

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

In the Matter of the Accusation Against:

**PALO ALTO SMOG TEST ONLY CENTER,
EMRE ELCI, OWNER,**

Automotive Repair Dealer Registration
No. ARD 252141

Smog Check Test Only Station License
No. TC 252141

Case No. 79/12-145

OAH No. 2013030047

Respondent.

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

9/9/13

DATED: August 5, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

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PALO ALTO SMOG TEST ONLY
CENTER,
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Automotive Repair Dealer Registration No.
ARD 252141

Smog Check Test Only Station License No.
TC 252141

Respondent.

Case No. 79/12-145

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PROPOSED DECISION

Administrative Law Judge Regina J. Brown, Office of Administrative Hearings, State of California, heard this matter on June 3, 2013, in Oakland, California.

Maretta Ward, Deputy Attorney General, represented complainant John Wallauch, Chief of the Bureau of Automotive Repair.

Respondent Emre Elci represented himself.

The matter was submitted on June 3, 2013.

FACTUAL FINDINGS

1. Complainant John Wallauch filed the Accusation in his official capacity as Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
2. The parties stipulated to the following facts:

a. On September 20, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 252141 to respondent Emre Elci, doing business as Palo Alto Smog Test Only Center. The registration expired on September 30, 2010, and has not been renewed.

b. On September 24, 2007, the Bureau issued Smog Check Test Only Station License Number TC 252141 to respondent. The license expired on September 30, 2010, and has not been renewed.

c. On March 17, 2010, the Bureau issued citation number C2010-0924 to respondent for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). An administrative fine in the amount of \$1,000 was assessed. Respondent appealed the citation on April 29, 2010. A hearing was held on August 1, 2011, and a decision upholding the citation became effective on November 3, 2011. Respondent failed to pay the administrative fine.

d. On July 20, 2010, the Bureau issued citation number C2011-0073 to respondent for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). An administrative fine in the amount of \$2,500 was assessed. Respondent appealed the citation on September 9, 2010. A hearing was held on August 1, 2011, and a decision upholding the citation became effective on November 3, 2011. Respondent failed to pay the administrative fine.

3. The facility, Palo Alto Smog Test Only Center, was located at 4200 El Camino Real Unit B, Palo Alto, California.

Respondent's Evidence

4. Respondent testified that he sold the facility on August 15, 2010. He continues to operate another facility in San Francisco.

5. Respondent testified that he did not pay the citation for \$1,000, because it was assessed against his employee and not against him personally. He states that he did not pay the citation for \$2,500, because he sold the facility.

Costs

6. Although the accusation prays for recovery of the Bureau's costs of investigation and enforcement, no evidence of the Bureau's costs was presented.

LEGAL CONCLUSIONS

1. The expiration of respondent's smog check test only station license on September 30, 2010, does not deprive the Bureau of its authority to pursue this disciplinary proceeding. (Bus. & Prof. Code, § 118, subd. (b); Health & Saf. Code, § 44072.6.)

2. Pursuant to Health and Safety Code section 44050, subdivision (e), failure to comply with an order of payment of an administrative fine issued by the Bureau is grounds for suspension or revocation of the smog check test only station license. It is not a defense to assert that the citation was issued against respondent's employee or that respondent has now sold the facility. Respondent was the owner of the facility at the time the citations were issued, and failed to comply with the two orders to pay administrative fines. Cause exists to discipline respondent's smog check test only station license pursuant to Health and Safety Code section 44050, subdivision (e), by reason of the matters set forth in Finding 2.

Other Matters

3. Health and Safety Code section 44072.8 states: "When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director." The term "under this chapter" refers to chapter 5 of part 5, division 26, of the Health and Safety Code, known as the Motor Vehicle Inspection Program.

4. Under Health and Safety Code section 44072.8, revocation of respondent's smog check test only station license establishes cause to revoke or suspend any other license issued under chapter 5, part 5 of division 26 of the Health and Safety Code in the name of respondent.

5. Discipline against respondent's smog check test only station license does not establish cause to revoke or suspend respondent's ARD registration. The ARD registration was issued under the Automotive Repair Act, set forth in Business and Professions Code section 9880 et seq., not under the Motor Vehicle Inspection Program set forth in the Health and Safety Code. No cause exists under Health and Safety Code section 44072.8 to revoke or suspend respondent's ARD registration.

Cost Recovery

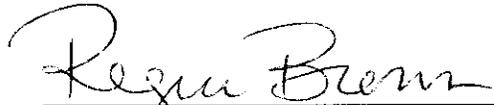
6. Business and Professions Code section 125.3, authorizes the Bureau to recover its reasonable costs of investigation and enforcement from a respondent whose license is disciplined. There is no evidence to establish any costs incurred by the Bureau.

ORDER

1. Smog Check Test Only Station License Number TC 252141 issued to respondent Emre Elci, doing business as Palo Alto Smog Test Only Center, is revoked.

2. Insofar as the accusation seeks to impose discipline against Automotive Repair Dealer Registration Number ARD 252141 issued to respondent Emre Elci, doing business as Palo Alto Smog Test Only Center, the accusation is dismissed.

DATED: July 3, 2013



REGINA J. BROWN

Administrative Law Judge

Office of Administrative Hearings

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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 Accusation Against:

79/12-145
Case No.

13 **PALO ALTO SMOG TEST ONLY CENTER**
4200 El Camino Real, Unit B
14 Palo Alto, CA 94306
Mailing Address:
2399 Market Street
15 San Francisco, CA 94114
EMRE ELCI, OWNER
16 Automotive Repair Dealer Registration No.
ARD 252141
17 Smog Check Test Only Station License No.
TC 252141

A C C U S A T I O N
S M O G C H E C K

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
23 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

24 **Automotive Repair Dealer Registration**

25 2. On or about September 20, 2007, the Bureau issued Automotive Repair Dealer
26 Registration Number ARD 252141 to Emre Elci ("Respondent"), doing business as Palo Alto
27 Smog Test Only Center. The automotive repair dealer registration expired on September 30,
28 2010, and has not been renewed.

1 Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of
2 compliance to a vehicle improperly tested). The Bureau assessed an administrative fine in the
3 amount of \$2,500. Respondent appealed the citation on September 9, 2010. A hearing was held
4 on August 1, 2011, and a Decision upholding the citation became effective November 3, 2011.
5 However, Respondent failed to pay the administrative fine.

6 **OTHER MATTERS**

7 13. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
8 License Number TC 252141, issued to Emre Elci, is revoked or suspended, any additional license
9 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
10 the director.

11 **PRAYER**

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

14 1. Revoking or suspending Smog Check Test Only Station License Number TC 252141,
15 issued to Emre Elci, doing business as Palo Alto Smog Test Only Center;

16 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Emre Elci;

18 3. Ordering Emre Elci to pay the Bureau of Automotive Repair the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,

21 4. Taking such other and further action as deemed necessary and proper.

22
23 DATED: May 21, 2012

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

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