

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 69-2
CRANSTON, RHODE ISLAND 02920**

<u>IN THE MATTER OF:</u>	:	
	:	
ANTHONY J. LOMBARDI d/b/a	:	
AIRPORT AUTO BODY, INC.,	:	DBR No. 13AB018
	:	
<u>RESPONDENT.</u>	:	

DECISION AND ORDER

Hearing Officer: Jenna Algee, Esq.

Hearing Held: June 20, 2013

Appearances:

For the Department of Business Regulation: Ellen Balasco, Esq.

For Respondents: No appearance by Respondent or counsel.

I. INTRODUCTION

This matter commenced with an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Order”) issued to Anthony J. Lombardi d/b/a Airport Auto Body, Inc. (“Respondent”) on March 20, 2013. The Order required Respondent to appear before the Department of Business Regulation (“Department”) to answer why the Director of the Department should not issue a cease and desist order against Respondent for unlicensed automobile repair shop operation and impose penalties pursuant to R.I. Gen. Laws §§ 5-38-10(1), (3), (4), (7), (8), and (9) and § 5-38-10.1. A pre-hearing

conference was held on April 4, 2013 pursuant to Section 6 of Central Management Regulation 2 (“CMR 2”) entitled *Rules of Procedure for Administrative Hearings*.

A Notice of Hearing was issued on June 3, 2013 scheduling the matter for full hearing on June 20, 2013 and appointing the undersigned as the Hearing Officer in this matter. This Notice was sent to the Respondent by regular mail and by certified mail to both to the personal and business address that the Respondent provided to the Department’s Division of Commercial Licensing (“Division”). The Respondent failed to appear at the show cause hearing held at the Department on that date, after having been duly served with notice of the hearing in accordance with R.I. Gen. Laws § 42-35-9.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 5-38-1 *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

After hearing the arguments of counsel for the Department, and due consideration of the evidence presented in this matter, the undersigned Hearing Officer makes the following findings of fact:

1. Respondent was previously issued a license for full collision automobile body repair (# AB.0000051) pursuant to R.I. Gen. Laws § 5-38-1 *et seq.* and Commercial Licensing Regulation 4 (“CLR4”) entitled *Motor Vehicle Body Repair* (“Auto Body License”). That license expired on December 31, 2012, and is currently inactive.
2. On March 20, 2013, the Department issued and caused to be served upon Respondent an Order to Show Cause alleging that Respondent had violated various

provisions under R.I. Gen. Laws § 5-38-1 *et seq.* and requiring that the Respondent appear for a pre-hearing conference on April 4, 2013.

3. On June 3, 2013, the Department issued and caused to be served upon Respondent a Notice of Hearing scheduling the matter for full hearing on June 20, 2013 and appointing the undersigned as the Hearing Officer in this matter.
4. Both the Order to Show Cause and the Notice of Hearing were served upon Respondent by regular mail and by certified mail to the last known business and personal addresses on file with the Department.
5. The record shows by United States Postal Service Track and Confirm printouts that the Order to Show Cause sent by certified mail was delivered to the Respondent's business address on March 22, 2013 at 11:19 a.m. and to the Respondent's personal address on March 25, 2013 at 9:39 a.m. Said documentation was admitted into evidence at the hearing as Department Exhibits # 1 and # 2, respectively.
6. After the hearing, the undersigned accepted into the record the United States Postal Service Track and Confirm printouts showing that the Notice of Hearing sent by certified mail was delivered to the Respondent's business address on June 5, 2013 at 11:56 a.m. The duplicate notice sent to the Respondent's personal address by certified mail was returned to the Department, unclaimed, on June 21, 2013.
7. The first class mail was not returned to the Department.
8. The Respondent failed to appear at the hearing on June 20, 2013, and failed to defend the allegations contained in the Order to Show Cause in any manner.
9. The Department presented documentary evidence to the undersigned at the June 20, 2013 hearing which established that:

- a. On or about January 8, 2012, the Division received an incomplete renewal application from Respondent (Department Exhibit # 3).
 - b. On or about January 16, 2013, the Division sent the Respondent notice of the renewal application deficiencies, including notice that the Technician Certification Affidavit is required for renewal (Department Exhibit # 4).
10. Through counsel and testimony of Implementation Aide Kim Precious, the Department established that:
- a. At the pre-hearing conference, the Department, through counsel, explained the deficiencies in the Respondent's renewal application. At that time, the Respondent indicated that he would address the technician certification requirements and notify the Department within thirty (30) days.
 - b. As of the date of the hearing, the Respondent has failed to correct the deficiencies in the renewal application by failing to submit a Technician Certification Affidavit.

IV. CONCLUSIONS OF LAW

1. The Department has complied with the requirements of R.I. Gen. Laws § 42-35-9 regarding notice in contested cases, and the Respondent was afforded an opportunity for a hearing after reasonable notice.
2. A default judgment against Respondent is appropriate given his failure to appear and/or defend this action pursuant to Section 21 of CMR 2. Any challenge to the default shall be made as a motion for reconsideration per Section 19 of CMR 2.
3. The Respondent's default and the evidence presented at the hearing establishes that the Respondent violated Commercial Licensing Regulation 16 – Motor Vehicle

Body Repair Technician Certification, which requires all submissions of renewal applications after January 1, 2012 be accompanied by a certification that the applicant has in its employ one certified technician per five shop employees.

4. Based on the above, there is sufficient cause to deny the Respondent's renewal application for "failure to comply with the provisions of this section or with any rule or regulation promulgated by the commission under § 5-38-5." R.I. Gen. Laws § 5-38-10(1).

V. RECOMMENDATION

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

1. The Respondent is defaulted for his failure to appear and/or defend this administrative enforcement action;
2. Respondent's automobile repair shop license renewal application is denied;
3. Respondent is ordered to cease and desist from operating an auto body shop at the current or other location pursuant to § 5-38-19 unless and until a new application for licensure is approved by the Department.

DATED: 7/16/13



Jenna Algee, Esq.
Hearing Officer

ORDER

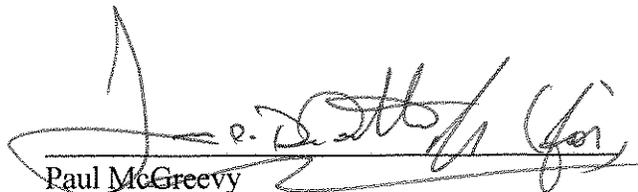
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 7-16-2013


Paul McGreevy
Director

ENTERED as Administrative Order No. 13-03 on the 17th day of July, 2013.

NOTICE OF APPELLATE RIGHTS

THIS DECISION AND ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 17th day of July, 2013, a true copy of this Decision and

Order was sent by first class mail, postage prepaid to:

Anthony J. Lombardi
40 Fresno Road
Warwick, Rhode Island 02889

Airport Auto Body
45 Gage Street
Warwick, Rhode Island

and by electronic mail to the following named parties at the Rhode Island Department of
Business Regulation: Ellen R. Balasco, Esq., Maria D'Alessandro, John Mancone, and
Kimberly Precious.

A handwritten signature in black ink, appearing to read "Robert J. Balasco", is written over a horizontal line. The signature is cursive and somewhat stylized.