

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of the Investigation of BMS)	
Transportation Company, Inc. of Platte City,)	
Missouri, Pursuant to the Kansas Highway)	
Patrol Issuance of a Notice of Violation for)	
Violation(s) of the Kansas Motor Carrier)	Docket No. 15-GIMM-212-KHP
Safety Statutes, Rules and Regulations and)	
the Commission's Authority to Impose)	
Penalties, Sanctions and/or the Revocation)	
of Motor Carrier Authority.)	

DEFAULT ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised, the Commission finds:

1. On or about July 7, 2014, the Kansas Highway Patrol (KHP) issued a Notice of Violation assessing fines against BMS Transportation Company, Inc. (BMS), for violations found during a June 23, 2014 routine motor carrier stop and inspection.
2. On November 12, 2014, BMS submitted a Request for Hearing.
3. On November 24, 2014, Commission Staff (Staff) filed a Notice of Hearing setting the matter for hearing on January 14, 2015.
4. On December 11, 2014, the Commission issued an Order Granting Continuance, rescheduling the hearing for February 11, 2015.
5. On January 30, 2015, Ken Pratt, the Owner of BMS, sought permission to appear pro se. In response to Pratt's request, the prehearing officer conducted a status conference

advising that since a Commission Order on his request would not be available until February 10, 2015, the parties may want to request a continuance in the event that BMS needs to find counsel for the hearing.

6. On February 4, 2015, BMS filed its Motion for Continuance explaining the uncertainty over its request to appear pro se necessitates a continuance. Staff did not oppose a continuance, and on February 10, 2015, the Commission granted the Motion for Continuance and rescheduled the hearing for March 18, 2015, at 9:00 a.m.

7. On March 5, 2015, the Commission issued its Order Granting Request to Appear Pro Se.

8. Neither BMS nor its representative appeared at the evidentiary hearing held on March 18, 2015.¹ Mr. Michael Duenes and Mr. Robert Vincent appeared as Litigation Counsel on behalf of Commission Staff.² Technical Trooper Shawn Hines, Technical Trooper Jason Mills, and Mr. Mike Hoeme appeared as Staff Witnesses.³

9. The Commission found Notice was proper based on Staff's statement that on November 24, 2014, it filed and served a Notice of Hearing to Ken Pratt's address of record via certified mail with return receipt requested.⁴ Commission Staff did not receive a signed receipt.⁵ Staff then resent the Notice of Hearing by regular mail on December 17, 2014, and it was not returned.⁶ Further demonstrating BMS was on notice of the hearing date, Pratt moved for a

¹ Transcript of Proceedings, Docket No. 15-GIMM-212-KHP, March 18, 2015, p. 2.

² *Id.*

³ *Id.*, p. 3.

⁴ *Id.*, p. 5.

⁵ *Id.*

⁶ *Id.*

continuance on January 4, 2015, and received the Commission's February 10, 2015 Order granting BMS's motion scheduling the hearing on March 18, 2015.⁷

10. The Commission is given full power, authority and jurisdiction to supervise and control motor carriers, doing business in Kansas, and is empowered to do all things necessary and convenient to exercise that power, authority and jurisdiction.⁸

11. The Commission may initiate sanctions or fines for violations of any provision of Kansas law relating to the regulation of motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.⁹

12. K.S.A. 77-520, which governs default actions on administrative proceedings, provides in relevant 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.

13. Additionally, K.S.A. 77-520 also provides that the proposed default order becomes 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.¹⁰

14. In this case, prefiled testimony states BMS is a motor carrier as defined by K.S.A. 66-1,108, and that on June 23, 2014, BMS committed two violations of the Kansas Motor Carrier Safety Rules and Regulations while operating a commercial motor vehicle in the state of Kansas.

⁷ *Id.*

⁸ K.S.A. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto.

⁹ K.S.A. 66-1,129a, 66-1,142b, and amendments thereto.

¹⁰ K.S.A. 77-520(b) and (c).

15. Pursuant to K.S.A. 66-1,129a and 66-1,142b, the alleged violations of Kansas motor carrier rules and regulations are subject to a civil penalty ranging from \$100 to \$1,000 for negligent violations, and up to \$5,000 for intentional violations.

16. Staff recommended upholding the \$150 civil penalty assessed in Invoice Number H000549106.

17. The Commission finds BMS in default for failing to appear at the March 18 hearing, and concludes the penalties assessed for violations identified on June 23, 2014 are reasonable pursuant to K.S.A. 66-1,129a and 66-1,1142b. Therefore, the Commission upholds the \$150 civil penalty assessed in Invoice Number H000549106.

18. Pursuant to K.S.A. 77-520(b), BMS has seven days from service to move to vacate this Default Order. Absent such motion, this Order will automatically become a Final Order of Default effective seven days after service.

THEREFORE, THE COMMISSION ORDERS:

A. BMS Transportation Company, Inc. (BMS) is found in default for its failure to appear at the evidentiary hearing scheduled for March 18, 2015.

B. This order serves as notice to BMS of the Default Order. BMS has seven days to submit a written motion requesting the Default Order be vacated and stating grounds in support of its motion.

C. Pursuant to K.S.A. 77-520(c) this Default Order becomes a Final Order of Default effective seven days after service, provided BMS does not file a motion to vacate.

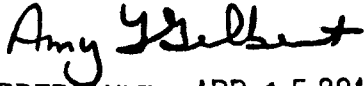
D. The parties have 15 days, plus three days if served by mail, from the date of service of this Order to petition for reconsideration.¹¹

E. The Commission retains jurisdiction over the subject matter and the parties for purposes of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: APR 14 2015


ORDER MAILED APR 15 2015
Amy L. Gilbert
Secretary

BGF/mf

¹¹ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
KEN PRATT BMS TRANSPORTATION COMPANY, INC. PO BOX 2326 PLATTE CITY, MO 64079		
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
BRIAN G. FEDOTIN, ASSISTANT GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED APR 15 2015

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.