

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 68, 69
CRANSTON, RHODE ISLAND 02920

<u>IN THE MATTER OF:</u>	:	
	:	
PATRICK BUCKLEY d/b/a	:	
CERTIFIED COLLISION CENTER	:	DBR No. 14AB001
	:	
<u>Respondent.</u>	:	

DECISION AND ORDER

Hearing Officer: Jenna Algee, Esq.

Hearing Held: July 29, 2014

Appearances:

For the Department: Neena Savage, Esq.

For Respondent: *Pro se*

I. INTRODUCTION

On or about January 29, 2014, the Department of Business Regulation (“Department”) received a complaint from David Stridel (“Complainant”) against Patrick Buckley d/b/a Certified Collision (“Respondent”). On March 25, 2014, an Order to Shows Cause, Notice of Hearing, and Appointment of Hearing Officer was issued to the Respondent, alleging violation of R.I. Gen. Laws § 5-38-19, § 5-38-10(3), and Commercial Licensing Regulation 4, Section 4(D), and appointing the undersigned as Hearing Officer for the purposes of conducting a Departmental hearing and rendering a decision in this matter. A Temporary Cease and Desist Order was issued on April 16, 2014.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 5-38-1 and 42-14-1 *et seq.*, subject to the provisions of § 42-35-1 *et seq.*

III. ISSUES PRESENTED

The issues presented are whether the Respondent violated R.I. Gen. Laws § 5-38-19, § 5-38-10(3), and Commercial Licensing Regulation 4, Section 4 and what penalty is appropriate.

IV. MATERIAL FACTS AND TESTIMONY

The Parties presented three (3) Joint Exhibits. Joint Exhibit # 1 is an On Site Work Form completed by the Department's Chief Public Safety Inspector on January 31, 2014, which reads: "License expired December 2006, they are still operating;" "I spoke w/owner Pat Buckley he admitted his license expired." In the course of his inspection, the Inspector took a photograph of the Respondent's Motor Vehicle Body Repair Shop License which reads "Expires on December 31, 2006." Joint Exhibit # 3.

Joint Exhibit # 2 is an Auto Body Department Complaint Form from the Complainant against the Respondent, which references September 9, 2013 as the date of the alleged violation and reads, in relevant part:

"The owner Patrick Buckley did not properly repair the vehicle. He has told me to come back about six times. He said to/claimed to fix parts but pocketed the money. Parts that should have been fixed aren't. He used by old bumper when supposed to be new. Screws are missing & clips. My paint is peeling & he burned throughout other areas of my car when he buffed it. I was told by the owner that [] would replace my muffler because the tip was kinked in the accident. He did not replace the muffler he purchased new tips & kept the money. I was told that I soon need a new fuel pump & when I asked Mr. Buckley about it he refuses to provide proof of a receipt of the auto parts. I still have yellow primer on my car & my exhaust (muffler) are estimated from inskid over \$1000.00 to fix...He left acid on my rims too long eating the clear off one of them...I went into my trunk and noticed that my bumper was burned through when he buffed it...[T]hey took out my fuel pump & got gas on my seat turning the color of the black leather to ashy looking. A week later I pull in front of my driveway & my muffler falls off....So for repairs I need my centercounsel [sic] that he broke my trunk mat that I found in the shop cut in half my muffler & he

paints my rear quarter when hes [sic] suppose [sic] to be only working on my trunk & messes the rear quarter & trunk up. There was/is runs fish eyes burn through etc.

Respondent submitted Respondent's Exhibit # 1, which the Complainant identified as his inspection invoice from Village Motors with the Complainant's hand written notes attached thereto. Respondent failed to explain how this document aids his defense.

The Complainant testified that he brought his vehicle to the Respondent for repairs. The Complainant thought it was a licensed body shop. The Respondent did repairs to the car which was in the Complainant's mother's name. There was then a problem with the rental car because the repair time exceeded the allowable rental time. So the Respondent "rushed" the repairs. The Complainant visited the shop and the Respondent told him he would fix the center console and muffler by the next day. When the Complainant returned the next day, the Respondent said it would take a few more days. When the Complainant went to pick up the vehicle, there were orange marks and the exhaust hanging. He was so upset that he left because the Respondent was being disrespectful to his mother. When the Complainant contacted the Respondent about the repairs, the Respondent kept "pushing him back." The Respondent told the Complainant to "get the hell out of my shop." The Complainant testified that he was in communication with the Respondent and the Respondent was aware of the issues.

The Complainant testified the insurance company was Progressive. The Complainant testified that the paperwork he signed said Damian Collision (or something like that), not Certified Collision. The Complainant testified that the Village Motors receipt (Respondent's Exhibit # 1) was for an inspection when he first purchased the vehicle which he kept in his dashboard. The Complainant testified that there was an accident necessitating repairs to the rear quarter, back bumper, and tire. He testified that while the vehicle was being repaired, the

Respondent broke the center console, sliced the mat in the truck that covers the spare tire, and spilled gas on the seat. The Complainant testified that the repairs occurred in December 2012. However, he then testified that the repairs were done in 2013, around the time the complaint was filed.

On cross-examination, the Complainant indicated that he never received documentation for the estimate. He testified that he never gave Respondent's Exhibit #1 to "Max," indicating that the document may have been stolen from his dashboard by the Respondent.

The Respondent testified he has been in business since 1996. He answered "I guess so" to the question of whether he has been performing unlicensed auto body work since 2006. When asked how he responds to the Complainant's allegations, he answered "I got no response;" "I'm just not going to be falsely accused of stuff that's not true." The Respondent testified that his cousin actually did the repairs on the vehicle. The Respondent testified that he spoke to the Complainant after the repairs were completed and the Complainant was dissatisfied. The Respondent then testified he was not aware of the issues until the complaint was filed. He testified that the Complainant's mother paid him directly, not the insurance company.

The Complainant responded that the Respondent would not release the vehicle until he received a check. He testified that the Respondent threatened his mother and made racial comments. He testified that the Respondent was "strung out high." The Complainant testified that his mother received a check from Progressive and then they paid the shop.

Counsel for the Department expressed the concern that the Respondent has come to the agency several times denying unlicensed activity and that he has not demonstrated the character and fitness necessary to hold a license.

V. STANDARD OF REVIEW FOR ADMINISTRATIVE HEARING

“[S]atisfaction by a ‘preponderance of the evidence’ [is] the recognized burden [of proof] in civil actions.” *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968). This standard is a finding that “facts asserted by the proponent are more probably true than false.” *Id.* at 61. “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).

VI. DISCUSSION

R.I. Gen. Laws § 5-38-4(b) provides: “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.” *See also* Commercial Licensing Regulation 4, Section 4 (“No Person may engage in the business of Motor Vehicle Body Work without first obtaining a Motor Vehicle Body License from the Department.”) R.I. Gen. Laws § 5-38-19(b) provides that the Department an Order to Show Cause to any person reasonably believed to be operating an automobile body repair shop without a license “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.” “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.” *Id.* R.I. Gen. Laws Ann. § 5-38-10(3) provides that “[t]he department of business regulation may deny an application for license or suspend or revoke a license after it has been granted, for...any

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 § 5-38-7(a) provides that “no license shall remain in force for a period in excess of three (3) years.” Therefore upon its expiration on December 31, 2006, the Respondent’s license became invalid. *See* Joint Exhibit # 3. All auto body repair work conducted after the expiration date was unlicensed activity prohibited by the above-cited statutory sections.

Here, the Respondent failed to “show cause” why an order to cease and desist order should not issue. It may be reasonably inferred that the Respondent was operating without a license, at least from December 31, 2006 until the date of the Department’s Inspection on January 31, 2014, a total of seven (7) years. Joint Exhibit # 1 contains the observation of the Inspector that unlicensed activity is still was occurring on the premises as of January 31, 2014. The Complaint, Joint Exhibit # 2, evidences that unlicensed auto body repair work was conducted on the Respondent’s vehicle on or around September 9, 2013. Joint Exhibit # 3 is documentation kept on the premises of the Respondent that would clearly indicate to him that his license was in fact expired. By looking at this license, Respondent knew or should have known that he was operating with an expired license.

Respondent presented no evidence or testimony to rebut the inference that Respondent knowingly engaged in unlicensed auto body repair activity for a period of seven (7) years. The Respondent did not “show cause” why a permanent cease and desist order should not issue in this case.

Furthermore, [i]n addition to every other power granted the department of business regulation, the department may fine a licensee not more than one hundred dollars (\$100) for any

violation or failure to comply with the provisions of this chapter or with any rule or regulation promulgated by the department.” R.I. Gen. Laws § 5-38-10.1. The long seven year time period for the unlicensed activity warrants imposition of the maximum \$100 monetary penalty allowed by the statute.

VII. FINDINGS OF FACT

1. The Respondent’s auto body repair license expired on December 31, 2006.
2. The Respondent continued to perform auto body repair work.
3. The Department’s Inspector found evidence of unlicensed auto body repair on January 31, 2014.
4. In his complaint and testimony, the Complainant provided evidence that the Respondent was engaged in automobile body repair work during the time period in which he was unlicensed.
5. It is reasonable to infer that Respondent engaged in unlicensed activity for seven (7) years and the Respondent did not rebut that inference.

VIII. CONCLUSIONS OF LAW

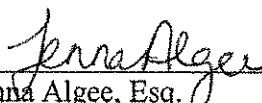
1. The Department has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 5-38-1 and 42-14-1 *et seq.*, subject to the provisions of § 42-35-1 *et seq.*
2. The Department established that a cease and desist order should be issued pursuant to R.I. Gen. Laws § 5-38-19.
3. Given the seven year length of the licensed activity, a \$100 penalty should be imposed pursuant to R.I. Gen. Laws § 5-38-10.1.

RECOMMENDATION

THEREFORE, the Hearing Officer recommends that the Director order that:

1. The Respondent is hereby permanently ordered to cease and desist from unlicensed auto body repair work.
2. The Respondent is ordered to pay an administrative penalty of \$100.

DATED: 8/8/14



Jenna Algee, Esq.
Hearing Officer

ORDER

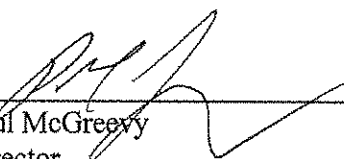
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 8 August 2014



Paul McGreevy
Director

ENTERED as Administrative Order No. 14-48 on the 12th day of August 2014.

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 12th day of August, 2014, a true copy of this Decision and Order was sent by first class mail, postage prepaid and electronic mail to:

Patrick Buckley
Certified Collision Center
43 Dyerville Avenue
Johnston, RI 02919
Tonia3@cox.net

and by electronic mail to the following parties at the Department of Business Regulation: Maria D'Alessandro, Esq., Deputy Director, Securities, Commercial Licensing, Racing & Athletics, Neena Savage, John Mancone, and Kimberly Precious

