

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

In the Matter of the Statement of Issues
Against:

**4 LESS SMOG CHECK STAR STATION
DARYA TARAN, Owner**

Case No. AI201216598A /
79/13-37S

OAH No. 2013020678

Respondent.

DECISION AFTER NONADOPTION

Administrative Law Judge Regina J. Brown, Office of Administrative Hearings, State of California, heard this matter on April 9, 2013, in Oakland, California.

Gregory Tuss, Deputy Attorney General, represented complainant John Wallauch, Chief of the Bureau of Automotive Repair.

Respondent Darya Taran represented herself.

The matter was submitted for decision on April 9, 2013. On April 16, 2013, the record was reopened following receipt of an ex parte communication (a letter) from respondent. Pursuant to Government Code section 11430.50, the ex parte communication was disclosed to counsel for complainant by letter dated April 17, 2013, and he was given 10 days from receipt of the letter to respond. A copy of the ex parte communication was marked as Exhibit F for identification and the letter to complainant's counsel was marked as Exhibit G for identification. Both exhibits were made a part of the record. No response was received from complainant's counsel. The matter was deemed submitted on April 29, 2013.

The proposed decision of the Administrative Law Judge was submitted to the Director on May 23, 2013. After due consideration thereof, the Director declined to adopt said proposed decision and thereafter on July 3, 2013 issued an Order of Non-adoption and subsequently on August 8, 2013 issued an Order Fixing Date for Submission of Argument. Written argument having been received from both parties and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Director of the Department of Consumer

Affairs pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. Complainant John Wallauch filed the Statement of Issues in his official capacity as Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

Citation against Sebastopol Smog Check

2. On October 27, 2009, the Bureau issued Automotive Repair Dealer Registration Number ARD259791 to respondent Darya Taran as owner of Sebastopol Smog Check. The status of this license was not established.

3. On August 1, 2011, the Bureau issued citation number C2012-0097 to respondent, for a violation of Health and Safety Code section 44012, subdivision (f), by issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air injection reactor system. Karlos Mardirous was the licensed technician who performed the smog inspection and issued the certificate of compliance. A civil penalty of \$1,000 was assessed.

4. On August 5, 2011, the Bureau sent a letter to the business address of Sebastopol Smog Check requesting that respondent attend a citation conference on August 22, 2011. When respondent did not appear at the citation conference, the Bureau sent another letter requesting her attendance at a citation conference on August 29, 2011.

On August 29, 2011, Mardirous attended the citation conference regarding citation number M2012-0098 issued against his license, for the smog check performed on the same undercover vehicle. Respondent did not appear at the citation conference.

5. On October 8, 2011, on a Bureau form, respondent changed the name of the business from Sebastopol Smog Check to 4 Less Smog Check. Respondent also changed the physical address to 3925 South El Camino Real, San Mateo, California, and the mailing address to 135-H Seminary Drive, Mill Valley, California.

6. On November 23, 2011, the bureau sent a copy of citation number C2012-0097, and a request for payment of the civil penalty, to respondent's new mailing address in Mill Valley. Respondent paid the \$1,000 civil penalty on November 29, 2011.

4 Less Smog Check Star Station Application

7. On September 19, 2012, the Bureau received an Application for Smog Check Station License Test-Only from respondent for 4 Less Smog Check Star Station. Respondent certified under penalty of perjury that each statement she made on the application was true and correct.

Question 9(b) of the application asks:

Has any person listed in number 8 been an Owner, Partner, Corporate Officer, Member, Director, Trustee or Responsible Managing Employee of a Sole Proprietorship, Partnership, Corporation, Limited Liability Company or Limited Partnership that had an automotive repair dealer registration, smog check station license, lamp and/or brake station license, gold shield certification issued by the [Bureau] denied, suspended, revoked, placed on probation or been issued a citation?

Respondent answered "No" to Question 9(b). Respondent's answer was false, as she had been issued a citation as set forth in Finding 3.

8. On September 19, 2012, the Bureau also received an Application for Automotive Repair Dealer Registration from respondent. Respondent certified under penalty of perjury that each statement she made on the application was true and correct.

Question 8(b) of that application asks:

Has any person listed in number 7 ever been an Owner, Partner, Corporate Officer, Member, Director, Trustee or Responsible Managing Employee of a Sole Proprietorship, Partnership, Corporation, Limited Liability Company or Limited Partnership that had an automotive repair dealer registration, smog check station license, lamp and/or brake station license, gold shield certification issued by the [Bureau] denied, suspended, revoked, placed on probation or been issued a citation?

Respondent answered "No" to Question 8(b). Respondent's answer was false, as she had been issued a citation as set forth in Finding 3.

9. On October 11, 2012, the Bureau denied respondent's applications. The denial letter stated that respondent was not forthright in her applications. Respondent filed a Notice of Defense and requested a hearing.

Respondent's Evidence

10. Respondent stated that she did not attend the citation conferences because she did not receive the letters, and the manager of Sebastopol Smog Check did not inform her about the letters or the citation conferences. When she received notification of the citation in November 2011, she paid the civil penalty.

11. On September 5, 2012, respondent also filed an application with the Bureau for a STAR station certification which allows a station to test and repair vehicles that have failed smog checks. On the STAR application, respondent disclosed that a technician from 4 Less Smog Check had been issued a citation in August 2011. She filed the STAR application at the same time that she filed the applications at issue. The STAR application specifically asks whether a technician has received a citation.

12. English is not respondent's first language. Respondent testified that she did not understand that the citation applied to her as the owner of the business, and that she had to disclose it on the applications. She also stated that she believed the citation had been issued against the technician only, and she had him reimburse her for the civil penalty she paid. Respondent stated that she answered truthfully when she completed the applications, and neither application specifically asked whether a technician had received a citation, which she would have disclosed as she did on the STAR application. Respondent further stated that she did not intend to misrepresent any information on the applications, and she was "not trying to hide any facts." Respondent was sincere and credible in her testimony.

LEGAL CONCLUSIONS

First Cause for Denial of Automotive Repair Dealer Registration Application

1. Pursuant to Business and Professions Code section 480, subdivision (c),¹ a board may deny an application for licensure if the applicant knowingly makes a false statement of fact required to be revealed on the application. Respondent did not knowingly fail to disclose that she had been issued a prior citation.

2. There is no cause to deny respondent's application for automotive repair dealer registration pursuant to section 480, subdivision (c).

Second Cause for Denial of Automotive Repair Dealer Registration Application

3. Pursuant to section 9889.2, subdivision (c), licensure may be denied when an applicant has committed any act which if committed by a licensee would be grounds for the suspension or revocation of a license.

4. Pursuant to section 9889.3, subdivision (e), the director may suspend, revoke or take other disciplinary action against a licensee who has misrepresented a material fact in obtaining a license.

¹ All statutory references are to Business and Professions Code, unless otherwise noted.

5. Cause exists to deny respondent's application pursuant to section 9889.3, subdivision (e), as it interacts with section 9889.2, subdivision (c), by reason of the matters set forth in Findings 3, 7, and 8.

Cause for Denial of Smog Check Station License Application

6. Pursuant to Health and Safety Code section 44072.1, subdivision (c), licensure may be denied when an applicant has committed any act that, if committed by a licensee, would be grounds for suspension or revocation of a license.

7. Pursuant to Health and Safety Code section 44072.2, subdivision (e), the director may suspend, revoke, or take other disciplinary action against a licensee who has misrepresented a material fact in obtaining a license.

8. Cause exists to deny respondent's application pursuant to Health and Safety Code section 44072.1, subdivision (c), as it interacts with Health and Safety Code section 44072.2, subdivision (e), by reason of the matters set forth in Findings 3, 7, and 8.

Other Considerations

9. Respondent has received one citation that she failed to disclose on her applications for licensure. However, respondent established that she mistakenly failed to disclose the citation on her applications. She disclosed the citation on the STAR application, and but for her limited understanding of the English language, she would have disclosed the citation on the applications at issue also. All things considered, it is determined that the public interest would be sufficiently protected by the issuance of probationary licenses pursuant to appropriate terms and conditions.

ORDER

1. Smog Check, Test Only, Station License will be issued to Darya Taran and immediately revoked. The revocation will be stayed and the Respondent will be placed on probation for a period of two (2) years on the following terms and conditions:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.
- b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

- c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.
- d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- e. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed.

2. Automotive Repair Dealer Registration will be issued to Darya Taran and immediately revoked. The revocation will be stayed and the Respondent will be placed on probation for a period of two (2) years on the following terms and conditions:

- a. Comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.
- b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.


- d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and

including the point of completion.

- e. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed.

This Decision shall become effective DEC 02 2013.

IT IS SO ORDERED this 31st day of October, 2013.



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
12 Against:

Case Number 79/13-37S

13 **4 LESS SMOG CHECK STAR STATION**

STATEMENT OF ISSUES

14 **DARYA TARAN, Owner**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Complainant John Wallauch brings this Statement of Issues solely in his official
20 capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer
21 Affairs.

22 2. On or about September 19, 2012, the Bureau received an application for an
23 automotive dealer registration from respondent Darya Taran for 4 Less Smog Check Star Station
24 (4 Less). On or about September 4, 2012, respondent certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Bureau denied
26 respondent's automotive dealer registration application on or about October 11, 2012.

27 3. On or about September 19, 2012, the Bureau received an application for a smog
28 check station license from respondent for 4 Less. On or about September 4, 2012, respondent

1 certified under penalty of perjury to the truthfulness of all statements, answers, and
2 representations in the application. The Bureau denied respondent's smog check station license
3 application on or about October 11, 2012.

4 JURISDICTION

5 4. This Statement of Issues is brought before the Director of Consumer Affairs for the
6 Bureau of Automotive Repair under the authority of the following laws. All section references
7 are to the Business and Professions Code unless otherwise indicated.

8 5. Section 9882, subdivision (a), provides:

9 "There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the
10 supervision and control of the director. The duty of enforcing and administering this chapter is
11 vested in the chief who is responsible to the director. The director may adopt and enforce those
12 rules and regulations that he or she determines are reasonably necessary to carry out the purposes
13 of this chapter and declaring the policy of the bureau, including a system for the issuance of
14 citations for violations of this chapter as specified in Section 125.9. These rules and regulations
15 shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
16 3 of Title 2 of the Government Code."

17 6. Section 9882.5 provides:

18 "The director shall on his or her own initiative or in response to complaints, investigate on a
19 continuous basis and gather evidence of violations of this chapter and of any regulation adopted
20 pursuant to this chapter, by any automotive repair dealer or automotive technician, whether
21 registered or not, and by any employee, partner, officer, or member of any automotive repair
22 dealer. The director shall establish procedures for accepting complaints from the public against
23 any dealer or automotive technician. The director may suggest measures that, in the director's
24 judgment, would compensate for any damages suffered as a result of an alleged violation. If the
25 dealer accepts the suggestions and performs accordingly, such fact shall be given due
26 consideration in any subsequent disciplinary proceeding."

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1 7. Section 9884, subdivision (a), provides:

2 "An automotive repair dealer shall pay the fee required by this chapter for each place of
3 business operated by the dealer in this state and shall register with the director upon forms
4 prescribed by the director. The forms shall contain sufficient information to identify the
5 automotive repair dealer, including name, address of each location, a statement by the dealer that
6 each location is in an area that, pursuant to local zoning ordinances, permits the operation of a
7 facility for the repair of motor vehicles, the dealer's retail seller's permit number, if a permit is
8 required under the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2,
9 Revenue and Taxation Code), and other identifying data that are prescribed by the director. If the
10 business is to be carried on under a fictitious name, the fictitious name shall be stated. To the
11 extent prescribed by the director, an automotive repair dealer shall identify the owners, directors,
12 officers, partners, members, trustees, managers, and any other persons who directly or indirectly
13 control or conduct the business. The forms shall include a statement signed by the dealer under
14 penalty of perjury that the information provided is true."

15 8. Section 9884.22 provides, in pertinent part:

16 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny
17 at any time any registration required by this article on any of the grounds for disciplinary action
18 provided in this article. The proceedings under this article shall be conducted in accordance with
19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
20 Code, and the director shall have all the powers granted therein.

21 "(b) The director may deny a registration to an applicant on any of the grounds specified in
22 Section 480."

23 9. Section 9889.1 provides:

24 "Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the
25 director. The director may refuse to issue a license to any applicant for the reasons set forth in
26 Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter
27 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
28 and the director shall have all the powers granted therein."

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1 “(c) Has committed any act which, if committed by any licensee, would be grounds for the
2 suspension or revocation of a license issued pursuant to this chapter.”

3 14. Section 9889.3 provides, in pertinent part:

4 “The director may suspend, revoke, or take other disciplinary action against a license as
5 provided in this article if the licensee or any partner, officer, or director thereof:

6 ...

7 “(e) Has misrepresented a material fact in obtaining a license.”

8 15. Health and Safety Code section 44072.1 provides, in pertinent part:

9 “The director may deny a license if the applicant, or any partner, officer, or director thereof,
10 does any of the following:

11 ...

12 “(c) Has committed any act that, if committed by any licensee, would be grounds for the
13 suspension or revocation of a license issued pursuant to this chapter.”

14 16. Health and Safety Code section 44072.2 provides, in pertinent part:

15 “The director may suspend, revoke, or take other disciplinary action against a license as
16 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the
17 following:

18 ...

19 “(e) Has misrepresented a material fact in obtaining a license.”

20 FACTUAL BACKGROUND

21 17. On or about August 1, 2011, the Bureau issued Citation Number C2012-0097 to
22 respondent, as owner of Sebastopol Smog Check, for violating Health and Safety Code section
23 44012, subdivision (f), by issuing a certificate of compliance to a Bureau undercover vehicle with
24 a missing pulse air injection reactor system. Respondent paid the citation on or about November
25 29, 2011.

26 18. On or about September 4, 2012, respondent submitted applications for an automotive
27 dealer registration and a smog check station license for 4 Less. Both applications listed
28 respondent as the owner of 4 Less and were signed by respondent under penalty of perjury.

1 19. Question 8 b) of the automotive dealer registration application asks: "Has any person
2 listed [on this application] ever been an Owner, Partner, Corporate Officer, Member, Director,
3 Trustee or Responsible Managing Employee of a Sole Proprietorship, Partnership, Corporation,
4 Limited Liability Company or Limited Partnership that had an automotive repair dealer
5 registration, smog check station license, lamp and/or brake station license, gold shield
6 certification issued by the Bureau of Automotive Repair (BAR) denied, suspended, revoked,
7 placed on probation or been issued a citation?" Respondent answered "No" to that question.

8 20. Question 9 b) of the smog check station license application asks: "Has any person
9 listed [on this application] ever been an Owner, Partner, Corporate Officer, Member, Director,
10 Trustee or Responsible Managing Employee of a Sole Proprietorship, Partnership, Corporation,
11 Limited Liability Company or Limited Partnership that had an automotive repair dealer
12 registration, smog check station license, lamp and/or brake station license, gold shield
13 certification issued by the Bureau of Automotive Repair (BAR) denied, suspended, revoked,
14 placed on probation or been issued a citation?" Respondent also answered "No" to that question.

15 CAUSES FOR DENIAL OF APPLICATIONS

16 **FIRST CAUSE FOR DENIAL OF** 17 **AUTOMOTIVE DEALER REGISTRATION APPLICATION** 18 **Knowingly Making a False Statement on Application** 19 **Bus. & Prof. Code, §480, subd. (c)**

20 21. The allegations of paragraphs 2 and 17-19 are realleged and incorporated by reference
21 as if fully set forth.

22 22. Respondent's automotive dealer registration application for 4 Less is subject to denial
23 under section 480, subdivision (c), for knowingly making a false statement on the application. As
24 set forth in paragraphs 2 and 17-19 above, respondent stated on the automotive dealer registration
25 application that she had never been a part of a business which had been issued a citation by the
26 Bureau. In fact, respondent owned Sebastopol Smog Check when it was cited by the Bureau for
27 violating Health and Safety Code section 44012, subdivision (f).

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2 **SECOND CAUSE FOR DENIAL OF**
3 **AUTOMOTIVE DEALER REGISTRATION APPLICATION**
4 **Misrepresenting a Material Fact in Obtaining a License**
5 **Bus. & Prof. Code, §§ 9889.2, subd. (c), 9889.3, subd. (e)**

6 23. The allegations of paragraphs 2 and 17-19 are realleged and incorporated by reference
7 as if fully set forth.

8 24. Respondent's automotive dealer registration application for 4 Less is subject to denial
9 under Business and Professions Code sections 9889.2, subdivision (c), and 9889.3, subdivision
10 (e), for misrepresenting a material fact in obtaining a license. As set forth in paragraphs 2, and
11 17-19 above, respondent stated on the automotive dealer registration application that she had
12 never been a part of a business which had been issued a citation by the Bureau. In fact,
13 respondent owned Sebastopol Smog Check when it was cited by the Bureau for violating Health
14 and Safety Code section 44012, subdivision (f).

15 **CAUSE FOR DENIAL OF SMOG CHECK STATION LICENSE APPLICATION**
16 **Misrepresenting a Material Fact in Obtaining a License**
17 **Health & Saf. Code, §§ 44072.1, subd. (c), 44072.2, subd. (e)**

18 25. The allegations of paragraphs 3, 17-18, and 20 are realleged and incorporated by
19 reference as if fully set forth.

20 26. Respondent's smog check station license application for 4 Less is subject to denial
21 under Health and Safety Code sections 44072.1, subdivision (c), and 44072.2, subdivision (e), for
22 misrepresenting a material fact in obtaining a license. As set forth in paragraphs 3, 17-18, and 20
23 above, respondent stated on the smog check station license application that she had never been a
24 part of a business which had been issued a citation by the Bureau. In fact, respondent owned
25 Sebastopol Smog Check when it was cited by the Bureau for violating Health and Safety Code
26 section 44012, subdivision (f).

27 **PRAYER**

28 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
Statement of Issues and that following the hearing, the Director of Consumer Affairs issue a
decision:

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- 1 1. Denying the application of respondent Darya Taran for an automotive dealer
2 registration;
3 2. Denying the application of respondent Darya Taran for a smog check station license;
4 and
5 3. Taking such other and further action as deemed necessary and proper.

6 DATED: January 2, 2013 John Wallauch by Song Balatti
7 JOHN WALLAUCH
8 Chief
9 Bureau of Automotive Repair
10 Department of Consumer Affairs
11 State of California
12 Complainant

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