

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

DEPARTMENT OF LABOR &
ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES
ex rel BARB BRANSCOMBE

Docket No. 2004-410
Complaint No. 31803
Former Complaint No. 27-02-3795-00

Complainant,

v

BEST NAILS
DIANA XUAN TRAN, OWNER
Cosmetology Establishment
Limited License No. 27-06-116259

Respondent.

AMENDED FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Cosmetology, hereafter the "Board", on October 11, 2004; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Robert H. Mourning, Administrative Law Judge, dated July 9, 2004;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Best Nails, Diana Xuan Tran, Owner, Limited Licensed Cosmetology Establishment, License No. 27-06-116259, hereafter "Respondent", having been found in violation of Sections 604(c); 604(h); 1204(6) of the Michigan Occupational Code, 1980 P.A. 299, as *amended*, hereafter the "Code", MCL 339.604(c); MCL 339.604(h); MCL 339.1204(6) and Rules 28; 71(f); 79g(1)(h) of the Michigan State Board of Cosmetology General Rules, *promulgated hereunder*, being 1979 AC, R 338.2128 and 1999 MR 11, 338.2179g(1)(h);

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 Seven Thousand Dollars and 00/100 Cents (\$7,000.00), a higher fine than recommended by the Administrative Law Judge, in accordance with the Board's recommended minimum sanctions for the nature and number of violations committed, said fine shall be paid to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 31803 clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the Department of Labor & Economic Growth, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.
2. Respondent Best Nails, Diana Xuan Tran, Owner, Limited Licensed Cosmetology

Establishment, License No. 27-06-116259, shall be and hereby are IMMEDIATELY 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.

This Final Order shall not be construed as limiting the Department of Labor & Economic Growth, 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 ____ day of _____, 2005.

**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
Office Of Administrative Services
P.O. Box 30018
Lansing, MI 48909**

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF HEARINGS**

In the matter of	Docket No.	2004-410
Bureau of Commercial Services, Petitioner	Agency No.	31803
v	Agency:	Bureau of Commercial Services
Best Nails	Case Type:	Sanction
Diana Xuan Tran, Owner, Respondent		

**Issued and entered
this 9th day of July 2004
by Robert H. Mourning
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter is commenced with the issuance of a Formal Complaint dated June 30, 2003, charging Diana Xuan Tran (Respondent) with one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101 *et seq.*

On April 9, 2004, a Notice of Hearing was mailed to the parties, scheduling a contested case hearing for May 28, 2004, at 9:30 a.m., in the hearing rooms of the Department of Labor & Economic Growth, Bureau of Hearings, 2922 Fuller Avenue, N.E., Suite 202B, 2nd Floor, Grand Rapids, Michigan.

On May 28, 2004, Attorney Elizabeth Band appeared on behalf of the Bureau of Commercial Services (Petitioner). The Respondent appeared and testified on her own behalf at the hearing.

The Petitioner offered the testimony of Jeanne Hoin, Inspector, and Barbara Branscombe, Complainant. The Petitioner offered the following exhibits, which were admitted into evidence:

Exhibit 1: Inspection Report, 4/4/03

Exhibit 2: Certification of Non-License for Thanh Bui, 4/7/03

Exhibit 3: Certification of Non-License for Kim Chi Duong, 4/7/03

Exhibit 4: Complaint from Barbara Branscombe, 9/19/02

ISSUES AND APPLICABLE LAW

The general issue is whether the Respondent violated the Code. The specific issues are whether the Respondent violated Sections 604(c) and (h) and 1204(6) of the Code and 1979 AC R 338.2128 and AACS, R 338.2179g(1)(h).

FINDINGS OF FACT

1. At all relevant times, the Respondent has been licensed for a cosmetology establishment under the Code.
2. The Respondent is the owner of Best Nails located at 1431 60th Street, Grand Rapids, Michigan. The Respondent's husband, Anthony Tran, is the manager of the establishment.
3. Sometime in late August 2002 or early September 2002, Barbara

Branscombe had a pedicure performed by an employee in the Respondent's establishment, which injured her feet. The injury to her feet was the result of the employee using a blade as part of the performance of the pedicure.

4. On September 19, 2002, Ms. Branscombe sent a complaint to the Department regarding the incident at the Respondent's establishment.
5. Before April 4, 2003, the Respondent made a visit to Vietnam and left her husband in charge of the establishment.
6. On April 4, 2003, Jeanne Hoin conducted an inspection of Best Nails and observed the following:
 - a. The licenses of Than Bui and Kim Chi Duong who were working in the establishment were not displayed in a prominent place visible to the public.
 - b. Bui and Duong performed cosmetological services without having a license issued by the Department.
 - c. The Respondent's employees used a blade in the performance of a pedicure.

CONCLUSIONS OF LAW

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

The Petitioner has presented substantial evidence to support the allegations in the Formal Complaint. Ms. Hoin is the only witness who has first-hand knowledge about the inspection conducted on April 4, 2003. The Respondent was in Vietnam on the date of the inspection and she did not offer the testimony of any of the persons who were present in her establishment on the date and time of the inspection. Ms. Hoin is a credible witness, and the Administrative Law Judge gives great weight to her testimony in deciding the issues in this case.

Accordingly, the Petitioner has proven, by a preponderance of the evidence, that the Respondent has violated Sections 604(c) and (h) and 1204(6) of the Code and Rules 28 and 79g(1)(h).

RECOMMENDATIONS

The Administrative Law Judge recommends that the Board impose the following sanctions on the Respondent:

1. A civil fine in the amount of \$1,000.00.
2. In the event that the civil fine is not paid within 60 days following the issuance of the Board's Final Order, then all licenses under the jurisdiction of the Board should be suspended and no new or renewal licenses should be issued until the civil fine is paid in full.

Robert H. Mourning
Administrative Law Judge

