
Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

**ADAM K. LEVIN, DIRECTOR,
DIVISION OF CONSUMER AFFAIRS,**
Complainant,
v.
**EARL LEWIS, t/a
THE RESTORATION SHOP,**
Respondent.

Decided February 13, 1980

Initial Decision

SYNOPSIS

The Division of Consumer Affairs charged respondent, the operator of a shop doing business in antique car restoration, with deceptive consumer practices in the conduct of an automobile repair business.

The administrative law judge assigned to the case determined that although the nature of respondent's automotive repair business was specialized and limited to the restoration of antique and classic cars, the broad sweep of *N.J.A.C.* 13:45A-7.1 brought respondent within the definition of automotive repair dealer.

The judge found that, in at least two instances, respondent had failed to provide a written estimate or obtain a waiver of a written estimate, in violation of *N.J.A.C.* 13:45A-7, and in both instances the final repair costs were far above the original oral estimate.

Accordingly, the administrative law judge found that the respondent has violated the Consumer Fraud Protection Act, *N.J.S.A.* 56:8-2 *et seq.*

David S. Griffiths, Deputy Attorney General for complainant (John J. Degnan, Attorney General of New Jersey, attorney)

Richard M. Brockway, Esq., for respondent (Wilentz, Goldman & Spitzer, attorneys)

OSPENSON, ALJ:

This matter is a complaint against the respondent in his capacity as an automobile repair dealer by the Director of the Division of Consumer Affairs under the Consumer Fraud Act (*N.J.S.A.* 56:8-1,

Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

et seq.) and regulations thereunder prohibiting deceptive practices in automotive repairs and advertising, *N.J.A.C.* 13:45A-7.1 *et seq.* the director asks for relief by way of consumer restitution, statutory penalties and costs, and restraints against future unlawful consumer practices.

The complaint was filed in the Division on October 22, 1979, and thereafter, on October 23, 1979, transmitted to the Office of Administrative Law for hearing and determination as a contested case, pursuant to *N.J.S.A.* 52:14B-9, 10. An amended complaint was filed in the Office of Administrative Law on January 23, 1980. In lieu of formal answer, all allegations of the complaint were deemed controverted. *N.J.A.C.* 13:45-4.5(d).

I

Counts I to IV of the amended complaint allege deceptive consumer practices in automotive repair in respondent's dealing with a 1962 Thunderbird motor vehicle belonging to Francois Desert, contrary to *N.J.A.C.* 13:45-7.2(a) 2, 3, 5 and 6. Counts V to VIII allege similar deceptive consumer practices in respondent's dealing with a 1925 Chevrolet truck engine belonging to Thomas J. Farrell. The respondent, Earl Lewis, an individual proprietor trading as "The Restoration Shop" of Jamesburg, denies he falls within the regulatory ambit of the Division's regulations. At issue first of all, therefore, is whether he is an "automotive repair dealer" within the meaning of *N.J.A.C.* 13:45A-7.1, which provides as follows:

'Automotive repair dealer' means any person who, for compensation engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on a motor vehicle or the replacement of parts including body parts. . . .

'Repair of motor vehicle' means all maintenance and repairs of motor vehicles performed by an automotive repair dealer but excluding . . . minor accessories and services . . . No service or accessory to be installed shall be excluded for purposes of this rule if the Director determines that performance of the service or the installation of an accessory requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

"Motor vehicle" means a passenger vehicle that is registered with the Division of Motor Vehicles of New Jersey or of any other comparable agency of any other jurisdiction. . . .

The respondent testified that he has operated The Restoration Shop, Jamesburg, since 1963. His business is restoration of antique and classic cars. He defined antique cars as vintage 1929 or older. He deals mostly with passenger cars, driven mainly for show purposes and not for transportation over the road. In his premises are a body shop, a wood shop, a machine shop, and a paint shop. He deals mainly with 25 to 50 year old cars and either repairs, makes or locates replacement parts for them in the restoration process. He has won numerous awards such as the Krause Publication 1979 Customer Service Award. Examples of the work done at his shop are the restored cars shown in photos marked into evidence. Many of his customers come from advertisements in national magazines like "Antique and Classic Cars," "Cars and Parts," and "Hennings Motor News." Some customers bring repeat business and referred business. In his wood shop all wood work for older cars is re-built. In the machine shop, fender or seat parts are made, castings machines, frequently from specifications. Often he must advertise for parts throughout the country. He employs five persons. In general, he said, engine overhaul prices are given to the customer on a "ball park" basis. Restoration work, however, is on a time/matter basis only. He advises his customers of this, and bills once a month for labor at \$20.00/hour and parts at cost.

Francois Desert testified he was referred to respondent by the person who sold him his 1962 Thunderbird.

Thomas J. Farrell testified he learned of respondent's business through an advertisement in "Antiques Magazine."

Respondent said there are four other "restoration" shops in New Jersey for antique and classic cars. He does no "collision work" as such.

From all of the foregoing, I **CONCLUDE** that respondent is clearly an "automotive repair dealer" within the meaning of the broadly inclusive language of *N.J.A.C.* 13:45A-7.1. Although the nature of his automotive repair business is specialized and limited to restoration of antique and classic cars, the broad sweep of the regulatory definition does not make or necessarily imply the exception to it that he urges be made. Restoration, in his operation, is but a specialized kind of diagnosis, repair and/or replacement or automobile engine and body parts. Though one aim of restoration is perhaps the vanity of show, the obvious end purpose of restoration is the return to automotive machine function and condition of disabled or deteriorated vehicles. Respondent has not limited his business of restoration to

Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

historic motor vehicles at least 25 years old, which if owned as collectors' items and used solely for exhibition and educational purposes by their owners may be specifically so registered and licensed. *See, N.J.S.A.* 39:3-27.3.

II

At issue in Counts I to IV of the complaint, secondarily, is whether respondent was guilty of deceptive consumer practices in his dealing with the 1962 Thunderbird belonging to Francois Desert. A Brooklyn resident, Desert testified that he was referred to respondent's Restoration Shop by the person from whom he bought the car, which was then a passenger vehicle registered in New York. He visited the Shop first with the car in the spring of 1978 and spoke to the respondent. Desert obtained a verbal price for repairs and overhaul to the engine, transmission, front and rear ends for \$1,500 and a paint job (excluding interior) for \$2,000. To Desert, the verbal price of \$3,500 was firm. No written estimate was given. No written waiver of estimate was given. Arrangements were made to redeliver the car for the agreed work when the respondent was ready for it. Later, Desert and a friend left the car with respondent's employee, Alan Rooney. The verbal price of \$3,500 for the repairs was confirmed. When some months went by without any work being begun, Desert, to whom it was hinted a money deposit was in order, gave respondent a bank check for \$3,363.78. In February 1979, Desert received an invoice showing his deposit, various charges for parts and 58 hours of labor, and a credit balance in his favor of \$1,507.58. According to Desert, when he asked respondent about the invoice, saying he had a "firm price," respondent said, for the first time, he didn't work like that. Desert next received an invoice showing additional charges for 134 hours of labor, other parts, and for the first time, a debit balance due respondent of \$1,164.37. Succeeding invoices charged for additional labor and parts. Though he still felt the price he had received was firm, Desert paid respondent another \$600 in April 1979, believing respondent would finish the repairs with that payment. As work progressed, respondent never sought verbal or written authorization from Desert for work done or parts supplied in excess of the original estimate of \$3,500.

Respondent presently demands that Desert pay him \$4,132.02 above the total of \$3,963.78 already paid. Since April 1, 1979, respondent has added monthly interest at one and one-half percent on unpaid

Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

balances. The last "labor" charge was for 9 hours on the May 11, 1979 invoice. The car is still unfinished. Desert still doesn't know what charges for what labor or parts respondent will demand. Re-possession has been refused.

Respondent testified he denied ever giving Desert a price by phone or even a firm price when Desert brought the car in. He insisted he told Desert he worked only on a timematerial basis. He said the nature of the work made it impossible to foresee what problems would appear.

III

At issue in Counts V to VIII of the complaint, thirdly, is whether respondent was guilty of deceptive consumer practices in his dealing with the 1925 Chevrolet truck engine belonging to Thomas J. Farrell. A Flushing resident, Farrell testified he came upon respondent's Restoration Shop in an "Antiques Magazine" advertisement. He owns a 1925 Chevrolet truck that is commercially registered in New York. He bought it in running condition. Wishing to have the engine overhauled, he called the Shop in October 1978 and spoke to a mechanic, Alan Rooney. He was told the price would be about \$600. The more it was disassembled, the less would be the labor cost. When he brought the engine to the Shop, disassembled, he was told by Rooney the price would be no more than \$800, which was "out of the ball park." When Rooney looked at the engine, the price went up again, but he and Farrell finally reached a price of \$1,000 for complete overhaul, painting, and re-assembly (except for starter and generator). Farrell made a \$100 deposit and was told the engine would be ready in 6 to 8 weeks. No written estimate or waiver of estimate was given.

In August 1979, he was told the engine was ready and two days later received an invoice for a total of \$2,051.28 showing 41 hours of labor at \$20 and charges of \$1,133.60 for parts. The Shop never sought his authorization for labor or parts beyond the agreed price. Farrell said when he called Rooney about the invoice, Rooney said the number of hours for labor was 21 and the charges for parts was \$540.

Rooney admitted he gave Farrell a "basic estimate" of \$600 or \$650 over the phone and that at first he did not indicate the job was to be on time/materials, which was for accessories and not for basic engine overhaul in any case. When Farrell brought the engine to the shop, however, said Rooney, cracks in the engine block were dis-

Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

covered. Later, he said, further cracks were found. This caused the "basic estimate" to go up. The engine is finished. Respondent refuses re-possession without payment of the invoice balance of \$1,951.28.

DISCUSSION

By enactment of the Consumer Fraud Act, the Legislature intended to establish broad regulatory powers in the interest of the consuming public. *See, Kugler v. Romain*, 58 *N.J.* 522, 537 (1971). The breadth of those powers reaches merchant and artisan alike. *See, Hyland v. Subak*, 146 *N.J. Super.* 407, 413 (App. Div. 1976). Subjective good faith does not excuse noncompliance with statute or regulations; capacity to mislead is paramount and the standards of conduct must be met regardless of intent. *See, Fenwick v. Kay American Jeep*, 72 *N.J.* 372, 378 (1977); and *State v. Hudson Furniture Co.*, 165 *N.J. Super.* 516, 519 (App. Div. 1979). *N.J.A.C.* 13:45A-7.1(a) provides:

... the following acts or omissions shall be deceptive practices in the business of an automotive repair dealer, whether done by the dealer or by an employee:

...

2. Commencing work for compensation without specific authorization from the customer which states the nature of the repair requested or problem presented. . .
3. Failure to provide the customer before commencing work for compensation with one of the following:
 - i. a written estimated price to complete the repair, quoted in terms of a not-to-exceed figure; or
 - ii. a written estimated price quoted as a detailed breakdown of parts and labor necessary to complete the repair. . .
 - iv. waiver of any written estimate. . .
5. Making false promises of a character likely to influence, persuade or induce a customer to authorize the repair.
6. Charging the customer for work done or parts supplied in excess of any estimated price given, without the oral or written consent of the customer. . .

The evidence here is clear that respondent Lewis gave no written estimates of repair to either Desert or Farrell before commencing work. Nor did he obtain from either waivers of such estimates or specific written authorizations from either stating the nature of the repairs to be done. It is likewise clear that he did work and supplied parts in excess of his verbal estimates, and charged them therefore,

Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

without their consent. In those respects, therefore, the proofs sustain the allegations of the complaint against respondent that *N.J.A.C.* 13:45A-7.2(a) 2, 3, 6 of the regulations were violated. His assertions that the nature of his business required that he work on a time/materials basis is no defense. *See, State v. Hudson, supra*, at 519.

Respondent is also clearly guilty of deceptive consumer practices independently of the regulations. His conduct is replete with the aura and aroma of commercial deception. Both Desert and Farrell sought, and though they had secured from respondent, fixed prices for repairs. They thought the prices were fixed because respondent said so to Desert and respondent's employee said so to Farrell. These were false statements calculated to deceive in order to obtain their business. Having listened carefully to the testimony, I am constrained not to credit respondent's testimony that Desert and Farrell were told beforehand that respondent worked only on a time/materials basis. I am satisfied from the testimony of all that, had that been the case, no bargains would have been struck. I am satisfied that respondent was satisfied that the longer he kept the car and the engine, the better were his chances to raise the prices, something he intended to do from the outset. To that extent, therefore, respondent engaged in deception and misrepresentation, conduct which is a direct violation of the act, *N.J.S.A.* 56:8-2, as well as the regulation, *N.J.A.C.* 13:45A-7.2(a)(5). *Cf., Hyland v. Zuback, supra*, at 415:

If (defendant) had contacted (the consumer) upon running into difficulties and sought authorization to exceed the estimate, (the consumer) might well have given that authorization. Here, however, (defendant) ignored his previous estimate in favor of presenting (the consumer) with a *fait accompli*, at which point he had few options. If he wanted his boat returned and to avoid storage fees, he had to pay. . . (Defendant's) act in this case went beyond that of mere omission. He actually lulled (the consumer) into a false sense of calm concerning what the job would actually cost. Thus, under the statute's broad definitions (defendant) engaged in deception and misrepresentation and that conduct constituted a violation of the act.

FINDINGS

Having carefully reviewed the exhibits herein, having heard the arguments of counsel, and having observed the demeanor of the witnesses in testimony, I **FIND** as follows:

Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

1. The foregoing discussion, to the extent of any mediate conclusions of fact, is adopted herein.
2. Earl Lewis, t/a the Restoration Shop, a single proprietor, at all relevant times herein was an automotive repair dealer within the meaning of *N.J.A.C.* 13:45A-7.1.
3. In the spring of 1978, Francois Desert brought his 1962 Thunderbird, New York registration, to respondent's shop.
4. Respondent falsely agreed at that time to perform repairs to the car's engine, transmission, front and rear ends for \$1,500 and to repaint it for \$2,000. No written estimate was prepared by respondent, no waiver of estimate was signed by Desert and no written authorization to perform work was signed by Desert.
5. In November, 1978, Desert left the car at respondent's shop during normal working hours for repairs.
6. The agreed estimate was falsely confirmed at that time by respondent's employee. No written estimate was prepared by respondent, no waiver of estimate or written authorization to perform work was signed by Desert. The false agreement induced Desert to leave the car for repairs in reliance thereon.
7. Desert paid respondent \$3,363.78 in reliance thereon and on account of repairs on October 27, 1978, and \$600 more in response to respondent's demand and in further reliance thereon on April 11, 1979.
8. Despite the agreed estimate, respondent deceptively continued to perform services on the car and to charge in excess of estimate without the oral or written consent of Desert. Final charges, though the work is unfinished, were more than double the estimate.
9. Contrary to his testimony, respondent did not tell Desert before agreement was struck that the work might exceed the estimate or that respondent worked only on a time/materials basis.
10. In the Fall of 1978, Thomas J. Farrell brought his 1925 Chevrolet truck engine, disassembled as he was instructed, to respondent's shop.
11. Respondent, through his employee, falsely agreed at that time to overhaul, paint and reassemble the engine for \$1,000. Respondent ratified the acts of his employee.
12. No written estimate was prepared by respondent; no waiver of estimate or no authorization to perform work was signed

- by Farrell. The false agreement induced Farrell to leave the engine for repairs in reliance thereon.
13. Farrell paid respondent \$100 in reliance thereon and on account of repairs on January 30, 1979.
 14. Despite the agreed estimate, respondent deceptively worked on the engine and performed services in excess of estimate without the oral or written consent of Farrell. Final charges were double the estimate.
 15. Contrary to testimony, respondent or his employee did not tell Farrell before agreement was struck that the work might exceed the estimate or that respondent worked only on a time/materials basis.

CONCLUSIONS

Based on all the foregoing, therefore, I **CONCLUDE** that respondent is guilty of deceptive consumer practices in the two instances aforesaid, contrary to *N.J.S.A.* 56:8-2 and *N.J.A.C.* 13:45A-7.2(a) 3, 4, 5, 6.

I **ORDER**, therefore, pursuant to *N.J.S.A.* 56:8-15, that respondent deliver to Francois Desert forthwith his 1962 Thunderbird without further payment by Desert and that respondent be restrained henceforth from instituting action in any court for recovery of any monies for repair thereof. It is the intendment of this **ORDER** that Desert be given the reasonable benefit of the original bargain. *See, Zeliff v. Sabatino*, 15 *N.J.* 70, 74, 75 (1954); and *Kugler v. Banner Pontiac-Buick, Opel, Inc.*, 120 *N.J. Super.* 572, 581 (Ch Div 1972).

In like manner, and for the same reason, I **ORDER** that respondent restore to Thomas J. Farrell forthwith his 1925 Chevrolet engine, subject, however, to payment by Farrell of \$900 in fulfillment of the original bargain. Thereafter, respondent shall be restrained thenceforth from instituting action in any court for recovery of any further monies for repair thereof.

I **ORDER**, pursuant to *N.J.S.A.* 56:8-18 that respondent be restrained and enjoined hereafter from engaging in commerce or business in such ways as to violate the Consumer Fraud Act, *N.J.S.A.* 56:8-1 *et seq.*, and regulations promulgated pursuant thereto in *N.J.A.C.* 13:45A-7.1 and 7.2, specifically, the commencement of work or repairs on motor vehicles without first obtaining written authorization from the owners or the performing of repair work on motor vehicles without providing written estimates or obtaining writ-

Levin v. Lewis
Cite as 6 *N.J.A.R.* 85

ten waiver thereof as required by *N.J.A.C.* 13:45A-7.2(a)(3), and the use of false promises of a character likely to influence, persuade or induce customers to authorize repair of motor vehicles.

Pursuant to *N.J.S.A.* 56:8-3.1 and 13 and having found no mitigating circumstances in respondent's conduct, I **ORDER** that respondent pay a maximum statutory penalty of \$2,000 for the violation in the case of Francois Desert and a maximum statutory penalty of \$2,000 for the violation in the case of Thomas J. Farrell. Though the violations are separate, distinct and unrelated, I treat both violations for purposes of penalty imposition as statutory first offenses brought in a single administrative action by the Director of the Division of Consumer Affairs. Jurisdiction for provision of remission of penalties for prompt restitution under *N.J.S.A.* 56:8-16 is not retained by the Office of Administrative Law. Costs are **ALLOWED** complainant, pursuant to *N.J.S.A.* 56:8-11, upon proof by affidavit that the costs taxable by law have been necessarily incurred and are reasonable in amount.

**After reviewing this Initial Decision, the
Division of Consumer Affairs on March 19, 1980
issued the following Final Decision:**

WHEREAS, I have received and reviewed the entire Office of Administrative Law file in this matter, and have duly taken note of the exceptions filed by the Respondent, and

WHEREAS, I have read and reviewed the initial decision of the administrative law judge herein, and i adopt his findings and conclusions in their entirety.

It is therefore on this 19th day of March, 1980 **ORDERED** that

1. In order to provide Francois Desert with the reasonable benefit of the original bargain he made with the respondent, as was the intendment of the administrative law judge pursuant to *N.J.S.A.* 56:8-15, I hereby modify the initial decision of the administrative law judge by requiring the respondent to forthwith return to Francois Desert \$463.78, representing the amount paid to respondent by Desert above the original estimated price provided by respondent.

Additionally, since the work which was to be performed on Desert's vehicle for \$3,500 has not been fully completed, Mr. Desert has 45 days from the date of this Order to supply to counsel for complainant an affidavit or certification detailing the work which the respondent failed to complete, and providing a bona fide estimate of the cost of

completing such repairs or painting. Thereafter, a Supplemental Final Order may be issued ordering respondent to return additional money to Mr. Desert.

I specifically reject respondent's contention that he is not an automotive repair dealer as defined by *N.J.A.C.* 13:45A-7.1. There is no question that respondent repairs and replaces parts of motor vehicles for compensation. His business is not limited to commercial or industrial establishments, and the two complaintants herein clearly retained his services as individuals. The application of the Consumer Fraud Act and its accompanying auto repair regulations (*N.J.A.C.* 13:45A-7) is not limited to any narrow class of individuals.

Additionally, it is totally consistent with the purpose of the Consumer Fraud Act and the initial decision of the administrative law judge to assess a penalty against respondent in conjunction with the ordered restitution. Conduct which violates the act must be deterred by effective penalties. A remedy limited to restitution would have no deterrent effect on future conduct of respondent and other auto repair dealers.

2. All other relief ordered by the administrative law judge in his initial decision is adopted.