

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



JAN 5 2011

STATE ROAD AND TOLLWAY
AUTHORITY,

Petitioner,¹

Docket No.:

OSAH-TA-X-1131170-60-Woodard

Hazel Jackson

Hazel Jackson, Legal Assistant

v.

ELIJAH BEYAH SHAHID,
Respondent.

FINAL DECISION

INTRODUCTION

This appeal is brought by the State Road and Tollway Authority (“Petitioner” or “SRTA”) pursuant to O.C.G.A. § 32-10-64. SRTA seeks affirmation from the undersigned Administrative Law Judge (“ALJ”) of the proposed imposition of Georgia State Route 400 (“GA 400”) toll fees, administrative costs, and civil money penalty totaling \$2,865.00. This amount is based on 30 alleged toll violations between December 18, 2007 and June 5, 2008 for Respondent’s vehicle bearing Georgia license plate “CAPITA4.”

SRTA initially filed a Motion for Summary Determination seeking judgment against Respondent on the grounds that no genuine issue of material fact existed regarding the unpaid tolls, administrative costs, and civil money penalty. The ALJ granted SRTA’s motion, and issued a Final Decision on August 2, 2011 which affirmed all tolls, costs, and civil money penalties. On August 17, 2011, Respondent filed a Motion for Reconsideration of the Final Decision. Ga. Comp. R. & Regs. (“OSAH Rules”) 616-1-2-.30(5) requires that a motion to reconsider or vacate a default judgment be filed within 10 days of the date of entry of the judgment. However, OSAH Rule 616-1-2-.02(2) allows the ALJ to exercise his discretion by relaxing procedural

¹ In the original Final Decision, SRTA was called “Plaintiff” and Mr. Shahid was called “Defendant.” OSAH has recently modified its rules to reflect that the party bring the action is the “Petitioner” and the party defending against the action is the “Respondent.”

rules. The ALJ granted Respondent's Motion for Reconsideration, vacated the Final Decision, and returned this case to the active hearing docket.

A full evidentiary hearing was conducted on December 9, 2011. Respondent appeared and represented himself. SRTA was represented by Audrey Seidle, Assistant Attorney General, State Department of Law. Also present was Meryl Mandus, SRTA Legal Counsel.

For the reasons set forth below, I AFFIRM the imposition of toll fees, administrative costs, and civil money penalty against Respondent in the amount of \$2,865.00.

I. Findings of Undisputed Facts

1. Respondent operates Capital Limousine in Atlanta. One of the vehicles in Respondent's fleet is a 2007 Cadillac Escalade conversion limo, which bears Georgia license plate "CAPITA4."
2. Respondent's business often requires operation of vehicles on Georgia State Route 400, a portion of which is a toll road operated by SRTA with a one-way toll of \$0.50 for vehicles such as Respondent's limosines. In order to facilitate his business, Respondent purchases what has been called variously a "Peach Pass" or "Cruise Card" which allows his limousines to use a special lane to bypass the toll booth without stopping. The transponder placed in each vehicle with a Peach Pass sends out a signal which notifies SRTA that the vehicle has passed onto the toll way. SRTA maintains electronic records of each toll way trip and sends a bill to Respondent.
3. Although Respondent put the vehicle bearing tag CAPITA4 into service at least as early as December 18, 2007, Respondent did not purchase a Peach Pass until January 7, 2010. Between December 18, 2007 and June 5, 2008, the vehicle made at least 30 trips on GA 400 without using an operational transponder or stopping to pay a toll. SRTA verified this through video cameras which take pictures of the license plate of each vehicle using the toll road. SRTA then matched

the CAPITA4 license plate to Respondent through records maintained by the Georgia Department of Revenue. Until the toll violations actually occurred, SRTA had no way to contact Respondent to notify him that one of his vehicles was not properly covered by the Peach Pass or Cruise Card. SRTA did not deny Respondent's application for a Peach Pass or Cruise Card for the vehicle bearing license plate CAPITA4 even though Respondent had numerous unpaid tolls.

4. After SRTA matched the CAPITA4 license plate to Respondent, it mailed him multiple Toll Violation Notices seeking payment of the toll plus administrative costs. SRTA turned this account over for collection. Respondent testified that he spoke with a collection agent in January 2010 about his account, and was told that he needed to place the CAPITA4 plate into service. Respondent also testified that the collection agent told him that the unpaid tolls would be dropped from his account, but Respondent did not provide any proof of this action and his testimony is clearly self-serving.

5. Finally, on April 7, 2011, Respondent issued a "Final Notice" to Respondent which informed him that he owed \$15.00 for 30 unpaid tolls, and administrative costs of \$25.00 per toll, for a total of \$765.00. Respondent failed to contact SRTA by the April 28, 2011 deadline contained in the Final Notice.

6. SRTA referred this case to the ALJ on May 11, 2011, and filed a Motion for Summary Determination against Respondent on June 8, 2011. The record shows that SRTA was still willing to discuss the unpaid tolls with Respondent, even though the case was before a judge. On or about June 11, 2011, Respondent spoke with a SRTA representative. Respondent denied that he owed any tolls or administrative costs, as he claimed to have a Peach Pass transponder in the vehicle. SRTA offered to settle the case for \$5.50 per unpaid toll, for a total of \$165.50.

Respondent refused this offer, and has continued to deny that he owes any unpaid tolls, administrative costs, or penalties on the vehicle bearing license plate CAPITA4.

II. Conclusions of Law

1. In Georgia, SRTA is “authorized and empowered to collect tolls” in Georgia. O.C.G.A. § 32-10-64(a). According to the statute,

[n]o motor vehicle shall be driven or towed through a toll collection facility, where appropriate signs have been erected to notify traffic that it is subject to the payment of tolls beyond such sign, without payment of the proper toll. In the event of nonpayment of the proper toll, as evidenced by video or electronic recording, the registered owner of such vehicle shall be liable to make prompt payment to the authority of the proper toll and an administrative fee of \$25.00 per violation to recover the cost of collecting the toll. . . . If the authority finds multiple failures by a registered owner of a vehicle to pay the proper toll and administrative fee after notice thereof and within the time designated in such notice, the authority may refer the matter to the Office of State Administrative Hearings. The scope of any hearing held by the Office of State Administrative Hearings shall be limited to consideration of evidence relevant to a determination of whether the registered owner has failed to pay, after notice thereof and within the time designated in such notice, the proper toll and administrative fee. The only affirmative defense that may be presented by the registered owner of a vehicle at such a hearing is theft of the vehicle, as evidenced by presentation at the hearing of a copy of a police report showing that the vehicle has been reported to the police as stolen prior to the time of the alleged violation. A determination by the Office of State Administrative Hearings of multiple failures to pay by a registered owner of a vehicle shall subject such registered owner to imposition of, in addition to any unpaid tolls and administrative fees, a civil monetary penalty payable to the authority of not more than \$70.00 per violation. . . .

O.C.G.A. § 32-10-64(c)(1).

3. Although Respondent holds the position that the vehicle bearing license plate CAPITA4 was covered by a Georgia Peach Pass or Cruise Card and contained an operational transponder, the evidentiary record clearly shows that Respondent failed to put that license plate into service with SRTA until January 2010. By then, Respondent’s vehicle had passed the GA 400 toll booth on 30 occasions without paying the \$0.50 toll.


4. Thereafter, SRTA sent multiple Violation Notices to Respondent's address on record indicating that he failed to pay the tolls and demanding payment of the tolls and the administrative fee for each failure to pay by a specified date. SRTA's Violation Notices presented the time, date, vehicle, and license plate of the violations, indicated the amount of \$0.50 due for each toll violated, the administrative fee of \$25.00 due for each violation, and the due date for paying these fees. Respondent failed to respond to the April 28, 2011 deadline contained in the Final Notice mailed by SRTA on April 7, 2011. Respondent further failed to agree to a settlement of the unpaid tolls offered by SRTA during a telephone conversation in June 2011.

5. The evidence shows that Respondent has failed to pay the proper tolls and administrative fees after notice thereof and within the time designated in the notice, and the ALJ finds that Respondent is liable to SRTA for tolls and administrative fees in the amount of \$765.00. Therefore, as required by O.C.G.A. § 32-10-64(c)(1), Defendant is also liable for a civil monetary penalty of not more than \$70.00 per violation, for a total of \$2,100.00 in addition to the unpaid balance of applicable tolls and administrative fees.

III. Decision

Accordingly, SRTA's Motion for Summary Determination is hereby **GRANTED** and Defendant is liable to SRTA a total of \$2,865.00 (\$765.00 for unpaid tolls and administrative fees plus \$2,100.00 for a civil monetary penalty).

SO ORDERED, this 5th day of January, 2012.

A handwritten signature in black ink, appearing to read 'M. Patrick Woodard, Jr.', is written over a horizontal line.

M. Patrick Woodard, Jr.
Administrative Law Judge