

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND)
CONSUMER SERVICES,)
)
Petitioner,)
)
vs.) Case No. 07-2770
)
ROGER C. WOOD, d/b/a A NEW)
CARB O TRONICS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A duly-noticed final hearing was held in this case by Administrative Law Judge T. Kent Wetherell, II, on March 28, 2008, by video teleconference between sites in Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioner: Eric H. Miller, Esquire
Department of Agriculture and
Consumer Services
Terry L. Rhodes Building
2005 Apalachee Parkway
Tallahassee, Florida 32301

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent committed the acts alleged in the Administrative Complaint, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

The Department of Agriculture and Consumer Services (Department) alleged in a five-count Administrative Complaint dated February 23, 2007, that Respondent violated various provisions of Chapter 559, Florida Statutes (2006).^{1/} On or about June 9, 2007, Respondent requested a formal hearing on the Administrative Complaint.

On June 19, 2007, the Department referred the matter to the Division of Administrative Hearings (DOAH) for the assignment of an Administrative Law Judge to conduct the hearing requested by Respondent. The referral was received by DOAH on June 21, 2007, and the case was initially assigned to Administrative Law Judge Bram D.E. Canter.

On December 20, 2007, Judge Canter entered an Order granting the Department's motion to correct a scrivener's error in the Administrative Complaint. The case proceeded to final hearing on the corrected Administrative Complaint.

The final hearing was initially scheduled for October 9, 2007, but it was continued twice at Respondent's request. The case was transferred to the undersigned on February 6, 2008, and set for final hearing on March 28, 2008.

Respondent failed to appear at the final hearing. The Department was given the option of treating Respondent's failure

to appear as a withdrawal of his request for a formal hearing, but the Department elected to put on its case.

The Department presented the testimony of Garrett Moon and the deposition testimony of David Addison and Janet Shea. The Department offered Exhibits 1 through 7, 9, 10, and 12 through 15, all of which were received into evidence. Additionally, at the hearing, the matters contained in the First Requests for Admissions served by the Department on June 28, 2007, were deemed admitted by virtue of Respondent's failure to respond to the requests. See Fla. R. Civ. P. 1.370(a).

Official recognition was taken of Sections 559.901 through 559.9221, Florida Statutes. See Order on Pending Motions entered by Judge Canter on December 20, 2007.

On May 8, 2008, the Department filed a motion to conform the Administrative Complaint to the evidence presented at the final hearing. Respondent did not file a response to the motion, and upon due consideration, the motion is granted.

The Transcript of the final hearing was filed on April 28, 2008. The parties were given ten days from that date to file proposed recommended orders (PROs). The Department filed a PRO on May 8, 2008. Respondent did not file a PRO. The Department's PRO has been given due consideration.

FINDINGS OF FACT

1. At all times material to this case, Respondent operated a motor vehicle repair shop in Melbourne known as A-New-Carb-O-Tronics. The shop has been registered with the Department since 2004 under registration number MV54037.

2. In December 2005, Janet Shea started having problems with the back hatch of her 2001 Pontiac Aztek. The problems were attributed to the body control module (BCM), which is an electronic device that controls the vehicle's lights, door locks, and window motors.

3. Ms. Shea consulted Respondent about the problems she was having with the Aztek because he had previously done repair work on another one of her vehicles.

4. Respondent told Ms. Shea that he could make the necessary repairs to the BCM, and he picked up the vehicle from Ms. Shea's home to perform the repairs.

5. On January 27, 2006, Ms. Shea paid Respondent \$900 for the repairs that he claimed to have done to the BCM.

6. Ms. Shea continued to have the same problems with the back hatch after the vehicle was returned to her by Respondent, so she took it back to Respondent for repairs.

7. On February 14, 2006, Ms. Shea paid Respondent an additional \$1,200 for repairs that he claimed to have done to the BCM.

8. Ms. Shea continued to have the same problems with the back hatch after the vehicle was returned to her the second time, so she again took it back to Respondent for repairs.

9. On February 18, 2006, while the vehicle was in Respondent's possession, it was involved in an accident that damaged the fuel pump. Respondent charged Ms. Shea \$390 to repair the fuel pump.

10. Ms. Shea continued to have the same problems with the back hatch of the vehicle after Respondent returned it to her the third time at the end of April or beginning of May 2006.

11. At that point, Ms. Shea decided to sell the Aztek, but Respondent convinced her to let him take the car again for another evaluation. Respondent told Ms. Shea that the BCM that he installed must have been defective and that he would replace it under his warranty and that it would cost her nothing.

12. On August 2, 2006, after Respondent failed to return the vehicle and refused to return her calls, Ms. Shea filed a stolen vehicle report with the Melbourne Police Department.

13. During the course of the police investigation, Respondent produced two written invoices for repairs that he purportedly performed with Ms. Shea's authority, including charges for repairs to a 1992 Chrysler LeBaron owned by Ms. Shea's friend, Ron Shultz. Ms. Shea was never given these invoices by Respondent.

14. The first invoice, dated July 13, 2006, was for \$1,657. It included \$343 of charges for repairs to Mr. Shultz's LeBaron. The remainder of the invoice was for repairs that Respondent claimed to have performed on Ms. Shea's Aztek, including replacement of the BCM.

15. The second invoice, also dated July 13, 2006, detailed the \$343 of repairs that Respondent purportedly made to Mr. Shultz's LeBaron.

16. Ms. Shea did not authorize the repairs to Mr. Shultz's vehicle, nor did she authorize the charges for that vehicle to be included on her invoice. The handwritten notations on the invoices, which appear to show that Ms. Shea consented to the repairs, were not written by Ms. Shea, but rather were written by Respondent without Ms. Shea's authority.

17. Ms. Shea did not pay these invoices.

18. Respondent placed a mechanic's lien on Ms. Shea's vehicle for the \$1,657 of repairs that he claimed to have performed, but for which Ms. Shea failed to pay.

19. On December 4, 2006, the Circuit Court for Brevard County entered an Order finding the lien to be "wrongful" and declaring it "null and void."

20. On or about December 11, 2006, Ms. Shea recovered her vehicle from Respondent with the assistance of the Melbourne Police Department.

21. Respondent had abandoned the vehicle behind the warehouses near his shop. The vehicle was not in a drivable condition when it was recovered. Respondent had removed belts and other parts that he claimed to have installed on the vehicle.

23. On December 11, 2006, Ms. Shea's vehicle was towed to Lane Pontiac-Buick-GMC (Lane) for an estimate of the repairs needed to make it drivable. The estimate prepared by Lane identified almost \$4,400 of necessary repairs, including a new BCM.

23. The estimated charges related to the BCM were approximately \$400--\$252.46 for parts and \$148.42 for labor--which is far less than the \$2,100 that Ms. Shea paid Respondent for the repair work that he claimed to have done on the BCM.

24. Ms. Shea filed a complaint with the Department in August 2006 concerning her dealings with Respondent. The complaint was investigated by Garrett Craig Moon, who has approximately eight years of experience investigating motor vehicle repair shops for the Department.

25. On September 21, 2006, Mr. Moon conducted an onsite visit to Respondent's shop. The visit was conducted after 8:00 p.m., because that was during the time Respondent regularly conducted his motor vehicle repair business.

26. During the onsite visit, Mr. Moon requested that Respondent provide the documents supporting any repairs that he made to Ms. Shea's vehicle, including documents showing her authorization for the repairs and receipts for the parts used to complete the repairs. Respondent told Mr. Moon that he did not have the documents at the shop on that date, but he agreed to produce them by fax.

27. Respondent subsequently sent a letter to Mr. Moon by fax, but he did not produce any of the requested records. He told Mr. Moon on December 4, 2006, that he refused to produce any records.

28. Respondent had not produced the motor vehicle repair records for inspection by the Department as requested by Mr. Moon as of the date of the final hearing.

29. On seven separate occasions, Ms. Shea paid Respondent for motor vehicle repairs where the cost of the repair work exceeded \$100. Those payments included the \$900 and \$1,200 payments for repairs to the BCM and the \$390 payment for the fuel pump, as well as payments for other repairs.

30. The only invoices that Respondent prepared for the work that he allegedly performed for Ms. Shea were those described above dated July 13, 2006.

31. Respondent did not provide written estimates to Ms. Shea for any of the repair work that he allegedly performed,

and at no time did Ms. Shea waive the preparation of a written estimate.

32. The invoices described above did not include odometer readings for Ms. Shea's Aztek or Mr. Shultz's LeBaron, a statement indicating whether anything was guaranteed in connection with the repair work, or the registration number for Respondent's motor vehicle repair shop.

33. Respondent did not appear at the final hearing despite having been given due notice of the date, time, and location of the hearing.

34. Respondent operated a motor vehicle repair shop under registration number MV10590 from 1993 to 2001.

35. Respondent has no disciplinary history with the Department.

36. The Department's records identify only one other consumer complaint against Respondent. Mr. Moon's report states that the other complaint was in 1996 and that it was mediated by a Department investigator.

CONCLUSIONS OF LAW

37. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. See also § 559.921(4)(c), Fla. Stat.

38. The Department is the state agency responsible for regulating motor vehicle repair shops under Part IX of Chapter 559, Florida Statutes.

39. The Department has the burden to prove the allegations in the Administrative Complaint by clear and convincing evidence. See Dept. of Banking & Finance v. Osborne, Stern & Co., 670 So. 2d 932 (Fla. 1996).

40. The clear and convincing evidence standard requires that the evidence "must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." In re Davey, 645 So. 2d 398, 404 (Fla. 1994).

41. The Department met its burden of proof as to all counts in the Administrative Complaint, as detailed below.

42. It is an unlawful practice for a motor vehicle repair shop to "[m]ake or charge for repairs which have not been expressly or impliedly authorized by the customer." See § 559.920(2), Fla. Stat.

43. The evidence clearly and convincingly establishes that Respondent charged Ms. Shea without her authorization for repairs allegedly made to her vehicle, as well as for repairs made to Mr. Shultz's vehicle. Therefore, the Department met its burden to prove that Respondent violated Section 559.920(2),

Florida Statutes, as alleged in Count 1 of the Administrative Complaint.

44. It is an unlawful practice for a motor vehicle repair shop to "[m]isrepresent that repairs have been made to a motor vehicle." § 559.920(3), Fla. Stat.

45. The evidence clearly and convincingly establishes that Respondent misrepresented that he repaired or replaced the BCM on Ms. Shea's vehicle because the vehicle continued to have the same problems each time it was returned to Ms. Shea, and the BCM was still in need of replacement after the vehicle was recovered from Respondent in December 2006. Therefore, the Department met its burden to prove that Respondent violated Section 559.920(3), Florida Statutes, as alleged in Count 2 of the Administrative Complaint.

46. A motor vehicle repair shop is required to "maintain repair records which shall include written repair estimates and repair invoices" and is required to "allow department personnel to inspect or copy these records during regular business hours." See § 559.915(1) and (2), Fla. Stat.

47. The evidence clearly and convincingly establishes that Respondent refused to allow Mr. Moon to inspect the records pertaining to the repairs that he allegedly made on Ms. Shea's vehicle. Therefore, the Department met its burden to prove that

Respondent violated Section 559.915(2), Florida Statutes, as alleged in Count 3 of the Administrative Complaint.

48. Section 559.905(1), Florida Statutes, provides:

When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed \$100 to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair.

49. The evidence clearly and convincingly establishes that Respondent failed to prepare a written estimate related to any of the seven payments that Ms. Shea made to Respondent for repairs to her and Mr. Shultz's motor vehicles and that Respondent failed to provide Ms. Shea an estimate for the work that he allegedly performed and included on the two invoices dated July 13, 2006. Therefore, the Department met its burden to prove that Respondent violated Section 559.905(1), Florida Statutes, as alleged in Count 4 of the Administrative Complaint, and each of the nine incidents is a separate statutory violation.

50. Section 559.911, Florida Statutes, provides in pertinent part:

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice may be provided on the same form as the written

repair estimate and shall include the following information:

(1) The current date and odometer reading of the motor vehicle.

* * *

(5) A statement indicating what, if anything, is guaranteed in connection with the repair work and the time and mileage period for which the guarantee is effective.

(6) The registration number from the certificate issued by the department pursuant to this part.

51. The evidence clearly and convincingly establishes that Respondent failed to provide Ms. Shea a written invoice related to any of the seven payments that she made to Respondent for repairs to her and Mr. Shultz's motor vehicles, and that the two invoices prepared by Respondent (but never provided to Ms. Shea) failed to include the information required by statute, including the current odometer reading of the vehicles, whether anything was guaranteed pertaining to the repair work, and Respondent's registration number. Therefore, the Department met its burden to prove that Respondent violated Section 559.911(1), (5), and (6), Florida Statutes, as alleged in Count 5 of the Administrative Complaint, and each of the nine incidents is a separate statutory violation.

52. The Department is authorized to impose penalties on a motor vehicle repair shop for violating any provision of Part IX

of Chapter 559, Florida Statutes, and for failing to produce any documents or records required by statute. See § 559.921(4)(a)1. and 3., Fla. Stat.

53. The authorized penalties include imposition of an administrative fine of up to \$1,000 per violation, placement of the motor vehicle shop on probation, and/or suspension or revocation of the motor vehicle shop's registration. See § 559.921(4)(b), Fla. Stat.

54. The Department is seeking an administrative fine of \$12,000 and the revocation of Respondent's motor vehicle shop registration.^{2/}

55. Even though Respondent has no disciplinary history with the Department, the proposed penalty is reasonable and appropriate under the circumstances of this case due to the number of violations committed by Respondent and the resulting financial harm to Ms. Shea.

RECOMMENDATION


Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department issue a final order that:

1. Finds Respondent guilty of violating Sections 559.905(1), 559.911(1), (5), and (6), 559.915(2), and 559.920(2) and (3), Florida Statutes, as alleged in the Administrative Complaint;

2. Imposes an administrative fine of \$12,000; and
3. Revokes Respondent's motor vehicle repair shop registration.

DONE AND ENTERED this 19th day of May, 2008, in
Tallahassee, Leon County, Florida.



T. KENT WETHERELL, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of May, 2008.

ENDNOTES

^{1/} All references to the provisions of Chapter 559, Florida Statutes, are to the 2006 version in effect at the time of the events giving rise to the Administrative Complaint. All other statutory references are to the 2007 version of the Florida Statutes.

^{2/} See Department's PRO, at pages 11-12. The proposed fine is broken down as follows: \$1,000 for Count 1 (violation of Section 559.920(2), Florida Statutes); \$1,000 for Count 2 (violation of Section 559.920(3), Florida Statutes); \$1,000 for Count 3 (violation of Section 559.915, Florida Statutes); \$4,500 for Count 4 (\$500 for each of the nine violations of Section 559.905(1), Florida Statutes); and \$4,500 for Count 5 (\$500 for each of the nine violations of Section 559.911, Florida Statutes). Id. at 11.

COPIES FURNISHED:

Honorable Charles H. Bronson
Commissioner of Agriculture
Department of Agriculture and
Consumer Services
The Capitol, Plaza Level 10
Tallahassee, Florida 32399-0810

Richard D. Tritschler, General Counsel
Department of Agriculture and
Consumer Services
407 South Calhoun Street, Suite 520
Tallahassee, Florida 32399-0800

Eric H. Miller, Esquire
Department of Agriculture and
Consumer Services
Terry L. Rhodes Building
2005 Apalachee Parkway
Tallahassee, Florida 32301

Roger Wood
561 Adventure Avenue Northwest
Palm Bay, Florida 32907

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.