

DOCKET NO. 601-00-1462

**THE TEXAS DEPARTMENT OF
TRANSPORTATION**

VS.

LONNIE CHAMBLY

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Department of Transportation (the Department) Compliance and Enforcement Division (Staff) sought an administrative penalty of \$2,500.00 from Lonnie Chambly (Respondent). Staff alleged Respondent violated the Department's rules related to motor carriers operating commercial motor vehicles or tow trucks on the public streets and highways of Texas. Due to Respondent's failure to appear or be represented at the hearing, Staff moved for a default judgment. The Administrative Law Judge (ALJ) finds Staff's motion for a default judgment should be granted, the allegations in the notice of hearing should be deemed admitted, and Respondent should be assessed an administrative penalty of \$2,500.00.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing was convened on July 6, 2000, but was recessed to give Respondent at least ten days notice of hearing. The hearing was reconvened on August 3, 2000, before State Office of Administrative Hearings ALJ Georgie B. Cunningham at the Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100, Austin, Texas. Assistant Attorney General Elias V. Lorenzana, Jr. represented Staff. Respondent did not appear and was not represented by counsel. Jurisdiction and notice in this proceeding are sufficient, as set forth in the Findings of Fact and Conclusions of Law. The hearing closed on August 3, 2000.

II. MOTION FOR DEFAULT AND SANCTIONS

Based on Staff's proof that Respondent was sent proper notice of hearing in this matter and on Respondent's failure to appear at the hearing, the ALJ finds Staff's motion for a default judgment, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55, should be granted. The allegations in Staff's complaint and notice of hearing are deemed admitted and are set forth in the Findings of Fact and Conclusions of Law herein.

Staff alleged that the Respondent: (1) operated one or more tow trucks on the public streets and highways of the State of Texas without first obtaining a certificate of registration issued by the Department; (2) operated one or more such vehicles without maintaining the minimum required insurance; and (3) failed to maintain records and documents to verify the carrier's operation. Staff argued the alleged violations are serious violations and an administrative penalty of \$2,500.00 should

be imposed. Based upon the seriousness of the allegations, the ALJ concludes that the penalty is appropriate.

III. PROPOSED FINDINGS OF FACT

1. Lonnie Chambly (Respondent) is an individual, corporation, or entity that is a motor carrier operating one or more commercial vehicles or tow trucks upon the public streets and highways of the State of Texas. Respondent's place of business and address for service is 7511 Thistle Lane, Dallas, Texas 75240.
2. On May 24, 2000, the Compliance and Enforcement Division of the Texas Department of Transportation (the Department) mailed an official complaint to Respondent at his address for service, via certified mail, return receipt requested, and by regular mail. Respondent refused to accept service of the complaint sent to him via certified mail; however, the complaint sent by regular mail was not returned to the Department.
3. On June 27, 2000, the notice of hearing was sent to Respondent at the address for service, via certified mail, return receipt requested, and by regular mail. Respondent refused the notice sent via certified mail; however, the notice sent by regular mail was not returned to the Department.
4. On July 6, 2000, a hearing was convened at the State Office of Administrative Hearings, 1700 North Congress Avenue, Austin, Texas. The Department's staff (Staff) appeared, but Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) continued the hearing to allow ten days minimum notice of the hearing.
5. On July 12, 2000, the ALJ issued an order rescheduling the hearing on August 3, 2000. The order was sent to the Respondent via certified mail, return receipt requested. The order was returned unclaimed.
6. When the hearing was reconvened on August 3, 2000, Respondent did not appear and was not represented.
7. Staff's motion for a default judgment was granted on August 3, 2000.
8. The notice of hearing and complaint informed Respondent of the date, time, place, and nature of the hearing, the allegations, the proposed administrative penalty, and the legal authority and jurisdiction under which the hearing would be held.
9. The notice of hearing contained the following language in at least 10-point or larger boldface type: "Failure to appear at the hearing will result in the allegations against you set out in this notice being admitted as true."

10. During 1998 and 1999, Respondent was a Texas and interstate motor carrier which did not possess a motor carrier certificate of registration through the Department.
11. As of February 23, 1999, Respondent had failed to file and maintain proof of vehicle liability insurance with the Department.
12. During 1998 and 1999, Respondent failed to prepare and maintain at its principal place of business in Texas the operational logs, insurance certificates and documents verifying the carrier's operations and failed to prepare and maintain at its principal place of business in Texas complete and accurate records of services performed by Respondent.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Department of Transportation (the Department) has jurisdiction over this matter pursuant to TEX. TRANSP. CODE ANN. (the Code) ch. 643 (Vernon 1999 & Supp. 2000).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Based upon Findings of Fact Nos. 1 - 9, Respondent was provided with proper notice of the hearing pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 - 2001.052 and 2001.054 (Vernon 2000), 1 TEX. ADMIN CODE (TAC) § 155.27 (1999), 43 TAC § 1.32 (1999), and § 643.251 of the Code.
4. Based upon Findings of Fact Nos. 1 - 9, the hearing proceeded on a default basis, as authorized by 1 TAC § 155.55 (1999), and the allegations were deemed true..
5. Based upon Finding of Fact No. 10, Respondent knowingly operated as a motor carrier upon the public streets and highways of Texas and interstate without a certificate of registration issued by the Department, in violation of 43 TAC § 18.11 (1999), 43 TAC § 18.17(a) (1999), and 49 UNITED STATES CODE § 14504.
6. Based upon Finding of Fact No. 11, Respondent failed to file and maintain proof of automobile liability insurance with the Department, in violation of 43 TAC § 18.16 (1999).
7. Based upon Finding of Fact No. 12, Respondent failed to prepare and maintain at its principal place of business in Texas complete and accurate records, as required by § 643.254 of the Code and 43 TAC § 18.32(a) (1999).

8. Pursuant to § 643.251 of the Code and 43 TAC § 18.71, the Department may impose administrative penalties against a motor carrier for a violation of the Code or the Department's rules.
9. Based upon the foregoing Findings of Fact and Conclusions of Law, a default judgment should be entered, and an administrative penalty should be imposed by the Department against Respondent in the amount of \$2,500.00.

SIGNED this _____ day of August, 2000.

GEORGIE B. CUNNINGHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

(GBC/DK) L:\GROUPS\WORKING\601\00-1462\00-1462.pfd