

**STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY**

In the Matter of:

File No. 04-144-CZ

James Mroz
Operating as
Rust Busters Automotive Restoration
and or Rust Busters
Repair Facility # F130077

Hon. Paula J. M. Manderfield

CP File No. 200406029

Respondent.

ASSURANCE OF DISCONTINUANCE

MICHAEL A. COX
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Dated Filed: May 11, 2004

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The Complainants are Michael Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan (hereafter sometimes referred to as "Attorney General" or "Department") and Terri Lynn Land Secretary of the Department of State of Michigan (hereafter sometimes referred to as the "Secretary" or the "BRS", i.e., the Bureau of Regulatory Services, a Bureau within the Department of State). The Respondent is James Mroz operating as Rust Busters Automotive Restoration and/or Rust Busters. Hereafter Respondent is sometimes referred to as "Respondent" or as "you" or "yours."

This Assurance of Discontinuance ("Assurance") concerns the resolution of alleged violations of the Motor Vehicle Service and Repair Act ("MVSRA"), MCL 257.1301 *et seq* and the Michigan Consumer Protection Act ("MCPA"), MCL 445.901 *et seq*. Respondent agrees not to contest: (a) the authority of the Department or the Secretary to execute this Assurance; or, (b) any terms or conditions set forth herein.

The entry of this Assurance by Respondent is neither an admission of liability with respect to any issue dealt with in this Assurance nor is it an admission or denial of any factual allegations or legal conclusions stated or implied in this Assurance.

The Parties agree that the terms and conditions of the Assurance are fair, reasonable and consistent with the public interest and the doctrines of applicable law.

I. JURISDICTION, VENUE AND SECRETARY'S AUTHORITY

1.1 The Ingham County Circuit Court has jurisdiction over the subject matter of this action pursuant to Sections 5 and 6 of the MCPA, MCL 445.905 and MCL 445.906. The Court also has personal jurisdiction over the Respondent for the enforcement of this Assurance.

1.2 The Secretary, by the BRS, has authority to accept this Assurance pursuant to MCL 257.1327.

1.3 Respondent waives all objections and defenses regarding jurisdiction, venue and authority.

II. PARTIES BOUND

2.1 This Assurance shall apply to and be binding upon the Respondent, James Mroz operating as Rust Busters Automotive Restoration and/or Rust Busters, whether acting with or through employees, representatives, agents, successors, or through any assumed name or business entity. Respondent is responsible for compliance with the terms of the Assurance, and shall ensure that all employees, sales agents and other representatives acting on Respondent's behalf are in compliance with the terms and conditions of this Assurance. Respondent shall not enter into any contract or agreement that is inconsistent with this Assurance.

2.2 The signatories to this Assurance certify that they are authorized to execute and legally bind the parties they represent.

2.3 Respondent shall notify the Department within 15 days of the involvement in bankruptcy receivership or similar proceedings, or any other change that may affect any compliance obligations arising out of this Assurance.

III. STATEMENT OF PURPOSE

In entering into the Assurance, the mutual objective of the Attorney General, the Secretary and Respondent is to resolve, without litigation, the alleged violations of the MVSRA and the MCPA, the demand for payment of civil penalties, and the reimbursement of costs and expenses incurred by the Attorney General and the Secretary in investigating this matter and enforcing the MVSRA and the MCPA.

IV. IMPLEMENTATION OF COMPLIANCE MEASURES, COSTS AND CIVIL PENALTY

4.1 The Respondent shall immediately comply with all applicable provisions of the MVSRA including, but not limited to, all examination, registration, and certification requirements. Further, Respondent shall comply with all applicable provisions of the MCPA.

4.2 The Respondent shall fully complete and file the Motor Vehicle Repair Facility Registration Renewal forms and pay total registration fees and late fees of \$600.00 for the years 2002, 2003 and the part year 2004 (and/or 2005) unless evidence, acceptable to the BRS, discloses Respondent owes a greater or lesser amount and, if so, Respondent shall pay said greater or lesser amount. Said amount must be paid in the form of a check or money order made out to the "State of Michigan" and received by the Attorney General or the Secretary on or

before May 11, 2004. Said amount must be received before or concurrent with Respondent's registration renewals and any other completed forms and documents that may be required by the BRS.

4.3 The Respondent shall pay a total of \$200.00 to the Secretary for the Secretary's investigative costs. Said amount must be paid by check or money order made out to the "State of Michigan" and received by the Attorney General or the Secretary on or before May 11, 2004. Said amount may be combined in the same check or money order as the license fees and late fees required to be paid in Paragraph 4.2, above. Said amount must be received before Respondent's registration renewal is deemed completed by the BRS and the Attorney General.

4.4 The Respondent shall pay a total of \$200.00 costs for the litigation and attorney costs of the Attorney General. Further, pursuant to the MCPA, Respondent shall pay a civil penalty of \$500.00. The total amount of the costs and penalty is \$700.00. Said total amount must be paid by a separate check or money order made out to the "State of Michigan" and received by the Attorney General or the Secretary on or before May 11, 2004. Said amount must be received by the Attorney General or the Secretary before Respondent's registration renewal will be deemed completed by the Attorney General and the BRS.

4.5 All required checks or money orders shall be made payable to the "State of Michigan" and remitted as follows:

A. The amounts required in Paragraphs 4.2 and 4.3 (now totaled at \$800.00) shall be remitted to the Secretary of State at the following address:

Department of State
Attn: Krista Moorman
Business Licensing Division
7707 Rickle Road
Lansing, MI 48918

Your check or money order shall reference "Rust Busters; F130077."

B. The amounts required by Paragraph 4.4 (now totaled at \$700.00) shall be remitted to:

Stewart H. Freeman
Assistant In Charge
Consumer Protection Division
G. Mennon Williams Building
525 Ottawa Street, 6th Floor
PO Box 30213
Lansing, MI 48909

Your check or money order shall reference "Rust Busters; AG No. 200406029"

4.6 If Respondent fails to timely comply with all future registration requirements, the Respondent shall immediately cease and desist engaging in the business of performing or employing persons who perform maintenance, diagnoses, vehicle body work, or repair service on a motor vehicle for compensation subject to the exceptions set forth in MCL 257.1302(g) and MCL 257.1304.

**V. COVENANT NOT TO SUE BY COMPLAINANT
AND RESERVATION OF RIGHTS**

5.1 In consideration of the implementation of compliance measures, the payment of the civil penalty and the reimbursement of the costs and expenses that will be made by Respondent under the terms of this Assurance, and except as specifically provided in this Section, Complainants covenant not to sue or to take administrative action against Respondent for Covered Matters.

5.2 "Covered Matters" shall include any liability to the State of Michigan for the following:

A. All claims for violations of the registration and licensing requirements of the MVSRA and the MCPA as alleged in the Notice of Intended Action, through to the date the parties sign this Assurance.

B. Payment of all civil penalties for violations of the registration and licensing requirements of the MVSRA and the MCPA as alleged in the Notice of Intended Action, through to the date the parties sign this Assurance.

C. Reimbursement of costs and expenses incurred by the Departments of Attorney General and the Secretary of State through to the date the parties sign this Assurance.

5.3. The covenants not to sue set forth in this Section do not pertain to any matters other than those expressly specified in "Covered Matters" in paragraph 5.2. The Attorney General and the Secretary, each, reserves, and this Assurance is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:

- A. Any criminal liability;
- B. Liability arising from a violation by Respondent of a requirement of this Assurance;
- C. Liability for licensing and registration violations of the MVSRA and MCPA occurring after the date of the parties signing of this Assurance;
- D. All other violations of the MVSRA and MCPA;
- E. Any conduct of Respondent deemed by the Attorney General or the Secretary, to be causing a threat of imminent harm to the health, safety and welfare of the public.

VI. NOTICES

All notices, deliveries or other communications required or permitted hereunder shall be in writing and shall be deemed given when sent by facsimile transmission and confirmed by certified or registered mail (unless otherwise specified) addressed as follows:

A. If to Respondent:

James Mroz
Rust Busters Automotive Restoration
and/or Rust Busters
12025 Telegraph Road
Redford, MI 48239

B. If to the Secretary:

Department of State
Attn: Director, Compliance Division
7707 Rickle Road
Lansing, MI 48918

C. If to the Attorney General:

Department of Attorney General
Consumer Protection Division
PO Box 30213
Lansing, MI 48909

VII. GENERAL PROVISIONS

7.1 This Assurance is accepted and final upon signing by all parties. This Assurance may be executed in counterparts.

7.2 No change or modification of this Assurance shall be valid unless in writing and signed by the parties.

7.3 Neither Respondent nor anyone acting on his behalf shall state or imply or cause to be stated or implied that the State of Michigan, the Attorney General, the Secretary or any

other governmental unit of the State of Michigan has approved, sanctioned, or authorized any practice, act, advertisement or conduct of the Respondent.

7.4 Nothing in this Assurance shall limit the Attorney General's or the Secretary's right to obtain information, documents or testimony from Respondent pursuant to any state or federal law or regulation.

7.5 Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of reasonable and appropriate attorneys' fees to the State of Michigan related thereto.

7.6 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

7.7 Respondent will not participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

7.8 This Assurance sets forth the entire agreement among the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, among the parties relating to the subject matter of this Assurance that are not fully expressed in this Assurance.

7.9 Nothing in this Assurance shall be construed as relieving Respondent of his obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such law, regulation or rule.

7.10 This Assurance does not extinguish, limit, or otherwise affect any private cause of action any consumer may have against Respondent, whether arising under the MVSRA, the MCPA or other law. Further, nothing in this Assurance may prevent Respondent from raising any defenses they may, by law, raise in any private right of action.

VIII. APPLICABLE LAW

This Assurance shall be construed in accordance with and governed by the internal laws of the State of Michigan.

IX. EFFECTIVE DATE

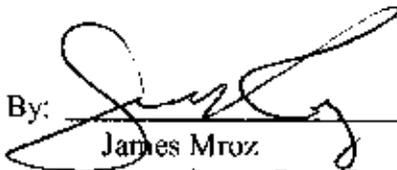
The effective date of this Assurance is the date it is filed with the Ingham County Circuit Court.

X. TERMINATION

If all substantive terms of this Assurance are met by Respondent this Assurance shall terminate 24 full months after the date it is filed with the Ingham Circuit Court except the then applicable requirements of Sections IV, V, and VII shall survive. The parties shall be allowed to

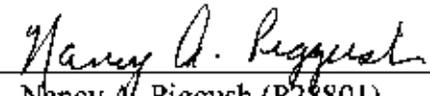
reopen this Assurance for purposes of addressing any matters arising under Sections IV, V or VII and this Court shall have continuing jurisdiction for such purposes.

Dated: 5-11-04

By: 
James Mroz
Operating as Rust Busters Automotive
Restoration and/or Rust Busters

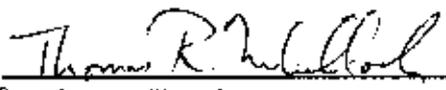
MIKE COX
ATTORNEY GENERAL

Dated: 5-11-04

By: 
Nancy A. Piggush (P28801)
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
517-335-0855; Fax 517-335-1935

TERRI LYNN LAND
SECRETARY OF STATE

Dated: 5-11-04

By: 
For Thomas Kronk
Director, Compliance Division
Bureau of Regulatory Services
7707 Rickle Road
Lansing, MI 48918