

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Damarquis D. Owens,)	
Notice of Apparent Violation and)	Case No. 23-498-TR-CVF
Intent to Assess Forfeiture.)	(OH3274024883D)
)	

**RESPONSE TO RESPONDENT’S REQUEST TO REOPEN
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

I. INTRODUCTION

The Transportation Staff of the Public Utilities Commission of Ohio (Staff) requests that the Public Utilities Commission of Ohio (Commission) deny Damarquis D. Owens’ (Applicant’s) request to reopen this case because it is an improper attempt to argue a matter that is already closed. Under Ohio Adm. Code § 4901: 2-7-22(B), full payment of the forfeiture amount constitutes an admission of the occurrence of the violation and terminates all further proceedings regarding the violation. In the alternative, if the Commission desires more information from the Applicant before ruling on his request, Staff recommends that the Commission issue a show cause order requiring a response from the Applicant within 20 days, demonstrating and showing good cause as to the reason the case should be reopened.

II. BACKGROUND AND DISCUSSION

On December 15, 2022, a vehicle operated by RT 80 EXPRESS INC and driven by Applicant was inspected in the State of Ohio. On December 19, 2022, as a result of the

inspection, Applicant was served with a Notice of Intent to Assess a Forfeiture (NIF). The NIF provided approximately thirty days for the Applicant to respond to the notice requesting an administrative hearing or pay the forfeiture due. The NIF advised the Applicant that failure to respond to the notice would result in admission of the violation as fact. The NIF also advised that payment of the forfeiture would act as an admission of the violation.

The Applicant failed to contact the Commission regarding this case. On January 18, 2023, a second notice was mailed to the Applicant. The second notice is essentially the same as the first NIF that was sent to Applicant and contains the same information, with the exception of saying **SECOND NOTICE**. The second NIF was returned by the United States Postal Service (USPS) as undeliverable. In response, on February 13, 2023, the second NIF was sent to the Applicant's employer's address.

On March 13, 2023, the civil forfeiture amount was paid online with the Commission. On March 17, 2023, the notice of conviction for violation 49 C.F.R. § 383.51A-SIN, driving a CMV while CDL is suspended for safety-related or unknown reason and in state of driver's license issuance, was sent to the Ohio Bureau of Motor Vehicles (Ohio BMV).

On May 4, 2023, the Commission received a request to reopen from the Applicant.

Respondent's payment of the forfeiture constitutes an admission of the violation, and completely obviates any right to a hearing. In a recent case, the Commission ordered that a similarly situated respondent be dismissed. *In the Matter of Daniel Anofils, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 19-1792-TR-CVF,

Finding and Order (Feb. 13, 2020). As in this case, Mr. Anofils filed a request for a hearing after having paid the proposed forfeiture because “he did not understand the consequences to his CDL that resulted from payment of the forfeiture.” *Id.* at ¶3. After a motion to dismiss was filed by the Commission Staff, the Commission found that:

 [¶9] Ohio Adm.Code 4901:2-7-22 provides, in pertinent part, that payment of a civil forfeiture assessed pursuant to a violation of the Commission’s transportation regulations constitutes an admission of the occurrence of the violation and serves to terminate all further Commission proceedings.

 [¶10] The Commission finds that respondent’s payment of the civil forfeiture . . . concludes jurisdiction over this matter. . .

By paying the assessed forfeiture, Respondent is deemed, by operation of law, to have admitted to the violation. Further, as the Commission has found, payment of the forfeiture ends the Commission’s jurisdiction to hear this case.

III. CONCLUSION

Staff requests the denial of the Applicant’s request to reopen this case because it is an improper attempt to argue a matter that is already closed. The Applicant was provided an opportunity to challenge the violation and chose not to do so, instead paying the entire civil forfeiture amount, which is a conviction pursuant to Commission rules.

The Applicant’s March 13, 2023 payment to the Commission operates as an admission to the violation listed in the NIF. Therefore, it is Staff’s position that the Applicant’s request is without merit and should be denied. In the alternative, if the Commission desires more information from the Applicant before ruling on his request, Staff recommends that the Commission issue a show cause order requiring a response

from the Applicant within 20 days, demonstrating and showing good cause as to the reason the case should be reopened.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Rhiannon D. Howard

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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 **Response to Respondent's Request to Reopen** 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, this 17th day of May, 2023.

/s/ Rhiannon D. Howard

Rhiannon D. Howard

Assistant Attorney General

Party of Record:

Damarquis D. Owens

257 W. Long Street

Akron, OH 44301

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Case No(s). 23-0498-TR-CVF

Summary: Response to Respondent's Request to Reopen Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO.