

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903

IN THE MATTER OF: :
: :
M&J DYNASTY AUTO BODY CORP., : DBR No.: 08-L-0106
: :
RESPONDENT. :

:

**EMERGENCY ORDER TO CEASE AND DESIST ACCEPTING NEW
BUSINESS, SUSPEND LICENSE, AND PROVIDE NOTICE OF HEARING**

Pursuant to R.I. Gen. Laws §§ 5-38-19(b) and 42-35-14(c), the Director (“Director”) of the Department of Business Regulation (“Department”) hereby issues this Emergency Order to Cease and Desist Accepting New Business, Suspend License, Provide Notice of Hearing (“Emergency Order”), to M&J Dynasty Auto Body Corp. (“Respondent”).

A. BACKGROUND

The Director issued an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer to Respondent (“Order to Show Cause”) on July 2, 2008. The Order to Show Cause represented the following facts based on information and belief:

1. Respondent is a corporation licensed as an automobile body repair shop.
2. The owners of the corporation are Marisela McClary (“McClary”) and Juan E. Caraballo (“Caraballo”). Each shareholder has 50% of the stock in this closely held corporation.
3. Respondent is delinquent in its mortgage and faces a foreclosure sale of its premises located at 17 Narragansett Street, Providence, Rhode Island.

4. Certain individuals who are not the shareholders of the corporation, later identified as John Gomes (“Gomes”) and Carlos Caraballo (“Carlos”), are operating Respondent under the name, “JG’s Auto Body,” without a license.

5. McClary is being excluded from the operation of Respondent even though she is a 50% owner of the corporation.

6. The individuals operating Respondent are not forwarding mail to McClary, are not engaging McClary in the operation of the facility, and are not paying the bills and other encumbrances of Respondent to the detriment of Respondent and McClary.

A pre-hearing conference was held on July 15, 2008 at 2:00 p.m. Present at the conference were Neena Sinha Savage, Esq., Thomas Broderick, and Kimberly Precious for the Department; Marisela McClary, accompanied by an attorney, M. Beth Arruda, Esq., who was there to provide support for McClary as a friend and was not making an appearance on the record; John Gomes; and Carlos Caraballo, the nephew of the other 50% owner of Respondent, Juan Caraballo. Juan Caraballo was not present.

At the conference, McClary represented that she was a 50% shareholder in the corporation that holds the license at issue. She and Juan Caraballo each contributed \$20,000 in initial capital for a total of \$40,000 to start Respondent’s operations. However, she attests to being shut out of the business. She also stated that the property and building from which Respondent operates is going to be sold at auction on July 16, 2008.

Gomes stated at the hearing that he intends to purchase the business and appeared the most knowledgeable about Respondent’s current operations. He stated that there were

only three (3) vehicles currently being repaired. Gomes also represented that Caraballo was currently in Puerto Rico and travels quite a bit.

Thomas Broderick stated that he inspected Respondent on July 14, 2008 on behalf of the Department and prepared a memorandum of his findings. The memorandum is dated July 14, 2008 and includes an update of a second inspection conducted on July 15, 2008. It was entered into the record for identification purposes only. Broderick stated that he found sixteen (16) vehicles on the premises and that Gomes could not produce any paperwork on them.

B. RELEVANT LAW

1. Pursuant to R.I. Gen. Laws § 5-38-6, the Department may consider many factors in determining whether or not to license an automobile repair shop in order to safeguard the public interest. These factors include the applicant's financial standing and business integrity; whether the applicant has an established place of business; whether the applicant is properly able to conduct the business of an automobile body repair shop; and any other pertinent information consistent with the safeguarding of the public interest.

2. R.I. Gen. Laws § 5-38-10(1) authorizes the Department to suspend or revoke a license on proof of unfitness to do business as an automobile body repair shop.

3. R.I. Gen. Laws § 5-38-4 provides that no person, firm, or corporation shall engage within this state in the business of auto body repairing or painting or enter into contracts for the repairing, replacing, or painting of auto bodies or parts of auto bodies or advertise or represent in any form or manner that he, she, or it is an auto body shop unless that person, firm, or corporation possesses a license in full force and effect from the Department specifying that person, firm, or corporation as licensed to operate or conduct an auto body shop.

4. R.I. Gen. Laws § 5-38-18 provides that every licensee shall maintain up-to-date records in the form prescribed by the Department with reference to every vehicle for which it has made a charge for parts or services and of all original orders for repairs to those vehicles. Those records shall be preserved for a period of two (2) years from the date thereof.

5. R.I. Gen. Laws § 42-35-14(c) provides that if the Department finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action.

C. BASIS FOR EMERGENCY ACTION

Based on the foregoing, there is reason to believe that Respondent is in violation of R.I. Gen. Laws § 5-38-10(1) because of its deteriorating financial condition, exclusion of McClary from its operations, and failure to maintain proper records. The latter also constitutes a violation of R.I. Gen. Laws § 5-38-18. In addition, there is evidence that persons other than the owners of the corporation holding the license at issue are controlling the operations of Respondent without McClary's consent or without their own license. The Director finds that such facts constitute an unfitness to engage as a viable automobile body shop and imperils the public welfare. As such, Respondent's license is summarily suspended, pursuant to R.I. Gen. Laws § 42-35-14(c).

F. ORDER

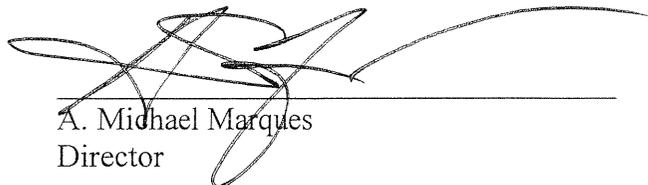
Accordingly, it is hereby ORDERED:

1. That, pursuant to R.I. Gen. Laws § 42-35-14(c), Respondent's license is immediately suspended;

2. That Respondent will cease and desist from engaging in any new business requiring licensure;

3. That, within two (2) business days of the receipt of this Order, Respondent shall either repair the three (3) vehicles described by Gomes at the pre-hearing conference or shall transfer them to a licensed automobile repair shop designated by the vehicles' owners; and

4. That McLary and Caraballo are required to appear at a status conference at the Department on August 5, 2008 at 10:00 a.m.


A. Michael Marques
Director

Dated: 07-17-2008

Entered as an Administrative Order No. 08- 125 on this 17th day of July, 2008.

THE DIRECTOR RESERVES THE RIGHT TO PUBLISH A NOTICE OF THIS ORDER IN A NEWSPAPER OF GENERAL CIRCULATION IN THE STATE OF RHODE ISLAND.

CERTIFICATION

I hereby certify on this 17th day of July, 2008, that a copy of the within Emergency Order was mailed by certified and first class mail, postage prepaid, to:

Juan E. Caraballo
118 Peace Street
Providence, Rhode Island 02907

Marisela McClary
226 Clarence Street
Providence, Rhode Island 02909

M&J Dynasty Auto Body Corp.
17 Narragansett Avenue
Providence, Rhode Island 02907

and by first class mail, postage prepaid, to:

M. Beth Arruda, Esq.
1116 Park Avenue
Cranston, Rhode Island 02910

and by hand-delivery to:

Michael P. Jolin, Esq.
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1511 Pontiac Avenue
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