

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**BRIAN BISHOP DBA BISHOP  
TOWING & TRANSPORT,  
(USDOT No. 979378)**

**Respondent**

**Docket No. FMCSA-2013-0505<sup>1</sup>  
(Eastern Service Center)**

**INTERIM ORDER**

**1. Background**

On September 25, 2013, the Maryland Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim (NOC) against Brian Bishop dba Bishop Towing & Transport (Respondent), proposing a civil penalty of \$1,990.<sup>2</sup> The NOC, which was based on a compliance review completed on September 13, 2013, alleged: (1) one violation of 49 CFR 395.8(k)(1), failing to preserve a driver's record of duty status for 6 months, with a proposed civil penalty of \$219; (2) one violation of 49 CFR 396.3(b), failing to keep minimum records of vehicle inspection and maintenance, with a proposed civil penalty of \$219; and (3) one violation of 49 CFR 396.17(a), using a commercial motor vehicle not periodically inspected, with a proposed civil penalty of \$1,561.<sup>3</sup>

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<sup>1</sup> The prior case number was MD-2013-0152-US1493.

<sup>2</sup> See Exhibit A to Regional Field Administrator's Motion for Default, Alternatively Motion for a More Definite Statement (Motion for Default).

<sup>3</sup> Although the NOC sought a civil penalty of \$1,990, the proposed penalties for the individual violations add up to \$1,999.

On or about October 12, 2013, Respondent served a somewhat bizarre document in response to the NOC.<sup>4</sup> This document, titled "Petitioner's Affidavit of Fact, Evidence, and Information," is seven pages in length, single spaced, and contains virtually no information responding to the allegations in the NOC. It is subtitled "Demand to Vacate and to Void Notwithstanding Tickets/Suits/Summons/Citations/(misrepresented) Bill(s) of Exchange," declares Respondent to be an "Aboriginal/Indigenous Natural Person," and affirms Respondent's "Substantive Rights to Travel upon the public Roadways and Highways, in harmony with the Highest and most supreme law of the land." After plowing through much irrelevant boiler-plate language and poorly written quasi-legalese, it appears that Respondent is arguing that FMCSA lacked jurisdiction to issue the NOC and that he was being denied due process of law.

On December 11, 2013, the Regional Field Administrator for FMCSA's Eastern Service Center (Claimant) served a Motion for Default and Alternative Motion for a More Definite Statement. Claimant argued that Respondent defaulted because his reply to the NOC did not request a particular form of administrative adjudication and, therefore, did not meet the standards for a reply under 49 CFR 386.14. In the alternative, Claimant requested that Respondent be directed to indicate how he wishes to adjudicate the matters raised in the NOC.

## **2. Decision**

Under 49 CFR 386.14(b) of the Rules of Practice, a respondent must reply to the NOC by choosing one of three options: (1) paying the full amount of the claim; (2) contesting the claim by requesting administrative adjudication pursuant to 49 CFR 386.14(d)(1)(iii);<sup>5</sup> or (3) seeking

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<sup>4</sup> See Exhibit B to Motion for Default.

<sup>5</sup> The options available to Respondent were: (A) submission of written evidence without a hearing; (B) an informal hearing; or (C) a formal hearing. FMCSA subsequently suspended use

binding arbitration in accordance with the Agency's dispute resolution program. Although Respondent did not request administrative adjudication, he attempted to present a defense to the charges based on lack of jurisdiction and denial of due process. Even though that defense did not address the specifics of the violations alleged in the NOC, I do not find Respondent to be in default.

The essence of a default is a failure by the respondent to participate in the proceedings when required to do so.<sup>6</sup> A default will not be entered when the respondent has clearly participated in the proceeding.<sup>7</sup> Respondent intended to participate in this proceeding by asserting jurisdictional and constitutional defenses, notwithstanding his failure to select a form of administrative adjudication. It is, therefore, not appropriate to enter a default judgment finding Respondent liable for each of the violations alleged in the NOC.

However, I am granting Claimant's alternative motion for a more definite statement of Respondent's request for administrative adjudication. Accordingly, Respondent has 15 days from the service date of this Order to submit a supplemental reply that selects one of the two available options for administrative adjudication provided in § 386.14(d)—submission of written evidence without a hearing or a formal hearing. Because Respondent did not request administrative adjudication in his original reply, he will be deemed in default if he fails to serve a supplemental reply in accordance with this Order. If Respondent is deemed in default, the

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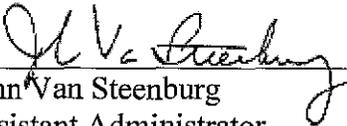
of the informal hearing process for all enforcement cases initiated on or after June 7, 2010. *See* 75 Fed. Reg. 32242 (June 7, 2010).

<sup>6</sup> *See In the Matter of Parcel Shipper's Express, Inc.*, Docket No. FMCSA-2000-9523, Order, May 25, 2001, at 3.

<sup>7</sup> *See In the Matter of Globus Moving, LLC dba Globus Moving*, Docket No. FMCSA-2006-26592, Final Order, Nov. 25, 2008, at 4.

Notice of Claim will become the final agency order in these proceedings on the 20<sup>th</sup> day following the service date of this Order.<sup>8</sup>

*It Is So Ordered.*

  
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John Van Steenburg  
Assistant Administrator  
Federal Motor Carrier Safety Administration

1/23/14  
Date

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<sup>8</sup> See *In the Matter of Rimrock Stages, Inc.*, FMCSA-2013-0401, Interim Order, Dec. 31, 2013.

***CERTIFICATE OF SERVICE***

This is to certify that on this 24 day of January, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Brian Bishop  
Bishop Towing & Transport  
11626 Rest Drive  
La Plata, MD 20646

One Copy  
U.S. Mail

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Trial Attorney  
Office of Chief Counsel (MC-CCE)  
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