

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

In the Matter of the STAR Certification  
Invalidation Against:

**YADOLLAH MISSAGHIAN, Owner**

**dba A1 76 AUTO REPAIR UNIT 2**

License No. RC256231,

**NORTHGATE SHELL**

License No. RC206883

and

**SLATER SHELL AUTO REPAIR**

License No. RC247924

Respondent.

OAH No. 2014030662

Case No. 2013 19169

**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 July 16, 2015.

DATED: June 11, 2015

  
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TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

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**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Danette C. Brown, Office of Administrative Hearings (OAH), State of California, on February 23, 2015, in Fresno, California.

Deputy Attorney Karen R. Denvir represented complainant Bureau of Automotive Repair (BAR), Department of Consumer Affairs.

Yadollah Missaghian (respondent) was present and was represented by Jacob M. Weisberg, Attorney at Law.

Evidence was received, the record was closed, and the matter was submitted for decision on February 23, 2015.

## FACTUAL FINDINGS

### *Licenses and Certifications*

#### A1 76 AUTO REPAIR UNIT 2

1. On September 24, 2008, the BAR issued Automotive Repair Dealer (ARD) registration number ARD 256231 to respondent, doing business as A1 76 Auto Repair Unit 2 in Fresno, California. The registration expires on June 30, 2015. The BAR also issued Smog Check Station License No. RC 256231 on October 8, 2008, to respondent. The license expires on June 30, 2015. A1 76 Auto Repair Unit 2 is also certified as a STAR Station.<sup>1</sup> Respondent applied for STAR certification on September 12, 2012, and the certification was issued on January 2, 2013, and will remain active unless the ARD registration and/or Smog Station license are revoked, canceled, or delinquent, or certification is invalidated.

#### NORTHGATE SHELL

2. In 1999, the BAR issued ARD registration number 206883 to respondent, doing business as Northgate Shell in Fresno, California. The registration expires on August 31, 2015. The BAR also issued Smog Check Station License No. RC 206883, in 1999, to respondent. The license expires on August 31, 2015. Northgate Shell is also certified as a STAR Station. Respondent applied for STAR certification on September 12, 2012, and the certification was issued on January 2, 2013, and will remain active unless the ARD registration and/or Smog Station license are revoked, canceled, or delinquent, or certification is invalidated.

#### SLATER SHELL AUTO REPAIR

3. On December 18, 2006, the BAR issued ARD registration number 247924 to respondent, doing business as Slater Shell Auto Repair in Fresno, California. The registration expires on October 31, 2015. The BAR also issued Smog Check Station License No. RC 247924 on December 21, 2006, to respondent. The license expires on October 31, 2015. Slater Shell Auto Repair is also certified as a STAR Station. Respondent applied for STAR certification on September 12, 2012,

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<sup>1</sup> "STAR" refers to a voluntary certification program that applies to a registered ARD that is also a licensed smog check test-and-repair station or a test-only station that meets all requirements specified in Article 10 of the regulations. (Cal. Code of Regs., tit. 16, § 3340.1.) Article 10 of the regulations sets forth the eligibility requirements for STAR Station certification. STAR stations are smog check stations that certify directed and gross-polluting vehicles. Some STAR stations are licensed to perform only tests, while others may perform tests and repairs. The STAR Program began on January 1, 2013.

and the BAR issued the certification on January 1, 2013. The BAR invalidated respondent's certification on April 23, 2014, due to a separate cause for invalidation not part of the present case.

*Notices of STAR Certificate Invalidation Based on Prior Suspension and Probation*

4. On February 27, 2013, the BAR issued Notices of STAR Certificate Invalidation to each of respondent's three businesses: A1 76 Auto Repair Unit 2; Northgate Shell; and Slater Shell Auto Repair. The basis for invalidation was that respondent's ARD registration and smog check station licenses were disciplined in a previous administrative action in BAR Case No. 77/11-60. The BAR issued the Accusation on June 1, 2012, and respondent entered into a Stipulated Settlement and Disciplinary Order on September 20, 2012. The Stipulated Settlement and Disciplinary Order was accepted and adopted by the Director of Consumer Affairs on December 18, 2012, and became effective on January 14, 2013. Respondent's ARD registrations and smog check station licenses were revoked, stayed with a five day suspension, and respondent was placed on probation for three years upon specified terms and conditions.

5. California Code of Regulations, title 16, section 3392.5.1, lists the causes for BAR to invalidate the certification of a STAR station. One of the causes for invalidation is when a STAR station receives a suspension and/or probationary order. (Cal. Code of Regs., tit. 16, § 3392.5.1, subd. (a)(1).) The suspension and probationary order in Case No. 77/11-60 became effective on January 14, 2013. (Finding 4.)

6. Respondent contested the STAR Invalidations. The BAR upheld the invalidations on May 1, 2013, and the invalidations were to take effect on May 31, 2013. Respondent appealed the invalidations and requested a hearing. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

*Respondent's Arguments*

7. Respondent asserted the following at hearing:
  - a. The BAR is estopped from invalidating respondent's STAR certifications;
  - b. The BAR has no legal basis to invalidate respondent's STAR certifications based upon his plea to the Accusation in Case No. 77/11-60; and

- c. The Accusation in Case No. 77/11-60 cannot be used in the STAR certification invalidation in the absence of a specific agreement that the parties intended the stipulation to be binding in future litigation.

#### ESTOPPEL DISCUSSION

8. Respondent asserted that the BAR is estopped from taking further disciplinary action that is not set out in the agreement between the parties in Case No. 77/11-60. If the BAR wanted to initiate discipline in excess of what was contained in the agreement, respondent asserted that complainant could have refused to approve the agreement, amended the Accusation to include the present STAR invalidation action, and proceeded to hearing on all issues, or entered into a different agreement that took into account the STAR certifications.

9. The STAR program was not yet in existence when respondent entered into the Stipulated Settlement. Respondent did not have STAR certifications for the three businesses at issue in this matter at that time. If respondent wanted to preclude the BAR from invalidating his STAR certifications that he applied for and intended to receive in the future, after the January 1, 2013 implementation of the STAR program, respondent, with the advice of his counsel, could have incorporated such language into the Stipulated Agreement. He did not. Respondent's argument lacks merit.

#### NO LEGAL BASIS TO INVALIDATE STAR CERTIFICATIONS DISCUSSION

10. Respondent asserted that BAR has no legal basis to invalidate his STAR certifications because none of the enumerated sections under California Code of Regulations, title 16, section 3392.5.1, subdivision (a)(1) were alleged in the Accusation in Case No. 77/11-60, and respondent's suspension and probation order arising out of that case was not based on respondent's violation of any of those enumerated code sections. Thus, respondent argued, the BAR cannot invalidate respondent's STAR certifications. However, respondent has misread the regulation, which states:

- (a) It shall be cause for the bureau to invalidate the certification of a STAR station if any of the following occur:
  - (1) The STAR station, manager, or any licensed technician employed by the station receives an order of suspension, a probationary order, or a citation that is final and non-appealable for violation of any of the following sections: 44012, 44015 (a) and (b), 44015.5, 44016, and 44032 of the Health and Safety Code; and 3340.15 (a), 3340.16 (a) and (b), 3340.16.5 (a) and (b), 3340.17,

3340.30 (a), 3340.35, 3340.41 (b), 3340.41 (c),  
3340.42, 3340.42.2, and 3340.45 of Division 33,  
Title 16, California Code of Regulations.

The enumerated Health and Safety Code sections and regulations apply to citations only. Therefore, BAR had a legal basis to invalidate respondent's STAR certifications based upon the Stipulated Agreement, wherein respondent admitted to the truth of each and every charge and allegation in the Accusation,<sup>2</sup> and imposed a suspension and probationary period. This argument lacks merit.

#### NO AGREEMENT WHERE STIPULATION WOULD BE BINDING DISCUSSION

11. Respondent asserted that the Stipulated Settlement and Disciplinary Order in Case No. 77/11-60 cannot be used as cause for invalidation of respondent's STAR certifications because the stipulation did not state that the facts stipulated to would be binding in future actions. He further asserted that the Stipulated Settlement and Disciplinary Order was intended "to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement," and that the Stipulated Settlement and Disciplinary Order "may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties."

12. The BAR does not seek to use the stipulated facts in Case No. 77/11-60 as a basis for the STAR invalidations in the present case. The BAR is not seeking discipline against respondent's ARD and smog check station licenses in the present case. The BAR is not seeking to "discipline" respondent's STAR certifications in the present case. The STAR certifications are not a license or licensing right to be disciplined. Rather, STAR is a voluntary certification program whose criteria respondent must meet. Respondent's conduct in Case No. 77/11-60 is not a basis for the STAR invalidations. The suspension/probationary orders are. Based upon the suspension/probationary orders, respondent no longer meets the criteria for STAR certification. Respondent's argument lacks merit.

#### LEGAL CONCLUSIONS

1. In administrative proceedings, as in civil actions, the party asserting the affirmative generally has the burden of proof by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.) Once the party bearing the burden of proof has made a prima facie case, the burden shifts to respondent, who has the burden of proof of any affirmative defenses. (*Whetstone v.*

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<sup>2</sup> The Accusation in BAR Case No. 77/11-60 alleged numerous violations of Business and Professions Code section 9884.7.

*Board of Dental Examiners* (1927) 87 Cal.App. 156.) In this matter, the BAR had the burden of proving that respondent received “an order of suspension, a probationary order, or a citation that is final and non-appealable for violation of specified Business and Professions Code sections. (Cal. Code of Regs., tit. 16, § 3392.5.1, subd. (a)(1).)

2. The evidence established that cause exists to invalidate the STAR Certifications of A1 76 Auto Repair Unit 2, Northgate Shell, and Slater Shell Auto Repair, pursuant to California Code of Regulations, title 16, section 3392.5.1, subdivision (a)(1), by reason of Findings 4 and 5.

3. The matters set forth in Findings 7 through 12 were considered in determining that respondent’s defenses based upon estoppel, BAR having no legal basis to invalidate the STAR certification, and the impact of the earlier Stipulated Settlement and Disciplinary Order all lack merit.

#### ORDER

The STAR Invalidations of A1 76 Auto Repair Unit 2, Northgate Shell, and Slater Shell Auto Repair, with respondent Yadollah Missaghian, Owner, are **AFFIRMED**.

DATED: March 16, 2015

  
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DANETTE C. BROWN  
Administrative Law Judge  
Office of Administrative Hearings