

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

James R. Kurtz, d/b/a :  
ECM Automotive, :  
Appellant :  
v. : No. 1505 C.D. 2007  
Commonwealth of Pennsylvania, : SUBMITTED: February 1, 2008  
Department of Transportation, :  
Bureau of Motor Vehicles :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: June 23, 2008**

James R. Kurtz, doing business as ECM Automotive (collectively, Kurtz), appeals the order of the Court of Common Pleas of Lancaster County denying his appeal of the Department of Transportation’s (PennDOT) July 24, 2006, notice of suspension of his Certificate of Appointment as an Official Safety Inspection Station for a period of two months.

PennDOT’s July 24, 2006, notice addressed to Kurtz and ECM Automotive - OIS#AH-07, 166 Lancaster Avenue, Columbia, Pennsylvania, suspended Kurtz’s Certificate of Appointment for two months for “misstatement of fact” on the MV-427A application for inspection station certificate of appointment. More specifically, the notice references Kurtz’s failure to disclose past

administrative action<sup>1</sup> that in 1996 resulted in a permanent suspension of Kurtz's right to apply for certification as an official safety inspection station.

Kurtz appealed the two-month suspension to the trial court, which scheduled a hearing and granted a supersedeas as to "all proceedings relative to the suspension of Petitioner's Certificate of Appointment as an Official Safety Inspection Station" and ordered that "the Petitioner's Certificate of Appointment as an Official Safety Inspection Station is restored pending final disposition of this matter before the Court." (Trial Court Order dated August 28, 2006, Record Item 1.) In light of the supersedeas, PennDOT restored the station's Certificate of Appointment.

While the appeal of the two-month suspension was pending before the trial court, PennDOT, by notice dated October 3, 2006, re-imposed the 1996 permanent suspension of Kurtz's right to apply for certification, imposed for "numerous violations of receiving certificates of inspection without an inspection." (Petitioner's Hearing Exhibit 4.) No appeal was taken from this October 3, 2006, notice.

At the hearing before the trial court, counsel disagreed as to the scope of the hearing. PennDOT took the position that the trial court lacked jurisdiction to hear an appeal of the October 2006 notice re-imposing the 1996 permanent suspension. Kurtz took the position that when PennDOT determined that Kurtz made misstatements of fact in order to obtain a certificate of appointment, it could

---

<sup>1</sup> The past administrative action refers to PennDOT's suspension of Kurtz's right to apply for Certification as an Official Safety Inspection Station for the violation of receiving certificates of inspection without an inspection. (PennDOT's Notice of Suspension dated June 14, 1996, addressed to James Kurtz, ECM, 6<sup>th</sup> Street and Lancaster Avenue, Columbia, Pennsylvania. Record Item 3, attachment B.)

have re-imposed the 1996 permanent suspension, but because it imposed a two-month suspension of the Certificate of Appointment, it was collaterally estopped from re-imposing the 1996 permanent suspension. The trial court rejected Kurtz's collateral estoppel argument and agreed with PennDOT that Kurtz failed to appeal the October 2006 notice of suspension. Based on the evidence submitted, the trial judge denied Kurtz's appeal of the two-month suspension.

Kurtz now argues that the trial court erred 1) in concluding that it had no jurisdiction to address the sanction imposed on October 3, 2006; 2) in failing to apply the doctrines of res judicata, collateral estoppel, and/or equitable estoppel to PennDOT's re-imposition of the 1996 permanent suspension; 3) in concluding that Kurtz failed to rebut PennDOT's evidence of misstatement of fact; and 4) in rejecting Kurtz's theory of unreasonable delay between PennDOT's issuance of Kurtz's Certificate of Appointment and the notice of suspension for misstatement of fact.

We have reviewed the record in this matter, and these issues were raised and argued before the trial court and ably addressed in the opinion of the Honorable James P. Cullen of the Court of Common Pleas of Lancaster County. We now affirm on the basis of the trial court's opinion in *James R. Kurtz d/b/a ECM Automotive v. Department of Transportation*, No. CI-06-08166, filed on September 12, 2007.

---

**BONNIE BRIGANCE LEADBETTER,**  
President Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

James R. Kurtz, d/b/a	:	
ECM Automotive,	:	
Appellant	:	
	:	
v.	:	No. 1505 C.D. 2007
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Motor Vehicles	:	

**ORDER**

AND NOW, this 23rd day of June, 2008, the order of the Court of Common Pleas of Lancaster County in the above-captioned matter is hereby AFFIRMED.

---

**BONNIE BRIGANCE LEADBETTER,**  
President Judge