

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

In the matter of

Docket No. 2002-900

**Bureau of Commercial Services,
Petitioner**

Agency No. 27-02-0119-00

v

Agency: Bureau of Commercial Services

**Kimberly Beauty College
Hang Le Thi Tran, Owner,
Respondent**

Case Type: Sanction

**Issued and entered
this 5th day of December, 2002
by Lauren G. Van Steel
Administrative Law Judge**

AMENDED 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 Hearing dated June 17, 2002, scheduling a hearing for July 24, 2002. On August 19, 2002, an Order Granting Adjournment was issued, rescheduling hearing for October 11, 2002. On October 7, 2002, an Order Granting Adjournment was issued, rescheduling hearing for November 14, 2002.

The Notice of Hearing was issued pursuant to a Formal Complaint filed on 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 Rule 38 of the Board of Cosmetology General Rules, being 1999 MR 11, R338.2138.

The hearing was held as scheduled on November 14, 2002. A stipulation of the parties was entered into the record as follows: Respondent admits to Paragraph 1B of the Formal Complaint. Petitioner withdrew Paragraph 1A, which contains the balance of the violation allegations in the Formal Complaint.

The following exhibits were entered into the record:

Petitioner's Exhibit 1 Memorandum of Findings, dated 2/19/02

Petitioner's Exhibit 2 Memorandum of Findings, dated 2/12/02

Neither Petitioner nor Respondent presented witnesses to testify at the hearing.

At the hearing, Petitioner's representative requested that the Board of Cosmetology impose a \$2,000.00 fine against Respondent. Petitioner did not request that the Board order restitution to any person. Respondent's representative requested that no sanction be imposed, in light of the fact that Respondent's cosmetology establishment is no longer in business, having burned down in March 2002, and in light of a possible sanction in another matter pending against Respondent (Docket No. 2002-251).

ISSUES AND APPLICABLE LAW

The issue in this matter is whether Respondent has violated Section 604(c) of the Code, which provides 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
[MCL 339.604(c)].

The allegation concerning Rule 38, contained in Paragraph 1A of the Formal Complaint, has been withdrawn by Petitioner.

FINDINGS OF FACT

Based on the record as a whole, including the stipulation of the parties entered on the record, the undersigned makes the following findings of fact:

1. On or about November 14, 2001, an inspection was conducted of Kimberly Beauty College by an inspector from the Department of Consumer & Industry Services. The Cosmetology Establishment Inspection Report is attached to the Formal Complaint as Exhibit 1. At said inspection, a violation of the Code was observed.
2. Respondent has stipulated to a finding that it violated a rule of conduct in practicing an occupation.
3. Petitioner has not requested restitution to any person in this matter.

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, Petitioner has proven by a preponderance of the evidence that Respondent has violated Section 604(c) of the Code, as alleged in Paragraph 1B of the Formal Complaint.

The remaining allegation in Paragraph 1A of the Formal Complaint, concerning Rule 38, has been withdrawn by Petitioner. Therefore, no conclusion of law is made concerning Rule 38.

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 \$2,000.00 be assessed against Respondent.
2. No restitution be ordered.
3. Any and all licenses or registrations under the jurisdiction of the Code held by Respondent be suspended if the fine amount is not paid within the time frame set forth in the Board's Final Order.

Lauren G. Van Steel
Administrative Law Judge