

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 :
PROCEEDINGS AGAINST :

MARY L. LIBERT,
D/B/A TAKE IT FROM THE TOP
RESPONDENT.

FINAL DECISION AND ORDER

LS98100511BAC

Division of Enforcement
97 BAC 146

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

Mary L. Libert
Take It From The Top
7972 W. Appleton Ave.
Milwaukee, WI 53218

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

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. Mary L. Libert (DOB 08-15-52) S68W13476 Bristlecone Ln., Muskego, WI 53150, is duly licensed as a barbering and cosmetology manager in the state of Wisconsin (license #13061). This license was first granted on February 17, 1975.

2. Take It From The Top, 7972 W. Appleton Ave., Milwaukee, WI 53218 is duly licensed as a barbering and cosmetology establishment in Wisconsin (license #26435). This

license was first granted on May 29, 1997. Mary L. Libert is listed with the Department of Regulation and Licensing as owner and manager of Take It From The Top. As owner and manager, Ms. Libert was and is at all times relevant to this action responsible for compliance with ch. 454, Stats. and Wisconsin Administrative Code chs. BC 2, 3 and 4.

3. On exact dates unknown, but at least in September 1996 and continuing on through May 29, 1997, Take It From The Top was open and operating as a barbering and cosmetology establishment. At no time relevant to this action was Take It From The Top licensed in Wisconsin as a barbering and cosmetology establishment.

4. On exact dates unknown, but at least in November 1996 and continuing on through December 19, 1997, David M. Lees rented a chair from Mary L. Libert at Take It From The Top. At no time relevant to this action did Mr. Lees hold a barbering and cosmetology establishment license for the chair he was renting from Ms. Libert.

5. On exact dates unknown, but at least in November 1996 and continuing on through November 13, 1997, Katherine M. Evert rented a chair from Mary L. Libert at Take It From The Top. At no time relevant to this action did Ms. Evert hold a barbering and cosmetology establishment license for the chair he was renting from Ms. Libert.

6. On exact dates unknown, but at least in November 1996 and continuing on through August 5, 1997, Laura L. Klopfenstein rented a chair from Mary L. Libert at Take It From The Top. At no time relevant to this action did Ms. Klopfenstein hold an electrology establishment license for the chair he was renting from Ms. Libert.

7. In resolution of this matter, Ms. Libert consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

By the conduct referred to in ¶¶ 3-6, above, Mary L. Libert, d/b/a Take It From The Top, violated sec. 454.15, Stats. and Wis. Admin. Code §§BC 2.04, BC 2.06 and BC 3.03(5).

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Mary L. Libert, d/b/a Take It From The Top shall pay to the Department of Regulation and Licensing a forfeiture of ONE THOUSAND FIVE HUNDRED dollars (\$1500.00). Payment shall be submitted as follows:

\$250.00 due on or before October 15, 1998;
\$250.00 due on or before November 15, 1998;
\$250.00 due on or before December 15, 1998;
\$250.00 due on or before January 15, 1999;
\$250.00 due on or before February 15, 1999; and
\$250.00 due on or before March 15, 1999.

Payments 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
PO Box 8935
Madison, WI 53708-8935

IT IS FURTHER ORDERED that in the event Mary L. Libert fails to timely submit payment of the forfeiture as set forth above, the establishment license of Take It From The Top (#26435) **SHALL BE SUSPENDED**, without further notice or hearing, until Respondents 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: *Dr. Palermo*
A member of the Board

10/5/98
Date

648

STATE OF WISCONSIN
BEFORE THE BARBERING AND
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :

MARY L. LIBERT, :
D/B/A TAKE IT FROM THE TOP :
RESPONDENT. :

STIPULATION

It is hereby stipulated between Mary L. Libert, d/b/a Take It From The Top, personally on her own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement (97 BAC 146). Ms. Libert consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Ms. Libert understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, 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 against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; 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 her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

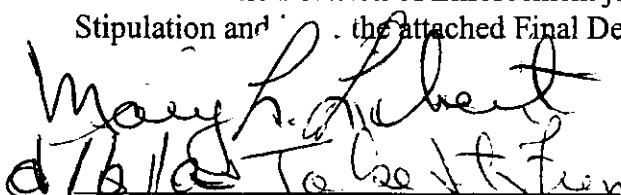
3. Ms. Libert is aware of her right to seek legal representation and has been provided an opportunity to obtain legal advice prior to signing this stipulation.

4. Ms. Libert agrees to the adoption of the attached Final Decision and Order by the Barbering and Cosmetology Examining 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 for the Division of Enforcement and the member of the Barbering and Cosmetology Examining Board assigned as an advisor in this investigation may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the Board may have in connection with their deliberations on the stipulation.

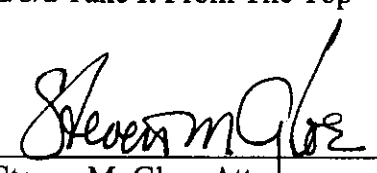
7. The Division of Enforcement joins Ms. Libert in recommending the Board adopt this Stipulation and the attached Final Decision and Order.


Mary L. Libert

d/b/a Take It From The Top


Date

9/21/98


Steven M. Gloe, Attorney
Division of Enforcement


Date

9.24.98

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 October 5, 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: \$1,500.00 Case #: LS98100511BAC

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of 6 monthly payments of \$250.00 each

The costs and/or forfeitures are due: 10/15/98; 11/15/98; 12/15/98; 1/15/99; 2/15/99; 3/15/99

NAME: Mary L. Libert LICENSE NUMBER: 13061

STREET ADDRESS: 7972 West Appleton Avenue

CITY: Milwaukee STATE: WI ZIP CODE: 53218

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

 COSTS X 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:

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.

G:\BDLS\FM2145.DOC

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

In the Matter of the Disciplinary Proceedings Against

Mary L. Libert,
d/b/a Take It From The Top,

AFFIDAVIT OF MAILING

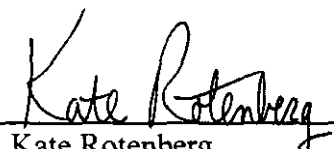
Respondent.

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 October 6, 1998, I served the Final Decision and Order dated October 5, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS98100511BAC, upon the Respondent Mary L. Libert, d/b/a Take It From The Top, by enclosing true and accurate copies of the above-described documents 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 Z 233 819 864.
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:

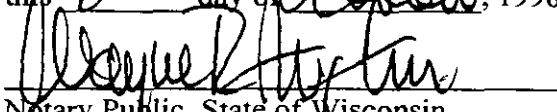
Mary L. Libert
d/b/a Take It From The Top
7972 W. Appelton Avenue
Milwaukee WI 53218



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 8th day of October, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: MARY L LIBERT, d/b/a TAKE IT FROM THE TOP

You have been issued an Order. For purposes of service the date of mailing of this Order is 10/6/98. 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 Order 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 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 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 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 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