Adm.Code Rule 4906-2-27(B)(1), the Staff of the Public Utilities Commission of Ohio (Staff) submits this memorandum contra the Motion to Dismiss filed by David Grass (Respondent) filed on August 12, 2022. As set forth in detail below, Respondent states no basis for his motion. Moreover, Respondent himself requested a hearing on the forfeiture to be assessed against him, the only means afforded to him by law to contest the proposed forfeiture. Therefore, Staff respectfully requests that Respondent's Motion to Dismiss be denied and that this matter be set for hearing.

II. BACKGROUND

On October 29, 2021, a vehicle driven by Respondent, and operated by Tucson Inc., was inspected in the State of Ohio, resulting in the discovery of an apparent violation of the Commission's rules. Specifically, the Respondent was determined to have violated 49 C.F.R. 392.16 by failing to use a seat belt while operating a commercial motor vehicle.

Staff served a Notice of Apparent Violation and Intent to Assess Forfeiture on the Respondent on November 5, 2021 in accordance with Ohio Adm.Code 4901:2-7-07. A second notice was served on December 5, 2021.

A conference was scheduled and conducted with Staff on January 11, 2022 pursuant to Ohio Adm.Code 4901:2-7-10. As a result of that conference, Staff made a preliminary determination that the Commission should assess a civil forfeiture against

the Respondent in the amount of \$100.00. Pursuant to Ohio Adm.Code 4901:2-7-12, Staff served a Notice of Preliminary Determination upon Respondent on January 13, 2022. On January 29, 2022, Respondent requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

On March 8, 2022, a prehearing teleconference was held between the parties. The parties determined the case could not be settled and should be set for hearing.

On May 3, 2022, Respondent filed a Request to Dismiss this Case with Prejudice, stating three reasons for this request: (1) the charge was brought more than six months ago, (2) Respondent alleges he has not received evidence, and (3) Respondent alleges he has “been denied access to a court to prove my innocence on this charge in a timely manner.”

On May 18, 2022, Staff filed a memorandum contra Respondent’s Motion to Dismiss because Respondent failed to provide good cause for his motion.

On July 12, 2022, the Attorney Examiner filed an Entry scheduling a hearing for August 1, 2022. The parties did not receive the evidence that Respondent had requested, so, on July 25, 2022, the Attorney Examiner postponed the hearing and scheduled a prehearing teleconference for August 1, 2022.

The prehearing teleconference was held on August 1, 2022. The Attorney Examiner attempted to call Respondent, but Respondent did not answer his phone. Staff informed the Attorney Examiner that Staff was still waiting to receive the evidence that the Respondent had requested, and once that evidence is received, Staff will send the evidence to Respondent.

On August 1, 2022, after the teleconference took place, Staff found Respondent at the Commission Office, waiting on the floor where the (postponed) hearing had been scheduled to take place according to the Attorney Examiner's July 12, 2022 Entry. Staff and the Attorney Examiner met with the Respondent to discuss what had been discussed at the prehearing: Staff would send the requested evidence to Respondent once the evidence was received.

On August 4, 2022, the Attorney Examiner filed an Entry directing Staff to file written notice in the docket when Staff shared the Evidence with Respondent, or for Staff to file notice by August 31, 2022 that the evidence still has not been received and the matter, therefore, should not be scheduled for hearing.

On August 12, 2022, Respondent filed another Motion to Dismiss. Respondent argues (1) he was not notified that the hearing was postponed, (2) Respondent followed the procedures according to a letter he received on July 15, 2022, (3) Respondent drove 240 miles to the Commission Office for the postponed hearing, (4) Respondent lost another day of work and wages, (5) Respondent paid for his gas and parking, (6) Respondent was at the Commission Office so he wouldn't be held in default. This memorandum will address Respondent's arguments.

III. ARGUMENT

A. Respondent is presumed to have had notice of the prehearing.

Respondent argues the case should be dismissed because he was not notified that the hearing was postponed. He goes on to list the ways he was affected by allegedly not receiving the July 25, 2022 Entry. These reasons are not good cause to dismiss. The July

25, 2022 Entry is on the docket, and is accompanied by a July 26 Service Notice. That Service Notice has Respondent's mailing address and email address, which Respondent verified in the meeting after the prehearing teleconference. Respondent is presumed to have had notice. All of the information that Respondent missed in the prehearing teleconference was communicated to him immediately after. Even still, Respondent missing the prehearing teleconference is not a good cause reason to dismiss the case. All of the avoidable consequences of Respondent driving to the Commission Office are also not a good cause reason to dismiss the case.

Respondent does not seek to dismiss the hearing that he requested because he no longer contests the violation. Staff contends that Respondent misunderstands the administrative process and procedure of Commission transportation cases. The law and procedure to be followed in these cases comes from R.C. Chapters 4921 and 4923 and the accompanying Ohio Administrative Code provisions that amplify the laws and process for those Chapters. The Commission's rules do not require that the hearing commence within any specified time after the violation. Ohio Adm.Code 4901:2-7-16(D).

IV. CONCLUSION

Respondent has not given a good cause reason for this case to be dismissed; so, his motion to dismiss should be denied. Mr. Grass has requested a hearing, and that request has been granted.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Sarah Feldkamp

Sarah Feldkamp

Assistant Attorney General

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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 **Memorandum Contra Respondent's Motion to Dismiss** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named party via United States mail and/or electronic service upon the following parties of record, this 26th day of August, 2022.

/s/ Sarah Feldkamp

Sarah Feldkamp

Assistant Attorney General

Parties of Record:

David Grass

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**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 22-0085-TR-CVF

Summary: Memorandum Contra Respondent's Motion to Dismiss Submitted on
Behalf of the Staff of the Public Utilities Commission of Ohio electronically filed by
Mrs. Kimberly M. Naeder on behalf of PUCO