

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920**

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IN THE MATTER OF:

MSA, Inc. d/b/a Warren Gas & Repair,

Respondent.

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DBR No.: 15AB001

**DECISION**

**I. INTRODUCTION**

The above-entitled matter came before the Department of Business Regulation (“Department”) pursuant to an Order to Show Cause Why Cease and Desist Order Should Not be Issued, Notice of Hearing and Appointment of Hearing Officer (“Order to Show Cause”) issued to MSA, Inc. d/b/a Warren Gas & Repair (“Respondent”) on April 23, 2015. A hearing was held before the undersigned<sup>1</sup> on September 21, 2015. Both parties were represented by counsel who rested on the record.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-35-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-38-1 *et seq.*, and R.I. Gen. Laws § 31-46-1 *et seq.*

**III. ISSUES**

Whether the Respondent violated R.I. Gen. Laws § 5-38-1 *et seq.* and/or R.I. Gen. Laws § 31-46-7.

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<sup>1</sup> Pursuant to a delegation of authority by the Director of the Department.

#### IV. MATERIAL FACTS AND TESTIMONY

Margaret Natale (“Natale”) testified on behalf of the Department. She testified that on August 4, 2014, she was in an automobile accident and had her car towed to the Respondent. She testified that her car was appraised on August 15, 2014 and the appraiser found that her car was a total loss. See Department’s Exhibit One (1) (copy of appraisal indicating the car is a “total loss”). She testified that she spoke to Dale Tommer and the mechanic at the Respondent and told them that she did not know if she could buy a used car for what the insurance company would give her and they indicated that they knew what was wrong with her car and could rebuild it. She testified that she did not know a total loss car could be rebuilt, but she had kept good care of her car so she decided to have it rebuilt by Respondent. She testified that there were delays in fixing the car and she picked it up on November 25, 2014. She testified that she paid some money in advance of the work and when she picked up the car, she received a receipt for the work done on the car. See Department’s Exhibit Two (2) (receipt indicated Respondent replaced the hood and the bumper among other items). She testified that the car had problems after she picked it up and she eventually took it to a Saab expert who indicated that there were problems with the engine and bumper. On cross-examination, she testified that she did make an election to the insurance company to keep the car and have it rebuilt so took less money from the insurance company. She testified that she thought the receipt she received from the Respondent was odd since it did not list the work done, the VIN numbers, or labor but just listed what was replaced.

Dale Tommer, Jr., testified on behalf of the Respondent. He testified that he set up the Respondent corporation for his daughter and her fiancé to learn the business and he acts as a consultant. He testified that Saab parts are hard to obtain, but he did obtain another Saab from a junk yard to get parts. He testified the Respondent replaced Natale’s car’s hood, plastic grill, front

bumper, radiator, transmission cooler, and gas tank. He testified that when Natale picked up the car, she had not paid for the work in full. He testified that he told Natale that she needed to know what they could do. He testified that this is the only time he did something like this because he was trying to help Natale. He testified that he never knowingly violated Rhode Island law. He testified that Natale only got mad when there was a dispute over work performed. He testified the majority of the work was mechanical. He testified he removed the hood to get to the engine. On cross-examination, he testified that the Respondent performed all the work on the invoice and replaced those parts but did not repair them.

## 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 and Regulations**

R.I. Gen. Laws § 31-46-7 states as follows:

Repair of salvaged vehicles – Licenses: (a) A salvage rebuilders' license shall be established and issued to all licensed auto body repair facilities that qualify under established guidelines. The regulations shall outline equipment and training necessary to rebuild (total loss) salvage vehicles prior to the issuance of a certificate of salvage title by the division of motor vehicles under § 31-46-4. The guidelines shall be promulgated by and the license shall be issued by the department of business regulation.

(b) No company, corporation, business or person(s) shall rebuild salvage vehicles unless in possession of a valid salvage rebuilders license.

(c) Any vehicle repaired or rebuilt by person(s) not in possession of this license shall have its title stamped "FOR PARTS ONLY". (sic)

(d) Any company, agency or person(s) found in violation of this section shall be guilty of a felony and shall be punished by imprisonment for not more than two (2) years, or a fine of five thousand dollars (\$ 5,000), or both.

(e) The director of the department of business regulation shall be required to issue a "salvage rebuilders license form" which for the purposes of record keeping shall be numbered. Any salvage vehicle sold to a salvage rebuilders licensee shall be assigned a salvage rebuilders license form which shall be presented at the time of registration of any salvage vehicle

*Commercial Licensing Regulation 7 - Salvage Vehicle Repair* (“CLR7”) provides the following definition:

“Salvage Vehicle” means a vehicle declared to be a total loss because of (i) damage to such vehicle or (ii) in settlement of a claim for damage or theft.

R.I. Gen. Laws § 5-38-1 defines an “automobile body shop” as follows:

Automobile body shop, referred to as "auto body shop", includes any establishment, garage, or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers, chassis and similar components of motor vehicle bodies as distinguished from the seats, motor, transmission, and other accessories for propulsion and general running gear of motor vehicles, except as provided in § 5-38-20. No repairs performed by licensees under this chapter may be performed using mobile units, but may only be performed at a fixed, licensed location. This section shall not apply to glass repair and installations or paintless dent repairs.

R.I. Gen. Laws § 5-38-4 provides as follows:

Practices for which license is required. – (a) An annual license shall be issued to businesses, corporations, and persons meeting the qualifications set by the auto collision repair licensing board and paying the required fees. Qualification shall be set by the auto collision repair licensing board and approved by the director.

(b) No person, firm, or corporation shall engage within this state in the business of auto body repairing or painting or enter into contracts for the repairing, replacing, or painting of auto bodies or parts of auto bodies or advertise or represent in any form or manner that he, she, or it is an auto body shop unless that person, firm, or corporation possesses a license in full force and effect from the department of business regulation specifying that person, firm, or corporation as licensed to operate or conduct an auto body shop.

(c) This chapter applies to every new and used motor vehicle dealer as defined in § 31-1-19, but does not apply to or require the obtaining of a license by persons, firms, or corporations whose business is or may be limited to the making or entering into contracts for the making of mechanical or electrical repairs or adjustments to motor vehicles.

R.I. Gen. Laws § 5-38-19 provides as follows:

Criminal penalties for violations – Injunctive relief. – (a) Any person, firm, or corporation required to be licensed under this chapter who conducts an automobile body repair shop business without obtaining a license, or who after the denial, suspension, or revocation of a license conducts that business, is guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000), or imprisonment for not more than one year, or both; for a second conviction, is guilty of a felony and shall, upon conviction, be punished by a

fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000), or by imprisonment for not more than two (2) years, or both; and for a third and subsequent conviction, is guilty of a felony and shall, upon conviction, be punished by a fine of not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000), or by imprisonment for not less than two (2) years nor more than five (5) years, or both. For the purposes of this section, a plea of nolo contendere with probation shall be considered a conviction.

(b) If the department of business regulation has reason to believe that any person, firm, corporation, or association is conducting an automobile body repair shop business without obtaining a license, or who after the denial, suspension, or revocation of a license is conducting that business, the department may issue its order to that person, firm, corporation, or association commanding them to appear before the department at a hearing to be held not sooner than ten (10) days nor later than twenty (20) days after issuance of that order to show cause why the department should not issue an order to that person to cease and desist from the violation of the provisions of this chapter. That order to show cause may be served on any person, firm, corporation, or association named by any person in the same manner that a summons in a civil action may be served, or by mailing a copy of the order, certified mail, return receipt requested, to that person at any address at which that person has done business or at which that person lives. If during that hearing the department is satisfied that the person is in fact violating any provision of this chapter, the department may order that person, in writing, to cease and desist from that violation. All these hearings are governed in accordance with the Administrative Procedures Act, chapter 35 of title 42. If that person fails to comply with an order of the department after being afforded a hearing, the superior court for Providence County has jurisdiction upon complaint of the department to restrain and enjoin that person from violating this chapter.

*Commercial Licensing Regulation 4 – Motor Vehicle Body Repair* (“CLR4”) provides the following definitions:

"Motor Vehicle Body" means that portion of the Motor Vehicle mounted on the chassis or frame or unibody, including fenders, bumpers, windshields, glass and similar components of motor vehicle bodies as distinguished from the, seats, motor, transmission, air conditioning condenser, radiator and other accessories for propulsion and general running gear of motor vehicles.

"Motor Vehicle Body Work" means the act or acts of preparing, fixing, restoring, painting or putting together a Motor Vehicle Body, including repairing, replacing or installing of glass thereon, or the subcontracting of said work.

#### **D. Arguments**

The Department argued that the Respondent's work on the car constituted automobile body work pursuant to R.I. Gen. Laws § 5-38-4. The Department argued that the car was a total loss

and Respondent does not have a salvage rebuilder license which is required perform work on a total loss vehicle. The Department argued that there is no exemption to the salvage rebuilder licensing requirement. The Department argued that just because Natale agreed to have Respondent fix her car that does not relieve the Respondent from any statutory or regulatory requirements. The Department argued that there is no requirement that an individual or entity needs to purposely violate the statute. The Department argued that since the car was not repaired by a licensed salvage rebuilder, Natale cannot receive salvage title from DMV so cannot register her car. The Department requested that a cease and desist order be issued for the violations of R.I. Gen. Laws § 5-38-1 *et seq.* and the matter be referred to the Attorney General's for prosecution for criminal violations of both statutes.

The Respondent argued that this is a contract dispute and the Respondent had other options and chose to have her car repaired and she is using the statutes to avoid paying for the repairs. The Respondent argued that there is no evidence that it violated either statute, but a one-time repair does not violate the statutes and there was no intent to violate the statutes. The Respondent argued that a cease and desist or referral is unnecessary as it had not performed this type of work previously and would not again.

**E. Whether Respondent Violated R.I. Gen. Laws §§ 31-46-7 or 5-38-1 *et seq.***

It was undisputed that the Respondent does not hold an automobile body repair license pursuant to R.I. Gen. Laws § 5-38-1 *et seq.* and does not hold a salvage rebuilders license pursuant to R.I. Gen. Laws § 31-46-7. It was undisputed that the Respondent performed work on the car. The Respondent and Natale agreed that the Respondent would repair Natale's car and there may be a dispute over the money owed for work performed, but that does not relieve the Respondent of any statutory or regulatory licensing requirements for performing such work.

**a. R.I. Gen. Laws §31-46-7**

R.I. Gen. Laws § 31-46-1.1 provides for the two (2) classifications of salvage vehicles, one where a vehicle is so damaged that it is only good for “parts only” and the other where a vehicle is damaged but can be repaired. The car was declared a total loss. CLR7 defines a salvage vehicle to be one that is declared a total loss. R.I. Gen. Laws § 31-46-7 requires that a salvage rebuilders license is necessary to rebuild salvage vehicles. R.I. Gen. Laws § 31-46-7(c) requires that any vehicle repaired by individual who rebuilds a salvage vehicle without possessing a salvage rebuilders license will have the title stamped “For Parts Only.”

The statute does not provide any exemption for an individual to repair a totaled vehicle – a salvage vehicle - without a salvage rebuilders license. The requirement is very clear: “[n]o company, corporation, business or person(s) shall rebuild salvage vehicles unless in possession of a valid salvage rebuilders license.” It is undisputed that the car was a salvage vehicle and that the Respondent repaired said car without a salvage rebuilders license. See Department’s Exhibits One (1) and Two (2). There is no requirement that the individual must have some kind of intent to violate said law.<sup>2</sup> Rather this is a licensing law and it mandates that such a license is required for such work and the Respondent performed such work without the statutorily required license. The statute provides for criminal sanctions<sup>3</sup> for performing such unlicensed work. Therefore, a referral to the Attorney General’s is appropriate as the Respondent engaged in unlicensed work under this statute.

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<sup>2</sup> There is a presumption in law that people have knowledge of applicable law. See *McElroy v. Hawksley*, 196 A.2d 172 (R.I. 1963).

<sup>3</sup> See R.I. Gen. Laws § 31-46-7 for criminal penalties for violation of said statute.



**b. R.I. Gen. Laws § 5-38-1 et seq.**

CLR4 defines automobile body work to include work on fenders, bumpers, windshields, and similar components. The transmission, motor, and radiator are not included in the definition. The Respondent performed work on the radiator and condenser which are not included in automobile body work definition. However, the receipt and testimony demonstrated that the Respondent did engage in automobile body work by replacing the hood and bumper.

R.I. Gen. Laws § 5-38-20<sup>4</sup> provides an exemption from automobile body repair licensing work for work done by a private individual on his or her own vehicle or a family member's vehicle without compensation. This exemption does not apply to the Respondent as Respondent repaired a customer's car for compensation. There are no other exemptions. The Respondent performed automobile body work as defined by CLR4 and R.I. Gen. Laws § 5-38-1 and a license is required by R.I. Gen. Laws § 5-38-4 for such work. There is no requirement that the individual must have some kind of intent to violate said law. Rather this is a licensing law and it mandates that such a license is required for such work and the Respondent performed such work without the statutorily required license. The statute provides for criminal sanctions<sup>5</sup> for performing such unlicensed work. Therefore, a referral to the Attorney General's is appropriate as the Respondent engaged in unlicensed work pursuant to this statute. Furthermore, R.I. Gen. Laws § 5-38-19(b) provides that a cease and desist order may be entered against a person or firm shown to have violated R.I. Gen. Laws § 5-38-1 et seq. While the Respondent represented that it would not perform such work in

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<sup>4</sup> R.I. Gen. Law § 5-38-20 provides as follows:

Persons exempt. – This chapter does not prohibit the registered owner of any motor vehicle, or any person related by blood or marriage to that registered owner, from performing any type of work usually performed in an auto body shop, upon the vehicle that is registered in his or her own name; provided, that the work is done personally by the registered owner or that relative, and he or she neither employs nor compensates any person, monetarily or otherwise, to aid and assist in that work.

<sup>5</sup> See R.I. Gen. Laws § 5-38-19 for criminal violations of said statute.

future, the order to cease and desist is not predicated on a respondent's future intent but rather is predicated on actions already taken by a respondent. Since Respondent engaged in unlicensed automobile body repair work, it is in violation of R.I. Gen. Laws § 5-38-1 *et seq.* so that a cease and desist order should enter.

## **VI. FINDINGS OF FACT**

1. On or about on April 23, 2015, an Order to Show Cause was issued by the Department to the Respondent.

2. A hearing on was held on September 21, 2015 with the parties resting on the record.

3. The Respondent does not hold a motor vehicle body repair license pursuant to R.I. Gen. Laws § 5-38-1 *et seq.*

4. The Respondent does not hold a salvage rebuilder's license pursuant to R.I. Gen. Laws § 31-46-1 *et seq.*

5. The Respondent repaired a car that was declared a total loss and was a salvage car.

6. The Respondent repaired among other things on said car the hood and bumper.

7. The facts as detailed in Section V are incorporated herein by reference.

## **VII. CONCLUSIONS OF LAW**

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 5-38-1 *et seq.*, R.I. Gen. Laws § 31-46-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

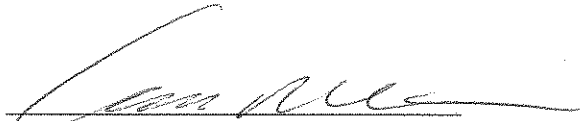
2. The Respondent violated R.I. Gen. Laws § 31-46-7.

3. The Respondent violated R.I. Gen. Laws § 5-38-1 *et seq.*

**VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that referrals be made to the Attorney General pursuant to R.I. Gen. Laws § 31-46-7 and R.I. Gen. Laws § 5-38-19(a) regarding Respondent's violation of both statutes. Further, pursuant to R.I. Gen. Laws § 5-38-19(b), the Respondent is order to cease and desist from violating any provisions of R.I. Gen. Laws § 5-38-1 *et seq.*

Dated: October 21, 2015

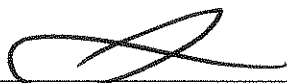
  
Catherine R. Warren  
Hearing Officer

**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:

ADOPT  
 REJECT  
 MODIFY

Dated: 10/30/15

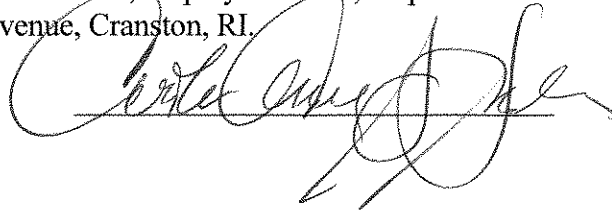
  
Macky McCleary  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION 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 on this 30<sup>th</sup> day of October, 2015 that a copy of the within Order was sent by first-class mail to Richard Tallo, Esquire, 999 Chalkstone Avenue, Providence, RI 02908 and by hand-delivery to Jenna Algee, Esquire, and Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "Cristina A. Algee".