

**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. 2002-251

Agency No. 27-00-6559-00

Agency: Bureau of Commercial Services

Case Type: Sanction

**Issued and entered
this 15th day of January, 2003
by Lauren G. Van Steel
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

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

This proceeding commenced with the filing of a Notice of Remand Hearing dated June 6, 2002, scheduling a hearing for July 24, 2002. On August 19, 2002, an Order Granting Adjournment was issued, rescheduling hearing for October 11, 2002.

The Notice of Remand Hearing was issued pursuant to a Formal Complaint dated December 28, 2000, which alleged noncompliance with the Michigan Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (hereafter "Code"), specifically Sections 604(c)&(h) and 1205(2)(e)&(5)(a), as well as Rules 32(1)(a), 35(2), 36(2)(c)&(e),

71(1)(f), 73(2) and 79c(1)(b)&(d) of the Board of Cosmetology General Rules, being 1999 MR 11, R338.2132(1)(a) [Note: the Formal Complaint cites R338.2132(a) in apparent error]; 1999 MR 11, R338.2135(2); 1999 MR 11, R338.2136(2)(c)&(e); 1999 AACS, R338.2171(1)(f); 1999 MR 11, R338.2173(2) and 1999 MR 11, R338.2179c(1)(b)&(d).

The hearing was held as scheduled on October 11, 2002. A stipulation of the parties was entered into the record as follows: Respondent admits to Paragraphs 1A, 1C, 1D, 1G, 1K and 1L of the Formal Complaint. Petitioner withdrew the balance of the allegations in the Formal Complaint, being Paragraphs 1B, 1E, 1F, 1H, 1I and 1J.

The following exhibits were offered by Petitioner and admitted into the record:

Petitioner's Exhibit 1	Memorandum Report of Investigation, dated 11/29/00
Petitioner's Exhibit 2	Memorandum of Findings, dated 9/22/00
Petitioner's Exhibit 3	Memorandum of Interview, dated 9/28/00
Petitioner's Exhibit 4	Memorandum of Findings, dated 9/28/00

Respondent did not offer any exhibits for the record. Neither party presented any witnesses to testify at the hearing.

At the hearing, Petitioner's representative requested that the Board of Cosmetology impose a \$4,000.00 fine and revoke Respondent's cosmetology license. Petitioner did not request that the Board order restitution to any person. Respondent's representative requested that only a minimal fine or suspension be imposed for the stipulated-violations, in light of Respondent's correction of violations and the fact that Respondent is no longer in business, after an arson fire in March 2002.

ISSUES AND APPLICABLE LAW

The issues in this matter are whether Respondent has violated Sections 604(c)&(h) and 1205(2)(e) of the Code, as alleged in Paragraphs 1A, 1K and 1L of the Formal Complaint, which provide in pertinent part 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.

* * *

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed [MCL 339.604(c)&(h)].

Sec. 1205(2) A school of cosmetology shall fulfill all of the following requirements:

* * *

(e) Shall provide for the display of the license of the school of cosmetology and of each instructor working in the school in a prominent place that is visible to the public at all times. * * * [MCL 339.1205(2)(e)].

Also at issue is whether Respondent violated certain administrative rules, as alleged in Paragraphs 1C, 1D and 1G of the Formal Complaint. Specifically, 1999 MR 11, R338.2132(1)(a) provides as follows:

Rule 32(1) A school or apprenticeship practitioner shall have all of the following items:

(a) Instructional visual aids for teaching the prescribed curriculum.

1999 MR 11, R338.2135(2) states in pertinent part:

Rule 35(2) A school or apprenticeship practitioner shall keep a monthly record of all student or apprentice enrollment. A copy of each month's report shall be placed on the school bulletin board in the student area. * * *

Further, 1999 AACS, R338.2171(1)(f) provides:

Rule 71(1) An owner of an establishment or school shall ensure that the establishment or school have all of the following:

(f) Covered waste containers that are large enough to contain 1 day's accumulation of waste materials.

The balance of the allegations contained in Paragraphs 1B, 1E, 1F, 1H, 1I and 1J of the Formal Complaint, concerning Section 1205(5)(a) of the Code and Administrative Rules found at 1999 MR 11, R338.2136(2)(c)&(e), 1999 MR 11, R338.2173(2), and 1999 MR 11, R338.2179c(1)(b)&(d), have been withdrawn by Petitioner and are thus not at issue.

FINDINGS OF FACT

Based on the record and the stipulation of the parties entered on the record, the undersigned makes the following findings of fact:

1. On or about September 22 and 28, 2000, inspections were conducted of Kimberly Beauty College by an inspector from the Department of Consumer & Industry Services. Respondent or Respondent's representative received a copy of the inspection report on September 28, 2000. The Cosmetology School Inspection Report is attached to the Formal Complaint as Exhibit 1. At said inspections, violations of the

Code and administrative rules were observed, as set forth in Paragraphs 1A, 1C, 1D, 1G, 1K and 1L of the Formal Complaint.

2. Respondent failed to provide for the display of the licenses of all instructors working in the school in a prominent place visible to the public (Paragraph 1A of Formal Complaint).
3. Respondent failed to have instructional visual aids for teaching the prescribed cosmetology curriculum (Paragraph 1C of the Formal Complaint).
4. Respondent failed to place copies of monthly student enrollment records on the school bulletin board in the student area (Paragraph 1D of the Formal Complaint).
5. Respondent failed to ensure that the school had covered waste containers large enough to contain one day's accumulation of waste materials (Paragraph 1G of the Formal Complaint).
6. Respondent has violated rules of conduct in practicing an occupation (Paragraph 1K of the Formal Complaint).
7. Respondent has violated a provision or rule for which a penalty is not otherwise prescribed (Paragraph 1L of the Formal Complaint).

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. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist., 428 Mich 248; 406 NW2d 825 (1987).

Based upon the above findings of fact and the stipulation of the parties entered on the record, Petitioner has proven by a preponderance of the evidence that Respondent has violated the Code and administrative rules as follows:

1. Respondent failed to provide for the display of the licenses of all instructors working in the school in a prominent place visible to the public (Paragraph 1A of Formal Complaint), contrary to Section 1205(2)(e) of the Code.
2. Respondent failed to have instructional visual aids for teaching the prescribed cosmetology curriculum (Paragraph 1C of the Formal Complaint), contrary to 1999 MR 11, R338.2132(1)(a).
3. Respondent failed to place copies of monthly student enrollment records on the school bulletin board in the student area (Paragraph 1D of the Formal Complaint), contrary to 1999 MR 11, R338.2135(2).
4. Respondent failed to ensure that the school had covered waste containers large enough to contain one day's accumulation of waste materials (Paragraph 1G of the Formal Complaint), contrary to 1999 AACS, R338.2171(1)(f).

5. Respondent has violated rules of conduct in practicing an occupation (Paragraph 1K of the Formal Complaint), contrary to Section 604(c) of the Code.
6. Respondent has violated a provision or rule for which a penalty is not otherwise prescribed (Paragraph 1L of the Formal Complaint), contrary to Section 604(h) of the Code.

In summary, it is concluded that Respondent has violated Section 604(c)&(h) and 1205(2)(e) of the Code, being MCL 339.604(c)&(h), as well as Administrative Rules 32(1)(a), 35(2) and 71(1)(f), being 1999 MR 11, R338.2132(1)(a); 1999 MR 11, R338.2135(2); and 1999 AACS, R338.2171(1)(f).

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:

1. A civil fine of \$4,000.00 be assessed against Respondent.
2. No restitution be ordered.
3. Revocation of any and all licenses or registrations under the jurisdiction of the Code held by Respondent, if the above civil fine is not paid within the time frame set forth by the Board in its final order.

Lauren G. Van Steel
Administrative Law Judge

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF COSMETOLOGY**

In the matter of:

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

**Docket No. 2002-251
Complaint No. 27-00-6559-00**

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Cosmetology, hereafter the “Board”, on May 5, 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 January 15, 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, License No. 27-07-000430, hereafter “Respondent”, having been found in violation of Sections 604(c); 604(h); 1205(2)(e); of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the “Code”, MCL 339.604(c); MCL 339.604(h); MCL 339.1205(2)(e) and Rules 32(1)(a); 35(2) and 71(1)(f) of the State Board of Cosmetology General Rules, *promulgated hereunder*, being 1999 MR 11, R 338.2132(1)(a); 1999 MR 11, R 338.2135(2) and 1999 AACS, R 338.2171(1)(f)

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 Six Thousand Dollars and 00/100 Cents (\$6,000.00), a higher fine than recommended, based upon the grievous nature and number of violations committed, said fine to be paid to the Department of Consumer & Industry Services 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. 27-00-6559-00 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. The Cosmetology School License No. 27-07-000430 of Respondent and any and all other Article 12 licenses or registrations of Respondent shall be and hereby are REVOKED effective the mailing date of this Final Order**

- 3. No application for licensure , renewal, registration or reinstatement shall be considered by the Department unless proper application and/ or petition is filed for relicensure or re-registration under Article 4/ Article 5 of the Occupational Code, 1980 P. A. 299, *as amended*.**