

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

In the matter of:

KIMBERLY BEAUTY COLLEGE
HANG LE THI TRAN, OWNER
Cosmetology School
License No. 27-07-000430

Docket No. 2002-867
Complaint No. 29503
Former Complaint No. 27-01-0894-00

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 Lauren G. Van Steel, Administrative Law Judge, dated May 13, 2003;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Kimberly Beauty College, by its owner Hang Le Thi Tran, Owner, Licensed Cosmetology School, License No. 27-07-000430, hereafter "Respondent", having been found in violation of Sections 604(c) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(c); and Rules 38; 41 of the State Board of Cosmetology General Rules, *promulgated hereunder*, being 1999 MR 11, R 338.2138; 1999 MR 11, R 338.2141 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 Four Thousand Dollars and 00/100 Cents (\$4,000.00), 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. 29503 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 shall make RESTITUTION to Christina Ortiz in the Amount of Two Thousand Two Hundred Dollars and 00/100 Cents (\$2,200.00) by certified check made payable to Christina Ortiz, and mailed to 3543 Edmonton Trail, Wayland, MI 49348. Restitution shall be paid within sixty (60) days from the mailing date of this Final Order.
3. Respondent Kimberly Beauty College, Hang Le Thi Tran, Owner, Licensed Cosmetology School, License No. 27-07-000430 shall be REVOKED 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 including payment –in-full of restitution and fine within the sixty (60) day time period set forth in 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

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

In the matter of

Bureau of Commercial Services,
Petitioner

v

Kimberly Beauty College
Hang Le Thi Tran, Owner,
Respondent

Docket No. 2002-867

Agency No. 27-01-0894-00

Agency: Bureau of Commercial Services

Case Type: Sanction

Issued and entered
this 13th day of May, 2003
by Lauren G. Van Steel
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracey Hampton Yarborough, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Michael S. Dantuma, Attorney at Law, appeared on behalf of Respondent, Kimberly Beauty College, Hang Le Thi Tran, Owner.

This proceeding commenced with the filing of a Notice of Hearing dated June 6, 2002, scheduling a hearing for July 24, 2002. The Notice of Hearing was issued pursuant to a Formal Complaint dated March 20, 2002, which alleged noncompliance with the Michigan Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (hereafter "Code"), specifically Section 604(c), as well as Rules 38 and 41 of the State Board of Cosmetology General Rules, being 1999 MR 11, R338.2138 and 1999 MR 11, R338.2141.

Docket No. 2002-867

Page 2

On August 19, 2002, an Order Granting Adjournment was issued, rescheduling hearing for October 11, 2002. On October 7, 2002, another Order Granting Adjournment was issued, rescheduling hearing for November 14, 2002.

On November 14, 2002, hearing was commenced as scheduled. By Order for Continuance dated November 18, 2002, hearing was continued until February 10, 2003.

On February 10, 2003, the continued hearing was held as scheduled. The complainant, Christina Ortiz, testified for Petitioner. At the request of Respondent's attorney, and by Order of February 12, 2003, the hearing was continued until March 3, 2003.

On March 3, 2003, the continued hearing was held as scheduled. Ms. Ortiz, Jeanne Hoin, Regulation Agent, and Shannon Bush, Cosmetology Investigator, testified for Petitioner. The following exhibits were offered at hearing by Petitioner and admitted into the record:

Petitioners Exhibit 1	Receipt #1059, dated 7/10/2000, for \$2,200.00.
Petitioners Exhibit 2	Cosmetology Student Daily Record, February 2001
Petitioners Exhibit 3	Letter to Respondent from Jeanne Hoin, Regulation Agent, dated 4/27/2001
Petitioners Exhibit 4	Letter to Respondent from Jeanne Hoin, dated 11/15/2001
Petitioners Exhibit 5	Michigan Board of Cosmetology Verification of Licensure for Quoc-Dinh Nguyen as of 6/06/2002

Hang Le Thi (Lisa) Tran, Owner of Kimberly Beauty College, testified for Respondent. The following exhibits were also admitted into the record for Respondent:

Respondents Exhibit A	Judgment, 62A Judicial District Court, dated 5/03/2002, Case No. 01-6948-GC
Respondents Exhibit B	Student Agreement, dated 7/07/2000
Respondents Exhibit C	Student Handbook Acknowledgment, dated 7/07/2000
Respondents Exhibit D	Affidavit and Claim, 62A District Court - Small Claims, Case No. 01-6821-SC, dated 8/16/2001

The record was closed after the hearing on March 3, 2003.

ISSUES AND APPLICABLE LAW

The issues in this matter are whether Respondent has violated Section 604(c) of the Code, and/or Rules 38 and 41 of the State Board of Cosmetology General Rules, which provide as follows:

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:

* * *

(c) Violates a rule of conduct of an occupation [MCL 339.604(c); emphasis supplied].

Rule 38 of the Cosmetology General Rules states:

Rule 38 Theory shall be taught throughout a course as applied to practical training under

1205(5)(c) of the act [1999 MR 11, R338.2138; emphasis supplied].

Rule 41 of the Cosmetology General Rules states:

Rule 41 A student shall be supervised by a licensed instructor for all credited time and services [1999 MR 11, R338.2141; emphasis supplied].

FINDINGS OF FACT

The undersigned makes the following findings of fact, based on a preponderance of the evidence in the record:

1. Respondent operated a licensed cosmetology school at all times relevant to this matter.
2. On July 7, 2000, the complainant, Christina Ortiz, picked up an application to attend Respondent school.
3. It is more likely than not that Ms. Ortiz did not personally sign an acknowledgment of receipt of a school handbook on July 7, 2000. Although Respondent has produced a signed acknowledgment dated July 7, 2000, Ms. Ortiz has credibly denied that it contains her true signature [Resp. Exh. C].

4. On July 10, 2000, Ms. Ortiz signed a 'Student Agreement' for 1,500 hours of instruction to become licensed as a cosmetologist and paid \$2,200.00 cash to Respondent school [Pet. Exh. 1]. The amount paid was \$600.00 short of the stated tuition fee of \$2,800.00, which was itself a one-half discount of the standard tuition fee of \$5,600.00. The one-half discount was based on the stated term that Ms. Ortiz would complete her period of instruction within 10 months [Resp. Exh. B].
5. On July 17, 2000, Ms. Ortiz began to attend Respondent school on a full-time basis.
6. After her first day attending Respondent school, Ms. Ortiz decided it was not what she wanted. She spoke to one of Respondent's staff persons, Quoc-Dinh (Tony) Nguyen, about the return of her money, but was told that her money had already been deposited and could not be returned to her at that time. Ms. Ortiz continued as a student at Respondent school.
7. From July 2000 to October 2000, Ms. Ortiz completed 350 hours of training. Respondent provided theory instruction to Ms. Ortiz during her initial 350 hours of training. Ms. Ortiz recorded her training hours each week on a 'Cosmetology Student Daily Record' form [Pet. Exh. 2].
8. After Ms. Ortiz completed 350 hours of training, but while she was still enrolled in Respondent school (between October 2000 and February 2001), Respondent failed to provide any appropriate theory instruction to

her, other than having Ms. Ortiz continue to read her instruction book and ask questions of staff persons. At least one of the staff persons Ms. Ortiz was expected to ask questions of, Mr. Nguyen, was not a licensed cosmetology instructor at the time.

9. On at least one occasion while Ms. Ortiz was enrolled as a student at Respondent school, she was not given proper supervision by any cosmetology instructor, licensed or unlicensed. On that occasion, Ms. Ortiz cut a customer's hair and looked all around the school to have the haircut checked by an instructor. No one else was present.
10. On more than one occasion beginning in July 2000, Ms. Ortiz's practical training, consisting of cutting dolls' hair and later customers' hair, was checked and supervised only by Mr. Nguyen, who was not a licensed cosmetology instructor at the time. Mr. Nguyen did not obtain a limited cosmetology instructor license until February 5, 2001 [Pet. Exh. 5].
11. Although there may have been licensed cosmetology instructors on the school premises at the time that Mr. Nguyen supervised Ms. Ortiz's practical training, it was Mr. Nguyen, not the licensed cosmetology instructors, who were acting as Ms. Ortiz's instructor and supervisor.
12. Ms. Ortiz did not complete her full-time instruction at Respondent school within 10 months as stated in the July 10, 2000 Student Agreement, but Respondent also failed to meet the terms of the Agreement by failing to

provide theory instruction throughout the full course and by failing to have Ms. Ortiz's credited time and services supervised at all times by a licensed cosmetology instructor, as required by administrative rule.

13. On or about February 7, 2001, Ms. Ortiz left Respondent school without completing the cosmetology instruction, because she thought she was not being properly taught. When she requested a copy of her transcript so she could transfer to another cosmetology school, Respondent refused to give her the transcript copy until she paid the \$600.00 balance owing for the tuition fee. When Ms. Ortiz did not pay the \$600.00, she was asked to leave the premises of Respondent school.
14. The Department's investigator, Jeanne Hoin, pursued the issue of 'senior's theory curriculum with Respondent after Ms. Ortiz left the school [Pet. Exh. 3 & 4].
15. Ms. Ortiz has not attended any other cosmetology school before or since attending Respondent school. She intends to save up the tuition money to attend another cosmetology school.
16. Ms. Ortiz filed a civil action against Respondent in 62A District Court. By Judgment dated May 3, 2002, the Court determined that Ms. Ortiz had failed to state a cause of action and dismissed the case [Resp. Exh. A].

17. Respondent school was burned in a fire after Ms. Ortiz left and is not currently in operation. The whereabouts of some of Respondent's records is in question.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings [8 Callaghan's Michigan Pleading and Practice, '60.48, at 230 (2d ed. 1994)]. The burden of proof in this matter is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent.

Based upon the above findings of fact, it is concluded that Petitioner has proven by a preponderance of the evidence that Respondent has violated Cosmetology General Rules 38 and 41. Respondent violated Rule 38 by failing to teach theory to Ms. Ortiz throughout the full course of training [1999 MR 11, R338.2138]. Further, Respondent violated Rule 41 by failing to have a licensed cosmetology instructor supervise Ms. Ortiz for all credited time and services [1999 MR 11, R338.2141]. Accordingly, Petitioner has also proven by a preponderance of the evidence that Respondent has violated Section 604(c) of the Code, by violating rules of conduct of an occupation [MCL 339.604(c)].

RECOMMENDATIONS

Based upon the above findings of fact and conclusions of law, the following recommendations are made by the undersigned to the Board of Cosmetology:

2. A civil fine of \$4,000.00 be assessed against Respondent;
\$2,200.00 in restitution be ordered paid to Christina Ortiz; and

Any and all licenses or registrations under the jurisdiction of the Code held by Respondent be revoked, if the above fine and restitution amounts are not paid within the time frame set forth by the Board in its final order.

Lauren G. Van Steel
Administrative Law Judge