

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: :
: :
AI COLLISION CENTER, INC., : DBR No. 15AB005
AI PHRACHAN and DALIVANH :
VONGSA, a/k/a DALI VONGSA MS. :
RESPONDENTS. :
:

DECISION AND ORDER TO CEASE AND DESIST

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: September 10, 2015

Appearances:

For the Department of Business Regulation: Matthew Gendron, Esq.

For Respondents: No appearance by Respondent or counsel.

I. INTRODUCTION

This matter came on for hearing on September 10, 2015, pursuant to an Order to Show Cause Why Cease and Desist Order Should Not Issue, Notice of Hearing, and Appointment of Hearing Officer issued by the Director of the Department of Business Regulation ("Department") 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 § 5-38-4 R. I. Gen. Laws § 5-38-19, and R.I. Gen. Laws § 42-35-1, *et seq.*

III. STANDARD OF REVIEW FOR AN ADMINISTRATIVE HEARING

It is well settled that in formal or informal adjudications modeled on the federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 at 759 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* at 763-766; see also, *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases); *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968) (“satisfaction by a ‘preponderance of the evidence’ [is] the recognized burden [of proof] in civil actions”). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. See *Parker*, 238 A.2d at 60. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 100 (R.I. 2006).

IV. MATERIAL FACTS AND TESTIMONY

The Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer was duly and properly served upon the appropriate parties for the Respondents. Each of the named Respondents have 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 findings of fact at the hearing.

Chief Inspector for the Division was sworn, and offered testimony regarding the Respondents' history with the Department and with two investigations which he conducted of the Respondent business premises. He testified that Respondent AI Phrachan d/b/a AI Collision, executed and entered into the terms of a Consent Agreement on November 14, 2014 based on the findings of the Department's Division of Commercial Licensing ("Division") which showed that the Respondent was conducting unlicensed auto body repair at its North Providence location. (Division's Exhibit #1) [Ref. DBR No. 14AB018].

Pursuant to the terms of that Consent Agreement, the Department agreed to issue a Special Use License to the Respondents if they duly satisfied and performed all requirements as set forth in that agreement. These requirements included that Respondent submit an application for said License, with all documentation necessary for the processing of the License, along with payment of an administrative penalty.

The documentary evidence presented by Division counsel at the hearing shows that, upon receipt of an application form submitted by the Respondents on November 14, 2014, the Division replied with a notice of deficiency indicating that the insurance binder submitted was not acceptable, and that the following required application documents were missing: Articles of Incorporation, Evidence of Fire Safety Approval, list of employees, appropriate Technician Certification Affidavits, Owner's home address and contact number, list of corporation members and EPA number. (Division's Exhibit #'s 2 and 3)

The Respondents failed to cure the deficiencies noted in the Departments Notice of November 18, 2014, and therefore have failed to meet the qualifications for licensure

as Auto Body – Special Use, pursuant to R.I. Gen. Laws § 5-38-4 and Commercial Licensing Regulation 4, Section 4(B)(4).

On July 7, 2015, a consumer complaint was received by the Division alleging poor workmanship, poor business operations, and spray painting being conducted on the premises of Respondent business. In response to that Complaint, the Division's Chief Protection Inspector responded to the business address named in the complaint. He made a definitive determination at that time, based on his observations and interviews with employees, that auto body repair was being conducted on the premises.

Respondent Dalivanh Vongsa is the owner of Ai Collision Center, Inc., a duly licensed corporation located at 5 Tag Drive, North Providence, RI 02911. This Respondent is also known as Dali Vongsa and Dali Vongsa MS. This party is also the registered agent for the business known as Ai Collision, a duly incorporated business. Respondent Ai Phracan is a principal of Ai Collision.

The Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer was delivered to the Respondent's the following parties: Ai Collision Center, Inc. 5 Tag Drive, North Providence, RI 02911; Ai Phrachan, 3 Tag Drive, North Providence, RI 02911; Dali Vongsa, Registered Agent, Ai Collision Center, Inc. 3 Tag Drive, North Providence, RI 01911 and Dalivanh Vongsa, MS at 18 Quinton Avenue, Apt 1, Attleboro, MA 02703. 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.

The Respondents failed to personally appear, and no one appeared as counsel or otherwise on their behalf, at the scheduled hearing. No explanation was provided by any Respondent at any time to explain their absence.

IV. RELEVANT LAW

R.I. Gen. Law § 5-38-4(b) states 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 of business regulation specifying that person, firm, or corporation as licensed to operate or conduct an auto body shop.

R.I. Gen. Law § 5-38-19(b) provides that “If the department of business regulation has reason to believe that any person, firm, corporation, or association is conducting an automobile body repair shop business without obtaining a license, or who after the denial, suspension, or revocation of a license is conducting that business, the department may issue its order to that person, firm, corporation, or association commanding them to appear before the department at a hearing to be held not sooner than ten (10) days nor later than twenty (20) days after issuance of that order to show cause why the department should not issue an order to that person to cease and desist from the violation of the provisions of this chapter. That order to show cause may be served on any person, firm, corporation, or association named by any person in the same manner that a summons in a civil action may be served, or by mailing a copy of the order, certified mail, return receipt requested, to that person at any address at which that person has done business or at which that person lives. If during that hearing the department is satisfied that the person is in fact violating any provision of this chapter, the department may order that person, in writing, to cease and desist from that violation. All these hearings are governed in accordance with the Administrative Procedures Act, chapter 35 of title 42.

Pursuant to Commercial Licensing Regulation 4 – Section 4(a), “No person may engage in the business of motor vehicle body work without first obtaining a motor vehicle body license from the Department.

V. FINDINGS OF FACT

1. A Notice was issued to the Respondents on August 28, 2015.
2. A hearing was held on September 10, 2015 at which the Respondents failed to appear.
3. The facts contained in Section IV. herein are reincorporated by reference as findings of fact.

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 Respondents’ application for auto body/special use license by the Division is appropriate for the following reasons:

- a. 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.
- b. Respondent failed to provide an EPA number on its application.

- c. Respondent failed to provide its Articles of Incorporation with its application.
- d. Evidence of Fire Safety Approval and Zoning Approval were not submitted with the Respondent's application.
- e. Respondent failed to provide a list of employees and corporation members with its application.
- f. Respondent submitted Technician Certification Affidavits which were not in compliance with the requirements established by the Department in its auto body regulations.
- g. Respondents have been continuously performing auto body repair on the business premises since at least September 29, 2014, and have willfully failed to comply with the terms of a Consent Agreement, in violation of 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. In accordance with the provisions of R.I. Gen. Law § 42-14.2-20, a permanent cease and desist order against the Respondents, collectively and individually, is appropriate, in accordance with the findings contained herein, and as established by the proof presented by the Division at hearing.

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 application filed on November 14, 2014 by the Respondent is denied;
3. Respondents Ai Collision Center, Inc. Dalivanh Vongsa, and Ai Phrachan are hereby ordered to permanently cease and desist from conducting any services constituting automobile body repair at the 3 Tag Drive, North Providence or at any location in the State of Rhode Island, unless and until a valid license has been issued by the Department for such work.

Date: 10/26/15


Ellen R. Galasco, Esq.
Hearing Officer

ORDER

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

ADOPT

REJECT

MODIFY

Dated: 10/30/15

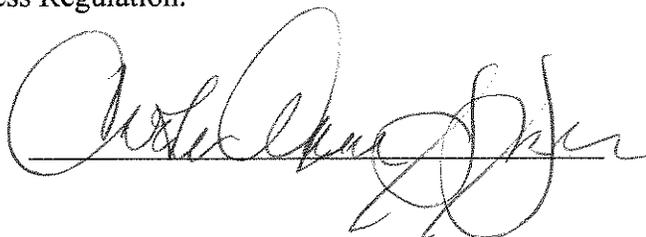

Macky McCleary
Director

ENTERED as Administrative Order No. 15-51 on the 30th day of October, 2015

THIS ORDER OF DISMISSAL CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-1 ET SEQ. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify that, on the 30th day of October, 2015, a true copy of this Decision and Order was sent by first class mail, postage prepaid, to: Ai Collision Center, Inc. 5 Tag Drive, North Providence, RI 02911; Ai Phrachan, 3 Tag Drive, North Providence, RI 02911; Sali Vongsa, Registered Agent, Ai Collision Center, Inc. 3 Tag Drive, North Providence, RI 01911 and Dalivanh Vongsa at 18 Quinton Avenue, Apt 1, Attleboro, MA 02703. and by electronic mail to Maria D'Alessandro, Deputy Director, John Mancone, Chief Inspector, Kimberly Precious, Implementation Aide and Matthew Gendron, Esq. at the Department of Business Regulation.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "Robert L. [unclear]".