

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION FOR
AN ADMINISTRATIVE INJUNCTION
INVOLVING

FINAL DECISION
AND ORDER
LS9811062RAL

MICHAEL THOMAS,
RESPONDENT.

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the, following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 15th day of December 1998.

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN

BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION
FOR AN ADMINISTRATIVE INJUNCTION
INVOLVING :

**PROPOSED DECISION
AND ORDER**

MICHAEL THOMAS,
RESPONDENT

Case No. LS-9811062-RAL

Based on the authority in section 440.21(2) of the Wisconsin Statutes and chapter RL 3 of the Wisconsin Administrative Code, and the Findings of Fact and Conclusions of Law below,

**THE DEPARTMENT OF REGULATION AND LICENSING HEREBY
ISSUES THE FOLLOWING SPECIAL ORDER:**

Effective on the date on which this order is signed by the departmental secretary or her designee,

- the respondent, Michael Thomas, is **enjoined and prohibited** from continuing to engage, directly or indirectly, in barbering or cosmetology, which is conduct which requires a credential under chapter 454, Stats., unless and until he obtains the appropriate credential under chapter 454, Stats.; and
- the respondent, Michael Thomas, is **enjoined and prohibited** from continuing to use the title of "barber", "cosmetologist", "barber cosmetologist", or "hairstylist" or any other title requiring a credential under chapter 454, Stats., unless and until he obtains the appropriate credential under chapter 454, Stats.

ANY VIOLATION OF THIS SPECIAL ORDER MAY RESULT IN A FORFEITURE OF UP TO \$10,000 FOR EACH OFFENSE, WITH EACH DAY OF CONTINUED VIOLATION CONSTITUTING A SEPARATE OFFENSE.

PARTIES

The parties to this action under section 227.44 of the Wisconsin Statutes and chapter RL 3 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats., are:

Complainant: Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

Respondent: Michael Thomas
3021 West Wells Street, #31
Milwaukee, WI 53208

Regulatory Authority: Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. On November 6, 1998, the complainant, the Division of Enforcement in the Department of Regulation and Licensing, filed a petition for an administrative injunction. A hearing on the petition was scheduled for November 30, 1998. On November 5, 1998, a copy of the petition and a notice of hearing were served on the respondent by leaving them at his place of business. A copy of the petition and notice of hearing were also mailed on November 6, 1998 to the respondent at the address which he provided, 3021 West Wells Street, #1, Milwaukee, WI 53208. This mailing was returned with the notation, "No Such Number".

B. The notice of hearing informed Mr. Thomas that he was to file a written answer to the petition within 20 days after service. Mr. Thomas did not file an answer to the petition within the specified time limit.

C. The hearing was held as scheduled. The respondent did not appear. The department was represented by Attorney Steven Gloe of the Department's Division of Enforcement. Upon the respondent's non-appearance, attorney Gloe moved for a finding of default under sec. RL 3.13, Wis. Admin. Code, and the motion was granted. The hearing was recorded. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The petition in this action was served upon the respondent, Michael Thomas, by leaving a copy at his place of business and also by mailing a copy to the address which he supplied, and he failed to comply with the requirement to file an answer.
2. The respondent, Michael Thomas, does not hold a license to practice as a barber or cosmetologist in the State of Wisconsin.
3. On November 5, 1998, Michael Thomas was observed providing barbering and/or cosmetology services at Pennie's Cut & Dye in Milwaukee, Wisconsin.

CONCLUSIONS OF LAW

I. Under section 440.21, Stats., and chapter RL 3, Wis. Admin. Code, the Department of Regulation and Licensing is the legal authority responsible for enforcing laws requiring credentials issued under chapters 440 to 459, Stats. The department has jurisdiction over the subject-matter of a petition alleging that a person engaged in a practice without a credential required under chapters 440 through 459.

II. The respondent, Michael Thomas, was served by mail at his last-known address in Wisconsin under section RL 3.13, Wis. Admin. Code. The Department of Regulation and Licensing has personal jurisdiction over the respondent under section 801.04(2), Stats., and section RL 3.07, Wis. Admin. Code.

III. The respondent, Michael Thomas, is in default under section RL 3.13, Wis. Admin. Code. The department may make findings of fact and enter an order on the basis of the petition and the evidence presented at the hearing.

IV. The respondent, Michael Thomas, has engaged in the practice of barbering or cosmetology and used the title of "barber", "cosmetologist", "barber cosmetologist", or "hairstylist" without a barber or cosmetologist license or a manager license, in violation of section 454.04(2) of the Wisconsin Statutes. A special order enjoining Michael Thomas from continuing to practice barbering and cosmetology and to hold himself out as a barber or cosmetologist is therefore appropriate under section 440.21(2), Stats.

OPINION

This case is an action for an administrative injunction against Michael Thomas, under the authority of sec. 440.21, Stats., and ch. RL 3, Wis. Admin. Code. The petition in this matter alleged that Mr. Thomas engaged in activities which are reserved by statute to those holding a valid barber or cosmetologist license or a manager license under sec. 454.04(2), Stats.

Mr. Thomas is in default, not having answered the petition as required by administrative rule, and not having appeared at the scheduled hearing. By his default, Mr. Thomas has effectively admitted all the allegations of the petition. There is no need in this opinion to weigh or discuss evidence, and no issues of fact remain.

The undisputed allegations in the complaint establish clearly that Mr. Thomas used the title of "barber", "cosmetologist", "barber cosmetologist", or "hairstylist" and engaged in the practice of barbering and cosmetology without the professional credential required by statute. An administrative injunction is authorized by section 440.21(2), Stats., and chapter RL 3, Wis. Admin. Code, and it is clearly appropriate here.

Any person who violates a special order issued under section 440.21(2), Stats., may be required to forfeit up to \$10,000 for each offense, under section 440.21(4), Stats., and each day of continued violation constitutes a separate offense. It should be noted that the issuance of a special order in an administrative injunction does not preclude other remedies for the respondent's violations of statutes, such as a misdemeanor prosecution by the district attorney under section 457.17, Stats.

Dated and signed: November 30, 1998

John N. Schweitzer
Administrative Law Judge

Department of Regulation and Licensing

