

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
SALON AMBIANCE,	:	LS0901293BAC
RESPONDENT.	:	

Division of Enforcement Case No. 07 BAC 122

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 14th day of September, 2009.

Jeannie M. Bush
Member
Barbering and Cosmetology Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings
Against **SALON AMBIANCE**, Respondent

PROPOSED DECISION AND ORDER
Case No. LS0901293BAC

Division of Enforcement Case No. 07 BAC 122

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

Salon Ambiance
Attn: Kenneth Efange
5474 Highway 10E, Suite 1
Stevens Points, WI 54481

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

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

PROCEDURAL HISTORY

The Complaint in this matter was filed on January 29, 2009. A Notice of Hearing was sent to the Respondent, Salon Ambiance, at its address of record with the Department, 5474 Highway 10E, Suite 1, Stevens Point, Wisconsin, 54481, notifying respondent that a hearing on the Complaint was scheduled for April 8, 2009. The Notice of Hearing also notified Respondent that it was required to file an Answer to the Complaint within 20 days, failing which "you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence and the Department may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

On March 27, 2009, the Division of Enforcement mailed to Salon Ambiance by both certified and regular mail a Notice of Motion and Motion for Default Judgment and supporting documents.

No Answer was filed by Salon Ambiance.

The hearing in this matter was held as scheduled on April 8, 2009. Salon Ambiance did not appear at the hearing or otherwise respond to Complainant's Motion for Default Judgment.

FINDINGS OF FACT

1. Salon Ambiance is duly licensed as a barbering and cosmetology establishment in the State of Wisconsin having license #080 0028822. This license was granted on 01/11/00.

2. Salon Ambiance's most recent address on file with the Department is: 5474 Highway 10E, Suite 1, Stevens Point, Wisconsin 54481.

3. Kenneth Efange is listed as the owner of record for Salon Ambiance. Mr. Efange does not hold a barbering and cosmetology credential in the State of Wisconsin.

4. Mr. Efange's most recent business address on file with the Department is: 5474 Highway 10E, Suite 1, Stevens Point, Wisconsin 54481.

5. As the listed owner of record, Mr. Efange was and is at all times relevant to this action responsible for compliance with Wisconsin Statutes Chapter 454 and the Wisconsin Administrative Code for Barbering and Cosmetology Chapters 2, 3, and 4.

6. On or about June 13, 2007, the Department received a consumer complaint alleging unprofessional conduct was taking place at Salon Ambiance. A case was subsequently opened for investigation.

7. On November 14, 2007, an inspection of Salon Ambiance was conducted by a Department consumer protection investigator. The inspection revealed the following violations:

A licensed manager had not been overseeing the daily operations of the salon for over ninety (90) days; and
Various items such as non-used waxing implements and clean hair care implements were not being stored in a covered container.

8. As of January 28, 2008, the Department's Division of Enforcement was notified that a new manager of record was employed at Salon Ambiance. Investigator Michelle Krisher confirmed during the hearing that the Salon Ambiance adequately corrected the violations noted during the November 14, 2007, inspection.

9. In an effort to resolve this matter, a Stipulation, Final Decision and Order were sent to the Respondent on September 12, 2008. As of the date of the hearing, no response had been received from the Respondent.

10. A copy of the Complaint and of the original Notice of Hearing were mailed on January 29, 2009, to Salon Ambiance at its last known address on file with the Department and the Barbering and Cosmetology Board by both certified and regular mail. A copy of the Division of Enforcement's Notice of Motion and Motion for Default Judgment was mailed on March 27, 2009, to Salon Ambiance at its last known address on file with the Department and the Barbering and Cosmetology Board by both certified and regular mail.

11. As noted in the procedural history, Respondent did not file an Answer to the Complaint filed against it, did not attend the scheduled hearing in this matter, and did not respond in any fashion to the Division of Enforcement's Motion for Default Judgment.

12. Salon Ambiance and its owner, Mr. Efange, were previously subject to discipline in Case No. LS0606142BAC, in which they were found to have violated Wis. Stat. § 454.08(1)(b) and Wis. Admin. Code §§ BC 2.04(1) and BC 3.01(1) by maintaining an unlicensed barbering and cosmetology establishment and allowing others to practice in that unlicensed establishment.

13. At the hearing, counsel for the Division of Enforcement represented that the Division's recoverable costs in this matter exceeded \$500.

CONCLUSIONS OF LAW

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

2. Salon Ambience was duly served with the Complaint, Notice of Hearing, Notice of Motion and Motion for Default Judgment pursuant to Wis. Admin. Code § RL 2.08.

3. Salon Ambience has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14.

4. Wisconsin Statutes § 454.08(6) require "[a] person who owns one or more barber or cosmetologist establishments [to] employ at least one person as a manager who holds a manager license and works full time in the establishments." Wisconsin Administrative Code §§ BC 2.06(5) and 3.02(1) reiterate this requirement. BC 2.06(5) allows an owner to continue to operate an establishment for 90 days without a manager if the manager leaves employment or becomes otherwise unavailable. However, in that case, the owner is required to notify the Board that the manager has left or is otherwise unavailable "within 10 days following the manager's last day of employment." There is no evidence in the record of Mr. Efange or Salon Ambience notifying the Board that a full-time manager had either left employment or otherwise become unavailable. Moreover, as set out in Finding of Fact no. 7, by the time of the November 2007 inspection, a licensed manager had not been overseeing the daily operations of the salon for over ninety days.

5. Wisconsin Administrative Code § BC 4.02(4) provides, in relevant part, that "[c]lean and disinfected contact equipment shall be placed in one or more covered containers." Wisconsin Statutes § 454.15(2)(c) authorizes the Board to impose discipline against a license holder who engages in conduct in the practice of barbering or cosmetology which evidence a lack of knowledge or ability to apply professional principles or skills.

6. Respondent Salon Ambience has violated:

- a. Wisconsin Statutes § 454.08(6) and Wis. Admin. Code §§ BC 2.06(5) and 3.02(1) for failing to employ a full-time barbering and cosmetology manager; and
- b. Wisconsin Statutes § 454.15(2)(c) and Wis. Admin. Code § 4.02(4) by failing to keep clean contact equipment in a covered container.

DISCUSSION

There is no question as to whether violations occurred. The issue is therefore one of disposition.

The requirement that clean contact equipment be kept in a covered container is necessary for the protection of the health and safety of the members of the public receiving services at this establishment. Salon Ambiances' failure to comply with this requirement evinces a lack of knowledge or ability to apply professional principles or skills, as alleged by the Division of Enforcement. The establishment's failure to employ a full-time barbering and cosmetology manager, coming on the heels of its earlier violation for maintaining, and allowing others to practice in, an unlicensed establishment, is particularly serious. Each violation is properly regarded as a second offense. The fact that two violations were committed is an aggravating factor. By not responding to the Division of Enforcement's initial settlement proposal and by not participating in the formal disciplinary proceedings, Salon Ambience has not cooperated in the disciplinary process.

The Board's current Forfeiture Grid indicates a penalty range of between \$500 and \$1,000 for a second offense of not having a manager working full-time and a penalty range of between \$100 and \$250 for a second offense of failing to properly store contact equipment. The Division of Enforcement is recommending a forfeiture of \$1,200. This is within the range of recommended forfeitures set out in the Forfeiture Grid. The amount that the Division is requesting is the same as the amount offered in its original settlement proposal. To impose a lesser penalty at this time would reward Salon Ambience for not responding in any manner to the original settlement proposal or to the subsequent disciplinary action. Salon Ambience agreed to pay \$1,000 in forfeiture and costs in the earlier disciplinary proceeding. It is appropriate that the penalty increase with successive violations. Weighing these considerations, this decision recommends that the Board impose a forfeiture of \$1,200 for the two violations, as recommended by the Division of Enforcement.

Because the violations have been corrected, Salon Ambience should be able to continue to provide barbering and cosmetology services, consistent with the State's regulatory interest, provided it makes timely payment of the forfeiture amount. Accordingly, this decision would also adopt the Division's recommendation for the issuance of a reprimand.

Under Wis. Stat. § 440.22 when discipline is imposed on a credential-holder, the Board has the authority to impose all or part of the costs of a proceeding on the credential-holder. The Board is directed to exercise discretion in its imposition of costs by considering certain factors, including the number of counts charged, contested, and proven; the nature of the misconduct; the level of discipline; the respondent's cooperation with the disciplinary process; prior discipline; and other relevant circumstances. In this case, the misconduct is serious, the level of discipline is relatively high, there have been previous disciplinary proceedings, and the respondent did not cooperate with the disciplinary process (albeit through a total absence of communication). The principal mitigating circumstance is the correction of the violations. The Division of Enforcement is not asking that Salon Ambiance pay the full costs of investigating and prosecuting this matter and is not asking that it pay any of the hearing examiner costs. The \$500 requested in costs is proportionate and appropriate.

ORDER

For the reasons set forth above, IT IS ORDERED that the Respondent Salon Ambiance be and is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED that the Respondent shall pay the Department of Regulation and Licensing a forfeiture of **ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00)**.

IT IS FURTHER ORDERED that Respondent shall pay costs in this matter in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**.

IT IS FURTHER ORDERED that a down payment of **THREE HUNDRED DOLLARS (\$300.00)** shall be submitted within ninety (90) days from the date of this order and five more payments of **TWO HUNDRED EIGHTY DOLLARS (\$280.00)** will be due every sixty (60) days from the previous payment until the full **ONE THOUSAND SEVEN HUNDRED DOLLARS (\$1,700.00)** is paid. Payments shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to:

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

IT IS FURTHER ORDERED that in the event Salon Ambiance fails to timely submit payment of the forfeiture and costs as set forth above, the establishment license (#080 0028822) **SHALL BE SUSPENDED**, without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said costs has been paid to the Department of Regulation and Licensing and its failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED that file 07 BAC 122, be and hereby is closed as to Respondent Salon Ambiance.

Dated at Madison, Wisconsin on April 22, 2009.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Peter C. Anderson
Administrative Law Judge