

**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 69-2
CRANSTON, RHODE ISLAND 02920**

In the Matter of:

Ideal Auto Body, Inc.,

Respondent.

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DBR No.: 19AB001; -03; --05; -06

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause Why License Should not be Revoked or Otherwise Sanctioned, Notice of Hearing, and Appointment of Hearing Officer (“Order to Show Cause”) issued by the Department of Business Regulation (“Department”) to Ideal Auto Body, Inc. (“Respondent”) on October 29, 2019.¹ The Respondent holds an automobile body repair license (“License”) pursuant to R.I. Gen. Laws § 5-38-1 *et seq.* After the exchange of discovery and status conferences, this matter was heard on July 23, and August 12 and 13, 2021. The parties were represented by counsel and briefs were timely filed by October 8, 2021.²

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-38-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings* (“Hearing Regulation”).

¹ The Department filed a motion to amend the Order to Show Cause to which the Respondent did not object. This motion was granted by the undersigned on June 18, 2020.

² Both parties filed briefs but did not file reply briefs.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-38-10(3), (4), (7), (8), and/or (9); R.I. Gen. Laws § 5-38-29; R.I. Gen. Laws § 5-38-18; R.I. Gen. Laws § 27-10.2-2; and R.I. Gen. Laws § 27-10-1.2, and if so what is the appropriate penalty.

IV. TESTIMONY AND MATERIAL FACTS

The parties filed an agreed stipulation of facts (“ASOF”) and agreed to exhibits as follows:

1. The Respondent is located and currently operating at 1398 Park Avenue, Cranston, RI 02920.
2. During the entirety of the pertinent time period (*i.e.*, January 29, 2016 to the date of signature of this Pre-Hearing Stipulation) Respondent has possessed an active Motor Vehicle Body Class B License AB.000370-B.
3. Daniel S. Davey is the listed owner, President, Secretary, and Treasurer of Respondent.
4. Prior to the initiation of this matter, the Department received four complaints against Respondent (initially labeled in the Order to Show Cause as “Complaint A,” “Complaint B,” “Complaint C,” and “Complaint D,” and hereinafter referred to as such). (Stipulated Exhibits 1, 10, 17, & 24.) [DBR0141-4, DBR0435-9, DBR0246-7, and DBR0001-2].

Complaint A - Bessette

5. John Bessette filed Complaint A, DBR No. 19AB001, with the Department on or about January 24, 2019. (Stipulated Exhibit 1.) [DBR0141-4].
6. Complaint A alleges poor workmanship of repairs to a 2013 Subaru Impreza Sport Wagon (the “Subaru”). (Stip. Ex. 1.) [DBR0141-4].
7. Mr. Bessette’s spouse, Alicia J. Bessette, drove the Subaru when it was involved in a collision on November 25, 2018. (Stip. Exhs. 1 & 6.) [DBR0143-44, DBR 0133-6].
8. On November 25, 2018, the Bessettes brought the Subaru to Respondent for repairs. (Stip. Exhs. 1 & 4.) [DBR0146, DBR0174, Ideal 001632].
9. Following the collision, the Bessettes filed a claim with their insurer, GEICO General Insurance Company (GEICO”). (Stip. Exhs. 1, 5 & 6.) [DBR 0133-6, 0143-4, 0121].

10. On November 30, 2018, GEICO sent a licensed motor vehicle damage appraiser to inspect the Subaru. The written appraisal identified that the total cost of all the required repairs would cost \$6,430.46, which GEICO would reimburse minus a \$500 deductible. (Stip. Exhs. 1 & 5) [DBR146-54, DBR0124-32].

11. Alicia Bessette authorized GEICO to pay Respondent directly. (Stip. Ex. 4.) [DBR0122-3].

12. Respondent received a check from GEICO for \$5,930.46 for the repairs to the Bessettes' Subaru on December 11, 2018. (Stip. Exhs. 1 & 7.) [DBR0143-4, Ideal 1631].

13. On January 7, 2019, Respondent informed Ms. Bessette that the repairs to the Subaru were completed. (Stip. Ex. 1.) [DBR0143].

14. On January 7, 2019, when the Bessettes arrived at Respondent to obtain the Subaru, the Bessettes claimed that Respondent refused to provide a complete repair bill. (Stip. Ex. 1.) [DBR0143].

15. On or about January 15, The Bessettes complained that Respondent provided the Bessettes with a receipt of \$1,097.92 for parts. (Stip. Ex. 1.) [DBR0145, 162].

16. Respondent's files related to the Bessettes and Complaint A totaled 23 pages. (Stip. Ex. 7.) [Ideal 1630-52].

17. Respondent's files included invoices for some of the parts used to repair the Bessettes' vehicle. (Stip. Ex. 7.) [Ideal 1635, 1649-51].

18. Respondent's files did not contain a separate copy of that repair bill besides the copy that the Bessettes had given to the Department with their complaint. (Stip. Ex. 7.) [Ideal 1639].

19. The difference between the amount GEICO paid to Respondent (\$5,930.46) and the repair cost evidenced by the repair bill given to the Bessettes (\$1,097.92) is \$4,832.54 ("Difference A"). (Stip. Exhs. 1 & 7.) [DBR 0143-4, Ideal 1631].

20. Difference A has not been returned to the Bessettes.

21. After recovery of the Subaru from Respondent on January 7, 2019, Mr. Bessette noticed that the Subaru's hood did not fit correctly, that parts of the body were scratched, and that the exterior paint was uneven. (Stip. Ex. 1.) [DBR0143].

22. On January 17, 2019, a supervising appraiser from GEICO, Chienchia Liao, met with the Bessettes to assess Respondent's repairs upon the Subaru. (Stip. Exhs. 1 & 8.) [DBR 0143, DBR 0192 (*to be produced under seal*)].

23. On January 17, 2019, Appraiser Chienchia Liao noted that the Subaru was not

repaired according to the estimate. (Stip. Exhs. 3 & 8) [DBR0174, DBR192 (*to be produced under seal*)].

24. The Auto Body Association of Rhode Island (“ABARI”) engaged Wreck Check Assessments of Boston, LLC (“Wreck Check”), to inspect the Subaru.

25. On or about February 2, 2019, the Subaru was inspected by Robert E. Collins, Jr. (“Collins”), owner of Wreck Check. (Stip. Ex. 9.) [DBR0175].

26. On or about February 3, 2019, Wreck Check produced a report (“Report A”) that included discussion of the February 2, 2019 inspection, factual findings, and 16 digital photographs of the Subaru. (Stip. Ex. 9.) [DBR0175-88].

27. Report A identified several concerns including that the Subaru “is unsafe due to the structural damage” and that it “has not been restored in a quality and workmanlike manner.” (Stip. Ex. 9.) [DBR0175].

28. Report A also indicated that “many parts and labor operations listed on the estimate were not completed” by Respondent. (Stip. Ex. 9.) [DBR0176].

29. Mrs. Bessette signed a waiver regarding repairs not being made according to the estimate that was dated November 26, 2018. (Stip. Ex. 7.) [Ideal 01634].

30. The GEICO estimate of repairs to be done was prepared on November 30, 2018. (Stip. Ex. 9.) [DBR 0124].

31. The GEICO estimate identified nine separate parts that each was estimated to cost more than \$100, including a Bumper cover, an Impact bar, a Grille assembly, two Headlamp assemblies, a Radiator, CAPA Hood, and two CAPA fenders. (Stip. Exh. 5.) [DBR0125-7].

32. Respondent’s files included receipts for five parts, including a hood ornament, a CAPA hood, a bumper cover, a grille and a “center moulding” for the grille. (Stip. Ex. 7.) [Ideal 1649-51].

33. Respondent has turned over copies of all its files related to certain customers pursuant to written discovery in this matter.

34. Respondent’s files contain no other records of receipts for parts used in the repair of the Subaru. (Stip. Ex. 7.) [Ideal 1630-52].

35. Respondent’s files do not contain a final bill for the Bessettes other than a document dated January 15, 2019. (Stip. Ex. 7.) [Ideal 1639].

36. The document referenced in paragraph 35 does not itemize whether the parts used to repair Bessette’s³ vehicle were OEM [original equipment manufactured], used or aftermarket.

³ The stipulation referenced the Masello car but that is an error as the section applies to the Bessette vehicle.

Complaint B – Masello

37. Rachelle R. Masello (“Masello”) filed Complaint B, DBR No. 19AB003 with the Department on or about May 2, 2016. (Stip. Exh. 10.) [DBR0435-9].

38. Her Complaint alleges improper repairs to Ms. Masello’s 2014 Chevrolet K 1500 Silverado Crew LT Pick Up Truck (“Chevrolet”). (Stip. Ex. 10.) [DBR0435-9].

39. The Chevrolet was involved in a collision resulting in damage and following the collision Ms. Masello filed a claim with her insurer, GEICO. (Stip. Ex. 15.) [DBR0596].

40. On or about February 2, 2016, Ms. Masello brought the Chevrolet to Respondent for repair. (Stip. Exhs. 10, 14.) [DBR0437, Ideal 001507].

41. On February 4, 2016, the Chevrolet was inspected by a licensed motor vehicle damage appraiser for GEICO who found there to be \$6,899.68 in repairs needed, less a \$300 deductible, for a total of \$6,599.68 available from the insurer to repair the Chevrolet. (Stip. Ex. 15.) [DBR0622-6].

42. On February 5, 2016, GEICO paid the \$6,599.68 directly to Respondent. (Stip. Ex. 15.) [DBR0631].

43. In response to her Complaint, Respondent provided some receipts for automotive parts purchased from a local Chevrolet dealer and a waiver form alleged to have been signed by Ms. Masello that authorized Respondent to not complete all the repairs on the insurance estimate. (Stip. Ex. 12.) [DBR0447-60].

44. Through her attorney, in a response to a rebuttal from Respondent, Ms. Masello disputed the authenticity of her signature on the waiver form and provided several other signed checks as evidence that the signature on the waiver was not her signature. (Stip. Ex. 13.) [DBR0462, 461-8].

45. The disputed waiver was dated January 29, 2016. (Stip. Exhs. 14 & 12.) [Ideal 01526, DBR0447].

46. The GEICO Estimate was prepared on February 4, 2016. (Stip. Exhs. 14, 15.) [Ideal 001498, DBR0622].

47. On or about February 26, 2016, Ms. Masello retrieved the Chevrolet from Respondent for the first time. (Stip. Ex. 10.) [DBR0437].

48. At the time of retrieval, Ms. Masello noted several instances where she observed poorly done repair work. (Stip. Ex. 10.) [DBR0437].

49. Ms. Masello’s complaint alleges that additional damage was done to the Chevrolet. (Stip. Ex. 10.) [DBR0438].

50. Ms. Masello's complaint alleges that Respondent stated that "in 25 years, they had never given a final invoice." (Stip. Ex. 10.) [DBR0439].

51. After retrieval, Ms. Masello and Respondent discussed the quality of the repairs. (Stip. Ex. 10.) [DBR0437-38].

52. At some point, Ms. Masello brought the Chevrolet back to Respondent for further repairs. On or about March 10, 2016, Ms. Masello retrieved the Chevrolet from Respondent. (Stip. Ex. 10.) [DBR0438].

53. At the time of the second retrieval, Ms. Masello complained to Respondent about poor workmanship. (Stip. Ex. 10.) [DBR0438].

54. At the time of the second retrieval, Ms. Masello complained to Respondent about additional damage to the inside of the passenger door panel, dashboard, and door jams. (Stip. Exhs. 10 & 14) [DBR0438, 0461-8].

55. After retrieving the Chevrolet the second time, Ms. Masello requested a final invoice from Respondent. (Stip. Ex. 10.) [DBR0439].

56. Respondent did not provide a final bill (or invoice) to Ms. Masello. (Stip. Ex. 10.) [DBR0439].

57. Respondent has 112 pages of files related to Ms. Masello. None represent a final bill for the repairs. (*See* Stip. Ex. 14.) [Ideal 1490-1602].

58. On or about April 18, 2016, the Chevrolet was inspected by Wreck Check to analyze the repairs performed upon it by Respondent. (Stip. Ex. 16.) [DBR0724-39].

59. On or about April 24, 2016, Wreck Check produced a report ("Report B") on the Chevrolet which identified several concerns including but not limited to defects in the repair process regarding paint, the fit of the replacement parts, and a list of repair work that was not performed in accordance with the insurance estimate totaling approximately \$1,900. (Stip. Ex. 16.) [DBR0724-739].

60. The Wreck Check report identified the following items not used in the repair: "F bumper chrome," "upper cover," and "Rt headlamp." Those parts totaled \$1,548.74. (Stip. Ex. 16.) [DBR0725].

61. The GEICO estimate of repairs to be done identified five separate parts that each was estimated to cost more than \$98, including a front bumper chrome without park assist with fog lamps, an upper bumper cap, a Headlamp assembly, a fender, and a mirror assembly, and the estimate's total price for parts to repair the vehicle was \$2,897. (Stip. Ex. 15.) [DBR0622-6].

62. Respondent's files included receipts for four parts with list prices above \$100, including a fender, a mirror, a bar and a deflector, totaling a cost of \$1,200.84. (Stip. Ex. 12.) [Ideal 1508-10].

63. Respondent's files did not include a receipt for a headlamp, a chrome bumper or an upper cover. (See Stip. Exhs. 12 & 14.) [DBR 0458-60, Ideal 1508-10].

64. Respondent has turned over copies of all its files related to certain customers pursuant to written discovery in this matter.

65. Respondent's files contain no other records of receipts for parts used in the repair of the Chevrolet. (See Stip. Ex. 14.) [Ideal 1490-1602].

Complaint C – DiSpirito

66. Jaclyn DiSpirito filed Complaint C, DBR No. 19AB005 with the Department on or about February 19, 2019. (Stip. Ex. 17.) [DBR0246-7].

67. Complaint C alleges improper repairs on a 2018 GMC Terrain ("GMC"). (Stip. Ex. 17.) [DBR0246-47].

68. The GMC was involved in a collision and afterwards Ms. DiSpirito, the lessee of the GMC, filed a third-party claim with Amica, the insurer of the vehicle that struck the GMC. (Stip. Ex. 20.) [DBR0572-3].

69. Due to the age of the vehicle, an insurer would be obligated to repair the GMC using OEM parts rather than using aftermarket parts, unless the consumer agreed in writing to the change. R.I. Gen. Laws § 27-10.2-2.

70. On or about December 17, 2018, Ms. DiSpirito brought the GMC to Respondent for repairs. (Stip. Exhs. 17 & 23.) [DBR 0276, Ideal 1626].

71. On or about December 26, 2018, the GMC was inspected by a licensed motor vehicle damage appraiser who found there to be \$9,238.56 in repairs; there was no deductible because Ms. DiSpirito had filed a third-party claim, so the entire amount was available from the insurer to repair the vehicle. (Stip. Ex. 20.) [DBR 0568].

72. On or about January 31, 2019, Ms. DiSpirito retrieved the GMC from Respondent. (Stip. Ex. 18.) [DBR 0276].

73. At the time of retrieval, Ms. DiSpirito noticed problems with the repair of the GMC. (Stip. Ex. 17.) [DBR 0246].

74. At the time of retrieval, Ms. DiSpirito requested a final invoice from Respondent. (Stip. Ex. 17.) [DBR 0246].

75. The DiSpirito complaint stated, “I asked for an invoice but was told they do not have one and do not make final invoices.” (Stip. Ex. 17.) [DBR0246].

76. In response to Ms. DiSpirito, Respondent provided some receipts for automotive parts purchased, receipts for mechanical work, receipts for glass repair, Respondent’s own estimate, a waiver form, a blank invoice form with only the fields for the vehicle and client information filled in, and a receipt for a “reinforcement bar” from a licensed auto wrecking and salvage yard. (Stip. Ex. 18.) [DBR0251-77].

77. On or about February 9, 2019, the GMC was inspected by Wreck Check. (Stip. Ex. 22.) [DBR 0229].

78. On or about February 13, 2019, Wreck Check produced a report (“Report C”) regarding the GMC which identified several concerns including remaining structural damage, incomplete and/or sub-standard repairs, failure to refinish certain parts, failure to replace or repair certain parts, and a list of repair work that was not performed in accordance with the insurance estimate totaling approximately \$2,500. (Stip. Ex. 22.) [DBR 0228-45].

79. Report C specifically identified that the following parts were not replaced: muffler and pipe, rear body, and rear bumper absorber. (Stip. Ex. 22.) [DBR0241].

80. Report C concluded that the GMC was “poorly repaired and unsafe to operate.” (Stip. Ex. 22.) [DBR0240].

81. On or about December 28, 2018, Amica paid Respondent \$9,238.65. (Stip. Exhs. 20 & 21.) [DBR0579, 585].

82. On or about April 11, 2019, Amica paid Respondent \$130.85. (Stip. Exhs. 20 & 21.) [DBR0579, 584].

83. Ms. DiSpirito signed a waiver regarding repairs not being made according to the estimate on December 17, 2018. (Stip. Ex. 23.) [Ideal 01626].

84. The Amica estimate was prepared on December 20, 2018 and included \$4,107.96 in parts required to complete the repairs. (Stip. Exhs. 23 & 19.) [Ideal 1605. DBR 588].

85. Respondent prepared two estimates for DiSpirito, both dated February 22, 2019, identifying parts totaling \$3,978.94 and \$1,070. (Stip. Ex. 23.) [Ideal 01610-15].

86. Respondent’s files contained receipts for items with list prices totaling \$3,480.43. (Stip. Ex. 23.) [Ideal 1618-27].

87. Respondent’s files do not contain receipts for a muffler or absorber. (*See* Stip. Ex. 23.) [Ideal 1618-27].

Complaint D – Adu Gyamfi

88. Roxanne Adu Gyamfi filed Complaint D, DBR No. 19AB006, with the Department on or about August 30, 2018. (Stip. Ex. 24.) [DBR0001-02].

89. Complaint D alleges several grievances, including not repairing her 2011 Nissan Rogue (“Nissan”) in a timely manner. (Stip. Ex. 24.) [DBR0001-21].

90. The Nissan was involved in a collision and following the collision, Ms. Adu Gyamfi filed a third-party claim with The Commerce Insurance Company (“MAPFRE”), the insurer of the vehicle that struck the Nissan. (Stip. Ex. 25.) [DBR0037-81].

91. On or about July 12, 2018, Ms. Adu Gyamfi brought the Nissan to Respondent for repairs. (Stip. Ex. 25.) [DBR0082].

92. Ms. Adu Gyamfi signed a waiver regarding repairs not being made according to the estimate on July 12, 2018. (Stip. Ex. 26.) [Ideal 01477].

93. Statewide Appraisal Service prepared an estimate for the repairs needed on the Nissan on July 25, 2018, and identified the total cost of repairs to be \$3,595.95, inclusive of \$131.63 in taxes. Given that this was a third-party claim, there was no applicable deductible for Ms. Adu Gyamfi. (Stip. Ex. 25.) [DBR0063-81].

94. On or about August 15, 2018, MAPFRE paid Respondent the full amount of \$3,595.95 pursuant to a direction to pay. (Stip. Ex. 26.) [DBR0119].

95. The Gyamfi Complaint alleged that she had visited Respondent’s shop on August 21, 2018 and found that Respondent had not performed any repairs on the Nissan. (Stip. Ex. 24.) [DBR0002].

96. The Gyamfi Complaint alleged that she asked to retrieve the Nissan at from Respondent and she was “hit with rental fee (see attached) \$1577.00, storage 866.08, and tax fee.” (Stip. Ex. 24.) [DBR0002].

97. --- [intentionally blank to maintain numbering]

98. In response to Ms. Adu Gyamfi’s request, Respondent presented her with an invoice listing the insurance payment, a charge of \$1,577 in rental fees from Bald Hill Rental, a 25% negotiation fee of \$866.08, and taxes in the amount of \$131.63. (Stip. Ex. 24.) [DBR0024].

99. Respondent justified the 25% negotiation fee in a letter to the Department on March 9, 2019 stating:

- “On 7-12-18 Roxanne Gyamfi dropped her car at Ideal Auto Body. At that time she expressed her wish was not to repair the car at that current time. She agreed on the charge of 25% of the check as my fee to negotiate this transaction for her.” (Stip. Ex. 26.) [Ideal 1471].

100. Respondent also noted charges of \$885, broken out as \$100 for “admin,” \$100 for “estimate,” and \$685 in “storage,” broken out between two rates. (Stip. Ex. 26.) [Ideal 1472].

101. Respondent paid Bald Hill Rentals the \$1,577 fee from the insurance proceeds Respondent received from MAPFRE to repair the Nissan. (Stip. Exhs. 26 and 24.) [Ideal 1473, DBR0024].

102. Pursuant to a separate direction to pay, MAPFRE paid \$866.70 directly to Bald Hill Rentals for the rental vehicle.

103. Respondent paid \$1,021.24 to Ms. Gyamfi via check on August 21, 2018. (Stip. Ex. 26.) [Ideal 01478].

Waiver Form

104. In Complaints A, B, C, and D, and in numerous other files reviewed by the Department, Respondent utilized a preprinted “waiver” form (“Respondent’s Waiver Form”). (Stip. Exhs. 7, 14, 23, 26, *passim*.) [Ideal 01634, 01526, 01626, 01477].

105. Respondent’s Waiver Form did not have a heading or title other than Respondent’s name and address.

106. Respondent’s standard Waiver Form states:

I [insert customer name] know and agree that Ideal Auto Body is not repairing my vehicle according to the insurance estimate. Ideal Auto Body is not repairing my vehicle according to the insurance estimate due to Ideal Auto Body not charging me my insurance deductible or other work is being performed on my vehicle.

107. Ms. DiSpirito (Complaint C) was not obligated to pay a deductible because the repairs were being paid for through a third-party insurance claim. (Stip. Ex. 20.) [DBR 0568].

108. Ms. Gyamfi (Complaint D) was not obligated to pay a deductible because the repairs were being paid for through a third-party insurance claim. (Stip. Ex. 25.) [DBR 0035-90].

DBR’s Review of Files from Respondent

109. The Department requested in Production Request 1 that Respondent produce all client files for the two years prior to October 30, 2019.

110. On February 20, 2020, Ideal identified each of its clients from 2018 and 2019, totaling 479 customer names.

111. DBR asked an Insurance Examiner, Brian Werbeloff, to apply sampling techniques to create a sample of the customers following generally recognized sampling techniques. (Stip. Ex. 27 – Werbeloff Email.)

112. Brian Werbeloff first reviewed the sampled names and removed duplicates, leaving a population of what appeared to be 437 unique customers. (Stip. Ex. 27 – Werbeloff Email.)

113. Mr. Werbeloff applied generally recognized sampling techniques to identify a sample population of 64 customers. (Stip. Ex. 27 – Werbeloff Email.)

114. Mr. Werbeloff then applied generally recognized sampling techniques to create a sample population of 64 customers from the 437 unique customers. (Stip. Ex. 27 – Werbeloff Email.)

115. Ideal produced 1,679 pages of files related to those 64 customers.

116. The Department first reviewed the customers included in the first 500 pages of that production, which included 19 customers. It reviewed each file to determine whether each contained Respondent's Waiver Form (regarding repairs not being made according to the estimate), and if so, what date the waiver was signed. The Department then cataloged whether an insurance estimate was prepared, and the date of that estimate. It compiled that information into a "Summary of Waivers," on a single sheet listing the Ideal Bates number, the customer's name, which form was seen, and the date that form was signed. (Stip. Ex. 28 - DBR Summary of Waivers from Ideal 0001-0501.)

117. Of the 19 files reviewed in the DBR Summary of Waivers, 16 customers were identified who signed a copy of Respondent's Waiver Form before the insurance estimate was prepared. (Stip. Ex. 28 - DBR Summary of Waivers from Ideal 0001-0501.)

118. The Department then reviewed the first nine randomly sampled files from the list of 64 customers, identified by the process in paragraph 114 above.

119. In eight of those files (Swedish Motors/Cole, Chu, Cruz, McKinney, Escobar, Flanagan, Fennessy, and Caouette), the customers also signed a copy of Respondent's Waiver Form before an insurance estimate was prepared, or in one case where it was a total loss, before the insurer was even contacted. The ninth customer file did not appear to relate to an insurance claim. (Paragraphs 122-174, below.)

120. In five of those nine files (Chu, Cruz, Escoboza, Fennessy, and Caouette), the insurance estimates included parts for which Respondent's file did not contain evidence of purchase of the item. (Paragraphs 128-131, 135-138, 150-154, 163-166, 170-173, below.)

121. In seven of those nine files (Swedish Motors/Cole, Chu, Cruz, Escobar, Flanagan, Fennessy, and Caouette), there was no evidence of a final bill being prepared and provided to the consumer that identified whether the parts used in the repair were OEM, used or aftermarket parts. (See paragraphs 125, 132, 139, 156, 160, 167, 174, below.)

122. Swedish Motors/Sue Cole brought a 2005 Audi A6 for repairs with Respondent. (Stip. Ex. 29.) [Ideal 000873-894].

123. Ms. Cole signed a waiver regarding repairs not being made according to the estimate on March 22, 2019. (Stip. Ex. 29.) [Ideal 00877].

124. The Amica estimate was prepared on March 25, 2019. (Stip. Ex. 29.) [Ideal 00878].

125. A review of the Swedish Motors/Cole file did not identify a final bill in conformance with the regulation. (Stip. Ex. 29.) [Ideal 00873-894].

126. Edwin WL Chu brought a 2013 Toyota Corolla for repairs with Respondent. (Stip. Ex. 30.) [Ideal 00728-764].

127. Mr. Chu signed a waiver regarding repairs not being made according to the estimate on March 13, 2019. (Stip. Ex. 30.) [Ideal 00754].

128. The Nationwide estimate was prepared on March 15, 2019. (Stip. Ex. 30.) [Ideal 00734].

129. Respondent prepared a bill totaling \$939.97 in parts, identical to the Nationwide estimate for parts. (Stip. Ex. 30.) [Ideal 00730].

130. Respondent's files contained receipts for items with list prices totaling \$191.86. (Stip. Ex. 30.) [Ideal 00756-7].

131. A review of the invoices in the Chu file identify several receipts for items used in repairing his Toyota, but several items included on the Peerless estimate were not accounted for, including: "rear lamps, combo lamp assmby \$114; rear bumper, cover \$229; absorber \$37; impact bar \$164; mount bracket \$47; pressure vent (\$46.29); trunk lid, nameplate (\$35.48), lid trim \$39.56." (Stip. Ex. 30.) [Ideal 00731-734].

132. A review of the Chu file did not identify a final bill in conformance with the regulation. (See Stip. Ex. 30.) [Ideal 00728-764].

133. Jean Cruz brought a 2014 Kia Optima for repairs with Respondent. (Stip. Ex. 31.) [Ideal 00765-787].

134. Ms. Cruz signed a waiver regarding repairs not being made according to the estimate on March 14, 2019. (Stip. Ex. 31.) [Ideal 00778].

135. The Nationwide estimate was prepared on March 18, 2019. (Stip. Ex. 31.) [Ideal 00768].

136. Respondent prepared a bill totaling \$2,255.77 in parts, identical to the Nationwide estimate for parts. (Stip. Ex. 31.) [Ideal 00767].

137. Respondent's files contained receipts for \$219.03. (Stip. Ex. 31.) [Ideal 782-4].

138. A review of the invoices in the Cruz file identify several receipts for items used in repairing his Kia, but numerous items included on the Nationwide estimate were not accounted for, including "exhaust, muffler & pipe \$858.33; rt tail lamp assy \$156.25; quarter panel, pressure vent \$22.97; trunk lid, molding assembly \$162.42, lock \$71.70; rear bumper, cover \$289, rt side retainer \$21.27, absorber \$71, impact bar \$212, bumper bracket \$40.33, capa lower cover \$65; rt reflector \$22." (Stip. Ex. 31.) [Ideal 768-770].

139. A review of the Cruz file did not identify a final bill in conformance with the regulation. (See Stip. Ex. 31.) [Ideal 00765-787].

140. Eric McKinney brought a 2002 Buick LeSabre for repairs with Respondent. (Stip. Ex. 32.) [Ideal 00788-801]

141. Mr. McKinney signed a waiver regarding repairs not being made according to the estimate on March 18, 2019. (Stip. Ex. 32.) [Ideal 794].

142. Respondent noted the vehicle first came in on March 18, 2019. (Stip. Ex. 32.) [Ideal 788].

143. Respondent first reached out to GEICO to discuss the claim on March 20, 2019. (Stip. Ex. 32.) [Ideal 788].

144. At some point, the Buick was declared a total loss and no repairs were conducted.

145. Respondent prepared a bill dated April 12, 2019, for \$1,643 related to services it provided for the Buick that included: tear down, 28-days of storage fees, administration fees, clean-up costs, a gate fee, an estimate, a plate fee, and a tow bill. (Stip. Ex. 32.) [Ideal 792].

146. Between March 18, 2019, and April 12, 2019, 25 days had transpired.

147. On April 12, 2019, Respondent received a check dated April 11, 2019, for \$1,643 from Insurance Auto Auctions related to the Buick. (Stip. Ex. 32.) [Ideal 789].

148. Carlos Escoboza brought a 2018 Honda Civic for repairs with Respondent. (Stip. Ex. 33.) [Ideal 00802-846].

149. Mr. Escoboza signed a waiver regarding repairs not being made according to the estimate on March 18, 2019. (Stip. Ex. 33.) [Ideal 00826].

150. The Nationwide estimate was prepared on March 26, 2019. (Stip. Ex. 33.) [Ideal 00815].

151. Respondent prepared a bill totaling \$2,629.68 in parts, identical to the Nationwide estimate for parts. (Stip. Ex. 33.) [Ideal 00804].

152. Respondent's files contained receipts for \$1,483.81. (Stip. Ex. 33.) [Ideal 00828-33].

153. A review of the invoices in the Escoboza file identify several receipts for items used in repairing the Honda, but several items included on the Nationwide estimate were not accounted for, including an "It rocker \$486.28, rear bumper, bumper cover \$284.85." (Stip. Ex. 33.) [Ideal 00805-809].

154. The invoices in the Escoboza file identify one receipt from Keystone LKQ, for two parts totaling \$390.81. (Stip. Ex. 33.) [Ideal 00829]

155. Due to the age of the vehicle, an insurer would be obligated to repair the Honda using OEM parts rather than using aftermarket parts, unless the consumer agreed in writing to the change. R.I. Gen. Laws § 27-10.2-2.

156. A review of the Escoboza file did not identify a final bill in conformance with the regulation. (*See* Stip. Ex. 33.) [Ideal 00802-846].

157. Cheryl Flanagan brought a 2004 Chrysler Sebring for repairs with Respondent. (Stip. Ex. 34.) [Ideal 000847-872].

158. Ms. Flanagan signed a waiver regarding repairs not being made according to the estimate on March 21, 2019. (Stip. Ex. 34.) [Ideal 856].

159. The Progressive estimate was prepared on April 11, 2019. (Stip. Ex. 34.) [Ideal 00850].

160. A review of the Flanagan file did not identify a final bill in conformance with the regulation. (*See* Stip. Ex. 34.) [Ideal 00857-872].

161. Ken Fennessy brought a 2002 Honda Accord for repairs with Respondent. (Stip. Ex. 35.) [Ideal 00895-911].

162. Donna Fennessy signed a waiver regarding repairs not being made according to the estimate on March 26, 2019. (Stip. Ex. 35.) [Ideal 00906].

163. The GEICO estimate was prepared on April 4, 2019. (Stip. Ex. 35.) [Ideal 00898].

164. Respondent prepared a bill totaling \$489.85 in parts, identical to the GEICO estimate for parts. (Stip. Ex. 35.) [Ideal 00897].

165. Respondent's files contained receipts for items with list prices totaling \$102. (Stip. Ex. 35.) [Ideal 00908].

166. A review of the invoices in the Fennessy file identify one receipt for items used in repairing the Honda, but several items included on the GEICO estimate were not accounted for, including an "absorber \$52.97, reinf beam \$267.57." (Stip. Ex. 35.) [Ideal 00898-900].

167. A review of the Fennessy file did not identify a final bill in conformance with the regulation. (*See* Stip. Ex. 35.) [Ideal 00895-911].

168. Karen Caouette brought a 2010 Subaru Forrester for repairs with Respondent. (Stip. Ex. 36.) [Ideal 00919-949].

169. Caouette signed a waiver regarding repairs not being made according to the estimate on April 17, 2019. (Stip. Ex. 36.) [Ideal 00931].

170. The GEICO estimate was prepared on April 29, 2019. (Stip. Ex. 36.) [Ideal 00911].

171. Respondent's files include a bill totaling \$2,537.85 in parts identical to the GEICO estimate for parts. (Stip. Ex. 36.) [Ideal 921].

172. Respondent's files contained receipts for items with list prices totaling \$713.26. (Stip. Ex. 36.) [Ideal 00938-41].

173. A review of the invoices in the Caouette file identify several receipts for items used in repairing the Subaru, but several items included on the GEICO estimate were not accounted for, including an "It reinforcement \$126.77; muffler with pipe \$329.95, intermed pipe \$427.19." (Stip. Ex. 36.) [Ideal 00922-925].

174. A review of the Caouette file did not identify a final bill in conformance with the regulation. (See Stip. Ex. 36.) [Ideal 00919-949].

Randy Botella ("Botella") testified on behalf of the Department. He testified he owns an auto body repair shop, Reliable Collision Repair, that is licensed by the Department, and has been in the auto repair industry for over 30 years and hold multiple certifications for auto body repair. He testified that he is the chair of the state advisory board for auto body licensing and the current president of the Auto Body Association of Rhode Island ("ABARI") which is a trade association of auto body shops and vendors. He testified that when repairing a car after a collision, he begins with checking and pre-scanning the car, blue printing the needed repairs, and ordering parts. He testified that when the parts are received, body framework is done, and if necessary, the painting is done, and then the car is re-assembled and quality control checks and calibrations of the car can begin. He testified that once repairs are complete, he returns the vehicle to the owner and goes over what repairs were made. He testified he does pre and post scans of vehicle repairs.

Botella testified ABARI has a process for consumers to file complaints and ABARI tries to settle minor complaints with a shop by either having the shop fix or pay for the repair. He testified that when there is a very poor repair, ABARI refers the consumer to the Department to file a complaint and to WreckCheck, and ABARI will pay for the WreckCheck inspection. Exhibit One (1) (February 6, 2019 email to Department about Bessette and DiSpirito cars). He testified that he is familiar with the Bessette and DiSpirito complaints made to ABARI and which were

referred to WreckCheck because of repair concerns, and that he agreed with the WreckCheck reports. He testified that he dismantled the DiSpirito vehicle since it was obvious it had uni-body damage so it could be inspected by WreckCheck. Exhibits Nine (9) and 22 (reports).

On cross-examination, Botello testified that for the Bessette and DiSpirito complaints, ABARI did not contact the Respondent. He testified that when he wrote to the Department about the complaints, he had not viewed those cars but believed that the Respondent should lose its License as he wrote in his email to the Department. He testified that an estimate includes labor and parts and that a shop will buy a part for less money than allowed for in an insurance company's estimate so that the shop is allowed to profit on parts. He testified that just because an insurance company allows a certain amount of money does not mean that amount has to be spent. He testified that a shop is paid for the time spent breaking down a vehicle and for storage of a car.

Robert Collins ("Collins") testified on behalf of the Department. He testified he has been in the auto repair industry for 45 years and owns WreckCheck, a vehicle valuation and inspection business. He testified he holds various certifications and is licensed as an automobile damage appraiser in Rhode Island, Massachusetts, and Connecticut. He testified that when he conducts a repair inspection, he looks to the car manufacturer requirements and generally for the quality of the repair. He testified that his inspection process starts with verifying the car VIN number, taking down the car's mileage, and taking pictures of the car before inspecting it. He testified that he then looks at the car up close and photographs issues and repair defects, and once he has gathered his information, he writes his report.

Collins testified that he was hired by ABARI to inspect the Bessette car. He testified he reviewed the insurance estimate and the parts' list from the owner and received the insurance estimate from the company. He testified that the Bessettes' car was unsafe because there was front

structural damage so that if there was a subsequent collision, that would affect the airbag timing. He testified the airbags would not deploy as designed because the structure where the airbag sensors are located had been weakened so the airbag on right side would go off late. He testified he measured how thick the paint was on each panel as that shows whether the area has been painted or filler put in. He testified the paint thickness from a manufacturer is around 4/1000 of an inch of paint but a painted car could go up to 8/1000 of an inch of paint. He testified that he confirmed there was sway and not just a misaligned hood as he measured the parts so the tie bar where the radiator bolts to and the upper body were swayed over. He testified the structural components add rigidity to a car and is any part of a car that is left after everything is unbolted. He testified that the Respondent did not do the repairs called for in the insurance estimate such as the headlight and radiator supports, and the fenders were not replaced, and the pinch welds were not clamped and refinished, along with other discrepancies. He testified that around \$1,934.14 worth of work appeared not to have been done based on the insurance estimate. He testified that a shop may only make safety related repairs and not do cosmetic repairs as long as the shop informs the customer that is what is being done, and the safety repairs are done in a quality and workmanlike manner.

Collins testified that ABARI hired him to inspect the Masello truck for which he used the insurance estimate, and there was no final bill from the Respondent which he thought unusual. He testified that the front bumper and right headlight were not replaced as well as the uni-side was not refinished. He testified the vehicle repair had evidence of damaged parts and unrepaired damage. He testified as to bad workmanship of various repairs including poor painting, cracks, and incorrectly installed wiring harness in the door. He testified that the repairs were unacceptable.

Collins testified that he reviewed the DiSpirito SUV on request by ABARI and found structural damage. He testified he used the insurance estimate as no final shop bill was provided.

He testified this was a rear end collision which damaged the rear bumper and once the rear bumper cover was removed, he found a lot of damage behind the bumper. He testified the margins of the panels were pushed forward, and if all the structural repairs had been made, the margins would be even. He testified that when the right quarter panel was removed, the bumper's steel bar was bent, and the rear impact bar was still damaged. He testified that this hidden damage was important to repair because it aligned the body frame and without the repairs, the car frame was compromised. He testified that the damage could not be missed, and the uni-body should have been realigned and the structural damage would have come out when one started to pull the car. He testified if the SUV got hit again from behind, the intrusion into the passenger cabin would be more significant than if it had been repaired correctly. He testified that items were not repaired as indicated on the insurance estimate. He testified that the insurance estimate included to pull "mash" which refers to how the car got hit in the back. He testified that the SUV was poorly repaired and unsafe.

On cross-examination, Collins testified that he has not worked in a body shop since 2012 which was the last time he commercially repaired a uni-body vehicle. He testified that he has known Botella for about 20 years and has performed about 12 inspections for him. He testified that once he performed the inspections on the three (3) vehicles above, he did not follow up to see if issues he found were repaired. He testified that paint itself does not affect the structural integrity of a car, and paint does not help in the safety of a car.

Donald Defede, Associate Director, testified on behalf of the Department. He testified that there is no requirement that a consumer complain to ABARI before the Department as the Department has its own complaint process.

Daniel Davey ("Davey") testified on behalf of the Respondent. He testified he has been in the auto body business since 1978 starting with a four (4) year apprenticeship and then became

a journeyman and went to school. He testified that he was taught pulling frames, replacing panels, welding, and body filler, etc. He testified he holds various certifications in structural, non-structural, frame repair, and prepping and applying paint. He testified that measuring paint thickness is something body shops used to do to get more money from insurance companies and has nothing to do with the safety of a vehicle. He testified that a uni-body vehicle is where the frame and floor and everything is all welded together as one (1) piece. He testified he repaired vehicles for close to 30 years but now he just checks on vehicles periodically during their repairs at his shop. He testified he started the Respondent shop in 2004.

Davey testified that the damage shown on the WreckCheck report for the DiSpirito car was not in the pictures taken by Amica when appraising the damage. Exhibit 20 (Amica photographs, bates 542, 544, 546);⁴ Respondent's Exhibit A. He testified the Amica photographs show the weld spots are holding, and the lower piece is not separated. He testified the WreckCheck photograph (Exhibit 22, page 8) shows a separation of the weld. He testified that the separation is the bottom two (2) pieces of the panel that the WreckCheck photographs marked as spot welds that broke because the car was not pulled properly. He testified that though the DiSpirito car had buckled and creased areas near the area of impact, the damage did not travel any further to cause a side sway or frame damage. He testified that the vehicle had structural damage but not unsafe structural damage. He testified that he went to the local Chevrolet dealership and took pictures of the brand-new vehicles to show that brand new factory vehicles have different gaps that do not line up. Respondent's Exhibit B. He testified that the gaps do not affect the structural integrity of the car as they are a cosmetic issue. He testified he performs computer scans for each vehicle, and a scan would indicate if the airbags had an error. He testified there was no airbag error in either the

⁴ All exhibits contain their bates stamp production number. The decision will refer to that number by "bates" and the number when needed.

DiSpirito or the Bessette vehicle. He testified that Mr. DiSpirito wanted him to add the left front headlight to the accident estimate but the car was not hit in the front so he did not add that because that would be insurance fraud.

Davey testified Ms. Gyamfi brought her car in after it was damaged and did not want it repaired, and she was entitled to a rental car while the car was looked at, so he referred her to a car rental company. He testified the insurance company inspected her car, and he pointed out damage to the insurance company but did not write the estimate. He testified the insurance company wrote an estimate, but the owner did not want to repair the car and when she picked it up, he charged her for costs to cover paperwork and telephone calls by administrative staff dealing with customers, the insurance company, and the car rental. Exhibit 26. He testified that he did not negotiate the property damage, but rather office staff wrote the term, negotiation, and put the 25% on the bill, and he did not negotiate anything. He testified that he divided the insurance check by four (4) ways because owner was unhappy, and he just wanted to put the situation to bed.

Davey testified that he ran a scan on the Bessettes' car. He testified the Bessettes asked for a \$500 kick-back, and he did not give it because he saved them their deductible. He testified that he did not give them a final bill because he was not aware he was supposed to and thought the insurance estimate was the bill. He testified that he gave Mr. Bessette the cost of the parts after Mr. Bessette showed up demanding them and being very hostile. He testified that aftermarket parts like the ones used on the Bessettes' car do not fit the same way as new parts because an aftermarket part is a lesser version of the original. He testified the employee who worked on the Bessettes' car was let go for poor work. He testified that the issues on the Bessettes' car were cosmetic and did not affect the safety of the vehicle. He testified that he had the Bessettes sign a waiver because they wanted to save on their deductible. He testified that he has customers sign a waiver before he

starts repairs stating that he will save them money on their deductible somehow. He testified that the Bessettes signed the waiver before the insurance company had written their estimate on the vehicle. He testified that he never heard of an airbag going off too soon or too late. Tr 2 at 196.⁵

Davey testified that for the Masello car, the owner insisted she pick up the vehicle two (2) days before it would be ready since she needed it for a horse show. He testified that the vehicle did not have dents in the bumper like it was shown in Collins' report. He testified that the cracked washer and screw on the bumper would come from over tightening. He testified that Ms. Masello signed a waiver to not repair the car to the insurance estimate. He testified that she returned the vehicle a week later to address some issues about painting and panels. He testified that he repaired the upper bumper cover rather than replace it to save on the deductible, but when she and her husband picked up the vehicle, they yelled that he had done more damage to the vehicle than repairs. He testified he considered suing, but the issue was resolved in 2016. Respondent's Exhibit C (proposed complaint).

Davey testified that he buys parts from places that sometimes bill him monthly, so he does not get a separate bill for each part. He testified that for the Wreckcheck reports, he made all repairs; though, in some cases, he repaired a part rather than replacing it in order to save on the deductible. He testified his customers agreed to changes in repairs to save on deductibles. He testified there was an administrative assistant in his office that was incompetent and was indicted for embezzling \$580,000 from his shop. He testified he went through several people to replace her, and when he was teaching them the job, many of the files were not completed.

On cross-examination, Davey testified that he will either do all the work that the insurance estimate suggests, or he makes an agreement with the customer about the work that will be done.

⁵ "Tr" refers to the transcript of the hearing with the next number indicating whether it was the first, second, or third day of hearing and the second number being the page number of the transcript.

He testified that customers sign the waiver to save on their deductible before the estimate is prepared. Tr 3 at 70-71. He testified that a customer who was a third party claimant would not have a deductible and would not have to sign a waiver. He testified that a customer usually signs his work order, the direction to pay, and the waiver, if saving the deductible. He testified that the work order form does not usually include the parts in the parts section. Exhibit 14 (bates 1546). He testified that he does not usually fill out that section. He testified that there are a lot of sections in his work order form that are not usually filled out, and he got the form from a dealership. He testified that he did not know the customer was supposed to receive an itemized list until this hearing. Tr 3 at 80. He testified that now he gives an itemized list. He testified that for Masello's direction to pay and for many of his customers, his employee would sign his name even though he told her not to. He testified that in Exhibit 29, there is a work order form that now has the part with costs for labor and paint filled out since he learned from the Department that he had to provide that. He testified that a waiver is also included for the Exhibit 29 claim file even though the insurance estimate did not include a deductible. He testified that the insurance estimates included paying for a pre and post scan. He testified that he tries to do a pre scan for every car and if one is not in the file, it would just not have been filed and maybe was not printed out. He testified that the Bessettes' pre scan showed an airbag error but there was no post scan. He testified that the lack of a scan in the file just means that it was not printed.

Davey testified that he had Ms. Gyamfi sign the direction to pay; though, she said she did not want the car repaired, and he was not going to repair her car. He testified that the 25% was for his time tearing down the car, talking to insurance appraiser, pointing out damage, administrative costs, and storage fees. He testified that he did not negotiate but looked at the amount and said okay. He testified that the Department told him he had to start filling out the section for service

and parts on the work order form, so he takes the insurance estimate numbers and puts them in the work order. Tr 3 at 135-136; 138-139. He testified that he can make a profit on parts by finding a part for less money than the insurance company will pay. He testified that his lack of/or issues with documentation was due to his office staff not doing their job right, and the staff member who embezzled from him. He testified that Mr. Bessette threatened him. He testified that the DiSpiritos asked him to commit insurance fraud. He testified that Collins was lying when he called the cars structurally unsafe because gaps do not show they are unsafe.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. 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 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *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). 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. *Id.* 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 (R.I. 2006).

C. Relevant Statutes

R.I. Gen. Laws § 5-38-10 provides in part as follows:

Grounds for denial, suspension, or revocation of licenses. The department of business regulation may deny an application for license or suspend or revoke a license after it has been granted, for the following reasons:

(3) For any failure to comply with the provisions of this section or with any rule or regulation promulgated by the commission under § 5-38-5;

(4) For defrauding any customer;

(7) For having indulged in any unconscionable practice relating to the business as an automobile body repair shop;

(8) For willful failure to perform work as contracted for;

(9) For failure to comply with the safety standards of the industry.

R.I. Gen. Laws § 5-38-18 provides as follows:

Purchase of used vehicle parts – Records of transactions to be maintained. The purchase of used vehicle parts shall be from entities licensed pursuant to chapter 21 of this title or similar provision by another state. Every licensee shall maintain up-to-date records in the form prescribed by the department of business regulation: (1) With reference to every vehicle for which it has made a charge for parts or services; and (2)

Of all original orders for repairs to those vehicles. Those records shall be preserved for a period of two (2) years from the date thereof and shall be open for inspection by any authorized representative of the department during regular business hours, by the division of motor vehicles, and by any state or municipal official or police officer.

R.I. Gen. Laws § 5-38-29 provides, “[r]epair bills. 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.”⁶

R.I. Gen. Laws § 27-10-1.1(i)(1) defines a public adjuster as follows:

(i) "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:

(1) Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, other than automobile, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract.

The public adjuster statute, R.I. Gen. Laws § 27-10-1.2, provides as follows:

License required. (a) A person shall not act or hold himself out as a public, company or independent adjuster in this state unless the person is licensed in accordance with this chapter.

(b) A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster.

⁶ Section 2.17 of the 230-RICR-30-05-2 *Motor Vehicle Body and Salvage Vehicle Repair* Regulation (“Regulation”) provides as follows:

Records of Transactions to be Maintained

A. All Licensees must maintain at a minimum the following information in its records for each motor vehicle repaired for a two (2) year period:

1. Consumer’s name;
2. Consumer’s address;
3. Vehicle make, model and year;
4. Vehicle VIN (Vehicle Identification Number);
5. Written authorization from the consumer to repair the vehicle;
6. All invoices and receipts in connection with the repairs made; and
7. The final repair bill which contains itemized listings of manufactured parts, used parts and generic parts used in the repair.

B. All records kept in accordance with this regulation must be maintained at the address at which the premises is Licensed and available for inspection during regular business hours.

This regulation was effective 10/26/17. The predecessor regulations effective March 21, 2013 and March 17, 2016 have the identical record keeping requirement. Indeed, the record keeping requirement was added to this regulation effective December 13, 2004. See *Commercial Licensing Regulation 4-Motor Vehicle Body Repair*. See <https://rules.sos.ri.gov/regulations/part/230-30-05-2/3246>. However, R.I. Gen. Laws § 5-38-29 was enacted in 1993.

R.I. Gen. Laws § 27-10.2-2 provides in part as follows:

Aftermarket parts – Time limit prohibition. (a) Whenever an insurance company, in adjusting a claim for motor vehicle physical damage, intends to specify the use of aftermarket parts, it shall notify the vehicle owner in writing. Any auto body repair shop conducting business in the state of Rhode Island shall not use non-original equipment manufactured (OEM) parts, also referred to as aftermarket parts, in the repair of any person's automobile, without that person giving the repairer his or her express written consent.

(b) No insurance company may require the use of aftermarket parts when negotiating repairs with any repairer unless the repairer has written consent from the vehicle owner to install aftermarket parts. The provisions of this section shall apply only to automobiles that are less than forty-eight (48) months beyond the date of manufacture.

(c) For any automobile that is less than forty-eight (48) months beyond the date of manufacture, the insurer and the auto body repair shop must provide a written notice to the vehicle owner that: (i) He or she may require the insurer to pay for and the auto body shop to install "original equipment manufacturer parts" or "OEM parts" in the repair of a motor vehicle; or (ii) He or she may require the insurer to pay for and the auto body shop to install "non-original equipment manufacturer parts" (non-"OEM parts") in the repair of a motor vehicle. To comply with this provision, written notice may be provided on the appraisal written on behalf of the insurer and the estimate prepared by the auto body repair shop.

D. Arguments

The parties' arguments will be discussed more in detail as necessary below. In summary, the Department argued the Respondent's License should be revoked since it made poor and unsafe repairs to its customers' vehicles, failed to perform work contracted for, engaged in unconscionable practices, failed to follow record keeping requirements, and engaged in unlicensed public adjusting. The Respondent argued the cars were all appropriately and safely repaired, that Collins mostly testified about paint thickness and lacked expertise, and any messy paperwork was due to the employee indicted for embezzlement.

E. Motion to Dismiss

Prior to the start of hearing, the Respondent moved to dismiss the Masello complaint due to it being filed in 2016 with the Department and resolved by the Respondent and Masello by

private counsel. The Department objected and indicated that the complaint had been internally lost at the Department but found in 2019 at which time it was included in this matter. The Respondent agreed to reserve on its motion for a determination as part of the decision.

The Department has jurisdiction over the Respondent's License and for the enforcement of statutory and regulatory requirements for licensing. That is separate and apart from possible private rights of action between a customer and a licensee. The auto body licensing statute does not include any time limits on the bringing of an enforcement action against a licensee. The Masello complaint was filed in May, 2016. While the hearing was in 2021, the Order to Show Cause was issued in October, 2019 so only about three (3) years from the date of the complaint. While it is preferable for an enforcement action to be brought sooner rather than later, three (3) years is not an unreasonable delay to bring an action and indeed, it is within the time period allowed for many civil actions. There are no grounds to dismiss the Masello complaint.

F. Respondent's Business Practices Regarding Insurance Estimates

The Department has long treated the insurance estimate for the repair of a damaged vehicle as the contract between the car owner and automobile body repair shop. The Department has long held that the car owner and shop can vary this estimate and agree that repairs will be done differently than how the estimate is written and the insurance company is still to pay on its estimate. *West Fountain Auto Sales & Body, Inc.*, DBR No.: 18AB004 (1/29/20); *Allstate Insurance Company v. Dean Auto Body, Inc.*, DBR No. 07-I-180 (11/4/09); *Allstate Insurance Company v. Leone's Atwood Collision Center and Auto Sales, LLC*, DBR No. 06-L-183 (5/20/09); *Ray Stewart's, Inc. v. Allstate Insurance Company*, DBR No. 03-I-237 (7/2/08); *Rotella v. Autobody Express*, DBR No. 03-L-052 (12/20/04) and reconsidered decision (5/20/05); *Benson v. North*

Providence Accurate Auto Body & Sale, DBR No. 00-L-012 (6/16/00); and *Teixeira v. Warren Auto Body*, DBR No. 96-L-0012 (9/22/94).

In *West Fountain*, *Benson*, *Teixeira*, and *Rotella*, the respondent auto body shops accepted insurance checks, and there was no evidence and no agreements showing the modifications by the customer and shop of the insurance appraisals. As *Rotella* found, an automobile body repair shop cannot unilaterally deviate from an appraisal as it sees fit. If automobile body repair shops were allowed to deviate unilaterally from appraisals, the whole purpose and procedure of having vehicles appraised and repaired based on the appraisals, appraisals on which the insurance company bases payment, would be undermined.

There must be evidence of an agreement by the shop and its customer to vary the appraisal. Without such evidence, a body shop must repair a vehicle according to the appraisal or else it has failed to perform the work contracted for. The Respondent makes a mockery of this requirement that there be an agreement between a customer and auto body shop to vary an appraisal. Davey testified he regularly had his customers sign a waiver so that repairs need not be made pursuant to the insurance appraisal prior to the appraisal actually being performed. The testimony was that administrative staff had customers sign forms, work orders, directions to pay, and waivers. While Davey testified that customers that did not have deductibles were not asked to sign the waiver, the evidence was otherwise. The signing of such waivers was so *pro forma* that customers that did not have a deductible were asked to sign a waiver. For example, DiSpirito (third party claim) and Gyamfi (third party claim who Davey testified did not want to repair her car) signed the waiver. ASOF#107, 108. The Department randomly sampled the Respondent's 479 customer files for 2018 and 2019 and identified 64 as an appropriate sample size. ASOF#114; Exhibit 27. Of 19 files reviewed of those 64, 16 had waivers signed prior to the appraisal. Exhibit 28. In addition to the

initial complaints and those 19 files, another customer who was a total loss signed a waiver (Exhibit 32), and one who was a third-party insured also signed the waiver (Exhibit 33).

G. Whether the Respondent Violated Various Statutes

i. R.I. Gen. Laws § 5-38-10(8): Willful Failure to Perform Work Contracted For

The statute speaks of willful failure to perform work as contracted for. “Willful” is defined as “intentional”⁷ and “deliberate, voluntary, or intentional”⁸ In the context of this statute,⁹ willful refers to doing the act which here is the act of not repairing the vehicle as contracted for. It is not a question of intentionally choosing to violate the statute but rather did a licensee do the act of not performing the work contracted for.

There is no evidence that DiSpirito, Besette, and Masello agreed to vary repairs from their appraisals. DiSpirito had no deductible to save because it was a third party claim. ASOF#71. While they each signed such a waiver, it was without knowing the actual appraisal so they were not in a position to agree to vary something that they did not know about. There must be evidence of an agreement by the shop and its customer to vary the appraisal. Without such evidence, a body shop must repair according to the appraisal or else it has failed to perform the work contracted for.

For the Besette vehicle, the parties agreed that a GEICO inspector reinspected the vehicle after the repairs and found that the vehicle was not repaired according to the estimate. ASOF#23; Exhibits Three (3) and Eight (8).¹⁰ Collins found that several parts and labor operations listed in the estimate were not completed. ASOF#28; Exhibit Nine (9) (WreckCheck report). The Besette

⁷ <https://www.merriam-webster.com/dictionary/willful> and <https://www.thefreedictionary.com/wilful>.

⁸ <https://www.dictionary.com/browse/wilful>.

⁹ As stated above, if a statute is clear and unambiguous, the words of the statute are to be given their plain and ordinary meanings. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the “ordinary meaning” of “must.” *Id.*, at 674. As the Court has found, “[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary.” *Defenders of Animals, Inc.*, at 543.

¹⁰ These exhibits (and others) were sealed by agreement of the parties and by order of the undersigned.

waiver was signed on November 26, 2018, and the estimate was prepared on November 30, 2018. ASOF#29; 30; Exhibits Seven (7) and Nine (9).

For the Masello vehicle, Collins found that repairs were not performed pursuant to the estimate. The report found that a front bumper chrome, upper cover, and right headlamp were not used in the repair. The Respondent's file did not include receipts for a headlamp, chrome bumper, or an upper cover. ASOF #60, 63; Exhibits 16 (WreckCheck report); 12 and 14 (files). The waiver was signed on January 29, 2016, and the estimate was performed on February 4, 2016. ASOF#45, 46; Exhibits 12, 14, and 15.¹¹

For the DiSpirito vehicle, Collins found that repairs were not performed pursuant to the estimate. The report found that the muffler and pipe, rear body, and rear bumper absorber were not replaced. The Respondent's files do not include receipts for a muffler or absorber. The waiver was signed on December 17, 2018 and the estimate was prepared on December 20, 2018. ASOF#78; 83; 87; and 84; Exhibits Exhibit 22 (WreckCheck report); 23; and 19.

The Respondent argued it is "nonsensical" to argue that it is a violation not to repair the cars pursuant to an insurance company's estimate as the Respondent repairs cars for customers and not for insurance companies. However, when an auto body shop repairs a car for a customer, it is to follow the insurance estimate unless the customer agrees to vary the repair. Here, there is no evidence that there were any agreements by the customers to vary the repairs of their vehicles. All the waivers were signed prior to appraisals being made and were part of a routine intake by the Respondent where every customer was given a waiver whether it applied or not.¹²

¹¹ Ms. Masello disputed that she signed the waiver and provided the Department with a check to show her actual signature. ASOF#44. For this analysis, the assumption is that Ms. Masello signed the waiver but as the waiver was dated prior to the estimate being performed, the waiver does not show any agreement by the customer to vary the estimate.

¹² For a discussion of when a waiver of rights is procedurally unconscionable, see *Baker v. Pawtucket Skilled Nursing*, 2016 WL 4410003 (R.I. Super.) (whether there was a waiver of right to file lawsuit by agreeing to binding arbitration).

The Respondent's failure to perform the repair work contracted for the Bessette, Masello, and DiSpirito vehicles pursuant to their appraisals prepared for the insurance companies violated R.I. Gen. Laws § 5-38-10(8). See *West Fountain, Rotella, Benson, and Teixeira*.

ii. R.I. Gen. Laws § 5-38-10(9): Failure to Comply with the Safety Standards of the Industry

The Respondent argued that since the vehicles are still being driven, they are safe to drive. The Respondent also argued that as the complainants did not testify, they must not have needed to spend more money for further repairs. However, Collins and Botella testified about the Bessette and DiSpirito vehicles which Collins found were unsafely repaired. Botella testified there were concerns with both cars, so they were referred to Collins and he, Botella, agreed with the WreckCheck reports on them. He testified he helped disassemble the DiSpirito car for the WreckCheck inspection and from the visuals, it was obvious that car had uni-body damage to it.¹³

The Respondent characterized Collins' testimony as being about paint thickness and non-substantive gaps in parts. However, Collins used his observations about paint thickness to see if a part was new or repaired,¹⁴ and he reviewed gaps to see if parts were aligned. He did not conclude that paint thickness made a car unsafe. Rather, he testified that for the Bessette car, the front structural damage was not repaired by the Respondent so that if it was involved in a subsequent collision, that would affect the airbag timing. He testified that the structure was weakened. Tr 1 at 85-86. He testified that the hood, grill, and fenders were not aligned and were swayed which was not fixed. He testified that the radiator was back further than it should be and the radiator

¹³ The Respondent argued Botella had animosity against Davey as he did not contact him before sending the cars to Collins. Botella testified that ABARI tries to mediate problems but not in every instance and that when repairs go beyond poor workmanship, it will refer the complainants to the Department. Tr 1 at 31-33. Here, there were safety issues that he felt merited further inspection. The Respondent argued that it is not a member of ABARI implying that Botella held that against it. Botella testified that there are about 200 auto body licensees and about 70 are ABARI members. While Davey is not a member of ABARI, it is speculative to believe that is a reason for the referral by Botella. However, the inspections and findings of the unsafe repairs were made by Collins.

¹⁴ Tr 1 at 88-89.

mounting bracket is bolted to the tie bar which was damaged. He testified that the car damage was not pulled out, so the structural damage was not fixed. *Id.* at 104. Exhibit Nine (9).

Davey testified that the Bessettes wanted a kick back on their car, and the aftermarket parts used on the car did not fit because they were lesser versions of the original parts. He testified that the employee who repaired the Bessette car was let go for poor work. While Davey testified there was no airbag problem, the pre scan of the Bessette car showed a problem with the airbag. There was no documentation of a post scan to show otherwise.

The Respondent also attacked Collins' credibility on the Bessette vehicle by arguing that Collins did not know where the airbag sensors were located on that vehicle as Collins testified that they were on the tie bar. However, Collins did not testify the air bag sensors were on the tie bar. He testified the airbag sensors are located on the core support of which the tie bar is a part. Tr 1 at 191. Prior to that testimony on cross-examination, Collins testified that the core support goes across the front of the car and the radiator and headlights are mounted to the core support as it supports the whole front of the car. He testified the tie bar is part of the core support as it goes right across the front of the car. He testified that a structural component is generally welded to a car so that one can unbolt the hood, bumper, fenders, doors, and trunk but one cannot unbolt the core panels and roof as they are part of the uni-body construction which goes to the structural components. He testified that the structural components add to the structural rigidity of a car which is for safety. E.g. the roof will not collapse. *Id.* at 100-102.

Davey's explanation for the Bessette repair was the use of aftermarket parts, and Mr. Bessette was mad that he did not get a kickback. Collins' finding of unsafe repair was not based on aftermarket parts but that the car was not fully repaired. Collins found that ill-fitting parts

showed the structural damage. In other words, the structural damage was still there because the car was not repaired properly.

Collins found the DiSpirito car was unsafely repaired. Exhibit 22. Collins testified that cars have a plastic bumper cover and behind that is a steel or aluminum bar that is actually the bumper. He testified this steel bar was bent and kinked. He testified that between the plastic bumper cover and the bumper is a space which is filled with styrofoam filler and is called an energy absorber. He testified that the energy absorber allows the bumper to withstand a five (5) m.p.h. impact. He testified this energy absorber was missing so if the car was hit, the impact would go much further than it should. Tr 1 at 143-146.

Collins testified that the DiSpirito damage was caused by an automobile accident in that when the car was hit in back, the damage hit the bumper cover, the energy absorber hit the bar itself, and the bar being bolted in pushed everything forward so that the damage was a result of the rest of the car being pushed forward as part of the impact. He testified if the structural repairs were made, the kinking and damage would have come out as the car was being pulled. He testified the metal is wrinkled because it is under stress and the repair would be to pull the car and relieve the stress. He testified that the car is unsafe because the uni-body is already compromised so that if it is hit again, the intrusion would be more significant than if it had been repaired correctly. *Id.* at 147-149. For where the quarter panel is welded to the rear body panel, he testified as follows:

[T]hat whole seam is opened up, because when it got hit, it all got distorted . . . See the spot welds every inch or two. Every inch is a spot weld. When the metal gets hit, the spot welds hold, but the metal buckles in between the spot welds, and that's what happened there, so it opens up all those seams. *Id.* at 150.

Collins testified that if the car was repaired properly the metal would be flush and there would not be any wrinkles or waves in it. He testified there would not be any gaps between the two (2) pieces of metal that are welded together. *Id.* at 150-151.

Davey testified that Collins testified that the car was not pulled correctly so panels separated, and the spot welds broke. Tr 2 at 30. He testified that the insurance photographs taken at his shop prior to Collins' inspection do not show a separation of the panels. He testified the damage in Collins' photograph is not in the insurance photographs. Tr 2 at 25-34. However, Collins did not testify that the spot welds broke. Rather, he testified they held but the metal buckled between the welds. Collins testified that the damage came from an accident. The insurance estimate included replacing, replacing, and installing various parts for the quarter panel and lift gate. The rear bumper, bumper cover, absorber, lower molding, right and left support, and impact bar (and other parts) were to be replaced. Exhibit 20. Collins testified that the term, "mash" is an industry term to describe what happened to the rear of the car when it got hit in the back. He testified it is like stepping on a beer can on the floor and it collapses. In other word, the rear of the car was smushed. The insurance estimate included two (2) hours of labor to pull the mash. Line 82 of Exhibit 20.

Davey's explanation for the poorly repaired DiSpirito car was that the insurance photographs did not show the spot welds were broken but Collins did not testify they were broken. He testified that the metal between the welds buckled and should have been pulled out. Davey implied that the car was not damaged at his shop, but the insurance estimate shows otherwise. The car was rear ended and mashed.

The Respondent argued that Collins was not credible because he nitpicked car repairs in order to justify his fees. However, Collins has many years of experience in the auto body repair business and is well versed in car repair. His reviews of the cars at issue were very thorough so that they ranged from cosmetic to safety issues. Just because Collins noted cosmetic issues were not fixed pursuant to appraisals did not mean that he was nitpicking on safety.

In contrast to Collins, Davey (who also has many years of experience in the auto body field) did not know the basic statutory and regulatory requirements of his own License. The statutory requirement to provide a final bill has existed since 1993. He admitted to never following an estimate in order to save on the deductible except he does that for all car repairs whether there is a deductible or not. He has his customers sign waivers of repair prior to the customer even seeing an appraisal. Davey's explanation for Collins' findings of poor workmanship and unsafe repairs relied on mischaracterizations of Collins' testimony (where airbag located; weld spots) and on Davey's belief that his customers were either hostile or cheats and that Collins is motivated to lie to get more ABARI work.

Collins credibly testified as to the Bessette and DiSpirito cars not only being poorly repaired but unsafely repaired. In addition, Botella who has many years of experience in the auto body industry also saw these cars and concurred with Collins' reports.

Davey is responsible for the repairs at his shop. Collins has many years of experience in the autobody field, and he testified to the industry safety standards and how the repairs of the Bessette and DiSpirito vehicles did not meet industry safety standards. See *West Fountain*; and *In the Matter of: Joe's Towing, Inc. d/b/a RI Auto Body*, DBR No. 11-L-002 (1/18/12).

Based on the foregoing the Respondent violated R.I. Gen. Laws § 5-38-10(9) in relation to the Bessette and DiSpirito vehicles.

iii. R.I. Gen. Laws § 5-38-10(7): Unconscionable Practice Relating to the Business as an Automobile Body Repair Shop

1. Contract

Relying on dictionary definitions, *Leone's* found that an unconscionable practice is some kind of action taken by a licensee or an agent of a licensee that is unscrupulous or unjust so that it is behavior that offends the conscience or more simply, is the wrong thing to do. See p. 15. In

Leone's, the respondent auto body shop did not obtain the customer's consent to repair the car in the manner that the shop repaired the car, and that behavior was found to be unconscionable. See *West Fountain, Rotella, Dean Auto Body, and Teixeira*. In those cases, the customer did not know what repairs were made to their cars.

The Respondent failed to obtain authority to vary the Bessette, Masello, and DiSpirito repairs and accepted money for work it did not perform. The further file review and Davey's testimony showed that as a matter of course, the Respondent obtained waivers for repairs prior to the customers actually receiving insurance estimates so that routinely, the Respondent made repairs without its customers' consent.

Therefore, the Respondent violated R.I. Gen. Laws § 5-38-10(7) in relation to the Besette, Masello, and DiSpirito vehicles as well engaging in a pattern of unconscionable practices relating to the business as an automobile body repair shop for other customers' vehicles.

2. Safety Standards

As well as failing to perform work contracted for without authorization, the Respondent performed unsafe repairs. As explained in *Leone's*, actions that are unscrupulous or simply the wrong thing to do are unconscionable. The Respondent made repairs that were shoddy and unsafe and inconsistent with industry standards. Based on the Respondent's failure to comply with industry safety standards in its repair of the Bessette and Masello vehicles, the Respondent violated R.I. Gen. Laws § 5-38-10(7) by engaging in an unconscionable practice relating to the business as an automobile body repair shop.

3. Pocketing the Difference

The Respondent argued that the Department did not understand that the Respondent is allowed to make a profit on parts so that if Davey found a part for \$100 that an insurance company

would pay \$200 for, Davey can make a \$100 profit. There is no doubt that an auto body shop may make a profit off what it pays for parts and what an insurance company will pay for the same part. Indeed, Botella testified to that as well as Davey.

The Respondent argued that the Department seemed to think that Davey should send his profit back to the insurance company or the customer. The Respondent discounted the idea of sending any profit back to the customer as that would result in the Respondent paying for the “honor” of fixing a customer’s car. See Respondent’s brief. What the Respondent fails to distinguish is the difference between making a profit on the purchase of a part and the Respondent’s practices. The Respondent had its customers sign waivers prior to receiving the insurance estimates. Davey testified that this was done to save on deductibles. However, it was done whether a customer had a deductible or not. While it is hard to confirm what repairs were made by the Respondent as no final bills were produced and its records were spotty, the Respondent’s records show the differences in repair prices and insurance payments were more than for deductibles and most likely more than a profit on parts. Indeed, often the Respondent was repairing parts that it was supposed to have replaced.

The Bessettes’ deductible was \$500. Exhibit Two (2). Their insurance company paid \$5,930.46 directly to the Respondent to repair the car. The repair bill given by the Respondent to the Bessettes was \$1,097.92 for a difference of \$4,832.54. That difference was not returned to the Bessettes. ASOF#12, 15, 19, 20. Ms. Massello had a \$300 deductible. ASOF#41. For the Masello car, the insurance company paid \$6,599.68 (less the \$300 deductible) directly to the Respondent. The WreckCheck report estimated that approximately \$1,900 of the insurance estimate work was not performed. The insurance estimate included five (5) parts over \$100 to repair for \$2,897 but the Respondent’s records show \$1,200.84 spent on four (4) parts over \$100. ASOF# 42, 59, 61.

DiSpirito was a third party claimant. ASOF#68. The insurance company for the DiSpirito claim paid \$9,238.65 and \$310.85 to Respondent for repairs. ASOF#81, 82. WreckCheck found that approximately \$2,500 of repairs were not completed on the DiSpirito vehicle. ASOF#78.

While the Respondent might argue that the difference in the payment for the Masello parts was the allowed profit on parts, the Respondent's lack of records cannot confirm such a claim, if made. Ms. Masello had a deductible of \$300 and approximately \$1,900 worth of repairs were not completed. It is more likely that the Respondent chose to do the repair on the cheap without the customer's knowledge and keep a greater profit than just would be made on the allowed mark up on parts. Certainly, there was no reason to vary the DiSpirito vehicle from the deductible as there was no deductible. The evidence was that the Respondent often did not replace parts when indicated to do so in the estimate, and there was no evidence of it using OEM (original equipment manufactured) parts when required. A final bill would show what was done to the cars, but no final bills were given for the complainants' vehicles. Therefore, the complainants (and other customers) had no way to verify what repairs were made or not.

Thus, not satisfied with profit from labor rates, storage rates, and price differentials on parts, the Respondent varied its repairs from estimates without the customers' knowledge and received a monetary bonus. Based on the Respondent's failure to document its repairs and costs, its failure to obtain agreements from its customers to vary the repairs from the insurance estimates, and its failure to provide final bills, it can be inferred that the Respondent engaged in repairs on the cheap in order to boost its own profits so violated R.I. Gen. Laws § 5-38-10(7) by engaging in an unconscionable practice relating to the business as an automobile body repair shop.

iv. R.I. Gen. Laws § 5-38-10(4): Defrauding any Customer

Relying on *Black's Law Dictionary's* definition, *Joe's Towing* found that defraud meant making a misrepresentation of an existing material fact, while either knowing it to be false or making it recklessly without regard to whether it was true or false, intending that one would rely on such a misrepresentation to his or her detriment. In *Joe's Towing*, the Department found that while the respondent auto body shop made no spoken misrepresentation, it could be inferred that returning a vehicle after repairing it, the respondent was representing that it was repaired properly and in safe condition to operate. In *Joe's Towing*, the Department found that a licensee that returned an improperly repaired and unsafe vehicle misrepresented that the vehicle repair was complete. That licensee had 26 years of experience in automobile body repair work so knew what methods and technology were available for repairs. *Rotella* found that the automobile body repair shop defrauded the complainant by not repairing that vehicle as required under the terms of the appraisal. *West Fountain* found that respondent defrauded its customer by returning a car that it knew had not been properly repaired and had not been repaired pursuant to contract which had not been agreed to. Similarly, here, the Respondent returned vehicles that it knew had not been properly repaired and also knew that they had not been repaired pursuant to the contract and that such repairs had not been agreed to with the owners.

Based on the Respondent's failure to comply with industry safety standards in its repair and failure to perform work contracted for (by performing unauthorized work), the Respondent violated R.I. Gen. Laws § 5-38-10(4) by defrauding its customers.

v. **R.I. Gen. Laws § 5-38-10(3): Failure to Comply with Statute and Regulation**

As detailed above and below, the Respondent violated numerous statutory requirements and regulatory requirements for its License. Thus, the Respondent violated R.I. Gen. Laws § 5-38-10(3) by failing to comply with R.I. Gen. Laws § 5-38-1 *et seq.* and the Regulation.

vi. **R.I. Gen. Laws § 5-38-18, R.I. Gen. Laws § 5-38-29, R.I. Gen. Laws § 27-10.2-2, and § 2.17 of the Regulation: Record Keeping**

The Department argued that the three (3) different laws relating to record keeping serve different purposes. First, the laws serve as a deterrent to buying and using stolen parts in that the records must be maintained of parts bought and used as well as the requirement that body shops can only purchase used parts from licensed auto wrecking and salvage yards. R.I. Gen. Laws § 5-38-18. Along with keeping chop-shops out of business, the record keeping laws also serve to inform customers of what repairs and parts were used on their vehicles. R.I. Gen. Laws § 5-38-29 requires that each repair bill shall contain an itemized listing of manufactured parts, used parts, and generic parts used in the repair. As the Department pointed out, this requirement is consistent with R.I. Gen. Laws § 27-10.2-2 which provides that original equipment manufactured (OEM) shall be used in vehicles less than four (4) years old.¹⁵

When questioned about the final bill for Bessette, Davey testified that he did not write a final bill and that he was not aware that he was supposed to do that. He testified that he has followed the “older guys” in the trade over the years that the insurance estimate was the bill. He testified that he has been providing bills now that he knows he is supposed to. Tr 2 at 172. Davey also testified that Mr. Bessette came to the shop and asked for the final bill but that he was

¹⁵ This statute was amended in 1994 to provide that non-OEM parts could only be used with an owner’s consent on automobiles that are less than 30 months old. P.L. 1994 ch. 116, §1. In 2018, the law was amended effective July 4, 2018 to apply to automobile that are less than four (4) years old. P.L. 2018, ch. 298, § 1, P.L. 2018, ch. 321, § 1.

threatening, hostile, and intimidating so that he just put together something for him so that Mr. Besette would leave the shop. *Id.* at 173-175.

In the Respondent's closing, it proffered that due to Mr. Besette's hostility, the records given him might not have been complete. The Respondent also argued the reason the Besseses filed a complaint was that Davey would not give Mr. Besette \$1,000 and stood up to a bully. Whether Mr. Besette was rude and/or hostile when he came to the shop for a final bill, the fact is that Davey admitted that he never gave final bills to his customers. No final bill was given to the Besseses. The parties agreed no final bill was given to Ms. Masello. ASOF#56. The DiSpiritos did not receive a final bill as evidenced by Respondent being unable to produce one but rather only produced some receipts. ASOF#76; Exhibit 18 (Respondent's response to complaint).¹⁶

The parties agreed to a sample of 64 customer files for 2018 and 2019. ASOF#114. The Department then reviewed nine (9) randomly sampled files from those 64. ASOF#118. The parties agreed that of those files reviewed, seven (7) files did not contain a final bill in conformance with the regulation. ASOF#125, 132, 139, 156, 160, 167, 174. In addition, the parties agreed that for those seven (7) files, there was no evidence of a final bill being prepared or provided to the consumer that showed whether the parts used in the repair were OEM, used, or aftermarket parts. ASOF#121. The parties agreed that of the nine (9) files reviewed, five (5) files did not have evidence of purchase of parts. ASOF#120

The Respondent has what it calls a "work order form" that is included in its customers' files. This form has sections that would – if filled out – contain the information required by statute and the Regulation to be kept as part of the Respondent's records. There is a section for parts and

¹⁶ The DiSpirito complaint indicated that Ms. DiSpirito requested a final invoice from Respondent but was told that it did not make final invoices. Exhibit 17 (complaint). That is consistent with Davey's testimony.

for the costs of labor, painting, supplies as well as instructions from customers. However, Davey testified that as a matter of course this form was not completed. Tr 3 at 75-78.

While the work order forms were not filled out for the initial complainants, the Respondent began to complete the portion of that form which includes charges for services and parts. However, the sections regarding the description of each part, storage fees, warranty, and instructions continue to be left blank. Exhibits 29–31; 33-36. Despite the completion of the charges for services and parts, Davey testified the information contained in that section was just copied from the insurance estimate. Thus, if there was a variance from the insurance estimate, the information in the order form does not detail such changes.¹⁷ As the Respondent routinely collects waivers from customers and does not follow insurance estimates in making repairs, the completion of its charges for services and parts is not based on its actual charge or final bill (which is not issued).

Due to the age of the DiSpirito vehicle, the repairs had to be with OEM parts unless the owner agreed otherwise. ASOF#69. The Respondent's files were incomplete so it is not known whether the DiSpirito vehicle was repaired with OEM parts as statutorily required or whether DiSpirito consented otherwise. As this was a third-party claim, there would not be a reason for DiSpirito to consent to used parts as insurance would be paying for OEM parts.

The Respondent characterizes this matter as a case of missing receipts and repair bills and being similar to the Department losing the 2016 Masello complaint. However, while the Department may have mislaid the Masello complaint, that does not serve to excuse the Respondent's violations of regulatory and statutory requirements. Nor is one (1) mislaid file

¹⁷ Consistent with Davey's testimony, one can see the estimates were copied by comparing the work order to the insurance estimates for Exhibits 29 (bates 875 and 880); 30 (bates 730; 741 and 734; 746); 31 (bates 767 and 771); 33 (bates 804 and 809); 34 (bates 849 and 852); 35 (bates 897 and 900); and 36 (bates 921 and 925). Indeed, the insurance estimate in Exhibit 35 (bates 900) has a hand written notation adding amounts for mechanical and frame labor for the labor mechanical amount in the work order (bates 897) and a hand written notation adding miscellaneous and other charges on the insurance estimate for the sublet amount in the work order.

similar to the Respondent's record keeping violations. Contrary to the Respondent's argument, this is not a question of a few missing receipts or repair bills.

The Bessette, DiSpirito, and Masello repairs were done without the customers' consent. The Respondent's failure to provide its customers with final bills means its customers do not know which repairs were made and which parts were replaced. This could raise safety issues if it is not known what parts were used or what repairs were made in case there was another accident. The Respondent routinely varied its customers' repairs from insurance estimates without consent and then the customers were not given any information of what was actually done to their cars.

The Respondent continuously ignored R.I. Gen. Laws § 5-38-18, R.I. Gen. Laws § 5-38-29, and §2.17 of the Regulation as evidenced by the initial complainants' files and the files that the Department further reviewed. The lack of compliance with these two (2) statutes results in the Respondent being unable to comply with R.I. Gen. Laws § 27-10.2-2 when applicable. The Respondent's statutory and regulatory violations were not a few isolated occurrences of sloppy record keeping but rather a systematic and ongoing pattern of continuous violations of these basic statutory and regulatory requirements.

vii. R.I. Gen. Laws § 27-10-1.1 *et seq.*: Public Adjusting

According to Davey, Ms. Gyamfi did not want to repair her car.¹⁸ The Respondent arranged for her to rent a car and when she picked up her car, she was charged the rental car fee by the Respondent and a 25% fee by Respondent. The 25% was the percentage of the insurance appraisal. In his reply to the Department about Gyamfi complaint, the Respondent wrote, "[s]he agreed on the charge of 25% of the check as my fee to negotiate this transaction for her." ASOF#99; Exhibit 26. At hearing, Davey testified that he just pointed out the damage to the insurance adjuster and

¹⁸ Gyamfi's complaint to the Department indicated that she took her car elsewhere for repair after it was not repaired at the Respondent shop. Exhibit 24.

the use of “negotiation” on his bill was due to administrative staff, and he did not know it was the wrong terminology. He testified that he did not really negotiate anything. Tr 2 at 146. On cross-examination, he testified that Ms. Gyamfi did not trust the insurance company to give her a “fair shake,” and she did not trust them to pay her what the car was worth so “she brought me in.” Tr 3 at 181. He testified that the percentage was for administrative costs, tearing down the car, dealing with the rental car company, and dealing with the insurance company.¹⁹ Davey testified that he just pointed out damage to the insurance company. *Id.* at 182-183.

Despite Davey disclaiming the use of the term, negotiating, his testimony and response to the Department demonstrated that he charged Gyamfi for acting on her behalf with the insurance company. As defined in the adjusting statute, Davey spoke to the insurance company for her in order to get her a “fair shake” and charged her for negotiating the transaction. He was trying to or effecting a settlement for damage covered by an insurance contract. The Respondent is not licensed as an attorney²⁰ or a public adjuster. Thus, he cannot negotiate for others for a fee and doing so constitutes unlicensed public adjusting.

H. What are the Appropriate Sanctions

a. For Violations Relating to Automobile Body Shop

R.I. Gen. Laws § 5-38-10 provides that the Department may revoke or suspend a license for any violation of said statute. In addition, R.I. Gen. Laws § 5-38-10.1 provides as follows:

Civil penalties for violations. In addition to every other power granted the department of business regulation, the department may fine a licensee not more than one hundred dollars (\$100) for any violation or failure to comply with the provisions of this chapter or with any rule or regulation promulgated by the department.

¹⁹ The Respondent advertises for free estimates but charged Ms. Gyamfi \$100 for an estimate. Davey testified that for people off the street, an estimate is free but as she was going through insurance, he charged her for his time. Tr 3 at 184-6.

²⁰ Even if the Respondent was licensed as a public adjuster, he would be statutorily prohibited from the public adjusting of automobile claims. R.I. Gen. Laws § 27-10-1.1(i)(1). The Respondent is not licensed as an attorney. *Rhode Island Bar Association v. Lesser*, 26 A.2d 6 (R.I. 1942) held that negotiating and obtaining settlements or adjustments of claims for losses under insurance policies and acting for people in negotiating is the practice of law

Section 2.16 of the Hearing Regulation provides as follows:

Penalties

A. In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s) or regulation(s), the Hearing Officer shall look to past precedence of the Department for guidance and may consider any mitigating or aggravating circumstances.

1. Mitigating circumstances may include, but shall not be limited to, the following: the Party's licensing history, i.e. the absence of prior disciplinary actions; the Party's acceptance of responsibility for any violations; the Party's cooperation with the Department; and the Party's willingness to give a full, trustworthy, honest explanation of the matter at issue.

2. Aggravating circumstances may include, but shall not be limited to, the following: the Party's prior disciplinary history; the Party's lack of cooperation and/or candor with the Department; the seriousness of the violation; whether the Party's act undermines the regulatory scheme at issue; whether there has been harm to the public; and whether the Party's act demonstrates dishonesty, untrustworthiness, or incompetency.

B. The finding of mitigating factors will not necessarily lead to a reduction in the penalty imposed if the circumstances of the violations found by the Hearing Officer are such that they do not warrant a reduction in penalty.

The Respondent's record keeping is not just sloppy but rather is a systematic pattern of noncompliance with statutory and regulatory requirements. Instead of admitting to and explaining how the violations have been rectified— e.g. new training/new forms/new staff - the only attempt at compliance by the Respondent was to copy information from insurance estimates to the work order forms to show the final repair costs which still fails to comply with the statutory and regulatory requirements of an itemized list and final bill. Davey failed to understand that his record keeping violations were not a mistake here or there but a pattern of noncompliance with statutory and regulatory requirements that serve inform the public, contribute to public safety, and protect against thieves. The Respondent's record keeping failure along with its failure to even try to improve and overhaul its record keeping is extremely troubling.

Along with the record keeping violations, the Respondent did not perform work as contracted for the Bessette, Masello, and DiSpirito vehicles. The Respondent's records showed a

systematic lack of consented to waivers of repairs by its customers. The Bessette and DiSpirito vehicles were unsafely repaired. The Respondent performed substandard repairs for the Bessette, DiSpirito, and Masello vehicles. The Respondent engaged in a myriad of unconscionable practices – continuously and systematically - relating to its contracts, its unsafe repairs, and financial transactions. The Respondent defrauded its customers.

When considering the mitigating and aggravating factors in the Hearing Regulation, the Respondent does not have any prior discipline. However, its violations undermine the auto body licensing regulatory scheme in that the Respondent continuously and systematically violated record keeping requirements that serve to inform and protect the public. The Respondent harmed the public by making unsafe repairs. The Respondent made (and makes) repairs to which its customers did not consent at the expense of its customers' safety, knowledge, and financial interest by keeping its customers in the dark over what repairs were made. The Respondent's numerous violations demonstrated dishonesty, untrustworthiness, and incompetency. The Respondent failed to grasp why its records were in violation of the statutes and the Regulation and that an effort should be made to comply with such requirements. The Respondent was dishonest in its dealings with its customers as it routinely obtained those waivers prior to an insurance estimate and never informed its customers regarding what repairs were performed. The Respondent failed to account or take responsibility for such actions. Instead, it blamed everyone else for any violations.

In *West Fountain*, that respondent unsafely repaired a car and varied the repair from the insurance appraisal without its customer's consent. It received a 30 day suspension of its license and the requirement to submit a remedial plan to ensure safe repair of vehicles. However, this matter is not just about two (2) unsafe repairs that could perhaps necessitate a similar suspension of 30 to 60 days.

While the violations in *West Fountain* were serious, the Respondent has many more severe and troubling violations that represent a continuous pattern of behavior. Its car repairs are unsafe and substandard. Its actions are egregious and demonstrate incompetency and untrustworthiness. *Supra*. The Respondent's numerous and egregious violations and its pattern of violations and their serious nature are not the type of actions and behaviors that are expected in an auto body licensee.

Based on the foregoing, pursuant to R.I. Gen. Laws § 5-38-10, the Respondent's License is revoked. The seriousness and troubling pattern of violations also merit administrative penalties. Pursuant to R.I. Gen. Laws § 5-38-10.1, an administrative penalty of \$3,100 (\$100 per violation as allowed by statute) is imposed for certain violations as detailed above. This penalty is broken down as follows: 1) \$300 for failure to perform work contracted for (three (3) vehicles); 2) \$200 for unsafe repairs (two (2) vehicles); 3) \$300 for unconscionable practices related to failing to perform work contracted for (three (3) vehicles); 4) \$200 for unconscionable practices related to safety (two (2) vehicles); 5) \$300 for unconscionable practices related to financial self-dealing (three (3) vehicles); 5) \$300 for defrauding customers (three (3) customers); 6) \$1,500 for record keeping (Bessette, DiSpirito, Masello files, seven (7) further files with no final bills, five (5) further files with no parts listed).²¹

b. For Unlicensed Adjusting

R.I. Gen. Laws § 42-14-16(a) provides for administrative penalties for the violation of insurance laws as follows:

Insurance — Administrative penalties. (a) Whenever the director, or his or her designee, shall have cause to believe that a violation of title 27 and/or chapter 14, 14.5, 62, or 128.1 of title 42 or the regulations promulgated thereunder has occurred by a licensee, or any person or entity conducting any activities requiring licensure under title 27, the director or his or her designee may, in accordance with the requirements of the administrative procedures act, chapter 35 of this title:

²¹ It is a violation of R.I. Gen. Laws § 5-38-10(3) to violate any auto body licensing statute or regulation so that the record keeping violations also constitute violations of R.I. Gen. Laws § 5-38-10(3).

- (1) Revoke or suspend a license;
- (2) Levy an administrative penalty in an amount not less than one hundred dollars (\$100) nor more than fifty thousand dollars (\$50,000);
- (3) Order the violator to cease such actions;
- (4) Require the licensee or person or entity conducting any activities requiring licensure under title 27 to take such actions as are necessary to comply with title 27 and/or chapter 14, 14.5, 62, or 128.1 of title 42, or the regulations thereunder; or
- (5) Any combination of the above penalties.

The claims adjuster statute, R.I. Gen. Laws § 27-10-10, provides as follows:

Orders for discontinuance of unlawful practices. If, after a hearing, the commissioner finds that the furnishing of any information or assistance to a claims adjuster involves any act or practice which is unfair or unreasonable or inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects that act or practice is unfair or unreasonable or inconsistent with the provisions of this chapter, and requiring the discontinuance of that act or practice.

Based on the foregoing, the Respondent acted as an unlicensed adjuster. Pursuant to R.I. Gen. Laws § 27-10-10 and R.I. Gen. Laws § 42-14-16, the Respondent is ordered to cease and desist from engaging in any activity requiring licensing under R.I. Gen. Laws § 27-10-1 *et seq.* In addition, while this is the first discipline against the Respondent, the Respondent failed to understand what negotiation means and acted on behalf of a customer with the insurance company in order to settle an insurance claim and blamed his staff for the use of the word. Pursuant to R.I. Gen. Laws § 42-14-16(a), the Respondent shall pay an administrative penalty of \$2,000 for engaging in unlicensed adjusting.

VII. FINDINGS OF FACT

1. On October 29, 2019, the Order to Show Cause was issued to the Respondent by the Department.
2. A hearing was held on July 23, 2021 and August 12 and 13, 2021. Briefs were timely filed by October 8, 2021.
3. The Bessette and DiSpirito vehicles were unsafely repaired.

4. The repairs on the Bessette, DiSpirito, and Masello vehicles were substandard.
5. The Respondent routinely had customers sign its waiver to repair prior to receiving their insurance estimates and even when such a waiver did not apply to customers so that the customers had no knowledge of what they were purportedly waiving.
6. The Respondent routinely did not provide itemized lists or final bills to its customers.
7. The Respondent routinely repaired cars not pursuant to the insurance estimate without consent from its customers.
8. The facts contained in Section IV and VI are incorporated by reference herein.

VIII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-38-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and the Hearing Regulation.
2. The Respondent violated R.I. Gen. Laws § 5-38-10(3), (4), (7), (8), and (9); R.I. Gen. Laws § 5-38-29; R.I. Gen. Laws § 5-38-18; R.I. Gen. Laws § 27-10.2-2; and R.I. Gen. Laws § 27-10-1.2.

IX. RECOMMENDATION

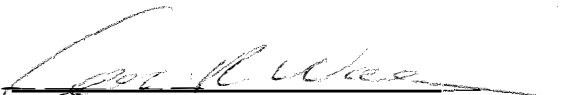
Pursuant to R.I. Gen. Laws § 5-38-10, the Respondent's License is revoked effective 31 days from the execution of this decision by the Department director. During this 31 day period, the Respondent shall not take on the repairs of any more vehicles but shall use the time to return any vehicles it currently has in its possession to their owners. The Respondent shall confirm with any vehicle owners whether repairs should be completed prior to their return. If any repairs are

completed, the Respondent shall completely document its repairs upon returning the vehicles to their owners and comply with all statutory and regulatory requirements.

Pursuant to R.I. Gen. Laws § 27-10-10 and R.I. Gen. Laws § 42-14-16, the Respondent is ordered to cease and desist from engaging in any activity requiring licensing under R.I. Gen. Laws § 27-10-1 *et seq.*

Pursuant to R.I. Gen. Laws § 5-38-10.1, an administrative penalty of \$3,100 is imposed (\$100 for each violation detailed above) on the Respondent. Pursuant to R.I. Gen. Laws § 42-14-16(a), the Respondent shall pay an administrative penalty of \$2,000 for engaging in unlicensed adjusting. These administrative penalties shall be paid by the 31st day following the execution of this decision by the Department director. The motion to dismiss is denied.

Dated: December 22, 2021



Catherine R. Warren, Esquire
Hearing Officer

ORDER

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

 X ADOPT
 REJECT
 MODIFY

Dated: 12/22/2021


Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 22nd day of December, 2021, that a copy of the within decision was sent by first class mail, postage prepaid and by electronic delivery to Lawrence P. Almagno, Jr., Esquire, Almagno Law, 10 Rangeley Road, Cranston, RI 02920 and Michael J. Lepizzera, Jr. Esquire, Lepizzera & Laprocina, 117 Metro Center Blvd. - Ste. 2001, Warwick, RI 02886 and by electronic delivery to Matthew Gendron, Esquire, Patrick Smock, Esquire, and Amy Stewart, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

Diane L. Paravisini
