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THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN, CHAIRMAN
WILLIAM E. JOHNSON
RICHARD STARBARD
SAMANTHA L. TRACY
PETER SMITH

Minutes of the Meeting of the Board held on July 12, 2023, and approved at the Board Meeting held on October 23, 2023; Motion of Board Member Peter Smith, Seconded by Board Member William Johnson. The Motion Passed by a Vote of: 3-0, with Board Members Peter Smith, William Johnson and Chairman Michael D. Donovan Voting in favor and Board Members Carl Garcia and Vicky Ye Abstaining, because they were not members of the Board on July 12, 2023.

Minutes of the Board Meeting held on July 12, 2023

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on July 12, 2023, at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
Samantha Tracy
William Johnson
Richard Starbard
Peter Smith

Attending to the Board:

Michael D. Powers, Counsel to the Board

Call to Order:

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

Chairman Donovan then 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 May 23, 2023:

Chairman Donovan called for a motion to approve the Board minutes of the Board meeting held on May 23, 2023, Board Member Richard Starbard made the motion to approve, and Board Member William Johnson seconded the motion. The motion passed by a vote of: 4-0, with Chairman Donovan abstaining.

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.

Mr. Smith reported that the Part-II examination was held on Saturday, June 24, 2023, as scheduled. Board Member Smith stated that they had another successful Part-II examination at Progressive Insurance facility in Westwood.

Mr. Smith thanked those who participated in the testing process including the individuals from Progressive Insurance Company, from MAPFRE Insurance Company, and Jim Steere from The Hanover Insurance Company. Mr. Smith reported that the exam was administered inside the building rather than the outside setting that has been used at Progressive's office complex. Chairman Donovan thanked Board Member Smith for his continuous outstanding service administering and overseeing the Part-II examination process.

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 and requested a postponement of the hearing because his lawyer was unable to attend the Board meeting. 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.**

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(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 agreed to postpone the hearing, in response to Mr. Forkuo's request and reschedule it for the next meeting for the Board.

The next meeting date:

The Board determined the next meeting date would be on October 5, 2023, at 10:00AM in Boston.

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

There was no other business to report.

Motion to adjourn:

Chairman Donovan called for a motion to adjourn, the motion was made by Board Member Smith, seconded by Board Member Johnson, 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)