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State of Wisconsin
Before the Hearing and Speech Examining Board

In the Matter of Disciplinary Proceedings Against

Clemence C. Rau
Respondent.
LS0304112HAS

Final Decision and Order

The parties to this proceeding for purposes of s. 227.53, Stats., are:

Clemence Rau
2604 W. Princeton Avenue
Eau Claire WI 54703

Hearing and Speech Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.o. Box 8935
Madison WI 53708

Mr. Rau and the Division of Enforcement have agreed to the following resolution of this matter, and the Board adopts the following

Findings of Fact

1. Clemence C. Rau ("Respondent") was born on July 26, 1934 and is licensed as a hearing instrument specialist in the state of Wisconsin pursuant to license number 108, first granted on June 29, 1970.

2. On November 29, 2001, Respondent sold two hearing aids to Milan Freng.

3. Mr. Freng paid \$2600.00 for the two hearing aids on November 29, 2001, with delivery of the hearing aids to be scheduled after they were made.

4. The hearing aids were delivered to Mr. Freng on December 17, 2001.

5. Respondent's advertisement in the Eau Claire, Wisconsin telephone directory yellow pages prominently included the phrase "60 day trial period."

6. Mr. Freng and his wife inquired about the 60 day trial period before purchasing the hearing aids for Mr. Freng. Respondent confirmed the 60 day trial period.

7. Mr. Freng returned the hearing aids to Respondent on February 4, 2002, within the 60 day trial period Respondent advertised.

8. Respondent refunded less than the amount Mr. Freng paid for the hearing aids.

9. Respondent disputes that he offered the 60 day trial period to Mr. Freng, and asserts that he is entitled to deduct some fee for his services in testing Mr. Freng's hearing and fitting the hearing aids.

10. Respondent did not disclose any conditions on the 60 day trial period in either his advertisements or on the sales documents, as required by s. 459.03, Stats., and s. HAS 5.02(2)(g), Wis. Admin. Code.

11. Following the filing of this proceeding, Respondent has refunded to Mr. Freng the amount Respondent withheld from the initial refund when Mr. Freng returned the hearing aids.

Conclusions of Law

1. The Hearing and Speech Examining Board has jurisdiction in this matter pursuant to s. 459.10, Stats.

2. Respondent's failures to disclose conditions on the 60 day trial period in his advertisements or to honor the trial period he advertised constitutes false, misleading and deceptive advertising contrary to s. 459.10(1)(g), Stats.

3. Respondent's failure to disclose the full terms of the sale on the receipt he provided to Mr. Freng constitutes a violation of s. HAS 5.02(2)(g), Wis. Admin. Code.

Order

Now, therefore, it is Ordered that Clemence C. Rau is Reprimanded.

It is further ordered that Respondent shall pay the costs of this proceeding in the amount of \$472.20 within 90 days of the date of this order.

Dated 6-2-03

Wisconsin Hearing and Speech Examining Board

Gerard Kupperman

A Member of the Board