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FILED - STATE OF CALIFORNIA
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board
Sacramento, California on March 28, 2011
By Yvonne Crawford

BEFORE THE
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 11-2011-51
MARSHALL LEIGH SHOQUIST **101 Church Street, Ste. 13** **Los Gatos, CA 95030** **Audiologist License No. AU 461** Respondent.	**A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Annemarie Del Mugnaio (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Department of Consumer Affairs.

2. On or about August 16, 1978, audiologist license no. AU 461 was issued to Marshall Leigh Shoquist (Respondent). Said audiologist license was in full force and effect at all times relevant to the charges brought herein and expires on January 31, 2013 unless renewed. Additionally, hearing aid dispenser license no. HA 1054 was issued to Respondent on February 7, 1978; that license expired on January 31, 2010 and was subsequently cancelled and converted to a dispensing audiologist license under Respondent's audiologist license no. AU 461.

JURISDICTION

3. This Accusation is brought before the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2531.5 of the Code provides that the board shall issue, suspend, and revoke licenses and approvals to practice speech-language pathology and audiology as authorized by this chapter.

5. Section 2533 of the Code states in pertinent part:

"The board may . . . suspend, revoke, or impose terms and conditions upon the license of any licensee for any of the following:

". . ."

"(e) Committing a dishonest or fraudulent act which is substantially related to the qualifications, functions, or duties of a licensee.

". . ."

"(k) Violation of Section 1689.6 or 1793.02 of the Civil Code."[1]

6. Civil Code Section 1793.02 provides in pertinent part:

"(a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: 'This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws.' In lieu of the words '30 days' the retail seller may specify any longer period. "

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[1] Section 2533, subdivision (k) (added by Stats. 2011, ch. 449, § 6) became effective January 1, 2012, and is identical in substance to and replaces former Code section 3401, subdivision (n) (repealed by Stats. 2011, ch. 449, §13).

" . . . "

" (c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

7. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

COST RECOVERY

8. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Dishonest Act/Failure to Refund re Customer S.W.)[2]

9. Respondent is subject to disciplinary action under Code section 2533(e) and/or Code section 2533(k) in that Respondent committed a dishonest act and failed to fully refund customer S.W. for the amount paid for a hearing aid device. The circumstances are as follows:

[2] Customer's names are abbreviated to protect privacy.

A. On or about February 14, 2011, S.W. ordered a custom set of Starkey ITC hearing aids from Respondent for the purchase price of $2955. On or about March 14, 2011, Respondent informed S.W. that the Starkey hearing aids had been destroyed during delivery and offered her a set of WOW hearing aids as a temporary replacement. On or about March 21, 2011, S.W. agreed to purchase the WOW hearing aids in lieu of the Starkey hearing aids for the same purchase price of $2955. On or about April 19, 2011, dissatisfied with the WOW hearing aids, S.W. returned them to Respondent and requested a full refund, which Respondent agreed to provide.

B. Respondent subsequently wrote three checks totaling $2955 payable to S.W. However, when S.W. attempted to deposit the checks, they were returned for insufficient funds.

C. S.W. then filed a case against Respondent in Small Claims Court seeking to recover her refund. On or about August 24, 2011, a judgment was entered against Respondent for $2955 as well as $60 for costs.

D. On or about September 28, 2011, in response to an inquiry from the Board regarding the status of S.W.'s refund, Respondent stated that, "It is our position that she is deserving of the full refund of $2995.00 and we will mail this to her as soon as possible."

E. Despite the court judgment and despite assurances to S.W. and the Board that he would refund S.W. for the entire purchase price of the hearing aids, Respondent has failed to fully refund S.W.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Act/Failure to Refund re Customer A.S.)

10. Respondent is subject to disciplinary action under Code section 2533(e) and/or Code section 2533(k) in that Respondent committed a dishonest act and failed to fully refund customer A.S. for the amount paid for a hearing aid device. The circumstances are as follows:

A. On or about April 21, 2010, A.S. ordered a Starkey hearing aid from Respondent for the purchase price of $2750. On or about May 17, 2010, A.S. received the Starkey hearing aid. On or about May 31, 2010, dissatisfied with the Starkey hearing aid, A.S. returned the hearing aid and received store credit for another hearing aid. After trying several

different hearing aids, requiring many adjustments, that did not meet his satisfaction, A.S. requested a full refund.

B. On or about September 3, 2010, Respondent issued a partial refund of $1000 to A.S.

C. In response to an inquiry from the Board regarding A.S.'s request for a full refund, Respondent stated in a letter dated November 26, 2010 that, "we have decided to complete [A.S.'s] refund of $1750."

D. Respondent subsequently wrote a check for $300 payable to A.S., but did not refund A.S. the remaining balance of $1450.

E. In response to further inquiries from the Board regarding A.S.'s request for a full refund, Respondent stated in a letter dated July 25, 2011, that he "apologize[d] for the delay in refunding [A.S.]" and that he would "do this as quickly as possible."

F. Despite assurances to the Board that he would refund customer A.S. for the entire purchase price of the hearing aid, Respondent has failed to fully refund A.S.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board issue a decision:

1. Revoking or suspending Audiologist License No. Number 461, issued to Marshall Leigh Shoquist.;

2. Ordering Marshall Leigh Shoquist to pay the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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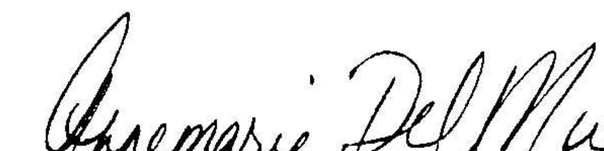
3. Taking such other and further action as deemed necessary and proper.

DATED: March 28, 2012



ANNEMARIE DEL MUGNAIO
Executive Officer
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant

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