Dep't of Consumer & Worker Protection v. B&M Electronic Diagnostic Repair Service Inc.

OATH Index No. 1869/23 (Oct. 20, 2025)

Respondent, a booting company, booted motor vehicles without a contract or license, failed to produce and maintain records required for inspection and comply with booting sticker requirements, and overcharged consumers for booting vehicles. Respondent's booting license is revoked. Respondent is ordered to pay a total civil penalty of $174,750 and $5,875.59 in restitution for a total of $180,625.59.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CONSUMER AND WORKER PROTECTION
Petitioner
- against -
B&M ELECTRONIC DIAGNOSTIC REPAIR SERVICE INC.
Respondent

REPORT AND RECOMMENDATION

JONATHAN FOGEL, *Administrative Law Judge*

Petitioner, the New York City Department of Consumer and Worker Protection ("DCWP" or "Department"), brought this proceeding under section 2203(h) of the New York City Charter and Title 20, Chapter 1 of the Administrative Code. *See also* 6 RCNY § 6-01(a) (Lexis 2025). Petitioner alleges that between December 4, 2019 and November 18, 2022,[1] respondent, a company engaged in booting motor vehicles, booted motor vehicles without a contract or license, failed to produce and maintain records required for inspection and comply with booting sticker requirements, and overcharged consumers for booting vehicles, in violation of DCWP's rules and the Administrative Code (ALJ Ex. 1). Admin. Code § 20-531 to -538; 6 RCNY § 2-400 to -409.

[1] Although the petition does not mention the date range of the violations, the exhibits appended to it indicate that the violations were committed during the period beginning December 4, 2019, and ending November 18, 2022 (ALJ Ex. 1 at Exs. B, C, D, E).

In a stipulation dated December 21, 2023, which I deem ALJ Exhibit 2, respondent acknowledged liability to counts one through eight in the petition.[2] The parties agreed that this tribunal would recommend a penalty for the violations outlined in the eight counts (*Id*.).

For the proven eight charges, I recommend that respondent pay $174,750 in civil penalties to petitioner and $5,875.59 in restitution to for a total of $180,625.59. I also recommend revocation of respondent's booting license.

ANALYSIS

Booting companies are licensed and regulated by DCWP. Admin. Code § 20-531 to -538 (Lexis 2025). Booting companies may charge up to $25 to release a vehicle that has been booted on a private parking lot. Admin. Code § 20-535. They must have a written contract to boot motor vehicles and affix stickers to booted vehicles that include required information. Admin. Code § 19-169.2(c)(4), (e),(g); 6 RCNY § 2-402 (Lexis 2025). Booting companies must also maintain certain records and produce them to the Department upon request. Admin. Code § 20-534; 6 RCNY § 2-408. A booting company's license may be suspended, revoked, or cancelled, and fines or civil penalties may be imposed for violations of the Administrative Code and applicable rules. Admin. Code §§ 20-104(e)(1), 20-533.

In the December 21, 2023, stipulation, respondent pled guilty to Counts 1 through 8 of the petition (ALJ Ex. 2 at 2):

Count 1: overcharging consumers for booting fees on private parking lots in violation of section 20-535 of the Administrative Code (83 violations);

Count 2: booting vehicles without a contract in violation of sections 19-169.2(c)(4) and 19-169.2(g) of the Administrative Code (19 violations);

Count 3: failure to maintain and produce "time of first sighting" logs in violation of section 2-408(b) of title 6 of the Rules of the City of New York ("RCNY") (1 violation);

Count 4: failure to maintain and produce receipts in violation of section 2-408(d) of title 6 of the RCNY (73 violations);

[2] In counts 9 through 26, the petition also charged respondent with 18 violations of the Administrative Code or petitioner's rules while operating a towing company. The parties proceeded to trial on those counts. During the trial, the parties reached an agreement to resolve the 18 counts concerning the towing violations, so these 18 counts are not part of this report and recommendation.

Count 5: failure to maintain and produce daily booting removal request logs in violation of section 2-408(e) of title 6 of the RCNY (28 violations);

Count 6: failure to maintain and produce records in violation of section 20-534 of the Administrative Code and section 2-408(a) of title 6 of the RCNY (1 violation);

Count 7: failure to follow booting sticker requirements in violation of section 2-402 of title 6 of the RCNY (22 violations); and

Count 8: unlicensed booting activity in violation of section 20-531 of the Administrative Code (8 violations).

Based on the stipulation, counts one through eight of the petition and their corresponding violations are sustained.

FINDINGS AND CONCLUSIONS

1. Petitioner proved that on 83 occasions respondent overcharged consumers for booting fees, in violation of section 20-535 of the Administrative Code.

2. Petitioner proved that on 19 occasions respondent engaged in booting activity without a contract, in violation of sections 19-169.2(c)(4) and 19-169.2(g) of the Administrative Code.

3. Petitioner proved that on one occasion respondent failed to maintain and produce "time of first sighting" logs, in violation of section 2-408(b) of title 6 of the RCNY.

4. Petitioner proved that on 73 occasions respondent failed to maintain and produce receipts, in violation of section 2-408(d) of title 6 of the RCNY.

5. Petitioner proved that on 28 occasions respondent failed to maintain and produce daily booting removal request logs, in violation of section 2-408(e) of title 6 of the RCNY.

6. Petitioner proved that on one occasion respondent failed to maintain and produce records, in violation of section 20-534 of the Administrative Code and section 2-408(a) of title 6 of the RCNY.

7. Petitioner proved that on 22 occasions respondent failed to follow booting sticker requirements, in violation of section 2-402 of title 6 of the RCNY.

8. Petitioner proved that on eight occasions respondent engaged in unlicensed booting activity, in violation of section 20-531 of the Administrative Code.

RECOMENDATION

Petitioner seeks civil penalties and restitution for violations of all proven charges except for count 6, which it detailed in a brief that I deem ALJ Exhibit 3. Petitioner also seeks revocation. Respondent "oppose[d] as excessive DCWPs [sic] request for maximum fines and over the top restitution to alleged consumers who have not complained about any fees charged."[3] Respondent otherwise viewed "the matter as moot" and declined to present evidence to contest petitioner's penalty recommendations, noting that respondent is a "defunct [company] and there are no assets with which to pay any fines" (ALJ Ex. 4). Accordingly, my recommendations for the proven violations are set forth below:

Civil Penalties

Overcharging booting fees on private parking lots in violation of section 20-535 of the Administrative Code (count 1):

Petitioner seeks a penalty of $61,500, or $750 per count, for 82 of the 83 the proven violations of section 20-535 of the Administrative Code.[4] This request is appropriate under DCWP's rules, which provide for a civil penalty of $750 for the first violation of section 20-535 of the Administrative Code. 6 RCNY § 6-37 (Lexis 2025).

Booting without a contract in violation of sections 19-169.2(c)(4) and 19-169.2(g) of the Administrative Code (count 2):

Petitioner seeks a penalty of $14,250, or $750 per count, for the 19 proven violations of sections 19-169.2(c)(4) and 19-169.2(g) the Administrative Code. This request is appropriate

[3] Respondent opposed petitioner's penalty recommendation in an email dated October 21, 2024, which I deem ALJ Exhibit 4.

[4] In its brief, petitioner only sought fines for 82 of the violations, and not 83 as charged petition (ALJ Ex. 3 at 3).

under DCWP's rules, which provide for a civil penalty of $750 for the first violation of sections 19-169.2(c)(4) and 19-169.2(g) of the Administrative Code. 6 RCNY § 6-37.

Failure to maintain and produce "time of first sighting" logs" in violation of 6 RCNY § 2-408(b) (count 3):

Petitioner seeks a penalty of $750 for the proven violation of rule 2-408(b). This request is appropriate under DCWP's rules, which provide for a civil penalty of $750 for the first violation of rule 2-408. 6 RCNY § 6-37.

Failure to maintain and produce receipts in violation of 6 RCNY § 2-408(d) (count 4):

Petitioner seeks a penalty of $54,750 for the 73 proven violations of rule 2-408(d). This request is appropriate under DCWP's rules, which provide for a civil penalty of $750 for the first violation of rule 2-408(d). 6 RCNY § 6-37.

Failure to maintain and produce daily booting removal request logs in violation of 6 RCNY § 2-408(e) (count 5):

Petitioner seeks a penalty of $21,000 for the 28 proven violations of rule 2-408(e). This request is appropriate under DCWP's rules, which provide for a civil penalty of $750 for the first violation of rule 2-408(e). 6 RCNY § 6-37.

Failure to follow booting sticker requirements in violation of 6 RCNY § 2-402(a) (count 7):

Petitioner seeks a penalty of $16,500 for the 22 proven violations of rule 2-402(a). This request is appropriate under DCWP's rules, which provide for a civil penalty of $750 for the first violation of rule 2-402(a). 6 RCNY § 6-37.

Unlicensed booting activity in violation of section 20-531 of the Administrative Code (count 8):

Petitioner seeks a penalty of $6,000 for the eight proven violations of section 20-531(1)(a) of the Administrative Code. This request is appropriate under DCWP's rules, which provide for a civil penalty of $750 for the first violation of section 20-531 of the Administrative Code. 6 RCNY § 6-37.

Restitution for fees charged under count 1

In its brief recommending the appropriate penalty, petitioner asserted that it was seeking restitution for only 54 of the 83 individuals identified in the petition that were overcharged for booting fees on private parking lots, as the remaining 29 individuals have already received restitution (ALJ Ex. 1 at Ex. D at 70-77; ALJ Ex. 3 at 3-4). Petitioner provided documentation to support its request for restitution, including complaints submitted to DCWP and receipts for payments to respondent for booting services, which I deem Petitioner's Exhibit 1. Respondent was afforded an opportunity to rebut petitioner's documentation or present its own evidence, but did not do so, asserting merely that the requested restitution was "over the top" (ALJ Ex. 4).

Petitioner's request for restitution is appropriate for 29 of the 54 individuals. *See* Admin. Code §§ 20-104(e)(2), 20-531. Restitution is recommended in the amount of $5,875.59 for the following 29 individuals where petitioner provided sufficient proof to establish that the individuals paid respondent in excess of the $25 respondent is permitted to charge for booting vehicles on a private parking lot:

Name	Amount Paid to Respondent	Restitution Owed
Shanique Nelson	$223.17	$198.17
Navindra Persaud	$230.00	$205.00
Faraj Lakhana	$223.17	$198.17
Mohammed Islam	$223.17	$198.17
Kevin Lin	$223.00	$198.00
Nanette Gusmorino	$223.17	$198.17
Aliyah Wickham	$223.19	$198.19
Garance Franke-Ruta	$223.17	$198.17
Melissa Yee	$223.17	$198.17
Peng Sun	$223.17	$198.17
Pamela Philip	$223.17	$198.17
Lennox Carter	$223.17	$198.17
Edel Cunningham	$233.00	$208.00
Ron Vincent	$223.17	$198.17

Kimberly Benjamin	$223.17	$198.17
Eula Henry	$248.17	$223.17
Jiarui Fu	$223.17	$198.17
Celeste Perez	$223.17	$198.17
Titus Speeight	$223.17	$198.17
Nam Lee	$223.17	$198.17
Huamin Yi	$223.17	$198.17
Luis Fragoso	$223.17	$198.17
Terrance Dixon	$223.17	$198.17
David An	$225.00	$200.00
Sheriza Bacchus	$223.17	$198.17
Maryanne Desalvo	$285.00	$260.00
Ina Duchan	$226.00	$201.00
Irene Dabydeen	$214.00	$189.00
Abraham Harris	$253.00[5]	$228.00

Restitution is not recommended for 24 of the 54 individuals. For 17 of the 54 individuals, it is not clear from petitioner's supporting documentation, the allegations made in complaints to DCWP, whether those individuals actually paid the fees they were charged (Pet. Ex. 1). Respondent pled guilty to overcharging consumers, not receiving payment, and petitioner provided no receipts showing payment for those individuals. Seven of the 54 individuals are not identified by name, only vehicle information, and so no restitution is recommended for them (*Id*.).

Revocation

Petitioner seeks revocation of respondent's license as a booting company under sections 20-101 to 20-119 and 20-531 to 20-538 of the Administrative Code. Section 20-104(e)(1) of the Administrative Code authorizes DCWP to "suspend, revoke, or cancel" the license of any DCWP licensee, upon due notice and hearing. Section 20-533 of the Administrative Code permits DCWP

[5] Although the complaint to DCWP indicates that Harris was charged an additional $100, it is not clear if he paid that amount.

to suspend or revoke a booting company's license upon a finding that the company has "violated any provision" of the law or rules which regulate booting.

In total, respondent committed 235 violations of the Administrative Code and DCWP's rules, as described above, over three years. Respondent provided no mitigation for the violations. Accordingly, I recommend revocation of respondent's booting license.

CONCLUSION

I recommend respondent pay a civil penalty of $174,750, the total that petitioner requested for the proven violations and to make restitution of $5,875.59 to 29 individuals for a total payment of $180,625.59. I further recommend revocation of respondent's booting license.

Jonathan Fogel
Administrative Law Judge

October 20, 2025

SUBMITTED TO:

VILDA VERA MAYUGA
Commissioner

APPEARANCES:

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