

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE CENTER, BLDG. 68-69  
1511 PONTIAC AVENUE  
CRANSTON, RHODE ISLAND 02920**

**IN THE MATTER OF:** :  
 :  
**COMPETITIVE AUTO BODY,** : **DBR No. 11-L-0046**  
 :  
**RESPONDENT** :

**CEASE AND DESIST ORDER**

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: July 28, 2011

Appearances:

For the Department of Business Regulation: Neena Sinha Savage, Esq.

For Respondents: No appearance by Respondent or counsel.

**I. INTRODUCTION**

This matter came on for hearing on July 28, 2011, pursuant to an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer issued June 27, 2011, in the above-referenced matter. No party appeared on behalf of the Respondent, after notice was duly served upon the appropriate parties, in accordance with the provisions of Section 9 of Central Management Regulation 2 – *Rules of Procedure for Administrative Hearings*, and R.I. Gen. Laws § 42-35-9.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 7-11-1 *et seq.*, R. I. Gen. Laws § 42-14-1, *et seq.*, and R.I. Gen. Laws § 42-35-1, *et seq.*

### **III. FINDINGS OF FACT**

The Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer was duly and properly served upon the appropriate parties for the Respondent, the responsible party for the Respondent has failed to answer or appear before the Department. Accordingly, the following findings of fact are made by the Hearing Officer:

1. Respondent's current owner filed an incomplete and insufficient license renewal application on April 26, 2010, and failed to respond to Department's correspondence notifying the Respondent of the insufficiency.

2. The Respondent failed to comply with the Department's request for response to a Complaint filed against it with the Department alleging willful failure to perform work as contracted in violation of R.I. Gen. Laws § 5-38-10(8), and failed to provide records relative to said complaint when requested to do so by the Department.

3. The Respondent business was being operated by a new owner who had failed to effectuate a proper transfer of the automobile body repair shop license issued by the Department to the previous owner, and was thereby engaging in unlicensed activity in violation of R.I. Gen. Laws § 5-28-10(3), and Commercial Licensing Regulation 4, Section 4D.

4. The Respondent, having failed to appear or defend the allegations made in the Complaint, is hereby defaulted, and is found to have willfully failed to perform work as contracted, in violation of R.I. Gen. Laws § 5-38-10(8).

### **IV. CONCLUSIONS OF LAW**

1. A default judgment against Respondent business is appropriate given the failure of its owner to appear and/or defend this action in accordance with Section 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

2. The issuance of a cease and desist order against the Respondent is appropriate and necessary, based upon the finding that it is being operated as an automobile body repair shop without having been issued a valid license, in accordance with the provisions of R.I. Gen. Laws § 5-38-19(b).

**VI. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the Director of the Department order that:

- 1. Respondent is defaulted for failure to appear and/or defend this administrative enforcement action;
- 2. The license renewal application filed on April 26, 2010 by Randy Lempitsky, on behalf of the Respondent business is denied;
- 3. Respondent is ordered to permanently cease and desist from conducting an automobile body repair business without having a valid license to do so.

Date: July 29, 2011

Ellen R. Balasco  
Ellen R. Balasco, Esq.  
Hearing Officer

**ORDER**

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT                       REJECT                       MODIFY

Dated: 29 July 2011

Paul McGreevy  
Paul McGreevy  
Director

ENTERED as Administrative Order No. 11-060 on the 1<sup>st</sup> day of August, 2011.

**CERTIFICATION**

I hereby certify that, on the 1<sup>st</sup> day of August, 2011, a true copy of this Order was sent by first class mail, postage prepaid, to: Steven Barone and to Competitive Auto Body, both at 1707 Plainfield Pike, Johnston, RI 02919 and to Randy Lempitsky, 28 Simmons Street, Providence, Rhode Island and by electronic mail to Maria D'Alessandro, Deputy Director, Kimberly Precious, Implementation Aide and Neena Sinha Savage, Chief of Legal Services at the Department of Business Regulation.

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