

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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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
FANTASTIC SAMs, :
RESPONDENT. : LS08090811BAC

Division of Enforcement Case File Number: 05 BAC 079

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Fantastic Sams
2289 Westowne Avenue
Oshkosh, Wisconsin 54904

Barbering and Cosmetology Examining Board
Post Office Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation and Licensing
Division of Enforcement
Post Office Box 8935
Madison, Wisconsin 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. Respondent Fantastic Sams is duly licensed as a Barbering and Cosmetology Establishment in the state of Wisconsin (license number 80-32259). This license was first granted on August 19, 2004, and is current through March 31, 2009.

2. Fantastic Sams is located at 2289 Westowne Avenue, Oshkosh, Wisconsin 54904.

3. Lori Madez is licensed as a Barbering or Cosmetology Manager in the state of Wisconsin (license number 81-17552). According to Department records, Ms. Madez was the manager of record of Fantastic Sams from June 8, 2005, through March 16, 2008.

4. Ms. Madez was on medical leave from Fantastic Sams from May 15, 2005, through September 20, 2005. When Ms. Madez returned to Fantastic Sams in September of 2005, she reduced her work schedule to approximately 6 hours per week.

5. On March 18, 2008, Melissa Kinzfohl, a licensed Barbering or Cosmetology Manager in the state of Wisconsin (license number 82-85953), took over as manager of record for Fantastic Sams.

6. Pursuant to Wis. Admin. Code § BC 3.02(1)(c), the owner of a barbering or cosmetologist establishment shall employ a licensed manager, and a manager is required to be present in the establishment full time. "Full time" is defined in Wis. Admin. Code § BC 1.01(7) as 30 hours per week, or the maximum number of hours an establishment is open if open less than 30 hours per week.

7. Fantastic Sams is open for business more than 50 hours per week.

8. Since Ms. Makes was on medical leave from May 15, 2005 through September 20, 2005, Fantastic Sams was operating without a licensed barbering or cosmetology manager during that time.

9. Since Ms. Makes was only working 6 hours per week from September 21, 2005 through March 17, 2008 as the manager of record, Fantastic Sams was operating without a full-time licensed barbering or cosmetology manager during that time.

10. In resolution of this matter Fantastic Sams consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Barbering and Cosmetology Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 454.15.

2. The Wisconsin Barbering and Cosmetology Examining Board is authorized to enter into the attached stipulation pursuant to Wis. Stat. § 227.44(5).

3. By not having a licensed Barbering and Cosmetology Manager from May 15, 2005 through September 20, 2005, Fantastic Sams has violated Wis. Stat. § 454.08(6) and Wis. Admin. Code § BC 2.06(5).

4. By not having a full-time manager from September 21, 2005 through March 17, 2008, Fantastic Sams has violated Wis. Stat. § 454.08(6) and Wis. Admin. Code § 3.02(1).

5. As a result, Fantastic Sams is subject to discipline pursuant to Wis. Stat. § 454.15(2)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Fantastic Sams shall, within 150 days of the date of this Order, pay a FORFEITURE in the amount of TWO THOUSAND DOLLARS (\$2,000.00).

2. Fantastic Sams shall, within 150 days of the date of this Order, pay COSTS in this matter in the amount of SIX HUNDRED DOLLARS (\$600.00).

3. Payment of the forfeiture and costs 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
Post Office Box 8935
Madison, Wisconsin 53708-8935
(608) 267-3817

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Fantastic Sams' establishment license. The Board in its discretion may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Fantastic Sams fails to timely submit any payment as ordered, then its establishment license (# 80-32259) SHALL BE SUSPENDED without further notice or hearing until Fantastic Sams has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Jeannie M. Bush
A member of the Board

9/8/08
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : STIPULATION
:
FANTASTIC SAMS, :
RESPONDENT. : LS#08 _____ BAC
:

Division of Enforcement Case File Number: 05 BAC 079

It is hereby stipulated between Fantastic Sams (hereafter "Respondent"), and Lara M. Herman, 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 (05 BAC 079). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

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

3. Respondent has been provided an opportunity to obtain legal counsel prior to signing this stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Barbering and Cosmetology Examining Board (hereafter "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. Respondent waives 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 or other agent for the Division of Enforcement and any member of the Barbering and Cosmetology Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or its attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department policy.

8. The Division of Enforcement joins Fantastic Sams in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

On Behalf of Fantastic Sams

Respondent

2289 Westowne Avenue

Oshkosh, Wisconsin 54904

License Number 80-32259

Date

Lara M. Herman

Attorney

Division of Enforcement

Wisconsin Department of Regulation and Licensing

Post Office Box 8935

Madison, Wisconsin 53708-8935

Date