

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Atlas Concrete Walls, Inc.       )  
Notice of Apparent Violation and Intent       ) Case No. 07-740-TR-CVF  
to Assess Forfeiture                               ) (OH3251003902D)

FINDING AND ORDER

The Commission finds:

- (1) A vehicle operated by Atlas Concrete Walls, Inc. (Respondent) and driven by Kerry D. Smith was inspected within the State of Ohio by staff of the Department of Public Safety (Staff). During the inspection, the following violations were found:  
  
49 C.F.R. Sec. 394.41(a) No medical certificate in driver's possession  
  
49 C.F.R. Sec. 391.11(b)(4) Driver not physically qualified to drive a commercial motor vehicle for failure to wear corrective lenses
- (2) On June 13, 2007, Respondent was timely served with a notice of preliminary determination (NPD) in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). A civil forfeiture of \$350.00 (\$250 for the violation of 391.11(b)(4) and \$100.00 for the violation of 391.41(a)) was assessed to Respondent by Staff for the alleged violations.
- (3) Respondent made a timely request for an administrative hearing pursuant to Rule 4901:2-7-13, O.A.C., and a hearing was scheduled for September 6, 2007. The hearing was continued in order to allow the parties time to negotiate a settlement. Difficulties in finalizing the settlement agreement led to multiple requests for additional time; however, the length of time involved in the negotiations in this case led the attorney examiner to reschedule the hearing for February 11, 2010.
- (4) On January 7, 2010, the parties filed a settlement agreement which, in the parties' opinion, resolves all issues raised in the

NPD. In the settlement agreement, Staff and Respondent agree, and recommend that the Commission find, as follows:

- (a) Respondent agrees to violations of 49 C.F.R. 391.41(a) and 391.11(b)(4) and recognizes that they may be included in Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- (b) Respondent agrees to pay a civil forfeiture of \$100.00 for the violations. Respondent has provided sufficient proof to Staff that its driver, Kerry D. Smith, had undergone LASIK corrective surgery and did not require corrective lenses at the time of the inspection. Therefore, Staff believes that the elimination of the civil forfeiture for the violation of 391.11(b)(4) is warranted. Respondent acknowledges that its driver, Kerry D. Smith, did not have his medical certificate or the certificate of his corrective surgery in his possession at the time of the inspection.
- (c) Respondent shall have 30 days from the entry of the Commission order adopting the settlement agreement to pay in full the forfeiture. The payments shall be made using a certified check or money order payable to "Treasurer, State of Ohio" and mailed to PUCO Fiscal Division, 180 E. Broad Street, Columbus, Ohio 43215-3793. In order to ensure proper credit, Respondent is directed to write the inspection number OH3251003902D on the face of the check.
- (d) The settlement agreement shall not become effective until adopted by the Commission. The date of the Commission order adopting the settlement agreement shall be considered the effective date of the settlement agreement.
- (e) The settlement agreement is made in settlement of all factual or legal issues in this case. It is not

intended to have any effect in any other case or proceeding.

- (5) The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement should be approved and adopted.

It is, therefore,

ORDERED, That the settlement agreement submitted in this case be approved and adopted. It is, further,

ORDERED, That Case No. 07-740-TR-CVF be dismissed. It is, further,

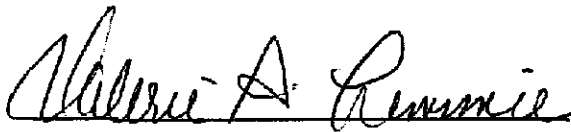
ORDERED, That a copy of this entry be served upon Atlas Concrete Walls, Inc. and all other interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Paul A. Centolella


  
Ronda Hartman Fergus

  
Valerie A. Lemmie

  
Cheryl L. Roberto

JML:ct

Entered in the Journal  
JAN 20 2010

  
Renee J. Jenkins  
Secretary