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

In the Matter of the Accusation Against: **MANGO INVESTMENTS, INC.** **dba AAMCO TRANSMISSIONS** **NATHAN CHRISTENSON, PRES./SECTY/TREAS.** 22351 Mission Blvd. Hayward, CA 94541 Automotive Repair Dealer Registration No. ARD 234758 Respondent.	Case no. 79/12-59 OAH No. 2012020647

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective 12/6/12.

DATED: October 25, 2012

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against: MANGO INVESTMENTS, INC., dba AAMCO TRANSMISSIONS NATHAN CHRISTENSON, PRES./SECTY/TREAS. Automotive Repair Dealer Registration No. ARD 234758 Respondent.	Case No. 77/11-52 OAH No. 2012040270

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 21, 2012.

Deputy Attorney General Char Sachson represented complainant John Wallauch, Chief, Bureau of Automotive Repair, Department of Consumer Affairs.

Jeffrey S. Kravitz, Attorney at Law, Kravitz Law Office, represented respondent Mango Investments, Inc. Respondent's president, Nathan Christenson, was present.

The record remained open to allow complainant to file a cost declaration and to allow respondent to file objections. The cost declaration was timely filed on August 23, 2012, and marked Exhibit 17 for identification. No objections were filed by respondent, and Exhibit 17 was admitted.

The record closed and the matter was deemed submitted on August 31, 2012.

FACTUAL FINDINGS

1. On August 12, 2004, the Bureau of Automotive Repair, Department of Consumer Affairs (bureau), issued Automotive Repair Dealer Registration No. ARD 234758 to Nathan Christenson, President/Secretary/Treasurer, Mango Investments, Inc., doing

business as Aamco Transmissions at 22351 Mission Boulevard in Hayward (respondent). The license expired on July 31, 2012, unless it was renewed.[1]

2. On March 6, 2012, complainant John Wallauch, chief of the bureau, issued an accusation against respondent. The accusation alleges that respondent violated numerous laws and regulations in connection with repairs it performed on two undercover vehicles. Respondent filed a notice of defense.

October 2010 Office Conference

3. On October 12, 2010, bureau representatives conducted an office conference with Christenson. The purpose of the conference, which was initiated by the bureau, was to inform respondent of 13 consumer complaints the bureau had received in 2009 and 2010 regarding respondent's business activities, and to educate respondent on its responsibilities under the Automotive Repair Act.[2] The bureau informed respondent that it had identified certain violations of the Act. The bureau made recommendations to respondent; offered to conduct training of respondent's personnel; and warned respondent that future violations would lead to legal action.

Among other specific written recommendations, the bureau informed respondent that it must not make any false or misleading statements to consumers; that it must give the customer a written estimate before work begins; that the customer must be given an itemized invoice with a description of all parts supplied and the price for each described part, so that the customer can understand what was purchased; and that respondent must comply with the legal requirements pertaining to the repair of automatic transmissions, set forth in section 9884.7, subdivision (a)(7), and section 3361.1 of the bureau's regulations.[3]

4. After the conference, the bureau received six more complaints about respondent's facility, and decided to initiate two undercover operations.

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[1] At hearing, complainant produced a license certification dated August 1, 2012, stating that respondent's license is delinquent. Christenson testified, however, that an ARD registration can be renewed by mail so long as it is postmarked on or before the registration's expiration date, and that respondent sent in its renewal "on time" with the required fee. No evidence was offered to contradict Christenson's assertion that an ARD registration can be renewed by mail, postmarked on or before its expiration date. The bureau's August 1 certification is not sufficient to establish that respondent's registration is delinquent, as it was issued before documents mailed on July 31 could be expected to be delivered to the bureau.

[2] The Automotive Repair Act is found at Business and Professions Code section 9880 et seq. All citations are to the Business and Professions Code, unless otherwise noted.

[3] The bureau's regulations are found at title 16 of the California Code of Regulations.

May – June 2011 undercover operation

5. On May 23, 2011, bureau employee Colleen A. Wood brought a 1997 Toyota Camry to respondent's shop. Wood was acting in an undercover capacity under the assumed name of Colleen Miller.

6. The Camry was owned by the bureau, and its transmission had been specially prepared for an undercover assignment by Stan Tanaka, a Program Representative I for the bureau. Tanaka had disassembled the transmission; inspected its components; installed new parts as necessary; marked the transmission's parts; reassembled the transmission to manufacturer's specifications; and then tested it to insure that it was in proper running order. When he was satisfied that the transmission was in proper working order, Tanaka installed a defective no. 2 (or "B") shift solenoid in the Camry; as a result, when operated in "drive," the transmission shifted from first gear to third gear. Because of the defective solenoid, the transmission did not have a second gear, the dashboard "check engine" light was illuminated, and, when the Camry's electronic control module was scanned, it produced Diagnostic Trouble Code (DTC) P0758, which properly indicated that the no. 2 shift solenoid was defective. The Camry was then delivered to Wood on May 23, 2011, at a location near respondent's facility. When Wood brought the Camry to respondent's facility, its transmission had been filled with clean, but artificially darkened transmission fluid. The transmission was in good, serviceable condition in all respects and free of any abnormalities, with the sole exception of the defective no. 2 shift solenoid.

7. A defective no. 2 shift solenoid is easily identifiable by trouble code P0758, and can be corrected without removing the transmission from the vehicle. The solenoid is replaced by removing the transmission pan, unplugging the defective solenoid, and replacing it with a new one.

8. When she brought the Camry to respondent's facility, Wood told Josh Phillips, respondent's service manager, that a light on the dashboard had come on while she was driving and that the car lacked power when going over an incline. Phillips told Wood that he would put the vehicle "on the machine" and that the machine would tell him what was wrong with the vehicle. Phillips inquired about a free diagnostic service that was advertised by Aamco on television. Phillips told her that the diagnosis would be free if she had the vehicle repaired at Aamco, otherwise the charge was $79.99 for the diagnosis. Wood signed a work order for that amount. Phillips kept the signed work order, but did not give Wood a copy.

9. Respondent's employee connected the Camry to the facility's diagnostic computer, which properly detected trouble code P0758. Respondent's records note, correctly, that the trouble code indicated a fault in the "B" shift solenoid.

10. On May 25, Lori Friedrich, respondent's office manager, called Wood. Friedrich told Wood that the Camry's transmission fluid was "burnt" and that the car had internal shifting problems. Those statements were not true, and Friedrich knew or reasonably should have known they were not true. With the sole exception of the defective

shift solenoid, the Camry's transmission was in proper running order and free of any abnormalities when Wood delivered it to respondent's facility on May 23.

11. Friedrich gave Wood a quote of $995 to remove the transmission from the vehicle and take it apart for inspection. Friedrich told Wood that the base price to repair the transmission would be $2,300 to $2,400, plus parts. Friedrich told Wood that if she did not authorize the repairs after disassembly of the transmission, the facility would charge her $995 for the inspection. Wood told Friedrich that she would speak to her son about it.

12. On May 26, Wood called respondent's shop and spoke to Phillips. Phillips told Wood that he needed to remove the transmission and disassemble it on the bench so he could see what parts were needed to repair the transmission. Phillips's statement was not true, and he knew or reasonably should have known it was not true. It was not necessary to remove the transmission or disassemble it to determine the cause of the shifting problem. The shifting problem was caused by the defective no. 2 shift solenoid, which had been properly identified by respondent's diagnostic computer, and which could be replaced without removing the transmission.

13. In their telephone conversation, Phillips reiterated to Wood that the inspection would cost $995, and that he would apply that amount to the repairs if respondent's shop performed the repairs. Phillips offered Wood a 10 percent senior discount toward the repairs. Wood authorized respondent to proceed with the inspection. Respondent did not provide Wood with a written estimate for the diagnosis of the Camry.

14. On May 31, Phillips called Wood and told her that the Camry needed a torque converter, all new bushings, a front pump body and a master solenoid kit. These statements were not true, and Phillips knew or reasonably should have known they were not true, as the only repair needed on the Camry was replacement of the no. 2 shift solenoid.

15. In their telephone conversation on May 31, Phillips quoted Wood $3,358.55 for the transmission work. Wood again stated that she needed to discuss it with her son.

16. On June 1, Wood called respondent's facility and authorized Phillips to go ahead with the work.

17. On June 3, Wood returned to respondent's shop to pick up the Camry. She was given an invoice for $3,258.55, and paid respondent $3,258 for the work. (Wood tendered $3,300 in cash, and respondent's facility did not charge her the $.55.)

18. Between June 9 and June 27, 2011, Program Representative Tanaka disassembled the Camry's transmission and compared the work respondent's facility had done against respondent's invoice. Respondent's facility had replaced the defective no. 2 shift solenoid. Beyond that, however, respondent had performed unnecessary repairs on the vehicle and had not reconditioned the transmission as stated on the invoice:

a. According to the invoice, the second coast brake band had been replaced but, in fact, it had not been replaced.

b. According to the invoice, the transmission fluid in the Camry was low and had a burnt odor. In fact, the transmission fluid was full, clean (albeit with an artificially darkened color), and did not smell burnt when taken to respondent's shop.

c. Under section 3361.1 of the bureau's regulations, when a dealer uses the word "reconditioned" in an invoice to describe work performed on an automatic transmission, the shop must replace the friction plates, the second coast brake band, the drive pinion seals, the upper valve body cover gaskets, the lower valve body gasket, and the forward clutch oil seal rings. According to the invoice it gave to Wood, respondent's facility "reconditioned" the Camry's transmission, but these items were not replaced, in violation of section 3361.1. The statement on respondent's invoice that the transmission had been reconditioned was not true.

19. Respondent's invoice stated that it installed a "New – Assembly Kit Transtar #67002CF (B)" for a price of $425, but the invoice did not identify each part that was supplied as part of that kit.

20. The evidence does not establish that the conduct of respondent's employees, described in Findings 8, 10, 12, 13, 14, 18 and 19, was due to "bona fide error," as that term is used in section 9884.7.

September 2011 undercover operation

21. On September 14, 2011, bureau employee Lou Jaramillo brought a 1997 Chevrolet pickup to respondent's shop. Wood was acting in an undercover capacity under the assumed name of Lloyd Reyes.

22. The Chevrolet pickup was owned by the bureau, and its transmission had been specially prepared for an undercover assignment by Robert Rodriguez, a Program Representative II(S) for the bureau. Rodriguez had disassembled the transmission; inspected its components; installed new parts as necessary; marked the transmission's parts; reassembled the transmission to manufacturer's specifications; and then tested it to insure that it was in proper running order. When he was satisfied that the transmission was in proper working order, Rodriguez introduced a defect into the 2-3 shift solenoid. As a result, when in overdrive or drive range, the transmission had only third gear, and when operated in manual second or manual first range, the transmission had only second gear. In addition, the defective 2-3 shift solenoid increased the transmission's hydraulic line pressures to the maximum range and caused the dashboard "check engine" light to illuminate. When the Chevrolet's electronic control module was scanned, it produced trouble code P0758, which properly indicated a fault in the 2-3 shift solenoid. The Chevrolet was then delivered to Jaramillo on September 14, 2011 at a location near respondent's facility. When Jaramillo brought the vehicle to respondent's facility that day, its transmission was in good,

serviceable condition in all respects and free of any abnormalities, with the sole exception of the defective 2-3 shift solenoid.

23. A defective 2-3 shift solenoid can be readily diagnosed by the P0758 trouble code. It is not necessary to remove the transmission from the vehicle to replace the shift solenoid. The solenoid is replaced by removing the transmission pan, unplugging the defective solenoid, and replacing it with a new one.

24. At respondent's facility, Jaramillo met with respondent's employee Sean Brown. Jaramillo told Brown that the truck was driving "sluggish" and that there was a light on in the dash.

25. Respondent's facility hooked the pickup to its diagnostic computer, which detected trouble code P0758. In its paperwork, respondent's employee correctly noted that the trouble code indicated a 2-3 shift solenoid B circuit fault. That fault can be corrected by removing the transmission pan and installing a 2-3 shift solenoid. The repair does not require removal of the transmission from the vehicle.

26. On September 15, Jaramillo called respondent's facility. Brown informed Jaramillo that the shop had performed a transmission inspection, which revealed that the truck was stuck in third gear and there was no operational second gear; according to Brown, second gear was "gone." Brown told Jaramillo that the shop had removed the transmission pan and found "a lot of metal" in it, which indicated a "complete transmission failure." Brown stated that the transmission had to be rebuilt, which would cure the sluggishness and the light on the dash. Brown's statements were not true, and he knew or reasonably should have known they were not true. The only repair needed on the vehicle was the installation of a new 2-3 shift solenoid, which is readily accessible when the transmission pan is removed. The transmission was otherwise in good working order and did not need to be rebuilt.

27. Brown gave Jaramillo an estimate of $1,933 to rebuild the Chevrolet's transmission, plus the cost of any "hard parts" or electronics. He estimated that the total cost of the rebuild would be $2,800. Jaramillo authorized respondent to perform the work.

28. On September 19, Brown called Jaramillo and told him that the mechanics had found that a couple of hard parts and all of the electronics needed to be replaced. Brown's statement was not true, and he knew or reasonably should have known it was not true. Except for the needed installation of a new 2-3 shift solenoid, the transmission was in good working order and no parts needed to be replaced.

29. On September 23, Brown called Jaramillo and told him that the truck was ready, and that the total cost was $2,475.04. Brown went to respondent's facility and gave Brown $2,500 in cash. Brown gave Jaramillo $25 change, and did not charge Jaramillo the $.04.

30. Beginning on September 28, 2011, Program Representative Rodriguez disassembled the Chevrolet's transmission and compared the work respondent's facility had done against respondent's invoice. Rodriguez found that respondent had performed unnecessary repairs to the Chevrolet, including the removal and reconditioning of the transmission and the replacement of the torque converter, the low and reverse roller clutch and forward sprag assembly, the 1-2 shift solenoid, the pressure control solenoid, the 3-2 shift solenoid, the pressure switch assembly, the servo piston housing, the 2nd apply piston, and the forward accumulator piston.

31. Respondent's invoice stated that it installed a "New – Assembly Kit Transtar #74004E (B)" for a price of $239.19, but the invoice did not identify each part that was supplied as part of that kit.

32. The evidence does not establish that the conduct of respondent's employees, described in Findings 26, 28, 30 and 31, was due to "bona fide error," as that term is used in section 9884.7.

Respondent's evidence

33. Nathan Christenson is one of two shareholders in respondent Mango Investments, Inc. Christenson holds all the corporate officer positions; the other shareholder does not participate in the operations of the Hayward facility. The corporation bought the Aamco shop in 2004 and then applied for and received its ARD registration from the bureau. When he obtained the registration, Christenson had no prior experience in the automotive industry. Christenson lives in Wisconsin, and does not travel often to California. When he appeared at hearing in this matter in August 2012, it was his first visit to California in 2012.

34. Christenson testified that he has made management changes over the past two years; he cannot remember all the changes, but he thinks that there have been three or four managers since October 2010. Christenson believes that "one common thread" to the customer complaints he has received is the builder who does the work. He has terminated one builder and his primary diagnostician, and the builders who worked on the undercover vehicles are no longer employed by respondent. As a complete explanation of respondent's fraudulent conduct, Christenson's testimony is not persuasive, because it does not account for the financial incentive to sell unnecessary repairs. Respondent's technicians are paid by the hour. Respondent, however, pays his managers on an incentive system based on the volume of business they bring in, a system that was in place at the time of the bureau's undercover runs and which remains in place today.

35. Respondent has no formal procedure for the resolution of consumer complaints. Christenson testified that complaints are handled "by kind of a group," that would include his service manager, his business manger (Friedrich), and himself.

36. Christenson testified that he takes the matters alleged in the accusation seriously. As a result of the bureau's undercover operations, he now requires the approval of two employees before a transmission is removed from a vehicle to perform internal repairs.

Costs

37. The board has incurred costs of $33,068.48 in its investigation and enforcement of this case. Of that amount, $30,460.98 is for investigation costs incurred by the Division of Investigations, and $2,607.50 represents billings by the Department of Justice of attorney and paralegal services. These charges are supported by declarations that comply with section 1042, title 1, of the California Code of Regulations. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. The evidence does not establish that respondent's ARD registration has expired. (Finding 1.) Even if it has, its expiration does not deprive the bureau of jurisdiction to pursue disciplinary action against respondent's registration. (§ 9884.13.)

First cause for discipline

2. Section 9884.7, subdivision (a)(1), provides as follows:

> (a) The [Director of Consumer Affairs], 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.

Cause exists under this provision to take disciplinary action against respondent's registration by reason of the matters set forth in Findings 12, 14, 18 and 20.

Second cause for discipline

3. Under subdivision (a)(3) of section 9884.7, the director may discipline the registration of any dealer who has failed to give a customer a copy of any document that requires the customer's signature, "as soon as the customer signs the document." Cause

exists under this provision to take disciplinary action against respondent's registration by reason of the matters set forth in Findings 8 and 20.

Third cause for discipline

4. Under subdivision (a)(4) of section 9884.7, the director may discipline the registration of a dealer who has committed any acts that constitute fraud. Cause exists under this provision to take disciplinary action against respondent's registration, by reason of the matters set forth in Findings 12, 14, 17, 18a, 18c and 20.

Fourth cause for discipline

5. Under subdivision (a)(7) of section 9884.7, the director may discipline the registration of a dealer who has willfully departed from or disregarded accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another and without the consent of the owner. Section 3361.1 of the bureau's regulations defines the minimum accepted trade standards for good and workmanlike rebuilding of automatic transmissions. Subdivision (a) of that section provides, in relevant part, as follows:

> Before an automatic transmission is removed from a motor vehicle for purposes of repair or rebuilding, it shall be inspected. Such inspection shall determine whether or not the replacement . . . of any external part or parts will correct the specific malfunction of the automatic transmission. In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the electronic control module that controls the operation of the transmission. If minor service and/or replacement . . . of any external part or parts . . . can reasonably be expected to correct the specific malfunction of the automatic transmission, then prior to removal of the automatic transmission from the vehicle, the customer shall be informed of that fact.

Subdivision (c) of section 3361.1 prohibits a dealer from invoicing a customer for a "rebuilt" automatic transmission if the dealer has not replaced (among other parts) the friction plates, the second coast brake band, the drive pinion seals, the upper valve body cover gaskets, the lower valve body gasket, and the forward clutch oil seal rings.

Cause exists under these provisions to take disciplinary action against respondent's registration, by reason of the matters set forth in Findings 6, 7, 12, 18c and 20.

Fifth cause for discipline

6. Under subdivision (a)(6) of section 9884.7, the director may discipline the registration of a dealer who has failed in any material respect to comply with the provisions of the Automotive Repair Act. Section 9884.9, subdivision (a), which is part of the Act, states: "The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job." Cause exists under this provision to take disciplinary action against respondent's registration, by reason of the matters set forth in Findings 13 and 20.

Sixth cause for discipline

7. Under subdivision (a)(6) of section 9884.7, the bureau may discipline the registration of a dealer who has failed in any material respect to comply with the bureau's regulations. Section 3356, subdivision (a)(2)(B), of the bureau's regulations states that, in the dealer's invoice, the dealer must separately list, describe and identify "[e]ach part supplied, in such a manner that the customer can understand what was purchased, the price for each part." Cause exists under this provision to take disciplinary action against respondent's registration, by reason of the matters set forth in Findings 19 and 20.

Seventh cause for discipline

8. Cause exists under section 9884.7, subdivision (a)(1) (making untrue statements), to take disciplinary action against respondent's registration by reason of the matters set forth in Findings 26, 28 and 32.

Eighth cause for discipline

9. Cause exists under section 9884.7, subdivision (a)(4) (fraud), to take disciplinary action against respondent's registration, by reason of the matters set forth in Findings 26, 28, 29, 30 and 32.

Ninth cause for discipline

10. Cause exists under section 9884.7, subdivision (a)(7) (departure from accepted trade standards), to take disciplinary action against respondent's registration by reason of the matters set forth in Findings 26 and 32.

Tenth cause for discipline

11. Cause exists under section 9884.7, subdivision (a)(6), and section 3356, subdivision (a)(2)(B), of the bureau's regulations (failure to identify parts), to take disciplinary action against respondent's registration by reason of the matters set forth in Findings 31 and 32.

Disciplinary considerations

12. Cause for discipline having been established, the issue is the level of discipline to impose. The bureau has published guidelines to be considered in assessing the proper level of discipline to impose in any given case. The minimum recommended discipline for fraudulent conduct is a period of suspension followed by a five-year term of probation. As factors in mitigation, the guidelines identify evidence that the shop has initiated steps to "minimize recurrence." Factors in aggravation include a prior office conference with the bureau; failure to comply with the bureau's request for corrective action or retraining; evidence that the misconduct was part of a pattern of practice; and any conduct which constitutes fraud.

Respondent has made some personnel changes since the bureau's undercover runs, and has instituted a new procedure that he believes will minimize the recurrence of transmissions being removed from a vehicle unnecessarily. These are factors in mitigation.

There is, however, no evidence that respondent made any meaningful changes in its operation after the October 2010 office conference. At the conference, the bureau warned respondent against making untrue statements to consumers, and admonished respondent to comply with department regulations; after the conference, the bureau received more complaints about respondent. The bureau then conducted two separate undercover operations in May and September 2011. In both cases, respondent defrauded the undercover customers out of thousands of dollars. The incentive for overreaching, if not for further fraudulent activity, remains in place, as respondent's managers are paid based on the volume of business they produce. The egregious fraud revealed in this case demands fundamental changes in respondent's operations, which Christenson has not made, and vigilant supervision by the owner, which Christenson, who lives in Wisconsin, cannot provide. It would be contrary to the public interest to allow respondent to retain its automotive repair dealer registration, even on a probationary basis.

Cost recovery

13. Section 125.3 provides that a licentiate found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

As set forth in Finding 37, it was established that complainant has incurred $33,068.48 in actual costs in connection with the investigation and enforcement of this matter.

14. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed

or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Applied to this case, these standards do not support a reduction in the bureau's cost recovery.

ORDER

1. Automotive Repair Dealer Registration No. ARD 234758 issued to respondent Mango Investments, Inc., is revoked.

2. Within 30 days of the date this decision is adopted, respondent Mango Investments, Inc., shall pay the Bureau of Automotive Repair its costs of investigation and enforcement in the amount of $33,068.48.

DATED: October 1, 2012

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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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: **MANGO INVESTMENTS, INC.,** **dba AAMCO TRANSMISSIONS** **NATHAN CHRISTENSON, PRES./SECTY/TREAS.** **22351 Mission Blvd.** **Hayward, CA 94541** **Automotive Repair Dealer Reg. No. ARD 234758** Respondent.	Case No. 77/11-52 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. In or about 2004, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 234758 to Mango Investments, Inc. ("Respondent"), doing business as AAMCO Transmissions, with Nathan Christenson as president, secretary, and treasurer. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.

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JURISDICTION

3. Business and Professions Code ("Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

4. Code section 9884.13 states, 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 temporarily or permanently invalidating (suspending or revoking) a registration.

STATUTORY AND REGULATORY PROVISIONS

(Statutory Provisions)

5. Code section 9884.7 states, in pertinent part:

> (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.
>
> . . . .
>
> (3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.
>
> (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.
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> (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 . . .

6. Code section 9884.7, subdivision (c), states, in pertinent part, that the director may suspend, revoke, or place on probation the registration for all places of business operated in this

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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 the laws and regulations pertaining to an automotive repair dealer.

7. Code section 9884.9, subdivision (a), states, in pertinent part:

> 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 . . .

8. Code section 22, subdivision (a), states:

> "Board" as used in any provision 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."

9. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

(Regulatory Provisions)

10. California Code of Regulations, title 16, section ("Regulation") 3356 states, in pertinent part:

> (a) All invoices for service and repair work performed, and parts supplied, as provided for in Section 9884.8 of the Business and Professions Code, shall comply with the following:
>
> . . . .
>
> (2) The invoice shall separately list, describe and identify all of the following:
>
> . . . .
>
> (B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part . . .

11. Regulation 3361.1 states, in pertinent part:

> The following minimum requirements specifying accepted trade standards for good and workmanlike rebuilding of automatic transmissions are intended to define terms that have caused confusion to the public and unfair competition within the automotive repair industry. The term "automatic transmission" shall also apply to the automatic transmission portion of transaxles for the purposes of this regulation, unless both the automatic transmission portion and the differential portion of the transaxle share a common oil supply, in which case the term "automatic

transmission" shall apply to both portions of the transaxle. These minimum requirements shall not be used to promote the sale of "rebuilt" automatic transmissions when a less extensive and/or less costly repair is desired by the customer . . . All automotive repair dealers engaged in the repair, sale, or installation of automatic transmissions in vehicles covered under the Act shall be subject to the following minimum requirements:

(a) Before an automatic transmission is removed from a motor vehicle for purposes of repair or rebuilding, it shall be inspected. Such inspection shall determine whether or not the replacement or adjustment of any external part or parts will correct the specific malfunction of the automatic transmission. In the case of an electronically controlled automatic transmission, this inspection shall include a diagnostic check, including the retrieval of any diagnostic trouble codes, of the electronic control module that controls the operation of the transmission. If minor service and/or replacement or adjustment of any external part or parts and/or of companion units can reasonably be expected to correct the specific malfunction of the automatic transmission, then prior to removal of the automatic transmission from the vehicle, the customer shall be informed of that fact as required by Section 3353 of these regulations. Before removing an automatic transmission from a motor vehicle, the dealer shall also comply with the provisions of section 3353(d), and disclose any applicable guarantee or warranty as provided in sections 3375, 3376 and 3377 of these regulations. If a diagnostic check of an electronic control module cannot be completed due to the condition of the transmission, the customer shall be informed of that fact and a notation shall be made on the estimate, in accordance with Section 3353 of these regulations . . .

. . . .

(c) Any automotive repair dealer that advertises or performs, directly or through a sublet contractor, automatic transmission work and uses the words "exchanged," "rebuilt," "remanufactured," "reconditioned," or "overhauled," or any expression of like meaning, to describe an automatic transmission in any form of advertising or on a written estimate or invoice shall only do so when all of the following work has been done since the transmission was last used:

. . . .

(3) All bands have been replaced with new or relined bands.

(4) All the following parts have been replaced with new parts:

(A) Lined friction plates

(B) Internal and external seals including seals that are bonded to metal parts.

(C) All sealing rings

(D) Gaskets . . .

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12. Regulation 3373 states:

> No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

13. Code section 125.3 provides, in pertinent part, that a Board 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.

UNDERCOVER OPERATION #1: 1997 TOYOTA CAMRY

14. On May 23, 2011, an undercover operator of the Bureau ("operator") took the Bureau's 1997 Toyota Camry to Respondent's facility. The No. 2 shift solenoid on the Bureau-documented vehicle was defective. The operator met with Respondent's manager, Josh Phillips ("Phillips"), and told him that a light on the dashboard had come on while she was driving and that the vehicle lost power when going over an incline. Phillips stated that he would put the vehicle up on "the machine" and that it would tell him what was wrong with the vehicle. The operator told Phillips that her son had seen an AAMCO television advertisement offering free diagnostic service. Phillips told the operator that the diagnostic service would be free if she had the vehicle repaired at AAMCO. Phillips had the operator sign a work order, but did not provide her with a copy or a written estimate for the diagnostic service. The operator left the facility.

15. On May 25, 2011, the operator received a call from Respondent's employee, "Lori". Lori told the operator that the vehicle's transmission fluid was burnt, that the vehicle had internal shifting problems, and that there was a problem with the engine coolant. Lori stated that it would cost $995 to remove the transmission from the vehicle and disassemble it for inspection. The operator told Lori that she would call her back after she discussed the work with her son.

16. On May 26, 2011, the operator called the facility and spoke with Phillips. Phillips told the operator that he needed to remove the transmission and disassemble it on the bench so he

could see what parts were needed to repair the transmission. Phillips stated that the inspection would cost $995 and that he would apply the $995 toward the repairs if they were done at AAMCO. Phillips also told the operator that the radiator had a problem and that he would attempt to repair it by "flushing it out". Phillips offered the operator a 10% senior discount on the repairs. The operator authorized Phillips to remove and inspect the transmission.

17. On May 31, 2011, Phillips called the operator and told her that the vehicle needed a torque converter, all new bushings, a front pump body, and a master solenoid kit, and that the transmission repairs would now cost $3,258.55. The operator told Phillips that she would discuss the transmission work with her son and call him back.

18. On June 1, 2011, the operator called the facility and authorized the additional work on the vehicle.

19. On June 3, 2011, the operator returned to the facility to retrieve the vehicle, paid Phillips $3,258 for the repairs, and received a copy of Invoice No. 135821. The invoice stated that a computer scan of the vehicle revealed a code (diagnostic trouble code or fault code) relating to the B shift solenoid (No. 2 shift solenoid).

20. On and between June 9, 2011, and June 27, 2011, the Bureau inspected the vehicle using the invoice for comparison. The Bureau found that Respondent's facility had replaced the defective No. 2 shift solenoid, but had performed unnecessary repairs on the vehicle and had not "reconditioned" the transmission as invoiced.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

21. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's employee, Phillips, represented to the operator that the Bureau's 1997 Toyota Camry needed a torque converter, all new bushings, a front pump body, and a master solenoid kit. In fact, the only repair needed on the vehicle was the replacement of the defective No. 2 shift solenoid, which is readily accessible once the transmission pan has been removed.

b. Respondent's employee, Phillips, represented to the operator that he needed to remove the transmission from the Bureau's 1997 Toyota Camry and disassemble it so he could see what parts were needed to repair the transmission. In fact, the transmission was not in need of removal or disassembly in order to determine the cause of the shifting problem.

c. Respondent represented on the invoice that the transmission on the Bureau's 1997 Toyota Camry had been reconditioned. In fact, the transmission had not been reconditioned, as set forth in paragraph 24 below.

d. Respondent represented on the invoice that the second coast brake band on the Bureau's 1997 Toyota Camry had been replaced. In fact, that part had not been replaced on the vehicle, as set forth in paragraph 24 below.

e. Respondent represented on the invoice that the transmission fluid on the Bureau's 1997 Toyota Camry was low and had a burnt odor. In fact, the transmission fluid was full, clean, and did not smell burnt at the time the vehicle was taken to Respondent's facility.

SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Customer with Copy of Signed Document)

22. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(3), in that Respondent's manager, Phillips, failed to provide the operator with a copy of the work order as soon as the operator signed the document.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

23. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud, as follows:

a. Respondent's employee, Phillips, made false or misleading statements to the operator regarding the Bureau's 1997 Toyota Camry, as set forth in subparagraphs 21 (a) and (b) above, in order to induce the operator to authorize unnecessary repairs on the vehicle, then sold the operator unnecessary repairs, including the removal and reconditioning of the transmission.

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b. Respondent obtained payment from the operator for reconditioning the transmission on the Bureau's 1997 Toyota Camry when, in fact, the transmission had not been reconditioned, as set forth in paragraph 24 below.

c. Respondent obtained payment from the operator for replacing the second coast brake band on the Bureau's 1997 Toyota Camry, when, in fact, that part was not replaced on the vehicle, as set forth in paragraph 24 below.

FOURTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

24. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative, in the following material respects:

a. Respondent failed to diagnose the fault code relating to the No. 2 shift solenoid before removing the transmission from the Bureau's 1997 Toyota Camry.

b. Respondent failed to replace the friction plates, the second coast brake band, the drive pinion seals, the upper valve body cover gaskets and lower valve body gasket, and the forward clutch oil seal rings in the transmission of the Bureau's 1997 Toyota Camry, as required by Regulation 3361.1.

FIFTH CAUSE FOR DISCIPLINE

(Violations of the Code)

25. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material respect, as follows: Respondent's employee, Phillips, failed to provide the operator with a written estimate for the diagnosis of the Bureau's 1997 Toyota Camry.

SIXTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

26. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision

(a)(2)(B), in a material respect, as follows: Respondent stated on the invoice that a new "Transtar assembly kit" was installed in the Bureau's 1997 Toyota Camry, but failed to list, describe, or identify the parts that were included in the kit.

UNDERCOVER OPERATION #2: 1997 CHEVROLET PICKUP

27. On September 14, 2011, an undercover operator of the Bureau ("operator") took the Bureau's 1997 Chevrolet pickup to Respondent's facility. The 2-3 shift solenoid on the Bureau-documented vehicle was defective. The operator met with Respondent's manager, Sean Brown ("Brown"), and told him that the vehicle was driving "sluggish" and that a light (malfunction indicator light) was illuminated on the dashboard. Brown asked the operator if he could keep the vehicle overnight. The operator agreed to leave the vehicle at the facility for diagnosis and signed and received a copy of a "Customer Reception" form.

28. On September 15, 2011, the operator called the facility and spoke with Brown. Brown told the operator that they performed a transmission inspection and that the vehicle was stuck in 3rd gear and had no operational 2nd gear, "it was gone". Brown stated that they removed the transmission pan and that there was "a lot of metal", which indicated that the vehicle had a "complete transmission failure". Brown told the operator that the transmission had to be rebuilt, that the rebuild would cost $1,933, and that there would be an additional charge if the facility found some bad components, such as hard parts and/or electronics. The operator authorized the repairs.

29. On September 19, 2011, Brown called the operator and told him that the mechanics found that a couple of hard parts and all of the electronics needed to be replaced. Brown stated that it would cost a total of $2,376 plus tax to rebuild the transmission and replace the hard parts and electronics. The operator authorized the additional repairs on the vehicle.

30. On September 21, 2011, Brown called the operator and informed him that the total charges for the repairs would be $2,475.04, including tax.

31. On September 23, 2011, the operator returned to the facility to retrieve the vehicle, paid Brown $2,475 for the repairs, and received a copy of a final invoice.

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32. On September 29, 2011, the Bureau inspected the vehicle and found that the facility had replaced the defective 2-3 shift solenoid, but had performed several unnecessary repairs, as set forth below.

SEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

33. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent's employee, Brown, represented to the operator that the Bureau's 1997 Chevrolet pickup was stuck in 3rd gear and had no operational 2nd gear, that there was "a lot of metal" in the transmission pan, which indicated that the vehicle had a "complete transmission failure", and that the transmission had to be rebuilt. In fact, the only repair needed on the vehicle was the replacement of the defective 2-3 shift solenoid, which is readily accessible once the transmission pan has been removed. Further, the transmission was free of any abnormalities and was not in need of removal or rebuilding at the time the vehicle was taken to Respondent's facility.

b. Respondent's employee, Brown, represented to the operator that a couple of hard parts and all of the electronics on the Bureau's 1997 Chevrolet pickup needed replacement. In fact, the transmission hard parts were new and/or in good condition and were not in need of replacement at the time the vehicle was taken to Respondent's facility. Further, all of the transmission's electrical components, with the exception of the 2-3 shift solenoid, were new, were within manufacturer's specifications and operated normally, and/or were not in need of replacement.

EIGHTH CAUSE FOR DISCIPLINE

(Fraud)

34. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud, as follows: Respondent's employee, Brown, made false or misleading statements to the operator regarding

the Bureau's 1997 Chevrolet pickup, as set forth in paragraph 33 above, in order to induce the operator to authorize unnecessary repairs on the vehicle, then sold the operator unnecessary repairs, including the removal and reconditioning of the transmission and the replacement of the torque converter, the low and reverse roller clutch and forward sprag assembly, the 1-2 shift solenoid, the pressure control solenoid, the 3-2 shift solenoid, the pressure switch assembly, the servo piston housing, the 2nd apply piston, and the forward accumulator piston.

NINTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

35. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(7), in that Respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows: Respondent failed to diagnose the cause of the malfunction indicator light and the fault code relating to the 2-3 shift solenoid, that was stored in the electronic control module on the Bureau's 1997 Chevrolet pickup, prior to removing the transmission from the vehicle.

TENTH CAUSE FOR DISCIPLINE

(Violations of Regulations)

36. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with Regulation 3356, subdivision (a)(2)(B), in a material respect, as follows: Respondent stated on the invoice that a new "Transtar assembly kit" was installed in the Bureau's 1997 Chevrolet pickup, but failed to list, describe, or identify the parts that were included in the kit.

OTHER MATTERS

37. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Mango Investments, Inc., doing business as Aamco Transmissions, upon a finding that Respondent has, or is, 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 of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 234758, issued to Mango Investments, Inc., doing business as Aamco Transmissions;

2. Revoking or suspending any other automotive repair dealer registration issued in the name of Mango Investments, Inc.;

3. Ordering Mango Investments, Inc., doing business as Aamco Transmissions, 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;

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

DATED: 3-6-12

John Wallauch by Doug Bast
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

Doug Bast
Asst. Chief

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