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

11
12 In the Matter of the Accusation Against:
13 **ELEGANCE PAINT AND BODY,**
OWNER JAVIER HERNANDEZ
14 **1821 Container Circle**
Riverside, CA 92509
15
16 **Automotive Repair Dealer Registration No.**
ARD 262478
17
18 Respondent.

Case No. 77/14-54
A C C U S A T I O N

19 Complainant alleges:

20 **PARTIES**

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

23 **Automotive Repair Dealer Registration**

24 2. On July 6, 2010, the Bureau of Automotive Repair issued Automotive Repair Dealer
25 Registration Number ARD 262478 to Elegance Paint and Body, Javier Hernandez, owner
26 (Respondent). Respondent's registration became delinquent on June 30, 2011 and was reinstated
27 on June 10, 2013. Respondent's Automotive Repair Dealer Registration was delinquent at all
28 times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

1 **JURISDICTION**

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

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

8 5. Code section 477 provides, in pertinent part, that "Board" includes "bureau."
9 "License" includes certificate, registration or other means to engage in a business or profession
10 regulated by the Code.

11 **STATUTORY PROVISIONS**

12 6. Section 9884.6 of the Code states:

13 (a) It is unlawful for any person to be an automotive repair dealer
14 unless that person has registered in accordance with this chapter [the
Automotive Repair Act] and unless that registration is currently valid.

15 ...

16 7. Section 9884.7 of the Code states:

17 (a) The director, where the automotive repair dealer cannot show there
18 was a bona fide error, may deny, suspend, revoke, or place on probation the
19 registration of an automotive repair dealer for any of the following acts or
20 omissions related to the conduct of the business of the automotive repair
dealer.

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

24 ...

25 (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.

26 (4) Any other conduct that constitutes fraud.

27 ...

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

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

7 ...

8 8. Code section 9884.8 states, in pertinent part:

9 All work done by an automotive repair dealer, including all warranty
10 work, shall be recorded on an invoice and shall describe all service work
11 done and parts supplied....One copy of the invoice shall be given to the
12 customer and one copy shall be retained by the automotive repair dealer.

13 9. Section 9884.9 of the Code states:

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

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

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

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

(signature or initials)"

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

4 10. Section 9884.11 of the Code states that:

5 [e]ach automotive repair dealer shall maintain any records that are required
6 by regulations adopted to carry out this chapter [the Automotive Repair Act].
7 Those records shall be open for reasonable inspection by the chief or other
8 law enforcement officials. All of those records shall be maintained for at
9 least three years.

8 REGULATORY PROVISIONS

9 11. California Code of Regulations, title 16, section 3353, states:

10 No work for compensation shall be commenced and no charges shall accrue
11 without specific authorization from the customer in accordance with the following
12 requirements:

13 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a
14 written estimated price for labor and parts for a specific job.

15 (b) Estimate for Auto Body or Collision Repairs. Every dealer, when doing
16 auto body or collision repairs, shall give to each customer a written estimated price
17 for parts and labor for a specific job. Parts and labor shall be described separately
18 and each part shall be identified, indicating whether the replacement part is new,
19 used, rebuilt or reconditioned. The estimate shall also describe replacement crash
20 parts as original equipment manufacturer (OEM) crash parts or non-OEM aftermarket
21 crash parts.

22 ...

23 (c) Revising an Itemized Work Order. If the customer has authorized repairs
24 according to a work order on which parts and labor are itemized, the dealer shall not
25 change the method of repair or parts supplied without the written, oral, electronic
26 authorization of the customer. The authorization shall be obtained from the customer
27 as provided in subsection (c) and Section 9884.9 of the Business and Professions
28 Code.

...

12. California Code of Regulations, title 16, section 3356, states:

(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:

(1) The invoice shall show the automotive repair dealer's registration number
and the corresponding business name and address as shown in the Bureau's records. If
the automotive repair dealer's telephone number is shown, it shall comply with the
requirements of subsection (b) of Section 3371 of this chapter.

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(2) The invoice shall separately list, describe and identify all of the following:

(A) All service and repair work performed, including all diagnostic and warranty work, and the price for each described service and repair.

(B) Each part supplied, in such a manner that the customer can understand what was purchased, and the price for each described part. The description of each part shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

...

13. California Code of Regulations, title 16, section 3358, states:

Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:

(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.

(b) All written estimates pertaining to work performed.

(c) All work orders and/or contracts for repairs, parts and labor. All such records shall be open for reasonable inspection and/or reproduction by the bureau or other law enforcement officials during normal business hours.

14. California Code of Regulations, title 16, section 3365, states:

The accepted trade standards for good and workmanlike auto body and frame repairs shall include, but not be limited to, the following:

(a) Repair procedures including but not limited to the sectioning of component parts, shall be performed in accordance with OEM service specifications or nationally distributed and periodically updated service specifications that are generally accepted by the autobody repair industry.

(b) All corrosion protection shall be applied in accordance with manufacturers' specifications or nationally distributed and periodically updated service specifications that are generally accepted by the autobody repair industry.

15. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care

should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

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1 **COST RECOVERY**

2 16. Code section 125.3 provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **CONSUMER COMPLAINT NUMBER ONE**

7 **H. RIVERA – 2008 HONDA ACCORD**

8 17. On or about April 8, 2012 consumer H. Rivera's (Rivera) 2008 Honda Accord was
9 involved in a collision. In June 2012, Rivera brought his 2008 Honda Accord to Respondent's
10 facility. WestCoast Appraisers prepared estimate W1204253 for Freedom National Insurance
11 Company, detailing the required parts and labor need for repairs in the amount of \$12,151.03.
12 Respondent agreed to do the work as stated on the estimate. Rivera did not receive a copy of the
13 work order authorizing the repairs.

14 18. On July 18, 2012 an inspection of Rivera's vehicle was performed by Bureau
15 personnel using a copy of estimate W1204253 as a reference and found the following were not
16 repaired or installed as required by the estimate:

- 17 a. Line #22 – Exhaust muffler with Pipe.
- 18 b. Line # 34 – Left Center Pillar Inner Panel (HSS).
- 19 c. Line # 35 – Left Center Pillar Inner Panel Reinforcement (HSS).
- 20 d. Line # 36 – Left Rocker Reinforcement (HSS).
- 21 e. Line # 37 – Floor Panel (HSS).
- 22 f. Line #38 – Left Lower Center Pillar Trim Panel.
- 23 g. Line #60 – Front Left Upper Door Hinge
- 24 h. Line #62 – Lower Front Upper Hinge Labor
- 25 i. Line #63 – Left Front Lower Door Hinge
- 26 j. Line #64 – Left Front Lower Hinge Labor
- 27 k. Line #76 – Left Rear Upper Door Hinge
- 28 l. Line #78 – Left Rear Upper Hinge Labor

- 1 m. Line #79 – Left Rear Lower Door Hinge
2 n. Line #80 – Left Rear Lower Hinge Labor
3 o. The airbag light on Respondent’s vehicle was also left on, potentially indicating
4 that the airbag was not replaced.

5 19. On July 17, 2012, Bureau personnel inspected Respondent’s facility and found him to
6 be operating without a valid registration.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 20. Respondent’s registration is subject to discipline under Code section 9884.7(a)(1), in
10 that Respondent made statements which he knew or which by exercise of reasonable care should
11 have known to be untrue or misleading by falsely representing that the 2008 Honda Accord
12 owned by H. Rivera had been repaired in accordance with the estimate W1204253 when, in fact,
13 it was not, as more particularly set forth in paragraphs 17-18 above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 21. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
17 subdivision(a)(4), in that Respondent committed acts constituting fraud, by charging for and
18 receiving payment for repairs that were not performed, as more particularly set forth above in
19 paragraphs 17-19 above.

20 **THIRD CAUSE FOR DISCIPLINE**

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

22 22. Respondent has subjected his registration to discipline pursuant to Business and
23 Professions Code section 9884.7, subdivision (a)(6), and 9884.8 in that Respondent failed to
24 comply with the California Code of Regulations title 16, in a material respect, as outlined in
25 paragraph 17 though 19 above and as follows:

- 26 a. Section 3353: Failing to receive written authorization for work performed.
27 b. Section 3353 (b): Failure to give the customer a written estimate.
28 c. Section 3356(a)(2)(A): Failure to record all serviced performed on an invoice.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 17. Respondent is subject to disciplinary action pursuant to Code section 9884.7,
4 subdivision(a)(4), in that Respondent committed acts constituting fraud, by charging for and
5 receiving payment for repairs that were not performed, as more particularly set forth above in
6 paragraphs 27-28 above.

7 **EIGHT CAUSE FOR DISCIPLINE**

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

9 18. Respondent has subjected his registration to discipline pursuant to Business and
10 Professions Code section 9884.7, subdivision (a)(6), and 9884.8 in that Respondent failed to
11 comply with the California Code of Regulations title 16, in a material respect, as outlined in
12 paragraph 27-29 above and as follows:

- 13 a. Section 3353: Failing to receive written authorization for work performed.
14 b. Section 3353 (b): Failure to give the customer a written estimate.
15 c. Section 3356(a)(2)(A): Failure to record all serviced performed on an invoice.
16 b. Section 3356(a)(2)(B): Failure to record each part supplied on an invoice.

17 **NINTH CAUSE FOR DISCIPLINE**

18 **(Willful Departure from Industry Standards)**

19 18. Respondent has subjected his registration to discipline pursuant to Business and
20 Professions Code section 9884.7, subdivision (a)(7), in that, Respondent's repair of the 2010
21 Toyota Camry LE owned by Hernandez willfully departed from or disregarded the accepted trade
22 standards in that the repairs were not in accordance with estimate 1610026-A5SC, as more
23 particularly set forth in paragraphs 27-28 above.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Unregistered Repair Facility)**

3 19. Respondent has subjected his registration to discipline pursuant to Business and
4 Professions Code section 9884.6, subdivision (a), in that Respondent operated an auto repair
5 facility for compensation without a valid registration as outlined in paragraph 17-19, 24-25 and
6 27-29 above.

7 **OTHER MATTERS**

8 31. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
9 suspend, revoke or place on probation the registration for all places of business operated in this
10 state by Respondent Javier Hernandez, owner of Elegance Paint and Body, upon a finding that
11 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
12 regulations pertaining to an automotive repair dealer.

13 **PRAYER**

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

- 16 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
17 262478, issued to Elegance Paint and Body;
- 18 2. Ordering Javier Hernandez to pay the Bureau of Automotive Repair the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.
- 22

23 DATED: April 7, 2014


24 PATRICK DORAIS
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

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