

**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:	:	
	:	
ACES, INC., d/b/a	:	DBR No. 13AB101
WARREN AUTO BODY, INC.	:	
	:	
<i>RESPONDENTS.</i>	:	
	:	

DECISION AND ORDER TO CEASE AND DESIST

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: October 2, 2013

Appearances:

For the Department of Business Regulation: Jenna Algee, Esq.

For Respondents: No appearance by Respondent or counsel.

I. INTRODUCTION

This matter came on for hearing on October 2, 2013, pursuant to an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer issued September 9, 2013, 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. Counsel for the Department presented significant documentary and sworn testimonial evidence to enable the Hearing Officer to make the following findings of fact at the hearing.

1. Respondent previously held a full collision automobile body repair license, first issued by the Department in 1967, which expired on December 31, 2012.

2. Respondent's current owner filed an incomplete and insufficient license renewal application on or about May 15, 2013, over four (4) months past the deadline. The Renewal Application was substantially incomplete in that it was not accompanied by a certificate of insurance, evidence of fire safety, criminal history records and technician certifications.

3. In its answer to question number 48 on the application "If you have not filed all required Rhode Island State tax returns and paid all taxes owed, provide a brief written explanation", the Respondent replied "Have a small balance with State of RI. All taxes filed."

4. Based on the foregoing, the Renewal Application filed by the Respondents was not "timely" or "sufficient" as required by R.I. Gen. Laws § 42-35-14(b).

5. The Respondent was notified in writing by the Department's Commercial Licensing Division ("Division") on May 16, 2013 and again on August 15, 2013 that the Renewal Application was deficient and what was needed to correct those deficiencies.

6. The Respondent has failed to correct the deficiencies as of the date of hearing in this matter.

7. The Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer was delivered to the Respondent's business address at 171 Market Street, Warren, Rhode Island on September 10, 2013 at 10:22 am, as evidenced by the USPS Tracking form submitted by the Department at hearing. This constituted sufficient notice and met

the requirements imposed by both Section 9 of Central Management Regulation 2 – *Rules of Procedure for Administrative Hearings*, and in R.I. Gen. Laws § 42-35-9.

8. The Respondent failed to personally appear, or have counsel appear on their behalf at the scheduled hearing.

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).

3. Pursuant to R.I. Gen. Laws § 5-38-10(3), the denial of Respondent’s renewal application is appropriate for the following reasons:

- a. Respondent stated on his application that he had outstanding taxes due and owing to the State of Rhode Island, in violation of R.I. Gen. Laws § 5-76-2(a).
- b. Respondent has failed to provide proof of business insurance coverage in the required amount indicating its financial responsibility, in violation of Commercial Licensing Regulation 4 – *Motor Vehicle Body Repair*, Section 4(E) and R.I. Gen. Laws § 5-38-6.
- c. By continuing to operate after its license expired, the Respondent violated R.I. Gen. Laws § 5-38-4(b) which requires that anyone engaged within this state in the business of auto body repairing, painting or contracting for that work or represent that it is an auto body shop unless that person or business possesses a license in full force and effect from the Department.

4. Pursuant to the power conferred to the Department in R.I. Gen. Laws § 5-38-10.1, it is appropriate to assess a fine against the Respondent in the amount of FOUR HUNDRED DOLLARS (\$400.00) for the violations and failures to comply with the Department's licensing provisions as set forth in Section III herein.

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 May 15, 2013 by the Respondent is denied;
3. Respondent is ordered to pay a fine to the Office of the General Treasurer in the amount of FOUR HUNDRED DOLLARS (\$400.00);
4. Respondents Aces's Inc. d/b/a Warren Auto Body, Inc. are ordered to permanently cease and desist from conducting any services constituting automobile body repair without first obtaining from the Department a valid license to do so.

Date: _____

12/16/13



Ellen R. Balasco, Esq.
Hearing Officer

ORDER

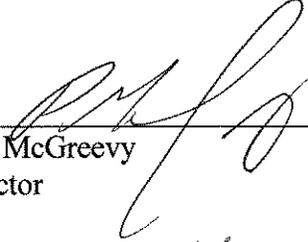
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 17 Dec 2013



Paul McGreevy
Director

ENTERED as Administrative Order No. B-067 on the 17th day of December, 2013.

CERTIFICATION

I hereby certify that, on the 17th day of December, 2013, a true copy of this Order was sent by first class mail, postage prepaid, to: Aces, Inc. d/b/a Warren Auto Body, 171 Market Street, Warren, Rhode Island 02885 and by electronic mail to Maria D'Alessandro, Deputy Director, Kimberly Precious, Implementation Aide and Jenna Algee, Esq. at the Department of Business Regulation.