

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
BUILDINGS 68 AND 69
CRANSTON, RI 02920**

<u>PHYLLIS E. HICKS,</u>	:	
Complainant,	:	
	:	
v.	:	DBR No. 11-L-0063
	:	
THOMAS P. DUNN d/b/a	:	
STANDARD AUTO BODY, INC.,	:	
	:	
<u>Respondent.</u>	:	

DECISION

Hearing Officer: Neena Sinha Savage, Esquire

Hearing Held: November 10, 2011

Appearances:

For Phyllis E. Hicks, Complainant: *Pro se*

For Thomas P. Dunn d/b/a
Standard Auto Body, Respondent: Robert Testa, Esquire

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation (“Department”) as the result of a complaint filed on June 22, 2011 by Phyllis Hicks (“Complainant”) with the Department against Thomas P. Dunn d/b/a Standard Auto Body, Inc. (“Respondent”). Respondent is licensed as a Salvage Rebuilder (License Number A175) pursuant to R.I. Gen. Laws § 31-46-1 *et seq.* and Commercial Licensing Regulation 7 (“CLR 7”) and the business is located in Pawtucket, Rhode Island. After an investigation by the Department, a Notice of Complaint and Order Appointing Hearing Officer was issued on August

24, 2011 and a prehearing conference was scheduled to be held on September 27, 2011. On September 25, 2011, the Director of the Department issued an Order Appointing Substitute Hearing Officer and Providing Notice of Hearing which appointed the undersigned Hearing Officer and modified the date of the hearing to October 11, 2011. Based on a request for a continuance from the Respondent, the matter was continued, without objection by Complainant, to October 12, 2011 on which date a pre-hearing conference was held. On October 17, 2011, the undersigned Hearing Officer issued an Order clarifying the issues, ordering an exchange of evidence information between the parties on or before October 31, 2011, and scheduling the matter for hearing on November 10, 2011. On November 2, 2011, the Director granted Respondent's and Complainant's requests for Subpoenas and issued subpoenas for four separate witnesses (two each for Respondent and Complainant). The hearing was held on November 10, 2011. Complainant represented herself and Respondent was represented by counsel. Three of the four witnesses appeared and testified (one of Respondent's witnesses was unable to appear and there was no objection from Respondent), Complainant and Respondent testified, and numerous documentary exhibits were presented by both parties. After the hearing concluded, the record was left open until November 22, 2011 for Respondent to provide information requested by Complainant regarding the salvage vehicle used for the repairs made to the Subject Vehicle and to allow Complainant to provide additional evidence based on her request to provide that information.¹ On November 21, 2011, the undersigned Hearing Officer received an email from

¹ Toward the conclusion of the hearing on November 10, 2011 after all of the witnesses had testified and all evidence presented and submitted, the Hearing Officer asked (in reviewing the evidence presented), whether the Subject Vehicle had been inspected by a licensed Salvage Rebuilder (because Complainant had only presented evidence from an auto repairer witness who is not a licensed Salvage Rebuilder and which repairer testified that at the time of that auto repairer witness's inspection, the Subject Vehicle was in good, operable condition). The Hearing Officer then asked whether the Subject Vehicle was inspected by someone with a Salvage Rebuilder license. Complainant indicated that she would provide that information (but did not state that such an inspection had already taken place). There was no understanding by the Hearing Officer or statement that Complainant made that such an inspection (by another salvage rebuilder) had already been performed.

Complainant referencing a "Formal Request/Notice to Withdraw," which requested that Complainant be allowed to withdraw the complaint against Respondent. The November 21, 2011 email from Complainant also stated the following:

I have filed a Civil Action lawsuit at the "State of Rhode Island" "Providence Superior Court" this afternoon. (11/21/11).
I am acting in the capacity of "Attorney Pro Se."
I have also been advised to go to the Attorney General's Office to possibly file a complaint at that office.
As you previously mentioned DBR can and only go so far, it has definite limitations.
If there are any forms that I need to sign to "Withdraw" the complaint; please let me know.
No need to have two state agencies work on the same complaint.
Seeing, that I am withdrawing the complaint and have placed it in the court system.
I will not be forwarding to you an Inspection Report from a Licensed Salvage Repair Shop.

The undersigned Hearing Officer notified Complainant that the notice had been received and that she would "issue an appropriate decision on the information presented." Complainant objected to the issuance of a Decision and requested a withdrawal of the complaint. The Respondent, who is represented by counsel, has not consented to the Complainant's request for withdrawal. The unilateral request for dismissal and the basis for denying that request is addressed in detail below. Additionally, given that the hearing had concluded and the expenditure of time and resources by the Complainant, Respondent, witnesses, and the Department, this matter will be decided on the merits. Further, this record, via this Decision, documents this adjudication as a record for potential future actions by Respondent and/or Complainant.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 31-46-7, R.I. Gen. Laws § 42-14-1 et seq., and R.I. Gen. Laws § 42-35-1 et seq.

III. ISSUE

Whether Respondent violated R.I. Gen. Laws § 31-46-7 (by engaging in unlicensed activity) and/or Sections 8 A, C, D, G, H of CLR 7² in connection with the salvage repair of Complainant's automobile.

IV. MATERIAL FACTS AND TESTIMONY

This matter arose out of circumstances surrounding the salvage repair and sale by Respondent of the Complainant's 2002 Ford Focus LX ("Subject Vehicle") which was purchased by Complainant from Respondent in January 2011. The Subject Vehicle was purchased by Respondent as a salvage vehicle in January 2006.³ Complainant's Exhibit 1 which is a receipt evidencing the purchase by Respondent of the Subject Vehicle on January 31, 2006 indicates that the mileage on the Subject Vehicle as of that date was 24,309 miles. In Joint Exhibit 2, there is a document dated December 23, 2010 that has a "SALVAGE INSPECTION" stamp on it that reflects the Respondent's estimate to repair the Subject Vehicle included 77.6 hours of labor (for a total labor cost of \$3,811) and parts and materials (including tax) totaling \$1,214.34 for a total

² CLR 7 Section 8 states, in pertinent part, that:

The Director may deny, non-renew, suspend or revoke the License of any Licensee or an Applicant for any of the following reasons:

- A. Violation of any provisions of the Act or this Regulation; ...
- C. On proof of unfitness of an Applicant to conduct the Business of Salvage Vehicle Repairing;
- D. Defrauding any customer; ...
- G. Willful failure to perform work contracted for;
- H. Failure to comply with the safety standards of the industry[.]

³ The CarFax report for Subject Vehicle indicates that it was registered as rental vehicle in June 2002. The Subject Vehicle was involved in an accident in 2003 and sold at auction on October 28, 2003 as a salvage vehicle. The CarFax report further indicates that the Subject Vehicle was issued a salvage title in Massachusetts on October 28, 2003. The Subject Vehicle was purchased by two other Rhode Island auto sellers in 2004 prior to being purchased by Respondent from Greenville Auto Sales of Pawtucket, RI on January 31, 2006.

estimate to repair Complainant's car from salvage at \$5,025. Respondent also provided photographs of the Subject Vehicle during repair as well as photographs of the vehicle from which parts were used to repair the Subject Vehicle. Respondent also provided the Certificate of Salvage Repair (in Joint Exhibit 2) dated December 2010 as well as the Rhode Island Division of Motor Vehicles Verification of Identification Number. Joint Exhibit 2 also includes the sales receipt, payment terms, and warranty terms for the Subject Vehicle dated January 15, 2011 and the mileage as of that date was 24,832 miles. This sales receipt indicates that the Subject Vehicle is a "used" vehicle and has "Mass Salvage Title #AZ56942" typed on the form. Joint Exhibit 2 also included a Vehicle Inspection Report dated December 31, 2010 which indicates that the Subject Vehicle passed the safety inspection.

Stephanie Laurence from Warwick, Rhode Island was subpoenaed by Complainant and was the first witness to testify. Ms. Laurence, an employee of Enterprise Rent a Car ("Enterprise") on Niantic Avenue in Cranston, Rhode Island testified to the following facts. Ms. Laurence met Complainant when Complainant came into the Enterprise in Rhode Island in June of 2011. Complainant was inquiring about the Subject Vehicle which Complainant knew to be a previous rental vehicle from Enterprise. Ms. Laurence investigated and discovered that the Subject Vehicle was formerly owned by a Massachusetts Enterprise and attempted to help Complainant because Complainant told Ms. Laurence that she had just discovered that the Subject Vehicle was a salvage vehicle and that it was Complainant's understanding that a salvage vehicle could not be sold in Rhode Island. Ms. Laurence explained to her that salvage vehicles could be sold if they met certain requirements and explained, in detail, the salvage process in Rhode Island as Ms. Laurence knew them.

This explanation of the salvage repair process by Ms. Laurence to Complainant included an explanation of "UDW" which stands for "undamaged wholesale" and, according to Ms.

Laurence, means the value a salvage vehicle would be were it not damaged. Ms. Laurence explained to Complainant that a salvage vehicle could be repaired depending on the amount of damage and whether it was designated “salvage-repairable” or “salvage-parts only.” Ms. Laurence explained that if the ratio of the value of the vehicle with damage (fair market value as determined by blue book or other valuation method (year of vehicle/current year, mileage, condition minus the damage estimate) and the value of the UDW is less than 75%, the law is that it is “salvage-repairable” and may be repaired; if the ratio is more than 75% then it is “salvage-parts only.” Ms. Laurence explained at hearing that she provided this detailed explanation because Complainant was insisting that a salvage vehicle could not be repaired and sold and that Complainant did not know it was a salvage vehicle.

At their first meeting in June 2011, Ms. Laurence, after reviewing computer records, informed Complainant that Ms. Laurence did not have any records on the Subject Vehicle because it was a former Massachusetts vehicle and Ms. Laurence only had limited information. Ms. Laurence conveyed that limited information to Complainant: that the Subject Vehicle sold at auction in 2003 in Massachusetts as a salvage vehicle and gave her a piece of paper with the General Manager’s phone number at Enterprise in Massachusetts (Joint Exhibit 6) because Complainant was requesting information that Ms. Laurence did not have.

In response to Complainant’s assertion that Ms. Laurence was being hostile at hearing, Ms. Laurence explained her frustration at being subpoenaed because she does not have any records pertaining to the Subject Vehicle because it was sold by Enterprise in Massachusetts and Complainant had repeatedly come to Enterprise in Rhode Island over the summer of 2011 requesting more and more information. Ms. Laurence had tried to help her but learned that Complainant engaged in a “lie” to Ms. Laurence; specifically that the Complainant had dropped by repeatedly with documents including the bill of sale and title that show that the Subject

Vehicle is a salvage vehicle. This contradicted Complainant's statements to Ms. Laurence that Complainant did not know it was a salvage vehicle. Complainant indicated shock at the fact that she discovered that the Subject Vehicle was a salvage vehicle, but the Complainant had a copy of the bill of sale and the Massachusetts title dated which was clearly marked "SALVAGE VEHICLE REPAIRABLE COLLISION." (It later came to light that Ms. Laurence did not know that Complainant may not have always had the documents she was bringing to Ms. Laurence, but that Complainant was bringing documents to Ms. Laurence that were being obtained from the Department as a result of the complaint process throughout the summer of 2011).

Complainant admitted giving Ms. Laurence documents as she was receiving them via the Department's complaint process. Complainant also said that Ms. Laurence was nice and did attempt to help her understand the salvage repair process because Complainant did not understand the salvage repair process. Complainant also admitted that she kept going back to Ms. Laurence because Ms. Laurence was the only one who was helping her. The Complainant indicated that she was told there was \$6,700 worth of damage and the Subject Vehicle was worth \$7,700 (in 2003); but it was not clear from the testimony presented whether Ms. Laurence actually provided this information to Complainant or whether Complainant obtained this information from elsewhere.

Ms. Laurence also stated that she assisted Complainant with getting a hearing before the Rhode Island Motor Vehicle Dealers License & Hearing Board. However, at hearing, Ms. Laurence testified that she has repeatedly told Complainant that the Subject Vehicle was a Massachusetts vehicle, subject to Massachusetts law, and the value of the Subject Vehicle in 2003 may not affect how it was treated in 2011. Ms. Laurence stated that she did assist the Complainant in determining the salvage process that the damage amount to the vehicle was eighty-eight (88) percent in 2003; however, she stated that the value now would be different

now. Later, in her testimony, Ms. Laurence did not recall providing the salvage percentage number or the value at which the Subject Vehicle sold for in 2003 because she stated that she deals with a lot of vehicles. Additionally, Ms. Laurence stated that she does not have access to the type or degree of damage but only the amount that the vehicle sold for and to whom it was sold. The only way she was able to determine that it was a damaged vehicle was because the Enterprise computer record indicated that it sold in a certain “TRA” lane, which is a damaged car designation (she explained this at hearing to corroborate her claim that she did not know the damage amount to the vehicle-she had not explained this to Complainant previously). Respondent pointed out on cross examination of Ms. Laurence that the vehicle in 2003 was a deemed a “salvage repairable” vehicle that it could be repaired and that is how it was sold.

The next witness (subpoenaed by Respondent and testified out of order) was Robert Almeida, Vice President of R&S Auto Repair in Warwick, Rhode Island. Mr. Almeida testified that he examined the Subject Vehicle in “April or May” of 2011 because Complainant stated there was a “banging or clunk noise in the rear of the vehicle.” Mr. Almeida stated there was no invoice or record of that meeting. Complainant has visited R&S Auto Repair on another matter and dealing with Mr. Almeida’s business partner.

Mr. Almeida confirmed the details on Invoice Number 432 which is an invoice conducted on the Subject Vehicle on June 21, 2011 by R&S Auto Repair Inc. (Respondent’s Exhibit 1). That Invoice indicates that as of June 21, 2011, the mileage on the Subject Vehicle was 36,400, and that the car “[m]akes all sorts of noises” and that “[C]ustomer purchased car with knowledge of salvage title, but was wanting to see the extent of the damage.” The invoice further stated that described issues related to brake pads not wearing in correctly, brake pulsating at high speeds, excessive movement in motor mounts and transmission mount. There is no reference to any problem attributed to salvage repair. Complainant signed the June 21, 2011 invoice and

therefore acknowledged that in June 21, 2011 she was aware that she “purchased the car with knowledge of salvage title, but was wanting to see extent of damage.”

Mr. Almeida also explained Joint Exhibit 4 which is a letter dated July 27, 2011 on R&S Auto Repair Inc. letterhead and addressed to the Department which stated in pertinent part that: (i) Mr. Almeida never saw the Subject Vehicle prior to February of 2011; (ii) when Complainant dropped by in February 2011, Mr. Almeida tightened the jack in the wheel well hoping to solve the noise problem; (iii) Mr. Almeida never inspected the Subject Vehicle prior to Complainant’s purchase in January 2011; (iv) Mr. Almeida never said the purchase price of the Subject Vehicle was in line with the value of the Subject Vehicle; (v) the Subject Vehicle had Complainant’s personal plates on it; and (vi) Invoice 432 accurately reflects his June 21, 2011 inspection.

Mr. Almeida testified that Complainant also asked him to submit a letter to the Department disputing Respondent’s claim in his July 8, 2011 response to the complaint (Joint Exhibit 2) that the Subject Vehicle was inspected by Mr. Almeida prior to Complainant’s purchase of the Subject Vehicle. Because Mr. Almeida was too busy to write a letter, he allowed Complainant to type the letter dated Joint Exhibit 4) letter on his letterhead and he signed it. (Respondent clarified later that his statement regarding Mr. Almeida’s inspection prior to Complainant’s purchase of the Subject Vehicle is incorrect because he was under the misunderstanding and assumption that when Complainant went for a test drive, she took it to Mr. Almeida. Complainant denies taking the Subject Vehicle for a test drive.)

Mr. Almeida also explained a letter dated August 24, 2011 (Respondent’s Exhibit 1) which is a letter (not on R&S Auto Repair letterhead but with R&S Auto Repair’s name and address typed at top of the letter) to the “Rhode Island Dealer Commission.” Mr. Almeida explained that Respondent requested that Mr. Almeida write this letter for a hearing at the Rhode

Island Department of Motor Vehicles on August 25, 2011. Respondent picked up the letter from R&S Auto Repair.

Mr. Almeida explained that because he is a technician, he is too busy to write letters; therefore, he dictated the information in the August 24, 2011 letter to his business partner, Steve Johnson. Mr. Almeida testified that there are inaccuracies in the letter and it is poorly worded. Mr. Almeida's intent was to tell his business partner the facts pertaining to the July 27, 2011 letter drafted by Complainant and to state that the Subject Vehicle was safe to drive when he inspected it. He explained that he dictated the letter to his business partner and that the first sentence in the second paragraph is poorly worded. (That sentence states that "[o]ther letters were typed by Mrs. Hicks and I refused to sign them due to inaccuracies in information about the existing problem with the vehicle.") He also stated that the sentence that states that "I dictated the events of which occurred from the inspection done on Invoice Number 432. Which she intern [sic] typed out, and photo-shopped" is also poorly worded because he meant to say that Complainant typed the letter and "photo-shopped" implies fraud which was not the case. However, Mr. Almeida testified that he stands by his statement that the Subject Vehicle has always been safe and would drive it even on a long trip and he would not have let Complainant leave his business with the Subject Vehicle if it was unsafe to drive.

Complainant was, according to Mr. Almeida, not happy about the August 24, 2011 letter and when he tried to call her to explain it, she called him names and she hung up on him.

Mr. Almeida also said that he did not call the DMV to correct the error regarding the first sentence in the second paragraph of the August 24, 2011 letter because it was his understanding that the letter was never admitted as evidence in the DMV hearing.

Complainant then asked Respondent questions pertaining to the records that Complainant had subpoenaed from Respondent. Respondent's counsel assert that the value of the Subject

Vehicle at auction (\$2,685 in Complainant's Exhibit 1) is not relevant to the issues in the salvage repair.

Complainant then sought to introduce, for the first time, issues pertaining to potential fraud in the sale of the Subject Vehicle because she claimed that the Respondent required her to purchase full comprehensive and gap insurance and her insurance company did not know that the Subject Vehicle was a repaired salvage vehicle. Complainant stated that she did not have the insurance binder or the policy and did not know details of the policy. Respondent stated that the Subject Vehicle identification number is on the title and registration and that it was Complainant that actually obtained the insurance so she should have the records. Complainant asserts that the insurance company was not told that the Subject Vehicle was a salvage vehicle and therefore she has overpaid the insurance amount and is entitled to a refund.

Respondent admitted that Complainant complained about a noise in the back of the car almost immediately after taking possession of it and that he has made numerous repairs to the Subject Vehicle in the past 11 months. These repairs (as delineated in invoices in Complainant's Exhibit 4) include: (i) on February 17, 2011, unwarrantable repairs totaling \$769.39 (and included replacement of two tires, replacement of left rear shock, rental, mounting and balance and labor); (ii) on March 22, 2011, unwarrantable repairs totaling \$269.05 (for which a rental vehicle was provided to Complainant at no cost); and (iii) on July 8, 2011, unwarrantable repairs totaling \$ 307.54 (and included replacement of "Ignition Cylinder & Pats, Recode Cylinder Affordable Lock, Install Cylinder" and were paid by Complainant in installments). There is also an estimate for repairs by Respondent dated April 7, 2011, but these repairs (totaling \$401.31 for replacement of "Frt Pads" and "Rear Pads" and "Rotors") were not performed. Respondent explained that Complainant wanted a vehicle with low mileage and he explained the reason that

the nine (9) year old Subject Vehicle had low mileage is because it was a salvage vehicle and she knew this.

The Complainant also provided a “Power Train Service Contract” (Complainant’s Exhibit 5) which she asserts covers some of the issues she was experiencing and the repairs delineated in Complainant’s Exhibit 4 described in detail above.

Respondent also indicates that Complainant as of July 8, 2011, had put 12,432 miles on the Subject Vehicle since it was purchased on January 14, 2011. And, as corroborated by Mr. Almeida, the Subject Vehicle is, and always has been, safe to drive.

Further, Respondent stated that Complainant had filed a complaint against him before the Motor Vehicle Dealers’ Board, License and Hearing Board and a Decision had been issued October 4, 2011 finding that Respondent did not violate any laws or regulations that fell within that Board’s jurisdiction. (Joint Exhibit 5).

V. DISCUSSION

A. **Complainant’s Request for Withdrawal of Complaint**

Central Management Regulation 2 (“CMR 2”) entitled, *Rules of Procedure for Administrative Hearings*, states that:

Section 11 *Motions*

- (A) General. Any Party may request that the Hearing Officer enter any order or action not inconsistent with law or these Rules. The types of motions made shall be those which are permissible under these Rules and the Rhode Island Superior Court Rules of Civil Procedure (“Super. R. Civ. P.”).

Super. R. Civ. P. 41 entitled *Dismissal of actions* addresses dismissals and states in subsection (a)(1) that:

(a) Voluntary Dismissal; Effect Thereof.

(1) *By Plaintiff; By Stipulation.* Subject to the provisions of Rule 23(e), of Rule 66(j), and of any statute of this state, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this or any other state or of the United States an action based on or including such claim.

The Complainant's unilateral withdrawal was made well after the period covered by Rule 41(a)(1)(i) which allows voluntary dismissal without order of court prior to the adverse party answering or filing a motion for summary judgment and therefore does not apply to this matter. Further, Respondent, who is represented by counsel, has not consented to the dismissal of the matter as allowed under Rule 41(a)(ii). The applicable section is Rule 41(a)(2) which states, in pertinent part, that "...an action shall not be dismissed at plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." Therefore, it is necessary for the undersigned Hearing Officer to determine whether this matter should be dismissed in light of all facts and circumstances.

In this matter, Complainant requested the withdrawal of her complaint on November 21, 2011, after the presentation of evidence, toward the close of hearing (on November 10, 2011), and after significant time and resources had been expended by the Complainant, Department, Respondent, and three (3) subpoenaed witnesses. Given these relevant and material facts and the potential for the Respondent to have to defend against these allegations in the future, the request

to withdraw the complaint in this matter is denied and the matter will be finally adjudicated in this Decision on the merits as discussed below.

B. Standard of Review for 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).

Here, the proponent of this action is the complainant, Ms. Hicks. As such, she bears the burden for establishing why it is more likely than not that Respondent conducted himself in a manner that violated the statutes under which his auto body repair shop is licensed as a salvage rebuilder.

C. Relevant Statutory and Regulatory Requirements

There are several statutes that are relevant to this proceeding including:

R.I. Gen. Laws § 31-46-1.1 entitled, *Classification of Salvage Vehicles* and states:

There shall be two (2) classifications of salvage vehicles: Classification A indicates the vehicle has extensive damage and is good for "parts only." Classification B indicates the

vehicle has considerable damage but is considered repairable. It will be the responsibility of insurance companies to evaluate and classify salvage. The classification is subject to review and evaluation by the administrator of the division of motor vehicles or his or her designee.

There was no evidence presented which indicated that the Subject Vehicle was classified as a Classification A vehicle.

R.I. Gen. Laws § 31-46-3, entitled "Salvage by non-insurers" states that:

If the total cost of repairs to rebuild or reconstruct the motor vehicle to its condition immediately before it was wrecked, destroyed or damaged, and for legal operations on the roads or highways, exceeds seventy-five percent (75%) of the fair market value of the motor vehicle immediately preceding the time it was wrecked, destroyed or damaged, and the motor vehicle is less than seven (7) years beyond the date of manufacture, the owner shall return within ten (10) days to the division of motor vehicles, the certificate of title of that vehicle and obtain a salvage certificate of title for that vehicle as prescribed for by the administrator of the division of motor vehicles. For the purposes of this section, "fair market value" shall mean the retail value of a motor vehicle as set forth in a current edition of any nationally recognized compilation of retail values, including automated databases, or from publications commonly used by the automotive industry to establish the values of motor vehicles, or determined pursuant to market survey of comparable vehicles with regard to condition and equipment. If any person, individual, or corporation or other owner sells the motor vehicle for any reason, that owner shall make application for a salvage certificate of title. The division of motor vehicles shall issue the salvage certificate of title on a form prescribed by the administrator of the division of motor vehicles that shall be of a color easily distinguished from the original certificate of title and shall bear the same number and information as the original certificate of title. The administrator of the division of motor vehicles shall charge the owner a fee of fifty dollars (\$50.00) for the cost of processing each salvage certificate of title.

The Respondent provided evidence that he complied with all inspections required by the Rhode Island Department of Motor Vehicles in December 2010 and the Car Fax report indicates that on February 18, 2011 the Rhode Island “Motor Vehicle Dept. Cranston, RI” issued a “Reconstructed Title.” Therefore, there was no evidence presented that supports a finding that Respondent violated any statutory requirement pertaining to the classification and/or repair of the Subject Vehicle pursuant to R.I. Gen. Laws § 31-46-3.

The Complainant also requested sanctions on the following sections of CLR 7:

- The Director may deny, non-renew, suspend or revoke the License of any Licensee or an Applicant for any of the following reasons:
- A. Violation of any provisions of the Act or this Regulation; ...
 - C. On proof of unfitness of an Applicant to conduct the Business of Salvage Vehicle Repairing;
 - D. Defrauding any customer; ...
 - G. Willful failure to perform work contracted for;
 - H. Failure to comply with the safety standards of the industry[.]

There was no evidence presented that supported a finding of a violation based on Sections 8A, C, D, G, and/or H of CLR 7.

D. Licensing

The Department has confirmed that Respondent was licensed and in good-standing during all relevant times pertinent to the repair and sale of the Subject Vehicle. Respondent, due to clerical error, was not put on the list of licensees that appeared on the DBR website in 2011, but in fact held an active license from April 14, 2010 through to and including August 10, 2011 and his license has been timely renewed on July 18, 2011 and is due to expire on August 10, 2014. The Department’s records show that Respondent has been licensed as an auto salvage rebuilder since December 21, 2005. Therefore, Respondent is not in violation of R.I. Gen. Laws § 31-46-7 because he was licensed during all relevant time periods pertinent to this matter.

E. Salvage Repair

The following relevant facts support the finding that Complainant knew or should have known based on the evidence presented that the Subject Vehicle was a salvage vehicle at the time of its purchase from Respondent. It is clear from the documentary evidence provided that the Subject Vehicle was a “Salvage Vehicle” at the time it was sold at auction in 2003. The Massachusetts title dated October 30, 2003 (in Joint Exhibit 2) further indicates that Subject Vehicle is a “SALVAGE VEHICLE REPAIRABLE COLLISION.” Additionally, Joint Exhibit 2 also includes the receipt of the sale of the Subject Vehicle dated January 15, 2011 (and signed by Complainant and initialed by her in fourteen (14) different items on the two (2) page document) which also states “Mass. Salvage Title” on the first page.

Respondent also signed the June 21, 2011 Invoice 432 from R&S Auto Repair which indicates that “Customer purchased car with knowledge of salvage title, but was wanting to see extent of damage.”

The Respondent provided all required records and evidence that he purchased a salvage repairable vehicle and provided evidence (including photos of the vehicle that the parts came from and an estimate of the repair details and cost) that he repaired it. The Subject Vehicle passed a safety inspection and all documentation was provided as part of the Department’s complaint process.

Additionally, even though Mr. Almeida provided some questionable written documents to the DMV (at Respondent’s request), he did appear sincere in his testimony and did explain all issues clearly. Mr. Almeida’s testimony corroborated Respondent’s assertion that the Subject Vehicle has been safe to drive. The 12, 432 additional miles on the Subject Vehicle (as of July 2011) also supports a finding that it was sold as an operable and safe vehicle. There was no testimony (other than Complainant’s assertions) that the Subject Vehicle was found to be unsafe

to drive nor was there any testimony that there were any issues with the salvage repair of the Subject Vehicle. The testimony regarding the percentage of damage at purchase, in 2003, from Enterprise was not supported by any documentary evidence and the inclusion of the “SALVAGE VEHICLE REPAIRABLE COLLISION” designation on the Massachusetts title of the Subject Vehicle (from 2003) was not rebutted or explained by Complainant. The DMV Decision also found no wrong-doing by Respondent as a dealer. For the reasons stated herein, the evidence was not sufficient to support a finding that Respondent violated any statutory or regulatory requirements in the repair of the Subject Vehicle.

VI. FINDINGS OF FACT

- A. The facts contained in Sections I, IV and V are incorporated herein.
- B. Under the standard set forth in Section V (B) and the statutory framework and analysis set forth in Sections V (C), (D), and (E), there is no evidence presented to establish by a preponderance of the evidence that Respondent violated any statutory or regulatory requirements.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:


- A. The Department has jurisdiction over this matter as set forth in Section II, *supra*.
- B. Under the analysis set forth in Section V (A), Complainant’s request to withdraw the complaint in this matter is denied pursuant to CMR 2, Section 11, and Super. R. Civ. P. 41(a)(2) based on the timing of the withdrawal toward the conclusion of the hearing and resource expended by all parties and witnesses at the time of withdrawal.

- C. Under the standard set forth in Section V (B) and the statutory framework and analysis set forth in Section V (C), (D), and (E), Complainant failed to establish: (i) that Respondent violated R.I. Gen. Laws § 31-46-7 by engaging in unlicensed activity; and/or (ii) that there is a basis to sanction Respondent's Salvage Rebuilder License pursuant to CLR 7 Sections 8A, C, D, G and/or H.

VIII. RECOMMENDATION

For the reasons stated herein, Complainant's request to withdraw the complaint in this matter is denied. The undersigned Hearing Officer finds that Complainant failed to substantiate the allegations⁴, and therefore, the complaint lacks merit and recommends that the complaint be dismissed with prejudice.

By:



Neena Sinha Savage
Hearing Officer

Date: 3/8/12

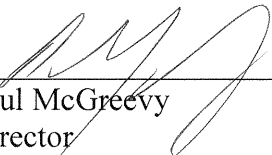
⁴ Complainant has copied the undersigned Hearing Officer on numerous emails since the close of the hearing. These emails include counsel, Respondent, other agencies' representatives including the DMV, Governor's office, Department, Attorney General and often include issues that were not properly identified or submitted for consideration in this proceeding; and, therefore, are not set forth in this Decision.

IX. ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 9 March 2011



Paul McGreevy
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION AND DECLARATORY RULING 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 ITSELF DOES NOT STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

All are welcome at the Rhode Island Department of Business Regulation ("DBR). If any reasonable accommodation is needed to ensure equal access, service, or participation, please contact DBR at 401-462-9551, RI Relay 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the meeting or hearing.

CERTIFICATION

I hereby certify on this 9th day of March 2012 that a copy of the within Order was sent by first class mail, postage prepaid and certified mail to:

Complainant: Phyllis Hicks, P.O. Box 8013, Cranston, RI 02920;

Respondent: Thomas Dunn, Standard Auto Body, 379 Roosevelt Avenue, Pawtucket, RI 02860

Respondent's Counsel: Robert Testa, Esq., 411 Broadway, Providence, RI 02909

and also to the following parties at the Department of Business Regulation by electronic mail:

Neena Sinha Savage, Hearing Officer

Maria D'Alessandro, Deputy Director, Division of Commercial Licensing

Kimberly Precious, Implementation Aide

