

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Mark Sievers
Thomas E. Wright

In the Matter of the Investigation of Carry Yours)
A Division of CFSI, Inc. of Marietta, Georgia,)
Pursuant to the Kansas Highway Patrol Issuance of)
a Notice of Violation for Violations of the Kansas) Docket No. 12-GIMM-423-KHP
Motor Carrier Safety Statutes, Rules and)
Regulations.)

DEFAULT ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) upon its own motion. The Commission, being duly advised of the premises finds and concludes as follows:

I. Background

1. On or about November 4, 2011, the Commission issued a Notice of Violation to Carry Yours a Division of CFSI, Inc., (Respondent) for alleged motor carrier violations identified on September 13, 2012, during a motor carrier inspection.
2. On or about November 3, 2011, Respondent submitted a request for a hearing disputing the civil assessment.
3. On December 12, 2011, Staff filed a *Notice of Hearing* setting this matter for February 9, 2011, at 11:00 a.m.
4. On or about January 25, 2012, Staff filed and served an Amended Notice of Hearing in this docket, rescheduling the hearing for March 8, 2012, at 10:00 a.m.

5. Staff Counsel Amber Smith, informed the Commission during the March 8th evidentiary hearing that she had personally placed a call to Respondent and left a voicemail message reminding Respondent of the date and time of the hearing.

6. The record shows that neither the Respondent nor any representative on behalf of the Respondent appeared at the evidentiary hearing held on March 8, 2012. As a result, Staff requested the Commission to find Respondent in default for failure to appear and participate pursuant to K.S.A. 2011 Supp. 77-520.

II. Jurisdiction

7. The Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. K.S.A. 2011 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto.

8. The Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission. K.S.A. 2011 Supp. 66-1,129a, 66-1,142b, and amendments thereto.

9. The Commission has the authority to investigate an entity under the Commission's jurisdiction when the Commission believes the entity is in violation of the law or any order of the Commission. K.S.A. 66-1,108b, 66-1,108c, 66-1,111, 66-1,112 and, K.A.R. 82-1-237.

III. Discussion

10. K.S.A. 2011 Supp. 77-520 governs default actions on administrative proceedings.

The statute provides in part:

- (a) If a party fails to attend or participate in a pre-hearing conference, hearing or other state of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds.

11. Additionally, K.S.A. 2011 Supp. 77-520 also provides that the proposed default order shall become final seven days after service of the proposed default order unless the party, against whom the proposed default order was issued, submits a written request that the proposed order be vacated and states the grounds relied upon. K.S.A. 2011 Supp. 77-520(b) and (c).

12. In this case, testimony filed in the record alleges that Respondent is a motor carrier as defined in K.S.A. 66-1,108, and that on September 13, 2011 Respondent committed two violations of the Kansas Motor Carrier Safety Rules and Regulations while operating a commercial motor vehicle in the State of Kansas.

13. Pursuant to K.S.A. 2011 Supp. 66-1,129a and 66-1,142b, the alleged violations of Kansas motor carrier rules and regulations are subject to a civil penalty of not less than \$100 and not more than \$1,000 for negligent violations, and not more than \$5,000 for intentional violations.

14. Based on the facts available, Staff's testimony recommended the Commission uphold the civil penalty as assessed in Invoice Number H000526561, in the amount of \$400.00.

IV. Conclusion of Law

15. On March 8, 2012, during the scheduled evidentiary hearing, Staff asserted that Respondent was properly served with the Notice of Hearing and an Amended Notice of Hearing in response to Respondent's request for a hearing in this matter.

16. The Commission finds and concludes that Staff's Motion for Default Judgment should be granted. The Commission further finds and concludes that the violations identified on September 13, 2011 are reasonable and pursuant to K.S.A. 2011 Supp. 66-1,129a and 66-1,1142b, the civil penalty assessed in Invoice Number: H000526561 is upheld.

17. Pursuant to K.S.A. 2011 77-520(b), Respondent may file a written motion requesting that the Proposed Default Order be vacated and stating the grounds relied upon, within seven days after service of this proposed order. If no motion is filed, this Order will automatically become a Final Order of Default effective seven days after service.

THE COMMISSION THEREFORE ORDERS THAT:

(a) Staff's Motion for Default Judgment is granted.

(b) This order serves as notice to Carry Yours, a Division of CFSI, Inc., of the Proposed Default Order. Carry Yours, a Division of CFSI, Inc., has seven days to submit a written motion to request the Proposed Default order be vacated to include stated grounds upon which the company relies on for such motion.

(c) Pursuant to K.S.A. 2011 Supp. 77-520(c) this Proposed Default Order shall become a Final Order of Default effective seven days after service, provided Carry Yours, a Division of CFSI, Inc., does not file a motion to vacate. If Carry Yours, a Division of CFSI, Inc., files a motion to vacate within the specified time, the Commission shall either vacate the

Proposed Default Order or issue a Final Order of Default.


(d) The parties have fifteen (15) days, plus three (3) days if service of a final order is served by mail, in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529(a)(1).

(e) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn; Wright, Com.

Dated: JUL 20 2012


ORDER MAILED JUL 20 2012
Patrice Petersen-Klein
Executive Director

JYJ

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
Richard Carruthers, PRESIDENT Carry Yours A Division Of CFSI, Inc. 3595 Canton Rd Bldg A9 Rm 252 Marietta, GA 30066		
JUDY JENKINS, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED JUL 20 2012

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.