



BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AIR POLLUTION CONTROL OFFICER of the
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

DOCKET NO. 3682

Complainant,

CONDITIONAL ORDER FOR
ABATEMENT ~~(PROPOSED)~~

vs.

HARVEY FLORES, aka Javier Flores, an Individual;
and DOES 1 through 25, inclusive,

Respondents.

On October 26, 2015, the Air Pollution Control Officer (“APCO”) of the Bay Area Air Quality Management District (District), the Complainant in this action, filed an accusation and request for conditional order for abatement against Harvey Flores, and Does 1 through 25, inclusive (hereafter collectively, “Respondents”) (“Accusation”). The APCO sought an order from this Hearing Board requiring Respondents to cease motor vehicle refinishing operations at their facility located at 7201 Monterey Street, Gilroy, Santa Clara County, California (“Facility”), as of the fifteenth day after the Hearing Board files an order for abatement in this action, unless and until Respondents come into compliance with District Regulation 2, Rule 1.

The Clerk of the Hearing Board assigned this matter Docket No. 3682 and set a public hearing for December 17, 2015. The Clerk of the Hearing Board provided notice of the hearing on the Accusation in accordance with the requirements of Health and Safety Code section 40823.

The Clerk of the Hearing Board set a pre-hearing conference for this matter for December 3,

✓-ARB (1/5/16)
✓-EPA (1/5/16)

1 2015, and served notice of the conference on November 23, 2015. The Chair of the Hearing Board
2 delayed start of the conference to allow for late arrival of Respondents. At the pre-hearing conference,
3 Susan D. Adams, Assistant Counsel, on behalf of Complainant, made an opening statement describing
4 this matter and its proposed scope of the pre-hearing conference. No Respondents appeared at the
5 conference. The Chair closed the pre-hearing conference.

6 On December 17, 2015, the Hearing Board conducted a public hearing on Complainant's request
7 for an Order for Abatement. The Hearing Board Chair called the hearing at approximately 10:05 a.m.,
8 to allow for Respondents' arrival. Susan D. Adams, Assistant Counsel, appeared on behalf of
9 Complainant. No Respondents appeared. After the hearing started, Respondent Flores called the
10 Hearing Board Clerk, who reported to the Hearing Board that Mr. Flores stated he was ill and would not
11 attend.

12 Ms. Adams made an opening statement that included, at the request of the Chair, a summary of
13 efforts to inform Respondent Flores of this hearing. She described the alleged violation and the
14 District's request for a conditional order for abatement. She stated that District Inspector Frank Nakhai
15 would testify that he had conducted compliance inspections at the Facility numerous times between
16 2011 and December 2, 2015 and that he had issued a notice of violation in 2014 for operating the
17 Facility without a District permit to do so. He would testify that Mr. Flores stated on several occasions
18 that he intended to pay the permit fees. Ms. Adams stated that Duncan Campbell, a District permit
19 engineer, would testify that the District records list Respondent Flores as the owner and operator of the
20 Facility, that he had sent at least one invoice to Mr. Flores, and that it was his practice to send facility
21 permittees a new copy of their invoices for an expired permit at the request of an inspector or when an
22 inspector contacted him about the status of an expired permit.

23 With respect to notifications to Respondents, Ms. Adams stated that Mr. Nakhai had reported that
24 he had urged Mr. Flores directly to attend the pre-hearing conference and the hearing. Ms. Adams stated
25 that she had spoken with Respondent Flores after the pre-hearing conference and had forwarded a
26 proposed settlement agreement in an effort to resolve the matter prior to this hearing. She stated further
27 that when she spoke with Respondent Flores, he had stated he would appear at this hearing.

28 Hearing Board Member Magalhães inquired about the extent of the District's outreach to bring

1 the Facility into compliance and inquired whether Respondent Flores understood the effect of an order
2 for abatement. Ms. Adams stated that Inspector Nakhai would testify that he had spoken with
3 Respondent Flores at least twice during compliance inspections between 2011 and 2013, at least twice in
4 2014, at least once in Summer 2015, and most recently on December 2, 2015. Ms. Adams stated that in
5 her December 3, 2015 discussion with Mr. Flores, she had informed him the District was seeking an
6 order that he cease conducting motor vehicle refinishing operations until he obtained a permit.

7 Hearing Board Member Armento inquired about Exhibit 7, a copy of a handwritten note, lodged
8 with the Hearing Board. Ms. Adams stated that during Inspector Nakhai's site visit on December 2,
9 2015, Respondent Flores wrote that note and told Inspector Nakhai to deliver it to her. Ms. Adams
10 stated that in the context of the site visit, Inspector Nakhai and she understood the statement in the note
11 "stop crying" to mean that the District should stop bothering Respondent Flores about paying the permit
12 fees. Ms. Adams stated that Inspector Nakhai would testify that during previous compliance
13 inspections, Respondent Flores had stated to Inspector Nakhai that he would pay the fees.

14 Prior to the hearing, Complainant lodged nine exhibits with the Hearing Board.

15 **WRITTEN FINDINGS IN SUPPORT OF ITS DECISION**

16 Because Respondents did not appear at the public hearing, pursuant to Hearing Board Rule
17 6.9(a), the Hearing Board may upon its own motion decide the matter or dismiss the action. Health
18 and Safety Code Section 42451(a) provides that the Hearing Board may upon its own motion issue
19 and order for abatement where it finds that a person is operating equipment without a permit that the
20 District requires. To that end, the Hearing Board finds as follows:

21 Respondent Flores owns and operates a business at 7201 Monterey Street, Gilroy, Santa Clara
22 County, California, where he conducts motor vehicle refinishing operations that require a District
23 permit to operate. Respondents had a permit to operate, which expired on August 1, 2009. They have
24 not renewed the permit since then. The District conducted numerous compliance inspections at the
25 Facility between 2011 and 2015, including on December 2, 2015, and found the Facility in operation
26 each time. The District notified Respondent Flores numerous times that he needs a current permit to
27 conduct motor vehicle refinishing operations at the Facility. Respondent Flores is knowledgeable of
28 the permit renewal requirements and has admitted that he owes permit fees.

1 No Respondents appeared at the hearing to dispute the District's allegations or the statements
2 of admission by Respondent Flores.

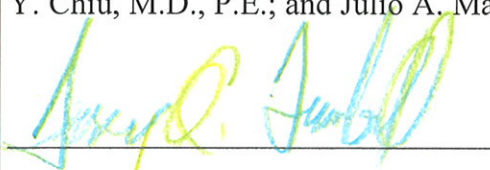
3 The Hearing Board has determined that based on these findings, it is appropriate to enter a
4 conditional order for abatement that requires Respondents to cease motor vehicle refinishing
5 operations at the above-referenced address as of fifteen days from the date the Hearing Board files its
6 findings and decision in this action.

7 **CONDITIONAL ORDER FOR ABATEMENT**

8 **Cause being found therefore, pursuant to Sections 42451(a) and 42452 of the California**
9 **Health and Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY**
10 **MANAGEMENT DISTRICT hereby ORDERS:**

- 11 1. That as of fifteen (15) days after upon the filing of the written findings and decision of the Hearing
12 Board of the Bay Area Air Quality Management District, Respondents and their agents,
13 employees, successors and assigns shall cease motor vehicle refinishing operations at 7201
14 Monterey Street, Gilroy, Santa Clara County, California, unless and until Respondents come into
15 compliance with District Regulation 2, Rule 1, Section 302.
- 16 2. That pursuant to Hearing Board Rule 4.12, this Hearing Board shall retain jurisdiction over the
17 order for abatement for three years from December 17, 2015, i.e., the date of the public hearing in
18 this matter, during which period the parties may apply to modify or terminate this Order in
19 accordance with the Rules of the Hearing Board.
- 20 3. That the Hearing Board provide for such other and further relief as the Hearing Board deems just
21 and proper.

22 Members: Terry A. Trumbull, Esq.; Valerie J. Armento, Esq.; Gilbert G. Bendix, P.E.; Peter
23 Y. Chiu, M.D., P.E.; and Julio A. Magalhães, Ph.D.

24 
25 _____
26 Terry A. Trumbull, Esq., Chair

27 
28 _____
Date

1 BEFORE THE HEARING BOARD
2 OF THE
3 BAY AREA AIR QUALITY MANAGEMENT DISTRICT
4 STATE OF CALIFORNIA

5 AIR POLLUTION CONTROL OFFICER of)
6 the BAY AREA AIR QUALITY)
7 MANAGEMENT DISTRICT,)

8 Complainant,

9 vs.

10 HARVEY FLORES, aka Javier Flores, an)
11 Individual; and DOES 1 through 25,)
12 inclusive,)

13 Respondent.

Docket No.: 3682

CERTIFICATE OF SERVICE



14 STATE OF CALIFORNIA)
15 City and County of San Francisco) ss.

16 I, Maricela Martinez, do hereby certify under penalty of perjury as follows:

17 That I am a citizen of the United States, over the age of eighteen years and not a party to
18 the above entitled action; that I served a true copy of the attached Conditional Order for
19 Abatement on:

20 **Harvey Flores**
21 **Harvey's Body Shop**
22 **7201 Monterey Street**
Gilroy, California 95020

23 by depositing same in the United States certified mail, return receipt requested, on January 5,
24 2016; and on

25 **Susan Adams**
26 **Bay Area Air Quality Management District**
27 **939 Ellis Street, 7th Floor**
San Francisco, California 94109

1 by hand-delivery deposit of same in the in-box of the District Counsel's office, on January 5,
2 2016.

3 DATED: January 5, 2016

Maricela Martinez

4 Maricela Martinez
5 Clerk of the Boards

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