

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

In the Matter of the Statement of Issues
Against:

**HABIB FUSTOKJIAN
DBA A SMOG CHECK AND TEST ONLY
STATION #1,**

Respondent.

Case No. 79/15-77s

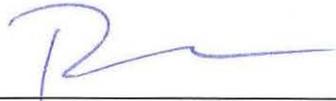
OAH No. 2015070102

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 February 26, 2016.

DATED: January 11, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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October 8, 2015

Bill Thomas, Program Manager I
Bureau of Automotive Repair
10949 N. Mather Blvd.
Rancho Cordova, CA 95670

Re: RECOMMENDATION TO ADOPT STIPULATION
In the Matter of the Statement of Issues Against:
HABIB FUSTOKJIAN dba A SMOG CHECK AND TEST ONLY STATION #1
OAH No. 2015070102
Bureau of Automotive Repair - I/M Smog Case No. 79/15-77s

Dear Mr. Thomas:

Enclosed for consideration by the Director of Consumer Affairs are the Stipulated Settlement and Disciplinary Order in this matter. For the reasons stated below, our office recommends that the Director adopt the agreement and issue the enclosed Decision and Order.

The terms and conditions contained in the stipulation were coordinated with Rebecca Harris and Greg Pearson prior to being offered to Respondent.

BACKGROUND INFORMATION

Habib Fustokjian ("Respondent") previously held an Automotive Repair Dealer Registration (AJ090423) and a Smog Check Station License (RJ090423) which on or about January 13, 1994, were revoked, stayed, and placed on three years probation by the Decision and Order in Case No. 79/93-29. On or about November 28, 2001, the registration and license were again revoked, stayed, and placed on three years probation as the result of a stipulated settlement of Case No. 79/97-51. The registration and license each expired on September 30, 2005.

On or about January 24, 2014, the Bureau received an application from Habib Fustokjian dba A Smog Check and Test Only Station #1 for an Automotive Repair Dealer Registration. Three days later, the Bureau received an application from Respondent for a Smog Check, Test Only, Station License. On each of the applications in response to the question asking if any person in control of the business had ever been subject to administrative discipline by the Bureau, Respondent checked the box indicating "No."

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CHARGES AND ADMISSIONS

The Statement of Issues against Respondent was filed on November 21, 2014. It alleges that on each of the applications, Respondent knowingly made a false statement of fact regarding his prior administrative discipline. Respondent admits the charges but claims that, because of his limited use of the English language, he asked a friend to help him with filling out the applications.

PROPOSED SETTLEMENT CONTRASTED WITH PENALTY GUIDELINES

Issuance of a registration and license on a three (3) year probationary basis for each falls within the Bureau's Disciplinary Guidelines.

MITIGATING OR AGGRAVATING CIRCUMSTANCES

Respondent's most recent history of administrative discipline from the Bureau dates back more approximately fourteen years. Respondent has been cooperative in these proceedings. This appears to be an appropriate case for probation.

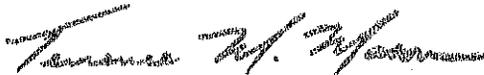
REASONS FOR RECOMMENDATION

Based on the evidence in this case, this stipulation provides for meaningful discipline and a fair resolution of the charges in the Statement of Issues while avoiding the additional time, expense and uncertainty of an administrative hearing. This office therefore recommends that the Bureau adopt the proposed stipulation as the decision in this case.

I hope the above information is sufficient to enable the Bureau to make a decision in this matter. If you have any questions, please do not hesitate to contact me at your earliest convenience.

Habib Fustokjian dba A Smog Check and Test Only Station #1 is represented by attorney Asbet A. Issakhanian, who should be sent a copy of the decision at: 440 Western Ave., Suite 205, Glendale, CA 91201.

Sincerely,



TERRENCE M. MASON
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

Enclosures: Proposed Stipulation and Statement of Issues

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2 LINDA L. SUN
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Attorneys for Complainant
7

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

10
11 In the Matter of the Statement of Issues
Against:

Case No. 79/15-77s

12 **HABIB FUSTOKJIAN**
13 **DBA A SMOG CHECK AND TEST ONLY**
14 **STATION #1,**

OAH No. 2015070102

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair
21 ("Bureau"). He brought this action solely in his official capacity and is represented in this matter
22 by Kamala D. Harris, Attorney General of the State of California, by Terrence M. Mason, Deputy
23 Attorney General.

24 2. Respondent Habib Fustokjian dba A Smog Check and Test Only Station #1
25 ("Respondent") is represented in this proceeding by attorney Asbet A. Issakhanian, whose address
26 is 440 Western Ave., Suite 205, Glendale, CA 91201.
27
28

1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in Statement of
3 Issues No. 79/15-77s.

4 11. Respondent agrees that his Automotive Repair Dealer Registration and Smog Check,
5 test Only, Station License are each subject to denial and he agrees to be bound by the Director's
6 probationary terms as set forth in the Disciplinary Order below.

7 CONTINGENCY

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

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

22 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
27 writing executed by an authorized representative of each of the parties.

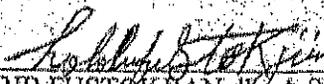
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ACCEPTANCE

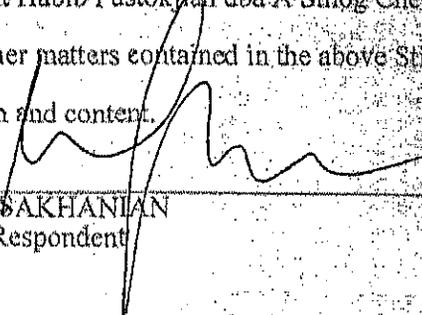
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Asbet A. Issakhanian. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog Check, Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 9-21-15


HABIB FUSTOKJIAN dba A SMOG CHECK AND
TEST ONLY STATION #1
Respondent

I have read and fully discussed with Respondent Habib Fustokjian dba A Smog Check and Test Only Station #1 the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/21/15


ASBET A. ISSAKHANIAN
Attorney for Respondent

ENDORSEMENT

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

DATED: 9/22/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA L. SUN
Supervising Deputy Attorney General

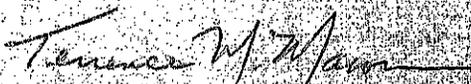

TERRENCE M. MASON
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Statement of Issues No. 79/15-77s

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2 GREGORY J. SALUTE
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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 Statement of Issues
13 Against:

Case No. 79/15-775

14 **HABIB FUSTOKJIAN**
15 **DBA A SMOG CHECK AND TEST ONLY**
16 **STATION #1**

STATEMENT OF ISSUES

Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Patrick Dorais (Complainant) brings this Statement of Issues solely in his official
20 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

21 APPLICATION INFORMATION

22 2. On or about January 24, 2014, the Bureau of Automotive Repair (Bureau) received an
23 Application for Automotive Repair Dealer Registration from Habib Fustokjian (Respondent) dba
24 A Smog Check and Test Only Station #1. On or about January 21, 2014, Respondent certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Bureau denied the application on February 26, 2014.

27 3. On or about January 27, 2014, the Bureau received an Application for Smog Check
28 (Test Only) Station License from Respondent Habib Fustokjian dba A Smog Check and Test

1 Only Station #1. On or about January 21, 2014, Respondent certified under penalty of perjury to
2 the truthfulness of all statements, answers, and representations in the application. The Bureau
3 denied the application on February 26, 2014.

4 PRIOR LICENSURE

5 4. Respondent Habib Fustokjian dba Habibs Union 76 Service was issued Automotive
6 Repair Dealer Registration No. ARD/ AJ 90423 in 1981 and Smog Check Station License No.
7 RC/ RJ 90423 on November 15, 2004. Both the registration and the license expired on
8 September 30, 2005.

9 PRIOR DISCIPLINE

10 5. On or about January 13, 1994, Automotive Repair Dealer Registration No. AJ 090423
11 and Smog Check Station License No. RJ 090423 issued to Respondent were revoked, stayed and
12 placed on three (3) years probation by the Decision and Order in Case No. 79/93-29. In order to
13 verify compliance with the terms of probation, in May 1996, the Bureau initiated an investigation
14 of Respondent's Habib's Union 76 Service. As a result of the investigation, on or about
15 December 12, 1996, the Bureau filed Accusation and Petition to Revoke Probation No. 79/97-51.
16 The period of probation expired on or about January 13, 1997.

17 6. On or about November 28, 2001, in a Decision and Order entitled *In the Matter of the*
18 *Accusation Against: Habib's Union 76 Service, Habib Fustokjian, Owner*, Bureau of Automotive
19 Repair Case No. 79/97-51 (OAH Case No. L-2001060620), Automotive Repair Dealer
20 Registration No. AJ 090423 and Smog Check Station License No. RJ 090423 issued to
21 Respondent were revoked, stayed and again placed on three (3) years probation.¹ Discipline
22 was imposed based upon two Bureau undercover operations conducted at Habib's Union 76
23 Service in which smog certificates of compliance were falsely and fraudulently issued to vehicles
24 which each had the exhaust gas recirculating (EGR) valve's diaphragm ruptured and a blockage
25 plate installed. In each instance, Respondent Habib's Union 76 Service was found to have
26

27 ¹ Because the period of probation had expired on or about January 13, 1997, the Decision and
28 Order did not deal with the Petition to Revoke Probation, but solely with the remaining Accusation.

1 violated the following sections of the Business & Professions Code: § 9884.7(1)(a) [false
2 statements];
3 § 9884.7(1)(d) [fraudulent conduct]; § 9884.7(1)(f) [failure to provide a written estimate]; as well
4 as the following sections of the Health & Safety Code: § 44072.2(a) [failure to comply with the
5 Motor Vehicle Inspection Program]; § 44072.2(c) [failure to comply with regulations pursuant to
6 the Motor Vehicle Inspection Program]; and § 44072.2(d) [dishonesty, fraud or deceit]. A copy
7 of the Decision and Order in that matter is attached hereto as "Exhibit A" and incorporated by
8 reference.

9 JURISDICTION

10 7. Pursuant to Business & Professions Code section 485(b), on or about February 26,
11 2014, Respondent's applications for an Automotive Repair Dealer Registration and a Smog
12 Check (Test Only) Station License were denied and Respondent was notified of the right to a
13 hearing to appeal the denial.

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

17 9. Section 44072.6 of the Health & Safety Code provides, in pertinent part, that the
18 expiration or suspension of a license by operation of law, or by order of the Director shall not
19 deprive the Director of jurisdiction to proceed with an investigation of, or action against, the
20 licensee, or to render a decision suspending or revoking the license.

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

23 STATUTORY PROVISIONS

24 11. Section 44072.1 of the Health and Safety Code states, in pertinent part:

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

27 ".....
28 "(b) Was previously the holder of a license issued under this chapter [the Motor
Vehicle Inspection Program (Health and Safety Code, § 44000, et seq.)], which

1 license has been revoked and never reissued or which license was suspended and
the terms of the suspension have not been fulfilled.

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

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

6 12. Section 475 of the Business and Professions Code provides, in pertinent part:

7 "(a) Notwithstanding any other provision of this code, the provisions of this
8 division shall govern the denial of licenses on the grounds of:

9 "(1) Knowingly making a false statement of material fact, or knowingly
omitting to state a material fact, in an application for a license."

10 13. Section 480 of the Business & Professions Code states, in pertinent part:

11 "(a) A board may deny a license regulated by this code on the grounds that the
12 applicant has one of the following:

13 ".....
14 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

15 "(3) (A) Done any act that if done by a licentiate of the business or profession
in question, would be grounds for suspension or revocation of license.

16 ".....
17 "(c) A board may deny a license regulated by this code on the ground that the
applicant knowingly made a false statement of fact required to be revealed in
the application for the license."

18 14. Section 9884.7 of the Business & Professions Code provides, in pertinent part:

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

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

27 **FIRST CAUSE FOR DENIAL OF APPLICATION**

28 **(Knowingly Making a False Statement of Fact on an Application)**

1 (BAR) denied, suspended, revoked , placed on probation or been issued a citation?" when, in fact,
2 Respondent's prior Automotive Repair Dealer Registration and Smog Check Station License had
3 each been subject to prior discipline.

4 **FIFTH CAUSE FOR DENIAL**

5 **(Dishonesty, Fraud, or Deceit)**

6 19. Respondent's application for a Smog Check (Test Only) Station License is subject
7 to denial pursuant to Business & Professions Code section 480(a)(2), in that Respondent
8 committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit
9 himself or another, or substantially injure another, as set forth in paragraph 18 above.

10 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

11 **(Committed Acts That, If Committed by A Licensee,
12 Would Be Grounds for Suspension or Revocation of License)**

13 20. Respondent's applications for a Smog Check (Test Only) Station License is subject to
14 denial under section 44072.1(c), of the Health & Safety Code, in that Respondent committed acts
15 which, if committed by any licensee, would be grounds for the suspension or revocation of a
16 license, as set forth more fully above in paragraph 18 above.

17 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

18 **(Committed Acts Involving Dishonesty, Fraud, or Deceit)**

19 21. Respondent's application for a Smog Check (Test Only) Station License is subject to
20 denial under section 44072.1(d) of the Health & Safety Code, in that Respondent committed acts
21 involving dishonesty, fraud, or deceit, as set forth more fully above in paragraph 18 above.
22

23 **PRAYER**

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

26 1. Denying the application of Habib Fustokjian dba A Smog Check and Test Only
27 Station #1 for an Automotive Repair Dealer Registration;
28

1 2. Denying the application of Habib Fustokjian dba A Smog Check and Test Only
2 Station #1 for a Smog Check (Test Only) Station License; and

3 ///

4 ///

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

6
7 DATED: November 21, 2014 Patrick Dorais

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

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