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## THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN, CHAIRMAN  
WILLIAM E. JOHNSON  
PETER SMITH  
CARL GARCIA  
VICKY WEI YE

**Minutes of the Meeting of the Board held on October 23, 2023, and approved at the Board Meeting held on December 5, 2023; Motion of Board Member William Johnson, Seconded by Board Member Peter Smith. The Motion Passed by a Vote of: 4-0, with Chairman Donovan abstaining.**

Minutes of the Board Meeting held on October 23, 2023

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on October, 2023, at 1000 Washington Street, Boston, Massachusetts.

**Members Present:**

Chairman Donovan  
William Johnson  
Peter Smith  
Carl Garcia  
Vicky Ye

**Attending to the Board:**

Michael D. Powers, Counsel to the Board

**Call to Order:**

Chairman Michael Donovan called the meeting to order at 10:00AM.

Chairman Donovan asked those recording the proceedings to identify themselves and state with whom they were affiliated. Those responding to the Chairman's request were: Jim Steere of The Hanover Insurance Company and "Lucky" Papageorg" of the Alliance of Automotive Service Providers of Massachusetts.

**Approval of the Board minutes for the Board meeting held on July 12, 2023:**

Chairman Donovan called for a motion to approve the Board minutes of the Board meeting held on July 12, 2023, Board Member William Johnson made the motion to approve, and Board Member Peter Smith seconded the motion. The motion passed by a vote of: 3-0, with Board Members William Johnson, Peter Smith, and Chairman Michael Donovan voting in favor and Board Members Carl Garcia and Vicky Ye abstaining, because they were not members of the Board when the Board meeting was held on July 12, 2023.

**Report on Part-II Examination for motor vehicle damage appraiser license:**

Chairman Donovan requested a report by Board Member Peter Smith about the status of the Part-II examination for motor vehicle damage appraiser.

Board Member Smith reported that the exam was held as scheduled on Saturday, September 23, 2023, at the Progressive Insurance Company's office in Westwood. There were 63 applicants, 58 passed the exam, and 5 failed. Board Member Smith thanked Progressive Insurance specifically Parker Riley at Progressive for hosting and facilitating the exam, Jim Steere of The Hanover Insurance Company, Sue Conena and Ed Jankowski of MAPFRE/Commerce Insurance Company as well as new Board member, Carl Garcia for proctoring the exam. The next exam is expected to take place in mid-December, there are currently 30 applicants listed, with more expected by December. Board Member William Johnson asked that Board Member Garcia assist the examinations in the future, because Board Member Johnson lives in the Western part of Massachusetts and Mr. Garcia previously administered the exam that was held in Taunton and resides closer to the exam facilities. Board Member Garcia thanked Mr. Johnson for his endorsement. Chairman Donovan thanked Board Member Smith and all those who assisted in making the Part-II examination a successful endeavor.

**Hearing by the Board to review the revocation of the motor vehicle damage appraiser license of Justin Forkuo based on the findings that were made against Mr. Forkuo as the owner of defendant 290 Auto Body Inc. ("290") in the case of Preferred Mutual Insurance Company v. 290 Auto Body Inc. Civil Action 18- 01813, (Worcester Superior Court):**

The licensed motor vehicle damage appraiser Justin Forkuo appeared before the Board with his Attorney Jacob Morris. The hearing before the Board was on the following final findings made by Massachusetts Associate Superior Court Justice A. Gavin Reardon Jr. in which Associate Justice Reardon entered a final judgment and found that Mr. Forkuo created a fraudulent auto damage invoice and engaged in fraud and deceit in the appraisal of damage of a motor vehicle:

In short, I find that Forkuo was unable to provide any paperwork or explanation justifying the invoices he sent in this matter and that the invoices were excessive. I also find that he created the billing and email system he used in this matter for the express purpose of frustrating insurance carriers like the plaintiff, with the intent of forcing them to pay excessive and unwarranted fees in order to avoid accrual of storage charges.

...

**RULINGS OF LAW**

**1. Fraud and Deceit.**

...

Finally, the invoices and demands 290 sent to Preferred did not accurately reflect work performed or charges incurred by 290. 290's "Direction to Pay" to Preferred indicated that 290 was due payment for, among other things, work dismantling the Honda, a gate fee, a hazardous waste fee, a blueprint fee, an administration fee, and a collision access fee. However, Forkuo was unable to specifically relate the itemized costs in the "Direction to Pay" to the Honda. As Forkuo failed to maintain accurate records of what work was actually performed on the Honda, and as I credit McKeen's testimony that the reasonable cost to appraise the Honda was less than \$100, 290 grossly overstated the amounts due from Preferred, seeking payment for at least some work not actually performed

by 290 and not actually due from Preferred. Further, 290's repeated demands for reimbursement of attorney's fees by Preferred were fraudulent as 290 failed to demonstrate that it actually incurred those attorney's fees for which it sought reimbursement from Preferred.

Taking these findings together, 290 knowingly made multiple false representations of material fact to Preferred for the purpose of inducing Preferred to pay more to 290 than was actually due...

....

Such conduct violates M.G.L. c. 26 § 8G which provides in relevant part:

...

The board, after due notice and hearing, **shall revoke any license issued by it and cancel the registration of any person who pleads guilty to or is convicted of a fraudulent automobile damage report as a result of a court judgment and said license shall not be reinstated or renewed nor shall said person be relicensed.**

....

...

(Emphasis added).

The Board will also review whether such conduct violated the Board's Regulation 212 CMR 2.02 which provides:

(8) Revocation or Suspension of a License. The Board may revoke or suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of any motor vehicle damage report. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

(a) material misrepresentations knowingly or negligently made in an application for a license or for its renewal;

(b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;

(c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;

(d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;

(e) the refusal by any appraiser who owns or is employed by a repair shop to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, supervisory reinspection, or intensified appraisal;

(f) the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;

(g) knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist; and

(h) failure to comply with 212 CMR 2.00.

Chairman Donovan asked Board Legal Counsel Michael D Powers to explain the item. Counsel Powers stated that the licensed motor vehicle damage appraiser Justin Forkuo is in attendance with his attorney, Jacob Morris and said that Attorney Morris would like to provide a presentation in defense of the allegations set forth in the Notice of Meeting and agenda. Attorney Morris began by thanking the Board Members and particularly Mr. Powers for their patience in scheduling the matter and stated that his presence may not be necessary, as Mr. Forkuo was very intelligent and capable of representing himself. Attorney Morris stated that the court case referenced in the Board Meeting Notice and agenda involved 290 Auto Body, and not specifically Mr. Forkuo. Attorney Morris stated that the subject matter reviewed by the Court in the superior court trial did not involve “appraisal work” because there was no formal appraisal written by Mr. Forkuo or any other employee of the auto body shop that Mr. Forkuo owned.

Board Legal Counsel Powers asked Attorney Morris if he would stipulate to a copy of Judge Reardon’s decision as evidence and being marked as an Exhibit, Attorney Morris agreed, the decision was submitted as an evidentiary exhibit, and marked as Exhibit “A”. (a copy of Judge Reardon’s decision is attached). In sum, Attorney Morris argued that the decision made by Judge Reardon could not be used against Mr. Forkuo, because he was not named individually as a defendant in the case and the only defendant in the case was the company that Mr. Forkuo owned, 290 Auto Body, Inc. Notwithstanding that defense, one reason Preferred Mutual Insurance Company would not have named Mr. Forkuo individually as a defendant in the case was that the payments were made to the corporate entity that Mr. Forkuo created, 290 Auto Body, Inc. and not directly in his name.

In rebuttal to Attorney Morris’s argument, it was pointed out that Judge Reardon’s “FINDINGS OF FACTS” and “CONCLUSIONS OF LAW” found that Mr. Forkuo testified as the president and owner of 290 Auto Body, Inc., that Mr. Forkuo was a licensed motor vehicle damage appraiser, and that Mr. Forkuo repeatedly engaged in fraud, deceit, and misrepresentations to the detriment of Preferred Mutual Insurance Company, which relied on Mr. Forkuo’s fraudulent, deceitful misconduct and misrepresentations and paid substantial sums of money under the insurance policy for the damaged motor vehicle that were not due to Mr. Forkuo (as the president and owner of 290 Auto Body, Inc), for the repair and custody of the damaged motor vehicle.

Board Member Johnson asked whether Mr. Forkuo was joined in the case by Preferred Mutual. Attorney Morris responded that he was not. Attorney Mr. Morris stated that 290 Auto Body is no longer in business, Mr. Forkuo still owned the building and leased it out to a business which does not make auto body repairs. Attorney Morris stated that Mr. Forkuo is currently licensed as a Public Insurance Adjuster and a decision against Mr. Forkuo by the Board might put his Public Adjuster’s license in jeopardy. He added that Mr. Forkuo has no criminal history.

Board Member Johnson stated that the 32 hours of teardown seemed excessive and the cost to blueprint the vehicle repair process should have cost half of what was billed, but did not see how Mr. Forkuo could be held accountable by the Board.

Mr. Garcia noted that he also has an issue with the blueprinting of the damaged vehicle as well as questioning whether the 32 hours of teardown were derived from a database or actual time spent dismantling the vehicle. Attorney Morris responded that the teardown time was the actual time. Board Member Peter Smith summarized what he saw as Mr. Forkuo's direct involvement in each aspect of the process, which was determined to be misrepresentations, fraudulent, and deceitful misconduct by the superior court, including the assessment of the teardown and cost to blueprint the vehicle.

Attorney Morris noted that the reason Mr. Forkuo was involved in the trial was as the President of 290 Auto Body and by rule of law, the corporation's "person most knowledgeable" is usually its president.

Chairman Donovan asked Attorney Powers if he had any comment. Board Legal Counsel read portions of Judge Reardon's decision and focused on the specific findings made about Mr. Forkuo, the facts that: Mr. Forkuo testified at trial, that he was the owner of 290 Auto Body Inc., was a licensed appraiser, and he personally committed the acts that involved fraud, misrepresentation, and deceit which supported the findings made by Judge Reardon. Among other things, Legal Counsel Powers read the following relevant portions of Judge Reardon's decision:

Forkuo, the president and owner of 290 Auto Body, Inc. also testified. He stated that he is a high school graduate, and New England Technical School graduate, from which he received a certificate in automobile body repair. He worked for two collision repair shops prior to opening 290 in 2010. I credit this portion of his testimony. He stated he is a licensed motor vehicle appraiser.

He stated that 290 does not declare cars to be a total loss; only insurance companies do. He acknowledged receiving emails and communications from Copart but stated he doesn't trust Copart and is reluctant to work with them. With regard to the Honda, he stated that it was not a total loss, but also, "I do not know how to total vehicles." His belief is that he works for the vehicle owner, not the insurer, and so he does not take direction or orders from insurers.

Forkuo was unable to relate the costs on the invoices to this specific vehicle; they are general costs which he attempts to collect on all vehicles. He uses a computer program, called "CCC" to estimate costs and labor but does not know what "CCC" stands for, and was unable to explain the program in detail. The software does not keep records for vehicles which have been declared a total loss. He acknowledged that he does not negotiate bills with insurers by telephone and stated that none of his responses to email communications in this case were auto generated; he stated he wrote each response individually. I do not credit this statement. He was unable to justify including an estimated attorney's fee in his invoices, as he does not show that 290 had utilized the services of an attorney during this dispute. He refused to vacate the storage fees that accrued while he was on vacation, as he blamed the plaintiff for the accrual of those fees.

In short, I find that Forkuo was unable to provide any paperwork or explanation justifying the invoices he sent in this matter and that the invoices were excessive. I also find that he created the billing and email system used in this matter for express purpose of frustrating insurance carriers like the plaintiff, with the intent of forcing them to pay excessive and unwarranted fees in order to avoid accrual of storage charges.

Here, Preferred paid 290 \$9,250 in total for release of the Honda. The actual reasonable amount that Preferred should have been required to pay was \$1,050, inclusive of the reasonable cost of labor to determine that the Honda was a “total loss” and reasonable storage and administrative fees. Thus Preferred is entitled to \$8,200 in damages on its count of fraud and deceit, representing the damages which mutually flowed from 290s fraudulent conduct.

Legal Counsel Powers stated that all these factual findings made by Judge Reardon against Mr. Forkuo were used in the decision to support the findings of fraud, deceit, and misrepresentation. Board Member Johnson agreed that the charges submitted for the damaged motor vehicle were excessive but said that bad business decisions do not equate to fraud.

Board Member Smith asked whether the case was on appeal or whether the judgement was final. Attorney Morris confirmed that Judge Reardon’s decision was final. Board Member Smith stated that in the case according to the decision, the only person named who testified on behalf of 290 Auto Body is Mr. Forkuo. Mr. Smith made a motion that the license of Mr. Forkuo be revoked for the reasons stated in the Board’s agenda and the findings made in the decision of Judge Reardon, Board Member Ye seconded the motion. Chairman Donovan called the roll.

Before a vote was taken, Board Member Garcia asked to review Judge Reardon’s decision that was entered into evidence before the Board as Exhibit A. After reading Judge Reardon’s decision, Board Member Garcia stated that the Board needed to find whether Mr. Forkuo is personally responsible as a licensed appraiser and raised the question whether an appraisal was written and pointed out that the Board’s Regulation [212 CMR 2.00 et seq.] states that a body shop is mandated to write an appraisal when a damaged motor vehicle is brought to the auto body shop for repair work. Chairman Donovan thanked Mr. Garcia for his input and asked how the Board can get around the fact that the court determined there was fraud, misrepresentations, and deceit committed while demanding money to repair a motor vehicle without holding Mr. Forkuo accountable.

Board Member Johnson stated that Mr. Forkuo may be correct in practice that he doesn’t total the vehicle, but in the spirit of the laws, all appraisers need to know how to total a vehicle. Mr. Johnson stated the disputed charges were presented as an invoice from the shop, not an appraisal. Chairman Donovan stated that it was Mr. Forkuo who testified on behalf of 290 and it was Mr. Forkuo who was the focus of the trial and found to be responsible for the auto body shop’s actions. Attorney Morris responded that was correct.

Mr. Johnson stated that Judge Reardon’s decision was made under Chapter 93A, not under the Board’s Regulation 212 CMR 2.00 et seq. Board Member Ye reminded the Board that it was Mr. Forkuo who stated it was he who responded to every email, and he was the one who controlled

the process. Board Member Ye also reminded the Board that Mr. Forkuo was found by the court to be unable to support the charges he was seeking payment for from the insurance company. Board Member Ye concluded that Mr. Forkuo, as the owner of the shop, reportedly a large company, should have a way of explaining its charges. Chairman Donovan asked Mr. Smith to restate his motion. Board Member Garcia asked that Mr. Smith state the reason for the motion given the serious nature of revocation of an appraiser's license. Board Member Smith obliged and read the agenda item stating the specific charges listed and added, for all the reasons stated in Judge Reardon's decision.

Chairman Donovan called for a rollcall vote and Board Members Johnson and Garcia voted: No, with Board Members Smith, Ye, and Chairman Donovan voting: Yes. The motion to revoke licensed motor vehicle damage appraiser Justin Forkuo's license passed by a Vote of: 3-2.

Mr. Lucky Papageorg asked permission to speak, and Chairman Donovan granted permission. Mr. Papageorg asked the Chairman for the basis for his vote. Chairman Donovan stated his decision was based on the ruling by Judge Reardon's decision, the factual findings made against Mr. Forkuo, and the findings of fraud, misrepresentation, and deceit made therein.

Attorney Morris asked whether he could receive a written decision. Chairman Donovan asked Legal Counsel Powers to respond, and he stated the Board's written decision would be sent forthwith.

**Next meeting date:**

Chairman Donovan recommended December 5, 2023, at 10:00AM for the next meeting and it was adopted by the Board Members.

**Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda:**

Board Member Johnson asked that letters of thank you for your service be sent to Mr. Starbard and Ms. Tracy for their work on the Board. Chairman Donovan requested Board Counsel Powers whether that comes from the Insurance Commissioner's office. Mr. Johnson suggested a more personal letter from the Chairman. Chairman Donovan asked Mr. Powers to draft a letter, and Mr. Powers agreed.

Board Member Johnson asked what the status was of the proposed changes to the Board's Regulation, noting that there is a new Board and asking whether the process needs to begin all over again, and Mr. Powers stated he will ask for an update.

**Review of Complaint 2023-1. The review will be conducted on the written complaint that was submitted by the complainant to determine whether the Board will move to the next step in the Board's Complaint Procedures and the licensed appraiser complained against will not be named during the Board's discussion about the complaint:**

Chairman Donovan asked Legal Counsel Powers to give the Board a synopsis of the complaint review process and Legal Counsel Powers provided an overview. Board Member Johnson noted the insurance company that is named in the complaint creates a conflict issue for one of the

Board Members. Board Member Smith stated that he intended to recuse himself, Mr. Powers asked whether Mr. Smith would recuse himself now, and he stated that he would. Board Member Johnson stated that he understood that Board Member Ye is an insurance agent, and Board Member Ye stated she wrote for this insurance carrier which is the subject matter of the complaint and other carriers as well. Board Member Ye agreed to recuse herself from voting on this particular matter on this particular occasion.

Board Members Johnson and Garcia discussed and reviewed the complaint and Board Member Johnson made a motion to move the complaint to the next step, the motion was seconded by Board Member Garcia and the motion passed by a Vote of: 3-0. The licensed appraiser will be requested to respond in writing to the complaint for the Board's review.

Chairman Donovan stated that the Board had concluded the items on the agenda and opened the meeting to a public comment session. Mr. Papageorg asked for a status on the complaint brought by a consumer seeking the revocation of a license due to fraudulent representation on the renewal of the license. Chairman Donovan asked Mr. Powers for an update, and Legal Counsel Powers noted the matter was in Executive Session and stated he would check on the matter.

Mr. Papageorg then noted there are two new Board members and asked whether they would be introduced. Chairman Donovan introduced the new members and welcomed them aboard.

Mr. Papageorg asked Chairman Donovan whether the next meeting will restart the complaint review process. Chairman Donovan responded in the affirmative, and Mr. Papageorg stated was getting calls from people saying they haven't heard anything. Chairman Donovan reminded Mr. Papageorg that in the last few meetings they've dealt with several complaints, and asked Legal Counsel Powers how many complaints were reviewed. Mr. Powers responded that there were over 100 complaints reviewed over the past year.

Mr. Papageorg complained about a statement that was made at a hearing in the Massachusetts Legislature, that complaints filed before the Board were frivolous and Chairman Donovan responded he knew nothing about the hearing that was held at the Legislature.

**Motion to Adjourn:**

Chairman Donovan called for a motion to adjourn, and Board Member Smith made the motion to adjourn, the motion was seconded by Board Member Garcia, Chairman Donovan called for a roll call vote, and the motion passed by a Vote of: 4-0 with Chairman Donovan abstaining.

Whereupon the Board's business was concluded.

The form of these minutes comports with the requirements of M.G.L. c. 30A, §22(a)