

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

In the Matter of the Accusation and Petition to Revoke Probation Against:

AIRPORT COLLISION RPR & TOW, INC.; MIKE DAVID MILLER, PRESIDENT

513 S. La Brea Ave.

Inglewood, CA 90301

Automotive Repair Dealer Registration No. ARD 206811

Respondent.

Case No. 77/22-7548

OAH No. 2023080422

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall be effective on JUN 04 2024.

IT IS SO ORDERED April 23, 2024.



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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Agency Case No. 77/22-7548

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PROPOSED DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 14 and 15, 2024.

Complainant Patrick Dorais, the Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs (Department), State of California, was represented by William Gardner, Deputy Attorney General.

Respondent Airport Collision Rpr. & Tow, Inc., Mike D. Miller, President, appeared through its president, Mike D. Miller, who is known as Hiroshi "Hiro" Troy Jones, (Jones) and was represented by Gary A. Smith, Attorney at Law.

Testimony and documents were received into evidence. The record was closed and the matter was submitted for decision on February 15, 2024.

SUMMARY

Complainant seeks to revoke respondent's ARD registration and probation based on allegations: (1) respondent violated multiple provisions of the Automobile Repair Act (Act) and its attendant regulations; and (2) respondent engaged in predatory scheme involving tow truck drivers and storage fees which essentially forced consumers to utilize respondent's repair services.

Complainant established that independent tow truck drivers would arrive at various accident sites and take vehicles to respondent. Respondent would pay the drivers the towing bill, which was typically about \$400, and afterwards would assess the consumer an additional 35 percent fee for paying the bill. Respondent would then prepare an initial estimate with various fees, including a \$700 fee for disassembling the vehicle for an internal inspection and storage fees. Respondent would then begin charging a storage fee of \$200 or more per day on the basis that repair work was not being performed. Respondent maintained possession of the vehicle unless the consumer paid the storage fees. Once the consumer's insurance provider performed a repair estimate, the consumer then could either approve the estimate and have respondent perform the repairs or pay respondent thousands of dollars in storage fees. Even after the consumer approved the estimate, respondent would not always

begin the repairs and continue to assess storage fees. If the consumer demanded their vehicles be returned, respondent would refuse to release the vehicle and continue to assess storage fees until paid in full.

Complainant also established that in the course of this practice, respondent prepared estimates that did not comply with the Act, had consumers sign the non-conforming estimates, made or authorized false statements to effectuate the lien sale of vehicle, and assessed fees for work that was not performed.

Respondent asserted it did not engage in predatory practices and had no relationship with the tow truck drivers that took vehicles to its facility and that all the fees it charged were legal. Respondent also presented evidence in mitigation and argued that as Bureau representatives reviewed respondent's paperwork and routinely visited the facility as part of respondent's probation, they could have notified respondent of the deficiencies and respondent would have made changes to its business practices. Respondent's evidence was not persuasive.

Given the seriousness of the violations and the extent of damage, monetary and otherwise, inflicted on his consumers, revocation is the only disposition consistent with the public safety. The Accusation and Petition to Revoke Probation is affirmed, the registration is revoked, and respondent is ordered to pay costs.

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FACTUAL FINDINGS

Jurisdictional Matters

1. In 1999, the Bureau issued ARD 206811 to respondent doing business as Airport Collision Rpr & Tow Inc. The ARD registration is scheduled to expire on August 31, 2024, unless renewed.

2. On June 21, 2023, complainant brought the Accusation and Petition to Revoke Probation (Accusation) in his official capacity with the Bureau.

3. In a disciplinary action titled, *In the Matter of the Accusation Against Airport Collision Rpr & Tow, Inc.*, Case No. 77/19-6758, the Bureau issued a Decision and Order, effective September 9, 2021 (2021 Disciplinary Order), revoking respondent's ARD registration, staying the revocation, was placing respondent's ARD registration on probation for two years with certain terms and conditions. Under the terms of probation, if respondent violates or fails to comply with the probation and is served with notice of the Bureau's intention to set aside the stay of revocation, the Director maintains jurisdiction and the period of probation is extended until final resolution of the matter.

4. Respondent filed a Notice of Defense. All jurisdictional requirements are met.

Probation

5. The facts and circumstances underlying the 2021 disciplinary action are that respondent made false and misleading statements regarding the repairs it

performed on a vehicle by representing that parts had been replaced when, in fact, they had been repaired.

6. The terms and conditions of the 2021 Disciplinary Order require, in part, for respondent to comply with all federal and state statutes, regulations and rules governing BAR registrations and licenses held by respondent (Condition 1); and directly supervise all respondent's employees that carry out business activities relevant to the ARD (Condition 2).

Bureau Investigation

7. In April 2022, the Bureau initiated an investigation into respondent's business practices after receiving 13 consumer complaints alleging respondent engaged in unlawful, unfair, fraudulent and/or deceptive business acts and/or practices that constitute unfair competition.

8. Marc Ortega, Bureau Program Representative II, (Ortega) was assigned to investigate the complaints and testified at hearing regarding the Bureau's investigation and its findings.

9. As part of the investigation, Ortega visited respondent's facility and met with Jones on April 18, 21, and 27, 2022. During the April 18, 2022 meeting, Ortega had Jones explain respondent's repair process and policies. Ortega then requested respondent produce the repair records for 13 vehicles (presumably the vehicles that were the subject of the consumer complaints). Jones provided Ortega with respondent's records and reviewed them with Ortega on April 21, and 27, 2022.

10. Ortega documented Jones's statements in a Station Inspection Reports which were then signed by Jones after each visit. After completion of the investigation,

Ortega completed an Investigation Report, which was admitted into evidence as Exhibit 5.

RESPONDENT'S REPAIR PROCESS AND POLICIES

11. According to Jones, respondent's repair process begins when the consumer arrives and completes the consumer information sheet. Respondent then prepares an estimate "to tear down the vehicle for inspection of the damage." (Exh. 7.)

12. Jones stated the estimate (Initial Estimate) includes various fees that may not be needed and may not actually be charged. Jones explained the fees as follows: (1) the photo submission fee to provide photographs of the vehicle to the insurance company; (2) the forklift/special equipment/labor fee for moving the vehicle when it cannot move on its own; (3) the transportation fee is for the cost of moving the vehicle to an overflow location; (4) the storage fee if the vehicle is a total loss and will not be repaired, or if the consumer decides not to have the repair; and (5) the after hours gate fee is the fee to release the vehicle after regular business hours.

13. After the Initial Estimate is generated, the consumer's insurance provider is contacted to prepare an estimate. Respondent then obtains the consumer's authorization to prepare the repairs pursuant to the insurance provider's estimate. Afterwards, if the insurance provider produces supplement estimates those are also given to the consumer for their authorization.

RESPONDENT'S RECORDS

14. Ortega requested respondent produce its repair records, including all estimates, invoices, parts receipts, and supplemental work orders, for C.A.'s 2011 Honda Civic (Vehicle 1); R.C.'s 2021 Toyota Camry (Vehicle 2); D.F.'s 2022 Toyota Prius

(Vehicle 3), W.E.'s 2021 Lincoln Navigator (Vehicle 4); R.M.'s 2021 Toyota Corolla (Vehicle 5), A.M.'s 2013 BMX (Vehicle 6); A.P.'s 2021 Jeep Renegade (Vehicle 7); C.G.'s 2020 Honda CR-V (Vehicle 8); A.D.'s 2021 Hyundai Sonata (Vehicle 9); M.D.'s 2021 Range Rover (Vehicle 10); M.D.'s 2016 Honda Civic (Vehicle 11); M.R.'s 2017 Ford Focus (Vehicle 12); and E.B.'s 2021 Toyota Corolla (Vehicle 13). (Vehicle owner's initials are used in lieu of their full names to protect their privacy.)

15. Jones produced respondent's records for Vehicle 1, 2, 4, and 5, and reviewed the records with Ortega on April 21, 2022. Jones produced respondent's records for Vehicles 6-13 and reviewed the records with Ortega on April 27, 2022.

16. Every one of the estimates and bills Jones produced identifies respondent on the letterhead as "Airport Collision Repair" and, in the smaller print, as "Airport Collision Repair Inc," instead of "Airport Collision Rpr. & Tow, Inc."

17. There was no Initial Estimate for Vehicle 1 or 3 in the records Jones produced. Each of the Initial Estimates for the remaining 11 vehicles had a line item for the removal of damaged parts to the vehicle for internal inspection (teardown fee) at 10 hours of labor at \$70 per hour, i.e. \$700. In addition to the teardown fee, each of the Initial Estimates had a: (1) photo submission fee from \$200-\$220; (2) forklift fee/special equipment/labor for \$275; (3) transportation to 1541 W. 132nd St., Gardena, respondent's overflow lot, for \$150; (4) a COVID 19 (Covid) fee of \$110; and (5) storage fees of \$200 to \$255 per day starting the day the vehicle was towed to respondent which would be assessed if the vehicle was not repaired by respondent.

18. Ten of the 11 Initial Estimates Jones produced also had a line item for towing fees which were anywhere between \$300 to \$450 plus 35 percent for Vehicles 2, 4-9, 11-13. Jones, however, only produced one towing truck bill for \$400 from Ivy

League Auto Transport located in El Segundo, California. The bill assessed a \$275 charge for the "flatbed" towing of Vehicle 12, and an unexplained fee of \$125. (Exh. 18, p. A269.)

19. The Initial Estimates also had a line item for Hazmat fee of \$100 for Vehicles 45, 7, and 9-13; and a line item for an after-hours gate fee of \$88.50 for Vehicles 8 and 9. Respondent included sales tax for towing and storage related charges.

20. Respondent did not produce any estimates to tear down and vehicles or an itemized estimate for the labor and parts necessary to the repair after the teardown.

VEHICLE 1-C.A.'s 2011 HONDA CIVIC

21. On March 21, 2021, Vehicle 1 was taken to respondent's facility following a collision. According to Jones, respondent created an estimate on March 22, 2021. (Jones did not provide the initial estimate for Vehicle 1 to Ortega during his investigation and did not produce the initial estimate at the hearing.)

22. On March 30, 2021, respondent, through its agent Lewis Lien Sales, LLC., initiated a lien sale of Vehicle 1. After respondent initiated the lien sale, C.A.'s insurance company, Auto Club Enterprises (AAA) contacted respondent on April 6, 2021, and requested photographs so that it could generate an estimate. Respondent subsequently contacted C.A. regarding the estimate. C.A. came to respondent's facility later that day and authorized respondent to repair her vehicle in accordance with the insurance company's estimate. Respondent had C.A. sign an Estimate for "REAPIRS (sic) PER AAA Ins" of \$2,494.77 and "TOWING \$400.00+35%=540" for \$540. (Exh. 10, pp. A146-A147.)

23. Though C.A. authorized the repairs, respondent did not perform the repairs. Jones claimed respondent was later contacted by an attorney representing C.A. notifying respondent that AAA would not be paying to repair Vehicle 1. When respondent received no further contact C.A. or her attorney, Vehicle 1 was sold on May 1, 2021.

24. The lien sale documents filed in conjunction with the sale included a Certification of Lien Sale, that was signed under penalty of perjury by Jones, as Mike Miller, stating: (1) respondent completed the services on March 29, 2021; (2) billed C.A. on March 29, 2021; and (3) the itemized the billing and costs as follows: \$540 for towing costs; \$8,400 for storage; \$2,199 for repairs; and \$70 for the costs of selling. (Exh. 10, p. A149).

25. The statements made and authorized by respondent in connection with the lien sale of Vehicle 1 were untrue and respondent knew them to be untrue. Respondent did not provide any services on March 29, 2021, and, as respondent did not know who owned Vehicle 1 on March 29, 2021, could not have billed C.A. for any services. In addition, respondent did not sustain any of the sworn costs. Vehicle 1 had been dropped off during the weekend when respondent was closed. Respondent therefore could not have advanced any towing fees. (Respondent also did not provide Ortega with a towing bill or present one at hearing.) There was, therefore, no grounds for the \$540 towing charge. Jones testified respondent did not perform repairs on Vehicle 1 because C.A. had not dropped off a deposit. Therefore, there was no grounds to charge \$2,199.85 for the repairs. Finally, there was no evidence respondent ever notified C.A. of the storage fees or that she approved the storage fees. Therefore, respondent did not have grounds to charge \$8,400 in storage fees. (At \$200 per day,

the storage fees amount to 42 days, or from March 21, 2021, until the day after the lien sale.)

VEHICLE 2-R.C's 2021 TOYOTA CAMRY

26. On June 11, 2021, Vehicle 2 was towed to respondent's facility. Respondent created an Initial Estimate without listing the odometer reading for \$2,212.50 (\$2,075 plus \$137.50 sales tax), listing the items set forth in Factual Findings 17 and 19. R.C. authorized respondent to perform repair services in accordance with the Initial Estimate on the same day.

27. On a date not established by the record, R.C.'s insurance company, 21st Century, prepared an estimate and three supplemental damages (Supplements). On March 29, 2022, respondent contacted R.C. to notify him of 21st Century's estimate and the Supplements and prepared a Final Bill, without the odometer reading, for \$15,536.99, which included a \$400 towing fee and \$1,150 for rental costs.

28. R.C. subsequently agreed to have respondent repair Vehicle 2 in accordance to 21st Century Estimate and Supplements on March 30, 2022. (Respondent did not produce the 21st Century or Supplements.)

VEHICLE 3-D.F.'s 2022 TOYOTA PRIUS

29. Jones did not produce repair documents for Vehicle 3. According to Jones, the estimate for Vehicle 3 was written to cover the tow bill only. D.F. refused to sign any paperwork, wanted the vehicle returned, and paid the \$400 tow bill.

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VEHICLE 4-W.E.'S 2021 LINCON NAVIGATOR

30. On August 22, 2021, Vehicle 4 was towed to respondent's facility. Respondent created an Initial Estimate without listing the vehicle's odometer reading for \$2,330.75 (\$2,182.50 plus \$148.25 sales tax) the following day, listing the items set forth in Factual Findings 17 through 19. W.E. authorized respondent to perform repair services in accordance with the Initial Estimate on August 24, 2021.

31. On September 8, 2021, W.E.'s insurance company, Allstate Northbrook Indemnity Company (Allstate), prepared an Estimate of Record, which contained Vehicle 4's odometer reading.

32. Respondent prepared an Estimate on September 9, 2021, incorporating Allstate's estimate but again, did not include the odometer reading. Respondent contacted W.E. later that day to obtain his approval to begin with the repairs.

33. After W.E. indicated he wanted the repairs to be completed at a different shop, respondent issued a Final Bill on October 25, 2021, for \$16,307.50. The Final Bill included: a \$700 fee for a "tear down," a \$200 photo submission fee," a \$275 forklift fee/special equipment/labor, \$150 transportation fee to 1541 West 132nd Street Gardena, a \$607.60 towing fee, \$110 Covid-19 fee, \$140 Hazmat fee, and a \$14,625 storage fee for storage beginning August 22, 2021, the day Vehicle 4 was towed to respondent's facility. (Exh. 11, p. A168.)

34. After receipt of the bill, W.E. consented to respondent completing the repairs as outlined in respondent's September 9, 2021 Estimate on November 1, 2021. Respondent did not begin the approved repairs.

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35. On November 17, 2021, Allstate issued a Supplement of Record on November 17, 2021, approving additional repair costs in the amount of \$16,463.97. When W.E. indicated he did not want to wait for the repairs and take his vehicle, respondent issued a second Final Bill for on November 24, 2021, increasing the storage fees to \$21,275.

36. W.E. consented to the repairs being performed by respondent on November 29, 2021, after receiving the increased bill. As of the April 21, 2022, eight months after respondent took possession of the vehicle. Vehicle 4 was still "in repair." (Exh. 8, p. A137.)

VEHICLE 5-R.M.'s 2021 TOYOTA CAMRY

37. On November 19, 2021, Vehicle 5 was towed to respondent's facility. Respondent created an Initial Estimate \$2,531.50 (\$2,365 plus \$166.50 sales tax), listing the items set forth in Factual Findings 17 and 19. R.M. authorized respondent to perform repair services in accordance with the Initial Estimate that day.

38. Jones told Ortega during the record review on April 21, 2022, that respondent issued a revised estimate on November 29, 2021. R.M. initially agreed to the authorized revised estimate but then changed her mind and decided to take her vehicle without repairs. Jones's statements regarding these events were contradicted by R.M.'s credible testimony at hearing and were not supported by any documents including the revised estimate.

39. At hearing, R.M. testified that her vehicle was taken to respondent's facility when, after an accident on November 19, 2021, a tow truck driver came, "out of nowhere" to the accident site. The driver told her that he had heard "over the intercom" that she had an accident. The tow truck driver informed her that her vehicle

was not driveable and that he would take her vehicle to a good automobile repair shop. As R.M. had never been in a car accident before, she agreed and her vehicle was towed to respondent's facility.

40. When she arrived at respondent's facility, R.M. was told that respondent would perform an inspection which would reveal what repairs needed to be made. When reviewing the Initial Estimate, R.M. was assured that the storage fees would not accrue until after her vehicle was fixed and that the fees would be paid by R.M.'s insurance provider. R.M. subsequently authorized respondent to perform the repair services in accordance with the Initial Estimate.

41. When R.M. returned home, she went onto Yelp and saw respondent had several negative reviews. R.M. returned to respondent's facility to pick up her vehicle but was presented with a bill. R.M. was then advised to wait for the insurance company to take care of the bill and R.M. returned home without her vehicle.

42. When it did not appear there was anything being done to her vehicle, respondent returned on November 29, 2021. Respondent issued R.M. a Final Bill for \$5,040. The Final Bill included a \$700 tear down fee, described in the bill as "remove damaged parts for internal inspection [¶] rear bumper, rear quarter panel, trunk lid," towing bill for \$540, storage fee for 15 days from November 19, 2021, forklift fee/special equipment/labor for \$275, and transportation fee 1541 West 132nd Street Gardena of \$150. R.M. paid the bill in cash as respondent refused to take any other form of payment.

VEHICLE 6-A.M.'s 2013 BMW X1

43. On June 21, 2021, Vehicle 6 was towed to respondent's facility. Respondent created an Initial Estimate without listing the odometer reading for

\$2,322.50 (\$2,175 plus \$147 sales tax), listing the items set forth in Factual Findings 17 and 18. A.M. authorized respondent to perform the repair services in accordance with the Initial Estimate the same day.

44. After the vehicle was inspected by A.M.'s insurance provider, Alliance Untied Insurance (Alliance), determined Vehicle 6 was a Total Loss, not to be repaired. Respondent prepared a final bill on July 1, 2021, for \$3,825. The bill included a \$350 teardown fee described as "remov[al of] damage[d] parts for internal inspection," \$275 forklift fee, \$150 transportation fee to inspection lot (1541 W. 132nd St., Gardena), \$540 towing fee, \$110 Covid-19 fee, \$200 rental fee, and \$2,200 storage fees for 11 days for storage from the day Vehicle 6 had been towed to respondent's facility. (Exh. 12, p. A189.)

45. After A.M. notified respondent that she planned on keeping the vehicle and having the repairs made, respondent generated an estimate for the repair (Repair Estimate) on July 14, 2021. The Repair Estimate estimated that the cost to repair Vehicle 6 was \$6,889.01. The Repair Estimate also did not have an odometer reading and used the term "LKQ," which was defined as "Like Kind Quality or Used" on the bottom of every page of the Repair Estimate. The Repair Estimate was approved by A.M. on July 15, 2021.

46. On July 27, 2021, respondent generated a second Final Bill for \$8,365, this time charging 37 days of storage fees as well as the other charges same charges that were on the July 1, 2021 bill. On August 17, 2021, respondent generated a third Final Bill for \$5,965, this time removing the \$350 tear down fee, \$100 Covid-19 fee, \$200 rental fee and reducing the storage fee to \$5,000 for 25 days of storage from June 21, 2021 to July 14, 2021.

47. Respondent generated a fourth Final Bill on October 18, 2021. This fourth Final Bill was for \$6,788.46, and itemized the repairs respondent made to the vehicle, which were largely consistent with the Repair Estimate, as well as a \$500 towing charge. The fourth Final Bill indicates A.M. paid respondent \$4,000 and there was a balance of \$2,788.46 due from the insurance provider.

48. On September 15, 2021, respondent generated a fifth Final Bill. Jones advised Ortega that the fifth Final Bill had been generated to recoup the towing bill that the insurance provider had not paid and was not given to A.M.

49. According to Jones, A.M. brought Vehicle 6 back to respondent's facility complaining that the air bag light was on and the seat belt was not properly wired. Respondent created an Estimate without an odometer reading on December 6, 2021, for \$300, the fee for a 10-day rental, and listing that an inspection would be performed of A.M.'s areas of concern. On January 31, 2022, respondent generated a Final Bill that described the condition of the vehicle, made recommendations and documented A.M.'s decision to decline the recommended additional repairs.

VEHICLE 7- A.P.'S 2021 JEEP RENEGADE

50. On November 4, 2021, Vehicle 7 was towed to respondent's facility and an Initial Estimate was created for \$2,861.50 (\$2,665 plus \$196.50 sales tax), listing the items set forth in Factual Findings 17 through 19. A.P. authorized respondent to perform the repair services in accordance with the Initial Estimate the same day.

51. On November 17, 2021, A.P.'s insurance provider, Allstate Northbrook Indemnity Company (Allstate), created an Estimate of Record, estimating the cost of repairs to be \$3,106.99. After Allstate informed A.P. of the repairs and charges. A.P.

declined to have Vehicle 7 repaired by respondent and came to respondent's facility on November 23, 2021, and released the vehicle to Crash Champions.

52. When Crash Champions did not pick up the vehicle, A.P. decided to have Vehicle 7 repaired by respondent. On January 27, 2021, respondent created a supplement estimate for repairs of \$14,543.16, which Jones stated was only provided to Allstate. On February 8, 2022, Allstate created a Preliminary Supplement 1 with Summary authorizing an additional \$6,500.17 for a total of \$10,107.16 in repairs. Respondent created a new Estimate on February 8, 2022, listing repairs "per" Allstate's Estimate of Record and Preliminary Supplement and the towing fees of \$540. A.P. was contacted by phone and notified of the new estimate. A.P. then provided consent for respondent to perform \$3,606.99 in repairs, which was documented with the last four digits of A.P.'s Social Security Number. Jones advised Ortega that as of April 27, 2022, Vehicle 7 was still in repairs.

VEHICLE 8- C.G.'s 2020 HONDA CR-V

53. On July 18, 2021, Vehicle 7 was towed to respondent's facility. Respondent created an Initial Estimate the following day for \$2,141 (no sales tax was assessed), listing the items set forth in Factual Findings 17 through 19. C.G. did not authorize respondent to perform the repair services in accordance with the Initial Estimate.

54. Respondent's interactions with C.G. and others with regard to Vehicle 8 were documented in respondent's notes, which were included in the records Jones provided to Ortega on April 28, 2022. The notes were largely unclear but, along with the respondent's other records, establish that No Limit Towing towed Vehicle 8 to respondent's facility. There was no evidence C.G. authorized No Limit Towing to tow

Vehicle 7 to respondent's facility or that C.G. was provided a copy of the Initial Estimate. On July 28, 2021, respondent contacted an individual by phone who stated that it was "not her number but wants to know everything." (Exh. 16, p. A249.) The following day, C.G. arrived at respondent's facility to collect her vehicle and wanting the "fees" removed. (Ibid.) Respondent refused to release the vehicle.

55. The following day, C.G.'s insurance provider, National General, contacted respondent, requesting information about when Vehicle 8 had been taken to respondent's facility. After respondent informed National General that the storage fees began accruing on July 30, 2021, National General informed respondent it would not continue to pay storage fees. On August 2, 2021, C.G. authorized the release of her vehicle to Strong Tide Insurance Company. (The release was mistakenly dated August 2, 2020.)

56. On September 21, 2021, C.G. called asking for a cash estimate and requesting to see her vehicle as she had not been able to see it since No Limit Towing had towed the vehicle to respondent's facility.

57. On October 1, 2021, respondent generated a Final Bill for \$5,002.50. The Final Bill included a \$275 for forklift fees, \$607.50 for towing, \$3,150 for storage fee for 14 days from July 18, 2021, \$700 for a tear down, \$140 in Hazmat fees and \$130 in lien fees. On October 8, 2021, respondent generated a second Final Bill for \$3,000. The second Final Bill increased the forklift fee to \$300, reduced the storage fee to \$1,250, and removed the lien fee.

58. Eventually, H&S Transport and Recovery Inc, whom Jones described as the lien holder, paid respondent \$3,000 on October 8, 2021, and respondent released

the vehicle without repairs. It was unclear from respondent's records if C.G. ever regained possession of her vehicle.

VEHICLE 9-A.D.'S 2021 HYUNDAI SONATA

59. On November 29, 2021, A.D.'s Vehicle 9 was towed to respondent's facility. Respondent created an Initial Estimate, listing the items set forth in Factual Findings 17 and 19. A.D. authorized respondent to perform the repair services in accordance with the Initial Estimate the same day.

60. Respondent produced two Final Bills for \$3,580, dated December 6, 2021. The Final Bills were identical and included the \$700 teardown fee, \$275 forklift fee, \$150 transportation fee, \$405 towing fee, \$1800 in storage fees (\$225 per day beginning November 29, 2021), \$110 Covid-19 fee and \$140 Hazmat fee.

61. According to Jones, two Final Bills were printed on December 6, 2021, to provide the fees charged and due provided to the insurance provider only, not to A.D.

VEHICLE 10-M.D.1'S 2013 RANGE ROVER EVOQUE

62. On January 24, 2022, Vehicle 10 was towed to respondent's facility. Respondent created an Initial Estimate for \$2,205.45 (\$2,068.50 plus \$136.85 sales tax), listing the items set forth in Factual Findings 17 and 19. M.D.1 authorized respondent to perform the repair services in accordance with the Initial Estimate the same day.

63. On February 7, 2022, M.D.1's insurance provider, 21st Century Insurance Company (21st Century), created a Preliminary Estimate for \$4,888.75.

64. On February 18, 2022, M.D.1 returned to respondent's facility wanting to remove Vehicle 10 without any repairs, and respondent prepared another estimate,

assessing M.D.1 \$400 for "Tear down and write estimate" and \$2,025 in storage fees from February 9, 2022. (Exh. 14, p. A214.) Respondent did not prepare a tear down estimate and therefore did not provide M.D.1 a tear down estimate.

65. M.D.1 did not have the funds to pay for the storage fees and, on February 23, 2022, later agreed to having respondent perform the repairs according to 21st Century's estimate.

66. 21st Century later provided three additional supplements. Respondent created an additional estimate which incorporated the supplements on April 14, 2022 (Estimate). M.D.1 agreed to the Estimate the same day.

67. As pf April 27, 2022, more than three months after Vehicle 10 was towed to respondent's facility, Vehicle 10 was still in the process of being repaired.

VEHICLE 11-M.D.2's 2016 HONDA CIVIC

68. On January 24, 2022, Vehicle 11 was towed to respondent's facility. Respondent created an Initial Estimate for \$2,278.50 (\$2,135 plus \$143.50 sales tax), listing the items set forth in Factual Findings 17 through 19. M.D.2 authorized respondent to perform the repair services in accordance with the Initial Estimate the same day.

69. On February 7, 2022, M.D.2's insurance provider, 21st Century, created a Preliminary Estimate for \$3,511.25. 21st Century prepared a supplement on February 8, 2022, estimating an additional \$236.19 in repairs. Respondent prepared a new Estimate on February 23, 2022, for \$3,747.44, indicating the repairs "per" 21st Century's initial estimate and supplement. M.D.2 approved the Estimate the same day.

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70. On March 1, 2022, respondent prepared an estimate listing repairs of \$14,792.87 (without sales tax). 21st Century prepared a second supplement in response. On March 11, 2022, respondent incorporated the Supplement in a new Estimate, which M.D.2 approved the same day. Respondent issued a Final Bill for \$10,982.10, indicating that repairs had been performed pursuant to 21st Century's Estimate and supplements.

VEHICLES 10 AND 11

71. At hearing, M.D.1 testified that on January 24, 2022, an individual driving a Sports Utility Vehicle (SUV) hit her daughter's parked vehicle, Vehicle 11, causing Vehicle 11 to collide into Vehicle 10. When the person driving SUV did not stop, M.D.1 called law enforcement. M.D.1 then contacted her insurance provider, 21st Century. While on the phone with 21st Century, a tow truck driver who identified himself as "Larry," appeared. M.D.1 originally believed Larry was with the police department. Larry then loaded Vehicle 11 onto the tow truck's flat bed and gave M.D.1 respondent's business card. M.D.1 admitted that after the accident, things were not clearly registering, and she believed Larry was taking Vehicle 11 to the impound. It wasn't until after M.D.1 showed the police officer respondent's business card that she realized Vehicle 11 was not being impounded.

72. M.D.1 and her daughter, M.D.2 followed Larry in Vehicle 10. When they arrived at respondent's facility, Larry greeted her telling her how "lucky" she was that she had made it as she could have "blow[n] up." M.D.1 had wanted to take Vehicle 11 from respondent's facility and drive back in Vehicle 10 but because of what Larry kept saying, she became scared and decided to leave her vehicle with respondent. Larry assured her that her vehicle would be safe, respondent would prepare an estimate and that she would not have to pay for any storage fees. Larry told her that they

understood she was a single mother and that they were not trying to cause her any problems. M.D.1 and her daughter, M.D.2, were told they had to sign the Initial Estimate because that was the only way respondent could assess the damage to their vehicles.

73. From the date Vehicle 10 and Vehicle 11 were towed to respondent's facility until 21st Century prepared the Preliminary Estimate, M.D.1 was continually contacting respondent trying to find out the status of the estimate as she was using a rental vehicle. 21st Century subsequently sent M.D.1 a check for \$3,806.24 pursuant to the estimate. Respondent was irate with M.D.1 because the insurance company was issuing the check to M.D.1 instead of to respondent. M.D.1 informed respondent that she would sign the check over to respondent once the repairs had been performed. Respondent then demanded M.D.1 pick up Vehicle 10 and 11.

74. When M.D.1 arrived at respondent's facility to pick up the vehicles, respondent refused to release the vehicles until M.D.1 paid storage fees in excess of \$10,000. M.D.1 did not have the funds to pay for the fees and posted on Next Door asking for advice. Channel 2 News became aware of M.D.1's post and ran a story on her situation.

75. Afterwards, Jones agreed to sit down with M.D.1, and talk "like adults." During the discussion, they came to an agreement that respondent would repair the vehicle. Vehicle 10 was eventually returned to M.D.1 in May. M.D.1 had no issues with the repairs respondent performed on the vehicles and that Jones went "above and beyond" to get M.D.2's vehicle repaired in time for her to use it while she was in Arizona. M.D.1 also relayed she had respondent repair the windshield of the rental car she had been using (while Vehicle 10 was being repaired). Respondent replaced the windshield at a discounted cost.

VEHICLE 12-M.R.'S 2017 FORD FOCUS

76. On February 12, 2022, Vehicle 12 was towed to respondent's facility. Respondent created an Initial Estimate for \$2,256.50 (\$2,115 plus \$141.50 sale tax), listing the items set forth in Factual Findings 17 through 19, on February 14, 2022.

77. M.D. authorized respondent to perform repair services in accordance with the Initial Estimate the same day.

78. Respondent's records reflect that M.R. released Vehicle 12 to Geico Insurance Company (Geico) on February 17, 2022. On February 23, 2022, respondent subsequently issued a Final Bill, for \$4,415, charging \$500 for the tear down, a \$275 forklift fee, a \$150 transportation fee, \$540 towing fee, \$140 Hazmat fee, \$110 Covid fee and \$2,700 in storage fees for storage beginning February 12, 2022.

79. On February 24, 2022, Geico provided an Estimate of Record. Respondent updated the estimate on February 24, 2022, to reflect "repairs per [Geico]" (Undated Estimate). (Exh. 18, p. A265.) On March 10, 2022, M.D. authorized respondent to conduct repairs in accordance with the Estimate, but respondent did not begin the repairs.

80. On March 16, 2022, respondent prepared a Final Bill for \$9,315, which included the towing fee, tear down, forklift and transportation fees in line with the Initial Estimate as well as a \$7,650 fee for 34 days of storage. On March 21, 2022, respondent prepared a second Final Bill for \$8465, which eliminated the teardown and transportation fees.

81. According to M.R., who testified at hearing, on Saturday, February 12, 2022, she was notified her daughter was involved in an accident. When she arrived at

the accident scene, a tow truck driver was already there. M.R. does not know how the tow truck driver knew of the accident. When M.R. announced her intention to drive the vehicle home, the driver told her that by doing so, she could further damage the vehicle. M.R. subsequently decided to allow the driver to tow her vehicle. The driver then gave M.R. respondent's business card stating that he would tow the vehicle to respondent's facility. M.R. did not know anything about respondent's facility but agreed to allow the tow truck driver to take her vehicle there.

82. M.R. then drove her daughter home. M.R. looked at respondent's reviews online and became concerned about negative reviews. M.R. decided to go to respondent's facility the following Monday, February 14, 2022, to retrieve her vehicle.

83. When M.R. arrived at the facility on February 14, 2022, respondent provided her an itemized Final Bill, which amounted to over \$2,000. As she could not pay the bill at that time, respondent refused to release her vehicle. Respondent then told her that they could include the costs in the cost of the repair. M.R. returned on two other occasions to retrieve her vehicle but on each occasion, respondent refused to release her vehicle to her. Ultimately, M.R. authorized the repairs on February 17, 2022. M.R. was subsequently notified that respondent had updated the Estimate and M.R. authorized repairs to be performed pursuant to the March 10, 2022 Estimate. Respondent, however, did not repair her vehicle. Approximately four to five weeks after Vehicle 12 was towed to respondent's facility, the vehicle was determined to be a total loss.

VEHICLE 13-E.B.'s 2012 TOYOTA COROLLA

84. On February 10, 2022, Vehicle 13 was towed to respondent's facility. Respondent created an Initial Estimate for \$2,249 (\$2,108.25 plus \$140.83 sales tax) on

February 14, 2022, listing the items set forth in Factual Findings 17 through 19. E.B. authorized respondent to perform repair services in accordance with the Initial Estimate the same day.

85. According to Jones, E.B. and a representative from her insurance provider, 21st Century, subsequently called respondent requesting her vehicle be released as it was intended to go to another shop. Respondent issued a Final Bill on February 28, 2022, for \$5,793.25, which included the forklift fee, transportation fee, tow fees, Hazmat fee as well as \$4,725 in storage fees.

Jones's Testimony

86. Jones testified that he started in the auto repair industry by working with his father. Jones opened his first shop in Santa Monica, moved his shop to Los Angeles three years later, ten years after that, he moved his shop to Inglewood in 1996, where Jones currently continues to operate.

87. In an average 30-day period, respondent has approximately 100 vehicles come through. Respondent was particularly busy during January 2021 until December 2022, and over 3,000 work vehicles came to the facility during that period.

88. Respondent has also been on probation since September 2021. While on probation, Bureau representatives would review respondent's paperwork and visit the facility. When Jones was notified respondent's operations had any issues, Jones claimed he would rectify the issue "right away." Based on the input Jones received from Bureau representatives, Jones changed respondent's practices on multiple occasions.

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INITIAL ESTIMATE

89. Jones's testimony regarding respondent's repair policies and fees was largely consistent with what he reported to Ortega in April 2022.

Business Name

90. Jones acknowledged respondent's business name "Airport Collision Rpr & Tow Inc " was not on respondent's estimates and bills. According to Jones, respondent uses CCC, an estimate software commonly used by insurance companies and automobile repair shops. CCC does not permit respondent to input its full name into the letterhead for the program. It has been an ongoing issue for some time but has been recently resolved. In addition, as no other ARD uses respondent's name, respondent asserted it cannot cause confusion.

Odometer Readings

91. Jones also asserted that odometer readings were not on initial estimates for Vehicle 2 and Vehicle 4 because it was broken and could not be read. When asked how Allstate was able to add the odometer reading for Vehicle 4 on their Estimate of Record, Jones dismissed the failure as an employee oversight.

Towing Fees

92. Jones denies that respondent has any tow trucks or employs any tow truck drivers, and denies he is part of a predatory scheme. Tow trucks who bring vehicles to his shop charge consumers \$400 or more. If a consumer does not have the funds to pay the towing charge, respondent charges fee for advancing the funds.

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Storage Fees

93. Jones insisted respondent was entitled to charge fees after the Initial Estimate was completed, which was generally the day the vehicle was brought to respondent. Jones also insisted that the storage fees accrued while the vehicle was waiting for the insurance company to make the estimate.

TEAR DOWN

94. Jones testified the \$700 fee respondent lists in the Initial Estimate for the disassembly and removal of vehicle parts were so that the consumer's insurance company can examine the damage. Jones therefore claimed it was not a "teardown" and that respondent did not have to prepare a teardown estimate. Though his testimony regarding this issue was somewhat unclear, Jones appeared to suggest if the disassembly was done for the insurance provider, an ARD is not required comply with regulations related to teardowns.

LIEN SALE OF VEHICLE 1

95. At hearing, Jones reiterated what he told Ortega during the April 21, 2022 meeting. According to Jones, C.A.'s situation was "unique." Vehicle 1 had been dropped off when respondent was closed. Jones did not know who the vehicle belonged to as it had been dropped off when respondent was closed. After the vehicle had been in respondent's possession for 72 hours without any contact from the owner, respondent had to file the lien as the vehicle could have been stolen.

96. Respondent did not perform any repairs to Vehicle 1. After AAA refused to pay for the repairs, C.A. indicated to respondent that she wanted her vehicle repaired and agreed to drop off a deposit. Respondent waited for C.A. to drop off the

deposit but when 42 days elapsed without respondent receiving any contact from C.A., respondent initiated the lien sale.

97. When asked about some of the false statements in the lien documents at hearing, Jones's only explanation was that it had been repaired by respondent's lien company and that he had not prepared the lien documents.

Costs of Investigation and Prosecution

98. Complainant seeks costs related to the investigation of this matter in the amount of \$6,313.78 for investigative work between March 2022 and May 2022. The Bureau produced Declarations with attachments detailing the activity performed, hours of service for each task performed, and the date the hours worked at the rate in support of these costs signed by Bureau Program representatives. The Declaration by Mark Casillas dated May 19, 2022, documented \$1,714.24 in costs. The Declaration by Marc Ortega dated May 19, 2022, documented \$4,599.54 in costs. These investigation costs were established and are reasonable, particularly in light of the multiple complaints, extensive document review and field visits to respondent's facility.

99. Complainant also seeks costs related to the prosecution of this matter in the amount of \$13,515.00 for costs. A certification of costs was signed by Deputy Attorney General William D. Gardner who prosecuted this disciplinary action. A schedule was attached to his declaration that described the legal services provided, the dates legal services were performed, who provided the services, the amount of work that was performed on specific dates, and the professionals' hourly rates. The costs provided in the declaration and schedule are also found to be reasonable.

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LEGAL CONCLUSIONS

Purpose of Automobile Repair Act

1. Protection of the public is the highest priority for the Bureau and whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public is paramount. (Bus. & Prof. Code, §9880.3.)

Burden and Standard of Proof

2. In an action seeking to impose discipline against the holder of an automotive repair dealer registration, the burden of proof is on Complainant to establish the charging allegations by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.) As the moving party, the Bureau bears the burden of proof for establishing the charges. (Evid. Code, § 500.)

3. A defense of mitigation, however, is akin to an affirmative defense for which the respondent bears the burden of proof. (Evid. Code, § 115; see also *Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

Statutory and Regulatory Authority

4. The Bureau may discipline the registration of an automobile repair dealer for any of the following acts or omissions related to the conduct of the automotive repair dealer's business, whether done by the dealer or any employee, partner, or officer:

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or

misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. [¶] . . . [¶]

(2) Causing or allowing a consumer to sign any work order that does not state the repairs requested by the consumer or the automobile's odometer reading at the time of repair. [¶] . . . [¶]

(4) Any other conduct that constitutes fraud. [¶] . . . [¶]

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

8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of automobiles. [¶] . . . [¶]

(Bus. & Prof. Code, § 9884.7, subd. (a).)

5. California Code of Regulations, title 16 (CCR), section 3371 provides, in pertinent part, that, "No automotive repair 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. . ."

6. Business and Professions Code section 9884.7 further authorizes the Director to invalidate the registration for all places of business operated by an automotive repair dealer "upon a finding that the automotive repair dealer has, or is,

engaged in a course of repeated and willful violations of the [Automotive Repair Act] or regulations adopted pursuant to it." (§ 9884.7, subd. (c)).

Evaluation

7. Jones's assertion that respondent did not have any relationship with tow truck drivers who brought their vehicles to respondent's facility is not credible. Three consumers credibly testified at hearing that they were not familiar with respondent's facility before their accidents but then were taken to respondent's facility by tow truck drivers who appeared at the scene of the accident and insisted their vehicles were not drivable.

8. Jones asserted that respondent would assess a tow truck fee if respondent advanced the consumer the tow truck fee. There was no evidence any of the truck drivers gave the consumer's any bills or that the consumers requested respondent to advance them to tow truck fee. In addition, despite Jones's statement that the \$400 towing fees were not excessive, the only bill respondent produced, indicated the cost of flatbed towing was \$275. The bill became \$400 with unexplained charge.

9. Pursuant to Business and Professions Code section 9884.9, respondent is required to provide customers with a written estimate before completing any work or any charges accrue unless the service is being provided free of charge or the total price for labor and parts are displayed conspicuously to the customer. Respondent violated the provision by assessing both C.A. and C.G. with storage charges without providing any estimate.

10. Respondent's Initial Estimates and Final Bills did not comply with the Act and its attendant regulations in that used a business name that did not correspond to

respondent's business name in the Bureau's records, in violation of CCR section 3356, they were also misleading in that respondent indicated respondent could properly assess storage fees from the date the vehicle was towed to respondent's facility, in violation of CCR section 3373.

11. The issue of storage fees was addressed by the Court of Appeal in *Owens v. Pyeatt* (1967) Cal.App.2d 840 (*Pyeatt*), which held there are no grounds to collect storage fees when vehicles are in the process of being repaired or when they were being kept to protect to protect a garageman's lien. In *Pyeatt*, the Pyeatts were involved in an accident and took their vehicle to Owens for repairs. After the Pyeatts inspected their vehicle, they refused to accept it on the grounds the repairs were incomplete. Owens performed additional work on the vehicle but refused release the vehicle until the Pyeatts signed a release. Part of the reason Owens refused to release the vehicle to the Pyeatts was in order to protect Owens's lien and Owens continued to assess storage fees.

12. The Court of Appeal found that any verdict against the car owner for the storage charges was contrary to evidence and against law because the car owner had not expressly or impliedly requested storage of their vehicle and that no storage fees could be assessed while the car owner's vehicle was being repaired. After the repairs were completed, Owen was not entitled to storage fees for the period of time after Owen refused to release the vehicle because part of the reason Owen retained the vehicle was to protect his lien.

13. Based on the forgoing, respondent improperly assessed its consumers storage fees illegally. On several occasions, respondent assessed fees even after consumers provided respondent authorization to perform the repairs. After consumers

stated their intent to regain possession of their vehicles, respondent continued to assess storage fees in an apparent attempt to protect its lien.

14. Jones asserted that fees listed in the Initial Estimate were only charged if the service was, in fact, performed. The evidence established that this was untrue. There was a \$700 teardown fee in respondent's final bills for Vehicle 4, 5, 8, 9; a \$350 teardown fee in respondent's final bill for Vehicle 6, a \$400 teardown fee in respondent's final bill for Vehicle 10, and a \$500 teardown fee for Vehicle 12.

15. Jones appeared to suggest in his testimony that when the vehicle's component parts are disassembled so that an insurance provider can conduct an estimate, it is not a teardown and the requirements of CCR section 3353 do not apply. Jones is mistaken.

16. A tear down occurs when an ARD is required to disassemble a vehicle or vehicle component part so that the vehicle can be diagnosed. (CCR § 3353, subd. (c).) The regulation does not differentiate disassembly of a vehicle so that the ARD can diagnose the vehicle versus the consumer's insurance provider.

17. As the component parts of the vehicle were being disassembled for an estimate of repair, respondent was required to perform a teardown estimate before the teardown and an itemized estimate for repair after the teardown. Respondent failed to perform either the teardown estimate or prepare an itemized estimate for repair and therefore was not entitled to charge the customers for the teardown.

18. Allegations contained in the Accusation or raised during the hearing for which there are no specific findings in this Proposed Decision were deemed unproven or considered irrelevant or surplusage upon consideration of all of the evidence.

First Cause for Discipline

19. Cause exists under Code section 9884.7, subdivision (a)(1), to discipline respondent's ARD registration on the basis that respondent made or authorized statements that were known to be untrue or misleading, as set forth in Factual Findings 7 through 97 and Legal Conclusions 4 through 17.

Second Cause for Discipline

20. Cause exists under Code section 9884.7, subdivision (a)(2), to discipline respondent's ARD registration on the basis that respondent caused or allowed consumers to sign estimates that did not include their vehicle's odometer reading, as set forth in Factual Findings 7 through 97 and Legal Conclusions 4 through 17.

Third Cause for Discipline

21. Cause exists under Code section 9884.7, subdivision (a)(4), to discipline respondent's ARD registration on the basis that respondent engaged in fraudulent conduct set forth in Factual Findings 7 through 97 and Legal Conclusions 4 through 17.

22. Black's Law Dictionary defines a "fraudulent act" as "conduct involving bad faith, dishonest, a lack of integrity, or moral turpitude." (11th ed. 2019) In this case, respondent engaged in fraudulent conduct when respondent used lien documents containing false information (and signed by Jones under penalty of perjury) to affect a lien sale of Vehicle 1. "Actual" fraud is defined in Civil Code section 1572, subdivision (2), in the context of contracts as a "positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true" with the intent to induce a party to enter into a

contract. In this case, respondent engaged in a pattern of fraudulent conduct by routinely telling consumers that if they did not have respondent repair their vehicles, respondent would be entitled to assess them thousands of dollars in storage fees. This was an untrue and unwarranted assertion even if Jones had the subjective belief respondent could charge the storage fees.

Fourth Cause for Discipline

23. Cause exists under Code section 9884.7, subdivision (a)(4), to discipline respondent's ARD registration on the basis that respondent in a material respect failed to comply with the following provisions of the Act and regulations enacted pursuant thereto as set forth in Factual Findings 7 through 97 and Legal Conclusions 4 through 17.

Fifth Cause for Discipline

24. Cause does not exist under Code section 9884.7, subdivision (a)(8), to discipline respondent's ARD registration on the basis respondent made false promises of a character likely to influence consumers to authorize repair or service in that complainant failed to present any evidence respondent made any false promises to its consumers to induce them to authorize the repairs to the vehicles.

Cause to Revoke Probation

25. Cause exists under Condition 7 of the Disciplinary Order to revoke probation in that respondent violated Condition 1 of the probation by failing to obey all laws, as set forth in Factual Findings 1 through 97 and Legal Conclusions 7 through 22.

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Appropriate Level of Discipline

26. Having established causes for discipline, the question is whether Respondent presented sufficient mitigating and rehabilitative evidence to establish that its registration should not be revoked outright for his practices that endanger the public's health, safety, and welfare.

27. To determine the proper level of discipline, the Bureau must consider its Uniform Disciplinary Guidelines (Rev. June 2021) which identify a number of factors in aggravation, such as: 1) prior warnings from BAR, 2) prior office conferences with BAR, 3) prior history of citations, 4) prior history of formal disciplinary action, 5) failure to permit BAR inspection of records, and 6) evidence of abuse of mechanic's lien, 7) evidence of attempts to intimidate consumer, 8) evidence of negligent or willful improper repair work that endangers consumers, 9) evidence that the unlawful act was part of a pattern of practice, 10) failure to comply with BAR request for corrective action and retraining, 11) currently on probation for improper acts, 12) failure to successfully complete prior probation, 13) failure to pay court judgment to victim, 14) violation of previous court order, and 15) evidence of any other conduct which constitutes fraud or gross negligence.

28. In the present instance, respondent has been operating for years and held an ARD registration for over 20 years. Respondent, however, was just placed on probation in September 2021 for making misleading statements in connection to repairs that were performed on a vehicle. While on probation, respondent engaged in a pattern of conduct which intimidated consumers into having repairs performed by respondent, which, in some cases, were not completed until months had passed. In addition, Jones, respondent's president and owner, made false statements under penalty of perjury in order to effectuate the lien sale of a consumer's vehicle. In light of

the Bureau's paramount duty to protect the public, the overall circumstances require that Respondent's license be revoked.

Costs

29. Business and Professions Code section 125.3 provides that a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. A certified copy of the actual costs signed by the Bureau or its designated representative is prima facie evidence of reasonable costs of investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3, subds. (a), (c).)

30. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court provided factors to be considered in determining the reasonableness of the costs sought under statutory provisions such as Section 125.3. Those factors include whether the licensee was successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

31. Complainant seeks a total of \$19,828.78 in costs. Respondent did not rebut the reasonableness of the costs nor was there any colorable defenses raised to reduce the charges or mitigate the discipline. The requested costs are awarded as set out in the Order below.

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ORDER

1. IT IS HEREBY ORDERED that the stay in the Disciplinary Order in Case No. 77/19-6758 is set aside, and the Disciplinary Order staying the revocation of Automotive Repair Dealer Registration No. ARD 206811 is hereby set aside. and the probation of ARD held by Airport Collision Rpr & Tow, Inc.; Mike David Miller, President's probation revoked.

2. IT IS HEREBY ORDERED that Automotive Repair Dealer Registration Number ARD 206811 issued to respondent Airport Collision Rpr & Tow, Inc.; Mike David Miller, President, is revoked.

3. IT IS HEREBY ORDERED that the Automotive Repair Dealer Registration for all places of business operated by respondent Airport Collision Rpr & Tow, Inc.; Mike David Miller, President, are revoked pursuant to Business and Professions Code section 9884.7, subdivision (c).

4. Respondent Airport Collision Rpr & Tow, Inc. and its president Mike David Miller shall pay the Bureau of Automotive Repair its costs investigation and enforcement in the amount of \$19,828.78.

DATE: 03/18/2024


Nana Chin (Mar 18, 2024 14:16 PDT)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings