

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

**STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY PROCEEDING AGAINST
OMAR MUSTAFAA, d/b/a FADE MASTERS,
RESPONDENT.
Case No. LS 941261 BAC**

FINAL DECISION AND ORDER

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

Omar Mustafaa
dba Fade Masters
3076 North 34th Street
Milwaukee, Wisconsin 53210

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, Wisconsin 53708

Division of Enforcement
Department of Regulation & Licensing
P.O. Box 8935
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on December 16, 1994. A hearing was held in the above-captioned matter on January 19, 1995. Attorney Steven M. Gloe appeared on behalf of the Division of Enforcement, Department of Regulation and Licensing. The respondent, Omar Mustafaa did not file an Answer to the Complaint and did not appear at the hearing.

The Administrative Law Judge filed a Proposed Decision on April 13, 1995. No objections to the Proposed Decision were filed by either Complainant or Respondent. The Barbering and Cosmetology Examining Board, having considered the matter on the entire file, enters the following Final Decision and Order, consisting of Findings of Facts, Conclusions of Law, and Explanation of Variance from the Proposed Decision recommended by the Administrative Law Judge.

FINDINGS OF FACT

1. Omar Mustafaa (dob 12/18/49), 3076 North 34th Street, Milwaukee, WI 53210 is duly licensed in the state of Wisconsin to practice as a barbering or cosmetology manger (license #20847).

2. On exact dates unknown, but during the time period beginning at least by May 18, 1994 and continuing on through at least December 13, 1994, respondent owned and operated a barbering or cosmetology establishment at 3076 North 34th Street, Milwaukee, Wisconsin without a current establishment license.

3. On May 18, 1994 and again on July 13, 1994, the Fade Masters premises were not in clean, safe and sanitary conditions. Supplies and equipment necessary to ensure safe and sanitary conditions were also not maintained.

4. At all times relevant to this action, Omar Mustafaa was acting as owner and manager of the barbering or cosmetology establishment referred to in paragraph 2, above. As owner and manager, Mr. Mustafaa was responsible for compliance with Wis. Stats., ch. 454 in the operation of his establishment.

5. On December 13, 1994, a copy of the Notice of Hearing and Complaint was served on the respondent by personal delivery to his employee, Julian McKnight, at respondent's place of business located at the establishment identified in paragraph 2, above. Respondent did not file an Answer to the Complaint.

CONCLUSIONS OF LAW

1. The Barbering and Cosmetology Examining Board has jurisdiction in this matter pursuant to ss. 454.08 and 454.15, Wis. Stats.

2. The respondent, Omar Mustafaa is in default under s. RL 2.14 Wis. Adm. Code.

3. By practicing barbering or cosmetology in an establishment which is not licensed to provide that practice, respondent violated ss. 454.08 (1) (b), and 454.15 (i), Stats.

4. By operating a barbering or cosmetology establishment in the manner described in Finding of Fact 3 herein, respondent violated s. 454.15 (2) (i), Stats., and ss. BC 2.06 (2) (d); 2.07 (2) (a) and (b); 3.01 (1) and (7), and 4.02 (3), Wis. Adm. Code.

ORDER

NOW THEREFORE, IT IS ORDERED that the respondent, Omar Mustafaa, pay a forfeiture in the amount of One Thousand Dollars (\$1000.00) within ninety days of the date of this order.

IT IS FURTHER ORDERED that the respondent is Reprimanded.

IT IS FURTHER ORDERED that respondent pay the costs of this proceeding, pursuant to s. 440.22, Stats.

This order is effective as of the date it is signed by the Barbering and Cosmetology Examining Board's designee.

EXPLANATION OF VARIANCE

The Barbering and Cosmetology Examining Board accepts the Findings of Facts and Conclusions of Law proposed by the Administrative Law Judge, but amends the Order to reflect two concerns. First, professional discipline, while not intended to punish licensees who violate the applicable regulations of the profession, is intended to protect the public, to rehabilitate licensees who fail to meet their professional obligations, and to deter other licensees from similar violations of the regulations adopted for public health, safety and welfare. Second, professional discipline is supposed to be directed at persons who require discipline, rather than applied to all the members of a particular licensed occupation.

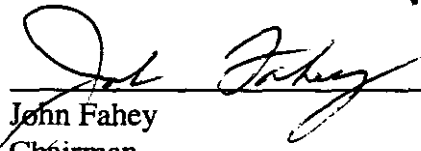
Mr. Mustafaa clearly violated the law, flouted the standard of the profession for the licensing and sanitation of his establishment and the protection of public health, and did so over an extended period of time. The seriousness of the violation of the standards of safety and sanitation requires that discipline be appropriately tailored to instruct Mr. Mustafaa and other licensees that the public health and safety is not a trivial concern, and sufficient to clearly and unequivocally deter others from discounting their obligations as licensees of the State to protect public health and safety. The Board is convinced that assessing a minimal forfeiture, and allowing even that small indication of disapproval to be reduced or eliminated by the cost of finally doing what the law required to be done long ago, sends precisely the wrong message to Mr. Mustafaa, other licensees, and the public. It is the obligation of every licensee to do what the law requires be done to comply with the minimal directives for the operation of a clean, sanitary, safe and licensed establishment. A licensee who is unable or unwilling to comply with those standards is not free to disregard them, nor should the State or other licensees be required to subsidize the operation of an establishment whose owner will not or cannot make the effort to comply with the regulations imposed for the protection of public health and safety.

Permitting Mr. Mustafaa to reduce or eliminate the forfeiture imposed for his failure to comply with the regulations designed to protect the public by crediting the price he may finally pay to bring his establishment into compliance with the minimal requirements of the law would do nothing but require other licensees to subsidize his business. It is not the policy of the State to permit persons practicing a licensed profession to reduce their license fees by the cost of keeping their premises clean, or to forgive them the costs of enforcing the laws they flout. The Board

believes it would be remiss in its duty to forgive Mr. Mustafaa the consequences of his long-term decision to disobey the laws governing the privilege of his license to the detriment of public health, safety and welfare.

The Board imposes a single forfeiture, the maximum which can be imposed for a single day of violation. The Findings of Fact demonstrate that this forfeiture is itself lenient, given the long term during which Mr. Mustafaa operated his establishment without the license required by law of every establishment, and at least two days on which he neglected minimal safety and sanitation procedures. It is further only appropriate that Mr. Mustafaa bear the costs of this action, which was required only by his failure to comply with the law, rather than to ask all the licensees to bear the costs of Mr. Mustafaa's unprofessional conduct.

Dated this 31st day of July, 1995.



John Fahey
Chairman
Barbering and Cosmetology Examining Board

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NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

AUGUST 3, 1995.

1. 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 sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

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

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision 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.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

AFFIDAVIT OF COSTS
LS9412161BAC

OMAR MUSTAFAA
RESPONDENT.

STATE OF WISCONSIN
COUNTY OF DANE

Ruby Jefferson-Moore, being first duly sworn on oath deposes and states:

1. That affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. That in the course of affiant's employment she was appointed administrative law judge in the above-captioned matter. That to the best of affiant's knowledge and belief, the costs for services provided by affiant are as follows:

<u>ACTIVITY</u>	<u>DATE</u>	<u>TIME</u>
Preparation and Hearing	01/19/95	30 min.
Review record/law/draft decision	04/13/95	1 hr.

Total costs for Administrative Law Judge \$40.72

3. That upon information and belief, the total cost for court reporting services provided by Magne-Script is as follows: N/A

Total costs for Office of Board Legal Services: \$40.72

Ruby Jefferson-Moore
Ruby Jefferson-Moore
Administrative Law Judge

Sworn to and subscribed to before me
this 11th day of August, 1995

Donaco R. Rittel
Notary Public
My Commission: is Permanent

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

OMAR MUSTAFAA,
RESPONDENT

:
:
:
:
:

AFFIDAVIT OF COSTS
94 CHI 034

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Steven M. Gloe, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and

3. 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

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
12/12/94	Review file; draft documents; Schedule Hearing date	2 hours 15 min.
01/19/95	Hearing preparation and attend hearing	1 hour
TOTAL HOURS		3 hours 15 min.

Total attorney expense for
3 hour and 15 minutes at \$41.00 per hour
(based upon average salary and benefits
for Division of Enforcement attorneys) equals: \$ 133.25

INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
05/18/94	Investigative stop	1 hour 30 min.
07/13/95	Investigative stop	1 hour

07/25/94	Draft Memo, case summary; Telephone call to Board advisor	1 hour
11/21/94	Telephone call	05 min.
11/25/94	Prepare case for PIC	1 hour
TOTAL HOURS		<u>4 hours 35 min.</u>

Total investigator expense for
4 hours and 35 minutes at \$21.00 per hour
(based upon average salary and benefits
for Division of Enforcement investigators) equals:

\$ 96.25

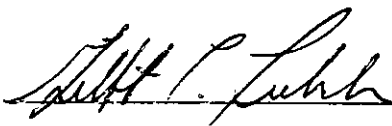
TOTAL ASSESSABLE COSTS

\$ 229.50



Steven M. Gloe
Attorney
Division of Enforcement

Subscribed and sworn to before me this 18th day of August, 1995.



Notary Public
My Commission is permanent

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

OMAR MUSTAFAA,
dba FADE MASTERS,
RESPONDENT.

NOTICE OF FILING
PROPOSED DECISION
LS9412161BAC

TO: Omar Mustafaa
dba Fade Masters
3076 North 34th Street
Milwaukee, WI 53210
Certified P 195 982 040

Steven M. Gloe, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

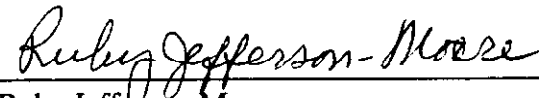
PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Barbering and Cosmetology Examining Board by the Administrative Law Judge, Ruby Jefferson-Moore. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Barbering and Cosmetology Examining Board, Room 290, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before April 28, 1995. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Barbering and Cosmetology Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Barbering and Cosmetology Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 13th day of April, 1995.


Ruby Jefferson-Moore
Administrative Law Judge

**STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDING AGAINST**

**PROPOSED DECISION
LS9412161BAC**

**OMAR MUSTAFAA,
dba FADE MASTERS,
RESPONDENT.**

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

Omar Mustafaa
dba Fade Masters
3076 North 34th Street
Milwaukee, Wisconsin 53210

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, Wisconsin 53708

Division of Enforcement
Department of Regulation & Licensing
P.O. Box 8935
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on December 16, 1994. A hearing was held in the above-captioned matter on January 19, 1995. Attorney Steven M. Gloe appeared on behalf of the Division of Enforcement, Department of Regulation and Licensing. The respondent, Omar Mustafaa did not file an Answer to the Complaint and did not appear at the hearing.

Based upon the record herein, the Administrative Law Judge recommends that the Barbering and Cosmetology Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Omar Mustafaa (dob 12/18/49), 3076 North 34th Street, Milwaukee, WI 53210 is duly licensed in the state of Wisconsin to practice as a barbering or cosmetology manger (license #20847).

2. On exact dates unknown, but during the time period beginning at least by May 18, 1994 and continuing on through at least December 13, 1994, respondent owned and operated a barbering or cosmetology establishment at 3076 North 34th Street, Milwaukee, Wisconsin without a current establishment license.

3. On May 18, 1994 and again on July 13, 1994, the Fade Masters premises were not in clean, safe and sanitary conditions. Supplies and equipment necessary to ensure safe and sanitary conditions were also not maintained.

4. At all times relevant to this action, Omar Mustafaa was acting as owner and manager of the barbering or cosmetology establishment referred to in paragraph 2, above. As owner and manager, Mr. Mustafaa was responsible for compliance with Wis. Stats., ch. 454 in the operation of his establishment.

5. On December 13, 1994, a copy of the Notice of Hearing and Complaint was served on the respondent by personal delivery to his employee, Julian McKnight, at respondent's place of business located at the establishment identified in paragraph 2, above. Respondent did not file an Answer to the Complaint.

CONCLUSIONS OF LAW

1. The Barbering and Cosmetology Examining Board has jurisdiction in this matter pursuant to ss. 454.08 and 454.15, Wis. Stats.

2. The respondent, Omar Mustafaa is in default under s. RL 2.14 Wis. Adm. Code.

3. By practicing barbering or cosmetology in an establishment which is not licensed to provide that practice, respondent violated ss. 454.08 (1) (b), and 454.15 (2) (i), Stats.

4. By operating a barbering or cosmetology establishment in the manner described in Finding of Fact 3 herein, respondent violated s. 454.15 (2) (i), Stats., and ss. BC 2.06 (2) (d); 2.07 (2) (a) and (b); 3.01 (1) and (7), and 4.02 (3), Wis. Adm. Code.

ORDER

NOW THEREFORE, IT IS ORDERED that the respondent, Omar Mustafaa, pay a forfeiture in the amount of Two Hundred Dollars (\$200.00), part or all of which may be reduced by any amount paid by the respondent to obtain a current establishment license and/or to restore the establishment to a clean, safe and sanitary condition.

This order is effective as of the date it is signed by the Barbering and Cosmetology Examining Board's designee.

OPINION

Mr. Mustafaa is licensed in Wisconsin to practice as a barbering or cosmetology manager. He operates Fade Masters, a barbering or cosmetology establishment, located in Milwaukee. Fade Masters was a licensed establishment at least up until July 1, 1993, at which time the license expired. Thereafter, at least on May 18, 1994, July 13, 1994, and December 13, 1994, Mr. Mustafaa operated the establishment without a current license. As of the date of the hearing, he had not filed an application for an establishment license with the Department of Regulation and Licensing or with the Barbering and Cosmetology Examining Board.

In addition to operating an establishment without a current license, the evidence establishes that on at least two occasions in 1994, a Board representative who inspected the establishment found that the premises were not in clean, safe and sanitary conditions, and that supplies and equipment necessary to ensure safe and sanitary conditions were not maintained. In reference to the premises, the ceiling in the rest room was in disrepair, the floor was not clean and there was no soap for patrons. In reference to supplies and equipment, only one of the four workstations had disinfectant available for cleaning metal instruments and combs. There were piles of soiled towels on the floor which should have been placed in a plastic or metal container, and a brush was used on different patrons without being cleaned and disinfected prior to use.

Having found that Mr. Mustafaa violated ch. 454, Stats., and numerous provisions contained in chs. BC 2, 3 and 4, Wis. Adm. Code, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Barbering and Cosmetology Examining Board is authorized under s. 454.15 (2), Stats., to discipline a licensee for violations of ch. 454, Stats., or any rule promulgated under the statutes. In addition, the Board is authorized under s. 454.15 (3), Stats., to assess a forfeiture of not more than \$1,000 for each violation found under s. 454.15 (2) (a)-(i), Stats.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. MacIntyre*, 41 Wis. 2d 481 (1969).

The Administrative Law Judge accepts the recommendations made by Mr. Gloe that Mr. Mustafaa be required to pay a forfeiture in the amount of \$200.00, and that all or part of that amount be reduced by any amount paid by the respondent to either obtain a current establishment license or to improve the safety and sanitary condition of the establishment. This measure is designed to assure protection of the public and to deter other licensees from engaging in similar misconduct.

In reference to maintaining a current establishment license, the purpose of licensing statutes is not to benefit those persons licensed to practice under the statute, but rather to protect the public by the requirement of a license as a condition precedent to practicing in a given profession. Such statutes are grounded in the state's police power to protect the public welfare through safeguarding the life, health, and property of its citizens. Gilbert v. Medical Examining Board, 119 Wis. 2d 168, 188, 349 N.W. 2d 68 (1984).

In reference to maintaining clean, safe and sanitary conditions, the Board has adopted minimum standards concerning maintenance, equipment, plans and specifications for licensed establishments as they relate to public health and safety (Chs. BC 3 and 4 Wis. Adm. Code). These standards, which govern sanitation, safety and maintenance of facilities, equipment and instruments, have been specifically adopted to assure public protection. It is essential that the respondent and other licensees comply with these standards.

Based upon the record herein, the Administrative Law Judge recommends that the Barbering and Cosmetology Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 13th day of April 1995.

Respectfully submitted,



Ruby Jefferson-Moore
Administrative Law Judge