

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

BROOKLYN'S AUTOBODY INC.,

Respondent.

DECISION AND ORDER

**Violation No.:
LL005312958**

**License No.:
1218153**

A hearing on the above-captioned matter was held on March 5, 2013.

Appearances: For the Department: Jordan Cohen, Esq.; Inspector Zinkewitsch; Inspector Burke. For the Respondent: Michael Ojeda, corporate officer; Lloyd Berns, authorized representative.

The Notice of Hearing charged the Respondent with violating the following:

1. Title 6 of the Rules of the City of New York (6 RCNY) § 1-08 by moving its licensed address without notifying the Department (1 count);
2. New York City Administrative Code (Administrative Code) § 20-112 by failing to operate its business from the address listed on its license (1 count);
3. 6 RCNY § 2-371(m) by failing to maintain the minimum amount of square footage required for DARP participation (1 count);
4. Administrative Code Section 20-518(a)(3) by maintaining a business premises that is not listed on Respondent's license to engage in towing.
5. 6 RCNY § 1-01.1(a) by making a false statement on an application with respect to its business location (1 count);
6. Administrative Code 20-101 by failing to maintain the standards of honesty, integrity and fair dealing required of licensees (1 count).

Based on the evidence in the record, I **RECOMMEND** the following:

Findings of Fact

The respondent does not operate its business from the address listed on its license, 262 39th Street in Brooklyn. Willy's Complete Auto Repair, Inc. operates out of the subject location. The inspector did not measure the interior space of the location at the time of the inspection. Mr. Ojeda, respondent's corporate officer, listed respondent's business address as 262 39th Street, Brooklyn, on its license renewal application, dated April 23, 2012, and received by the Department on August 30, 2012 (see Department's exhibit 5).

On December 14, 2011, respondent was found guilty of, or pleaded guilty to, violating Administrative Code § 20-518(b)(3) (see LL005294235).

Opinion

Charges 1 and 2: 6 RCNY § 1-08 and Administrative Code § 20-112

The Department established the violation by a preponderance of the credible evidence.

Inspector Zinkewitsch established through clear and consistent testimony that he entered the subject location and spoke with Mr. Rosales, an individual identifying himself as the "owner". Mr. Rosales informed the inspector that Brooklyn's Autobody "are not here anymore." Both inspector Zinkewitsch and inspector Burke testified that there was no exterior signage present at the location. Inspector Zinkewitsch further stated that he observed no literature, signage or license bearing the respondent's business name inside of the location, nor did he observe indicia that a towing business was in operation. Rather, he observed several shelves containing auto parts and a New York State Department of Motor Vehicles "Official Business Certificate" issued to "Willy's Complete Auto Repair Inc", dated 4/25/11. Notably, Willy's Auto Repair was issued a violation on October 23, 2012 (see PL005306135) for operating as an unlicensed second-hand dealer¹ at the location.

Mr. Ojeda's claims that respondent's towing license, which had previously been posted, fell off an interior wall due to a hurricane, and that exterior signage was vandalized and torn down, are not supported by any credible, corroborating evidence. Respondent's evidence, including lease agreements and a notarized affidavit from the landlord, David Jaron (who asserted that respondent pays a certain sum of rent and denied knowledge of

¹ Department records indicate that on December 10, 2012, "owner" William Rosales entered into a settlement agreement with the Department to resolve violation PL005306135).

any other tenants), is of little probative value and as such fails to sufficiently support respondent's claim that it actively conducts business from the subject location.

As the respondent did not dispute that it was doing business on all relevant dates, it is determined that it conducted its business at a location other than that listed on its license and as such failed to notify the Department of such.

Accordingly, the charges shall be sustained.

Charge 3: 6 RCNY § 2-371(m)

The Department failed to establish the violation by a preponderance of the credible evidence.

Inspector Zinkewitsch conceded that he did not take any measurements when inspecting the subject premises. His mere claim that the space did not appear to conform to the statute's square footage requirement is insufficient to support the charge. Furthermore, the Department's assertion that measurements need not have been taken because the respondent was not operating its business is insufficient on its own to establish that the premises' space did not meet minimum size requirements per truck.

Accordingly, the charge shall be dismissed.

Charge 4: Administrative Code § 20-518(a)(3)

The Department established the violation by a preponderance of the credible evidence.

Administrative Code § 20-518(a)(3) states in pertinent part, "[a]ll participants in the [DARP] program shall maintain a business premises that is under the *exclusive control* of the participant, is not used by any other towing company and is the premises listed on such participant's license to engage in towing" (emphasis added). The credible testimony and evidence establishes that Willy's Complete Auto Repair, Inc. operated out of the subject premises on all relevant dates and, therefore, the respondent did not maintain exclusive control of such premises.

Mr. Ojeda's claim that Mr. Rosales operated Willy's Complete Auto Repair Inc. without his knowledge or consent is not credible in light of his assertion that he opens the shop every day, operates his DARP business from the location, and the vehicles serviced there (by Mr. Rosales) are delivered via Mr.

Ojeda's tow truck. It is not likely that Mr. Rosales was able to run a clandestine business and service vehicles other than those brought in by Mr. Ojeda without Mr. Ojeda's knowledge.

Accordingly, the charge shall be sustained.

Charge 5: 6 RCNY § 1-01.1(a)

The Department established a violation of the charge by a preponderance of the credible evidence.

The evidence indicates that Mr. Ojeda completed a renewal license application on or about April 23, 2012 and listed respondent's business address as 262 39th Street, Brooklyn. Such application was received by the Department on August 30, 2012 (see respondent's renewal application, marked as Department's exhibit 5).

As noted above, the credible testimony and evidence establishes that the respondent did not operate or maintain its business from the address listed on its renewal application: there was a complete lack of signage (both exterior and interior); lack of a posted license, price list, or literature bearing respondent's name; William Rosales was present and stated to inspector Zinkewitsch that the respondent business was not at the location; and Willy's Auto Repair (operating from the subject location) was issued and settled a violation in regard to its activities there.

The respondent failed to rebut the charge with the submission of credible testimony or evidence.

Accordingly, the charge shall be sustained.

Lack of Fitness: Administrative Code § 20-101

The Department established that the respondent, by failing to operate its business from the address listed on its license to engage in towing and by making a false statement regarding such, has failed to maintain the standards of honesty, integrity, and fair dealing required of licensees.

Accordingly, the charge shall be sustained.

ORDER

The **Respondent** is found **not guilty** of charge #3 which is, accordingly, **dismissed**.

The **Respondent** is found **guilty** of charges #1, 2, 4, 5 and 6 and is, hereby, **Ordered to pay to the Department a TOTAL FINE of \$4,000.**, as follows:

<u>Charge</u>	<u>Fine</u>
1. 6 RCNY § 1-08	\$500
2. Administrative Code § 20-112	\$500
4. Administrative Code § 20-518(a)(3)	\$2,500
5. 6 RCNY § 1-01.1(a)	\$500
6. Administrative Code § 20-101	Revocation

The respondent's license is **REVOKED effective immediately**. The respondent is directed to surrender the license document to the Licensing Division immediately. Please NOTE that if the respondent continues to operate with a revoked license, the respondent is subject to CRIMINAL PROSECUTION and/or civil penalties of \$100 per day for each day of unlicensed activity, as well as the closing of the respondent's business and/or the removal of items sold, offered for sale, or utilized in the operation of such business, pursuant to the Administrative Code of the City of New York §§ 20-105 and 20-106 (the "Padlock Law").

The respondent is also disqualified from participation in the Directed Accident Response Program ("DARP") and is thereby permanently barred from participation in DARP.

It is further **declared** that the respondent is deemed unfit to hold a license issued by the Department of Consumer Affairs.

This constitutes the recommendation of the Administrative Law Judge.

E. DeFontes
Administrative Law Judge

cc: Lloyd Berns
sportylmb@aol.com

Michael Ojeda
Torrescarmen619@gmail.com

Jordan Cohen
JCohen@dca.nyc.gov

DECISION AND ORDER

The recommendation of the Administrative Law Judge is approved.

This constitutes the Decision and Order of the Department.

Date: 12 March 2013

James M. Plotkin
Deputy Director of Adjudication

Mail payment in the enclosed envelope addressed to:

NYC Department of Consumer Affairs
Collections Division
42 Broadway, 9th Floor
New York, NY 10004

APPEAL INFORMATION

You have **30 days** to file an **APPEAL** of this decision. You must include with your appeal **all** of the following: (1) a check or money order payable to DCA for the sum of \$25; and (2) a check or money order payable to DCA for the amount of the fine imposed by the decision, *or* an application for a waiver of the requirement to pay the fine as a requisite for an appeal, based upon financial hardship. The application must be supported by evidence of financial hardship, including the most recent tax returns you have filed.

BY EMAIL: Send your appeal to myappeal@dca.nyc.gov and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11th Floor, New York, NY 10038. (Make sure to write the violation number(s) on your check or money order.) You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

BY REGULAR MAIL: Mail your appeal and the appeal fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11th Floor, New York, NY 10038. You must also mail a copy of your appeal to: DCA, Legal Division, 42 Broadway, 9th Floor, New York, NY 10004. Make sure to include in your appeal some indication or proof that you have sent a copy of the appeal to DCA's Legal Division. You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.