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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 Accusation Against:

Case No. 77/06-75

12 **RICHARD T. MARTINEZ**
13 **DOING BUSINESS AS**
14 **TIMS AUTO BODY**
4200 24th Street
Sacramento, California 95822

A C C U S A T I O N

15 Automotive Repair Dealer Registration
No. AE 227961

Respondent.

18 Dennis Kenneally ("Complainant") alleges:

19 **PARTIES**

- 20 1. Complainant brings this Accusation solely in his official capacity as the
21 Assistant Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
- 22 2. On or about July 1, 2003, the Bureau of Automotive Repair issued
23 Automotive Repair Dealer Registration Number AE 227961 ("registration") to Richard T.
24 Martinez ("Respondent"), doing business as Tims Auto Body. The registration was delinquent
25 from May 31, 2004, to November 10, 2004, and from May 31, 2005, to August 19, 2005. The
26 registration was delinquent from May 31, 2006, to July 20, 2006. The registration will expire on
27 May 31, 2007, unless renewed.

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1 however, Bertoluccis could not align the vehicle because the right front steering knuckle was
2 bent. That steering knuckle was part of the original estimate of repairs that were to have been
3 performed by Respondent and that had been paid for by the consumer.

4 9. On or about January 6, 2005, the Bureau went to Respondent's facility to
5 discuss the consumer's complaint. The Bureau requested the part receipt for the right front
6 steering knuckle, but Respondent was unable to produce it.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 10. Respondent's registration is subject to discipline under Code section
10 9884.7, subdivision (a)(1), in that between August 1, 2004, through September 2004, Respondent
11 made statements which he knew or which by exercise of reasonable care he should have known
12 were untrue or misleading by falsely representing to the consumer that he had replaced the right
13 front steering knuckle. In fact, that part had not been replaced as invoiced.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraudulent Acts)**

16 11. Respondent's registration is subject to discipline under Code section
17 9884.7, subdivision (a)(4), in that between August 1, 2004, through September 2004, Respondent
18 committed acts which constitute fraud by receiving payment to replace the right front steering
19 knuckle. In fact, that part had not been replaced as invoiced.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Delinquent Registration)**

22 12. Respondent's registration is subject to discipline under Code section
23 9884.6, subdivision (a), in that between August 1, 2004, through September 2004, Respondent
24 performed automotive repairs when his registration was in delinquent status.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations)**

27 13. Respondent's registration is subject to discipline under Code section
28 9884.7, subdivision (a)(6), in that between August 1, 2004, through September 2004, Respondent

1 failed to materially comply with California Code of Regulations, title 16, section 3356,
2 subdivision (a), by setting forth an incorrect registration number on the damage report dated
3 September 30, 2004.

4 **CONSUMER COMPLAINT (MORENO) - 2002 HONDA CIVIC**

5 14. On or about May 19, 2005, the Bureau received a Consumer Complaint
6 from Rosa Moreno ("consumer") regarding the length of time it was taking Respondent to
7 perform collision repairs to her 2002 Honda Civic. The vehicle was originally taken to
8 Respondent's facility on or about March 7, 2005.

9 15. On or about March 22, 2005, GMAC Insurance paid Respondent
10 \$8,701.44 for the repairs. On or about May 19, 2005, repairs to the consumer's vehicle had not
11 been completed.

12 16. On or about June 24, 2005, the consumer retrieved her vehicle from
13 Respondent following completion of the collision repairs. Before she could leave Respondent's
14 facility with the vehicle, the consumer was asked to sign a release stating that the air bags had not
15 been installed and that there was a problem with the transmission. The consumer reluctantly
16 signed the release.

17 17. On or about June 29, 2005, the Bureau arranged for the vehicle to be
18 towed to the Bureau's lab for inspection.

19 18. On or about June 29, 2005, and July 5, 2005, the Bureau inspected the
20 vehicle using Estimate Record No. 3692522 as a reference. The inspections revealed the
21 following services totaling \$2,871.54 had not been performed pursuant to the estimate of record:

- 22 a. The Supplemental Restraint System Caution Label had not been replaced.
23 b. The Air Conditioning Clutch Label had not been replaced.
24 c. The Emission Control Label had not been replaced.
25 d. The front bumper license plate frame had not been replaced.
26 e. The front bumper reinforcement was not painted with a final coat.
27 f. The right front combination lamp assembly had not been replaced with a
28 new Original Equipment Manufacture ("OEM") part.

- 1 g. The front hood seal had not been replaced.
- 2 h. The cooling radiator had not been replaced with a new OEM part.
- 3 i. The upper radiator hose had not been replaced.
- 4 j. The air conditioning condenser had not been replaced with a new OEM
5 part.
- 6 k. The radiator support had not been painted with a final coat
- 7 l. The right front body apron assembly had not been replaced.
- 8 m. The right apron assembly had not been had not been painted with a final
9 coat.
- 10 n. Corrosion protection had not been applied to exposed bare metal areas on
11 the vehicle.
- 12 o. The air bag cable reel had not been replaced.
- 13 p. The front driver's side air bag module had not been replaced.
- 14 q. The right front air bag sensor had not been replaced.
- 15 r. The left front air bag sensor had not been replaced.
- 16 s. The engine under cover had not been replaced.
- 17 t. Respondent failed to make the following repairs which were necessary:
- 18 aa. The transmission housing had not been repaired since it was
19 cracked and still welded at the mounting areas and the transmission was not functioning properly
20 since there were fluid leaks near the welds.
- 21 bb. The power steering reservoir was empty of fluid and the power
22 steering was inoperative.
- 23 u. The front tires had been improperly installed because this vehicle was
24 equipped with WANL 205-40-ZR17 directional tires. The right front tire had been installed on
25 the left front and left front tire had been installed on the right front.
- 26 v. The welding on the radiator support was sub-standard, which would result
27 in the loss of structural integrity. Sub-standard welds will allow contaminants to enter, causing
28 premature failure of the welds and adjoining parts.

1 w. Between July 1, 2005, and July 13, 2005, the Bureau reinspected the
2 vehicle and found that the following had not been performed pursuant to the estimate of record:

3 aa. The air conditioning had not been evacuated and recharged.

4 bb. A four wheel alignment had not been performed.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 19. Respondent's registration is subject to discipline under Code section
8 9884.7, subdivision (a)(1), in that on or about March 7, 2005, Respondent made statements
9 which he knew or which by exercise of reasonable care he should have known were untrue or
10 misleading by falsely representing to the consumer that he had repaired the vehicle pursuant to
11 the estimate prepared by Cal West Appraisal on behalf of GMAC Insurance. In fact, Respondent
12 failed to repair the vehicle pursuant to the estimate, as more particularly set forth in paragraph 18,
13 and its subparagraphs, as stated above.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Fraudulent Acts)**

16 20. Respondent's registration is subject to discipline under Code section
17 9884.7, subdivision (a)(4), in that on or about March 22, 2005, Respondent committed acts
18 which constitute fraud by receiving payment from GMAC Insurance to repair the consumer's
19 vehicle pursuant to the estimate prepared by Cal West Appraisers. In fact, Respondent failed to
20 repair the consumer's vehicle pursuant to the estimate, as more particularly set forth in paragraph
21 18, and its subparagraphs, as stated above.

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23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Delinquent Registration)**

25 21. Respondent's registration is subject to discipline under Code section
26 9884.6, subdivision (a), in that between May 31, 2005, and August 19, 2005, Respondent
27 performed automotive repairs when his registration was in delinquent status.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 22. Respondent's registration is subject to discipline under Code section
4 9884.7, subdivision (a)(5), in that on or about March 7, 2005, Respondent committed acts
5 constituting gross negligence by returning the vehicle to the consumer in sub-standard condition,
6 as follows:

- 7 a. Respondent failed to install the air bags.
8 b. Respondent failed to fill the power steering reservoir and the power
9 steering was inoperative.
10 c. Respondent failed to properly weld the radiator support, resulting in
11 sub-standard welds which could result in loss of the structural integrity.
12 d. Respondent failed to square the right front frame rail.

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Departure From Trade Standards)**

15 23. Respondent's registration is subject to discipline under Code section
16 9884.7, subdivision (a)(7), in that on or about March 7, 2005, Respondent willfully departed
17 from or disregarded accepted trade standards for good and workmanlike repair by returning the
18 vehicle to the consumer in sub-standard condition, as follows:

- 19 a. Respondent failed to install the air bags.
20 b. Respondent failed to fill the power steering reservoir and the power
21 steering was inoperative.
22 c. Respondent failed to properly weld the radiator support, resulting in
23 sub-standard welds which could result in loss of the structural integrity.
24 d. Respondent failed to square the right front frame rail.
25 e. Respondent failed to apply corrosion protection to the exposed bare metal
26 areas on the vehicle.

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1 f. The transmission housing had not been repaired since it was cracked and
2 still welded at the mounting areas and the transmission was not functioning properly since there
3 were fluid leaks near the welds.

4 **TENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations)**

6 24. Respondent's registration is subject to discipline under Code section
7 9884.7, subdivision (a)(6), in that on or about March 7, 2005, Respondent failed to materially
8 comply with California Code of Regulations, title 16, section 3356, subdivision (a), by failing
9 to set forth a valid registration number on the damage reports dated March 7, 2005, and June 24,
10 2005.

11 **OTHER MATTERS**

12 25. Under Code section 9884.7, subdivision (c), the director may deny, refuse
13 to validate or invalidate, temporarily or permanently, the registrations for all places of business
14 operated in this state by Richard T. Martinez, doing business as Tims Auto Body, upon a finding
15 that Richard T. Martinez has, or is, engaged in a course of repeated and willful violations of the
16 laws and regulations pertaining to an automotive repair dealer.

17 **PRAYER**

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

- 20 1. Revoking or suspending Automotive Repair Dealer Registration Number
21 AE 227961, issued to Richard T. Martinez, doing business as Tims Auto Body;
- 22 2. Temporarily or permanently invalidating any other automotive repair
23 dealer registration issued to Richard T. Martinez;

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1 3. Ordering Richard T. Martinez to pay the Bureau of Automotive Repair the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
3 125.3; and,

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

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6 DATED: 19 Oct 2006

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9 DENNIS KENNEALLY
10 Assistant Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California
14 Complainant