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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:
ANDREW GARZA
dba ANDREWS AUTO CENTER
1873 E. Hedges Avenue
Fresno, California 93703
Automotive Repair Dealer Registration No.
ARD 238107

Respondent.

Case No. 77/10-39

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 22, 2011, Complainant Sherry Mehl, in her official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 77/10-39 against Andrews Auto Repair, Andrew T. Garza (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. On or about January 1, 2005, the Bureau of Automotive Repair (Bureau) issued Automotive Repair Dealer Registration No. ARD 238107 to Respondent. The Automotive Repair Dealer Registration expired on November 18, 2007, and has not been renewed.
3. On or about March 4, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 77/10-39, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
2 section 1409.1, is required to be reported and maintained with the Board, which was and is:

3 1873 E. Hedges Avenue
4 Fresno, California 93703

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. No documents were returned by the U.S. Postal Service.

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 77/10-39.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Director after
24 having reviewed the proof of service dated March 4, 2011, signed by Tracy Cortez, finds
25 Respondent is in default. The Director will take action without further hearing and, based on
26 Accusation, No. 77/10-39, proof of service, and on the Affidavit of Bureau Representative Ronald
27 Grasmick, finds that the allegations in the Accusation are true.

28 10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
(\$6,301.90) and Enforcement (\$1,520.00) totals \$7,821.90 as of July 22, 2011.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Andrews Auto Repair, Andrew
3 T. Garza has subjected his Automotive Repair Dealer Registration No. ARD 238107 to discipline.

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

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

9 a. Respondent failed to comply with Code section 9884.6(a), by failing to maintain a
10 valid registration, and representing himself as having a valid Automotive Repair Dealer
11 registration.

12 b. Respondent made untrue or misleading statements in that Respondent generated
13 invoices using his expired registration number and advertised himself to have a registered
14 facility when, in fact, he did not have a valid registration.

15 c. Respondent failed to comply with provisions of Code section 9884.8 in that he
16 failed to record the results of the diagnosis of a vehicle on the invoice and violated section
17 9884.9(a) in that he failed to provide the operator with a written estimate for a specific job
18 and failed to obtain and record the operator's authorization for additional labor costs for
19 repairs.

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ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 238107, heretofore issued to Respondent Andrews Auto Repair, Andrew T. Garza, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: Tim Corcoran, 10220 Systems Parkway, Unit B, Sacramento, CA 95827. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on October 10, 2011.

It is so ORDERED August 31, 2011


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

Attachment: Exhibit A: Accusation

Exhibit A

Accusation

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 7710-39

12 **ANDREW GARZA**
13 dba **ANDREWS AUTO CENTER**
1873 E. Hedges Avenue
14 Fresno, California 93703

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD 238107**

17 Respondent.

18
19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

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

23 2. In or about 2005, the Bureau issued Automotive Repair Dealer Registration Number
24 ARD 238107 to Andrew Garza ("Respondent"), doing business as Andrews Auto Center. On or
25 about June 21, 2007, a temporary 150-day registration was issued to Respondent due to family
26 support issues. Respondent failed to resolve the family support issues. The registration expired
27 on November 18, 2007, and renewal was denied based upon Family Code section 17500.

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1 crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy
2 of the invoice shall be given to the customer and one copy shall be retained by the
3 automotive repair dealer."

4 6. Code section 9884.9 states:

5 (a) The automotive repair dealer shall give to the customer a written
6 estimated price for labor and parts necessary for a specific job. No work shall be
7 done and no charges shall accrue before authorization to proceed is obtained from the
8 customer. No charge shall be made for work done or parts supplied in excess of the
9 estimated price without the oral or written consent of the customer that shall be
10 obtained at some time after it is determined that the estimated price is insufficient and
11 before the work not estimated is done or the parts not estimated are supplied. Written
12 consent or authorization for an increase in the original estimated price may be
13 provided by electronic mail or facsimile transmission from the customer. The bureau
14 may specify in regulation the procedures to be followed by an automotive repair
15 dealer if an authorization or consent for an increase in the original estimated price is
16 provided by electronic mail or facsimile transmission. If that consent is oral, the
17 dealer shall make a notation on the work order of the date, time, name of person
18 authorizing the additional repairs, and telephone number called, if any, together with
19 a specification of the additional parts and labor and the total additional cost, and shall
20 do either of the following:

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

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

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

28 _____
(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.

7. Code section 9884.13 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.

COST RECOVERY

8. 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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **CONSUMER COMPLAINT NO. 1 – 2000 HONDA ODYSSEY**

4 9. On or about January 5, 2009, M.B. ("consumer"), took his 2000 Honda Odyssey to
5 Respondent's facility to repair the check engine light for Code P0401 (low exhaust gas
6 recirculation ("EGR") flow). Respondent inspected the vehicle and told the consumer that the
7 computer was not properly controlling the EGR and needed to be replaced. The consumer
8 refused the repairs because he wanted a second opinion. The vehicle would not run and the
9 consumer had his vehicle towed to Honda North. Honda North determined that the EGR had
10 plugged passages and the computer was damaged, causing the vehicle not to run, and required
11 replacement. The consumer alleged that Respondent damaged the vehicle's computer and asked
12 Respondent to pay for the new computer. Respondent denied damaging the computer and refused
13 to pay to replace it.

14 10. On or about February 23, 2009, the Bureau received a complaint from the
15 consumer regarding the damage to the vehicle's computer.

16 11. On or about April 1, 2009, a Bureau representative went to Respondent's facility to
17 discuss the consumer's complaint. The Bureau representative discovered that Respondent's
18 registration had expired on November 18, 2007. The Bureau representative requested
19 Respondent to cease performing any repairs requiring a valid registration.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with the Automotive Repair Act)**

22 12. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
23 in that on or about January 5, 2009, Respondent failed to comply with Code section 9884.6(a), by
24 failing to maintain a valid registration, and representing himself as having a valid Automotive
25 Repair Dealer registration.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 13. Respondent's registration is subject to discipline under Code section 9884.7(a)(1),
4 in that on or about January 5, 2009, Respondent made untrue or misleading statements, which he
5 knew or which by exercise of reasonable care, should have known were untrue or misleading, in
6 that Respondent generated Invoice Number 2375 using his expired registration number,
7 advertising himself to have a registered facility when, in fact, he did not have a valid registration.

8 **CONSUMER COMPLAINT NO. 2 – 2000 VOLVO S80**

9 14. On or about August 31, 2009, J.R. ("consumer"), took her 2000 Volvo S80 to
10 Respondent's facility for repairs. The repairs were suggested by Fresno Lincoln Mercury Volvo
11 ("FLMV"). Over the following three weeks, Respondent made several repairs. Respondent then
12 said that the computer was defective and needed to be replaced. Respondent told the consumer
13 that she would need to have her vehicle towed back to FLMV. FLMV inspected the vehicle and
14 found that the battery was bad, the wiring had been probed and not correctly sealed, the wrong
15 spark plugs had been installed, and the vehicle's computer was bad. The consumer alleged that
16 the repairs performed by Respondent were substandard, causing the computer to fail. The
17 consumer requested a refund of \$1,386.55 from Respondent. Respondent refused. The consumer
18 no longer owns the vehicle for inspection by a Bureau representative.

19 15. On or about February 22, 2010, the Bureau received a complaint from the
20 consumer regarding the repairs to her vehicle and damage to the vehicle's computer.

21 16. On or about March 11, 2010, a Bureau representative went to Respondent's facility
22 to discuss the consumer's complaint. The Bureau representative discovered that Respondent's
23 registration had expired on November 18, 2007. The Bureau representative requested
24 Respondent to cease performing repairs requiring a valid registration.

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1 a. Section 9884.8: Respondent failed to record the results of the diagnosis of the vehicle
2 on Invoice Number 2666.

3 b. Section 9884.9(a):

4 i. Respondent failed to provide the operator with a written estimate for a
5 specific job, in that he failed to record the diagnostic fee and labor fee on estimate number 2666.

6 ii. Respondent failed to obtain and record the operator's authorization for
7 additional labor costs for repairs on estimate number 2666.

8 OTHER MATTERS

9 27. Under Code section 9884.7(c), the director may deny, suspend, revoke, or place on
10 probation the registrations for all places of business operated in this state by Andrew Garza, doing
11 business as Andrews Auto Center, upon a finding that he has, or is, engaged in a course of
12 repeated and willful violations of the laws and regulations pertaining to an automotive repair
13 dealer.

14 PRAYER

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

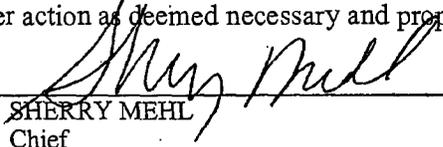
17 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
18 238107, issued to Andrew Garza, doing business as Andrews Auto Center;

19 2. Revoking or suspending any other automotive repair dealer registration issued to
20 Andrew Garza;

21 3. Ordering Andrew Garza to pay the Bureau of Automotive Repair the reasonable
22 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

24 DATED: 2/22/11


25 SHERRY MEHL
26 Chief
27 Bureau of Automotive Repair
28 Department of Consumer Affairs
State of California
Complainant

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