

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 :
 :
THO THI BUI and NAIL ART, : FINAL DECISION AND ORDER
RESPONDENTS. : LS0804072BAC

Division of Enforcement Case File Number 07 BAC 202

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

Tho Thi Bui
1077 Hemmingway Avenue North
Oakdale, Minnesota 55128

Nail Art
2928 Market Place
Suite 157
Onalaska, Wisconsin 54650

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 Barbering and Cosmetology Examining Board. The Barbering and Cosmetology Examining 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. Nail Art is duly licensed as a manicuring establishment in the state of Wisconsin (license #71-3198). This license was first granted on September 14, 2007, and is current through March 31, 2009. The last address reported to the Department of Regulation and Licensing (Department) for Nail Art is 2928 Market Place, Suite 157, Onalaska, Wisconsin 54650.

2. Tho Thi Bui (Date of Birth: October 27, 1966) is listed in the records of the Department of Regulation and Licensing as the owner of Nail Art. The last address reported to the Department of Regulation and Licensing (hereinafter Department) by Ms. Bui is 1077 Hemmingway Avenue North, Oakdale, Minnesota 55128. As owner of Nail Art, Ms. Bui 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.

3. An inspection of Nail Art by Investigator Douglas Austin of the Department on September 11, 2007, found Yen Huu Nguyen providing manicuring services to a customer. Mr. Nguyen did not possess any occupational/professional

licensure in the state of Wisconsin at the time of the inspection.

4. Investigator Austin also found that the establishment license for Nail Art posted in the establishment was issued to James Nguyen. While at Nail Art, Investigator Austin discovered that James Nguyen has sold Nail Art to Ms. Bui on May 2, 2006.

5. According to Wisconsin Administrative Code section 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.

6. According to Wisconsin Administrative Code section BC 3.06(2), a change of ownership of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license.

7. On further inspecting Nail Art, Investigator Austin found that used emery boards and nail buffers were being stored in workstation drawers. Emery boards and nail buffers are not designed to be reused.

8. Investigator Austin informed Nhut Minh Truong, a friend of Ms. Bui's who was in the establishment at the time of inspection, that Nail Art must be closed until a current establishment license was obtained. Investigator Austin also told Mr. Truong that any manicurist who worked at Nail Art must have a current Wisconsin manicurist license.

9. On September 12, 2007, Investigator Austin stopped at Nail Art and found that it was closed.

10. On September 14, 2007, Nail Art was granted a manicuring establishment license by the Department. Yen Huu Nguyen was first granted a Wisconsin manicurist license on September 13, 2007.

11. On September 28, 2007, Investigator Willie Garrette inspected Nail Art. Investigator Garrette found Tho Thi Bui providing manicuring services to a customer. Ms. Bui still did not possess any occupational/professional licensure in the state of Wisconsin at the time of the inspection.

12. On October 6, 2007, Investigator Austin again inspected Nail Art. Investigator Austin found Tho Thi Bui providing manicuring services to a customer. Ms. Bui still did not possess any occupational/professional licensure in the state of Wisconsin at the time of the inspection.

13. In resolution of this matter, Tho Thi Bui and Nail Art consents 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 the conduct referred to in Findings of Fact 3., 11. and 12., Tho Thi Bui and Nail Art, have violated Wis. Stats. 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, barber 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.

4. By the conduct referred to in Findings of Fact 3., 4., 5., 6., 7., 11. and 12., Tho

Thi Bui and Nail Art, have violated Wis. Stat. sec. 454.15(2)(i). Violated this chapter or any rule promulgated under this chapter.

5. By the conduct referred to in Findings of Fact 3., 11. and 12., Tho Thi Bui and Nail Art have have violated Wis. Admin. Code § BC 2.03(2). Licensees may provide only those services which they are competent to perform by training or experience and are licensed to provide.

6. By the conduct referred to in Findings of Fact 3., 4., 5., 6., 7., 11. and 12., Tho Thi Bui and Nail Art have violated 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.

7. By the conduct referred to in Findings of Fact 3., 4., 5., 6., 7., 11. and 12., Tho Thi Bui and Nail Art, have violated 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.

8. By the conduct referred to in Findings of Facts 4., 5., and 6., Tho Thi Bui and Nail Art have violated 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.

9. By the conduct referred to in Findings of Facts 4., 5., and 6., Tho Thi Bui and Nail Art have violated Wis. Admin. Code § BC 3.06(2). Change of ownership of any establishment constitutes the creation of a new establishment and requires submission of an application for a new establishment license.

10. By conduct referred to in Findings of Fact 7., Tho Thi Bui and Nail Art, have violated Wis. Admin. Code § BC 4.10(4). Manicure instruments that cannot be cleaned and disinfected or sterilized shall be disposed of following each use.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Nail Art (license number 71-3198) is **REPRIMANDED**.

NOW, THEREFORE, IT IS HEREBY ORDERED that Tho Thi Bui and Nail Art shall jointly and severally pay to the Department of Regulation and Licensing a forfeiture of FOUR THOUSAND FIVE HUNDRED dollars (\$4,500.00). Tho Thi Bui and Nail Art shall also jointly and severally pay full costs in the amount of FOUR HUNDRED FIFTY dollars (\$450.00). Payments shall be on the following schedule:

Payment	Payment Date	Amount
1	July 15, 2008	\$500.00
2	October 15, 2008	\$500.00
3	January 15, 2009	\$500.00
4	April 15, 2009	\$500.00
5	July 15, 2009	\$500.00
6	October 15, 2009	\$500.00
7	January 15, 2010	\$500.00
8	April 15, 2010	\$500.00
9	July 15, 2010	\$500.00
10	October 15, 2010	\$450.00

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

IT IS FURTHER ORDERED that in the event that Tho Thi Bui and Nail Art fails to comply with all the terms of the Order as set forth above, the manicuring establishment license of Nail Art (#71-3198) **SHALL BE SUSPENDED**, without further notice or hearing, until Tho Thi Bui and Nail Art 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

4/7/08
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
 :
THO THI BUI and NAIL ART, : STIPULATION
RESPONDENTS. : LS#08 _____ BAC

Division of Enforcement Case File Number 07 BAC 202

It is hereby stipulated between Tho Thi Bui and Nail Art (hereafter "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 pending investigation by the Division of Enforcement (07 BAC 202). 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 are aware of their right to seek legal representation and have been provided an opportunity to obtain legal advice 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 (hereafter "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 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 Department policy.

8. The Division of Enforcement joins Tho Thi Bui and Nail Art in recommending the Barbering and Cosmetology Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Tho Thi Bui

Date

Respondent

1077 Hemmingway Avenue North

Oakdale, Minnesota 55128

Nail Art

Date

Respondent

2928 Market Place

Suite 157

Onalaska, Wisconsin 54650

License Number 71-3198

Claudia Berry Miran

Date

Attorney

Division of Enforcement

Post Office Box 8935

Madison, Wisconsin 53708-8935