

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BOARD OF COSMETOLOGY

In the matter of:

**NAIL OASIS – MERLE NORMAN
KCS COSMETICS, OWNER**

**Docket No. 2001-1291
Complaint No. 28937**

**Cosmetology Establishment
License No. 27-06-114524**

Former Complaint No. 27-00-5305-00

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Cosmetology, hereafter the "Board", on September 8, 2003; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Gregory Holiday, Administrative Law Judge, dated May 23, 2003;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Nail Oasis – Merle Norman, KCS Cosmetics, Owner, License No. 27-06-114524, hereafter "Respondent", having been found in violation of Sections 604(h); 1204(6) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(h); MCL 339.1204(6) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:

1. Respondent shall pay a FINE in the amount of One Thousand Dollars and 00/100 Cents (\$1,000.00), a higher fine than recommended by the Administrative Law Judge, in accordance with the number of violations committed, said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the date of mailing of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 28937 clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the Department of Consumer & Industry Services, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.

2. Respondent Nail Oasis – Merle Norman, KCS Cosmetics, Owner, Cosmetology Establishment, License No. 27-06-114524 shall be SUSPENDED and any current or future applications for licensure, relicensure or registration renewal shall be DENIED if Respondent fails to fully comply with each and every condition imposed by this Final Order.

This Final Order shall not be construed as limiting the Department of Consumer & Industry Services, any other agency of the State of Michigan, or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

Failure to comply with the provisions of this Final order is itself a violation of the Code pursuant to Section 604(k) and may result in further disciplinary action.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this 8th day of September, 2003.

BY: _____
Cynthia A. Stramecky, Chairperson

Date mailed: _____

Proof of Compliance shall be filed with:

Department of Labor & Economic Growth
Bureau of Commercial Services
Enforcement Division
Audit Unit
P.O. Box 30018
Lansing, MI 48909

This is the last and final page of a Final Order in the matter of Nail Oasis –Merle Norman, KCS Cosmetics, Owner, Complaint No. 28937, before the Michigan State Board of Cosmetology, consisting of three (2) pages, this page included.

STATE OF MICHIGAN

**DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-1291

**Bureau of Commercial Services,
Petitioner**

Agency No. 27-00-5305-00

v

**Agency: Bureau of Commercial
Services**

**Nail Oasis - Merle Norman
KCS Cosmetics, Owner,
Respondent**

Case Type: Sanction

**Issued and entered
this 23rd day of May, 2003
by Gregory Holiday
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint dated November 1, 2000, charging Respondent with one or more violations of the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.* Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*, Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing.

The hearing was scheduled to be held on September 20, 2001 at 9:30 a.m., at the Department of Labor & Economic Growth, Bureau of Hearings, State Executive Plaza Building, 8th Floor, 1200 Sixth Street, Detroit, Michigan. At Respondent-s request, with no

objection from Petitioner, the hearing was postponed to November 13, 2001 at 9:30 a.m. At that hearing, the parties consented to a dismissal without prejudice and an Order For Dismissal was issued on November 19, 2001. On February 20, 2003, a Request for Hearing was filed with the Bureau of Hearings on the basis that the parties failed to reach a settlement. A Notice of Remand Hearing was issued which scheduled a hearing for Thursday, April 10, 2003 at 9:00 a.m., at Cadillac Place, 2nd Floor Annex, Room 2-700, 3026 West Grand Boulevard, Detroit, Michigan, and the same proceeded as scheduled. Gregory Holiday presided as Administrative Law Judge. Tracey Hampton Yarborough, Esq., appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Consumer and Industry Services (Petitioner). Bonnie Milke, Owner, appeared for Nail Oasis - Merle Norman, KCS Cosmetics (Respondent).

ISSUES AND APPLICABLE LAW

The general issue presented is whether Respondent violated the Code, with respect to the regulation of a cosmetology establishment. The specific issues are whether Respondent violated Sections 604(h) and 1204(6) of the Code, which provide, in pertinent part:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

Sec. 1204...(6) The license of the establishment and of each individual working in the establishment shall be displayed in a prominent place which is visible to the public at all times. The license of an individual working in the establishment may be posted at the individual's workstation.

Neither party offered any testimony or exhibits for consideration at the hearing.

FINDINGS OF FACT

By agreement of the parties, the following facts are found:

1. On or about September 26, 2000, an inspection was conducted of Nail Oasis-Merle Norman by an inspector from the Department of Labor & Economic Growth. Respondent or Respondent's representative received a copy of the inspection report on the date of the inspection. At the inspection, violations of the Code were observed, as identified in paragraph A below:

1. The license of the establishment and all persons working in the establishment were not displayed in a prominent place visible to the public.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) ' 60.48, page 230. The

burden of proof is upon Petitioner to prove, by a preponderance of the evidence that grounds exist for the imposition of sanctions upon Respondent. 1990 AACS, R 339.1763.

Petitioner has established that Respondent violated Section 604(h) of the Code by violating Section 1204(6) of the Code in connection with paragraph A above.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent violated Section 604(h) and 1204(6) of the Code as described in this Hearing Report. Both parties recommended that the Board of Cosmetology impose a civil fine in the amount of \$500.00 to be paid within 60 days following the issuance of a final order.

It is recommended that the Board include the following as sanctions in this matter:

1. Payment of a civil fine in the amount of \$500.00.
2. In the event the civil fine has not been paid within 60 days following the issuance of a final order, then all Article 12 licenses should be suspended and no new or renewal licenses should be issued until the civil fine has been paid.

Gregory Holiday
Administrative Law Judge