

DOCKET NO. 601-99-3213

THE TEXAS DEPARTMENT OF TRANSPORTATION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
ROOSEVELT HANSON D/B/A HANSON'S TRUCKING	§	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 \$17,500.00 from Roosevelt Hanson d/b/a Hanson's Trucking (Respondent). Staff alleged Respondent violated the Department's rules related to motor carriers who operate 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 \$17,500.00.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing was convened on April 20, 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 record closed the same day.

II. MOTION FOR DEFAULT AND SANCTIONS

Based on Staff's proof that Respondent received proper notice of hearing in this matter and on Respondent's failure to appear at the hearing, the ALJ finds Staff's motion for default, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55, should be granted. All 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 of such vehicles without maintaining the minimum required insurance; (3) failed to maintain records and documents to verify the carrier's operation; and (4) failed to produce, upon request by an authorized and identified agent of the Department, records

required to be maintained. Staff argued the alleged violations are serious violations and an administrative penalty of \$17,500.00 should be imposed. Based upon the seriousness of the allegations, the ALJ concludes that the penalty is appropriate.

III. PROPOSED FINDINGS OF FACT

1. Roosevelt Hanson d/b/a Hanson's Trucking (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 1827 Atlas Drive, Dallas, Texas 75216.
2. On December 14, 1999, 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 received the complaint on December 17, 1999.
3. On January 24, 2000, the notice of hearing was mailed to Respondent at the address for service, via certified mail, return receipt requested, and by regular mail. Respondent received the notice on January 27, 2000.
4. The Department filed a motion for continuance of the hearing on January 26, 2000. A copy of the motion was mailed to Respondent at his address for service, via certified mail, return receipt requested, and by regular mail. Respondent received the motion on January 28, 2000.
5. The Department filed a supplemental motion for continuance on February 4, 2000, and a second supplemental motion for continuance on February 15, 2000. Copies of both motions were mailed to Respondent at his address for service, via certified mail, return receipt requested, and by regular mail. Both motions were returned to the Department unclaimed.
6. The motion for continuance was granted on February 17, 2000, and the hearing was rescheduled for April 20, 2000.
7. On March 30, 2000, Staff mailed an amended notice of hearing to Respondent at his address for service, via certified mail, return receipt requested, and by regular mail. Neither the green card nor the notice sent by regular mail has been returned to the Department.
8. The hearing notices 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 amended 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. On April 20, 2000, the Staff appeared and was ready to proceed. Respondent did not appear at the hearing and was not represented by counsel.
11. Staff's motion for a default judgment was granted.
12. Respondent was a Texas and interstate motor carrier that did not possess a motor carrier certificate of registration through the Department.
13. Respondent failed to file and maintain proof of automobile liability insurance with the Department.
14. 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.
15. Respondent failed to produce, upon request by an authorized and identified agent of the Department, records required to be maintained.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Department of Transportation (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 (Vernon 1999), 43 TAC § 1.32 (Vernon 1999), and § 643.251 of the Code (Vernon 1999).
4. Based upon Findings of Fact Nos. 1 - 11, the hearing proceeded on a default basis as authorized by 1 TAC § 155.55 (1999).
5. Based upon Finding of Fact No. 12, 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. 13, 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. 14, Respondent failed to prepare and maintain at its principal place of business in Texas complete and accurate records, as required by 43 TAC § 18.32(a)(1) (1999).
8. Based upon Findings of Fact Nos. 14 and 15, Respondent failed to make available requisite records or permit an inspection, in violation of § 643.254 of the Code and 43 TAC § 18.33 (1999).
9. 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.
10. Based upon the foregoing Findings of Fact and Conclusions of Law, an administrative penalty should be imposed by the Department against Respondent in the amount of \$17,500.00.

SIGNED this _____ day of May, 2000.

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

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