

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

SHANNON K. LUND,

RESPONDENT.

:
:
:
:
:
:

FINAL DECISION AND ORDER

ORDER 0000920

Division of Enforcement Case No. 09 BAC 044

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

Shannon K. Lund
3925 Margaret Street
Madison, WI 53714

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Barbering and Cosmetology Examining Board (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 Shannon K. Lund is licensed in the State of Wisconsin as a barbering and cosmetology practitioner, having license # 82-87790. This license was first granted on November 16, 2007 and is current through March 31, 2013. The most recent address on file with the Department for Ms. Lund is 3925 Margaret Street, Madison, WI 53714.
2. On or about May 21, 2009, the Department received a complaint alleging that Ms. Lund (previously known as Shannon K. Connors) was leasing a booth without the required barbering and cosmetology manager license and barbering and cosmetology establishment

license. The complaint alleged that the unlicensed practice was occurring at Co Leigh Co Salon LLC (license #80-34396), which is owned and managed by Nicole L. Moser (license #81-31302).

3. On March 4, 2011, an investigator from the Department performed an unannounced inspection of Co Leigh Co Salon LLC. No sanitation violations were discovered upon inspection. Neither Ms. Lund nor Ms. Moser were present during the inspection. The investigator advised the practitioner present of the allegations and requested a response from Ms. Moser.
4. On March 5, 2011, Ms. Moser contacted the investigator and stated that Ms. Lund was no longer under contract with her and had terminated her relationship with Co Leigh Co Salon LLC. Ms. Moser stated that she had executed a booth lease agreement with Ms. Lund.
5. On March 10, 2011, Ms. Moser provided copies of two booth lease agreements to the Investigator entitled "Work Station Renter/Independent Contractor Agreement". The first agreement (2007 Agreement), signed by Ms. Lund (then known as Shannon Connors) and Ms. Moser, had an effective date of December 1, 2007 and expired on November 30, 2009. The second agreement (2009 Agreement), signed by Ms. Lund and Ms. Moser, had an effective date of December 1, 2009, and was terminated on November 30, 2010.
6. Language contained in both of the booth agreements attempted to circumvent the requirements of chair or booth leasing contained in Wis. Admin. Code § BC 3.02(2).
7. The 2007 Agreement contains the following:
 - a. Under paragraph C, the parties agreed that "Associate desires to rent a work station area from Establishment Owner, and perform general cosmetology services for the general public[;]".
 - b. Under paragraph 3 titled "Establishment Owner's Duties", the parties agreed in subsection (c.) that Ms. Moser would "maintain the Manager's License [f]or the premises and provide all of the duties, requirements, [s]upervision, management and instruction required by the Wisconsin Department of Licensing and Regulations."
 - c. In paragraph 7 titled "Relationship of the Parties", the parties agreed in subsection (b.) that "[t]he Establishment Owner shall maintain the Manager's License for the premises and provide all requirements of the duties, supervision, management and instruction required by the Wisconsin Department of Licensing and Regulations."
 - d. In paragraph 7 titled "Relationship of the Parties", the parties agreed in subsection (c.) that "[t]he Associate is not subject to the Establishment Owner's control or direction."
 - e. In paragraph 7 titled "Relationship of the Parties", the parties agreed in subsection (e.) that "[t]he Establishment Owner is not hiring, supervising, or paying the Associate and provides [n]o equipment, materials or labor other than those contained in this agreement."
8. The 2009 Agreement contains the following:

- a. Under paragraph E, the parties agreed that “Associate desires to rent a work station area from Establishment Owner, and perform general cosmetology services for the general public[;]”.
 - b. Under paragraph 4 titled “Establishment Owner’s Duties”, the parties agreed in subsection (b.) that Ms. Moser would “maintain the Manager’s License and Establishment License for the premises and provide all of the duties, requirements, supervision, management and instruction required by the Wisconsin Department of Licensing and Regulations.”
 - c. In paragraph 8 titled “Relationship of the Parties”, the parties agreed that “[t]he parties intend this Agreement to establish an Independent Contractor relationship. The Establishment Owner only provides space for Associate to conduct Associate’s cosmetology services, and the conduct and control of all services performed are the sole responsibility of the Associate. Associate is **not** considered an agent or employee of the Establishment Owner for any purpose, and is **not** entitled to any benefits of any employer/employee relationship.” (emphasis in original).
 - d. In paragraph 8 titled “Relationship of the Parties”, the parties agreed in subsection (f.) that “[t]he Establishment Owner is not hiring, supervising, or paying the Associate...[t]he parties recognize that the Establishment Owner is to provide all the services necessary and required by the Wisconsin Department of Licensing and Regulation of a holder of a Management License.”
9. During the three years covered by the 2007 Agreement and 2009 Agreement, Ms. Lund continuously operated the booth under the terms of the lease with Ms. Moser and Co Leigh Co Salon LLC without a barbering and cosmetology manager license or a barbering and cosmetology establishment license. Following termination of the 2009 Agreement, Ms. Lund no longer leases a booth at and is not employed by Ms. Moser and Co Leigh Co Salon LLC.
 10. In resolution of this matter, Respondent Shannon K. Lund 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, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
2. By the conduct described in Findings of Fact paragraphs 5-9, Respondent Shannon K. Lund has violated Wis. Admin. Code §§ BC 2.045(1) and 3.01(1) by practicing barbering and cosmetology services outside the confines of a licensed establishment, when she operated a leased booth without the manager’s license and establishment license required by Wis. Admin. Code § BC 3.02(2)(b).
3. As a result of these violations, Respondent Shannon K. Lund is subject to discipline pursuant to Wis. Stat. § 454.15(2)(i) and § 454.15(3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondent Shannon K. Lund (license #82-87790) is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED that:

2. Respondent Shannon K. Lund shall pay a **FORFEITURE** in the amount of **\$500.00** and **COSTS** in the amount of **\$270.00** for a total of **\$770.00**.
3. A down payment of \$270.00 shall be submitted within 60 days of the date of this order and two more payments of \$250.00 will be due every 60 days from the date of the previous payment due date until the full \$770.00 is paid in full.
4. Payment of the costs and forfeiture shall be made 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) 261-7904, 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 Respondent's 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 Respondent fails to timely submit payment of the costs and forfeiture as set forth above, the Respondent's license (#82-87790) may, in the discretion of the board or its designee, be **SUSPENDED**, without further notice or hearing, until Respondent has complied with payment of the costs and forfeiture.
6. This Order is effective on the date of its signing.

Dated this 27 day of June, 2011.

WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD

By: Janice M. Boeck