

**DEPARTMENT OF CONSUMER AFFAIRS
CITY OF NEW YORK**

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

ALL ABOUT AUTOMOTIVE II, INC. and
FRANCISCO MARTINEZ

Respondents.

CONSENT ORDER

**Violation No. LL 5324946
5324947**

All About Automotive II, Inc. ("Respondent All About Automotive") and Francisco Martinez ("Respondent Martinez"), collectively referred to as ("Respondents"), acknowledge receiving the above-captioned Notices of Hearing charging the Respondents with violating NYC Administrative Code ("Code") § 19-169.1, §§20-101, 20-509(d)(1), 20-527, 20-700 and Title 6 of the Rules of the City of New York ("RCNY"), §§1-14, 2-363(m), and 2-366(d). Respondents agree to entry of this consent order ("CO") with the New York City Department of Consumer Affairs ("Department" or "DCA") to settle the charges contained in the Notice of Hearing.

I. BACKGROUND

1. Respondent All About Automotive maintains tow truck company license no. 1227931 to operate as a tow truck company.
2. The listed principal of Respondent All About Automotive is Respondent Martinez. Respondent Martinez maintains tow truck driver license no. 0869679.
3. Respondents admit that they violated the following charges alleged in the Second Amended Notice of Hearing, dated October 22, 2013: (1) 6 RCNY § 1-14 by failing to comply with a lawfully issued subpoena; (2) Code Section 20-527 by failing to accept payment by credit card and demanding cash payment; (3) Code Section 19-191.1(e) by failing to take towed vehicles directly to its facility for storage; (4) Code Section 19-169.1(g) by failing to charge consumers one-half of the charge allowed for removal when the consumer arrived before the car was removed from the premises; (5) Code Section 20-509(d)(1) by charging unauthorized fees; (6) Code Section 19-169.1(d) by towing a vehicle occupied by

a person; (7) 6 RCNY §2-366(d) by failing to include the method of payment that was made by consumers on tow receipts, by making false statements of service on tow receipts, and by failing to list tow rates on tow receipts; (8) 6 RCNY § 2-363)(m) by failing to take reasonable care of towed vehicles, (9) Code Section 19-169.1(e) by towing vehicles in excess of ten miles from the point of removal; and (10) Code Section 20-700 by engaging in deceptive trade practices.

II. FINES AND RESTITUTION

4. Respondents shall pay to DCA a fine of \$50,000.00 to settle the charges contained in the Notice of Hearing. Payment shall be made according to the agreed upon payment plan. Payment shall be made via bank check or money order made payable to "New York City Department of Consumer Affairs," and sent to the New York City Department of Consumer Affairs, c/o Legal Division, 42 Broadway, 9th Floor, New York, NY 10004.
5. Respondents shall pay a sum of \$5,000.00 to be administered as restitution to affected consumers. DCA shall direct the administration of restitution to the affected consumers and shall be the sole and final arbiter of the validity of affected consumers' claims for restitution under this CO.
6. Any portion of the \$5,000.00 restitution not paid to consumers within six months of the execution of the CO shall revert to DCA as fines.

III. INJUNCTIVE RELIEF

7. Respondents agree to comply with all relevant laws and rules.

IV. COMPLIANCE

8. Beginning from the date the Respondents execute this CO, Respondents shall submit to the Department, for a period of two years, monthly electronic records that reflect all tows performed by Respondent All About Automotive, including all authorizations to tow, towing invoices, and customer receipts, in the preceding month of each submission.
9. The electronic records must be maintained in accordance with 6 RCNY 2-378.
10. The records described above must be transmitted to the Department no later than the fifth (5th) day of the month following the month for which it is providing information.
11. Respondents shall hand deliver or mail the records to the Legal Division located at 42 Broadway, 9th Floor, New York, NY 10004, or email the records to TowCompliance@dca.nyc.gov .

V. DARP SUSPENSION

12. Respondent All About Automotive is suspended from DARP participation for forty-five days, beginning the date the parties execute this CO.

VI. RESOLUTION OF CONSUMER COMPLAINTS

13. Respondents shall make all possible efforts in good faith to resolve all consumer complaints filed with the Department within ten (10) business days of Respondents' receipt of copies of said complaints. Respondents shall respond to subsequent communications from the Department concerning the complaints within five (5) business days.
14. Respondents shall submit to the Department's jurisdiction to adjudicate the merits of every complaint.

VII. CONSEQUENCES OF BREACH OF THIS ORDER

15. Any material breach of any provision of this Order either by Respondents and/or Respondents' agent shall be a basis for automatic revocation of license(s) issued to Respondent by the Department.
16. Any material breach of any provision of this CO shall be deemed to be proof that no person who has an equity interest of 10% or more in Respondents' business and/or significant managerial responsibility for the operation of Respondents' business, is possessed of the characteristics, including integrity, honesty, and fair dealing, required of persons who or which hold any license issued by the Department.
17. Any of the following shall be a basis for automatic revocation of license(s) issued to Respondents by the Department:
- a. Respondents' failure to pay any restitution or fine ordered by the Department's administrative tribunal; or
 - b. Respondents' failure to pay any consumer restitution awarded by any other court of competent jurisdiction within thirty days of Respondents' receipt of the decision of such court.

VIII. WAIVER OF APPEALS

18. Respondents waive their right to a hearing on, appeal of and/or any challenge of, in any forum, the facts alleged by the above-referenced violation under Sections 20-104 of the Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806.

IX. MISCELLANEOUS

19. Nothing in this Order shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Sections 20-101.

Dated: 12/31/2013

Dated: 1/16/2014

Agreed to for the Respondents by:

Accepted for the Department of Consumer Affairs by:

X Francisco Martinez
Signature

[Redacted]
Signature

Francisco Martinez
Print Name

[Redacted]
Print Name

Attorney for Respondents:

[Signature]
Signature

Lance Luccaso
Print Name

Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.