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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: **SKEETERS AUTO;** **BRENDA KAYCEE HOWELL,** **AKA BRENDA KAY NIMOTA, OWNER** **1943 Deere Avenue** **Santa Ana, CA 92705-5715** **Automotive Repair Dealer Registration No. ARD 192102** Respondent.	Case No. 77/12-1 **ACCUSATION**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On a date uncertain in 1996, the Bureau issued Automotive Repair Dealer Registration Number ARD 192102 ("Registration") to Brenda Kaycee Howell, also known as Brenda Kay Nimota, owner of Skeeters Auto ("Respondent"). The Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

JURISDICTION

3. This Accusation is brought before the Director for the Bureau under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 9884.13 of the "Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

6. Section 9884.20 of the Code states:

"All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation."

STATUTORY PROVISIONS

7. Section 22 of the Code states:

"(a) 'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a 'bureau.'"

8. Section 477 of the Code states:

As used in this division:

"(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) 'License' includes certificate, registration or other means to engage in a business or profession regulated by this code."

9. Section 9884.7 of the Code states:

"(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

"(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

"(2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

". . .

"(4) Any other conduct that constitutes fraud.

". . .

"(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

"(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

"(8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of automobiles.

". . .

"(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

"(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it."

10. Section 9884.8 of the Code states:

"All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer."

11. Section 9884.9 of the Code states:

"(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided

by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

"(1) Make a notation on the invoice of the same facts set forth in the notation on the work order .

"(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

_____

"(signature or initials)"

"Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

". . .

"(c) In addition to subdivisions (a) and (b), an automotive repair dealer, when doing auto body or collision repairs, shall provide an itemized written estimate for all parts and labor to the customer. The estimate shall describe labor and parts separately and shall identify each part, indicating whether the replacement part is new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written estimate and the written estimate shall indicate whether the crash part is an original equipment manufacturer crash part or a nonoriginal equipment manufacturer aftermarket crash part.

". . . ."

12. Section 9884.11 of the Code states that "[e]ach automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter [the

Automotive Repair Act]. Those records shall be open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years."

13. Section 9889.9 of the Code states that "[w]hen any license has been revoked or suspended following a hearing under the provisions of [Article 7 of the Automotive Repair Act], any additional license issued under Articles 5 and 6 . . . in the name of the licensee may be likewise revoked or suspended by the director."

COSTS

14. Section 125.3 of the Code provides, in pertinent part, that the Director may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONSUMER COMPLAINT – 2002 NISSAN ALTIMA (MURRAY)

15. On or about February 18, 2011, Janet Murray ("Consumer") took her 2002 Nissan Altima to Respondent's facility, Skeeter's Auto, to repair the damage to her car sustained in a collision. When the Consumer left her car at Respondent's facility, the Consumer also asked to have the engine oil and filter replaced and to replace the rear shock absorbers. Respondent had the Consumer sign a document, but did not provide the Consumer with a copy of the signed document. On or about March 1, 2011, the Consumer received from State Farm Insurance Company a check for $5,113.07 and a repair estimate, ID: 75-7170-86802. The Consumer got a cashier's check from her credit union in the amount of $4,513.00 made payable to Respondent.

16. On or about March 4, 2011, the Consumer gave Respondent this cashier's check. Respondent told the Consumer she would repair the collision damage per the State Farm repair estimate. The Consumer planned to pay Respondent the remaining $600.00 when the repairs were completed.

17. In late March 2011, when the Consumer spoke with Respondent about the status of the repairs, Respondent told her they were not yet completed. On or about March 31, 2011, the Consumer returned to Respondent's facility and demanded that Respondent return the car to her.

The Consumer saw that the trunk lid would not close properly. Respondent told the Consumer she would have a separate auto body shop repair the trunk lid.

18. On or about April 6, 2011, Respondent informed the Consumer that the car was ready to be picked up. The Consumer went to Respondent's facility and Respondent gave the Consumer a repair order, number 09308. This repair order did not have a detailed description of the repairs Respondent performed. After the Consumer got her car from Respondent's facility, she noticed the rear spoiler on the trunk lid was loose and the top rear taillight lenses were red instead of yellow.

19. On or about April 11, 2011, the Consumer filed a complaint with the Bureau. On or about June 2, 2011, Bureau representatives inspected and photographed the Consumer's car, referencing State Farm's estimate and related documents from State Farm. The Consumer told the Bureau representatives that the trunk lid was not water-tight, the trunk opened spontaneously while driving on the freeway, the rear spoiler was loose, and the top rear taillight lenses were red instead of yellow. The Bureau representatives' inspection revealed that the following parts were not provided and labor not done by Respondent, totaling $1,190.86 of the State Farm estimate:

a. The luggage lid was not replaced or the underside refinished;

b. Both luggage lid hinges were not replaced or refinished;

c. The upper rear body trim panel insert was not replaced;

d. The right rear frame rail was not repaired;

e. The rear window was not roped; and

f. The rear floor pan was not repair and refinished;

20. The representatives' inspection identified willful departure from accepted trade standards for good and workmanlike repair for the installation of the following, totaling $697.20 for labor:

a: Both rear quarter corner panels;

b: The rear body panel;

c: The rear bumper;

d: The spoiler; and

e: The left rear taillight assembly.

21. On or about July 8, 2011, the Bureau representatives spoke with Respondent. She told them she sublet some of the repairs to an individual named Patrick Shane, and also an automobile repair dealer called Lauto Body. Later, the representatives spoke with Patrick Shane and employees at Lauto Body, and they learned that Respondent had instructed both Patrick Shane and Lauto Body to do less work and fewer repairs on the Consumer's car than those called for in the State Farm estimate.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

22. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(1), in that between February and April 2011, Respondent made statements which Respondent knew or which by exercise of reasonable care should have known were untrue or misleading, by representing to the Consumer that the Consumer's car had been repaired consistent with the repair estimate. In fact, Respondent failed to repair the vehicle pursuant to the repair estimate, as more particularly set forth in paragraph 19, subparagraphs a through f, above.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

23. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4), in that between February and April 2011, Respondent committed acts which constitute fraud by accepting payment of $4,513.00 from the Consumer for replacement of parts and the performance of labor when, in fact, Respondent failed to perform repairs including labor in the amount of $1,190.86, as more particularly set forth in paragraph 19, subparagraphs a through f, above.

THIRD CAUSE FOR DISCIPLINE

(Departure from Accepted Trade Standards)

24. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(7), in that between February and April 2011, Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair in a material respect when Respondent performed substandard installation of both rear quarter corner panels, rear body panel, rear

bumper, spoiler, and rear taillight assembly as more particularly described above in paragraph 20, subparagraph a through e, totaling $697.20 in labor.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Code)

25. Respondent is subject to disciplinary action under Code section 9884.7, subdivision (a)(6), in that between February and April 2011, Respondent failed to comply with the Code sections 9884.8 and 9884.9, subdivisions (a) and (c), in that Respondent's repair order 09308 includes the statements "oil change," "rear shocks," and "rear trunk lights-light Bumper Body Work," but does not include a description of the parts to be provided or the work to be performed; a separate itemization of all parts and labor; identification of each part indicating whether the replacement part is new, used, rebuilt, or reconditioned; indication of whether the crash parts were original equipment manufacturer crash parts or non-original equipment manufacturer aftermarket crash parts; identification of the oil filter, synthetic blend oil, or rear shock absorbers as new, used, rebuilt, or reconditioned; identification of parts supplied for the collision damage repairs; and the subtotal prices for parts supplied.

26. Respondent failed to comply with Code section 9884.11 in that Respondent failed to provide parts purchase invoices for the right and left rear quarter corner panels, the luggage lid, both luggage lid hinges, luggage lid adhesive name plates, rear body panel, and the upper rear body trim panel insert.

UNDERCOVER OPERATION – NOVEMBER 7, 2011

27. On or about November 7, 2011, a Bureau undercover operator drove a Bureau documented 2001 Toyota Corolla to Respondent's facility for repairs. The only repairs necessary were replacement of the front brake pads and an engine oil and filter change. The operator spoke with Respondent and asked her to check the brakes and replace the engine oil and filter. The operator left the car at Respondent's facility and left. Later, Respondent called the operator and told her that the brake pads need to be replaced, the car needed a fuel injection cleaning, and that the brake rotors needed to be resurfaced. Respondent told the operator the fuel injection cleaning would give the car better gas mileage. Respondent told the operator these repairs would cost

$267.00 for labor and $124.00 for parts, for a total bill of $402.61. The operator authorized the repairs.

28. About two hours later, Respondent called the operator and told her the car was ready to be picked up and the operator returned to Respondent's facility. After paying for the repairs, the operator asked Respondent why the brake rotors needed to be resurfaced. Respondent replied that they "machine 1/8th of an inch off of the rotor and make them smooth." She asked Respondent why the car needed a fuel injection cleaning and Respondent answered it would "get better gas mileage." The operator then drove the car out of Respondent's facility and gave custody of it to a Bureau representative.

29. Afterwards, the Bureau reinspected the vehicle. That inspection revealed that the two front brake rotors were machined unnecessarily and that the fuel injection cleaning was unnecessary. These vehicle components were in good serviceable condition and not in need of service or repair.

FIFTH CAUSE FOR DISCIPLINE

(Misleading Statements)

30. Respondent is subject to disciplinary action under Code section 9884.7, subdivision (a)(1), in that on November 7, 2011, Respondent made statements which Respondent knew or by exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent told the operator that the brake rotors needed to be resurfaced. In fact, the brake rotor repair was unnecessary because the rotors were in good serviceable condition and not in need of service or repair; and

b. Respondent told the operator that the car needed a fuel injection cleaning. In fact, the fuel injection cleaning was unnecessary because the fuel injection system was in good serviceable condition and not in need of service or repair.

SIXTH CAUSE FOR DISCIPLINE

(Fraud)

31. Respondent is subject to disciplinary action under Code section 9884.7, subdivision (a)(4), in that on November 7, 2011, Respondent committed acts which constitute fraud by

accepting payment from the operator for repairs and/or services she performed needlessly. In fact, the only repairs necessary were replacement of the front brake pads and an engine oil and filter change.

SEVENTH CAUSE FOR DISCIPLINE

(False Promise)

32. Respondent is subject to disciplinary action under Code section 9884.7, subdivision (a)(8), in that on November 7, 2011, Respondent made a false promise of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of an automobile in that Respondent told the operator that the brake rotors needed to be resurfaced and that Respondent would machine 1/8th of an inch off of the rotor and make them smooth, when in fact, the brake rotor repair was unnecessary because the rotors were in good serviceable condition and not in need of service or repair. Respondent also told the operator that the car needed a fuel injection cleaning and that it would give the car better gas mileage, when in fact, the fuel injection cleaning was unnecessary because the fuel injection system was in good serviceable condition and not in need of service or repair.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Comply with Code)

33. Respondent is subject to disciplinary action under Code section 9884.7, subdivision (a)(6), in that on November 7, 2011, Respondent failed to comply with Code sections 9884.7, subdivision (a)(2), 9884.8, and 9884.9, subdivision (a), in that the estimate listed an "oil change," a check mark next to an illegible word, and a check mark next to the word, "brakes," but did not include a description of a specific job to be performed; an estimate price for the $2.00 disposal fee charge; or the odometer reading.

34. Additionally, the invoice did not include Respondent's Environmental Protection Agency number while charging a $2.00 waste fee; the date, time, and repairs to be performed for the additional authorization for the $402.61 charge; a description of diagnostic and service work performed for the brake work and fuel injection service; or a description of the parts supplied and the price for each described part.

OTHER MATTERS

35. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Respondent upon a finding that Respondent has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 192102, issued to Brenda Kaycee Howell, also known as Brenda Kay Nimota, owner of Skeeters Auto;

2. Ordering Brenda Kaycee Howell, also known as Brenda Kay Nimota, owner of Skeeters Auto, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: July 3, 2012

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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