

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

In the Matter of the Accusation Against:

**CORVETTE CONNECTIONS, dba
CORVETTE CARE,
PHILLIP E. VAN EVERY, PRESIDENT,
SHANNON E. VAN EVERY,
SECRETARY AND TREASURER,**

Rancho Cordova, CA 95742

Automotive Repair Dealer Registration No.
ARD 260078

Respondent.

Case No. 77/15-24

OAH No. 2015020471

DECISION AFTER RECONSIDERATION


On September 9, 2015, the Director (Director) of the Department of Consumer Affairs (Department) issued a Decision adopting the Proposed Decision of the Administrative Law Judge, to become effective on October 15, 2015. Subsequently, the Department received a petition for reconsideration (Petition) from Respondent.

On October 6, 2015, the Director issued an Order Granting Reconsideration, pursuant to which the parties were given until November 10, 2015 to submit written argument. Both parties timely submitted their respective written arguments.

The Director, having read and considered the entire record, including the arguments submitted, hereby adopts the attached Decision as the Decision in the above-entitled matter.

This Decision shall become effective on September 15, 2016.

DATED: August 5, 2016



KURT HEPPLER
Supervising Attorney
Division of Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

This matter was heard before Ed Washington, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, on June 15, 2015.

Supervising Deputy Attorney General Kent D. Harris represented complainant Patrick Dorias, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Respondent Corvette Connections, Inc., doing business as Corvette Care, Phillip E. Van Every, President, and Shannon E. Van Every, Secretary and Treasurer, was represented by Phillip E. Van Every.

Evidence was received the record was closed and the matter was submitted for decision on June 15, 2015.

FACTUAL FINDINGS

1. On November 30, 2009, the Bureau issued Automotive Repair Dealer Registration No. ARD 260078 (registration) to Corvette Connections Inc., doing business as

Corvette Care, with Phillip E. Van Every as President and Shannon E. Van Every as Secretary and Treasurer. The registration was in full force an effect at all times relevant to the findings herein, and will expire on November 20, 2015, unless renewed or revoked.

2. On October 23, 2014, complainant, acting solely in his official capacity, filed an Accusation seeking to discipline respondent's registration based on numerous violations of the Automotive Repair Act.

Consumer Complaint -- Terri Blankenship's 2003 Chevrolet Corvette

3. In or around April 2013, Terri Blankenship took her 2003 Chevrolet Corvette to respondent's facility for repairs stemming from two collisions in February and March of 2013. Ms. Blankenship had her Corvette repaired at respondent's facility because it was recommended by the tow truck driver who transported the vehicle from the accident scene, and because respondent specialized in Corvette repairs.

4. The damage to Ms. Blankenship's Corvette was covered by her insurance policy with Nationwide Insurance Company (Nationwide). Nationwide determined the cost of repairs, based on an estimate itemizing the parts and labor required to complete those repairs. Ms. Blankenship's insurance policy included an Original Equipment Manufacturer (OEM) Endorsement, which ensures that aftermarket replacement parts are not used in repairs when OEM parts are available. Nationwide paid respondent \$9,417.42 to repair front end damage, and \$2,068.41 to repair left side damage, based on its estimate for repairs. Ms. Blankenship paid respondent \$214 to replace the vehicle's heads-up display bezel and defrost grille vent. She also paid respondent \$1,000 to cover the deductibles on her insurance claims.

5. When Ms. Blankenship took her Corvette to respondent's facility for repairs she believed that all repairs would be performed utilizing OEM parts, when available, and that all repairs would be performed at respondent's facility. Ms. Blankenship did not authorize the use of used or reconditioned parts on her vehicle, and did not authorize respondent to sublet repairs on her vehicle to another facility.

6. Ms. Blankenship learned that respondent sent her car to another facility for repairs when she called to check on the status of repairs and was told that her car "is not here [at Corvette Care]" and they would have to "check on it" and call her back. When the vehicle was returned to Ms. Blankenship, she was very dissatisfied with several aspects of the repairs. She noticed that spacing between the body panels was out of alignment and even overlapped in some places. She also noticed that the color of the heads-up display bezel did not match the interior, and that the defrost grille vent was cracked.

7. In or around July 2013, Ms. Blankenship filed a consumer complaint with the Bureau. Adam Marquez was one of two Bureau representatives who investigated Ms. Blankenship's claims. Mr. Marquez is employed as a Program Representative I for the Bureau and has held this position for over two years. He investigates consumer complaints

and inspects vehicles as part of the Bureau's auto body inspection program. Prior to joining the Bureau, Mr. Marquez performed automotive body repairs for three auto body shops over the preceding 18 years. His duties included vehicle frame structural work, removing and installing non-structural panels, electrical work, and composite plastic repair.

8. The investigation of Ms. Blankenship's consumer complaint included an inspection of Ms. Blankenship's vehicle, a review of the insurance provider's estimate for repairs, and a review of repair invoices created by respondent. The Bureau representatives also interviewed Mr. Van Every and employees of MAACO Collision Repair & Auto Paint, located in Rancho Cordova (MAACO).

9. Mr. Marquez provided testimony at hearing on the substance of his investigation and his final determinations. He determined that respondent accepted payment from Ms. Blankenship and her insurance provider to complete repairs that were either: (1) not completed at all; (2) completed with less expensive parts not specified in the estimate for repairs or invoice; or (3) completed in a defective and unsafe fashion.

Repairs to John Shirey's 2004 Chevrolet Corvette

10. On or about August 20, 2013, the Bureau met with the owner of MAACO, Gary Jeffery, to discuss the repairs to Ms. Blankenship's vehicle. During the interview, Mr. Jeffery informed the Bureau that he frequently repairs cars for respondent and had just returned a vehicle to respondent that morning. Mr. Jeffery provided the Bureau with the files for the vehicle he recently returned to respondent's facility. The vehicle was a 2004 Chevrolet Corvette owned by John Shirey. The documentation for the repairs completed on Mr. Shirey's vehicle included a repair estimate from P&C Appraisal Services, on behalf of Anchor General Insurance Company (Anchor), which reflected that respondent was to install a new OEM rear bumper cover on Mr. Shirey's Corvette at a cost of \$691.21, and respondent was paid this amount to purchase a new OEM rear bumper cover to complete repairs. However, the MAACO file for the repair included an invoice for a reconditioned rear bumper cover for \$378—rather than a new OEM rear bumper cover as specified in the insurance estimate. Mr. Jeffery testified that Mr. Van Every directed him to replace the rear bumper cover on Mr. Shirey's Corvette with a reconditioned rear bumper cover rather than a new OEM part.

11. On or about August 20, 2013, Mr. Marquez inspected Mr. Shirey's Corvette at respondent's facility and found that respondent had failed to repair the vehicle as estimated, and had replaced the rear bumper cover with a reconditioned rear bumper cover rather than a new OEM part.

12. Mr. Shirey testified at hearing that it was his understanding, based in part on the estimate from P&C Appraisal Services, that all parts used to repair his 2004 Corvette would be new OEM parts. Mr. Shirey also believed that all repairs would be completed at

respondent's facility, but learned while his vehicle was being repaired that it had been taken to another shop. Mr. Shirey did not authorize or approve respondent's use of reconditioned parts on his vehicle.

13. On August 22, 2013, representatives from Bureau met with Mr. Van Every and requested twenty additional repair files as part of its investigation. The request was documented in an Inspection Report provided to respondent. The request provided, as follows:

Pursuant to 9884.11 of the Business and Professions Code and 3358 (a), (b), and (c), of the California Code of Regulations, this is the Bureau's formal request for additional records. Please provide all estimates, authorizations, documentation, invoices, parts receipts, payments, photographs, and any other documentation/information pertaining to the last 20 auto body repairs over \$1,500.00 you have performed for consumers. Please produce this information by 8/27/13.

(Bold in original.)

14. As of the day of hearing, Mr. Van Every had not provided the requested files.

15. Mr. Van Every did not dispute the allegations at hearing. He admitted the facts alleged in the Accusation, except for the Bureau's assertion that he refused to provide requested records. He asserted that the issues related to the repairs completed on the 2003 and 2004 Corvettes resulted from extenuating circumstances and poor decision making. He acknowledged that the repair work was not properly completed on either vehicle, stating the repairs were "obviously not our finest work." He acknowledged that he was paid for repair services that were not performed and that he was paid for new OEM parts that were not purchased. He claimed that when the two vehicles were scheduled for repairs, respondent's facility was backed up with ongoing repairs and did not have the room at the shop or the man hours to perform the repairs in a timely fashion, so he sublet the repairs to MAACO.

16. He asserted that the failure to set up and measure the frame on Ms. Blankenship's Corvette was an oversight, saying "I didn't see it on the insurance sheet and not performing any of the fender work on the car, we didn't know the frame was that far off." Mr. Van Every admitted that he received payment to paint the hood hinges on Ms. Blankenship's vehicle but failed to do so, asserting that "hood hinges are never painted." He also claimed that he believed the reconditioned rear bumper cover installed on Mr. Shirey's Corvette was acceptable because Mr. Jeffery told him: "it's a reconditioned part and meets factory standards" Mr. Jeffery denied this assertion and testified that the reconditioned rear bumper cover was purchased and installed at Mr. Van Every's direction. Mr. Jeffery was the more credible witness on this issue.

17. Mr. Van Every asserted that he attempted to provide the documents requested by the Bureau, but could not. He claimed he spent 10 to 15 hours attempting to locate the 20 additional repair files requested by the Bureau, but could only locate files for six or seven jobs covering approximately the previous two years. He stated that he just did not have time in the day to pull any other files, and claimed that the representatives from the Bureau refused to accept the six or seven repairs files he obtained.

18. Cause exists to discipline respondent's registration. Mr. Van Every admitted the underlying allegations, but claimed that they resulted from either "an oversight" or his decision to sublet repairs not completed or not completed in a satisfactory fashion. Both consumers and insurance providers expect automotive repair dealers to complete vehicle repairs as specified in vehicle repair estimates and vehicle repair invoices, unless the insurance providers or consumers agree to a modification and the repair estimate and invoice are adjusted accordingly. More importantly, consumers and insurance providers expect automotive repair dealers to effect vehicle repairs in a manner that maintains the vehicle's integrity and ensures that the vehicle is safe to operate. The repairs respondent performed on the 2003 and 2004 Corvettes demonstrate that respondent accepted payment for repair services that were not completed at all, not completed as described, or not completed satisfactorily. Respondent's repairs on these vehicles fell short of the expectations of the consumers and insurance providers and violated the Automotive Repair Act.

19. In performing repairs to Ms. Blankenship's 2003 Chevrolet Corvette, respondent subjected its registration to discipline on the following grounds:

- a. Respondent replaced the front bumper cover on Ms. Blankenship's Corvette with a reconditioned part, although the insurance provider's estimate for repairs specified that a new OEM part be used, and respondent's Repair Invoice No. 1154 indicated that a new OEM part was used.
- b. Respondent received payment from Ms. Blankenship and her insurance provider to replace the front bumper cover on Ms. Blankenship's Corvette with a new OEM part, but replaced it with a reconditioned part instead.
- c. Respondent replaced the defrost grille vent on Ms. Blankenship's Corvette with a used part, although respondent's Repair Invoice No. 1154 indicated that a new OEM part was used.
- d. Respondent received payment from Ms. Blankenship to replace the defrost grille vent on her vehicle with a new OEM part, but replaced it with a used part instead.
- e. Respondent failed to replace the heads-up display bezel on Ms. Blankenship's Corvette, although respondent's Repair Invoice No. 1154 indicated the heads-up display bezel was replaced with a new OEM part.

- f. Respondent received payment from Ms. Blankenship to replace the heads-up display bezel on her vehicle with a new OEM part, but did not replace the heads-up display bezel.
- g. Respondent represented on Repair Invoice No. 1154 for repairs performed on Ms. Blankenship's vehicle that the heads-up display bezel was dyed or painted, although that repair was not performed.
- h. Respondent received payment from Ms. Blankenship to dye or paint the heads-up display bezel on Ms. Blankenship's vehicle, but did not dye or paint the heads-up display bezel.
- i. Respondent received payment from Ms. Blankenship and her insurance provider to refinish the left and right hood hinges of Ms. Blankenship's Corvette, but did not refinish them.
- j. Respondent received payment from Ms. Blankenship and her insurance provider to set up and measure the frame on Ms. Blankenship's Corvette, but did not set up and measure the frame.
- k. Respondent failed to properly repair the left door outer panel on Ms. Blankenship's Corvette. The inside structure of the door shell remained cracked and damaged after the vehicle was repaired and the outer door panel remained cracked in numerous places and separated from the door shell, leaving the left door outer panel potentially unsafe.
- l. Respondent willfully departed from or disregarded accepted trade standards without the consent of the owner when respondent: (1) failed to set up and measure the frame structure on Ms. Blankenship's vehicle, leaving the frame damaged and out of factory tolerances; (2) failed to properly fasten the front bumper lower shield screw; (3) failed to repair or replace the cracked right headlamp door and hood panel; (4) failed to properly repair the left door outer panel as it remained cracked in numerous places and separated from the door shell; and (5) failed to reinstall the upper bolt on the left fender near the windshield.
- m. Respondent sublet the front end body work and painting of Ms. Blankenship's Corvette to MAACO without Ms. Blankenship's knowledge or consent.

20. In performing repairs to Mr. Shirey's 2004 Chevrolet Corvette, respondent subjected its registration to discipline by receiving payment from Anchor Insurance to replace the rear bumper cover on Mr. Shirey's Corvette with a new OEM part, but replaced it with a reconditioned part instead.

21. Respondent subjected its registration to discipline by failing to provide the Bureau with 20 additional repair files, as requested on or about August 22, 2013.

22. Respondent engaged in repeated and willful violations of the Automotive Repair Dealer Act when repairing the 2003 and 2004 Corvettes by: (1) accepting payment for repairs not completed or completed in an acceptable fashion; (2) making misleading statements regarding those repairs; and (3) subletting the repairs for Ms. Blankenship's 2003 Corvette without her knowledge or consent.

23. In its Guidelines for Disciplinary Penalties and Terms of Probation, the Bureau has set forth several "Factors in Aggravation and in Mitigation" that should be considered when determining the severity of any discipline imposed upon an automotive repair dealer's registration. Here, the only applicable factors are factors in aggravation. By failing to produce the repair records requested by the Bureau, respondent has limited the Bureau's ability to determine the length of respondent's pattern of misconduct. The Bureau discovered 20 separate violations of the Automotive Repair Act within the Blankenship and Shirey repair files. Respondent's negligent and unsafe repair of Ms. Blankenship's left door outer panel is also a serious aggravating factor, as it endangered Ms. Blankenship's safety. Mr. Van Every's explanation that he sublet the repairs to another shop because he lacked sufficient staffing and space to perform the repairs at respondent's facility is unpersuasive when weighed against the risks created by his actions.

24. When all the evidence is considered, respondent's conduct established that it would be against public interest to permit respondent to maintain its automotive repair dealer registration, at the present time, even on a probationary basis. The Bureau has demonstrated that respondent engaged in multiple acts of fraud, misrepresentation, gross negligence, willful departure from or disregard of trade standards when completing automotive repairs, and failed to produce repair records to Bureau investigators, hindering its investigation of respondent's activities. Therefore, respondent's automotive repair dealer registration must be invalidated.

Recoverable Costs

25. Pursuant to Business and Professions Code section 125.3, the Bureau requested costs of investigation and enforcement in the total amount of \$19,740.86. This amount consisted of the following:

a. The Bureau submitted a certification of costs, which requested \$14,968.36 for "investigator costs." The certification specified that a Program Representative I dedicated 202 hours to this matter in fiscal year 2013-2014, at an hourly rate of \$71.26, for a total of \$14,394.52, and 8 hours in fiscal year 2014-2015, at an hourly rate of \$71.73, for a total of \$573.84. The certification of costs did not delineate with any specificity the matters that the Program Representative I investigated or the particular actions he undertook, and the costs attributed to those matter and actions. The Bureau did not, therefore, submit sufficient substantiation of the investigative costs to determine whether they were reasonable. A

declaration submitted to substantiate proof of costs at hearing must contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of those costs and shall describe the general tasks performed, the time spent on each task and the method of calculating the costs. (Cal. Code of Regs., tit. 1, § 1042, subd. (b).)

b. The Bureau also submitted a Certification of Prosecution Costs and the Declaration of the Deputy Attorney General, which requested a total of \$4,722.50 in costs. Attached to the Deputy Attorney General's Declaration was a printout describing with sufficient particularity the nature of the work performed. These costs are reasonable in light of the allegations in this matter.

26. Based on the allegations specified in the Accusation, and without substantiation to justify greater investigative costs, the reasonable cost of investigation and prosecution are \$4,722.50.

27. At hearing, Mr. Van Every testified that he did not have the financial ability to pay the requested costs and will not for several years. He asserted that the profit margins for respondent are very low and he frequently cannot pay himself. He and his wife have living expenses typically associated with owning a home and three vehicles. The bulk of their assets secure the loan utilized to purchase Corvette Care.

LEGAL CONCLUSIONS

Burden of Proof

1. The Bureau has the burden of proving the existence of grounds for disciplining respondent's Automotive Repair Dealer registration 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.)

Applicable Statutes and Regulations

2. Business and Professions Code section 9884.7, subdivision (a) provides, in pertinent part:

The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related 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.

(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.

[¶] ... [¶]

(4) Any other conduct that constitutes fraud.

(5) Conduct constituting gross negligence.

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

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

[¶] ... [¶]

(9) Having repair work done by someone other than the dealer or his or her employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified.

[¶] ... [¶]

3. Business and Professions Code section 9884.7, subdivision (c), provides that the director may suspend, revoke, or place on probation the registration for all places of business operated in this state 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 Dealer Act.

4. Business and Professions Code section 9884.9, subdivision (b), provides that, the automotive repair dealer shall include with the written estimated price a statement of any automotive repair service that, if required to be done, will be done by someone other than the dealer or his or her employees. No service shall be done by other than the dealer or his or her employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or his or her employees had done the service.

5. Business and Professions Code section 9884.11, subdivision (b), provides that, each automotive repair dealer shall maintain any records that are required by regulations

adopted to carry out this chapter. Those records shall be open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years.

6. California Code of Regulations, title 16, section 3358, provides the following about the types of documents an automotive repair dealer is required to keep:

Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:

(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.

(b) All written estimates pertaining to work performed.

(c) All work orders and/or contracts for repairs, parts and labor. All such records shall be open for reasonable inspection and/or reproduction by the bureau or other law enforcement officials during normal business hours.

Cause for Discipline

Untrue or Misleading Statements

7. As set forth in Findings 15, 16 and 19a, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for making or authorizing any written or oral statement which is untrue or misleading, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that respondent represented on Repair Invoice 1154 that he replaced the front bumper cover on Ms. Blankenship's 2003 Corvette with a new OEM part, when he actually replaced it with a reconditioned part.

8. As set forth in Findings 15, 16 and 19c, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for making or authorizing any written or oral statement which is untrue or misleading, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that respondent represented on Repair Invoice 1154 that he replaced the defrost grille vent on Ms. Blankenship's 2003 Corvette with a new OEM part, when he actually replaced it with a used part.

9. As set forth in Findings 15, 16 and 19e, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for making or authorizing any written or oral statement which is untrue or misleading, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that respondent represented on Repair Invoice 1154 that he replaced the heads-up display bezel on Ms. Blankenship's 2003 Corvette with a new OEM part, when it was not replaced.

10. As set forth in Findings 15, 16 and 19g, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for making or authorizing any written or oral statement which is untrue or misleading, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that respondent represented on Repair Invoice 1154 that the heads-up bezel on Ms. Blankenship's 2003 Corvette was dyed or painted, when that repair was not performed.

Fraud

11. As set forth in Findings 15, 16 and 19b, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for fraud, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent obtained payment to replace the front bumper cover on Ms. Blankenship's 2003 Corvette with a new OEM part, but replaced it with a reconditioned part instead.

12. As set forth in Findings 15, 16 and 19i, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for fraud, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent obtained payment to refinish the left and right hood hinges on Ms. Blankenship's 2003 Corvette, but did not refinish them.

13. As set forth in Findings 15, 16 and 19j, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for fraud, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent obtained payment to set up and measure the frame on Ms. Blankenship's 2003 Corvette, but did not perform this service.

14. As set forth in Findings 15, 16 and 19d, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for fraud, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent obtained payment to replace the defrost grille vent on Ms. Blankenship's 2003 Corvette with a new OEM part, but replaced it with a used part instead.

15. As set forth in Findings 15, 16 and 19f, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for fraud, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent obtained payment to replace the heads up display bezel on Ms. Blankenship's 2003 Corvette with a new OEM part, but did not replace it.

16. As set forth in Findings 15, 16 and 19h, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for fraud, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent obtained payment to dye or paint the heads up display bezel on Ms. Blankenship's 2003 Corvette, but did not perform this repair.

17. As set forth in Findings 15, 16 and 20, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for fraud, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that respondent obtained payment to replace the rear bumper cover on Mr. Shirey's 2004 Corvette with a new OEM part, but replaced it with a reconditioned part instead.

Gross Negligence

18. As set forth in Findings 15, 16 and 19k, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for gross negligence, pursuant to Business and Professions Code section 9884.7, subdivision (a)(5), in that respondent failed to properly repair the left door outer panel on Ms. Blankenship's 2003 Corvette, because the inside structure of the door shell remained cracked and damaged, and the door skin was cracked in several areas and separated from the door shell.

Departure from Trade Standards

19. As set forth in Findings 15, 16 and 19j, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for departing from or disregarding trade standards, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner when respondent failed to set up and measure the frame structure on Ms. Blankenship's 2003 Corvette, leaving the frame damaged and out of factory tolerances.

20. As set forth in Findings 15, 16 and 19l, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for departing from or disregarding trade standards, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner when respondent failed to properly fasten the front bumper and lower shield screw on Ms. Blankenship's 2003 Corvette.

21. As set forth in Findings 15, 16 and 19l, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for departing from or disregarding trade standards, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner when respondent failed to repair or replace the cracked right headlamp door and hood panel on Ms. Blankenship's 2003 Corvette.

22. As set forth in Findings 15, 16 and 19l, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for departing from or disregarding trade standards, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from or disregarded accepted trade

standards for good and workmanlike repair without the consent of the owner when respondent failed to properly repair the left door outer panel on Ms. Blankenship's 2003 Corvette.

23. As set forth in Findings 15, 16 and 19l, and Legal Conclusions 1 and 2, the Bureau established that respondent's registration is subject to discipline for departing from or disregarding trade standards, pursuant to Business and Professions Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner when respondent failed to reinstall an upper bolt on the left fender near the windshield on Ms. Blankenship's 2003 Corvette.

Unauthorized Sublet of Repairs

24. As set forth in Findings 15, 16 and 19m, and Legal Conclusions 1, 2, and 4, the Bureau established that respondent's registration is subject to discipline for engaging in an unauthorized sublet of repairs, pursuant to Business and Professions Code section 9884.7, subdivision (a)(9), in that respondent sublet the front end body work and painting on Ms. Blankenship's 2003 Corvette to MAACO without Ms. Blankenship's knowledge or consent.

Failure to Maintain Records

25. As set forth in Finding 21, and Legal Conclusions 1, 5 and 6, the Bureau established that respondent's registration is subject to discipline for failing to maintain required records, pursuant to Business and Professions Code section 9884.7, subdivision (a)(9), and California Code of Regulations, title 16, section 3358, in that respondent failed to maintain, and make available for inspection, records as required by the Automotive Repair Act, when he failed to produce the records of additional repairs requested by the Bureau.

Repeated Willful Violations

26. As set forth in Factual Findings, collectively, and the Legal Conclusions as a whole, the Bureau established that respondent's registration is subject to discipline for engaging in a course of repeated and willful violations of the Automotive Repair Act.

Costs

27. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Business and Professions Code section 125.3, subdivision (c), states:

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity

bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

28. As set forth in Finding 26, reasonable costs of investigation and prosecution in this matter were \$4,722.50. In *Zuckerman v. State Board of Chiropractic Examiners*,¹ the Supreme Court of California identified factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has succeeded 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 has 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 to the alleged misconduct. Respondent was unable to get any of the charges dismissed or reduced. In fact, he admitted each of the pertinent allegations.

29. At hearing, Mr. Van Every claimed he would be unable to pay the Bureau's original cost certification of \$19,740.86 because respondent's profit margins have been very low. The original cost certification has been reduced to reasonable costs totaling \$4,722.50, as described above. Based upon the factors set forth in *Zuckerman*, there is no basis to reduce the costs further.

30. Respondent shall pay the costs of investigation and prosecution of this matter pursuant to Business and Professions Code section 125.3, in the amount of \$4,722.50. Respondent may make installment payments in a schedule to be approved by the Bureau or its designee.

ORDER

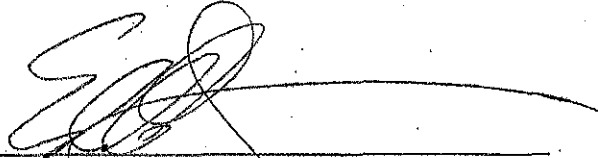
1. Automotive Repair Dealer Registration No. ARD 260078 issued to respondent Corvette Connections, Inc., doing business as Corvette Care is INVALIDATED.

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¹ *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

2. Respondent shall reimburse the Bureau the sum of \$4,722.50 for costs incurred while investigating and prosecuting this matter. Respondent may pay these costs according to a payment plan approved by the Bureau or its designee.

DATED: July 14, 2015

A handwritten signature in black ink, appearing to read 'ED WASHINGTON', is written over a horizontal line.

ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings