

## **2023 OHIO PUC LEXIS 89**

Public Utilities Commission of Ohio

January 26, 2023, Entered

CASE NO. 21-922-TR-CVF (OH3239002062C); CASE NO. 21-923-TR-CVF (OH3239002062D)

### ***OH Public Utilities Commission Decisions***

#### **Reporter**

2023 OHIO PUC LEXIS 89 \*

## **IN THE MATTER OF SEI LOGISTICS, LLC, NOTICE OF APPARENT VIOLATION AND INTENT TO ASSESS FORFEITURE ; IN THE MATTER OF CARY STULTZ, NOTICE OF APPARENT VIOLATION AND INTENT TO ASSESS FORFEITURE**

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### **Core Terms**

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staff, inspect, forfeiture, transport, trailer, truck, motor carrier, certificate, log book, carrier, preponderance of evidence, fire extinguisher, warning device, air pressure, no proof, triangle, tire, braking system, no record, inoperable, interstate, driver's, church, drive, pound

**Panel:** COMMISSIONERS: Approving: Jenifer French, Chair; M. Beth Trombold; Lawrence K. Friedeman; Daniel R. Conway; Dennis P. Deters

### **Opinion**

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#### **OPINION AND ORDER [\*1]**

##### **I. SUMMARY**

The Commission finds that Staff demonstrated, by a preponderance of the evidence, that SEI Logistics, LLC violated 49 C.F.R. 398.17(c) (no proof of periodic vehicle inspection), 393.95(a) (no or discharged fire extinguisher), 393.95(f) (insufficient warning devices, such as safety triangles), 390.21(b) (no carrier name or USDOT number on sides of commercial motor vehicle), 393.75(a) (right outside tire no measurable air pressure), and 393.43 (emergency braking system inoperable). The Commission further finds, by a preponderance of the evidence, that driver Cary Stultz did not violate [49 C.F.R. 391.41\(a\)](#) (no medical examiner's certificate), 395.8(a)(1) (no record of duty status/logbook), and 393.23(a)(2) (no commercial driver's license). In addition, the Commission orders that SEI Logistics, LLC pay a \$ 250 forfeiture within 60 days of this Entry, and that the civil forfeiture assessed against Cary Stultz be excused, with the violations deleted from Mr. Stultz's Safety Net record.

##### **II. PROCEDURAL HISTORY**

On June 3, 2021, Andrew Powley, a Motor Carrier Enforcement Investigator of the Ohio State Highway Patrol (Investigator Powley) stopped and inspected a commercial motor vehicle (CMV) operated by [\*2] SEI Logistics, LLC, (SEI) and driven by Mr. Cary Stultz (Mr. Stultz) (collectively, Respondents). Investigator Powley stopped the CMV after observing that it did not display a company name or USDOT numbers on the driver's side of the vehicle. At the time of inspection, Investigator Powley prepared an inspection report indicating nine violations of the Federal Motor Carrier Safety Regulations (FMCSR). Six of the violations concerned SEI, specifically, 49 C.F.R. 398.17(c) (no proof of periodic vehicle inspection), 393.95(a) (no or discharged fire extinguisher), 393.95(f) (insufficient warning devices, such as safety triangles), 390.21(b) (no carrier name or USDOT number on sides of CMV), 393.75(a) (right outside tire no measurable air pressure), and 393.43 (emergency braking system inoperable). Three of the violations concerned Mr. Stultz, specifically, [49 C.F.R. 391.41\(a\)](#) (no medical examiner's certificate), 395.8(a)(1) (no record of duty status/logbook), and 393.23(a)(2) (no commercial driver's license (CDL)). (Staff Ex. 1; Tr. at 9.)

Staff served separate notices of preliminary determination (NPDs) upon SEI and Mr. Stultz, in accordance with Ohio Adm.Code 4901:2-7-12, alleging violations of the Commission's transportation [\*3] regulations. SEI was assessed a \$ 250 total forfeiture and Mr. Stultz was assessed a \$ 450 total forfeiture for the violations indicated in Paragraph 2 above.

On September 7, 2021, counsel for Respondents requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

By Entry dated September 20, 2021, the attorney examiner scheduled a telephonic prehearing conference for October 4, 2021 pursuant to Ohio Adm.Code 4901:2-7-16(B). Respondents and Staff participated in the prehearing conference as scheduled, but the matter was not resolved.

On February 10, 2022, the attorney examiner scheduled an evidentiary hearing for April 18, 2022, to be conducted via Webex virtual hearing technology.

At the hearing on April 18, 2022, Investigator Powley and Rod Moser (Mr. Moser), Chief of Compliance for the Commission's Transportation Division, testified in support of the violations and forfeiture amounts. Mr. Colin Maher (Mr. Maher), counsel for Respondents, represented Mr. Stultz and SEI at the hearing.

### III. LAW

[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 [\*4] and intrastate commerce. Under Ohio Adm.Code 4901:2-5-03(A), the Commission adopted certain provisions of the FMCSR. Specifically, the Commission adopted 49 C.F.R. Sections 40, 367, 380, 382, 383, 385, 386, 387, and 390-397, to govern the transportation of persons or property in intrastate commerce within Ohio. Through the same rule, the Commission also adopted those portions of the regulations contained in 49 C.F.R. 107, Subparts F and G, and 49 C.F.R. 171 to 180, as are applicable to transportation of hazardous materials by motor vehicle. Ohio Adm.Code 4901:2-5-03(C) requires all motor carriers engaged in interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission. 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 when transporting persons or property, in interstate commerce, in or through Ohio. Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

Staff alleges that SEI violated 49 C.F.R. 398.17(c) (no proof of periodic vehicle inspection), 393.95(a) (no or discharged fire extinguisher), 393.95(f) (insufficient [\*5] warning devices, such as safety triangles), 390.21(b) (no carrier name or USDOT number on sides of CMV), 393.75(a) (right outside tire no measurable air pressure), and 393.43 (emergency braking system inoperable). Staff further alleges that Mr. Stultz violated [49 C.F.R. 391.41\(a\)](#) (no medical examiner's certificate), 395.8(a)(1) (no record of duty status/logbook), and 393.23(a)(2) (no CDL).

### IV. ISSUE

At issue is whether Staff has satisfied its burden to prove, by a preponderance of the evidence, that Mr. Stultz was not qualified to drive a CMV, because he did not possess a CDL and medical examiner's certificate, nor did he maintain a logbook. Further, Staff must satisfy its burden to show, by a preponderance of the evidence, that SEI failed to comply with the FMCSR, because there was no proof of a periodic vehicle inspection, no or discharged fire extinguisher, insufficient warning devices such as safety triangles, no carrier name or USDOT number displayed on the CMV, the right outside tire had no measurable air pressure, and the emergency braking system was inoperable.

## V. SUMMARY OF EVIDENCE

At the hearing on April 18, 2022, Investigator Powley stated that he enforces the FMCSR, the hazardous materials [\*6] regulations, and the Ohio Revised Code by conducting inspections of CMVs traveling interstate and intrastate (Tr. at 7). Investigator Powley testified that he observed Mr. Stultz driving west in a Ford F350 pickup truck that was towing a trailer; a generator was strapped to the trailer for interstate transport. According to Investigator Powley, he stopped Mr. Stultz for an inspection because there was no USDOT number and company name on the driver's side of the vehicle. During the inspection, Investigator Powley determined that the gross vehicle weight rating (GVWR) of the truck and of the trailer each exceeded 10,001 pounds, thus resulting in the FMCSR being applicable. Investigator Powley explained that he immediately recorded the GVWR for the truck and trailer in his report during the inspection. (Staff Ex. 1; Tr. at 9-10; 16-18; 20; and 22-23.)

Investigator Powley testified that Mr. Stultz did not possess a medical certificate or a logbook at the time of inspection, in violation of [49 C.F.R. 391.41\(a\)](#) and [395.8\(a\)\(1\)](#). In addition, Investigator Powley stated that Mr. Stultz could not produce a CDL, in violation of [49 C.F.R. 383.23\(a\)\(2\)](#). (Staff Ex. 1; Tr. at 9.) According to Investigator Powley, Mr. Stultz stated that he served [\*7] in a preacher-type capacity at a church, and that the church was receiving payment from SEI in exchange for Mr. Stultz transporting the generator, which he did not own. (Tr. at 15, 17, 21.)

Investigator Powley further testified that the remaining violations were applicable to SEI. Investigator Powley determined that the CMV did not have an annual vehicle inspection report in violation of [49 C.F.R. 396.17\(c\)](#), nor did the CMV have an operable fire extinguisher, warning devices such as safety triangles, and a USDOT number or company name on the side of the CMV, thus violating [49 C.F.R. 393.95\(a\)](#), [393.95\(f\)](#), and [390.21\(b\)](#), respectively. Investigator Powley also determined that the CMV had a flat tire with no measurable air pressure and that the emergency braking system for the trailer was not working, thus violating [49 C.F.R. 393.75\(a\)](#) and [393.43](#), respectively. Investigator Powley noted that, even without the weight of trailer taken into consideration, the weight of the pickup truck made the vehicle subject to the FMCSR. (Tr. at 12-14, 18, 31.)

Mr. Moser testified regarding the assessment of forfeitures following roadside inspections. Referring to the NPDs sent to SEI and Mr. Stultz, Mr. Moser confirmed that Respondents received all notices required by Commission [\*8] rules (Tr. at 26-27).

During the proceeding, Mr. Maher agreed to stipulate to the amounts of the forfeitures assessed against Respondents (Tr. at 28). In addition, Mr. Maher asserted that there was no proof that Mr. Stultz was paid for transporting the generator; rather, the compensation consisted of a donation made to Mr. Stultz's church. Second, Mr. Maher contended that there was no evidence indicating the truck and trailer's actual weight. Mr. Maher emphasized that Investigator Powley did not take a photograph of the manufacturer's plates on the truck and trailer to prove that the weight of the truck and the trailer resulted in the FMCSR being applicable. Mr. Maher stated that, under Commission rules, the GVWR of the truck and trailer would have to exceed 26,000 pounds. (Tr. at 29-30.)

Staff also submitted a Brief on May 20, 2022. Staff explains that, pursuant to the FMCSR, a "motor carrier" is defined as a "for-hire motor carrier, inclusive of the carrier's agents, officers and representatives." Staff contends that, as a CMV driver, Mr. Stultz was driving as a "for-hire motor carrier " because there was payment made in exchange for transporting the generator. Staff contends [\*9] that, although Mr. Stultz is not on SEI's payroll, he nonetheless is acquiring money for his church. Staff adds that Respondents did not present evidence to rebut this factor. (Staff Brief at 5-6.) In addition, Staff observes that SEI did not provide evidence that the GVWR of the truck and trailer was less than the 10,001 pound threshold at which the FMCSR is applicable (Staff Brief at 7-8).

## VI. COMMISSION CONCLUSION

Ohio Adm.Code 4901:2-7-20 requires that Staff prove the occurrence of a violation by a preponderance of the evidence at hearing. The Commission finds that Staff has satisfied its burden to prove that Respondent SEI violated the above mentioned FMCSR rules. In so doing, we find Investigator Powley's testimony, as well as Staff's exhibits, to be persuasive.

Concerning Mr. Stultz's violations, the Commission acknowledges that Mr. Stultz was not directly compensated by SEI for driving the CMV (Tr. at 15, 17, 21, 29). Further, we observe that, pursuant to the FMCSR, Mr. Stultz was driving as a "for-hire motor carrier, " because payment was made to his church in exchange for transporting the generator. Furthermore, a "for-hire motor carrier" is defined in the FMCSR to include a carrier's [\*10] agents; at the time of the inspection, Mr. Stultz was acting as an agent for SEI. Finally, the FMCSR applies to Mr. Stultz's interstate trip in a CMV, because the GVWR of the truck and trailer each exceeded 10,001 pounds, as recorded by Investigator Powley as he prepared an inspection report while checking manufacturer's truck and trailer specifications (Tr. at 17, 19-20, 21; Staff Ex. 1). Nevertheless, we conclude that Mr. Stultz did not violate [49 C.F.R. 391.41\(a\)](#) (no medical examiner's certificate), 395.8(a)(1) (no record of duty status/logbook), and 393.23(a)(2) (no CDL) due to the extenuating circumstances described herein.

SEI is also subject to the FMCSR, because it was the owner of the truck and trailer, each of which exceeded 10,001 pounds GVWR on an interstate trip for which compensation was paid to haul an SEI generator (Tr. at 15; Staff Ex. 1). Therefore, we find that SEI violated 49 C.F.R. 398.17(c) (no proof of periodic vehicle inspection), 393.95(a) (no or discharged fire extinguisher), 393.95(f) (insufficient warning devices, such as safety triangles), 390.21(b) (no carrier name or USDOT number on sides of CMV), 393.75(a) (right outside tire no measurable air pressure), and 393.43 (emergency braking [\*11] system inoperable).

Next, we conclude, based on our review of the mitigating factors described herein, that Mr. Stultz did not violate [49 CFR 391.41\(a\)](#) (no medical examiner's certificate), 395.8(a)(1) (no record of duty status/logbook) and 383.23 (no CDL) violations. Staff did not offer evidence or testimony indicating that Mr. Stultz was involved in any prior violations. Additionally, the record does not show that Mr. Stultz held himself out as a driver for commercial purposes. The Commission observes this case to be similar to *In the Matter of Micah Zappe, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 13-702-TRCVF ( *Zappe*), Opinion and Order (October 16, 2013), in which Mr. Zappe was found in violation of the FMCSR but the forfeiture was reduced. In *Zappe*, the record did not show that Mr. Zappe received compensation on any other occasions that would indicate he operated a business moving personal property. Furthermore, the Commission found persuasive Mr. Zappe's explanation that moving personal property was not his primary means of employment. Thus, the Commission concludes that Mr. Stultz should not be found in violation of the Commission's transportation regulations, and that the alleged violations should be removed from his Safety-Net record.

The Commission [\*12] further finds that the total forfeiture of \$ 250 should be assessed against SEI for violating 49 C.F.R. 398.17(c), [393.95\(a\)](#), [393.95\(f\)](#), [390.21\(b\)](#), [393.75\(a\)](#), and [393.43](#). The Commission determines that the record indicates that, unlike Mr. Stultz, SEI is a commercial motor carrier and thus should be subject to the assessed civil forfeiture. The record indicates that SEI owned the CMV that Mr. Stultz used to haul an SEI generator, and that SEI is classified as a motor carrier (Staff Ex. 1). Therefore, SEI is subject to the forfeitures as assessed. The \$ 250 should be paid within 60 days from the date of this Opinion and Order. Payment shall be made via the Commission website or by certified check or money order payable to the "Public Utilities Commission of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case No. 21-922-TR-CVF and inspection number OH3239002062C should be written on the face of the check or money order.

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

On June 3, 2021, Investigator Powley stopped a CMV operated by SEI and driven by Cary Stultz. During the inspection, Mr. Stultz was found in violation of [49 C.F.R. 391.41\(a\)](#) (no medical examiner's certificate), 395.8(a)(1) (no record of duty status/logbook), and 393.23(a)(2) (no CDL). SEI was found in violation of 49 C.F.R. 398.17(c) (no

proof of periodic vehicle inspection), 393.95(a) (no or discharged fire extinguisher), 393.95(f) (insufficient warning devices, such as safety triangles), 390.21(b) (no carrier name or USDOT number on sides of CMV), 393.75(a) (right outside tire no measurable air pressure), and 393.43 (emergency braking system inoperable).

On August 17, 2021, Staff timely served NPDs on Mr. Stultz and SEI. In the NPDs, a civil forfeiture of \$ 450 was assessed upon Mr. Stultz and \$ 250 upon SEI.

On September 7, 2021, counsel for Respondents requested an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

Respondents participated in a prehearing conference with Staff on October 4, 2021.

An evidentiary hearing was held on April 18, 2022 using virtual hearing [\*13] technology.

Ohio Adm.Code 4901:2-7-20(A) requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

Based upon the record in this proceeding, the Commission finds that Staff has not proven, by a preponderance of the evidence, that Mr. Stultz violated [49 C.F.R. 391.41\(a\)](#) (no medical examiner's certificate), 395.8(a)(1) (no record of duty status/logbook), and 393.23(a)(2) (no CDL). Further, the Commission finds that SEI violated 49 C.F.R. 398.17(c) (no proof of periodic vehicle inspection), 393.95(a) (no or discharged fire extinguisher), 393.95(f) (insufficient warning devices, such as safety triangles), 390.21(b) (no carrier name or USDOT number on sides of CMV), 393.75(a) (right outside tire no measurable air pressure), and 393.43 (emergency braking system inoperable). Accordingly, the alleged violations against Mr. Stultz should be removed from his Safety-Net record. Finally, we find that SEI did violate the Commission's transportation regulations and should be assessed and pay the \$ 250 forfeiture within 60 days from the date of this Opinion and Order.

### VIII. ORDER

It is, therefore,

ORDERED, That Mr. Stultz is not in violation of Commission transportation regulations [\*14] and the alleged violations should be removed from his Safety-Net record. It is, further,

ORDERED, That SEI pay a total civil forfeiture of \$ 250 within 60 days of this Opinion and Order. Payment shall be made via the Commission website or by certified check or money order payable to the "Public Utilities Commission of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 21-922-TR-CVF and inspection number OH3239002062C should be written on the face of the check or money order. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon each interested person and party of record.  
JML/IMM/hac

### COMMISSIONERS:

*Approving* :

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

OH Public Utilities Commission Decisions

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