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**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 77/15-45

**DON'S BODY REPAIR INC.
MICHAEL E. SMITH; DANIEL R.
ADAMS; SHELLEY MARIE SMITH
1937 West Lane
Stockton, CA 95205**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Automotive Repair Dealer No. 269812

Respondents.

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FINDINGS OF FACT

1. On or about April 6, 2015, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation No. 77/15-45 against Don's Body Repair Inc., Michael E. Smith; Daniel R. Adams; Shelley Marie Smith (Respondent) before the Director of Consumer Affairs. The Accusation is attached as Exhibit A and incorporated herein.

2. On or about August 1, 2012, the Bureau issued Automotive Repair Dealer No. 269812 to Respondent. The Automotive Repair Dealer expired on August 31, 2013, and has not been renewed.

3. On or about April 14, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 77/15-45, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136, is required to be reported and maintained with the Bureau. Respondent's address of record was and is:

1937 West Lane
Stockton, CA 95205.

The proof of service by mail is attached to Exhibit A, the Accusation and Accusation Packet incorporated herein.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. On or about April 20, 2015, the aforementioned documents were returned by the U.S. Postal Service marked "Unable to Deliver as addressed. Unable to Forward."

6. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 77/15-45.

8. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Director after having reviewed the proof of service dated April 14, 2015, signed by Tami Acshenbrenner in Exhibit A, and returned envelopes in Exhibit B finds Respondent is in default. The Director will take action without further hearing and, based on Accusation, No. 77/15-45, proof of service and on the Affidavit of Bureau Representative Julian Rodriquez, finds that the allegations in Accusation are true.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Dons Body Repair Inc., Michael E. Smith; Daniel R. Adams; Shelley Marie Smith has subjected its Automotive Repair Dealer No. 269812 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Automotive Repair Dealer based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Julian Rodriquez in this case.:

a. Business and Professions Code section 9884.7(a)(4) fraud for accepting, negotiating and depositing a check in the amount of \$8,593.73 from a vehicle owners' insurer for full payment of estimated repairs to the insured vehicle knowing Respondent would not and could not purchase parts and materials or perform the repairs listed on Respondent's repair estimate on the insured vehicles.

b. Business and Professions Code section 9884.7(a)(2) preparing a repair estimate without the vehicle's mileage and permitting the vehicle owner to sign the estimate.

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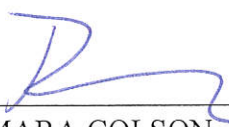
ORDER

IT IS ORDERED that Automotive Repair Dealer No. 269812, issued to Respondent Don's Body Repair Inc., Michael E. Smith; Daniel R. Adams; Shelley Marie Smith, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 22, 2016

It is so ORDERED March 29, 2016


TAMARA COLSON
Assistant General Counsel
Division of Legal Affairs
Department of Consumer Affairs

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DOJ Matter ID:SA2014115980

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation, Accusation Packet and Proof of Service by Mail

(DONS BODY REPAIR INC., MICHAEL E. SMITH; DANIEL R. ADAMS; SHELLEY MARIE SMITH)

1 KAMALA D. HARRIS
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2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
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Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 77/15-45

13 **DON'S BODY REPAIR INC.**
14 **MICHAEL E. SMITH, Pr.**
15 **DANIEL R. ADAMS, Sec.**
16 **SHELLEY MARIE SMITH, Tr.**
17 **1937 West Lane**
18 **Stockton, CA 95205**

ACCUSATION

19 **Automotive Repair Dealer No. ARD 269812**

20 Respondents.

21 Patrick Dorais ("Complainant") alleges:

22 **PARTIES**

23 1. Complainant brings this Accusation solely in his official capacity as the Chief of the
24 Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

25 2. On or about August 1, 2012, the Bureau issued Automotive Repair Dealer Number
26 ARD 269812 to Don's Body Repair Inc. ("Respondent") Michael E. Smith (Smith) President,
27 Daniel R. Adams Secretary, and Shelley Marie Smith, Treasurer. The registration expired on
28 August 31, 2013, and has not been renewed.

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1 6. On or about June 13, 2013, the consumer's insurance company, State Farm
2 Insurance Company ("State Farm"), inspected the vehicle and prepared a written estimate of the
3 damage and cost to repair the vehicle that totaling \$8,593.73 (less a \$500 deductible).

4 7. On or about June 17, 2013, State Farm issued a check payable to Respondent in
5 the amount of \$8,593.73 for repairs to the consumer's vehicle.

6 8. Between June 13, 2013, and August 15, 2013, there were several unsuccessful
7 attempts by or on behalf of the consumer to contact Respondent by telephone and site visits to
8 inquire about the status of the consumer's vehicle.

9 9. On or about August 15, 2013, the consumer filed a complaint about Respondent
10 with the Bureau.

11 10. Between August 23, 2013, and September 3, 2013, a Bureau representative made
12 several unsuccessful attempts to contact Respondent regarding the consumer's complaint and
13 vehicle status.

14 11. On or about September 4, 2013 while on a site visit, a Bureau representative
15 finally made contact with Smith. Smith represented to the Bureau's representative that the
16 Internal Revenue Service had seized Respondent's business financial accounts, which prevented
17 or interfered with Respondent meeting their business obligations. Consequently, Respondent had
18 ceased operations and closed the business. Smith admitted depositing State Farm's check issued
19 for repairs to the consumer's vehicle and failing to perform the repairs or purchase parts described
20 in Respondent's estimate and State Farm's estimate.

21 12. On or about September 5, 2013, the consumer's vehicle was towed from
22 Respondent's facility to All Foreign and Domestic Body Shop ("All Foreign"). All Foreign
23 estimated the total cost of repairs to the consumer's vehicle would be \$9,093.73.

24 13. On or about November 7, 2013, JN paid All Foreign \$9,093.73 for the repairs to
25 JN's vehicle.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 14. Paragraphs 5 through 13 are incorporated herein as though set forth at length.
4 Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that
5 Respondent committed fraud by accepting payment of \$8,593.73 from State Farm for or on behalf
6 of JN for the repairs and/or services described, listed and promised in Respondent's and State
7 Farm's written estimates but failed to perform any of the repairs or services.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Provisions of the Automotive Repair Act)**

10 15. Respondent's registration is subject to discipline pursuant to Code section
11 9884.7(a)(2), in that on or about June 12, 2013, Respondent presented and thereafter allowed the
12 repair estimate to be signed on behalf of JN without the vehicle's odometer reading on the
13 estimate.

14 **OTHER MATTERS**

15 16. Pursuant to Code section 9884.7(c), the director may suspend or revoke the
16 registrations, licenses, and certificates for all places of business operated in this state by Don's
17 Body Repair Inc., upon a finding that it has, or is, engaged in a course of repeated and willful
18 violations of the laws and regulations pertaining to an automotive repair dealer.

19 **PRAYER**

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision;

22 1. Revoking, suspending or placing on probation Automotive Repair Dealer
23 Registration Number ARD 269812, issued to Don's Auto Body Repair Inc.;

24 2. Revoking, suspending or placing on probation any other automotive repair dealer
25 registration issued to Don's Auto Body Repair Inc.;

26 3. Ordering Don's Auto Body Repair Inc. to pay the Director of Consumer Affairs
27 the reasonable costs of the investigation and enforcement of this case, pursuant to Code section
28 125.3; and,

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4. Taking such other and further action as deemed necessary and proper.

DATED: April 6, 2015

Patrick Dorais
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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