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**Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

In the Matter of a Petition for an Administrative
Injunction Involving Jeffrey Scott Rabbitt and
Superior Kuts, Respondents.

FINAL DECISION AND ORDER
ORDER 0008927
Order No. _____

Division of Legal Services and Compliance Case No. 23 UNL 081

The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make 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, Department of Safety and Professional Services.

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 at Madison, Wisconsin on the 22nd day of December, 2023.

Aloysius Rohmeyer

Aloysius Rohmeyer
Chief Legal Counsel
Department of Safety and Professional Services



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

In the Matter of a Petition for an Administrative
Injunction Involving Jeffrey Scott Rabbitt and
Superior Kuts, Respondents.

DHA Case No. SPS-23-0054
DLSC Case No. 23 UNL 081

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

Jeffrey Scott Rabbitt
1413 Belknap St.
Superior, WI 54880

Superior Kuts
1413 Belknap St.
Superior, WI 54880.

Department of Safety and Professional Services
P.O. Box 8368
Madison, WI 53708-8368

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorneys Jon A. Derenne and Mark M. Jahnke
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Petition for an Administrative Injunction against Respondents Jeffrey Scott Rabbitt and Superior Kuts. The Petition for an Administrative Injunction alleged

Respondents engaged in the practice of barbering and cosmetology without the necessary credentials in violation of Wis. Stat. §§ 454.04(1)(a), 454.08(1)(b), 454.22(1), and 454.25(1)(b).

On August 3, 2023, the Division served Respondents with a copy of the Notice of Hearing and Petition for an Administrative Injunction by sending it to their last known address, which is 1413 Belknap Street, Superior, Wisconsin 54880 via regular and certified mail. Respondents failed to file an Answer to the Petition for an Administrative Injunction within 20 days from the date of service, as required by Wis. Admin. Code § SPS 3.08, and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on September 12, 2023.

At the September 12, 2023 telephone prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 3.13 and Wis. Admin. Code § HA 1.07(3). In light of Respondents' failure to file an Answer to the Petition for an Administrative Injunction and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ), Kristin P. Fredrick, found Respondents to be in default and issued a Notice of Default and Order on September 12, 2023. Consistent with this notice, the Division filed a recommended proposed decision and order by the deadline of October 13, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–14 are taken from the Division's Petition for an Administrative Injunction against Respondents filed in this matter.

1. Respondent Jeffrey Scott Rabbitt (Rabbitt) is not and has never been licensed in the state of Wisconsin as a barber or cosmetologist, nor is he a barber or cosmetology apprentice, student, or temporary permit holder in the state of Wisconsin. He is the operator of Respondent Superior Kuts, located at 1413 Belknap Street, Superior, Wisconsin 54880.

2. Respondent Rabbitt does not and never has held a barbering or cosmetology establishment license in Wisconsin.

3. Respondent Superior Kuts does not and never has held a barbering or cosmetology establishment license in Wisconsin.

4. On May 9, 2023, the Superior Police Department executed a search warrant at the Superior Kuts premises. The police discovered fentanyl in the establishment in an unlocked drawer near hair cutting implements, and within reach of clients.

5. On May 11, 2023, Respondent Rabbitt was charged in Douglas County Circuit Court Case Number 2023CF000186 with one count of Maintaining a Drug Trafficking Place, a class I felony, in violation of Wis. Stat. § 961.42(1); one count of Possession of Narcotic Drugs, a class I felony, in violation of Wis. Stat. § 961.41(3g)(am); one count of Bail Jumping, a class A

misdemeanor, in violation of Wis. Stat. § 946.49(1)(a); and one count of Possession of Drug Paraphernalia, a class U misdemeanor, in violation of Wis. Stat. § 961.573(1).

6. On May 18, 2023, the Department received a complaint from the Superior Police Department alleging that Respondent Rabbitt was engaged in drug trafficking at Superior Kuts. After determining Respondents are not licensed to provide barbering or cosmetology services or serve as a barbering or cosmetology establishment, the Division of Legal Services and Compliance (DLSC) opened case number 23 UNL 081 (RBR) against Respondents.

7. On May 24, 2023, the Department sent a cease-and-desist letter to Respondents demanding that they immediately cease and desist from providing barbering services in Wisconsin.

8. An August 2, 2023 review of Respondent Superior Kuts's website indicates that the establishment is currently open. There are several reviews on the website for hair cut services provided by Respondent Rabbitt, one of which was posted in the last week.

9. Pursuant to Wis. Stat. § 454.20(2), "barbering" is defined as, "for compensation, arranging, styling, dressing, shampooing, cleansing, curling, dyeing, tinting, coloring, bleaching, waxing, waving, straightening, cutting, shaving, trimming, relaxing, singeing, or performing similar work upon the hair of the head, neck, or face of any person by any means."

10. Pursuant to Wis. Stat. § 454.01(7m)(a), the definition of cosmetology includes the practice of barbering.

11. Pursuant to Wis. Stat. §§ 454.04(1)(a) and 454.22(1), individuals must be licensed as a barber or cosmetologist, hold a temporary permit, or be a barbering or cosmetology student or apprentice in order to practice barbering or cosmetology.

12. Pursuant to Wis. Stat. §§ 454.08(1)(b) and 454.25(1)(b), no person may practice barbering or cosmetology in an unlicensed establishment.

13. Pursuant to Wis. Stat. § 440.21, the Department is authorized to enforce laws requiring a credential.

Facts Related to Default

14. The Petition for an Administrative Injunction and Notice of Hearing in this matter were served on Respondents on August 3, 2023 to their last known address, by both certified and regular mail consistent with Wis. Admin. Code § SPS 3.07. The Notice of Hearing advised Respondents: "If you do not provide a proper Answer within twenty (20) days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from working as a barber, cosmetologist, or a barbering or cosmetology establishment without a proper credential, or use of a related title. If a special order is issued as a

result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than \$10,000 for each offense.”

15. Respondents failed to file an Answer as required.

16. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for September 12, 2023 at 10:00 a.m. Notice of this prehearing conference was sent to both parties, with instructions that Respondents provide to the ALJ a telephone number at which they could be reached no later than September 11, 2023. The Notice instructed Respondents: “The Respondents’ failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondents.”

17. Respondents failed to provide a telephone number and could not be reached for the September 12, 2023 prehearing conference.

18. Based on Respondents’ failure to Answer the Petition for an Administrative Injunction and failure to appear at the September 12, 2023 prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 3.13 and Wis. Admin. Code § HA 1.07(3)I.

19. On September 12, 2023, the ALJ issued a Notice of Default and Order, finding Respondents to be in Default, and requiring the Division to file and serve no later than October 13, 2023, a recommended proposed decision and order.

20. The Division timely filed its recommended proposed decision and order by October 13, 2023.

DISCUSSION

Jurisdictional Authority

The Wisconsin Department of Safety and Professional Services has jurisdiction over this matter pursuant to Wis. Stat. § 454.29. Wisconsin Stat. § 440.03(1) provides that the Department “may promulgate rules defining uniform procedures to be used by the department . . . and all examining boards and affiliated credentialing boards attached to the department or an examining board, for . . . conducting [disciplinary] hearings.” These rules are codified in Wis. Admin. Code ch. SPS 2.

Wisconsin Stat. § 440.21 provides that the Department “may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.” These rules are codified in Wis. Admin. Code ch. SPS 3.

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. §§ 227.43(1m), 227.46(1), and Wis. Admin. Code § SPS 3.09.

Default

As stated in the September 12, 2023 Notice of Default and Order, Respondents are in default for failing to file an Answer to the Petition for an Administrative Injunction and failing to appear for the telephone prehearing conference. As a result, an order may be entered against Respondents on the basis of the Petition and other evidence. *See* Wis. Admin. Code § SPS 3.13; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violation of Wis. Stat. §§ 454.04(1)(a), 454.08(1)(b), 454.22(1), and 454.25(2):

The Division alleges Respondents have engaged in the practice of barbering without a credential in violation of Wis. Stat. §§ 454.04(1)(a), 454.08(1)(b), 454.22(1) and 454.25(2). The undisputed facts of this case show that Respondent was practicing as a barber and operating a barbering establishment without a credential. Wisconsin Stat. § 454.22(1) prohibits the unlicensed practice of barbering. It states:

No person may engage in barbering unless the person is one of the following: (a) A licensed barber. (c) An apprentice in barbering under s. 454.26. (d) A student in a barbering course of instruction. I A person who holds a temporary permit to practice barbering granted by the department under s. 454.23(7). (f) A licensed cosmetologist. (h) An apprentice in cosmetology under s. 454.10. (i) A student in a cosmetology course of instruction. (j) A person who holds a temporary permit to practice cosmetology granted by the cosmetology examining board under s. 454.06(10).

The act of cutting hair constitutes the practice of barbering and/or the practice of cosmetology. Pursuant to Wis. Stat. § 454.20(2), barbering means, among other things, cutting hair for compensation. Wisconsin Stat. § 454.25 prohibits the practice of barbering outside of a licensed establishment. Specifically, subparagraph (1)(b) states:

Except as permitted under par. (ag) or (ar),¹ no person may practice barbering in an establishment unless the establishment is a licensed barbering establishment under sub. (2) or licensed cosmetology establishment under s. 454.08 (2).

Pursuant to Wis. Stat. § 454.01, the practice of cosmetology includes the practice of barbering, among other practices. Wisconsin Stat. § 454.04(1)(a) prohibits the practice of cosmetology without a license and Wis. Stat. § 454.08(1)(b) prohibits the practice of cosmetology outside of a licensed establishment.

¹ Respondent Rabbitt and Respondent Superior Kuts establishment do not meet the exceptions in this paragraph.

The undisputed facts of this case establish that Respondents were providing haircuts to members of the public, which was supported by evidence of customer reviews found online. Additionally, the Division staff observed the Respondents' website which indicated it was open and remained open as of May 31, 2023 and published recent customer surveys relating to Jeffery Scott Rabbitt. Further, it is uncontested that hair cutting equipment and fentanyl were discovered at the Respondents' premises pursuant to a search warrant executed by the City of Superior Police Department at the Respondents' premises. Department records show that as of May 31, 2023, Respondent Jeffrey Scott Rabbitt was not a licensed barber. Similarly, Department records show that as of May 31, 2023, Respondent Superior Kuts was not a licensed barbering establishment.

Therefore, the preponderance of undisputed evidence establish that the Respondents violated the law by engaging in the unauthorized and unlicensed practice of barbering and/or cosmetology outside of a licensed establishment in violation of Wis. Stat. §§ 454.04(1)(a), 454.08(1)(b), 454.22(1) and 454.25(2).

Administrative Injunction

The Department requests the ALJ issue a special order enjoining Respondent Jeffrey Scott Rabbitt and Respondent Superior Kuts from the practice of barbering without a credential. An administrative injunction is permitted under Wis. Stat. § 440.21(2), which provides:

If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

Based upon the undisputed facts of this case, enjoining the Respondents from the practice of barbering and operating a barbering establishment without a credential is warranted.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction over this matter pursuant to Chapter 440 of the Wisconsin Statutes, Wis. Stat. § 454.29, and Wis. Admin. Code ch. SPS 3.
2. The Respondents were found in default pursuant to Wis. Admin. Code § SPS 3.13; Wis. Admin. Code § HA 1.07(3)(b) and (c), based upon their failure to file an answer to the Complaint and their failure to appear for the prehearing conference.
3. The preponderance of the evidence establishes that the Respondents have engaged in the unauthorized and unlicensed practice of barbering and cosmetology at an establishment without the appropriate credential or license in violation of Wis. Stat. §§ 454.04(1)(a), 454.08(1)(b), 454.22(1) and 454.25(2).

4. Based upon the Respondents' violations of law, a special order enjoining the Respondents from the practice of barbering or operating a barbering establishment without a credential is reasonable and warranted under Wis. Stat. § 440.21(2).
5. The Division of Hearings and Appeals has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. §§ 227.43(1m), 227.46(1), and Wis. Admin. Code §§ SPS 2.10 and 3.09.

ORDER

1. Unless and until Respondent Jeffrey Scott Rabbitt is properly licensed as a barber by the Wisconsin Department of Safety and Professional Services, or as a cosmetologist by the Wisconsin Cosmetology Examining Board, Respondent is enjoined and prohibited from the practice of barbering in the state of Wisconsin.

2. Unless and until Respondent Superior Kuts is properly licensed as a barbering establishment by the Wisconsin Department of Safety and Professional Services, or as a cosmetology establishment by the Wisconsin Cosmetology Examining Board, Respondent is enjoined and prohibited from operating a barbering or cosmetology establishment in the state of Wisconsin.

3. Respondents shall provide a copy of this Administrative Injunction with any application submitted by Respondents for a credential issued by the Department.

4. If the Department determines that there is probable cause to believe that Respondents have violated any terms of this Administrative Injunction, the Department may refer the violations covered by this decision and order to any appropriate prosecutorial unit for review for possible criminal charges.

5. Violation of this special order may result in a forfeiture of up to \$10,000 for each day of violation. See Wis. Stat. § 440.21(4)(a).

Dated at Madison, Wisconsin on November 8, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Kristin P. Fredrick
Administrative Law Judge