

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

In the Matter of the Statement of Issues Against:

BERG-WEISS ENTERPRISES II, INC.
dba SPEEDEE OIL CHANGE – MIDAS
ROBERT WEISSBERG, President,
Secretary, Treasurer

Applicant for Automotive Repair Dealer
Registration
Applicant for Smog Check Station License

Case No. 79/14-09s

OAH No. 2013080795

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective

April 9, 2014

DATED: _____

MAR 21 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:
12 **BERG-WEISS ENTERPRISES II, INC.**
13 **dba SPEEDEE OIL CHANGE - MIDAS**
14 **ROBERT WEISSBERG, President,**
Secretary, Treasurer
15 **Applicant for Automotive Repair Dealer**
Registration
16 **Applicant for Smog Check Station License**

Case No. 79/14-19S

OAH No. 2013080795
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
24 brought this action solely in his official capacity and is represented in this matter by Kamala D.
25 Harris, Attorney General of the State of California, by Justin R. Surber, Deputy Attorney General.

26 2. Respondent BERG-WEISS ENTERPRISES II, INC. dba SPEEDEE OIL CHANGE -
27 MIDAS, ROBERT WEISSBERG, President, Secretary, Treasurer ("Respondent") is represented
28 in this proceeding by attorney William Ferreira, whose address is:

1 Automotive Defense Specialists

2 582 Market St. Ste 1608

3 San Francisco, CA 94104

4 3. On or about October 5, 2012, Respondent filed an application dated October 1, 2012,
5 with the Director of Consumer Affairs to obtain an Automotive Repair Dealer Registration and
6 Smog Check Station License.

7 JURISDICTION

8 4. Statement of Issues No. 79/14-19S was filed before the Director of Consumer Affairs
9 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
10 Respondent. The Statement of Issues and all other statutorily required documents were properly
11 served on Respondent on July 24, 2013.

12 5. A copy of Statement of Issues No. 79/14-19S is attached as exhibit A and
13 incorporated herein by reference.

14 ADVISEMENT AND WAIVERS

15 6. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Statement of Issues No. 79/14-19S. Respondent has also carefully
17 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
18 Disciplinary Order.

19 7. Respondent is fully aware of its legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
21 counsel at its own expense; the right to confront and cross-examine the witnesses against it; the
22 right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to
23 compel the attendance of witnesses and the production of documents; the right to reconsideration
24 and court review of an adverse decision; and all other rights accorded by the California
25 Administrative Procedure Act and other applicable laws.

26 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
27 every right set forth above.

28

1 CULPABILITY

2 9. With the exception first and third causes for denial, Respondent admits the truth of
3 each and every other allegation in Statement of Issues No. 79/14-19S. Respondent admits the
4 second and fourth causes for denial in Statement of Issues No. 79/14-19S subject its applications
5 to denial.

6 10. Respondent agrees that its Automotive Repair Dealer Registration and Smog Check
7 Station applications are subject to denial and to be bound by the Director's probationary terms as
8 set forth in the Disciplinary Order below.

9 11. Respondent specifically denies the first and third causes for denial. The Director
10 agrees to dismiss the first and third causes for denial.

11 CONTINGENCY

12 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or
13 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
14 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
15 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
16 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
17 and agrees that it may not withdraw this agreement or seek to rescind the stipulation prior to the
18 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
19 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
20 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
21 and the Director shall not be disqualified from further action by having considered this matter.

22 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
23 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
24 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

25 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 15. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Director may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Respondent BERG-WEISS ENTERPRISES II, INC.
8 dba SPEEDEE OIL CHANGE – MIDAS, ROBERT WEISSBERG, President, Secretary,
9 Treasurer shall be issued an Automotive Repair Dealer Registration and a Smog Check Station
10 License both of which shall be immediately revoked. The revocations will be stayed and the
11 Respondent placed on one (1) year probation on the following terms and conditions. The Director
12 dismisses the first and third causes for denial.

13 1. **Obey All Laws.** Comply with all statutes, regulations and rules governing
14 automotive inspections, estimates and repairs.

15 2. **Reporting.** Respondent or Respondent's authorized representative must report in
16 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
17 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
18 maintaining compliance with the terms and conditions of probation.

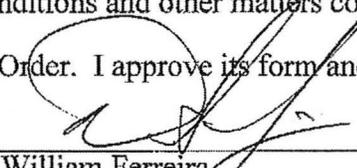
19 3. **Report Financial Interest.** Within 30 days of the effective date of this action, report
20 any financial interest which any partners, officers, or owners of the Respondent facility may have
21 in any other business required to be registered pursuant to Section 9884.6 of the Business and
22 Professions Code.

23 4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
24 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

25 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of
26 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
27 until the final decision on the accusation, and the period of probation shall be extended until such
28 decision.

1 I have read and fully discussed with Respondent BERG-WEISS ENTERPRISES II, INC.
2 and Robert Weissberg the terms and conditions and other matters contained in the above
3 Stipulated Settlement and Disciplinary Order. I approve its form and content.

4 DATED: 2/3/14



William Ferreira
Attorney for Respondent

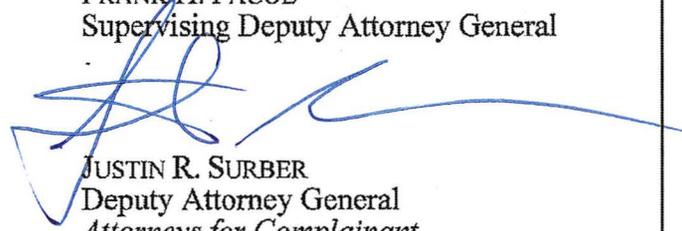
6
7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Director of Consumer Affairs

10 Dated: 2/7/14

Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 FRANK H. PACOE
14 Supervising Deputy Attorney General


15 JUSTIN R. SURBER
16 Deputy Attorney General
17 *Attorneys for Complainant*

18
19 SF2013404779
20 40860491.doc
21
22
23
24
25
26
27
28

Exhibit A

Statement of Issues No. 79/14-19S

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. 79/14-095

12 **BERG-WEISS ENTERPRISES II, INC.**
13 **dba SPEEDEE OIL CHANGE - MIDAS**
14 **ROBERT WEISSBERG, President,**
Secretary, Treasurer

STATEMENT OF ISSUES

15 **Applicant for Automotive Repair Dealer**
Registration
16 **Applicant for Smog Check Station License**
17 **Applicant.**

18
19 Complainant alleges:

20 PARTIES

- 21 1. Patrick Dorais (Complainant) brings this Statement of Issues solely in his official
22 capacity as the Acting Chief of the Bureau of Automotive Repair, Department of Consumer
23 Affairs.
- 24 2. On or about October 5, 2012, the Bureau of Automotive Repair received an
25 application for a/an Automotive Repair Dealer Registration (ARD Application) from Berg-Weiss
26 Enterprises II, Inc. dba Speedee Oil Change – Midas, Robert Weissberg, President, Secretary,
27 Treasurer (Applicant). On or about October 1, 2012, Robert Weissberg certified under penalty of
28

1 perjury to the truthfulness of all statements, answers, and representations in the application. The
2 Bureau denied the application on November 29, 2012.

3 3. On or about October 5, 2012, the Bureau of Automotive Repair received an
4 application for a Smog Check Station License (Station Application) from Berg-Weiss Enterprises
5 II, Inc. Speedee Oil Change – Midas, Robert Weissberg, President, Secretary, Treasurer
6 (Applicant). On or about October 1, 2012, Robert Weissberg certified under penalty of perjury to
7 the truthfulness of all statements, answers, and representations in the application. The Bureau
8 denied the application on November 29, 2012.

9 JURISDICTION

10 4. This Statement of Issues is brought before the Director of Consumer Affairs (Director) for
11 the Bureau of Automotive Repair, under the authority of the following laws.

12 STATUTORY PROVISIONS

13 5. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
14 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
15 the Motor Vehicle Inspection Program.

16 6. Section 44072 of the Health and Safety Code provides, in pertinent part, that the
17 director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1.

18 7. Section 44072.1 of the Health and Safety Code states:

19 "The director may deny a license if the applicant, or any partner, officer, or director thereof,
20 does any of the following:

21 "(c) Has committed any act which, if committed by any licensee, would be grounds for the
22 suspension or revocation of a license issued pursuant to this chapter.

23 "(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is
24 injured or whereby the applicant has benefitted.

25 ...

26 8. Section 9884.7 of the Business and Professions Code provides

27 (a) The director, where the automotive repair dealer cannot show there was a bona fide
28 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair

1 dealer for any of the following acts or omissions related to the conduct of the business of the
2 automotive repair dealer, which are done by the automotive repair dealer or any automotive
3 technician, employee, partner, officer, or member of the automotive repair dealer.

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

7 . . .”

8 9. Section 480 of the Business and Professions Code provides, in pertinent part, that a
9 board may deny a license if the applicant has been convicted of a crime substantially related to
10 the qualifications, functions or duties of the business or profession for which application is made,
11 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done
12 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made
13 a false statement of fact required to be revealed in the application.

14 FACTUAL HISTORY

15 10. On or about February 13, 2007, the Bureau issued Automotive Repair Dealer
16 Registration Number ARD 246091 to Berg-Weiss Enterprise Inc., Robert D Weissberg, President,
17 doing business as Speedee Oil Change & Tune Up. The registration was in full force and effect at
18 all times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

19 11. On or about June 5, 2007, the Bureau issued Smog Check Test and Repair Station
20 License Number RC 246091 to Berg-Weiss Enterprise Inc., Robert D Weissberg, President, doing
21 business as Speedee Oil Change & Tune Up. The station license was in full force and effect at all
22 times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

23 12. On or about May 28, 2008, the Bureau issued advanced emission specialist license
24 EA 630229 to Robert D. Weissberg. Pursuant to California Code of Regulations, title 16, section
25 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, as Smog
26 Check Inspector License Number EO 630229 and Smog Check Repair Technician License

1 Number EI 630229. Smog Check Inspector license EO 630229 and Smog Check Repair
2 Technician license EI 630229 will expire on July 31, 2014, unless renewed.¹

3 13. On or about June 29, 2011, the Bureau issued Citation No. C2011-1511 against Berg-
4 Weiss Enterprise Inc., Robert D Weissberg, President for violating Health and Safety Code
5 section 44012(f) (failure to perform a visual/functional check of emission control devices
6 according to procedures prescribed by the department), for issuing a certificate of compliance to a
7 Bureau undercover vehicle with a missing Fuel Evaporative Canister. The Bureau assessed civil
8 penalties totaling \$1000 against Berg-Weiss Enterprise Inc., Robert D Weissberg, President for
9 the violations. Berg-Weiss Enterprise Inc., Robert D Weissberg, President paid this citation on
10 August 8, 2011.

11 14. On or about November 8, 2011, the Bureau issued Citation No. C2012-0430 against
12 Berg-Weiss Enterprise Inc., Robert D Weissberg, President for violating Health and Safety Code
13 section 44012(f) (failure to perform a visual/functional check of emission control devices
14 according to procedures prescribed by the department), for issuing a certificate of compliance to a
15 Bureau undercover vehicle with a missing Positive Crankcase Ventilation valve. The Bureau
16 assessed civil penalties totaling \$1500 against Berg-Weiss Enterprise Inc., Robert D Weissberg,
17 President for the violations. Berg-Weiss Enterprise Inc., Robert D Weissberg, President paid this
18 citation on December 3, 2012.

19 15. On or about June 5, 2012, the Bureau issued Citation No. C2012-1699 against Berg-
20 Weiss Enterprise Inc., Robert D Weissberg, President for violating Health and Safety Code
21 section 44012(f) (failure to perform a visual/functional check of emission control devices
22 according to procedures prescribed by the department), for issuing a certificate of compliance to a
23 Bureau undercover vehicle with a missing Positive Crankcase Ventilation valve. The Bureau
24 assessed civil penalties totaling \$1500 against Berg-Weiss Enterprise Inc., Robert D Weissberg,
25 President for the violations.

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 which if done by a licentiate would be grounds for suspension or revocation of a license. The
2 circumstances are described in paragraphs 10-17, above.

3 THIRD CAUSE FOR DENIAL OF APPLICATION

4 (Deceit)

5 21. Applicant's Station Application is subject to denial under section 44072.1 of the code
6 in that the Applicant's officer, Robert Weissberg has and is committing acts of deceit. By
7 applying for a ARD and Station license Applicant is attempting to deceive the public of the fact
8 that Robert Weissberg, by and through Berg-Weiss Enterprises Inc., has run the location that
9 Applicant is applying for licensure at in a manner that violates the Automotive Repair Act and
10 Motor Vehicle Inspection Program as described in paragraphs 10-18, above.

11 FOURTH CAUSE FOR DENIAL OF APPLICATION

12 (Untrue or Misleading Statements)

13 22. Applicant's ARD Application is subject to denial under Business and Professions
14 Code section 9884.7 in that Applicant's officer, Robert Weissberg made statements that were
15 untrue or misleading. On or about May 4, 2012, Robert Werissberg certified under penalty of
16 perjury that a 1999 Mazda had properly installed Positive Crankcase Ventilation system. This
17 statement was untrue. The vehicle did not have a properly installed Positive Crankcase
18 Ventilation system.

19 PRAYER

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

22 1. Denying the application of Berg-Weiss Enterprises II, Inc. Robert Weissberg,
23 President, Secretary, Treasurer, for a Automotive Repair Dealer Registration;

24 Denying the application of Berg-Weiss Enterprises II, Inc. Robert Weissberg, President,
25 Secretary, Treasurer, for a Smog Check Station License;

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 7/19/13

PAT DORAIS by [Signature]

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

DIVA BALATTI

SF2013404779
40718484.doc