

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**HAMLET BMW, Inc.,
HAMLET SAHAKYAN, Pres.**
518 West Colorado Street
Glendale, CA 91204

Automotive Repair Dealer Registration No.:
ARD 259587

Respondent.

Case No.: 77/16-7775

OAH No.: 2017101187

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective September 7, 2018.

DATED: Aug. 2, 2018



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

BEFORE THE
BUREAU OF AUTOMOTIVE REPAIR
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HAMLET BMW, INC., HAMLET
SAHAKYAN, PRESIDENT,

Automotive Repair Dealer Registration No.
ARD 259587,

Respondent.

Agency Case No. 77/16-7775

OAH No. 2017101187

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 9, 2018, in Los Angeles, California.

William D. Gardner, Deputy Attorney General, represented complainant, Patrick Dorais, who brought the accusation in his official capacity as Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs, State of California.

Respondent, Hamlet Sahakyan, president, secretary, and treasurer of Hamlet BMW, Inc., and doing business as Hamlet BMW, Inc., was represented by Lawrence P. Adamsky, attorney at law.

The parties presented oral and documentary evidence. The record was closed and the matter was submitted for decision on May 9, 2018.

SUMMARY

Respondent's customer paid him thousands of dollars for repairs not actually performed. The vehicle's problems were not fixed until months later, when the customer went to another automotive repair dealer. At hearing, respondent provided explanations for his conduct that were not credible. The facts indicating respondent defrauded a customer warrant revocation of registration. Respondent must also pay costs.

FACTUAL FINDINGS

1. The accusation alleges seven causes for discipline, six based on misrepresentation, one on invoices that failed to follow a regulatory mandate. Respondent filed a timely request for hearing.

2. On October 1, 2009, BAR registered respondent as an Automotive Repair Dealer, registration number ARD 259587, due to expire on June 30, 2018. Respondent's registered name and address are:

Hamlet Sahakyan, president/secretary/ treasurer
Hamlet BMW, Inc., DBA
Hamlet BMW, Inc.
518 West Colorado St.
Glendale, CA 91204

(Exhibit 2.)

Respondent's Work on Mr. Kim's Vehicle

3. In September 2015, David Kim asked respondent for repairs to his 2008 BMW M5, which he had bought used a few months before. He told respondent the Check Engine light had come on and the vehicle was in limp mode: it could not be operated at a speed higher than approximately 40 miles per hour.

4. Using no diagnostic equipment, respondent said he was nearly certain the problem was the throttle actuators. Impressed, Mr. Kim felt he could trust respondent and left it for repair. A few days later, Mr. Kim agreed to respondent's plan to buy two new throttle actuators and install them for an estimated price in excess of \$2,000.

5. Exhibit 6 includes respondent's invoice number 000530 dated September 25, 2015. Exhibit 13 is a clearer copy of invoice number 000530. They show that respondent billed Mr. Kim \$2,245.18 for two new throttle actuators, with additional charges for labor, \$500, and taxes, \$202.07, for a total of \$2,947.25. Mr. Kim settled the bill by paying respondent a total of \$2,800 in cash.

6. Respondent's address and registration number are the same on the Exhibit 6 invoices and in BAR's records. Respondent's name on the invoices, however, is "Hamlet's BMW Services" or "Hamlet's BMW." BAR registered respondent under neither of these names, as set out in Finding 2 above. The names do not match BAR's records, as required by California Code of Regulations, title 16, section 3356, subdivision (a)(1).

7. About two weeks after Mr. Kim paid for the repairs, the Check Engine light went on again and the vehicle was back in limp mode. Respondent told Mr. Kim he could fix the problem with adjustments, including an oil change. Mr. Kim paid respondent \$300 in cash for the adjustments. No invoice reflects this payment. When Mr. Kim retrieved the car

on October 6, 2015, he paid an additional \$180 charged to a credit card as reflected in invoice number 000562. (Exhibit 6.)

8. In December 2015, the problem recurred. As stated in invoice number 000703, Mr. Kim paid \$120 for another adjustment on December 8, 2015. (Exhibit 6.)

9. The problem recurred in January 2016. Respondent said that more adjustment was needed, as well as a battery that he would program into the vehicle. As stated in invoice number 000002 dated January 18, 2016, Mr. Kim paid \$350 for a new battery and additional amounts for a filter and labor for a total of \$547.88. (Exhibit 6.)

10. Again in early March 2016, the Check Engine light went on and the vehicle was in limp mode. Again Mr. Kim took the vehicle to respondent, who charged \$266.98 on March 14, 2016 to replace a fuel filter and for labor. (Exhibit 6.)

Work by Pacific BMW

11. On March 15, 2016 the problem recurred, but this time Mr. Kim took the vehicle to the Pacific BMW dealership (Pacific) in Glendale, California. Mr. Kim explained to service personnel that respondent had installed new throttle actuators months ago, but the same problem had recurred several times.

12. Tim Weber investigated. Pacific has employed him as a master technician for approximately two and a half years. He is qualified to work on any vehicle manufactured by BMW. Mr. Weber has worked at BMW dealerships since 2011.

13. Mr. Weber took a conservative approach, using computer diagnostics first to see where the problem might be. He also reprogrammed the vehicle's computer system to see if that would resolve the problem. But all electronic indications were that the throttle actuators were the problem. Accordingly Mr. Weber partially dismantled the engine to gain access to the actuators.

14. If the throttle actuators had been replaced as Mr. Kim said, they would show tool marks. There were none. In addition, dirt and rust on the actuators matched the dirt and rust on engine parts nearby. Mr. Weber removed the actuators and read a production number stamped on them, which indicated they were older than Mr. Kim's vehicle by a few months. Mr. Weber concluded, as he testified convincingly, that respondent had not worked on the throttle actuators and that adequate repair required their replacement.

15. Pacific charged Mr. Kim \$3,501.80 for diagnosis and installation of new throttle actuators. Mr. Kim agreed that the battery should be replaced as well because the one respondent installed was not the type the vehicle required and had not been programmed into the vehicle's electronic system. Mr. Kim paid Pacific in total \$4,082.53, after which the vehicle operated normally. Pacific gave Mr. Kim the throttle actuators Mr. Weber replaced.

16. On several occasions when respondent worked on the vehicle, Mr. Kim rented a car or borrowed one from his parents. While the vehicle was at Pacific, about a week and a half, the dealership lent Mr. Kim another vehicle gratis.

17. Mr. Kim sold the vehicle within a year after Pacific's repairs. He felt uncertain whether respondent had put the vehicle back together correctly, so that it might be a "time bomb." Before he sold it, Mr. Kim had the vehicle fitted with new shock absorbers, for which he paid approximately \$1,800, and he may have had new brakes installed as well. Mr. Kim drove the vehicle approximately 20,000 miles during all the time he owned it.

Complaint and Investigation

18. Mr. Kim filed a complaint on March 22, 2016. BAR assigned Nicholas Stewart to investigate. BAR has employed him for approximately five years as a Program Representative I. Mr. Stewart has experience in automotive repair longer than 10 years, including certification as a Chrysler automotive technician.

19. Mr. Stewart spoke to Mr. Kim by telephone and obtained copies of respondent's invoices. Mr. Kim also turned over the throttle actuators that Mr. Weber replaced, which Mr. Stewart caused to be photographed. The photographs, Exhibit 10, corroborate Mr. Weber's testimony and the conclusion that Mr. Stewart reached as well, that respondent did not replace the throttle actuators.

20. On April 29, 2016, Mr. Stewart went to respondent's shop, where he asked for copies of any paperwork on Mr. Kim's vehicle. Respondent replied he was having difficulties finding the paperwork but would provide it later. He never did.

21. Respondent showed Mr. Stewart around his shop. In the course of conversation, respondent stated a technician he employed had replaced the throttle actuators in Mr. Kim's vehicle. Mr. Stewart, following his own and BAR's custom and practice, wrote a Station Inspection Report regarding these communications, Exhibit 11.

22. Mr. Stewart went to respondent's shop a second time and again noted what occurred in a second Station Inspection Report, included in Exhibit 11. Normally Mr. Stewart follows up on a first station inspection within 24 hours, but because respondent said he was having difficulty locating materials, Mr. Stewart waited six days, returning on May 5, 2016.

23. At the second station inspection, respondent told Mr. Stewart he still could not find the requested paperwork. Mr. Stewart asked him where he had purchased the new throttle actuators. Respondent said he could not remember, but he knew they were dealer-only parts unavailable in the aftermarket. Respondent thought he might have obtained the parts from the Century West BMW dealership in North Hollywood or Beverly Hills BMW. Respondent added he had checked with the dealerships but, because they had changed their parts invoice system, they too were unable to locate the records.

24. Mr. Stewart traveled to the two dealerships respondent named. Respondent was correct that the parts are available only from dealers and not the aftermarket. He was incorrect, however, about the dealerships' ability to check their records for the relevant period. Each checked and was able to confirm that it sold no throttle actuators to respondent. One dealership acknowledged changing its parts invoice system, but contrary to what respondent represented, that did not prevent the dealership from checking pertinent records.

25. Mr. Stewart recalled also that he went to Pacific and they told him they were unwilling to sell parts to respondent based on dealings with him previous to September 2015. Mr. Stewart also interviewed Mr. Weber at Pacific and had him sign a sworn declaration, Exhibit 8, which is consistent with Mr. Weber's testimony at hearing.

Respondent's Testimony

26. Respondent stated at hearing that he felt remorse for what happened to Mr. Kim and was willing to pay him restitution. Respondent explained he wished to make the customer happy.

27. Respondent claimed at hearing to recall he had purchased new parts for Mr. Kim's vehicle, some from Beverly Hills BMW and some from Century West BMW. He said the dealerships had provided him receipts, which were stored in cardboard boxes in a bathroom at the shop. A toilet flooded the bathroom and, according to respondent, water soaked and destroyed the records, which were then discarded. Respondent testified the flooding prevented him from providing copies to anyone. He did not mention that a flooded toilet ruined records until the hearing.

28. Mr. Kim was the first to ask respondent for copies of paperwork. Respondent testified that the day after Mr. Kim's request, he went to the Beverly Hills dealership, where a friend of his works. There respondent said he learned that records were unavailable because of a nationwide change in the computer system BMW dealerships use to track parts orders.

29. Respondent heard and disagreed with the testimony that his shop had not replaced the throttle actuators. Respondent testified that he looked at them before installation at his shop and they appeared new. Respondent then said that Mr. Weber would not have seen new parts because respondent had rebuilt the throttle actuators.

30. Because the parts he worked on seemed to have ongoing problems, in the end respondent advised Mr. Kim he should go to a BMW dealership and ask for a free software update of his vehicle's computer system. Respondent thought that that might resolve any problems. He regrets the advice.

31. Respondent had no explanation for why he did not tell either Mr. Kim or Mr. Stewart about rebuilt throttle actuators or how his records became unavailable.

32. Respondent argued that Mr. Kim's vehicle needed parts and service through no fault of respondent's and either respondent caused Mr. Kim no harm, or any harm was limited to the price of new throttle actuators.

Other Testimony

33. Two witnesses testified to respondent's skill and care as an automotive repair dealer. Respondent had repaired the vehicle of each witness.

A. Parsegh Mihranian, who was informed of the grounds for the accusation, testified that he trusts respondent. Mr. Mihranian has known respondent for nearly two years. When Mr. Mihranian's 2005 BMW M3 broke down about a year ago, he had it towed to a BMW dealership in Alhambra, California. They said the vehicle needed extensive repairs, including a new transmission, for which the charge would be approximately \$18,000. Mr. Mihranian sought a second opinion and had the vehicle towed to respondent's shop. Respondent repaired the vehicle within two days. It needed a new clutch, not a completely new transmission. Respondent charged him approximately \$3,300. The vehicle has run well since then. Mr. Mihranian emphasized that respondent is trustworthy and provides customers like him with top quality service.

B. Erik Verdian, also aware of the issues in the accusation, took his previous vehicle, a BMW 650, to respondent for repairs approximately five years ago. The Check Engine light was on. Respondent fixed that and performed other work, such as changing the vehicle's oil. Mr. Verdian is careful with the vehicles he has owned, and insists that he be allowed to see repair work being performed. Many mechanics object. Respondent did not. Mr. Verdian took his old vehicle to respondent regularly, about once every three months, for maintenance and repairs. Respondent allowed him to observe and did good work. Mr. Verdian contrasted respondent's work to that of some BMW dealerships, which attempt to do more work than is needed and consequently charge unreasonably. On one occasion a dealership told Mr. Verdian that they must replace many parts, including hoses, on his newer vehicle, a BMW M6. He did not allow the work and was pleased when respondent told him that the vehicle needed much less costly repairs, the replacement of gaskets and clamps. Mr. Verdian considers respondent honest, whereas he believes personnel at dealerships have lied to him about the need for repairs.

Costs

34. BAR incurred reasonable prosecution costs of \$3,915. (Exhibit 3.)

LEGAL CONCLUSIONS

1. Due process places the burden of proof on BAR. "[P]rocedural due process of law requires a regulatory board or agency to prove the allegations of an accusation filed against

a licensee” (*Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) The standard BAR must meet is proof by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

2. When an automotive repair dealer cannot show a bona fide error, Business and Professions Code section 9884.7, subdivision (a), authorizes revocation or other discipline of the automotive repair dealer’s registration based on:

- (1) [A]ny statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. [¶] . . . [¶]
- (4) Any other conduct which constitutes fraud. [¶] . . . [¶]
- (6) Failure in any material respect to comply with the provisions of this chapter [i.e., Business and Professions Code sections 9880 through 9889.68] or regulations adopted pursuant to it. [¶] . . . [¶]
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of automobiles.

3. California Code of Regulations, title 16, section 3356, subdivision (a)(1), requires, among other things, that invoices for service, repair, and parts “shall show the automotive repair dealer’s registration number and the corresponding business name and address as shown in the Bureau’s records.”

4. California Code of Regulations, title 16, section 3358, requires that automotive repair dealers maintain for three years legible copies of records, including: under subdivision (a), their automotive repair invoices and others’ invoices for parts or labor; under subdivision (b), written estimates; and, under subdivision (c), work orders and contracts for repairs, parts and labor. The section further requires that the records be open for reasonable inspection and reproduction by BAR or other law enforcement during normal business hours.

5. California Code of Regulations, title 16, section 3373, provides that: “No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order . . . , withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.”

6. Under California Code of Regulations, title 16, section 3374: “No dealer shall advertise, represent, or in any manner imply that a used, rebuilt or reconditioned part or component is new unless such part and all of the parts of any component are in fact new.”

First Cause for Discipline: Untrue or Misleading Statements

7. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(1), based on the invoice to Mr. Kim, Exhibits 6 and 13, Finding 5, that respondent replaced the old with new throttle actuators in Mr. Kim's vehicle. Respondent knew, or by the exercise of reasonable care should have known, that the throttle actuators were not replaced until another shop, Pacific, replaced them.

8. Respondent's other statements regarding the vehicle were misleading. Respondent failed to correct the information he gave Mr. Kim and Mr. Stewart regarding installation of new throttle actuators. As Mr. Kim convincingly testified, he was convinced respondent had installed new throttle actuators, but that more work was needed later to make the new parts function correctly. Misled in this way, Mr. Kim was wrongfully induced to pay respondent for further work.

Respondent's Vicarious Liability

9. Respondent bears responsibility for the untrue statements to Mr. Kim and Mr. Stewart regarding new throttle actuators, and any other wrongful conduct relating to Mr. Kim and his vehicle, whether the person acting wrongfully was respondent or other personnel employed by respondent. An employer is vicariously liable for wrongdoing during the course and scope of employment by those employed. (*Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 621.) "The licensee, if he elects to operate his business through employees must be responsible to the licensing authority for their conduct in the exercise of his license, else we would have the absurd result that [employees' conduct is] . . . forbidden [but] the licensees would be immune to disciplinary action . . ." (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144-145.)

Second Cause for Discipline: Fraudulent Conduct

10. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(4), for conduct which constitutes fraud. The same facts supporting the first cause for discipline support the second.

A. Respondent committed fraud by telling Mr. Kim, falsely, that he had installed new throttle actuators. The communication was actual fraud: "The suggestion, as a fact, of that which is not true, by one who does not believe it to be true." (Civ. Code, § 1572, subd. 1.)

B. Respondent committed actual fraud by failing to tell Mr. Kim that respondent had not replaced the throttle actuators. This failure was: "The suppression of that which is true, by one having knowledge or belief of the fact." (Civ. Code, § 1572, subd. 3.)

C. Respondent committed actual fraud by informing Mr. Kim that if he authorized respondent to make adjustments or perform other work, his vehicle would be repaired and stop going into limp mode. (Findings 7 through 9.)

Third Cause for Discipline: False Promises

11. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(8), for false promises that influenced, persuaded, or induced Mr. Kim to authorize the repair, service, and maintenance of his vehicle.

A. Respondent falsely promised that respondent would install new throttle actuators.

B. Respondent promised Mr. Kim on several occasions that adjustments to his vehicle would repair it. (Findings 7 through 9.) The promises were false, as respondent knew or, in the exercise of reasonable care, should have known.

12. Respondent also promised Mr. Kim that a new battery would be programmed into his vehicle. (Finding 9.) Mr. Weber credibly testified that though a new battery had been installed, it was not appropriate for the vehicle and not correctly programmed into the vehicle's electronic system. (Finding 15.) This evidence, however, does not support a false promise. Respondent's battery work was incompetent or mistaken.

Fourth Cause for Discipline: Invoice Violations re Business Name

13. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3356, subdivision (a)(1), because respondent's invoices to Mr. Kim did not show respondent's name as shown in BAR's records. (Finding 6.)

Fifth Cause for Discipline: Invoice Violations re Records of Purchased Parts

14. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3358, subdivision (a), because respondent did not maintain for three years legible invoices showing respondent had purchased throttle actuators for Mr. Kim's vehicle. Respondent's testimony that the invoices were ruined in a flooded restroom was not credible. Respondent's inability to produce the invoices upon request by Mr. Kim and Mr. Stewart is evidence that respondent never purchased the throttle actuators. This evidence is corroborated by Mr. Stewart's investigation, which indicated that none of the businesses from which respondent claimed he might have purchased the parts had any record of such a purchase.

Sixth Cause for Discipline: Invoice Violations re False or Misleading Information

15. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3373. As set out in Finding 5, respondent inserted into the September 25, 2015 invoice, number 000530, statements and information that caused the invoice to be false and misleading. As indicated in Conclusion 11, Mr. Kim was defrauded and misled.

Seventh Cause for Discipline: Misrepresentation Re Condition of Automotive Part

16. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(6), and California Code of Regulations, title 16, section 3374. Respondent represented that the used throttle actuators in Mr. Kim's vehicle were new, but they were not.

Harm to Mr. Kim

17. Respondent's argument that Mr. Kim suffered little or no appreciable harm is unavailing. There was harm to Mr. Kim from respondent's incorrect information about the vehicle's being adequately repaired, when it was not, as indicated by the number of times Mr. Kim sought repair after his initial encounter with respondent. The harm was not limited to the price of new throttle actuators and the cost of labor for their installation, money which respondent obtained from Mr. Kim improperly. Mr. Kim was also harmed each time his vehicle went into limp mode after respondent first said it had been repaired, including because Mr. Kim was forced to find substitute transportation while his vehicle was left at respondent's shop.

18. Respondent's claim at hearing that he installed rebuilt throttle actuators in Mr. Kim's vehicle is not credible. Respondent did not work on the throttle actuators in Mr. Kim's vehicle. The evidence established that the throttle actuators' condition did not change until Mr. Weber replaced them.

19. There was no credible evidence in mitigation of respondent's misconduct involving Mr. Kim and his vehicle. Respondent's witnesses, Mr. Mihranian and Mr. Verdian, offered evidence that at times respondent does good and reliable repair work for a price customers consider reasonable. But this testimony did not mitigate, or even address, respondent's wrongdoing against Mr. Kim.

20. Respondent's testimony that he wished to make his customer happy (Finding 26) was not an acknowledgement of wrongdoing or an expression of remorse. Respondent's only concession to the obligation not to take unfair advantage of a customer was his professed willingness, revealed only at the time of hearing, to refund Mr. Kim some money. Respondent's attitude did not take account of any consideration other than the purely financial, and was inadequate as a step toward rehabilitation.

Other Matters

21. Cause exists to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (c), by revoking the registrations for all places of business operated by respondent in California. The violations of law noted above collectively indicate that respondent engaged in a course of repeated and willful violation of laws and regulations pertaining to an automotive repair dealer under Chapter 20.3, Division 3, of the Business and Professions Code, that is, sections 5000 through 9998.11 of the Code, and regulations adopted pursuant to the chapter.

22. BAR's licensing, regulatory, and disciplinary functions are for the protection of the public. (Bus. & Prof. Code, § 9880.3.) In the present circumstances, and especially in light of respondent's conduct in defrauding a customer, protection of the public warrants revocation of respondent's registration.

Costs

23. Under Business and Professions Code section 125.3, BAR is entitled to recover its reasonable costs in the prosecution of this matter, a total of \$3,915. (Finding 33.) Respondent's testimony that he would return the money Mr. Kim paid for replacement of the throttle actuators indicates his ability to pay costs.

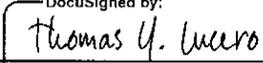
ORDER

1. The Automotive Repair Dealer registration, number ARD 259587, issued to respondent Hamlet Sahakyan, president/secretary/ treasurer of Hamlet BMW, Inc., doing business as Hamlet BMW, Inc., is revoked.

2. Registrations for any and all places of business operated in California by respondent, Hamlet Sahakyan, president/secretary/ treasurer of Hamlet BMW, Inc., doing business as Hamlet BMW, Inc., are revoked.

3. Respondent shall pay the Bureau of Automotive Repair \$3,915, its reasonable costs in case number 77/16-7775, on such terms as the Bureau may direct.

Dated: June 6, 2018

DocuSigned by:

THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearings

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7

8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 77/16-7775

12 **HAMLET BMW, INC., HAMLET**
13 **SAHAKYAN, PRESIDENT**
14 **518 West Colorado St.**
Glendale, CA 91204

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
16 **ARD 259587**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
22 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

23 2. On or about October 1, 2009, the Bureau of Automotive Repair issued Automotive
24 Repair Dealer Registration Number ARD 259587 to Hamlet BMW, Inc., Hamlet Sahakyan,
25 president (Respondent). The Automotive Repair Dealer Registration was in full force and effect
26 at all times relevant to the charges brought herein and will expire on June 30, 2018, unless
27 renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
4 All section references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
6 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
7 proceeding against an automotive repair dealer or to render a decision invalidating a registration
8 temporarily or permanently.

9 PERTINENT STATUTES AND REGULATIONS

10 5. Section 9884.7 of the Code states:

11 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
12 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
13 dealer for any of the following acts or omissions related to the conduct of the business of the
14 automotive repair dealer, which are done by the automotive repair dealer or any automotive
15 technician, employee, partner, officer, or member of the automotive repair dealer.

16 (1) Making or authorizing in any manner or by any means whatever any statement written
17 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
18 care should be known, to be untrue or misleading.

19 ...

20 (4) Any other conduct which constitutes fraud.

21 ...

22 (6) Failure in any material respect to comply with the provisions of this chapter or
23 regulations adopted pursuant to it.

24 ...

25 (8) Making false promises of a character likely to influence, persuade, or induce a customer
26 to authorize the repair, service, or maintenance of automobiles.

27

28 ///

CONSUMER D.K.'s 2008 BMW M5

1
2 11. In September 2015, the check engine light on consumer D.K.'s 2008 BMW M5
3 became illuminated. At that time, the vehicle began to exhibit reduced engine power and would
4 not travel above 40 mph. Because of this situation, on or about September 25, 2015, D.K.
5 brought his vehicle to Respondent's repair shop for diagnosis and repair. At that time,
6 Respondent's owner and president, Hamlet Sahakyan, ("Sahakyan") informed D.K. that the
7 problem was being caused by the vehicle's throttle actuators. Sahakyan represented that he
8 would replace the faulty throttle actuators with two (2) new OEM (i.e., original equipment
9 manufacturer) BMW throttle actuators for a total cost of \$2800.00. D.K. agreed to have
10 Sahakyan provide the parts and service. Sahakyan represented to D.K. orally that that he had
11 replaced the actuators with new BMW parts, and he generated an invoice for D.K. representing
12 the same. Based on those representations, on or about September 25, 2015, D.K. paid
13 Respondent \$2,800.00 for the parts and service. In actuality, however, Respondent did not
14 replace the throttle actuators with new OEM parts as Sahakyan had represented and for which
15 Respondent was paid.

16 12. Within a couple of weeks, D.K.'s vehicle started exhibiting the same issues with
17 reduced power and an illuminated check engine light. On or about October 6, 2015, D.K. took
18 his vehicle back to Respondent's shop, and Sahakyan told him that the new actuators needed
19 "adjustments" and cleaning. Sahakyan charged D.K. approximately \$300.00 for labor related to
20 those services, which D.K. paid in cash. Several weeks later the vehicle again began to exhibit
21 the same issues with reduced power and an illuminated check engine light, and on or about
22 December 8, 2015, D.K. brought the vehicle back to Respondent's station. Sahakyan again told
23 D.K. that the throttle actuators needed "adjustments," for which he charged D.K. an additional
24 \$120.00.

25 13. By January 2016, the vehicle again began to exhibit the same issues with reduced
26 power and an illuminated check engine light, and on or about January 18, 2016, D.K. brought the
27 vehicle back to Respondent's station. This time Sahakyan told D.K. that the problems were
28 related to issues with his car battery. Sahakyan told D.K. that the battery needed to be replaced

1 and offered to replace it and program the new battery to the car for a total of \$547.84. D.K.
2 agreed to the work and received an invoice for \$547.84, which he paid by credit card.

3 14. In March 2016, the vehicle once again began to exhibit the same issues with reduced
4 power and an illuminated check engine light. On or about March 14, 2016, D.K. brought the
5 vehicle back to Respondent's station and paid Sahakyan \$226.98 for a new fuel filter to fix the
6 problem. Later that day, however, the vehicle reverted back to having low power and an
7 illuminated check engine light as it had repeatedly done over the preceding months.

8 15. The next day, March 15, 2016, D.K. took his vehicle to the Pacific BMW dealership
9 to have the problem diagnosed. On or about March 21, 2016, Pacific BMW informed D.K. that
10 the throttle actuators were bad and needed to be replaced. Pacific BMW further informed D.K.
11 that the throttle actuators installed on the vehicle at that time were not new and were either
12 original to the vehicle or had been installed as used parts. In addition, Pacific BMW reported that
13 the wrong battery had been installed on the vehicle and that the battery had not been programmed
14 to the vehicle. On March 25, 2016, D.K. paid Pacific BMW a total of \$4,082.53 for diagnosing
15 these issues, installing two (2) new OEM actuators, and replacing the battery and programming it
16 to the vehicle.

17 16. Thereafter, a Bureau program representative interviewed Sahakyan regarding the
18 work performed on D.K.'s vehicle. Sahakyan falsely claimed that new throttle actuators had
19 been installed on the vehicle and that he had purchased the new OEM parts from one of three
20 local BMW dealerships in the area. The program representative asked Sahakyan for copies of the
21 purchase invoice or other documentation evidencing Respondent's purchase of the new OEM
22 throttle actuators that were purportedly installed on D.K.'s BMW; however, Respondent was
23 unable to provide any such documentation. Further, the program representative later contacted
24 each of the three local BMW dealerships that Sahakyan has identified as having been the source
25 of the new OEM throttle actuators, and none of those dealerships had any record of selling any
26 such parts to Respondent. Finally, the program representative contacted BMW of North America
27 for information regarding the throttle actuators that Respondent claimed were new OEM parts
28 purchased from a local dealer and confirmed that the parts were not new. Specifically, BMW of

1 North America reported that the throttle actuators that Respondent had represented as new OEM
2 parts had been manufactured the week of January 21, 2007, several months before BMW's
3 production of D.K.'s vehicle began on June 22, 2007.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 17. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
7 that Respondent made statements which it knew or which by exercise of reasonable care should
8 have known were untrue or misleading. Complainant refers to and by this reference incorporates,
9 the allegations set forth about in paragraphs 11 through 16, inclusive, as though set forth fully
10 herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Fraudulent Conduct)**

13 18. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
14 that Respondent engaged in fraudulent conduct. Complainant refers to and by this reference
15 incorporates, the allegations set forth about in paragraphs 11 through 16, inclusive, as though set
16 forth fully herein.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(False Promises)**

19 19. Respondent's registration is subject to discipline under Code section 9884.7(a)(8), in
20 that Respondent made false promises of a character likely to influence, persuade, or induce a
21 customer to authorize automobile repair and service. Complainant refers to and by this reference
22 incorporates, the allegations set forth about in paragraphs 11 through 16, inclusive, as though set
23 forth fully herein.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Invoice Violations – Business Name)**

26 20. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in
27 conjunction with California Code of Regulations, title 16, section 3356, subsection (a)(1), in that
28 the invoices issued by Respondent to D.K. contained a business name different from the name

1 shown in the Bureau's records. Complainant refers to and by this reference incorporates, the
2 allegations set forth about in paragraphs 11 through 16, inclusive, as though set forth fully herein.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Invoice Violations – Records of Purchased Parts)**

5 21. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in
6 conjunction with California Code of Regulations, title 16, section 3358, subsection (a), in that
7 Respondent failed to maintain and/or make available for inspection invoices or other pertinent
8 records related to its purchase of certain automotive parts (i.e., throttle actuators). Complainant
9 refers to and by this reference incorporates, the allegations set forth about in paragraphs 11
10 through 16, inclusive, as though set forth fully herein.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Invoice Violations – False/Misleading Information)**

13 22. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in
14 conjunction with California Code of Regulations, title 16, section 3373, in that Respondent filled
15 out/caused to be filled out invoices that contained false or misleading statements and information.
16 Complainant refers to and by this reference incorporates, the allegations set forth about in
17 paragraphs 11 through 16, inclusive, as though set forth fully herein.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Misrepresentation Regarding Condition of Automotive Part)**

20 23. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in
21 conjunction with California Code of Regulations, title 16, section 3374, in that Respondent
22 represented and/or implied that it had replaced the original throttle actuators on D.K.'s vehicle
23 with new OEM parts when, in fact, new parts were not provided. Complainant refers to and by
24 this reference incorporates, the allegations set forth about in paragraphs 11 through 16, inclusive,
25 as though set forth fully herein.

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OTHER MATTERS

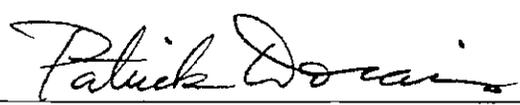
24. Section 9884.7, subdivision (c), of the BPC states that “the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to.”

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 259587, issued to Hamlet BMW, Inc., Hamlet Sahakyan, president;
2. Ordering Hamlet Sahakyan to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Revoking or suspending the Automotive Repair Dealer Registration for all places of business operated by Respondent pursuant to Business and Professions Code section 9884.7, subdivision (c); and
4. Taking such other and further action as deemed necessary and proper.

DATED: August 7, 2017


PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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