THE COMMONWEALTH OF MASSACHUSETTS
AUTO DAMAGE APPRAISER LICENSING BOARD

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
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MICHAEL DONOVAN
CHAIRMAN

RICHARD STARBARD
WILLIAM E. JOHNSON
SAMANTHA L. TRACY
PETER SMITH

February 24, 2023

Email: info@NDA911.com
justin@290autobody.com
Justin@certifiedpda.com

Mr. Justin Furkuo

Worcester, Massachusetts 01606-2720

Re: Auto Damage Appraiser Licensing Board Hearing to Determine Disciplinary Action

Dear Mr. Furkuo

The Auto Damage Appraiser Licensing Board (Board) will conduct a hearing based on the findings made in a civil action that you were a party to that was filed in the Worcester Superior Court, in which final judgments were entered against you for fraud and deceit during the course of your operating a business as a motor vehicle damage appraiser. In the case of Preferred Mutual Insurance Company v. 290 Auto Body Inc. Civil Action 18-01813 (Worcester Superior Court) findings were made against you in your capacity as a motor vehicle damage appraiser and the owner of the defendant 290 Auto Body Inc. ("290") (a copy is attached).

The Board will conduct a hearing which will focus on the following final findings, made by Massachusetts Associate Superior Court Justice A. Gavin Reardon Jr., in which Associate Justice Reardon entered final judgments against you and your company and found that you created a fraudulent auto damage invoice and engaged in fraud and deceit in the appraisal of damage of a motor vehicle:

FINDINGS OF FACTS

> …
> In short, I find that Furkuo 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, Furkuo was unable to specifically relate the itemized costs in the "Direction to Pay" to the Honda. As Furkuo 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 that 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 review these findings to determine whether disciplinary action will be taken against you which could include the permanent revocation of your motor vehicle damage appraiser license. The Board meeting is scheduled for Thursday, March 16, 2023, which begins at 10:00 AM at 1000 Washington Street, Boston, Massachusetts. You are required to appear at the hearing and respond to the findings. If you fail to appear at the hearing, the Board will move forward on the facts before it as found in the case of Preferred Mutual Insurance Company v. 290 Auto Body Inc. Civil Action 18-01813, (Worcester Superior Court) and the Board could impose the permanent revocation of your motor vehicle damage appraiser license as mandated by the above-cited statutory language.

Sincerely yours,

Michael D. Powers
Counsel to the Auto Damage Appraiser Licensing Board

CC: Chairman Michael Donovan, Board Members William Johnson, Richard Starbard, Samantha Tracy, and Peter Smith

Attachment

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GOVERNOR

Kim Driscoll
LIEUTENANT GOVERNOR

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.
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> RULINGS OF LAW
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>   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.
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> 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 that was actually due…
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> … .

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

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> 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 <u>fraudulent automobile damage report as a result of a court judgment</u> 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) <u>Revocation or Suspension of a License.</u> 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)

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MEGAN McCUEN
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Paralegal

December 12, 2023

Michael D. Powers, Esq.
Auto Damage Appraiser Licensing Board
1000 Washington Street, Suite 810
Boston, MA 02118

Re: My Client: Justin Forkuo

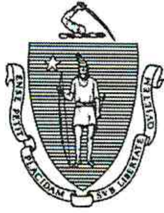
Dear Attorney Powers:

Please consider this correspondence a formal petition/request for rehearing and for reconsideration of the Boards' decision to revoke Mr. Forkuo's auto damage appraiser license. The Decision is attached for your reference. We have additional evidence for the Boards' consideration, if our petition for rehearing is allowed.

Thank you.

Very Truly Yours,

JACOB P. MORRIS
jmorris@rrwlaw.com



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VICKY W. YE

October 30, 2023

Mr. Justin Forkuo
Via email: claims@290autobody.com

Re: Revocation of Massachusetts Motor Vehicle Damage Appraiser License

Dear Mr. Forkuo:

On October 23, 2023, you and your attorney, Jacob P. Morris, appeared before the Auto Damage Appraiser Licensing Board (ADALB or Board) at a hearing to review the potential revocation of your motor vehicle damage appraiser license based on FINDINGS OF FACTS and CONCLUSIONS OF LAW made by Associate Superior Court Justice A. Gavin Reardon Jr., (Judge Reardon) in the case of Preferred Mutual Insurance Company v. 290 Auto Body, Inc. Civil Action 18-01813, (Worcester Superior Court). Judge Reardon found that you committed fraud, deceit, and made several misrepresentations, while demanding and receiving substantial payments of money your company and you were not entitled to from Preferred Mutual Insurance Company. The payments were demanded under a private passenger motor vehicle insurance policy for repairs to a damaged motor vehicle in your custody and possession at the auto body repair shop you owned 290 Auto Body, Inc., which was located in Worcester, Massachusetts.[1]

You were first notified to appear before the Board on March 13, 2023, and requested a postponement of the hearing on that date, asserting that you were filing an appeal of Judge Reardon's decision and your request was allowed by the Board. Thereafter, a check of the records on file with the Worcester Superior Court disclosed that you did not file an appeal of Judge Reardon's decision and the matter was rescheduled before the Board for the meeting on May 18, 2023. Just before the Board meeting, you requested a postponement of the hearing, your request was allowed, and the matter was rescheduled to July 12, 2023. Just before the hearing on July 12, 2023, you again requested a postponement of the hearing, which was allowed by the Board and the hearing was finally held on October 23, 2023.

You were notified by the Board, as appeared on the Board's notice of meeting and agenda for the October 23, 2023, Board meeting, to appear for the following reasons:

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[1] According to records on file with the Office of the State Secretary you filed the articles of organization as president, secretary, treasurer, and director in 2008, and are listed as president, secretary, treasurer, CEO, CFO, and Director up to February 2023.

Hearing by the Board to review the potential 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 records on file with the Worcester Superior Court disclose that the "Order for Judgement" and findings were entered on September 15, 2022, a final judgment was entered on February 21, 2023, and no appeal was filed by the defendant. Pursuant to Massachusetts law, an appeal must be filed within 30 days of the entry of final judgment.

The hearing will focus 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.
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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.

At the hearing, Attorney Morris stipulated to a copy of Judge Reardon's decision, the decision was submitted as an exhibit, and marked as Exhibit "A" (a copy of Judge Reardon's decision is hereto attached and incorporated into this letter). Attorney Morris was allowed to present an argument on your behalf. In sum, Attorney Morris argued that the decision made by Judge Reardon could not be used against you, because you were not named individually as a defendant in the case and the only defendant in the case was the company that you owned, 290 Auto Body, Inc. Notwithstanding that defense, one reason Preferred Mutual Insurance Company would not have named you individually as a defendant is that the payments were made to the

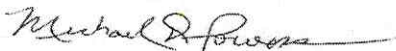
corporate entity that you created, 290 Auto Body, Inc. and not directly in your name. In rebuttal it was pointed out that Judge Reardon's "FINDINGS OF FACTS" and "CONCLUSIONS OF LAW" found that you testified as the president and owner of 290 Auto Body, Inc., that you were a licensed motor vehicle damage appraiser, and that you repeatedly engaged in fraud, deceit, and misrepresentations to the detriment of Preferred Mutual Insurance Company, which relied on your 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 you (as the president and owner of 290 Auto Body, Inc), for the repair and custody of the damaged motor vehicle.

The fraud you committed, as found by Judge Reardon, violated the ADALB's enabling act, M. G. L. c. 26, § 8G and mandates the permanent revocation of your motor vehicle damage appraiser license. In addition, each of your misrepresentations violated the ADALB's Regulation, 212 CMR 2.02(8) "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" and subsection (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." Each act of fraud, deceit and misrepresentation you committed is also a violation of the Board's Regulation, which provides for the suspension of your license for up to one year. According to Judge Reardon's decision, you committed at least two fraudulent acts and three acts of deceitful and false misrepresentation. For example, Judge Reardon found that you fraudulently demanded and received from Preferred Mutual Insurance Company $9,250 for repair and custody of the damaged motor vehicle, when in fact you were only entitled to $1,050.

At the conclusion of the discussion, at the Board meeting, a motion was made by Board Member Peter Smith to revoke your motor vehicle damage appraiser license based on the violation of the Board's enabling act and Regulation as listed in the Notice of Meeting and agenda for the Board meeting and the "FINDINGS OF FACTS" and "CONCLUSIONS OF LAW" made by Judge Reardon (in the attached decision). The motion was seconded by Board Member Vicky W. Ye, the motion was passed by a vote of 3-2, with Board Members Peter Smith and Vicky Ye and Chairman Michael Donovan voting yes, to break a tie, with Board Members Carl Garcia and William Johnson voting no.

Therefore, your Massachusetts motor vehicle damage appraiser license is permanently revoked by the Board, and you are to turn in the license to Robert Hunter of the Producer Licensing Unit for the Division of Insurance, 1000 Washington Street, Boston, Massachusetts.

On behalf of the Board,



Michael D. Powers
Legal Counsel for the Auto Damage Appraiser Licensing Board

CC: Attorney Jacob P. Morris via email: <jmorris@rrwlaw.com
Mr. Robert Hunter, Producer Licensing Unit Division of Insurance

Chairman Michael Donovan and the Members of the Board

Attachment

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
No. 18-01314

PREFERRED MUTUAL INSURANCE COMPANY

vs.

290 AUTO BODY, INC.

FINDINGS AND VERDICT ON PLAINTIFF'S COMPLAINT

The plaintiff, Preferred Mutual Insurance Company (Preferred or plaintiff), brought this complaint seeking declaratory relief and alleging fraud and deceit and violations of Chapter 93A against the defendant, 290 Auto Body, Inc. (290 or defendant). Preferred alleges that 290 fraudulently and inappropriately overcharged it for repairs and storage of a 2012 Honda CR-V owned by Preferred's insured, Erika Hoekstra. A jury-waived trial was held before me on November 19, 2021. Three witnesses testified for the plaintiff: Jessica White, Patrick Serra, and Paul McKeen. I credit their testimony. Justin Forkuo, the owner of 290, testified for the defendant. I do not credit his testimony regarding the invoices the defendant submitted or the mechanism by which he calculated those invoices. Twenty-one exhibits were introduced. After review of the credible evidence and relevant law, I find that the plaintiff has proven the elements of each count by a preponderance of the evidence. Judgment shall enter for Preferred Mutual Insurance Company on each count.

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FINDINGS OF FACT

Preferred provides automobile insurance in Massachusetts. During 2018, it insured a 2012 Honda CR-V (Honda) owned by Erika Hoekstra (Hoekstra). On June 2, 2018, Hoekstra

was involved in an accident and the Honda sustained significant front-end damage. The vehicle was initially towed to her residence, but then was transferred to the defendant's facility. Preferred was notified of the claim on June 5, 2018. On June 6, Hoekstra signed a repair authorization permitting 290 to work on the vehicle. The document did not authorize 290 to tear down the vehicle. That same day, 290 sent Preferred a "Direction to Pay"[1] in the amount of $12,025.00.[2]

Jessica White (White), an experienced auto collision adjuster employed by Preferred, testified to the course of dealings between Preferred and 290 regarding the Honda. I credit her testimony. She stated that Preferred sent an appraiser to 290 to view the car on June 7. The appraiser found the Honda had already been significantly dismantled, even though it was readily apparent to any qualified car appraiser that the Honda had suffered significant front-end damage, was a total loss, and therefore not a candidate for repair. Based upon the appraiser's examination, Preferred deemed the car a total loss. Preferred did not authorize 290 to tear down or repair the car. The net value of the car was estimated at $6,577.52.

Preferred frequently used Copart, an automobile transportation company with a branch in West Warren, Massachusetts, to transport its insureds' vehicles. On June 14, White instructed Copart to arrange with 290 to pick up the Honda, in order to prevent storage charges from

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[1] A "Direction to Pay" is a form signed by an insured, instructing an insurer to pay an auto body repair shop directly, rather than paying the insured for the repairs to a vehicle.

[2] The Direction to Pay contained the following language:

> **<u>WARNING:</u>** Please take our business as seriously as we do. Any unfair treatment of our company will result in our claims against you to the full extent of the law, including (a) any violations of the 1963 Consent Decree in the case of *United States Association of Casualty and Surety Companies, et al* (Civ. No. 63 Civ. 3106) (SDNY 1963); (b) any violations of the public policy expressed in guidelines issued by the Massachusetts Department of Insurance for determining reasonable rates for parts and labor; and (c) violations of any of the Massachusetts General Laws, including the consumer protection provisions of the Massachusetts General Laws, Chapter 93A (M.G.L. c. 93A).

I have reviewed the New York decision cited in this document and it is irrelevant to this litigation and, in any event, not binding on the plaintiff.

accumulating and to move the car toward the auction or scrapping process. Patrick Serra, a manager of Copart, testified regarding the difficulties Copart had in retrieving the vehicle from 290. I credit his testimony. Much of the problem resulted from the fact that, contrary to other auto body shops, 290 would only deal with Copart, or Preferred, by email, addressed to: totalloss@290autobody.com. Copart emailed 290 on multiple dates in June (on June 14, 15, 18, and 20), but consistently received an automated reply. The replies included the same language cited in the Direction to Pay sent to the plaintiff on June 6.

On June 20, Hoekstra signed a vehicle release form. On June 22, 290 sent an invoice to Preferred in the amount of $5,750. It was comprised of: a fee of $3,200 to dismantle the vehicle, calculated at $100 per hour for 32 hours; a $150 gate fee; a $50 hazardous waste storage fee; a $350 blue print fee; a $150 administration fee; a $150 collision access fee; and $1,700 in storage fees, calculated at the rate of $100 per day for 17 days.

White, based upon her experience, found the invoice to be clearly excessive. Angel Waggoner, an employee of Preferred, attempted to speak with 290 on June 22, but was informed that all communications had to be done by email. On June 25, Preferred retained counsel in the hope of resolving the conflict regarding the invoice. On June 27, Preferred, by a letter from counsel, offered $1,050.00 to 290 to resolve the dispute. On July 3, 290 responded with a boilerplate email to Preferred's counsel, Carrie Strasser, which did not answer any of the questions or concerns raised by Preferred in the June 27 letter, and began with the sentence, "**Hello Carrie**, in order to avoid losing another case in the court of law once again, please read and abide by the following" (emphasis in the original). At the end of a litany of demands and threats, the email concluded with the boilerplate language contained in the Direction to Pay.

On July 10, Preferred requested that 290 issue a final invoice for storage through July 11, in order to resolve the claim and prevent any claims for additional storage. That same day the defendant submitted an updated invoice in the amount of $8,500, which included storage through July 11, and a claim for estimated attorneys' fees of $750.[3] On July 10, Preferred issued, under duress, a payment of $7,750, which was calculated by subtracting the $750 in estimated attorneys' fees from the July 10 invoice. On July 11, Audrey Hunter (Hunter) of Copart spoke with 290 Auto and confirmed that the check had been received and the Honda would be released. However, when the driver from Copart arrived, the defendant did not release the car, and claimed additional fees were owed.

On July 16, Hunter sent an email to 290 complaining about the refusal to release in the car; in response she received an automated reply that the personnel at 290 were on vacation and storage charges accrued until July 23 would be vacated "if any delay is caused by us." Nevertheless, on July 20, the defendant sent another invoice, crediting the plaintiff with the $7,750 payment, and seeking an additional $1,950. This invoice comprised additional storage fees and the estimated attorney's fees. In response, on July 20, by overnight mail, Preferred sent to the defendant an additional check in the amount of $1,200. The payment was also made under duress. Preferred again refused to pay any estimated attorney's fees.

On July 25, an employee of Copart went directly to the defendant with a check in the amount of $200 to cover additional storage fees. A 290 employee stated the actual amount owed for storage was $300. In order to finally resolve the issue and retrieve the vehicle, the Copart employee wrote a check to the defendant for $300 and retrieved the car. This payment was also

[3] The invoice contained the following language, in small print: "All of 290 Auto Body Inc.'s charges were carefully calculated using fair and balanced business practices. All minimums are subject to increase or decrease annually. All fees listed above apply during normal business hours (8 a.m. – 4 p.m.) and to passenger vehicles as defined by Wikipedia. . . ."

made under duress. In total, the plaintiff paid the defendant $9,250 under duress in order to retrieve the Honda. White testified that the actual, reasonable amount Preferred should have been required to pay 290 is $1,050.00.

Paul McKeen (McKeen) testified as an expert on behalf of Preferred. He is the President of Viking Auto Appraisal, Inc. and has been a licensed vehicle appraiser since the late 1970's. I credit his testimony. He stated that in determining whether a vehicle is a total loss, the appraiser must weigh the cost of repairing the vehicle against the value of the vehicle as salvage. The plaintiff retained him to review the dispute in this case. He reviewed Forkuo's deposition, photographs of the vehicle, and the invoices from 290. He provided a written appraisal of the Honda in which he found that the car was total loss, and the reasonable labor involved in examining the vehicle amounted to 2.3 hours at $40 per hour, for a total of $92. He found the market value of the vehicle to be $3,389. He opined, and I find, that the car should have been declared a total loss on the first inspection, that there was no justification for dismantling it, that the fifty days of storage were more than excessive, and that the Honda should have been turned over to the insurer promptly.

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 both 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.[4]

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 did not show that 290 had actually 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 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.

[4] I note that 290 Auto Body's Repair Authorization (Ex. 8), signed by Hoekstra, states that all complaints regarding service must be send to a post office box in Venice, Florida. Forkuo provided no rational explanation for this requirement.

RULINGS OF LAW

1. Fraud and Deceit

A plaintiff alleging a claim for fraud and deceit must show that the defendant (1) made a false representation of material fact, (2) with knowledge of its falsity, (3) for the purpose of inducing the plaintiff to act on this representation, (4) which the plaintiff justifiably relied on as being true to the plaintiff's detriment. *Greenleaf Arms Realty Trust I, LLC* v. *New Boston Fund, Inc.*, 81 Mass. App. Ct. 282, 288 (2012). Deception need not be direct to come within the reach of the law; declarations and conduct calculated to mislead, and which in fact do mislead, one who is acting reasonably are enough to constitute fraud. *Sullivan* v. *Five Acres Realty Trust*, 487 Mass. 64, 73 (2021), citing *Boston Five Cents Sav. Bank* v. *Brooks*, 309 Mass. 52, 55 (1941).

290 made multiple false representations of material fact to Preferred with knowledge of their falsity for the purpose of inducing Preferred to make additional payments not actually due. On July 11, 290 represented to Hunter of Copart that the Honda would be released to Preferred upon payment of $7,750. When Copart's agent arrived at 290 to make the demanded $7,750 payment under duress and collect the Honda, 290 falsely represented that additional payment beyond the agreed-to $7,750 was due. 290 knowingly misrepresented that additional payment was due to delay release of the Honda and induce Preferred to pay more than was due.

On July 16, in response to an email from Hunter complaining of 290's refusal to release the Honda, 290 sent an automated reply which stated that 290 personnel were on vacation and that any storage charges accrued as a result thereof would be vacated "if any delay is caused by us." The representation that 290 would vacate any storage charges resulting from its own unavailability was knowingly false and was made by 290 to further delay release of the Honda so that 290 could charge additional storage fees to Preferred. In fact, on July 20, 290 transmitted an

invoice to Preferred, crediting Preferred with the above-referenced payment of $7,750 and seeking additional payment for attorney's fees and storage fees. The storage fees sought by 290 in that invoice included the storage fees that 290 promised would be "vacated" in its July 16 email to Preferred.

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. Further, Preferred reasonably relied on 290's false representations to its detriment. Faced with falsely overstated and ever-increasing demands for payment from 290, Preferred reasonably made payment to 290 under duress to prevent 290's excessive and unreasonable charges from continuing to grow. 290 induced Preferred to act to its detriment with its false and overstated invoices and demands. Preferred has demonstrated that 290 made false representations

of material facts with knowledge of their falsity for the purpose of inducing Preferred to act thereon, and that Preferred reasonably relied upon 290's representations as true and acted upon them to its detriment.

One who makes a fraudulent misrepresentation is subject to liability for the pecuniary loss suffered by the party who justifiably relies upon the truth of the matter misrepresented, if the party's reliance was a substantial factor in determining the course of conduct that results in his loss. *Reisman* v. *KPMG Peat Marwick LLP*, 57 Mass. App. Ct. 100, 112 (2003), citing Restatement (Second) of Torts § 546 (1977). That is, the damages recoverable are those which naturally flow from the fraud. *Id.*, citing *David* v. *Belmont*, 291 Mass. 450, 453 (1935).

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 290 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 for fraud and deceit, representing the damages which naturally flowed from 290's fraudulent conduct.

2. Violation of G. L. c. 93A, § 11

Section 11 of G. L. c. 93A prohibits unfair or deceptive acts or practices among those engaged in trade or commerce. To prevail on a claim of violation of G. L. c. 93A, § 11, a plaintiff must demonstrate (1) that the defendant committed an unfair or deceptive trade practice within the meaning of G. L. c. 93A, § 2, (2) that the plaintiff suffered a loss of money or property as a result, and (3) a causal connection between the loss suffered and the defendant's unfair or deceptive act or practice. See G. L. c. 93A, § 11; *Auto Flat Car Crushers, Inc.* v. *Hanover Ins. Co.*, 469 Mass. 813, 820 (2014).

Taken alone, 290's fraudulent misrepresentations to Preferred, see Section 1., *supra*, establish 290's unfair or deceptive trade practices under G. L. c. 93A, § 11. See *HI Lincoln, Inc.* v. *South Washington St., LLC*, 489 Mass. 1, 18 (2022) ("[C]ourts have repeatedly affirmed that fraudulent misrepresentation is sufficient to establish deception under G. L. c. 93A, § 11."); *McEvoy Travel Bur., Inc.* v. *Norton Co.*, 408 Mass. 704, 714 (1990) ("Common law fraud can be the basis for a claim of . . . deceptive practices under [G. L. c. 93A]"); *Levings* v. *Forbes & Wallace, Inc.*, 8 Mass. App. Ct. 498, 504 (1979) ("A misrepresentation in the common law sense would . . . be the basis for a c. 93A claim"). However, 290's unfair and deceptive trade practices warrant further discussion.

290's conduct in this matter possessed an extortionate quality designed to obtain undeserved benefits from Preferred in violation of G. L. c. 93A, § 11. The use of coercive or extortionate tactics by one business to extract undeserved concessions from another business constitutes unfair conduct under G. L. c. 93A, §§ 2 and 11. See *HI Lincoln, Inc.*, 489 Mass. at 14-15 (defendant threatened breach of contract in effort to extract additional benefits not provided by contract); *Anthony's Pier Four, Inc.* v. *HBC Assoc.*, 411 Mass. 451, 472-476 (1991) (landowner asserted pretextual disapproval of development plan to gain additional compensation from developer); *Frank J. Linhares Co.* v. *Reliance Ins. Co.*, 4 Mass. App. Ct. 617, 622-623 (1976) (defendant held truck hostage to obtain waiver of warranty rights).

Here, 290's withholding of the Honda while repeatedly demanding unreasonable and ever-changing payments constituted a form of commercial extortion, violating G. L. c. 93A, §§ 2 and 11. On July 11, 290 misrepresented to Preferred that additional payment was due before the Honda could be released for the purpose of delaying the vehicle's release and causing Preferred to accrue additional, inflated storage fees. 290 refused to deal with Preferred or its agents over

the telephone, and required that all negotiations be conducted via email, but when Preferred emailed 290 to negotiate release of the Honda on or about July 16, 290 replied with an automated reply that its personnel were on vacation and unavailable. This delayed Preferred's collection of the Honda so that additional storage fees would accrue. Further, 290's general practice of withholding the Honda until Preferred pay its ever-changing, unreasonable fees -- fees which Forkuo could not even specifically relate to the Honda – possessed a plainly extortionate quality..

As a direct result of 290's unfair and deceptive trade practices, Preferred suffered a loss of money within the meaning of G. L. c. 93A, § 11. 290's unfair and deceptive trade practices caused Preferred to suffer a loss of $8,200, made up of the $9,250 paid by Preferred to 290 to release the Honda less $1,050, representing the reasonable cost of labor to determine that the Honda was a "total loss" and reasonable storage and administrative fees.

Further, 290's unfair and deceptive practices in its dealings with Preferred were knowing and willful, justifying an award of double damages. To recover double damages under G. L. c. 93A, a plaintiff is required to demonstrate that the defendant committed its unfair or deceptive acts or practices knowingly or willfully. See G. L. c. 93A, § 11; *International Fidelity Ins. Co.* v. *Wilson*, 387 Mass. 841, 853 (1983). Here, 290's repeated misrepresentations to Preferred that additional payment was due before the Honda could be released were knowingly designed to delay release of the Honda so that additional, inflated storage fees could be collected. Similarly, 290's practices of refusing to negotiate except via email, then relying on automated email responses to Preferred, was likewise knowingly designed to delay release of the Honda so that 290 could collect additional, inflated storage fees.

The evidence at trial demonstrated that 290 knowingly engaged in business practices to delay resolution of Preferred's payment disputes, to delay release of the Honda, and to

disingenuously claim that additional payment was due, starting the cycle anew. As 290 knowingly engaged in unfair and deceptive business practices in its dealings with Preferred, Preferred is entitled to double damages, totaling $16,400. Such damages encompass the damages awarded to Preferred on its claim of fraud and deceit.

Finally, as Preferred has prevailed on its claim against 290, it is entitled to an award of attorney's fees. See G. L. c. 93A, § 11, par. 6 ("If the court finds in any action commenced hereunder, that there has been a violation of section two, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorneys' fees and costs incurred in said action."). The provision for attorney's fees under G. L. c. 93A reflects "the Legislature's manifest purpose of deterring misconduct by affording both private and public plaintiffs who succeed in proving violations of G. L. c. 93A, § 2(a), reimbursement for their legal services and costs." *Commonwealth* v. *Fall River Motor Sales, Inc.*, 409 Mass. 302, 316 (1991). Such legislative purpose to deter future misconduct by 290 will be served here. As Preferred has prevailed on its claim against 290 for violation of G. L. c. 93A, § 11, it is entitled to an award of reasonable attorney's fees. Preferred shall submit to the court an application for attorney's fees in accordance with Superior Court Rule 9A.

3. Declaratory Judgment

To maintain an action for declaratory judgment under G. L. c. 231A, § 1, a party must demonstrate the existence of (1) an actual controversy in the pleadings and (2) legal standing. *Massachusetts Ass'n of Indep. Ins. Agents & Brokers, Inc.* v. *Commissioner of Ins.*, 373 Mass. 290, 292 (1977). Chapter 231A is remedial in nature and is to be liberally construed. G. L. c. 231A, § 9.

Preferred has established that an actual controversy exists. An actual controversy exists where there is a real dispute caused by the assertion by one party of a legal relation, status or right in which he has a definite interest, and the denial of such assertion by another party also having a definite interest in the subject matter. *Gay & Lesbian Advocates & Defenders* v. *Attorney General*, 436 Mass. 132, 134 (2002). Here, an actual controversy exists through Preferred's denial of 290's claim of legal right to collect payment of $9,250 for hours worked on the Honda, a gate fee, a hazardous waste fee, a blueprint fee, an administration fee, a collision access fee, and a storage fee.

Preferred has likewise established that it has legal standing to pursue its claim of declaratory judgment. Standing to pursue a declaratory judgment claim requires that the plaintiff have a "definite interest in the matters in contention in the sense that his rights will be significantly affected by a resolution of the contested point." *Bonan* v. *Boston*, 398 Mass. 315, 320 (1986). Here, Preferred has a definite and concrete interest in the resolution of the contested issue of whether 290 maintains a legal right to collect payment of $9,250 for hours worked on the Honda, a gate fee, a hazardous waste fee, a blueprint fee, an administration fee, a collision access fee, and a storage fee.

As Preferred has established that an actual controversy exists between it and 290 and that Preferred has standing to sue for declaratory judgment, the court makes the following declaration of the rights and responsibilities of the parties to this matter in accordance with G. L. c. 231A, § 1 after consideration of the facts presented at trial: Preferred is not obligated to make payments to 290 for any charges imposed by 290 in relation to the Honda beyond $1,050, representing the reasonable cost of labor to determine that the Honda was a "total loss" and reasonable storage and administrative fees.

ORDER FOR JUDGMENT

For the foregoing reasons, it is hereby ORDERED that:

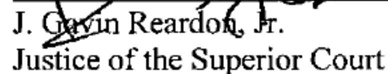
1. Judgment shall enter for Plaintiff Preferred Mutual Insurance Company and against Defendant 290 Auto Body, Inc. on Count I (Declaratory Judgment), Count II (Fraud and Deceit), and Count III (Violation of G. L. c. 93A, § 11) of the complaint.

2. On Count I of the complaint, this court explicitly finds that Plaintiff Preferred Mutual Insurance Company is not legally obligated to make payments to Defendant 290 Auto Body, Inc. for any charges in relation to the Honda beyond $1,050, representing the reasonable cost of labor to determine that the Honda was a "total loss" and reasonable storage and administrative fees.

3. On Count II of the complaint, Plaintiff Preferred Mutual Insurance Company shall be awarded damages of $8,200, plus costs and interest calculated from June 20, 2018.

4. On Count III of the complaint, Plaintiff Preferred Mutual Insurance Company shall be awarded damages of $16,400, plus costs and interest calculated from June 20, 2018. Such damages encompass the damages awarded under Count II, and Plaintiff Preferred Mutual Insurance Company shall not recover damages (exclusive of attorney's fees) exceeding $16,400 plus costs and interest for any combination of Counts II and III.

5. On Count III of the complaint, Plaintiff Preferred Mutual Insurance Company shall be awarded its reasonable attorney's fees. Plaintiff Preferred Mutual Insurance Company shall submit to the court an application for attorney's fees pursuant to Superior Court Rule 9A within sixty days of the date of this order.



J. Gavin Reardon, Jr.
Justice of the Superior Court

DATE: September 12, 2022

Entered and Copies Mailed 9/15/22