

05-378-CD

2005-378-CD
Com. of Pa v. Perry Irwin

BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
P. O. BOX 1
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION, :
Appellee :
vs. :
PERRY L. IRWIN, :
Appellant :
:

No. 2005-378-C0

NOTICE OF APPEAL FROM SUSPENSION
AS OFFICIAL SAFETY INSPECTOR/
MOTION FOR SUPERSEDEAS

NOW COMES, Perry Irwin, Appellant above named, and by his Attorneys, Belin & Kubista, files his appeal pursuant to 75 Pa.C.S.A. § 4726 (c) and avers as follows:

1. Appellant is the holder of Certification as an Official Safety Inspector and has his principal place of business at 104 Nichols Street, Clearfield, Clearfield County, Pennsylvania.
2. Appellant has received notification of a suspension from the Commonwealth of Pennsylvania Department of Transportation, said period of suspension being for two (2) months. A true and correct copy of the Order of Suspension is attached hereto, marked Exhibit "A" and incorporated herein by reference as if set forth at length.
3. Appellant believes and therefore avers that the suspension is improper in that there was not a faulty inspection of the vehicle as alleged by the Department of Transportation.

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FILED

MAR 17 2005

William A. Shaw
Prothonotary/Clerk of Courts

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CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION, :
Appellee :
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vs. : No. 2005-378-cd
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PERRY L. IRWIN, :
Appellant :
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MOTION FOR SUPERSEDEAS

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1. Appellant is the holder of Certification as an Official Safety Inspector and has his principal place of business at 104 Nichols Street, Clearfield, Clearfield County, Pennsylvania.
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3. Appellant believes and therefore avers that the suspension is improper in that there was not a faulty inspection of the vehicle as alleged by the Department of Transportation.

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4. Appellant accordingly files this Appeal pursuant to 75 Pa.C.S.A. § 2476 (c) and requests that the matter be scheduled for hearing in accordance therewith.
5. Appellant further requests that the Court grant an Order of Supersedeas to stay the above referenced suspension pending the outcome of this appeal for the following reasons:
 - a. Appellant believes that no faulty inspection took place as alleged, and that the evidence will show that the suspension was improper;
 - b. Appellant's business will be irretrievably harmed should his Certification as an Official Safety Inspector be suspended for two (2) months as a substantial portion of his business is the inspection of vehicles;
 - c. If any violation did occur, such violation was of a *de minimis* nature and does not warrant the sanction imposed by the Department.

WHEREFORE, Appellant requests that his Appeal be heard in accordance with the applicable statutes, and that the Court grant an Order of Supersedeas to stay the suspension at issue pending the outcome of this Appeal.

BELIN & KUBISTA



John R. Ryan
Attorney for Appellant



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG, PA 17104

Perry L. Irwin
Oper#18-266-591
104 Nichols Street
Clearfield, PA 16830
(Irwin Citgo-OIS#D-229)

Vehicle Inspection Division
P. O. Box 69003
Harrisburg PA 17106-9003
Phone: (717) 787-2895
MECHANIC #18-266-591
CERTIFIED MAIL: 7099 3400 0001 3558 0736
MAIL DATE: 02-17-05

ORDER OF SUSPENSION OF OFFICIAL SAFETY INSPECTOR

You are hereby notified that your certification as an Official Safety Inspector is suspended, pursuant to Section 4726 of the Vehicle Code. No vehicle safety inspections may be performed during the suspension. Pursuant to Departmental regulations, your certification as an Official Safety Inspector will be suspended for two (2) months for faulty inspection of equipment or parts (on a 1990 Pontiac Transport Van, Vin-1GMCU06D7LT211982).

The suspension(s) will run consecutively, for a total suspension of two (2) months. This suspension is to run consecutively with any other suspension(s) imposed by the Department for any violation considered separately.
THE SUSPENSION WILL BE EFFECTIVE 40 DAYS FROM THE MAIL DATE OF THIS ORDER.

At the end of the 40 days, you are ordered to surrender to the bearer of this notice, who is an authorized representative of the Department of Transportation, your Safety Inspector Certification Card. Upon the completion of your suspension, your inspector certification card will be returned to you.

You have the right to appeal this Departmental Order of Suspension to the Court of Common Pleas of the County in which the above referenced inspection station is located, **WITHIN THIRTY (30) DAYS OF THE MAIL DATE OF THIS ORDER**. If you do file an appeal, a signed and time-stamped copy of the appeal must be served upon the Department at the mailing address listed below. **FILING OF AN APPEAL DOES NOT AUTOMATICALLY STAY THE SUSPENSION.** In order for your privileges to be restored pending appeal, a signed Order of Supersedeas from the Court directing the Department to stay the suspension must be served upon the Department at the mailing address listed below.

MAILING ADDRESS:

Department of Transportation
Chief Counsel's Office
Riverfront Office Center
1101 S. Front Street, 3rd Floor
Harrisburg, PA 17104-2416

Sincerely,

Kurt J. Myers, Director
Bureau of Motor Vehicles

BELIN & KUBISTA
ATTORNEYS AT LAW
15 NORTH FRONT STREET
P. O. BOX 1
CLEARFIELD, PENNSYLVANIA 16830

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA : NO. 2005 - 378 - C.D.
DEPARTMENT OF TRANSPORTATION, :
Appellee : PRAECIPE TO WITHDRAW
VS. : APPEAL
PERRY L. IRWIN, : Filed on Behalf of:
Appellant : Appellant, PERRY L. IRWIN
: Counsel or Record for
This Party:
: JOHN R. RYAN, ESQUIRE
: PA I.D. #38739
: BELIN & KUBISTA
: 15 North Front Street
: P.O. Box 1
: Clearfield, PA 16830
: (814) 765-8972

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William A. Shaw
Prothonotary/Clerk of Courts
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:
DEPARTMENT OF TRANSPORTATION,	:
Appellee	:
vs.	:
	NO. 2005-378-C.D.
PERRY L. IRWIN,	:
Appellant	:

PRAECIPE TO WITHDRAW APPEAL

TO WILLIAM A. SHAW, PROTHONOTARY:

Please withdraw the appeal filed to the above-captioned matter on behalf of PERRY L. IRWIN.

BELIN & KUBISTA



John R. Ryan
Attorney for Appellant, PERRY L. IRWIN

BELIN & KUBISTA
ATTORNEYS AT LAW
16 NORTH FRONT STREET
P. O. BOX 1
CLEARFIELD, PENNSYLVANIA 16830
