

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

In the Matter of the Accusation Against:

MID VALLEY AUTOMOTIVE, LLC, dba MID VALLEY AUTOMOTIVE, ESTEFANIA RIQUELME,

ANGEL GUILLEN, MANLI GUO

6020 Hazeltine Ave.

Van Nuys, CA 91401

Automotive Repair Dealer Registration No. ARD 296509

Respondent.

Case No. 77/21-15119


OAH No. 2023060041

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 JUNE 4, 2024.

IT IS SO ORDERED April 23, 2024.



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

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

In the Matter of the Accusation Against:

**MID VALLEY AUTOMOTIVE, LLC, doing business as MID
VALLEY AUTOMOTIVE, ESTEFANIA RIQUELME, ANGEL
GUILLEN, and MANLI GUO, Respondents.**

Agency Case No. 77/21-15119

OAH No. 2023060041

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 5 through February 8, 2024, and February 12 and 13, 2024, via Zoom videoconference.

Kevin J. Rigley, Deputy Attorney General, appeared on behalf of Patrick Dorais (complainant), Chief of the Bureau of Automotive Repair (BAR or Bureau), Department of Consumer Affairs.

William H. Dailey, Attorney, appeared on behalf of Mid Valley Automotive, LLC, doing business as Mid Valley Automotive (MVA), Estefania Riquelme (Riquelme), Angel Guillen (Guillen), and Manli Guo (Guo) (collectively, "respondents"). Riquelme was

present on each day of the hearing. Guillen and Guo were not present on any day of the hearing.

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on February 13, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 28, 2020, the BAR issued Automotive Repair Dealer (ARD) registration number ARD 296509 to respondents. The ARD registration was always active relevant to the charges brought in the Accusation and is scheduled to expire on January 31, 2025, unless renewed.

2. On December 8, 2022, complainant, in his official capacity, filed an Accusation against respondents. Thereafter, all respondents filed a Notice of Defense, which requested an administrative hearing on the matters alleged in the Accusation.

3. All jurisdictional requirements have been met.

BAR Investigations

4. This case involves five investigations performed by BAR personnel. The first four investigations deal with the storage of vehicles at MVA after automobile accidents. The fifth investigation deals with repairs performed by MVA on a vehicle after an automobile accident.

5. As to the first four investigations, the Accusation includes factual allegations regarding the circumstances surrounding the towing of the four vehicles to

MVA. However, the parties stipulated at hearing that BAR does not have jurisdiction over companies that provide tow services. However, BAR does have jurisdiction over an entity that holds an ARD registration. There was some circumstantial evidence presented that MVA may have been providing towing services under the name "Easy Way Tow." However, insufficient evidence was provided to establish that MVA towed any of the vehicles involved in the five investigations. Therefore, respondents' conduct will be evaluated from the time each of the five vehicles was dropped off at MVA by a tow truck. Any Factual Findings regarding towing are merely for background information, unless otherwise stated.

INVESTIGATION NUMBER ONE – CONSUMER G.L.

6. On January 30, 2021, consumer G. L. (G.L.) was involved in an auto accident. All consumers will be referenced by their initials to protect their privacy. Easy Way Towing towed the consumer's vehicle to MVA. Respondents had (G. L.) sign a blank estimate with no description of labor, charges, or storage fees. G. L. did not authorize MVA to perform any repairs to the vehicle.

7. On February 3, 2021, G.L. notified MVA, per his lawyer's advice, that the vehicle needed to be transported to a different body shop. Thereafter, respondents refused to release G.L.'s vehicle until MVA received \$2,845.00 in cash. MVA had not performed any repairs on G.L.'s vehicle. All the charges were related to storage of G.L.'s vehicle.

8. On February 4, 2021, G.L. went to MVA to retrieve the vehicle. G.L. paid \$2,845.00 in cash, under protest. MVA provided G.L. an invoice, which reflected the following charges: \$495.00 towing, \$350.00 teardown, \$300.00 hazardous waste disposal, \$250.00 gate fee, \$150.00 administrative fee, \$100.00 COVID wipe down fee,

and six days of storage at \$200.00/day, for a total of \$1,200.00. Respondents failed to note the mileage of G.L.'s vehicle on any paperwork.

9. Thereafter, G.L. filed a complaint with BAR.

10. On March 18, 2021, Cameron Loessberg, Jr. (Loessberg), a BAR Program Representative II, went to MVA. Loessberg spoke to Manager Brandon Sau (Sau), and Riquelme about G.L.'s complaint.

11. Loessberg informed Sau and Riquelme that according to *Owens v Pyeatt* (1967) 248 Cal. App. 2d 840 (*Owens* case) (Exhibit 88), an entity holding an ARD registration cannot charge storage fees for a vehicle while the vehicle is undergoing repairs. MVA provided G.L. with an estimate, albeit a blank estimate, which indicated MVA planned to perform repairs on G.L.'s vehicle. Further, MVA's charge of \$350 for a "teardown" indicated that work had been performed on G.L.'s vehicle. In fact, MVA had not performed any work on G.L.'s vehicle.

12. Loessberg also informed Riquelme that some of the storage charges were unreasonable pursuant to Assembly Bill 2392 (AB 2392). AB 2392 will be discussed in detail in the Legal Conclusions section of this Proposed Decision. However, in sum, on September 17, 2018, AB 2392 amended Vehicle Code sections 10652.5, 22524.5, and 22651.07, which relate to the towing and storage of vehicles. Under the newly amended law, certain fees related to storage and towing were classified as presumptively unreasonable. These presumptively unreasonable storage fees include administrative fees, dolly fees, and gate fees. MVA charged G.L. a gate fee and administrative fee, which were presumptively unreasonable under the law.

13. On April 8, 2021, Loessberg spoke with General Manager Mathew Riquelme (Mathew) and Riquelme. Loessberg again mentioned the *Owens* case, AB

2392, and the other matters discussed on March 18, 2021. Loessberg recommended that MVA refund \$1,600 to G.L.

14. After consulting with the other members of MVA, Riquelme declined to offer any reimbursement to G.L.

INVESTIGATION NUMBER TWO – CONSUMER Z.O.

15. On February 23, 2021, consumer Z.O. (Z.O.) was involved in an auto accident. A short time later, a tow truck arrived at the scene of the accident. Z.O. got into the tow truck, which stated "Easy Way Towing" on the side panel. Z.O. and the vehicle were then transported to MVA.

16. Upon arriving at MVA, Z.O. informed Mathew that Z.O. did not want the vehicle repaired at MVA. Nevertheless, MVA had Z.O. sign a blank estimate form, which had no description of repairs to be performed, labor charges, or any other charges that would be accruing, such as storage fees. Respondents did not document the vehicle's odometer mileage.

17. On February 24, 2021, Z.O. received a call from her insurance company informing her MVA refused to release the vehicle unless storage fees and other miscellaneous fees were paid.

18. MVA's Invoice #965 (exhibit 28) reflected the following charges: \$580.00 towing, \$150.00 hazardous waste disposal, \$85.00 COVID-19 wipe down fee, \$150 vehicle pre-inspection fee, and three days of storage at \$200.00/day, for a total of \$600.00. The fees charged by MVA totaled \$1,565.00.

///

19. On February 25, 2021, Z.O. retrieved her vehicle and had it towed to another auto body shop. Z.O.'s insurance agency paid \$1,565.00 to MVA to have the vehicle released.

20. On March 12, 2021, Z.O. filed a complaint with BAR.

21. On March 23 and April 22, 2021, BAR representative Timothy Fowler (Fowler), a BAR Program Representative II, and Christopher Dunne (Dunne), Program Representative, visited MVA and spoke to Sau and Riquelme regarding Z.O.'s complaint.

22. Mathew told Fowler that the vehicle pre-inspection charge was for doing paperwork and research regarding what repairs Z.O.'s vehicle would require. However, Z.O. previously stated she did not want any repairs done by MVA, so this charge was unreasonable.

23. Fowler discussed his concerns regarding MVA's billing of Z.O. MVA was unable to explain why they charged Z.O. a vehicle pre-inspection fee in anticipation of performing repairs, but also charged storage fees, which is not allowed when a vehicle is going to be repaired, as per the *Owens* case. Fowler also advised Mathew and Riquelme regarding the importance of MVA's future compliance with the laws regarding storage fees. Fowler recommended MVA issue a refund of \$1565.00 to Z.O.'s insurance company, but MVA never replied to Fowler's recommendation and MVA never issued a refund.

24. During their April 22, 2021 visit, the BAR representatives noticed and photographed an "Easy Way Towing" tow truck parked on MVA's premises. A BAR representative asked Matthew about the relationship between Easy Way Towing and MVA. Mathew stated the tow truck was at MVA for repairs. However, Sau and

Riquelme also told Fowler that Easy Way Tow and MVA had a business relationship, which was not described.

25. Department of Motor Vehicle records revealed that Angel Guillen and Riquelme are the registered owners of the Easy Way Towing tow truck at the MVA facility. However, the tow truck has not been legally registered since 2018 and it was not established that this specific tow truck towed any of the five vehicles involved in BAR's investigations.

INVESTIGATION NUMBER 3 – CONSUMER J.O.

26. On November 7, 2020, consumer J.O. (J.O.) was involved in an auto accident. J.O.'s vehicle was towed to MVA. Later that evening, Mathew called J.O. and requested J.O.'s insurance information, which J.O. provided. Mathew did not inform J.O. of any charges or fees which would be accruing.

27. On November 9, 2020, J.O. went to MVA to retrieve his vehicle. Respondents refused to release J.O.'s vehicle unless J.O. paid \$1,200.00. J.O. believed MVA's fees were excessive and complained to MVA. J.O. ultimately left MVA and filed a complaint with the Los Angeles Police Department (LAPD). Within a few days, the LAPD determined the dispute between MVA and J.O. was a civil issue and LAPD referred J.O. to BAR.

28. On November 11, 2020, J.O. returned to MVA and was informed the total fees had increased to \$1,860.00. Further, MVA informed J.O. that only cash or a money order would be accepted as payment. J.O. was also informed he would have to pay another \$200.00 if he returned the next day, which would increase the total charges to \$2,060.00.

29. On November 12, 2020, J.O. returned to MVA with a tow truck provided by his insurance company and he paid \$2,060.00 to MVA by cashier's check. MVA then released J.O.'s vehicle and provided J.O. with invoice #847 (Exhibit 37), which listed the following charges: a COVID-19 cleaning fee of \$65.00, a \$150.00 gate fee, a \$150.00 administrative fee, a \$495.00 towing fee, and six days of storage at \$200.00 per day.

30. On March 23, 2021, J.O. filed a complaint with BAR.

31. On April 8, 2021, Robert Chavez (Chavez), a BAR Program Representative II, visited MVA and met with Sau and Riquelme. Respondents could not explain why two tow trucks, Far Out Towing (Exhibit 40) and All-American Alliance (Exhibit 33), had submitted invoices for purportedly towing J.O.'s vehicle to MVA. MVA also provided Chavez with an "Estimate and Repair Order" form for J.O.'s vehicle (Exhibit 43.) Other than J.O.'s basic information, this form was blank and J.O. did not sign the form. Chavez provided Sau and Riquelme with a copy of AB 2392 (Exhibit 65) and BAR's Spring 2019 Newsletter which discussed the current law regarding towing and storage fees (Exhibit 66.) Chavez advised MVA that the \$150.00 administrative fee was presumptively unreasonable. Chavez recommended that MVA offer a partial refund to J.O., but MVA declined.

32. Chavez also noted that no official dealer sign was displayed at MVA, as is required. However, other BAR personnel reported seeing the official dealer sign displayed during their visits and reported such in their Station Inspection reports after their visits. Since the evidence was conflicting, it was not established that MVA failed to display an official dealer sign.

///

///

INVESTIGATION NUMBER FOUR – CONSUMER M.K.

33. On September 24, 2021, consumer M.K. (M.K.) was involved in an auto accident while driving a BMW model vehicle. An unidentified male approached M.K. and said he had dash cam footage of the accident, and M.K. provided him with his name and telephone number to obtain the dash cam video. A few minutes later, M.K. received a telephone call from someone representing himself as "BMW roadside assistance." The caller then informed M.K. that the sensors on M.K.'s vehicle indicated the vehicle was not safe to drive. M.K. agreed to have the vehicle towed to a BMW-authorized repair facility. A tow-truck with the name "East to West" written on its door arrived at the scene. The tow-truck driver informed M. K. that his vehicle would be towed to MVA. M.K.'s BMW was then transported to MVA near closing time.

34. On September 24, 2021, M.K. arrived at MVA and met with Sau. M.K. provided his contact and insurance information to Sau. M.K. did not receive a verbal or written estimate of the services to be performed or any fees which would be accruing. MVA had M.K. sign a blank authorization form. M.K. expected MVA would inspect the BMW to determine if it was safe to drive.

35. On September 25, 2021, M.K. sent an email to MVA, which demanded that MVA not perform any repairs on the BMW.

36. On September 27, 2021, M.K. was informed by MVA that his vehicle would only be released if he paid unspecified fees in cash or through the banking application Zelle.

37. On September 28, 2021, Sau told M.K. the storage fees totaled \$1,860.

///

38. On September 29, 2021, M.K. paid MVA \$1,950.00 in fees, which included a \$150.00 gate fee, a \$100.00 COVID wipe-down fee, a \$550.00 towing fee, and six days of storage at \$200.00 per day. Respondents' paperwork did not contain their ARD registration number.

39. On November 4, 2021 Chavez provided Sau with a copy of AB 2392 and BAR's September 2019 Newsletter, which discussed the current law regarding towing and storage fees. Chavez also discussed the Owens case with Sau. Chavez recommended MVA refund M.K. the sum of \$1,950.00. Sau stated he would inform Riquelme of Chavez's visit and recommendation, but no refund was issued.

INVESTIGATION NUMBER FIVE – CONSUMER O.H.

40. On June 4, 2021, consumer O.H. (O.H.) was involved in an automobile accident. An unknown individual approached consumer O.H. at the accident scene and said he would call a tow truck. Within a few minutes, an "Easy Way" tow truck arrived at the scene of the accident and towed O.H.'s vehicle to MVA.

41. After O.H.'s vehicle was towed to MVA, O.H. did not authorize any repairs, nor did she receive any estimate from MVA. O.H. apparently is Russian and speaks English as her second language. Therefore, MVA dealt almost exclusively with O.H.'s insurance company, Geico Insurance (Geico).

42. Between June 4, 2021, and September 21, 2021, O.H.'s vehicle remained at MVA while it was repaired. During this time, respondents failed to record the subtotal price and total price for the repair work performed and all parts supplied and failed to record the sales tax on invoices.

///

43. On September 21, 2021, O.H. retrieved the vehicle from MVA after being informed all repairs had been completed. Thereafter, O.H. noticed a large plastic part hanging under the engine, the radio would not turn on, and when she arrived home, the engine would not turn off. O.H. also noticed gaps along the front bumper cover.

44. O.H. ultimately called Reseda International Auto Body (RIAB), who O.H. was familiar with due to RIAB's work on another vehicle owned by O.H.

45. O.H. later had her vehicle towed to RIAB. RIAB inspected the body work performed by MVA and noticed gaps along the front bumper cover. RIAB advised O.H. to request Geico and BAR to inspect the vehicle.

46. On November 12, 2021, BAR received a consumer complaint from O.H. which alleged respondents failed to properly repair her 2017 Acura MDX after a collision, and for which MVA was paid by O.H.'s insurance company.

47. Chavez received and reviewed the Geico insurance claim file, including six insurance checks issued to MVA. Using Geico's supplement number 4, and photographs of the vehicle, Chavez inspected the vehicle and found that 15 items to be repaired or replaced, which were paid for by Geico, had not been properly repaired or replaced by MVA. Those 15 items are listed in paragraph 57 of the Accusation and are incorporated by reference as if fully set forth herein. Specific findings on each of those items is unnecessary because of Factual Findings 48 and 49.

48. On the day O.H. retrieved her vehicle from MVA, a person from Geico was also at MVA. At this time, Geico's supplement number 4 (Exhibit 81) was handed to respondents, along with a check for \$2,076.62. Geico paid MVA a total of \$11,735.45 to repair O.H.'s vehicle. Supplement number 4 list items to be repaired or replaced, the cost, and what type of parts were to be used. However, since supplement number 4

was handed to MVA on the same day O.H. retrieved her vehicle, it is understandable that some of the items listed for repair or replacement were not actually repaired or replaced by MVA. MVA could have called Geico to discuss the situation or MVA could have returned the check to Geico and informed Geico that some items were not completed because O.H. had retrieved her vehicle.

49. However, Riquelme testified MVA kept the \$2,076.62 check, which was meant to fund the repair or replacement of items which MVA did not actually repair or replace. In other words, Riquelme admitted that MVA was paid money to fix or repair items, which in fact were not fixed or repaired. Instead, Riquelme stated MVA decided to keep those funds and to apply them to the cost of items allegedly previously repaired by MVA, but which Geico had not authorized or approved. Riquelme's testimony did not establish what "prior items" MVA had repaired without Geico's authorization. Further, Riquelme's testimony did not establish why MVA would repair items which it knew Geico would not pay for. Based on Riquelme's testimony, which specific items were not repaired or replaced is unnecessary. Her testimony established that MVA kept funds for items which MVA had not repaired or replaced. Therefore, MVA's conduct in keeping those funds was intentionally dishonest and fraudulent.

Other Findings

50. MVA has not changed its business practices regarding the storage of vehicles and does not plan to in the future. MVA did not change its business practices after meeting with BAR personnel during five meetings between March and April 2021. No evidence was presented that MVA considered AB 2392, BAR's September 2019 Newsletter, or the *Owens* case at any time. Instead, MVA continued to charge storage fees that are classified as presumptively unreasonable under the law.

51. No evidence was offered regarding the towing and storage charges made for services initiated by the California Highway Patrol, or another police agency. No evidence was offered regarding the daily storage rates of other facilities located near MVA's location.

52. It was established that when a severely disabled vehicle is delivered to MVA by a tow truck, a dolly may be required to move the vehicle. However, none of the four investigations involved allegations of an improper dolly fee. Respondents did not offer sufficient evidence to rebut the presumption of unreasonableness as to administrative fees or gate fees.

Costs of Investigation and Enforcement

53. The total cost of investigation in this matter is \$7,149.60.

54. The total cost of enforcement in this matter is \$27,800. Deputy Attorney General (DAG) Kevin Rigley billed \$7,535 in attorney fees, which is reasonable. However, before the matter was handled by DAG Kevin Rigley, the case was handled by DAG Melissa Tyner, who billed \$18,920 in attorney fees. Changing counsel in the middle of the litigation process likely led to some duplication of work. Further, It is difficult to find the initial attorney's complete billing as reasonable, when it is more than double the fees charged by the attorney who presented the matter at hearing. Without additional evidence to justify these fees, it is appropriate to reduce DAG Melissa Tyner's attorney fees to half of DAG Kevin Rigley's attorney fees. Therefore, the total reasonable cost of prosecution is \$11,302.50.

55. The total reasonable costs of enforcement and investigation is \$18,452.10.

LEGAL CONCLUSIONS

Investigation Number One, Two, Three, and Four

1. The first four investigations occurred after a consumer's vehicle was involved in an automobile accident and the vehicle was towed to MVA. During the hearing, the parties stipulated that the Bureau does not have jurisdiction over tow truck operators. Since it was not established that MVA towed any of the four vehicles, the circumstances involved in each of the four scenarios, regarding how, or why, the four consumers' vehicles were towed to MVA may not serve as a basis for discipline. MVA's responsibilities, as an ARD registration holder, began when each of the four consumers' vehicles was delivered to MVA's facility.

The Law Regarding Storage Fees

2. BAR's Spring 2019 Newsletter (exhibit 66) states, "[A]lthough storage fees . . . do not fall directly under the jurisdiction of the Bureau of Automotive Repair, the issues are often included in complainant investigations." While this language initially appears unusual and perhaps even in conflict, a closer examination of the rules and laws applicable to an ARD registration holder clarifies the issue. In other words, if an entity is engaged in the business of towing and storing vehicles, but that entity does not hold a BAR-issued ARD registration, then BAR has no jurisdiction to discipline that entity. However, when an entity holds an ARD registration, as does MVA, then that entity must comply with existing law regarding the storage of vehicles.

3. Pursuant to Business and Professions Code (Code) section 9884.9, an ARD registration holder must obtain the consumer's authorization before performing work or accruing charges. In each of the four cases, the vehicles were purportedly

towed to MVA for repairs, not storage. Therefore, before any work began, MVA was required to obtain the consumer's authorization. If the consumer declined all offered repairs, MVA could have then notified the consumer that storage fees would begin to accrue daily. However, MVA did not notify any of the consumers that storage fees would accrue daily.

4. An ARD registration holder is not allowed to charge storage fees during the time a vehicle is undergoing repairs, as set forth in *Owens (supra)* 248 Cal.App.2d 840.

5. An ARD holder must also comply with *Owens (supra)* 248 Cal. App. 2d 840 which, as relevant to this case, decided that storage fees may not accrue unless a consumer has expressly or impliedly requested storage of a vehicle. Further, a party that retains possession of a vehicle in order protect their liens rights for repairs performed on that vehicle, may not then charge storage fees for the time that party has retained the vehicle, despite the consumer's attempt to remove the vehicle. Similarly, once each of the four consumers had attempted to retrieve their vehicle, and MVA refused to allow the consumer to remove the vehicle, in order to obtain payment from that consumer, MVA was not allowed to charge storage fees for any days subsequent to the consumer's attempt to retrieve the vehicle.

6. ARD registration holders are also required to comply with Assembly Bill No. 2392 which amended Vehicle Code sections 10652.5, 22524.5, and 22651.07, which relate to the towing and storage of vehicles. This amendment was approved by the Governor on September 17, 2018.

7. Vehicle Code section 22524.5, subdivision (c)(1) requires all towing and storage fees charged, which occur as the result of a vehicular accident, to be

reasonable. However, no evidence was offered regarding the reasonableness of the storage fees charged by MVA. Therefore, the evidence presented did not establish that MVA violated this law, with respect to MVA's daily storage rate of \$200.00 per day.

8. Vehicle Code section 22524.5, subdivision (c)(2)(A), states that towing and storage charges shall be deemed reasonable if those charges do not exceed those fees and rates charged for similar services provided in response to requests initiated by a public agency, including, but not limited to, the California Highway Patrol or local police departments. However, no evidence was offered regarding the towing and storage charges made for services initiated by the CHP or another police agency. Therefore, the evidence presented did not establish that MVA violated this law.

9. Under Vehicle Code section 22524.5, subdivision (c)(2)(B), storage charges shall be deemed reasonable if those charges are comparable to storage-related rates and fees charged by other facilities in the same locale, although the rate could be higher or lower, as long as it is reasonable. In this matter, no evidence was offered regarding storage rates charged by other facilities in MVA's surrounding area. Therefore, the evidence presented did not establish that MVA violated this law.

10. Under Vehicle Code section 22524.5, subdivision (c)(3), certain storage fees are presumed unreasonable, such as those set forth in subdivision (c)(3)(A)-(F). Those presumptively unreasonable fees, as relevant to the four investigations regarding storage fees in this matter, are administrative fees (unrelated to Department of Motor Vehicle compliance), and gate fees (except when the owner or insurer of the vehicle requests that the vehicle be released outside of regular business hours). However, while presumed unreasonable, that presumption can be rebutted by evidence of reasonableness.

11. Since none of the stated exceptions apply to any of the four storage investigations at issue, respondents conduct of charging administrative fees and gate fees are presumptively unreasonable. Respondents did not offer sufficient evidence to rebut the presumption of unreasonableness as to administrative fees and gate fees. Therefore, it must be found that the administrative fees and gate fees were unreasonable.

Causes for Discipline Alleged for Investigation Number One

FIRST CAUSE FOR DISCIPLINE (UNTRUE OR MISLEADING STATEMENTS)

12. Cause does not exist to suspend or revoke respondent's ARD registration under Code section 9884.7, subdivision (a)(1). While respondents had G.L. sign a blank estimate with no description of labor or charges and respondents charged G.L. storage fees, this conduct does not equate to an untrue or misleading statement.

SECOND CAUSE FOR DISCIPLINE (FAILURE TO DOCUMENT)

13. Cause exists to suspend or revoke respondent's ARD registration under Code section 9884.7, subdivision (a)(2), because respondent failed to document the vehicle's odometer reading of G L.'s vehicle.

THIRD CAUSE FOR DISCIPLINE (FRAUD)

14. Cause does exist to suspend or revoke respondent's ARD registration under Code section 9884.7, subdivision (a)(4), based on respondents' fraudulent act. Black's Law Dictionary defines a "fraudulent act" as "conduct involving bad faith, dishonest, a lack of integrity, or moral turpitude." (11th ed. 2019). Respondents charged the consumer for a vehicle teardown when, in fact, no teardown had been performed.

**FOURTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH
AUTOMOTIVE REPAIR ACT)**

15. Cause exists to suspend or revoke respondent's ARD registration under Code section 9884.7, subdivision (a)(6), because respondents failed to provide the customer with a written estimate for repairs or storage fees, as required by Code section 9884.9, subdivision (c).

FIFTH CAUSE FOR DISCIPLINE (VIOLATIONS OF REGULATIONS)

16. Cause exists to suspend or revoke respondent's ARD registration under Code section 9884.7, subdivision (a)(6), because respondents failed in a material respect to comply with the following sections of Title 16 of California Code of Regulations (CCR). All further references to title 16 of the CCR.

- Section 3353: Respondents' invoice did not comply with the stated requirements.
- Section 3356, subdivision (b): Respondents' invoice did not show a dealer registration number.
- Section 3356, subdivision (c)(l): Respondent failed to document the "tear down" actions of the vehicle.
- Sections 3371 and 3373 were not established and do not serve as a basis for discipline.

///

///

**SIXTH CAUSE FOR DISCIPLINE (UNFAIR BUSINESS PRACTICES,
UNREASONABLE FEES)**

17. Cause exists to suspend or revoke respondents' ARD registration under Code section 17200, in conjunction with Vehicle Code section 22524.5, subdivision (c)(3), because respondents charged G. L.'s an administrative fee of \$150.00 and a gate fee of \$250.00, both related to storage fees. Those fees are unreasonable.

Causes for Discipline Alleged for Investigation Number Two

**SEVENTH CAUSE FOR DISCIPLINE (UNTRUE OR MISLEADING
STATEMENTS)**

18. Cause does not exist to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(1), because it was not established that respondents made statements which were untrue or misleading. While respondents had Z.O. sign a blank estimate with no description of labor and charges and respondents charged Z.O. 's insurance company storage fees, respondent did not make misleading or untruthful statements.

EIGHTH CAUSE FOR DISCIPLINE (FAILURE TO DOCUMENT)

19. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(2), because respondents failed to document the vehicle's odometer reading for Z.O. 's vehicle.

NINTH CAUSE FOR DISCIPLINE (FRAUD)

20. Cause does exist to suspend or revoke respondent's ARD registration under Code section 9884.7, subdivision (a)(4), because of a fraudulent act. Black's Law

Dictionary defines a "fraudulent act" as "conduct involving bad faith, dishonest, a lack of integrity, or moral turpitude." (11th ed. 2019). Respondents charged the consumer a "vehicle pre-inspection" fee, despite the consumer stating that MVA would not be performing any repairs on the vehicle.

TENTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH AUTOMOTIVE REPAIR ACT)

21. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(6), because respondents failed in a material respect to comply with Code section 9884.8 in that respondents failed to include their ARD registration number or the specifics work performed to justify the "vehicle pre-inspection" fee; and Code section 9884.9, subdivision (c), because respondents failed to provide Z.O. with an itemized auto body repair estimate.

ELEVENTH CAUSE FOR DISCIPLINE (VIOLATIONS OF REGULATIONS)

22. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(6), because, with respect to Z.O.'s vehicle, respondents failed in a material respect to comply with the following provisions of the CCR:

- Section 3353: Respondents' invoice did not include all the stated requirements.
- Section 3353.1, subdivision (a): Respondents failed to obtain authorization from the customer prior to commencing repairs.
- Section 3356, subdivision (b): Respondents invoice did not show an ARD registration number.

- Section 3356, subdivision (e): Respondents failed to record any authorization for the "vehicle pre-inspection" for which the consumer was charged.

Causes for Discipline Alleged for Investigation Number Three

TWELFTH CAUSE FOR DISCIPLINE (FRAUD)

23. Cause does exist to suspend or revoke respondents' ARD registration with respect to Consumer J.O. 's vehicle under Code section 9884.7, subdivision (a)(4), based on respondents' fraudulent act. Black's Law Dictionary defines a "fraudulent act" as "conduct involving bad faith, dishonest, a lack of integrity, or moral turpitude." (11th ed. 2019). "Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and which are resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling, and unfair ways by which another is deceived. (*Wells v. Zenz* (1927) 83 Cal.App.137, 140.) See Civil Code section 1572, subdivision (5) which defines fraud as "any other act fitted to deceive." Respondent had the vehicle brought to MVA and then did not inform the consumer that storage fees would accrue on a daily basis. This failure to disclose was designed to keep the vehicle at MVA for as long as possible to increase the storages fees and then surprise the consumer with a large bill, but only when the consumer attempted to retrieve the vehicle.

THIRTEENTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH AUTOMOTIVE REPAIR ACT)

24. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(6), with respect to J.O. 's vehicle, because

respondents failed in a material respect to comply with the following provisions of the Automotive Repair Act:

- Code section 9884.8: Respondents failed to reconcile why two different tow trucks submitted invoices for towing J.O.'s vehicle, on the same day, to MVA.
- Code section 9884.9, subdivision (c): Respondents failed to provide the consumer with a written estimate and failed to obtain the consumer's authorization.

FOURTEENTH CAUSE FOR DISCIPLINE (VIOLATIONS OF REGULATIONS)

25. Cause does not exist to suspend or revoke respondents' ARD registration Under Code section 9884.7, subdivision (a)(6), with respect to J.O.'s vehicle, because respondents did not fail in a material respect to comply with CCR section 3351, subdivision (a)(2), because it was not established that respondents failed to display the official dealer sign, as set forth in Legal Conclusion 24 (third bullet point).

FIFTEENTH CAUSE FOR DISCIPLINE (UNFAIR BUSINESS PRACTICES, UNREASONABLE FEES)

26. Cause exists to suspend or revoke respondents' ARD registration under Code section 17200, in conjunction with Vehicle Code section 22524.5, subdivision (c)(3), in that respondents charged J.O. an administrative fee of \$150.00, in conjunction with storage, which was unreasonable.

///

///

///

Causes for Discipline Alleged for Investigation Number Four

SIXTEENTH CAUSE FOR DISCIPLINE (UNTRUE OR MISLEADING STATEMENTS)

27. Cause does not exist to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(1), with respect to M.K.'s vehicle, because it was not established that respondents made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading. While respondent had M.K. sign a blank authorization form, with no description of labor and charges, it was not established that respondents made misleading statements related to M.K.'s vehicle.

SEVENTEENTH CAUSE FOR DISCIPLINE (FRAUD)

28. Cause does exist to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(4), for the same reasons set forth in Legal Conclusion 23.

EIGHTEENTH CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH AUTOMOTIVE REPAIR ACT)

29. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(6), with respect to M.K.'s vehicle, because respondents failed to provide a written estimate or obtain authorization from M.K., as required by Code section 9884.9, subdivision (c). Cause does not exist to revoke or suspend respondents' ARD registration under Code section 9884.17 because it was not established that respondents failed to display the official dealer sign.

NINETEENTH CAUSE FOR DISCIPLINE (VIOLATIONS OF REGULATIONS)

30. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(6), with respect to M. K.'s vehicle, because respondents failed in a material respect to comply with the following:

- CCR section 3356, subdivision (b): Respondents did not state an ARD registration number on the invoice.
- CCR section 3353.1, subdivision (a), Respondents failed to obtain authorization from M.K. prior to commencing repairs or accruing fees.

TWENTIETH CAUSE FOR DISCIPLINE (UNFAIR BUSINESS PRACTICES, UNREASONABLE FEES)

31. Cause exists to suspend or revoke respondents' ARD registration under Code section 17200, in conjunction with Vehicle Code section 22524.5, subdivision (c)(3), with respect to M.K.'s vehicle, because respondents charged an administrative fee of \$150.00, related to storage fees, which was unreasonable.

Causes for Discipline Alleged for Investigation Number Five

TWENTY-FIRST CAUSE FOR DISCIPLINE (UNTRUE OR MISLEADING STATEMENTS)

32. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(1), with respect to O.H.'s vehicle, because respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondents accepted payment, for repairs on O.H.'s vehicle. based on Geico's

supplement number four, when respondents knew they had not repaired or replaced all the items described in supplement 4. Respondents kept funds paid to it for work that MVA knew it had not performed, which conduct is fraudulent.

TWENTY-SECOND CAUSE FOR DISCIPLINE (FRAUD)

33. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(4), with respect to O.H.'s vehicle, because respondents committed acts of dishonesty and fraud as set forth in Factual Findings 48-49.

TWENTY-THIRD CAUSE FOR DISCIPLINE (FAILURE TO COMPLY WITH AUTOMOTIVE REPAIR ACT)

34. Cause exists to suspend or revoke respondents' ARD registration under Code section 9884.7, subdivision (a)(6), in that between May 12, 2021, and November 2, 2021, with respect to the repair of Consumer O.H.'s 2017 Acura MDX, Respondent failed in a material respect to comply with the following provisions of the Automotive Repair Act:

- CCR section 9884.8: Respondents failed to comply with invoice requirements.
- CCR section 9884.9, subdivision (a): Respondents failed to comply with estimate and authorization requirements when it failed to record any authorization for repairs from Consumer O.H.
- CCR section 9884.9, subdivision (c): Respondents failed to provide the customer with an itemized auto body repair estimate.

TWENTY-FOURTH CAUSE FOR DISCIPLINE (VIOLATIONS OF REGULATIONS)

35. Respondent is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), with respect to the repair of O.H.'s vehicle, because respondents failed in a material respect to comply with the following provisions of the Automotive Repair Act:

- CCR section 3356, subdivisions (c)(3), (c)(4), (c)(5), and (c)(6): Respondents failed to record the subtotal price and total price for the repair work performed and all parts supplied and failed to record applicable sales tax.

Other Matters

36. Cause exists under Code section 9884.7, subdivision (c), to revoke, suspend, or place on probation, any ARD registration(s) held by respondents because they engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

37. An factual allegations or causes for discipline set forth in the Accusation which are not directly addressed in this Proposed Decision are hereby found to be not established by the evidence.

The Costs of Investigation and Enforcement

38. Code section 125.3 authorizes complainant to request the administrative law judge to direct a licentiate found to have committed a violation, or violations, of licensing law, to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The total reasonable costs of enforcement and investigation is \$18,452.10, as set forth in Factual Findings 53 through 55.

Disposition

39. MVA had numerous opportunities to adjust their business practices with respect to the storage of vehicles and failed to do so. Further, MVA also committed fraud by keeping funds with respect to Investigation number 5. MVA has established a unwillingness to change its practices and for this reason the following order is required to protect the consuming public.

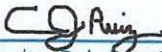
ORDER

1. Automotive Repair Dealer Registration Number ARD 296509, issued to Mid Valley Automotive, LLC, doing business as Mid Valley Automotive, Estefania Riquelme, Angel Guillen, and Manli Guo, is hereby revoked.

2. Any other Automotive Repair Dealer Registration issued to any respondent is hereby revoked.

3. Respondents are ordered, jointly and severally, to pay the Bureau of Automotive Repair the sum of \$18,452.10, which is the reasonable costs of the investigation and enforcement of this case.

DATE: 03/26/2024


Christopher Ruiz (Mar 26, 2024 15:04 PDT)

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings