

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

PHONG LAM D/B/A REGAL NAILS, :

FINAL DECISION AND ORDER
LS0709105BAC

Division of Enforcement Case File Number 04 BAC 041

The parties to this action for the purposes of Section 227.53 of the Wisconsin statutes are:

Phong Lam
676 Angelica Lane
Roscoe, Illinois 61073

Regal Nails
2785 Milwaukee Road
Beloit, Wisconsin 53511

Barbering and Cosmetology Examining Board
Post Office Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation and Licensing
Division of Enforcement
Post Office Box 8935
Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Phong Lam is listed with the Department of Regulation and Licensing as the current owner of Regal Nails. As owner, Mr. Lam is and was at all times relevant to this action responsible for compliance with Wis. Stat. Ch. 454 and Wisconsin Administrative Code Chs. BC 2, 3 and 4. The Department of Regulation and Licensing (Department) has learned that Mr. Lam currently resides at 676 Angelica Lane, Roscoe, Illinois 61073. At all times relevant to this action, Mr. Lam did not possess a valid manicurist license in the state of Wisconsin.

2. Regal Nails is duly licensed as a manicuring establishment in the state of Wisconsin (license #71-2897). This license was first granted on April 5, 2006, and is current through June 30, 2007. The last address reported for Regal Nails to the Department is 2785 Milwaukee Road, Beloit, Wisconsin 53511.

3. An inspection of Regal Nails by Investigator Ralph Draeger of the Department on March 23, 2006, found Phong Lam, Ha Lam and Nhi Lam providing manicuring services without valid Wisconsin manicurist licenses. During the inspection, Investigator Draeger noticed a Wisconsin Manicuring Establishment license that showed that Billy Nguyen was the owner of Regal Nails.

4. During the inspection, Phong Lam told Investigator Draeger that he was co-owner of the establishment with Billy

Nguyen.

5. On March 24, 2006, Billy Nguyen told Investigator Draeger that Mr. Lam had taken over the lease some time in 2005.
6. Records received on March 31, 2006, from Regal Nails, L.L.C., 11456 South Choctaw Drive, Baton Rouge, Louisiana 70815, show that Mr. Lam purchased the establishment franchise from Billy Nguyen on December 1, 2004, and that Mr. Lam took over the sublease agreement with Regal Nails, L.L.C. on January 13, 2005.
7. On March 31, 2006, Investigator Draeger informed Mr. Lam that he must obtain a new establishment license due to the change in ownership of the establishment.
8. On May 3, 2007, Investigator Draeger reinspected Regal Nails. Investigator Draeger found Phong Lam providing manicuring services without a valid Wisconsin manicurist license.
9. In resolution of this matter, Phong Lam d/b/a Regal Nails consent to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Barbering and Cosmetology Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. Sec. 454.15.
2. The Wisconsin Barbering and Cosmetology Examining Board is authorized to enter into the attached stipulation pursuant to Wis. Stat. Sec. 227.44(5).
3. By conduct referred to in Paragraphs 3 of the Findings of Fact, Phong Lam d/b/a Regal Nails, have violated:
 1. Wis. Stat. sec., 454.04(1)(d). No person may engage in manicuring unless the person has received training in the areas of service provided and holds a current manicurist license, barbering or cosmetologist license, manager license, temporary permit or training permit issued by the examining board or is an apprentice under s. 454.10 or a student in a manicuring or barbering or cosmetology course of instruction.
 2. Wis. Stat. sec. 454.08(1)(b). Except as permitted by rule promulgated under par. (a), no person may practice barbering or cosmetology, aesthetics, electrology or manicuring in an establishment unless the establishment is licensed to provide that practice under sub. (2).
 3. Wis. Stat. sec. 454.15(2)(i). Violated this chapter or any rule promulgated under this chapter.
 4. Wis. Admin. Code § BC 2.03(1). Services provided by any licensee shall be performed in a manner that is consistent with basic and accepted practice standards and in accordance with all state statutes, board rules and all local codes and ordinances.
 5. Wis. Admin. Code § BC 2.04(1). Licensees may not assist or participate in the unauthorized or unlicensed practice of barbering and cosmetology, aesthetics, electrology or manicuring.
 6. Wis. Admin. Code § BC 2.06. The owner of any licensed establishment shall be responsible for compliance with ch. 454, Stats., and chs. BC 2, 3 and 4.
 7. Wis. Admin. Code § BC 3.04(1). Before a person may open a new establishment, or change the ownership of an existing establishment, or relocate and create a new establishment as specified in s. BC 3.06(2), the person shall submit an application to the board on a form specified by the board.

8. Wis. Admin. Code § BC 3.06(1). Change of ownership of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license.

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Phong Lam d/b/a Regal Nails shall jointly and severally pay to the Department of Regulation and Licensing a forfeiture of TWO THOUSAND dollars (\$2,000.00). Phong Lam d/d/a Regal Nails shall also jointly and severally pay total costs in the amount of ONE THOUSAND TWO HUNDRED dollars (\$1,200.00) in this matter. Payment shall be submitted on the following payment schedule:

Date	Amount
October 15, 2007	\$266.00
December 15, 2007	\$266.00
February 15, 2008	\$266.00
April 15, 2008	\$266.00
June 15, 2008	\$266.00
August 15, 2008	\$266.00
October 15, 2008	\$266.00
December 15, 2008	\$266.00
February 15, 2009	\$266.00
April 15, 2009	\$266.00
June 15, 2009	\$266.00
August 15, 2009	\$274.00

The full amount of the forfeiture and costs may be paid at any time prior to each due date for payment.

Payment shall be made by ***certified check or money order***, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Post Office Box 8935
Madison, Wisconsin 53708-8935
608-261-7904

IT IS FURTHER ORDERED that in the event that Phong Lam d/b/a Regal Nails fails to comply with all the terms of the Order as set forth above, the establishment license of Regal Nails (#71-2767) **SHALL BE SUSPENDED**, without further notice or hearing, until Phong Lam d/b/a Regal Nails have complied with the terms of this Order.

This Order shall become effective upon the date of its signing.

BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Jeannie M. Bush
A member of the Board

9/10/07
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

PHONG LAM D/B/A REGAL NAILS, :
RESPONDENTS. :

STIPULATION
LS# 07 _____ BAC

Division of Enforcement Case File Number 04 BAC 041

It is hereby stipulated between Phong Lam, personally on his own behalf and on behalf of Regal Nails, (hereinafter Respondents) and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a complaint by the Division of Enforcement (04 BAC 041). Respondents consent to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondents understand that by the signing of this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
3. Respondents have been provided an opportunity to obtain legal counsel prior to signing this stipulation.
4. Respondents agree to the adoption of the attached Final Decision and Order by the Barbering and Cosmetology Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the attached order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Barbering and Cosmetology Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondents or their attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondents are informed that should the Board adopt this stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Departmental policy.
8. The Division of Enforcement joins Phong Lam d/b/a Regal Nails in recommending the Barbering and Cosmetology Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Phong Lam

Respondent

676 Angelica Lane

Roscoe, Illinois 61073

Date

Regal Nails

Respondent

2785 Milwaukee Road

Beloit, Wisconsin 53511

License Number 71-2897

Date

Claudia Berry Miran

Attorney

Division of Enforcement

Post Office Box 8935

Madison, Wisconsin 53708-8935

Date