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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
RUTH E. WARE,	:	LS0806241BAC
OLIVER JONES, and	:	
QUICK CUTS,	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 04BAC103

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 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 3rd day of November, 2008.

Jeannie M. Bush
Member of the Board
Barbering and Cosmetology Examining Board

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMING BOARD

IN THE MATTER OF THE DISCIPLINARY :		
PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
RUTH E. WARE,	:	AND ORDER
OLIVER JONES, and	:	
QUICK CUTS,	:	Case No. LS0806241BAC
RESPONDENTS.	:	

[DOE Case No. 04BAC103]

The parties to this action for purposes of §227.53, Wis. Stats., are:

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

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

Ms. Ruth E. Ware
6414 N. 93rd Street
Milwaukee, WI 53224

Mr. Oliver Jones and
Quick Cuts
6717 W. Villard Avenue
Milwaukee, WI 53218

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on August 6, 2008, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Claudia Berry Miran. Neither Ms. Ware nor Mr. Jones appeared. No one appeared on behalf of Quick Cuts.

Based on the entire record in this case, the undersigned 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. Quick Cuts is duly licensed as a barbering and cosmetology establishment in the State of Wisconsin and is located at 6717 West Villard Avenue in Milwaukee, Wisconsin (License #80-32527). Oliver Jones is listed with the Department of Regulation and Licensing (Department) as the owner of Quick Cuts.
2. Ruth E. Ware (dob 4/02/44) is listed with the Department as the manager of Quick Cuts. Ms. Ware's address of record with the Department is 6414 North 93rd Street in Milwaukee, Wisconsin. She was granted a license (License #81-29906) as a barbering and cosmetology manager in the State of Wisconsin on April 16, 2004. Her license expired on July 1, 2007, and has not been renewed.
3. The establishment license for Quick Cuts was granted on November 11, 2004, and expired on July 1, 2007. It was not renewed until April 18, 2008.
4. An inspection of Quick Cuts on April 3, 2008, by Investigator Willie Garrette of the Department of Regulation and Licensing, found that the establishment was open for business without a current barbering and cosmetology establishment license. On that same date, Investigator Garrette also found Billy Hill and Christopher McDonald providing barbering or cosmetology services. Neither had current barbering or cosmetology licenses.
5. During the April 3, 2008, inspection, Mr. McDonald told Investigator Garrette that Ms. Ware was still the manager of the establishment.
6. A second inspection of Quick Cuts conducted on August 9, 2007, by Investigator Garrette found that the establishment was open for business without a current barbering and cosmetology establishment license. Investigator Garrette also found Billy Hill, Angela Jackson, and Christopher McDonald providing barbering or cosmetology services. None of those individuals had current barbering or cosmetology licenses.

CONCLUSIONS OF LAW

1. The Barbering and Cosmetology Examining Board has jurisdiction in this matter pursuant to §§ 454.04, 454.08, and 454.15, Wis. Stats.
2. By failing to file an Answer as required by § RL 2.09, Wis. Admin. Code, and by failing to appear at the hearing, Ms. Ware, Mr. Jones, and Quick Cuts are in default under § RL 2.14, Wis. Admin. Code, and the Barbering and Cosmetology Examining Board may make Findings and enter an Order on the basis of the Complaint and evidence presented at the hearing.

3. By practicing barbering and cosmetology without a current credential and in an establishment that did not have a current license, Ms. Ware was in violation of §§ 454.04 (1) (a), and 454.08 (1) (b), Wis. Stats., and § BC 3.01 (1), Wis. Admin. Code.
4. By operating a barbering and cosmetology establishment without a valid license and by utilizing personnel to engage in barbering and cosmetology services without the required credentials, Mr. Jones and Quick Cuts are in violation of §§ 454.04 (1) (a) and 454.08 (1) (b), and §§ BC 2.06, 3.01 (1) and 3.02 (1), Wis. Admin. Code.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Oliver Jones is **REPRIMANDED**.

IT IS FURTHER ORDERED that Ruth E. Ware is **REPRIMANDED** and her right to renew her barbering and cosmetology manager's license is **REVOKED**.

IT IS FURTHER ORDERED that forfeitures in the amount of \$7000.00 be assessed against Oliver Jones and Quick Cuts, pursuant to s. 454.15, Wis. Stats.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Oliver Jones, Ruth E. Ware, and Quick Cuts, pursuant to s. 440.22, Wis. Stats.

OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that if a respondent fails to answer a complaint or fails to appear at a hearing, he or she is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent.

A Notice of Hearing and Complaint were sent to Ms Ware, Mr. Jones, and Quick Cuts by regular U.S. mail and by certified mail at their respective last known addresses on file with the Wisconsin Department of Regulation and Licensing on or about June 24, 2008. However, Ms. Ware, Mr. Jones, and Quick Cuts did not file an Answer to the above-captioned complaint, nor did anyone appear at the scheduled hearing on August 6, 2008. As a result, Ms. Ware, Mr. Jones, and Quick Cuts are in default and have effectively admitted all of the allegations contained in the complaint.

The primary allegations include the following: that Quick Cuts (owned by Mr. Jones) operated without a current establishment license for approximately ten months; that Ms. Ware, who was identified as the manager of record for Quick Cuts, also did not have a current credential during that same timeframe; and that during two separate inspections at Quick Cuts there were individuals engaged in the practice of barbering and cosmetology who did not have valid credentials.

Because Ms. Ware, Mr. Jones, and Quick Cuts have effectively admitted all of the allegations contained in the complaint, the question remains as to what the appropriate form of discipline for each is. A reprimand has been recommended for Ms. Ware, along with a recommendation that her right to renew her manager's license be revoked. In addition, a reprimand has also been recommended for Mr. Jones. Furthermore, a \$2000.00 forfeiture has been recommended for the failure of Quick Cuts and Mr. Jones to maintain a current establishment credential. For each of the two dates that Quick Cuts was inspected by Investigator Garrette and found to be unlicensed, a one thousand dollar forfeiture is being recommended for a total of \$2000.00. A \$5000.00 forfeiture has also been recommended against Quick Cuts and Mr. Jones for permitting individuals to provide barbering and cosmetology services on two separate occasions without the required credentials. During the first inspection that Mr. Garrette conducted at Quick Cuts, he discovered two individuals working there who did not have valid barbering or cosmetology credentials. The second inspection Mr. Garrette conducted revealed three individuals engaging in barbering or cosmetology services without valid credentials. Based on those inspections, a one thousand dollar forfeiture is being recommended for the unlicensed practice of each person. In other words, two thousand dollars is recommended for the first inspection in which two individuals were found to be working without credentials and three thousand dollars is recommended for the second inspection during which three individuals were found to be working without credentials, thereby totaling \$5000.00. Finally, the payment of costs has also been recommended.

It is well established that the objectives of professional discipline include the following: (1) to promote the

rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969).

Mr. Jones allowed Quick Cuts to operate without a valid establishment license and without having an appropriately credentialed manager for at least ten months. He also permitted individuals to engage in barbering and cosmetology services without valid credentials. Given those violations, a reprimand is eminently appropriate as are the recommended forfeitures. A reprimand against Ms. Ware, who continued to remain as the manager of record for Quick Cuts without a current credential, along with the revocation of her right to renew, is also an appropriate disciplinary action. These measures will serve as a deterrent to others in the profession and also ensure that going forward the public is properly safeguarded.

The imposition of costs against Mr. Jones, Ms. Ware, and Quick Cuts has also been recommended. Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word “may” in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against Mr. Jones, Ms. Ware, and Quick Cuts is a discretionary decision on the part of the Barbering and Cosmetology Examining Board (Board). It further suggests that the Board’s discretion extends to whether to assess the full costs or only a portion of the costs.

The administrative law judge’s recommendation and the Board’s decision as to whether the full costs of the proceeding should be assessed against the credential holder, like the supreme court’s decision whether to assess the full costs of disciplinary proceedings against attorneys, is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a “program revenue” agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
- 7) Any other relevant circumstances.

See Supreme Court Rule 22.24 (1m).

Under the circumstances of this case, it is reasonable to assess the full costs of this proceeding against the parties. Mr. Jones and Ms. Ware failed to participate in scheduled proceedings before the tribunal and did not appear for the evidentiary hearing. Because both Mr. Jones and Ms. Ware not only failed to file an answer to the complaint but also failed to appear at the evidentiary hearing, they have effectively admitted all of the allegations contained in the complaint. Additionally, in a program revenue agency the costs of prosecuting cases for a particular licensed profession are borne by the licensed members of that profession. Most regulatory boards have found that it is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, the more prevalent view has been that the licensee should bear the costs of the proceeding.

Such is the case with Mr. Jones, Ms. Ware, and Quick Cuts. Their failure to participate in this matter demonstrates a lack of respect not only for the tribunal, but also for the Board and the purposes for which it stands. Mr. Jones, Ms. Ware, and Quick Cuts have only themselves to blame for the majority of the costs associated with this action and they should

therefore bear them in full.

Dated this 11th day of August 2008, at Madison, Wisconsin.

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Jacquelynn B. Rothstein
Administrative Law Judge