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:	:	
JOE'S TOWING, INC. d/b/a RI AUTO BODY,	:	**DBR No. 11-L-0002**
Respondent.	:	

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: June 6, 2011

Appearances: For the Respondent: Marvin Nadiger, *pro se*

For the Department: Neena Sinha Savage, Esq.

I. INTRODUCTION

On September 19th, 2009 the Rina Guillermo ("Complainant") and her husband, Rafael[1] were involved in a motor vehicle collision which significantly damaged their 2005 Nissan Frontier ("Vehicle"). The Warwick Police had the car towed to Joe's Towing, Inc. d/b/a RI Auto Body ("Respondent"). The Complainant alleges that the Respondent defrauded her and her husband and son by taking an extraordinarily long time to complete the repair of her vehicle, making misrepresentations to them and performing an inadequate and unsafe repair of

[1] The Complainant's husband passed prior to the complaint being submitted to the Department.

This matter came for a hearing pursuant to the Department of Business Regulation's ("Department") Order To Show Cause, Notice of Hearing and Appointment of Hearing Officer ("Notice") issued by the Department on February 18, 2011 to the Respondent. The hearing was held on the morning of June 6, 2011 at the Department.[2] The Respondent's owner, Marvin Nadiger appeared *pro se* at the hearing.

II. JURISDICTION

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

III. ISSUES

The issue in this matter is whether or not the Respondent's automobile body repair license should be suspended or revoked or other administrative penalty assessed, for acts which violated R.I. Gen. Laws §§ 5-38-10(1),(3),(4),(8), and (9). Also at issue in this matter is whether the Respondent violated R.I. Gen. Laws §§ 5-38-18, 5-38-28 or 5-38-29.

IV. 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,

[2] The original hearing date was to be March 4, 2011, which became a pre-hearing conference. The hearing was then rescheduled for May 12, 2011. An Order Granting Continuance was ordered on May 12, 2011 rescheduling the hearing for June 6, 2011.

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).

V. MATERIAL FACTS AND TESTIMONY

The Department and the Respondent jointly presented two exhibits into the record. In addition, the Department presented ten exhibits on its own into the record. The Department questioned the Respondent's owner Marvin Nadiger as well and presented three witnesses on its own, Raymond Jayzak, Kenneth Guillermo, and Kim Precious. The Respondent presented no witnesses.

The first joint exhibit is a document listing the estimates of all parts needed to repair Complainant's vehicle prepared by Nationwide Insurance on October 11, 2009. This document was faxed to the Respondent on the same day. See Joint Exhibit A.

The second joint exhibit is a collection of receipts for the purchase of vehicle parts needed by the Respondent to repair Complainant's vehicle. A calculation prepared by counsel for the Department, Neena Sinha Savage, is attached as well.

The Department submitted ten (10) documentary exhibits, which were admitted as full. They were as follows: Department's Exhibit number One is a completed complaint form from the Division of Commercial Leasing and Racing and Athletics. Department's Two is a letter from Kim Precious, an Implementation Aide for the Division of Commercial Leasing and Racing and Athletics, to the Complainant confirming the receipt of the complaint by the Department.

Department's Three is a written estimate from Nick's Auto Body. Department's Four, a letter from Kim Precious to the Respondent including the complaint by the Complainant asking for an answer. The Department's fifth exhibit is the Respondent's answer to the complaint. The Department's sixth exhibit is a letter from Kim Precious to the Complainant enclosing the answer by the Respondent and asking for a rebuttal if one exists. The Department's seventh exhibit is a letter from Kim Precious to the Respondent confirming receipt of the answer and asking for specific documents to further the Department's investigation. The Department's eighth exhibit is the Complainant's rebuttal to the Respondent's answer written by the Complainant's son, Kenneth Guillermo. The Department's 9A through 9M is a collection of photographs of the Complainant's vehicle at Nick's Auto Body after the repairs done by the Respondent, but before the repairs by Nick's Auto Body.

The Department's final exhibit is a measurement report done by Nick's Auto Body to determine the damage to the frame of Complainant's vehicle. (Department's Exhibit Ten).

The first testimony offered at hearing was from Marvin Nadiger, owner and operator of the Respondent R.I. Auto Body. Mr. Nadiger testified that he has been in the auto body repair business for about twenty-six years, all of which in his present business entity. Mr. Nadiger testified that he indeed worked on the Complainant's vehicle from the time it was towed to his shop until the Complainant picked up the vehicle on February 25, 2010. The damage he observed when he first saw the vehicle in November of 2009 was to the driver's side, including the door, hood and headlight. His opinion of the damage was structural or "bolt-on" in nature, damage to the suspension, and limited frame or "non-structural" damage. In describing repairs to the vehicle frame, he indicated that it he felt it was bent from one-eighth to one-quarter bent, and it took approximately six hours to "tweak" it.

Countering what the complaint alleges, that Mr. Nadiger is at fault for the five month time period it took to repair the vehicle, he testified that in fact it was a constant flow of orders to stop work by the Complainant's husband. Mr. Nadiger also testified that the five month period was not unreasonable because of the bad economy.

He stated that due to the economic downturn, many suppliers did not keep inventory on site. He contends that he would have had to order almost all the parts in order to repair the Complainant's vehicle. The Respondent stated that he could not start the work until he was authorized to, which did not happen until October 11, 2009. See Joint Exhibit A.

According to his testimony, he has never had a customer return to his shop to complain that a repair was done incorrectly, in the 26 years he has been in business.

When questioned later in the hearing regarding the practices and procedures used in his business to undertake such repairs, the Respondent testified that he is unfamiliar with the requirements for collision repair set forth in CLR 4, §4(B). He indicated he does not use "high-end" computer testing equipment, but uses a machine called a Tran-Gauge instead, and has done so since 1997. He described the machine as "like a tape measure." He also testified that he does not keep any records or print-outs of the tests he conducts, that he is not a "preferred shop" and that he does not prepare or maintain formal damage estimates, but relies solely on the estimate prepared by insurance adjusters.

The Department next presented Raymond Jayzak as a witness. Mr. Jayzak has been in the auto body repair business for about 35 years and has specialized in frame straightening for 30 of those years. He testified that he has worked at Nick's Auto Body in Providence, Rhode Island for about 26 years.

Mr. Jayzak testified that he was familiar with the Complainant's vehicle and that he first saw it on August 19, 2010. He testified that the vehicle's left front wheel was rubbing and causing wear and tear on the new tire. Mr. Jayzak explained that this rubbing was by-product of a condition called diamonding. A diamond condition is when one part of the frame is so out of alignment with the other sides as to create a diamond shape. Nick's Auto Body conducted a test to determine the damage. See Department's Exhibit number ten. They also conducted a test after their repairs, which showed that the alignment was fixed. See Id.

Mr. Jayzak was qualified as an expert on auto body frame damage. He testified that the damage sustained to the frame of the Complainant's vehicle could not have resulted from normal wear and tear, a pothole or added mileage. Instead, he stated that it was not repaired properly in the first place. To prove this point, Mr. Jayzak referred to photographs taken of the vehicle before he started to work on it. In one photo it clearly shows that instead of aligning a bolt with its hole, Respondent drilled a new hole. See Department's Exhibit number 9B. Also, Mr. Jayzak testified that there were not enough bolts installed to properly support the frame, which created a significant safety issue.

The Department's next witness was Kenneth Guillermo. Mr. Guillermo is the son of the Complainant and her husband. He testified that starting around November of 2009; he assumed most of the dealings surrounding the vehicle due to his father's failing health. Mr. Guillermo also testified that he went with his father to speak to Mr. Nadiger about the vehicle a couple of days after the accident occurred in September. He stated that the reason they chose the Respondent business was that the vehicle had been towed there, not because they were familiar with it. According to him, Mr. Nadiger told them that the collision damage "was repairable".

He further testified that he maintained contact with Mr. Nadiger during the five month repair period, and that whenever he called to check on the car, Mr. Nadiger gave him excuses for why the work was not completed yet. The vehicle was returned to Mr. Guillermo's father on February 24, 2010. His father reported that he heard "rubbing" on the left side of the vehicle. This was reportedly told to Mr. Nadiger "repeatedly" by telephone. His father then brought the vehicle to a Sunoco service station where it was aligned, and the repairer said that it "looked fine to him."

In April, Mr. Guillermo himself drove the vehicle and discovered that it was pulling to the left. Mr. Guillermo did not call the Respondent, but instead took it to Nick's Auto Body, where it was repaired by Mr. Jayzak. Mr. Guillermo stated that the reason the family did not notice this pull between February and April is because his father primarily drove it on city streets and not on the highway.

The mileage of the car proved to be an elusive number throughout the hearing. The original mileage found on the purchase agreement for the vehicle and the certificate of title in late 2008 and early 2009 is 56,904 miles. (Department's Exhibit #8.) The only discrepancy in what Complainant has provided to the Department is that on the application for registration with the Rhode Island Department of Motor Vehicles it states the mileage as 58,000. See Id. The Nationwide insurance estimate dated October 2009 states the mileage was 58,400. (Joint Exhibit A)

Mr. Guillermo testified that on July 1, 2010 the Complainant re-registered the car in her name and the mileage was 70,161. On the date of the hearing Mr. Guillermo testified that the mileage was now 76,000. These numbers are important to Mr. Nadiger's defense in this matter, as he alleges that the re-repair was necessary only due to wear and tear over the course of an

additional 14,000 miles driven between February and April when Mr. Nadiger next saw the vehicle. Mr. Guillermo alleges it was closer to an additional 7,000 miles and that the Nationwide estimate was an error. Either way, Mr. Jayzak's expert testimony states that the problems the vehicle faced could not come from any amount of wear and tear, which renders the question of mileage to be a moot point.

There was confusing and contradictory evidence presented regarding a car rental by the Complainant. Mr. Guillermo testified that after the collision, Nationwide Insurance extended payment coverage for a rental car for a thirty day period. The Complainant contends that she and her family were unaware that this coverage only lasted thirty days, which would have ended on October 27, 2009. Hertz contacted the family for return of the car on December 14th, and billed the Complainant for the additional rental time. On December 14, 2009, they asked for a loaner car from the Respondent on December 15, 2009, which he provided. This car was uninspected and the Complainant's husband had to do this task. The Complainant also paid off the excess rental car fees. The Complainant is alleging that these fees would not have been incurred had the Respondent completed the repairs in a timely manner. Mr. Nadiger claims that he offered the loaner car the entire time and that the Complainant should have known what length of rental coverage his policy provided before he agreed to the rental. Indeed, when asked by the Hearing Officer whether the Complainant checked with the insurance carrier or the policy itself to see what rental coverages were provided, Mr. Guillermo indicated that he did not believe his father had done so.

The last witness presented by the Department was Kim Precious. Ms. Precious is an Implementation Aide in the Department's Division of Commercial Licensing and Racing and Athletics where she licenses applicants and handles complaints and enforcement actions. She

testified that the in her opinion the repairs Nick's Auto Body had to do on the vehicle indicate poor service from the Respondent that should lead to fines. She also testified that it is likely that the mileage stated on the Nationwide Insurance estimate was, in fact, a mistake. Joint Exhibit A.

VI. DISCUSSION

R.I. Gen. Laws § 5-38-10 provides that the Department, after a due and proper hearing, may suspend or revoke a license for upon proof that the holder of the license has engaged in certain conduct enumerated in the statute. In addition, R.I. Gen. Laws § 5-38-10.1 provides that, in addition to suspension or revocation of a license, the Department may levy an administrative penalty not exceeding one hundred dollars ($100) for any violation under Chapter 38 or the rules and regulations promulgated thereunder.

The facts alleged in this complaint and charged by the Department in this administrative enforcement action implicate four (4) of the bases set forth in R.I. Gen. Laws § 5-38-10. Each will be addressed in turn.

A. R.I. Gen. Laws § 5-38-10(1) – Unfitness.

The first provision implicated is R.I. Gen. Laws § 5-38-10(1), which authorizes the Department to suspend or revoke a license "on proof of unfitness of the applicant to do business as an automobile body repair shop[.]"[3] While "unfitness" is not defined in the statute, it is reasonable to assume that the legislature contemplated its plain and ordinary meaning given the unambiguous nature of this provision. Courts routinely "look to the plain and ordinary meaning of the statutory language" when engaging in statutory construction. Henderson v. Henderson, 818

[3] While Respondent is not an applicant, there was no dispute that this provision applies to licensees as well.

A.2d 669, 673 (R.I. 2003) (citing Pier House Inn, Inc. v. 421 Corp., 812 A.2d 799, 804 (R.I. 2002)).

"Unfitness" generally refers to being unsuitable, unqualified, or incompetent.[4] Thus, in the auto body repair regulatory context, a finding that the licensee is "unfit" to do business as an automobile body repair shop would mean that it does not meet the statutory criteria for licensure. Here, the statute and regulation contains several criteria that must be met before a license will issue or be renewed. For example, an applicant or licensee must provide evidence of financial responsibility.[5] It must have a service repair shop and related tools and equipment having a minimum value of $10,000 at the time of licensure or renewal.[6] In addition, an applicant or licensee must have a garage or work area enclosed within a building with sufficient space to repair motor vehicle bodies, including fenders, bumpers, chassis and similar components.[7] It must also have certain equipment such as electrical and/or hydraulic pulling equipment; a four (4) point clamping system to secure vehicles; welding equipment; equipment/gauges capable of measuring symmetrical and asymmetrical vehicles; and a paint system or access to a paint system capable of meeting the original manufacturers' requirements.[8] Licensees are also required to have their staff meet certain industry certifications in auto body repair as well.[9] Thus, whether or not a licensee is unfit to engage in the business of auto body repair depends upon the licensee's suitability, qualifications, and/or competence to do the actual work of auto body repair.

There was evidence presented during the hearing which certainly brings into question whether the Respondent business would be the best choice by a consumer to engage in frame

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[4] See *Random House Unabridged Dictionary*, 2006 Ed.
[5] See R.I. Gen. Laws § 5-38-6.
[6] Section 4(B) (v) of *Commercial Licensing Regulation 4 – Motor Vehicle Body Repair.*
[7] See R.I. Gen. Laws § 5-38-1.
[8] See Section 4(B)(i) of *Commercial Licensing Regulation 4 – Motor Vehicle Body Repair.*
[9] See *Commercial Licensing Regulation 16 – Motor Vehicle Body Repair Technician Certification.*

repairs such as were necessary in this case. While it does appear that the Respondent business fails to meet at least some of the regulatory qualifications and requirements set forth above, there was not sufficient evidence presented which would indicate that this licensee is altogether "unfit" to do business as an automobile body repair shop due to a failure to meet the statutory criteria for licensure.

Certainly, the Respondent's testimony that he is unfamiliar with the requirements for collision repair set forth in CLR 4, § 4(B) points to a less than desirable level of responsibility on the part of a Licensee of the Department. Inherent in the issuance of any license by a State regulatory body is the presumption that the party holding the license accepts their responsibility to know and comply with the laws and regulations which bind them.

Mr. Nadiger's admission that he does not use "high-end" computer testing equipment, but uses a machine which acts "like a tape measure" for frame damage indicates that his shop is most certainly not the most qualified to perform this type of repair. The evidence does indicate that the repair of this Complainant's vehicle which was undertaken by the Respondent was not done completely, or by following the best practices used in the industry. These facts alone, however, do not constitute "unfitness" as previously discussed.

To assist in reaching this conclusion, the Hearing Officer considered that Respondent testified that this case is the first time in his twenty-six years in this business that a customer returned a vehicle for insufficient repair, and that no evidence was presented showing previous complaints of that nature having been filed against this Licensee.

B. R.I. Gen. Laws § 5-38-10 (4) - Defrauding any customer, and
R.I. Gen. Laws § 5-38-10 (8) - Willful failure to perform work contracted for.

To meet the common definition of "defraud", one must make a misrepresentation of an existing material fact, while either knowing it to be false or making it recklessly without regard to whether it is true or false, intending that one would rely on such misrepresentation to their detriment.[10]

While there is no testimony that the Respondent made a spoken misrepresentation to the Complainant in this regard, it is certainly inherent and may be inferred that when he returned the vehicle after his attempt at repairing it, that it had been repaired properly and was in a safe condition to operate. The testimony and evidence, on the contrary, indicate that the vehicle was not. The detriment, in this case, was to the Complainant's safety and well-being while operating the vehicle in the condition it was returned to him by the Respondent.

The testimony of the Department's expert witness is highly credible and reliable. The condition of the Complainant's vehicle after the Respondent's repair rendered it to be unsafe, and the Respondent misrepresented to the Complainant that the repair was complete. Though the Respondent does not acknowledge that he did not repair the vehicle appropriately, the other evidence adduced at hearing indicates that he should have known his repair was incomplete, and his assertion to the Complainant that the vehicle was safe to drive was, indeed, reckless.

As set forth previously herein, the Respondent should have known, and likely did know, that his repair methods did not meet or exceed industry standards. He testified that he has been in the auto body repair business for twenty six years. During that time, he certainly was aware of what methods and technology were available for repairs such as this.

[10] See *Black's Law Dictionary,* Seventh Ed.

The five month time span that the Respondent claimed to be working on the vehicle and the seemingly baseless excuses he repeatedly provided to the Complainant were made intentionally and willfully. Those excuses, combined with the fact that the vehicle was not repaired properly, do point to conduct intended to defraud the consumer. It is reasonable to expect that over a five month period, an auto body repairman with 26 year's experience would have noticed the diamonding that had occurred because of the accident.

It is clear from the evidence that this Respondent did, in fact, fail to adequately perform the work contracted for. In determining whether that conduct, or failure to perform, was willful, one need only determine that the conduct was intentional. By definition, the term "willful" does require that the conduct is malicious; rather that it creates "a condition shown by the intentional disregard of a known duty necessary to another's safety of person or property."

This Respondent, in his disregard of the need to utilize the most appropriate repair techniques and equipment available to him, did act intentionally. That disregard in this case, placed the safety of the Complainant and the public at large in jeopardy.

C. R.I. Gen. Laws § 5-38-10 (9) Failure to comply with safety standards of the industry

The auto body professional presented by the Department was qualified as an expert in the in auto body repair based on thirty five years in the industry, with the majority of that time concentrating in vehicle frame straightening. His testimony was credible and reliable, and was uncontradicted by anything in the record. In addition, he actually viewed, assessed and corrected the repair which was attempted by the Respondent. His statements were of great

value therefore not only as they related to this specific vehicle repair, but also in establishing a report of the current industry standards for such repairs.

He substantiated his testimony with the introduction of numerous photographs of the Complainant's vehicle while under repair in his shop, measurement reports created with the frame analyzing equipment used, and a detailed and comprehensive work estimate. It is noteworthy that the Respondent presented no independent evidence to substantiate his claim that he completed a proper repair in this case, rendering his statements to be less than reliable.

The expert testified that, when he first viewed the vehicle after the attempted repair by the Respondent, its left rear wheel was rubbing, the body lines did not line up, the car went "sideways down the road" and the front cross member was held on by one bolt, where four bolts were required. In addition, he observed that the front and rear door were overlapping and the vehicle alignment was "two inches off."

In his opinion, this was the result of a poor attempt at a repair job. Instead of straightening out the frame, which was necessary to properly repair this type of damage, the Respondent cut a new hole and bolted the vehicle back together. (Department's Exhibit number 9B). This witness further testified that it was clear that the Respondent failed to use the required number of bolts for this process, and as a result caused a significant safety issue.

According to his testimony, the frame of the vehicle was not pulled out and repaired properly by the Respondent, the doors were not repaired properly and the Respondent's failure to properly perform these repairs left the vehicle in an unsafe condition to be driven. In order to properly repair the deficits remaining after leaving the Respondent's business, he necessarily performed an additional forty hours work on the vehicle.

He further testified that, in his expert opinion, the damage he viewed on Complainant's vehicle could not have been caused by the vehicle having been driven another 7000 miles after leaving Respondent's shop, hitting a pothole, high mileage or general wear and tear, as the Respondent argued. Rather, this is a sturdy framed vehicle, and the repairs performed by the Respondent (if done appropriately) should have lasted for the life of the vehicle.

In the evidence submitted by the Department and in the testimony adduced at hearing, three factors are clear. The repair undertaken by the Respondent took an unnecessarily lengthy period of time (five months), the repairs were incomplete when the vehicle was returned to the owner, and the work which was performed by the Respondent was below industry standards.

In addition, the Department established that the Respondent failed to meet the requirements of R.I. Gen. Laws § 5-38-18, which provides that states that up to date records must be kept for all used parts bought by an auto body repair shop. The Respondent could not produce, admitted to not having all of his receipts during the hearing when asked by the Department.

Further, he failed to comply with the requirements of R. I Gen. Laws § 5-38-29 - Repair bills, which requires that each repair bill shall contain an itemized listing of the manufactured parts, used parts, and generic parts installed by the licensee in the repair of the vehicle. Again, the Respondent could not produce a repair bill as specified by statute, rather relied on the damage estimate created by Nationwide Insurance.

Taken together, there is sufficient and competent evidence in the record that the Respondent willfully failed to perform work as contracted, failed to comply with safety

standards of the industry, defrauded the Complainants, and failed to comply with the record-keeping requirements of Title 5, Chapter 38 of the Rhode Island General Laws.

VII. FINDINGS OF FACT

1. The facts contained in sections V and VI above are reincorporated by reference herein.
2. Under the standard set forth in Section V and the statutory framework and analysis set forth in Section VI, there is sufficient evidence to establish by a preponderance that the Respondent failed to willfully failed to perform work as contracted, failed to comply with safety standards of the industry, defrauded the Complainants, and failed to comply with the record-keeping requirements of Title 5, Chapter 38 of the Rhode Island General Laws.

VIII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter as set forth in Section II, *supra.*
2. As established herein, the Department has proven by a preponderance of the evidence that the Respondent defrauded the Complainant by misrepresenting the amount of time required to repair the Complainant's vehicle, and that the vehicle was repaired to be in a safe condition to be driven, in violation of R.I. Gen. Laws § 5-38-10 (4).
3. As established herein, the Department has proven by a preponderance of the evidence that the Respondent willfully failed to perform work contracted for by not repairing the Complainant's vehicle in a timely manner, and by performing an incomplete,

the Complainant's vehicle in a timely manner, and by performing an incomplete, improper and unreliable repair of the Complainant's vehicle, in violation of R.I. Gen. Laws § 5-38-10 (8).

4. As established herein, the Department has proven by a preponderance of the evidence that the Respondent failed to comply with safety standards of the industry by failing to utilize the equipment, materials and methods required for a proper and safe repair of the Complainant's vehicle, in violation of R.I. Gen. Laws § 5-38-10 (9).
5. As established herein, the Department has proven by a preponderance of the evidence that the Respondent failed produce receipts and/or an itemized repair bill listing the manufactured parts, used parts, and generic parts installed in Complainant's vehicle, in violation of R. I Gen. Laws §§ 5-38-18, and 5-38-29.

IX. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that Respondent's license be suspended for a period of seven (7) days and pay an administrative penalty in the amount of four hundred dollars ($400.00) in accordance with the maximum fine allowed pursuant to R.I. Gen. Laws § 5-38-10.1.

Alternatively, at the Respondent's option, the Respondent may pay an administrative penalty in the amount of two thousand dollars ($2,000.00) in lieu of suspension and all other fines. The Respondent shall inform the commercial licensing division no later than thirty (30) days from the date of this decision as to which alternative it has selected.

Dated this 18th day of January, 2012.

Ellen R. Balasco, Esq.

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: 1/18/2012

Paul McGreevy
Director

Louis A. DeQuattro, Esq.
Deputy Director & Executive Counsel
on behalf of Paul McGreevy

ENTERED as Administrative Order No. 12-01 on the 18th day of January, 2012.

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 on this 18th day of January, 2012, that a copy of the within Decision was sent by first class mail, postage prepaid to: Marvin J. Nadiger, Respondent, at Joe's Towing d/b/a RI Auto Body, 455 Warwick Avenue, Warwick, RI 02888, and by electronic mail to the following parties at the Department of Business Regulation:
Neena Sinha Savage, Esq., Maria D'Alessandro, Deputy Director – Division of Commercial Licensing, Public Protection Inspector and Kim Precious, Implementation Aide.