

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

In the Matter of the Accusation Against:

**SUPERIOR TIRES AND FLEET SERVICE,  
INC., dba SUPERIOR TIRES & FLEET  
SERVICE, INC.;**  
**RAFAEL SOTO, President/Treasurer**

Automotive Repair Dealer Registration  
No. ARD 272215,

Respondent.

Case No. 77/15-19

OAH No. 2015070937

**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 April 26, 2016.

DATED: March 14, 2016

  
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TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIRS  
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**PROPOSED DECISION**

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on January 5, 2016, at Los Angeles, California.

Terrence M. Mason, Deputy Attorney General, appeared and represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repairs, Department of Consumer Affairs (Bureau).

Eric Youngquist, attorney at law, appeared and represented respondent Superior Tires and Fleet Service, Inc., doing business as Superior Tires & Fleet Service, Inc., with Rafael Soto as president/treasurer, who was present throughout the hearing.

The parties submitted the matter for decision at the conclusion of the hearing on January 5, 2016.

**FACTUAL FINDINGS**

1. On March 18, 2013, the Bureau issued Automotive Repair Dealer Registration number ARD 272215 to respondent. The registration is active and will expire on March 31, 2016, unless renewed.

2. Complainant brought the Accusation in his official capacity. Respondent timely submitted a Notice of Defense.

3. On March 4, 2014, respondent entered a plea of guilty and was convicted of grand theft in violation of Penal Code section 487, subdivision (a), a felony. (*People v. Soto* (Super. Ct. San Bernardino County, 2014, No. FWV1303780.) At a sentencing hearing on April 2, 2014, the court placed respondent on 36 months of supervised probation on terms and conditions including, but not limited to, the following: The court ordered respondent to serve 180 days in the county jail, obey the law, report to an assigned probation officer every 14 days, cooperate with the probation officer in a plan of rehabilitation, and make restitution to the victim.

4. The conviction arose from the following facts and circumstances. On February 4, 2013, respondent issued invoice number 8173 to a customer for automotive services rendered and parts installed on the customer's truck. To repair excessive oil loss, respondent promised to remove the existing engine and replace it with a different used engine. The invoice charged \$3,964.49 for parts and labor, including \$2,000 for the used engine and 18 hours of labor to remove and install the engine "as per the customer request." (Ex. 6.) The customer paid the invoice in full on February 18, 2013.

5. Subsequently, the customer noticed that the vehicle continued to lose excessive amounts of oil. The customer took the vehicle to another mechanic, who researched the serial number on the engine in the truck. The mechanic determined the serial number matched the original engine. The mechanic concluded "This is original engine block in this vehicle." (Ex. 7.)

6. On March 28, 2013, the customer filed a consumer complaint with the Bureau, alleging respondent did not replace the engine as promised. The Bureau assigned Robert Wright, Program Representative I, to investigate the allegations.

7. On April 12, 2013, the investigator met with Rafael Soto, respondent's chief executive officer, to discuss the complaint and to request records. Mr. Soto denied the allegations and agreed to gather the requested documents.

8. On April 18, 2013, the investigator met again with Mr. Soto, who cooperated with the investigation and produced the requested documents. Respondent repeated his denial of the allegations.

9. On June 27, 2013, the investigator interviewed the mechanic who performed the work. The mechanic admitted that the original engine was not removed and a used engine was not installed. Mr. Soto then admitted to the investigator that respondent did not perform the promised work.

10. At the time, Mr. Soto's mother was undergoing cancer treatment and he was devoting time to assist her with her healthcare needs. Respondent and the customer had an

existing working relationship prior to the incident. The evidence reveals no prior or recurring unlawful conduct or conviction.

11. Complainant incurred prosecution costs in the amount of \$4,012.50 and investigation costs in the amount of \$1,608.21. Respondent presented declarations to support his costs totaling \$5,620.71, a reasonable amount in light of the facts and circumstances of this case.

## LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline against a nonprofessional license or registration by a preponderance of the evidence. (See *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

2. The Bureau may discipline a registration if the registrant commits a crime substantially related to the qualifications, functions, or duties of licensed business or profession. (Bus. & Prof. Code, § 490, subd. (a).)

3. A crime substantially relates to the qualifications, functions, or duties of a registrant if the crime shows the registrant is presently or potentially unfit to perform the functions authorized by the registration in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 3395.2)

4. The Bureau may revoke the registration of an automotive repair dealer for any conduct that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subd. (a).)

5. The Bureau may suspend or revoke a registration if any partner, officer, or director of the registrant is convicted of a crime substantially related to the qualifications, functions, or duties of the license holder. (Bus. & Prof. Code, § 9889.3, subd. (b).)

6. In this case, complainant has proven by a preponderance of the evidence that respondent falsely represented to a customer that he replaced an engine in the customer's truck. In reliance on respondent's false representation, the customer paid respondent in full. Accordingly, respondent engaged in fraud and the court convicted him of grand theft. The crime substantially relates to respondent's duties as a registrant because grand theft shows to a substantial degree his present unfitness to perform the functions authorized by the registration. Moreover, the theft was committed in connection with work performed under the registration.

7. Accordingly, cause exists to discipline respondent's registration under Business and Professions Code sections 490, subdivision (a), 9884.7, subdivision (a), and 9889.3, subdivision (b). (Factual Findings 1-10.)

8. When considering the suspension or revocation of a registration on the grounds that the registrant has been convicted of a crime, the Bureau must consider the following criteria in evaluating the rehabilitation of such person:

- (A) Nature and severity of the act or offense.
- (B) Total criminal record.
- (C) The time that has elapsed since commission of the act or offense.
- (D) Whether the registrant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the registrant.
- (E) Whether the criminal court dismissed the conviction under Penal Code section 1203.4.
- (F) Any other evidence of rehabilitation.

(Cal. Code Regs., tit 16, §3395, subd. (b) .)

9. The weight of the evidence does not show sufficient rehabilitation. Respondent committed a felony by unlawfully taking the customer's money, a serious offense. Less than three years have elapsed since the misconduct and respondent will remain on criminal probation through March 2017. The absence of a prior criminal record is offset by the dishonest nature of grand theft; the absence of any recurrence is given little weight because people have a strong incentive to obey the law while under the supervision of the criminal justice system. (*In re Gossage* (2000) 23 Cal.4th 1080.)

10. Although respondent's mother was in failing health at the time of the incident, the personal distraction does not justify dishonest or unlawful acts and did not relieve respondent from his contractual obligations to the customer. To his credit, respondent cooperated with the Bureau's investigation, but only to the extent of producing documents. His cooperation is insufficient to overcome the finding of cause for discipline.

11. Imposing discipline on respondent's registration furthers the Bureau's most important goal: the protection of the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.) Taking into account all evidence presented, revoking respondent's registration will best protect the public.

12. The Bureau may assess and order any licensee who violates the licensing act to pay the Bureau's reasonable costs incurred to investigate and prosecute the action. (Bus. & Prof. Code, §125.3.)

13. Complainant has demonstrated the Bureau incurred reasonable costs in the amount of \$5,620.71 to investigate and prosecute the case. Moreover, complainant prevailed in proving that respondent violated Business and Professions Code sections 490, subdivision (a), 9884.7, subdivision (a), and 9889.3, subdivision (b).

14. Accordingly, cause exists to order respondent to pay the Bureau's costs of investigation and enforcement under Business and Professions Code section 125.3 within 90 days of the effective date of this decision. (Factual Finding 11.)

ORDER

The Accusation against respondent is affirmed. Respondent's Automotive Repair Dealer Registration No. ARD 272215 is revoked. Respondent shall pay the Bureau the sum of \$5,620.71 within 90 days of the effective date of this decision.

DATED: January 22, 2016

DocuSigned by:

*Matthew Goldsby*

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MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 77/15-19

13 **SUPERIOR TIRES AND FLEET SERVICE, INC.**  
14 **dba SUPERIOR TIRES & FLEET SERVICE, INC.**  
415 W. Emporia St.

15 Ontario, CA 91762

16 **RAFAEL SOTO, President/ Treasurer**

17 Automotive Repair Dealer Registration No.  
18 ARD 272215,

Respondent.

**ACCUSATION**

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 2. On or about March 18, 2013, the Bureau of Automotive Repair (Bureau) issued  
24 Automotive Repair Dealer Registration No. ARD 272215 to Superior Tires and Fleet Service,  
25 Inc., doing business as Superior Tires & Fleet Service, Inc., with Rafael Soto as President/  
26 Treasurer (Respondent). The Automotive Repair Dealer Registration was in full force and effect  
27 at all times relevant to the charges brought herein and will expire on March 31, 2015, unless  
28 renewed.

1 JURISDICTION

2 3. This Accusation is brought before the Bureau under the authority of the following  
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 STATUTORY PROVISIONS

5 4. Section 490 states, in pertinent part:

6 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
7 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
8 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
9 or profession for which the license was issued.

10 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
11 discipline a licensee for conviction of a crime that is independent of the authority granted under  
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
13 of the business or profession for which the licensee's license was issued.

14 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
18 made suspending the imposition of sentence, irrespective of a subsequent order under the  
19 provisions of Section 1203.4 of the Penal Code."

20 5. Section 493 states:

21 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
22 the department pursuant to law to deny an application for a license or to suspend or revoke a  
23 license or otherwise take disciplinary action against a person who holds a license, upon the  
24 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
25 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
26 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
27 and the board may inquire into the circumstances surrounding the commission of the crime in  
28 order to fix the degree of discipline or to determine if the conviction is substantially related to the

1 qualifications, functions, and duties of the licensee in question. "As used in this section, 'license'  
2 includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

3 6. Section 9884.7 states, in pertinent part:

4 "(a) The director, where the automotive repair dealer cannot show there was a bona fide  
5 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair  
6 dealer for any of the following acts or omissions related to the conduct of the business of the  
7 automotive repair dealer, which are done by the automotive repair dealer or any automotive  
8 technician, employee, partner, officer, or member of the automotive repair dealer.

9 . . . .

10 "(4) Any other conduct that constitutes fraud."

11 7. Section 9884.13 provides, in pertinent part, that the expiration of a valid registration  
12 shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding  
13 against an automotive repair dealer or to render a decision invalidating a registration temporarily  
14 or permanently.

15 8. Section 9889.3 states, in pertinent part:

16 "The director may suspend, revoke, or take other disciplinary action against a license as  
17 provided in this article [Article 7 (commencing with section 9889.1) of Chapter 20.3 of Division  
18 3 of the Business and Professions Code] if the licensee or any partner, officer, or director thereof:

19 . . . .

20 "(b) Is convicted of any crime substantially related to the qualifications, functions and  
21 duties of the license holder in question.

22 . . . .

23 "(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured."

24 **REGULATORY PROVISIONS**

25 9. California Code of Regulations, title 16, section 3395.2 states, in pertinent part:

26 "A crime or act shall be considered to be substantially related to the qualifications,  
27 functions, or duties of a registrant if to a substantial degree it shows that the registrant is presently

28 ///

1 or potentially unfit to perform the functions authorized by the registration in a manner consistent  
2 with the public health, safety, or welfare.”

3 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Substantially Related Crime)**

10 11. Respondent is subject to disciplinary action under Sections 9889.3, subdivision (b)  
11 and 490, in conjunction with California Code of Regulations, title 16, section 3395.2, in that  
12 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
13 duties of an automotive repair dealer. On or about March 4, 2014, after pleading guilty,  
14 Respondent was convicted of one felony count of violating Penal Code section 487, subdivision  
15 (a) [grand theft] in the criminal proceeding entitled *The People of the State of California v. Rafael*  
16 *Soto* (San Bernardino County Superior Court Case No. FWV1303780). The Court sentenced  
17 Respondent to serve 180 days in San Bernardino County Jail, ordered Respondent to pay  
18 restitution in the amount of \$3,664.49 plus a 10% administrative fee, and placed him on 36  
19 months supervised probation, with terms and conditions. The circumstances surrounding the  
20 conviction are that on or about May 1, 2013, Respondent failed to replace a used engine in the  
21 victim’s van, as paid for and invoiced during repairs ending in February 2013, for a total amount  
22 of loss to the consumer of \$3,664.49.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Acts Involving Dishonesty, Fraud or Deceit)**

25 12. Respondent is subject to disciplinary action under Sections 9889.3, subdivision (d)  
26 and 9884.7, subdivision (a)(4), in that Respondent has committed acts involving dishonesty,  
27 fraud, or deceit. Complainant refers to, and by this reference incorporates, the allegations set  
28 forth above, in paragraph 11, as though set forth fully.

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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 No. ARD 272215, issued to Superior Tires and Fleet Service, Inc., doing business as Superior Tires & Fleet Service, Inc., with Rafael Soto as President/ Treasurer;

2. Ordering Rafael Soto 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; and

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

DATED: October 8, 2014



PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*