

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION AND ORDER
:
NICOLE M. SCHWARK AND :
EAST TOWN SPA INC., : LS0810022BAC
RESPONDENTS. :

Division of Enforcement Case No. 04 BAC 097

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

Nicole M. Schwark
3162 S. 55th Street
Milwaukee, WI 53219

East Town Spa Inc.
718 E. Wells Street
Milwaukee, WI 53202

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53707-8935

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

PROCEDURAL HISTORY

A disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Barbering and Cosmetology Examining Board on October 2, 2008. Prior to the hearing on the Complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition 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 **Nicole M. Schwark** is licensed in the state of Wisconsin as a Barbering and Cosmetology Manager, having license # 81-28974. This license was first granted to her on 02/21/02 and is current through 03/31/09. The most recent address on file with the Department of Regulation and Licensing for Ms. Schwark is 3162 S. 55th Street, Milwaukee, WI 53219.

2. Respondent **East Town Spa Inc.** is licensed in the state of Wisconsin as a Barbering and Cosmetology Establishment, having license # 80-30242. This license was first granted on 02/05/02 and is current through 03/31/09. The most recent address on file with the Department of Regulation and license for East Town Spa Inc. is 718 East Wells Street, Milwaukee, WI 53202.

3. Nicole M. Schwark is listed as the owner and manager of East Town Spa Inc. As owner and manager, Ms. Schwark was at all times relevant to this action responsible for compliance with Wis. Stat. Ch. 454 and Wis. Admin. Code Chs. BC 2, BC 3 and BC 4.

4. A complaint was received by the Department alleging that several individuals with barbering and cosmetology practitioner licenses were renting chairs at East Town Spa Inc. without having manager licenses and separate establishment licenses.

5. Pursuant to Wis. Admin. Code § BC 3.02(2), the owner of a barbering and cosmetology establishment may lease a chair to a licensed individual as long as there is a written lease agreement and the lessee holds a manager's license and an establishment license. This rule has been in effect since October 1, 2003, with a 1-year grace period for getting into compliance for any person renting a chair prior to the October 1, 2003 effective date.

6. On September 20, 2006, two investigators from the Department of Regulation and Licensing performed an unannounced inspection at East Town Spa Inc. The inspection and follow-up investigation revealed the following:

a. some individual practitioners are paid employees of Ms. Schwark and East Town Spa Inc., while other individuals rent chairs, or have rented chairs, from Ms. Schwark;

b. between March 2004 and August 2008, a total of seven individuals rented chairs from Nicole M. Schwark and East Town Spa Inc. without having the required separate establishment licenses; four of these individuals also did not have their own barbering and cosmetology manager licenses for a period of time while renting chair space.

c. All individuals renting chairs from East Town Spa Inc. are now in compliance with the rule requiring separate establishment licenses and managers' licenses for chair rentals.

d. at the time of the inspection, current licenses were not posted for all individuals working at East Town Spa Inc.

CONCLUSIONS OF LAW

1. The Wisconsin Barbering and Cosmetology Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 454.15, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Respondents **Nicole M. Schwark** and **East Town Spa Inc.** have violated Wis. Admin. Code §§ BC 2.04(1) and BC 3.02(2) by renting chairs to seven individuals who did not have separate establishment licenses, four of whom also did not have separate manager's licenses. Respondents are therefore subject to discipline pursuant to Wis. Stat. § 454.15(2)(i).

3. Respondent **Nicole M. Schwark** has violated Wis. Admin. Code § 2.07(2) by failing to post her current license in the establishment and failing to insure that the current licenses of her employees were posted in the establishment. Ms. Schwark is therefore subject to discipline pursuant to Wis. Stat. § 454.15(2)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. **Nicole M. Schwark** (license # 81-28974) and **East Town Spa Inc.** (license # 80-30242) be, and hereby are, REPRIMANDED.

IT IS FURTHER ORDERED that:

2. Respondents shall jointly and severally pay **COSTS** in the amount of **TWO HUNDRED DOLLARS (\$ 200.00)**.

3. Respondents shall jointly and severally pay a **FORFEITURE** in the amount of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)**.

4. Payment of the costs and forfeitures, which total **TWO THOUSAND SEVEN HUNDRED DOLLARS (\$ 2,700.00)**, shall be made according to the following schedule:

PAYMENT DUE DATE	PAYMENT AMOUNT
May 1, 2009	\$540.00
November 1, 2009	\$540.00
May 1, 2010	\$540.00
November 1, 2010	\$540.00
May 1, 2011	\$540.00

Payment 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
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

5. 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 Respondents' licenses. 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 Respondents fail to timely submit any payment as ordered, then the Respondents' licenses (## 81-28974 and #80-30242) SHALL BE SUSPENDED without further notice or hearing until Respondents have complied with the terms of this Order.

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

Dated this 3rd day of November, 2008.

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Jeannie M. Bush