

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF KENNETH  
K. SWOGGER, NOTICE OF APPARENT  
VIOLATION AND INTENT TO ASSESS  
FORFEITURE.

CASE NO. 22-1193-TR-CVF  
(OH3285015571D)

## FINDING AND ORDER

Entered in the Journal on August 23, 2023

### I. SUMMARY

{¶ 1} The Commission grants Staff's motion to dismiss Respondent's request for an administrative hearing because payment of the civil forfeiture terminates further proceedings in the matter.

### II. DISCUSSION

{¶ 2} On November 10, 2022, a commercial motor vehicle (CMV) operated by American Demolition, Inc. (Company) and driven by Kenneth K. Swogger (Respondent) was inspected in the state of Ohio.

{¶ 3} On November 11, 2022, as a result of the inspection, Mr. Swogger was served with a Notice of Intent to Assess a Forfeiture (NIF). The NIF provided thirty days for the Respondent to respond to the notice by either requesting a conference or paying the assessed civil forfeiture due. The NIF advised the Respondent that failure to respond to the notice would result in admission of the violation as fact. The NIF also advised that payment of the forfeiture would act as an admission of the violation.

{¶ 4} According to Commission records, the full amount of the assessed civil forfeiture was paid on December 2, 2022.

{¶ 5} On December 27, 2022, Sam Peterson, a representative of the Company, filed a request on behalf of Respondent to reopen this matter to dispute the violations that

resulted from the inspection on November 10, 2022. The request asserts that the Company and Respondent did not know the consequences of simply paying the forfeiture. They assert the Inspection Report cites the Respondent for two disqualifying violations although Respondent asserts neither violation is listed on page 2 of the Inspection Report as a disqualifying offense. The motion further states that had the Company and Respondent known that the violations were disqualifying offenses they would not have paid the forfeiture.

{¶ 6} On June 28, 2023, Staff filed a memorandum contra Respondent's motion to reopen the case. Staff opposes reopening the case because: (1) the alleged good cause stated for the motion is not true and is unsupported, (2) the Company nor Mr. Peterson has standing to request the matter be reopened, and (3) the motion was filed by the Company's representative (Sam Peterson) on behalf of the Respondent, which constitutes the unauthorized practice of law, and (4) the matter will be moot by the time that the Commission makes a ruling given the Respondent's disqualification ends on July 17, 2023.

{¶ 7} Ohio Adm.Code 4901:2-7-22 provides, in pertinent part, that payment of a civil forfeiture assessed pursuant to a violation of the Commission's transportation regulations constitutes an admission of the occurrence of the violation and serves to terminate all further Commission proceedings.

{¶ 8} The Commission finds that Respondent has not presented good cause to reopen his case. As an initial matter, the Commission notes that in accordance with the Commission's established process in these types of proceedings and prior to the payment of the forfeiture, Mr. Swogger was afforded the opportunity to engage with the Commission's Transportation staff and present any mitigating circumstances in his case. We also recognize that Respondent admits to the payment of the civil forfeiture. The payment of the assessed civil forfeiture in connection with inspection number OH3285015571D concludes jurisdiction over this matter as provided in Ohio Adm. Code 4901:2-7-22. Pursuant to Ohio Adm.Code 4901:2-7-22, Respondent's payment of the civil

forfeiture terminates all further proceedings regarding the violation. See *In the Matter of Mark L. Arrasmith, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 21-203-TR-CVF, Entry (Jan. 11, 2023); *In the Matter of Daniel Anofils, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 19-1792-TR-CVF, Finding and Order (Feb. 13, 2020). Accordingly, the Commission finds that by paying the assessed forfeiture, Respondent is deemed to have admitted the violations and that such payment ends the Commission's jurisdiction to hear the case. Accordingly, the Commission finds that this case should be dismissed and closed of record.

### III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That this case be dismissed and closed of record as described in Paragraph 8. It is, further,

{¶ 11} ORDERED, That a copy of this Finding and Order be served upon Respondent and all other interested persons of record.

#### COMMISSIONERS:

##### *Approving:*

Jenifer French, Chair  
Daniel R. Conway  
Lawrence K. Friedeman  
Dennis P. Deters  
John D. Williams

GNS/CES/dr

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**Case No(s). 22-1193-TR-CVF**

Summary: Finding & Order granting Staff's motion to dismiss Respondent's request for an administrative hearing because payment of the civil forfeiture terminates further proceedings in the matter electronically filed by Debbie S. Ryan on behalf of Public Utilities Commission of Ohio.