

May 6, 2019

Reference Number: 19-0007

Julius T. Oliver
Kingly Hand Car Wash & Wax, LLC
[REDACTED]
Youngstown, OH 44503

Dear Mr. Oliver:

Kingly Hand Car Wash & Wax, LLC (Kingly) appeals the Ohio Department of Transportation's (ODOT) removal of its Disadvantaged Business Enterprise (DBE) certification under the rules set forth at 49 C.F.R. Part 26 (the Regulation). After examining the full administrative record, we affirm the decertification, under §28.89(f)(1), on the basis of failure to cooperate and because the appeal states no ground for reversal. *See* §§ 28.87(f)(6) (decertification for failure to cooperate) 26.89(c) (specifying appeal requirements).

ODOT moved to decertify because Kingly failed to submit its annual affidavit and accompanying documents supporting the firm's size and gross receipts per §26.83(j). ODOT sent Kingly a Notice of Intent to Decertify Letter (NOI) on July 3, 2018, and offered Kingly the option of requesting an informal hearing, or providing a written response. According to the U.S. Post Office, Kingly received the NOI on July 11 but did not respond. ODOT issued a final decision to remove Kingly's certification on August 13, 2018 because Kingly failed to submit the annual affidavit or avail itself of any of the appeal options the agency offered. ODOT's decertification is consistent with the applicable substantive and procedural rules.

Kingly's appeal letter, in its entirety, states:

We are requesting an appeal based on the following:

The request for the renewal was sent to a non-working email address. As a result[,] we were unaware of the deadline in a timely manner.

Kingly Appeal (undated) at 1.

The appeal does not argue that the decertification was faulty or impermissible, nor does it explicitly request that the Department reverse ODOT's decision. The appeal simply states that ODOT sent the request for its annual affidavit to a nonworking email address. But the firm's obligation to file its annual affidavit exists independent of any notification or reminder from the

certifier. Further, the record shows that Kingly received written notice, by certified mail, of the proposed decertification on July 11, 2018. Accordingly, Kingly failed to comply with §26.83(j) and its appeal fails to state a claim upon which relief might be granted.

We affirm under §26.89(f)(1). Kingly's only remedy is to reapply for DBE certification after the applicable waiting period has passed.

This decision is administratively final and not subject to petitions for reconsideration.

Sincerely,

Marc D. Pentino
Lead Equal Opportunity Specialist
Disadvantaged Business Enterprise Division

cc: ODOT