

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND)
CONSUMER SERVICES,)
)
Petitioner,)
)
vs.) Case No. 07-4597
)
AMERICAN AUTO GLASS NETWORK,)
INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 13, 2007, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Eric H. Miller, Esquire
Department of Agriculture &
Consumer Services
2005 Apalachee Parkway
Tallahassee, Florida 32301

For Respondent: Magdalena Gore, President
American Auto Glass Network, Inc,
11355 Southwest 53rd Terrace
Miami, Florida 33165

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in the Administrative Complaint dated August 23, 2007, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On August 23, 2007, the Department of Agriculture and Consumer Services ("Department") filed an Administrative Complaint charging that American Auto Glass Network, Inc., ("American Auto Glass") was operating as a motor vehicle repair shop without being properly registered with the Department as required by Section 559.904, Florida Statutes (2007),¹ which constituted a violation of Section 559.920(17), Florida Statutes. Magdalena Gore, the President of American Auto Glass, disputed material facts in the Administrative Complaint and requested a formal administrative hearing. The Department transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. Pursuant to notice, the final hearing was held on December 12, 2007.

At the hearing, the Department presented the testimony of Richard Strong and Ms. Gore; Petitioner's Exhibits 4 through 9 were offered and received into evidence. Ms. Gore testified on behalf of American Auto Glass; American Auto Glass did not offer any documents into evidence. Official recognition was granted,

at the Department's request, to Sections 559.901, .902, .903, .904, .920, and .921, Florida Statutes.

The transcript of the proceedings was filed with the Division of Administrative Hearings on February 6, 2008, and the parties timely filed their proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Department is the state agency responsible for registering and regulating motor vehicle repair shops. See §§ 559.904, .920, and .921, Fla. Stat.

2. Ms. Gore is the current president and sole shareholder of American Auto Glass. She is also its only employee.

3. American Auto Glass's physical address is 873 Orchid Drive, Plantation, Florida 33317, which is Ms. Gore's residence. American Auto Glass's business records are kept at this address, and its invoices and billings to various insurance companies are prepared there. All business correspondence and payments go to Post Office Box 17484, Fort Lauderdale, Florida 33318; and its the business telephone is Ms. Gore's cell phone. American Auto Glass is a "Sub-Chapter S" corporation.

4. Prior to June 2006, Ms. Gore and Ana Diaz jointly owned American Auto Glass; Ms. Gore purchased the business in June 2006, and Ms. Diaz has not been involved in the business since that time.

5. American Auto Glass is an approved vendor of automobile glass replacement claims for several insurance companies, and it acts as a broker handling automobile glass replacement claims for persons insured by those insurance companies.

6. When an insurance company receives a claim from an insured for replacement of damaged automobile glass, the insurance company assigns the claim to American Auto Glass. American Auto Glass receives the assignment either through a telephone call from the insurance company's claims department or in a facsimile transmission from a glass vendor, that is, an administrator under contract with the insurance company to sub-contract automobile glass replacement claims to other agents in the field.

7. The insurance company or glass vendor tells its insureds that it will handle the assignment of the claims and does not refer its insureds to American Auto Glass. Rather, it advises the insureds that they will be contacted by the person who will do the work of replacing the glass.

8. Once American Auto Glass receives the claim referral, Ms. Gore contacts an independent sub-contractor who will do the

installation of the automobile glass replacement. The sub-contractors used by American Auto Glass also work for other companies.

9. As part of the assignment, American Auto Glass receives complete information regarding the type of vehicle, the damages, and the materials that need to be replaced, which Ms. Gore transmits to the sub-contractor.

10. The sub-contractor assigned the installation job contacts the insured and arranges an appointment with the insured to bring in the car to the sub-contractor for the replacement installation.

11. American Auto Glass does not, at any time, have possession of the vehicles for which it arranges automobile glass replacement installations, nor does it share a business location with the sub-contractors it engages to do the automobile glass replacement installations.

12. Some sub-contractors used by American Auto Glass for automobile glass replacement installations furnish both parts and labor. If the sub-contractor does not furnish the parts but only the labor, the sub-contractor orders the necessary parts from AGS Auto Glass Export or another parts supplier.

13. American Auto Glass has an account with AGS Auto Glass Export. The sub-contractor picks up the necessary parts for a

job, and AGS Auto Glass Export bills American Auto Glass directly for these parts.

14. Once the glass replacement installation is completed, the sub-contractor either sends an invoice to American Auto Glass or contacts Ms. Gore and provides the vehicle information required by the insurance company and the cost of the installation.

15. American Auto Glass bills the insurance company for the work done, and the insurance company pays American Auto Glass.

16. American Auto Glass pays the sub-contractors for parts and labor if the sub-contractor has furnished the parts necessary for the replacement or for labor only if the sub-contractor has ordered the parts from AGS Auto Glass Export, the cost of which are billed directly to American Auto Glass. Ms. Gore adds a certain percentage to these charges when she bills the insurance company.

17. American Auto Glass's primary sub-contractor does not furnish parts, and he has a negotiated price with American Auto Glass for each installation.

18. American Auto Glass acts exclusively as a broker arranging with independent sub-contractors for the automobile glass replacement installations on behalf of insurance

companies.² American Auto Glass at no time has any contact with the insurance company's insureds or their vehicles.

19. At one time prior June 2006, when Ms. Gore purchased sole interest in the business, American Auto Glass employed an "installer" who did the actual work of installing automobile glass replacements. During this time, American Auto Glass was registered with the Department as a motor vehicle repair shop. The registration expired on May 29, 2007.³

20. The evidence presented by the Department is not sufficient to establish that American Auto Glass is a motor vehicle repair shop whose business is motor vehicle repairs. Rather, American Auto Glass acts as a middleman between insurance companies and motor vehicle repair shops that do the actual glass replacement installation. Its only physical location is Ms. Gore's residence, and the business activities that take place at that location do not include any activities related to the actual work of motor vehicle repair.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

22. In its Administrative Complaint, the Department seeks to impose an administrative fine on American Auto Glass for its

failure to register as a motor vehicle repair shop. Because an administrative fine constitutes a penalty, the Department has the burden of proving by clear and convincing evidence that American Auto Glass is guilty of the offense alleged in the Administrative Complaint. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

23. The Department has charged American Auto Glass with a violation of Section 559.20(17), Florida Statutes, which provides:

559.920 Unlawful acts and practices.--It shall be a violation of this act for any motor vehicle repair shop or employee thereof to:

* * *

(17) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.^[4]

24. The underlying violation alleged by the Department is found in 559.904(1), Florida Statutes, which provides: "Each motor vehicle repair shop engaged or attempting to engage in the business of motor vehicle repair work must register with the department prior to doing business in this state. . . ." In order to prove that American Auto Glass is required to register

as a motor vehicle repair shop, it must first prove that American Auto Glass is a motor vehicle repair shop.

25. Section 559.903, Florida Statutes, contains the following definitions, which are pertinent to this proceeding:

(3) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repair.

* * *

(6) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work. Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

(7) "Place of business" means a physical place where the business of motor vehicle repair is conducted, including any vehicle constituting a mobile motor vehicle repair shop from which the business of motor vehicle repair is conducted.

(8) "Motor vehicle repair" means all maintenance of and modifications and repairs to motor vehicles, and diagnostic work incident thereto, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.

26. Based on the findings of fact herein, the Department has failed to prove that American Auto Glass is a motor vehicle repair shop as defined in Section 559.903(6), Florida Statutes. The Department presented no evidence to support a finding that American Auto Glass engages in motor vehicle repairs as defined in Section 559.903(8), Florida Statutes.

27. In the alternative, Section 559.904(9) provides: "No registration application or fee is required for an individual with no employees and no established place of business. . . ." Based on the findings of fact herein, American Auto Glass does not have a "place of business" as defined in Section 559.903(7), Florida Statutes, and it has no employees, as defined in Section 559.903(3), Florida Statutes, because Ms. Gore does not perform motor vehicle repairs. Accordingly, American Auto Glass is not required to register as a motor vehicle repair shop because it has no "employees" and no "place of business."

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order dismissing the Administrative Complaint filed against American Auto Glass Network, Inc.

DONE AND ENTERED this 11th day of March, 2008, in
Tallahassee, Leon County, Florida.

S

PATRICIA M. HART
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of March, 2008.

ENDNOTES

^{1/} All references to the Florida Statutes are to the 2007 edition unless otherwise indicated.

^{2/} In order to do business as a motor vehicle repair shop in Broward County, a business is required to carry garage keeper's insurance. American Auto Glass cannot qualify for this insurance because no insurance company will agree to indemnify American Auto Glass for potential damage caused by a third-party independent sub-contractor. As a result, American Auto Glass cannot register as a motor vehicle repair shop in Broward County.

^{3/} The investigation that gave rise to the Administrative Complaint in this case was initiated when the Department became aware that American Auto Glass's registration as a motor vehicle repair shop had expired. The purpose of the investigation was to determine if American Auto Glass was still doing business as a motor vehicle repair shop. The Administrative Complaint was issued after the investigator had a conversation with Ana Diaz, who had sold her interest in American Auto Glass to Ms. Gore in June 2006. The investigator did not make a site visit to American Auto Glass. He spoke with Ms. Gore by phone, but he

did not discuss with her the manner in which American Auto Glass operated or its business practices.

^{4/} Interestingly, the Department did not charge American Auto Glass with a violation of Section 559.920(1), Florida Statutes, which provides:

It shall be a violation of this act for any motor vehicle repair shop or employee thereof to:

(1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or having submitted an affidavit of exemption to the department.

It would seem that this violation would more precisely describe the basis for the Department's charge against American Auto Glass than would the violation set forth in Section 559.9210(17), Florida Statutes.

COPIES FURNISHED:

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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.