FILE COPY

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER LS9801201BAC
RAYMOND LAWRENCE, d/b/a HAIR ELEGANCE, RESPONDENT.	:	

The State of Wisconsin, Barbering and Cosmetology Examining Board, 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, Barbering and Cosmetology Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 9th day of April 1998.

A Member of the Board

STATE OF WISCONSIN

BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST **RAYMOND LAWRENCE,** **d/b/a HAIR ELEGANCE,** RESPONDENT.	:	**PROPOSED DECISION** Case No. LS-9801201-BAC

SUMMARY

This is a disciplinary action by the Barbering and Cosmetology Examining Board against Raymond Lawrence. Mr. Lawrence was alleged to have employed three unlicensed individuals to provide barbering or cosmetology services in his establishment, Hair Elegance. Mr. Lawrence did not respond to the complaint with a written answer, and he did not appear at the scheduled hearing. The allegations were proven by a preponderance of the evidence. Mr. Lawrence's violations constitute unprofessional conduct for the barbering and cosmetology profession, and discipline is imposed.

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 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
Madison, WI 53708-8935

Respondent:
Raymond Lawrence
d/b/a Hair Elegance
3072 North 27th Street
Milwaukee, WI 53210

Disciplinary Authority:
Barbering and Cosmetology Examining Board
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 97 BAC 100) with the Barbering and Cosmetology Examining Board on January 20, 1998. A disciplinary proceeding (hearing) was scheduled for February 16, 1998. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on January 23, 1998 to Raymond Lawrence , who received it on January 26, 1998.

B. No answer was filed by Mr. Lawrence.

C. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on February 16, 1998. Raymond Lawrence did not appear. The Barbering and Cosmetology Board was represented by attorney Steven Gloe of the Department's Division of Enforcement. Mr. Gloe moved that Mr. Lawrence be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. Testimony was presented and exhibits identified by departmental investigator Dawn Kalies. The hearing was recorded; no transcript was prepared. The complaint and the testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

APPLICABLE STATUTES AND RULES

Statutes

454.15 Disciplinary proceedings and actions.

...

(2) ... the examining board may revoke, limit, suspend or refuse to issue or renew, in accordance with the severity of the violation, a license or permit issued under this chapter or reprimand the holder of a license or permit issued under this chapter if it finds that the holder or applicant has done any of the following:

...

(i) Violated this chapter or any rule promulgated under this chapter.

...

Wisconsin Administrative Code

BC 2.04 Unauthorized practice. (1) Licensees may not assist or participate in the unauthorized or unlicensed practice of barbering and cosmetology, aesthetics, electrology or manicuring.

...

FINDINGS OF FACT

1. Hair Elegance, 3072 N. 27th St., Milwaukee, Wisconsin, is licensed as a Barbering and Cosmetology establishment in Wisconsin, with license number 26224 granted on February 14, 1997.

2. The respondent, Raymond Lawrence, is listed as the owner of Hair Elegance.

3. On June 5, 1997 and on other dates unknown, Raymond Lawrence employed Romel Echols to provide barbering and cosmetology services at Hair Elegance. Mr. Echols did not at the time hold a valid license to practice barbering and cosmetology in Wisconsin.

4. On June 5, 1997 and on other dates unknown, Raymond Lawrence employed Wanda Dyson to provide barbering and cosmetology services at Hair Elegance. Ms. Dyson did not at the time hold a valid license to practice barbering and cosmetology in Wisconsin.

5. On November 8, 1997 and on other dates unknown, Raymond Lawrence employed Don Mitchell to provide barbering and cosmetology services at Hair Elegance. Mr. Mitchell did not at the time hold a valid license to practice barbering and cosmetology in Wisconsin.

CONCLUSIONS OF LAW

I. The Barbering and Cosmetology Examining Board has personal jurisdiction over Raymond Lawrence, based on his holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats.

II. The Barbering and Cosmetology Board is the legal authority responsible for issuing and controlling credentials for barber and cosmetologist establishment licenses, under ch. 454, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 454.15, Stats., and ch. BC 2, Wis. Admin. Code.

III. Raymond Lawrence is in default, under sec. RL 2.14, Wis. Admin. Code, and the board may enter an order on the basis of the complaint and other evidence.

IV. The violations in findings of fact 3, 4 and 5 above constitute unprofessional conduct, under sections BC 2.04(1), Wis. Admin. Code, and 454.15(2)(i), Stats., and discipline is appropriate, under sec. 454.15(2), Stats.

ORDER

THEREFORE, IT IS ORDERED that the barbering and cosmetology establishment license issued to Hair Elegance, 3072 N. 27th St., Milwaukee, Wisconsin, be revoked, effective on the date the final decision is signed by a member of the board.

IT IS FURTHER ORDERED that Raymond Lawrence pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Barbering and Cosmetology Examining Board alleging that the respondent, Raymond Lawrence, employed three unlicensed individuals to provide barbering and cosmetology services in his establishment, Hair Elegance. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Mr. Lawrence did not file a written answer to the complaint and did not appear for the scheduled hearing. Under sec. RL 2.14, Wis. Admin. Code, Mr. Lawrence is in default and the board may proceed on the basis of the complaint and other evidence presented at hearing. I conclude that the division met its burden of proof to show that Mr. Lawrence, d/b/a Hair Elegance, violated rules promulgated by the board for its licensees, and that disciplinary action against Mr. Lawrence is appropriate.

The complaint contains sufficient uncontested facts to prove the allegations. Departmental investigator Dawn Kalies provided supplemental evidence, including the identification of photographs (exhibits 1, 2 and 3) of the unlicensed individuals named in the complaint. She further testified that she visited Hair Elegance on two occasions, once in June of 1997 and once in November of 1997, and that on both occasions, <u>all</u> persons providing barbering and cosmetology services in the shop were unlicensed. Also, Ms. Kalies testified that when she returned in November accompanied by police officers, she was initially unable to enter because the door was locked. Clients and persons performing barbering and cosmetology services were visible inside, and some of these exited by a back door when she began knocking. Entry was finally gained with police assistance, at which time she spoke to and identified Don Mitchell, who then disappeared after she spoke to him. Ms. Kalies testified that at least one client who was receiving chemical treatment was left alone and unattended when the person providing the service abandoned ship.

<u>Discipline</u>.

The purposes of professional discipline for attorneys have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5), which states: "Discipline for misconduct is not intended as punishment for wrongdoing, but is for the protection of the public, the courts and the legal profession." That reasoning has been extended by regulatory agencies, including the Department of Regulation and Licensing, to disciplinary proceedings for other professions.

It is difficult to tell what discipline would have a sufficient rehabilitative effect on Mr. Lawrence, since he has not cooperated with the department or the board in the investigation and preparation of this case. Certainly in order to deter other professionals from similar misconduct, some form of serious discipline is appropriate. And given the repeated and apparently continuous nature of Hair Elegance's employment of unlicensed individuals, despite the notice provided by Ms. Kalies's first visit, removal of the establishment license appears to be the most appropriate discipline in order to ensure the protection of the public. Therefore, this order calls for revocation of the license.

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Costs.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code. Raymond Lawrence failed to cooperate in any way with the Department in this action, and failed to appear at the hearing. His lack of cooperation and disregard for these proceedings make an order for costs appropriate.

Dated and signed: February 16, 1998

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

Raymond Lawrence,
d/b/a Hair Elegance,

Respondent.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On April 14, 1998, I served the Final Decision and Order dated April 6, 1998, LS9801201BAC, upon the Respondent Raymond Lawrence, d/b/a Hair Elegance, by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 159 421.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Raymond Lawrence
d/b/a Hair Elegance
3072 N. 27th Street
Milwaukee WI 53210

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me
this 14th day of April, 1998.

Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: RAYMOND LAWRENCE, d/b/a HAIR ELEGANCE

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 4/14/98 Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
	:	Case # LS9801201BAC
RAYMOND LAWRENCE, d/b/a HAIR ELEGANCE, RESPONDENT.	:	

On April 6, 1998, the Barbering and Cosmetology Examining Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on April 21, 1998, the Barbering and Cosmetology Examining Board received the *Affidavit of Costs* in the amount of $394.84, filed by Attorney Steven M. Gloe. On April 13, 1998, the Barbering and Cosmetology Examining Board received the *Affidavit of Costs of the Office of Legal Services* in the amount of $72.12, filed by Administrative Law Judge John N. Schweitzer. The Barbering and Cosmetology Examining Board considered the affidavits on June 1, 1998, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of $421.96, which is 100% of the costs set forth in the affidavits of costs of Attorney Steven M. Gloe and Administrative Law Judge John N. Schweitzer, which are attached hereto and made a part hereof, are hereby assessed against respondent, and shall be payable by him to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before July 1, 1998, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the Barbering and Cosmetology Examining Board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached *"Guidelines for Payment of Costs and/or Forfeitures"* should be enclosed with the payment.

Dated this 1st day of June, 1998.

BARBERING AND COSMETOLOGY EXAMINING BOARD

By: _____
A Member of the Board

STATE OF WISCONSIN

BEFORE THE BARBER AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST **RAYMOND LAWRENCE,** **d/b/a HAIR ELEGANCE,** RESPONDENT.	: : : : : :	**AFFIDAVIT OF COSTS** Case No. LS-9801201-BAC

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.

3. Expenses for the Office of Board Legal Services are set out below:

a. Court Reporter Costs, paid by the Office of Board Legal Services. $0.00

b. Administrative Law Judge Expense @ $28.848/hour.

12-1-98	Receive complaint, prepare file	0
2-16-98	Prepare decision shell	1 hour
2-16-98	Conduct hearing	1/4 hour
2-16-98	Write proposed decision	1 1/4 hrs.

Total: 2 1/2 hrs. = $72.12

Total allocable costs for Office of Board Legal Services = **$72.12**

John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 15th day of April, 1998

Wayne A. Wolter, Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST RAYMOND J LAWRENCE, d/b/a HAIR ELEGANCE, RESPONDENT.	: : : : : : :	AFFIDAVIT OF COSTS LS9801201BAC

Being duly sworn Steven Gloe, the undersigned employee of the Department of Regulation, upon information and belief, deposes and states as follows:

That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE - STEVEN GLOE

Date	Activity	Hours	Minutes
02/16/1998	Hearing preparation and attend hearing.	1	0
		Hours	**Minutes**
	TOTALS:	1	0

TOTAL PROSECUTING ATTORNEY EXPENSE ---
(Based on their average salary and benefits at the Division of Enforcement)
AT $41.00 PER HOUR = $41.00

INVESTIGATOR EXPENSE - DAWN M. KALIES

Date	Activity	Hours	Minutes
01/01/1997	Initiative planning & file reviews	1	0
06/05/1997	Travel	0	30
06/05/1997	Inspection	0	45
08/05/1997	Phone calls	0	30
08/11/1997	Case Summary, photocopying & computer updating	3	0
08/27/1997	Phone calls & memo	0	30
08/29/1997	Memo	1	0
11/08/1997	Travel & site visit	2	0
11/08/1997	5 Polaroid pictures	0	0
12/08/1997	2 color photocopies	0	0
12/09/1997	Memo	1	0
02/16/1998	Prepare for & attend hearing	0	30
		Hours	**Minutes**
	TOTALS:	10	45

TOTAL INVESTIGATOR EXPENSE ---
(Based on their average salary and benefits at the Division of Enforcement)
AT $20.00 PER HOUR = $215.00

INVESTIGATOR EXPENSE - JOHN JOHNSON

Date	Activity	Hours	Minutes
06/05/1997	Travel & inspection	1	15
	TOTALS:	1	15

TOTAL INVESTIGATOR EXPENSE ---
(Based on their average salary and benefits at the Division of Enforcement)
AT $20.00 PER HOUR = $25.00

LEGAL ASSISTANT EXPENSE - CAROLYN O GALLAGHER

Date	Activity	Hours	Minutes
12/01/1997	Discuss case w/BA and receive recommendation	0	15
01/20/1998	Draft complaint; obtain SMG's signature; forward & obtain MJB's approval; copy and file w/Legal Services	1	0
01/23/1998	Serve complaint; draft AOM	1	0
02/16/1998	Assist at hearing	0	15
	TOTALS:	2	30

TOTAL INVESTIGATOR EXPENSE ---
(Based on their average salary and benefits at the Division of Enforcement)
AT $20.00 PER HOUR = $50.00

MISCELLANEOUS EXPENSE --- DAWN M. KALIES

Date	Activity	Cost
06/05/1997	6 Polaroid pictures	$ 9.42
08/12/1997	Color photocopies	4.72
02/13/1998	3 color photocopies	4.71
	SUBTOTAL:	$ 18.84

EXPENSE SUMMARY

Expense	Name	Cost
Prosecuting Attorney Expense	Steven Gloe	$ 41.00
Investigator Expense	Dawn M. Kalies	215.00
Investigator Expense	John Johnson	25.00
Legal Assistant Expense	Carolyn O Gallagher	50.00
Miscellaneous Expense	Dawn M. Kalies	18.84
	TOTAL ASSESSABLE COST:	**$ 349.84**

Steven Gloe, Attorney

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Subscribed and sworn to before me this21st day of April, 1998.

Notary Public

My Commission 3/26/2000.

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Department of Regulation & Licensing

State of Wisconsin

P O Box 8935, Madison, WI 53708-8935
(608)
TTY# (608) 267-2416] hearing or speech
TRS# 1-800-947-3529] impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On April 6, 1998, the Barbering and Cosmetology Examining Board took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a forfeiture.

The amount of the costs assessed is: $421.96 Case #: LS9801201BAC

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of $ 421.96

The costs and/or forfeitures are due: July 1, 1998

NAME: Raymond Lawrence LICENSE NUMBER: 26224

STREET ADDRESS: 3072 North 27th Street

CITY: Milwaukee STATE: WI ZIP CODE: 53210

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

For Receipting Use Only

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
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