

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

In the Matter of the Statement of Issues
Against:

ADAM KEEFAUVER,

Respondent.

Case No. AN 2016-1340

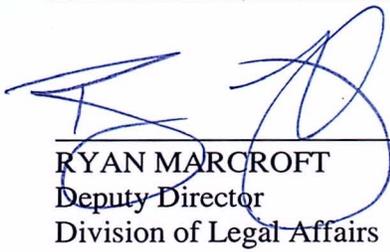
OAH No. 2017081016

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on 1/22/18.

DATED: 12/22/17



RYAN MARCROFT
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs



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

In the Matter of the Statement of Issues
Against:

ADAM KEEFAUVER,
aka ADAM RAY KEEFAUVER,
aka ADAM R. KEEFAUVER,
dba ALL APPLIANCE/MR. FREEZ,

Appliance Service Dealer Registration
Applicant

Respondent.

Case No. AN 2016-1340

OAH No. 2017081016

PROPOSED DECISION

John E. DeCure, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on November 6, 2017, in Sacramento, California.

Kristina T. Jarvis, Deputy Attorney General, appeared on behalf of complainant Dale Chasse, Acting Bureau Chief of the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau), Department of Consumer Affairs.

Adam Keefauver, also known as Adam Ray Keefauver and Adam R. Keefauver (respondent), doing business as All Appliance/Mr. Freez, appeared on his own behalf.

Oral and documentary evidence was received. The record was held open for respondent to submit further evidence by November 13, 2017, and for complainant to lodge any objections to that additional evidence by November 14, 2017. Respondent did not submit any additional evidence. The record was closed and the matter was submitted for decision on November 14, 2017.

FACTUAL FINDINGS

1. On August 18, 2017, complainant filed the Statement of Issues in his official capacity. Respondent timely filed a notice of defense. All jurisdictional requirements have been met.
2. On September 12, 2016, the Bureau received an application for registration as an Appliance Service Dealer (application) from respondent. The Bureau denied the application on November 7, 2016. In the Statement of Issues, complainant alleges the denial is due to respondent's history of criminal convictions, which complainant contends are substantially related to the qualifications, functions, and duties of an appliance service dealer.

Criminal Convictions

3. On May 13, 1999, in the Superior Court of the State of California, County of Mendocino, Case No. SCUKCRCR-98-122, respondent entered an indeterminate plea and was convicted of violating Penal Code section 243, subdivision (d) (battery), a felony (the battery conviction.) The court sentenced respondent to serve three years in state prison.
4. The facts and circumstances underlying the battery conviction are that on January 14, 1998, respondent shot his girlfriend, J.M.,¹ in the face with a shotgun.
5. On March 26, 2012, in the Superior Court of the State of California, County of Placer, Case No. 62-103954, respondent entered an indeterminate plea and was convicted of violating Penal Code section 422 (criminal threats), a felony, and section 148, subdivision (a)(1) (resisting, delaying or obstructing an officer), a misdemeanor (the criminal threats and obstruction convictions). Respondent admitted to his prior felony conviction pursuant to Penal Code section 1170.12, subdivisions (a) and (d), and that he was a habitual criminal pursuant to Penal Code section 667, subdivision (b)(i). The court sentenced respondent to serve two years and eight months in state prison.
6. The facts and circumstances underlying the criminal threats and obstruction convictions involve a November 21, 2010 domestic disturbance in which respondent's girlfriend, A.L., called police to report that respondent was drunk and had threatened to cut her with a knife and watch her bleed. When officers arrived, respondent was outside and attempted to evade them, ignoring their commands to stop. Following a pursuit, officers halted respondent with a Taser (i.e., electroshock) gun and forcibly detained him. Upon his arrest, respondent was intoxicated and displaying symptoms of alcohol abuse.
7. On March 26, 2012, in the Superior Court of the State of California, County of Placer, Case No. 62-111788, respondent entered an indeterminate plea and was convicted of violating: Penal Code section 136.1, subdivision (b)(1) (dissuading a witness), a felony; section 243, subdivision (e)(1) (battery against spouse/cohabitant), a misdemeanor; and

¹ The victims' identities are withheld to preserve their privacy rights.

section 166, subdivision (c)(1) (willful/knowing violation of protective or stay-away court order), a misdemeanor (the witness dissuasion, battery, and court-order violation convictions). Respondent admitted to his prior felony conviction pursuant to Penal Code section 1170.12, subdivisions (a) and (d), and that he was a habitual criminal pursuant to Penal Code section 667, subdivision (b)(i). The court sentenced respondent to serve four years in state prison consecutive with his sentence in Case No. 62-103954.²

8. The facts and circumstances underlying the witness dissuasion, battery, and court-order violation convictions involved a January 28, 2012 domestic disturbance in which victim A.L. told respondent to leave her residence because he was intoxicated and agitated. After being locked out of A.L.'s residence, respondent forcibly gained entry by kicking in a door. He then shoved her into a wall and forced her onto the ground against her will. When she attempted to call police, he took her purse and cell phone from her. Respondent stated he wanted to harm and kill her, and she believed his threats. When police arrived they found respondent outside A.L.'s residence with a butter knife. Respondent later attempted to dissuade A.L. from causing a criminal case to be sought and prosecuted.

Respondent's Evidence

9. Respondent testified that he was released from prison in July 2016, having been released early after serving four years of a six-years-and-eight-months term, for good behavior. Respondent has been working in the service business for 33 years, sometimes working in other states, but always self-employed. He does jobs for his father, a licensed appliance service dealer who owns Doctor Cool Appliance Repair. Respondent also does referral-only appliance repair work for himself under the business name All Appliance.

10. Respondent's attitude toward seeking licensure was unusual, in that he essentially admitted to conducting appliance repair work without a license, but viewed his lack of licensure as a "grey area" under the law. Respondent argued that Business and Professions Code section 9840, which makes it unlawful to act as a service dealer without first having been registered by the Bureau and currently holding a valid registration, does not apply to him, because he works on a referral basis only and does not advertise or solicit business. Respondent contends that a "Supreme Court case" which he could not name "overrides" the effect of the statute. These contentions were unfounded and unpersuasive, as section 9840 is a plain-stated licensure requirement for persons seeking to operate as appliance service dealers; and indeed, this is the licensure respondent, an appliance-servicing practitioner, seeks in this matter. The statute makes no reference to advertising, solicitation, or referrals as determining factors in whether a prospective business must obtain licensure.

11. Respondent further explained that he submitted his application because one of his sources of business referrals is the American Home Shield insurance company (AHS), and AHS requires subcontractors like respondent to carry general liability insurance. Respondent cannot obtain such coverage without becoming licensed.

² See Finding 5.

12. Regarding his past criminal misconduct, respondent stated, "I'm not good at alcohol and relationships," and admitted he had committed violent acts upon female victims. Respondent did not explain or offer any further insight into why he committed the several criminal offenses of which he was convicted, or detail any changes in his life which would prevent him from committing future crimes. He did say he "gets it" that the Bureau would be concerned about public protection, but claimed he has done appliance repair work for 33 years and has never had a customer complaint. Respondent asked for "lenience" in being granted a two-year probationary license, which would require him to be on probation until approximately the same time he will complete his parole.

13. In the late 1990s respondent was abusing methamphetamine, and by 2010, he was abusing alcohol. Respondent said he has not consumed alcohol since 2012. He has no specific sobriety date and no sobriety plan, other than not to drink at all. He does not attend Alcoholics Anonymous. Years ago, he attended Narcotics Anonymous, but after five years, he no longer needed it and stopped going. In approximately 1999, he was in a drug program as part of his criminal parole, but was expelled from the program due to suspicion that he was manufacturing illegal drugs. He was expelled from a second drug program in 1999 or 2000 for non-completion. Respondent's failure to complete the drug programs was considered a violation of his parole.

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for registration as an Appliance Service Dealer under Business and Professions Code sections 480, subdivisions (a)(1) and (a)(3)(A), on the grounds that respondent was convicted of crimes substantially related to the qualifications, functions, and duties of an appliance service dealer, as set forth in Findings 3 through 8.

2. California Code of Regulations, title 16 (Regulation), section 2767, states, in relevant part:

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

3. Respondent was convicted of felony battery, misdemeanor battery (twice), misdemeanor resisting a police officer, felony issuance of criminal threats, felony dissuasion of a witness, and misdemeanor willful violation of a protective or stay-away order. He was

an admitted habitual criminal pursuant to Penal Code section 667, subdivision (b)(i), which ensures longer prison sentences and greater punishment for felony repeat-offenders. Respondent's convictions involved violence against innocent victims, and disrespect for both the law and for law enforcement officers. Because an appliance service dealer works with members of the public, visiting private citizens in their homes to make repairs, a licensee must be honest, trustworthy, and law-abiding. Thus, these are "substantially related" crimes because the crimes to a substantial degree evidence respondent's present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare.

4. Regulation section 2768 states:

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

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

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

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

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

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

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

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

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

5. Considering all the relevant criteria, Respondent has not established sufficient rehabilitation to warrant the issuance of a registration. Nearly six years have elapsed since respondent committed his most recent crimes, and nearly 20 years have elapsed since the most distant crimes under consideration. (Regulation, § 2768, subd. (b)(4).) Respondent did not submit evidence that he has complied with the terms of his parole. His work doing appliance repairs in what he called a “grey area” of the law was concerning, since the standard terms and conditions of parole would require him to obey all laws. (Regulation, § 2768, subd. (b)(5).) Respondent’s crimes were by their nature serious and severe, as they involved violence and evinced disregard of the law and law enforcement officers. (Regulation, § 2768, subd. (b)(1).) Respondent did not demonstrate a mature understanding of the nature of his crimes and expressed no remorse. He submitted no evidence of rehabilitation. He proffered no evidence of expungement proceedings or of service to the community, and submitted no character references. (Regulation, § 2768, subd. (b)(6).) Respondent deserves credit for his candor as a witness. However, his testimony revealed an ignorance of the law in that he wrongly believed he was exempt from regulation.

ORDER

The application of Adam Keefauver, doing business as All Appliance/Mr. Freez, for registration as an Appliance Service Dealer is denied.

Dated: December 8, 2017

DocuSigned by:
John DeCure
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JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings