

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

GABRIEL CASTRO,
DBA GABE'S APPLIANCE REPAIR
403 Almond Road
San Marcos, CA 92078

Appliance Service Dealer Registration
Applicant

Respondent.

Case No. AN 2016-150

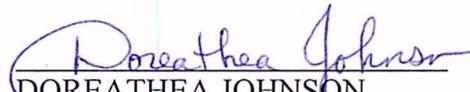
OAH No. 2016070425

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective on SEP 26 2016.

IT IS SO ORDERED August 26, 2016


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Attorney General of California
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8 *Attorneys for Complainant*

9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME**
12 **FURNISHINGS AND THERMAL INSULATION**
13 **STATE OF CALIFORNIA**

13 **In the Matter of the Statement of Issues**
14 **Against:**

15 **GABRIEL CASTRO,**
16 **DBA GABE'S APPLIANCE REPAIR**
17 **403 Almond Road**
18 **San Marcos, CA 92078**

19 **Appliance Service Dealer Registration**
20 **Applicant**

21 **Respondent.**

22 **Case No. AN 2016-150;**
23 **OAH No. 2016070425**

24 **STIPULATED SETTLEMENT AND**
25 **DISCIPLINARY ORDER**

26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
27 entitled proceedings that the following matters are true:

28 PARTIES

1. Justin Paddock (Complainant) is the Bureau Chief of the Bureau of Electronic and
Appliance Repair, Home Furnishings and Thermal Insulation (Bureau). He brought this action
solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney
General of the State of California, by Harinder K. Kapur, Deputy Attorney General.

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1 accordance with Section 9847 and 9847.5 of the Business and Professions Code.

2 7. **Violation of Probation.** If a Respondent violates the conditions of his probation, the
3 Bureau, after giving the Respondent notice and an opportunity to be heard, may set aside the stay
4 order and impose the stayed discipline of revocation of the Respondent's registration.

5 If during the period of probation, an accusation or petition to revoke probation has been
6 filed against Respondent's registration or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against the Respondent's registration, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Bureau. Upon successful completion of probation, the
10 Respondent's registration will be fully restored.

11 8. **Notification of Arrest.** If respondent is arrested during the period he is on probation,
12 he shall, within 72 hours of his arrest, notify the Bureau in writing of the fact of his arrest which
13 shall include date of arrest, the name of the arresting agency, the crime for which he was arrested,
14 the date(s) on which he is scheduled to appear in court, and the name and address of the court
15 where he is required to appear.

16 9. **Surrender of License.** During probation, if respondent ceases practicing due to
17 retirement, health reasons, or is otherwise unable to satisfy the conditions of probation,
18 Respondent may surrender his license to the Bureau. The Bureau reserves the right to evaluate
19 Respondent's request and to exercise its discretion whether to grant the request without further
20 hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to
21 the conditions of probation.

22 Surrender of Respondent's license shall be considered a disciplinary action and shall
23 become a part of Respondent's license history with the Bureau. A licensee who surrenders his
24 license may petition the Board for reinstatement no sooner than one (1) year from the effective
25 date of the disciplinary decision for the surrender.

26 10. **Tolling of Probation.** Respondent's probationary period is tolled, if and when he
27 fails to own and operate a Bureau-licensed business in California. Respondent must provide
28 written notice to the Bureau within fifteen (15) days of any such change of license status.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Appliance Service Dealer Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: _____

GABRIEL CASTRO,
DBA GABE'S APPLIANCE REPAIR
Respondent

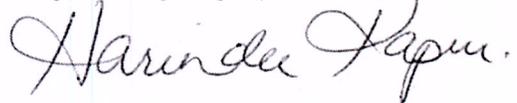
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs

Dated: 8/15/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General



HARINDER K. KAPUR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Statement of Issues No. AN 2016-150

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9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME**
12 **FURNISHINGS AND THERMAL INSULATION**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Statement of Issues
14 Against:

Case No. AN 2016-150

15 **GABRIEL CASTRO,**
16 **DBA GABE'S APPLIANCE REPAIR**
17 **403 Almond Road**
18 **San Marcos, CA 92078**

FIRST AMENDED STATEMENT OF
19 **ISSUES**

17 **Appliance Service Dealer Registration**
18 **Applicant**

Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Justin Paddock (Complainant) brings this First Amended Statement of Issues solely in
23 his official capacity as the Bureau Chief of the Bureau of Electronic and Appliance Repair, Home
24 Furnishings and Thermal Insulation (Bureau), Department of Consumer Affairs.

25 2. On or about January 22, 2016, the Bureau of Electronic and Appliance Repair, Home
26 Furnishings and Thermal Insulation received an application for an Appliance Service Dealer
27 Registration from Gabriel Castro (Respondent), to do business as Gabe's Appliance Repair. On
28 or about January 18, 2016, Gabriel Castro certified under penalty of perjury to the truthfulness of

1 all statements, answers, and representations in the application. The Bureau denied the application
2 on February 25, 2016.

3 JURISDICTION

4 3. This First Amended Statement of Issues is brought before the Director of Consumer
5 Affairs (Director) for the Bureau of Electronic and Appliance Repair, Home Furnishings and
6 Thermal Insulation (Bureau), under the authority of the following laws. All section references are
7 to the Business and Professions Code (Code) unless otherwise indicated.

8 4. Section 22, subdivision (a) of the Code states "'Board'" as used in any provision of
9 this Code, refers to the board in which the administration of the provision is vested, and unless
10 otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,'
11 'division,' 'examining committee,' 'program,' and 'agency.'"

12 5. Section 9831 of the Code states, in pertinent part, that the Director shall refuse to
13 validate the registration of an electronic appliance repair dealer if the applicant has committed
14 acts or crimes constituting grounds for denial of licensure under section 480 of that code.

15 STATUTORY PROVISIONS

16 6. Section 475 of the Code states:

17 (a) Notwithstanding any other provisions of this code, the provisions of this
18 division shall govern the denial of licenses on the grounds of:

19 (1) Knowingly making a false statement of material fact, or knowingly
20 omitting to state a material fact, in an application for a license.

21 (2) Conviction of a crime.

22 (3) Commission of any act involving dishonesty, fraud or deceit with the
23 intent to substantially benefit himself or another, or substantially injure another.

24 (4) Commission of any act which, if done by a licentiate of the business or
25 profession in question, would be grounds for suspension or revocation of license.

26 (b) Notwithstanding any other provisions of this code, the provisions of this
27 division shall govern the suspension and revocation of licenses on grounds specified
28 in paragraphs (1) and (2) of subdivision (a) .

(c) A license shall not be denied, suspended, or revoked on the grounds of a
lack of good moral character or any similar ground relating to an applicant's
character, reputation, personality, or habits.

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7. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

8. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that the applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.

12 As used in this section, "license" includes "certificate," "permit," "authority,"
13 and "registration."

14 10. Section 9841 of the Code states:

15 (a) The director may refuse to validate, or may invalidate temporarily or
16 permanently the registration of a service dealer for any of the following acts or
17 omissions done by himself or herself or any employee, partner, officer, or member of
18 the service dealer and related to the conduct of his or her business:

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20 (7) Conviction of a crime which has a substantial relationship to the
21 qualifications, functions and duties of a registrant under this chapter, in which event
22 the record of the conviction shall be conclusive evidence thereof.

23 (b) The director may also refuse to validate, or may invalidate temporarily or
24 permanently, the registration of a service dealer if the applicant or registrant, as the
25 case may be, has committed acts or crimes constituting grounds for denial of
26 licensure under Section 480.

27 (c) The director may also refuse to validate, or may invalidate temporarily or
28 permanently, the registration of a service dealer if the applicant or registrant, as the
case may be, will be or is holding the registration for the benefit of a former registrant
whose registration has been suspended or revoked and who will continue to have
some involvement in the applicant's or new registrant's business.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 2767 states:

For the purposes of denial, suspension, or revocation of the registration of a
repair service dealer pursuant to Division 1.5 (commencing with Section 475) of the
Business and Professions Code, a crime or act shall be considered to be substantially
related to the qualifications, functions or duties of a service dealer if to a substantial
degree it evidences present or potential unfitness of a service dealer to perform the
functions authorized by his registration in a manner consistent with the public health,
safety, or welfare. Such crimes or acts shall include but not be limited to those
involving the following:

1 (a) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of, or conspiring to violate any provision or term of Chapter 20,
3 Division 3 of the Business and Professions Code.

4 (b) Conviction of a crime involving fiscal dishonesty.

5 12. California Code of Regulations, title 16, section 2768 states:

6 (a) The Bureau shall evaluate the rehabilitation of the applicant, registrant, or
7 petitioner and his or her present eligibility for a registration:

8 (1) When considering the denial of a registration under the provisions of
9 Section 480 of the Code;

10 (2) When considering the suspension or revocation of a registration on the
11 grounds that a service dealer has been convicted of a crime;

12 (3) When considering a petition for reinstatement of a registration under
13 the provisions of Section 11522 of the Government Code.

14 (b) In evaluating the rehabilitation of the applicant, registrant, or petitioner, the
15 Bureau shall consider the following criteria:

16 (1) The nature and the severity of the act(s) or crime(s) under
17 consideration.

18 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
19 under consideration as grounds for denial which also could be considered as grounds
20 for denial under Section 480 of the Business and Professions Code when considering
21 an applicant pursuant to subsection (a)(1) of this section.

22 (3) Total criminal record when considering a person pursuant to
23 subsections (a)(2) and (a)(3) of this section.

24 (4) The time that has elapsed since commission of the act(s) or crime(s)
25 under consideration.

26 (5) The extent to which the applicant, registrant, or petitioner has
27 complied with any terms of parole, probation, restitution, or any other sanctions
28 lawfully imposed against the applicant, registrant, or petitioner.

(6) Evidence, if any, of rehabilitation submitted by the applicant,
registrant, or petitioner. Such evidence may include, but is not limited to, proof of
additional training or education, evidence of service to the community, and, if
applicable, evidence of expungement proceedings, pursuant to Section 1203.4 of the
Penal Code.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(April 17, 2001 Criminal Convictions for DUI and for Driving With a Suspended License**
3 **on March 19, 2001)**

4 13. Respondent's application is subject to denial under sections 480, subdivision
5 (a)(1), and 9841, subdivision (a)(7) of the Code, in Respondent was convicted of a crime that is
6 substantially related to the qualifications, duties, and functions of an appliance service dealer.
7 The circumstances are as follows:

8 a. On or about April 17, 2001, in a criminal proceeding entitled *People of the*
9 *State of California v. Gabriel Szeman Castro*, in the Los Angeles County Superior Court,
10 Metropolitan Courthouse, case number LAM1MT03278-01, Respondent was convicted on his
11 plea of nolo contendere of violating Vehicle Code sections 23152(b) (driving with a blood
12 alcohol concentration of 0.08% or more) and 14601.1(a) (driving with a suspended license),
13 misdemeanors. As a result of a plea agreement, charges for violating Vehicle Code sections
14 23152(a) (DUI) and 12500(a) (driving without a license), misdemeanors, were dismissed.

15 b. As a result of the conviction, the Court ordered Respondent to serve 15
16 days in the Los Angeles County Jail, was fined, and was placed on five (5) years summary
17 probation. The Court also ordered Respondent participate in an 18-month treatment program.

18 **SECOND CAUSE FOR DENIAL OF APPLICATION**

19 **(April 19, 2001 Criminal Convictions for DUI and for Driving With a Suspended License**
20 **on March 3, 2001)**

21 14. Respondent's application is subject to denial under sections 480, subdivision
22 (a)(1), and 9841, subdivision (a)(7) of the Code, in Respondent was convicted of a crime that is
23 substantially related to the qualifications, duties, and functions of an appliance service dealer.
24 The circumstances are as follows:

25 a. On or about April 19, 2001, in a criminal proceeding entitled *People of the*
26 *State of California v. Gabriel Jesus Castro*, in the Los Angeles County Superior Court,
27 Metropolitan Courthouse, case number LAM1MT02392-01, Respondent was convicted on his
28 plea of nolo contendere of violating Vehicle Code sections 23152(b) (driving with a blood

1 alcohol concentration of 0.08% or more) and 14601.1(a) (driving with a suspended license),
2 misdemeanors. As a result of a plea agreement, charges for violating Vehicle Code sections
3 23152(a) (DUI) and 12500(a) (driving without a license), misdemeanors, were dismissed.

4 b. As a result of the conviction, the Court ordered Respondent to serve 15
5 days in the Los Angeles County Jail, was fined, and was placed on five (5) years summary
6 probation. The Court also ordered Respondent participate in an 18-month treatment program and
7 restricted Respondent's driving to and from work and to and from program for a period of 18
8 months.

9 **THIRD CAUSE FOR DENIAL OF APPLICATION**

10 **(August 13, 2008 Criminal Convictions for DUI on July 26, 2008)**

11 15. Respondent's application is subject to denial under sections 480, subdivision
12 (a)(1), and 9841, subdivision (a)(7) of the Code, in Respondent was convicted of a crime that is
13 substantially related to the qualifications, duties, and functions of an appliance service dealer.

14 The circumstances are as follows:

15 a. On or about August 13, 2008, in a criminal proceeding entitled *People of the*
16 *State of California v. Gabriel Szeman Castro*, in the Los Angeles County Superior Court,
17 Metropolitan Courthouse, case number LAM8MP08940-01, Respondent was convicted on his
18 plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood alcohol
19 concentration of 0.08% or more), a misdemeanor. As a result of a plea agreement, a charge for
20 violating Vehicle Code section 23152(a) (DUI), a misdemeanor, was dismissed.

21 b. As a result of the conviction, the Court ordered Respondent to serve 180
22 days in the Los Angeles County Jail, was fined, and was placed on summary probation for 5
23 (five) years.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(March 13, 2013 Criminal Conviction for Possession of**
3 **a Controlled Substance on March 4, 2013)**

4 16. Respondent's application is subject to denial under sections 480, subdivision
5 (a)(1), and 9841, subdivision (a)(7) of the Code, in Respondent was convicted of a crime that is
6 substantially related to the qualifications, duties, and functions of an appliance service dealer.

7 The circumstances are as follows:

8 a. On or about March 13, 2013, in a criminal proceeding entitled *People of the*
9 *State of California v. Gabriel Szeman Castro*, in the Los Angeles County Superior Court, Airport
10 Courthouse, case number LAXSA083453-01, Respondent was convicted on his plea of nolo
11 contendere to violating Health and Safety Code sections 11352(a) (transportation of a controlled
12 substance for sale), and 11377(a) (possession of a controlled substance). The court stayed
13 sentencing as to one count, and suspended sentencing as to the second count.

14 b. The Court ordered Respondent to serve 120 days in the county jail and was
15 placed on formal probation for 3 (three) years.

16 c. On March 14, 2016, Respondent formally withdrew his plea of nolo
17 contendere as to violating Health and Safety Code section 11352(a) (transportation of a controlled
18 substance for sale). The court dismissed the charge in pursuant to Penal Code section 1385. In
19 addition, the court reduced the remaining charge, possession of a controlled substance, to a
20 misdemeanor conviction.

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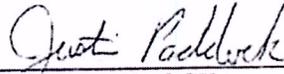
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Denying the application of Gabriel Castro for an appliance service dealer registration;
- and,
2. Taking such other and further action as deemed necessary and proper.

DATED: JUL 29 2016


JUSTIN PADDOCK
Bureau Chief
Bureau of Electronic and Appliance Repair, Home
Furnishings and Thermal Insulation
Department of Consumer Affairs
State of California
Complainant

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