

Before the  
N. H. Board of Barbering, Cosmetology and Esthetics  
Concord, New Hampshire

In the matter of:

Than Thuy Thanh Personal Manicuring License #10841      Docket No. 2010-03  
K&T Nails Shop License # 2035  
(Professional Misconduct Disciplinary Proceeding)

DECISION AND ORDER

By the Board Leanne Lummis, Chair, Gary Trottier, Kathleen Humes, & Aaron Losier, Board Members.

Appearances: Laurel O'Connor, Hearing Counsel  
George Cacavas, Board Inspector  
Kathryn Wantuck, Executive Director  
Than Thuy Thanh, Respondent  
Husband of the Respondent

BACKGROUND

On October 7, 2010 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("the Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Than Thuy Thanh ("the Respondent") had violated RSA 313-A:22 II (c), RSA 313-A:22 II (g), RSA 313-A:22 II (d), RSA 541-A and Barbering, Cosmetology and Esthetics Administrative Rules ("Bar") 501.02 (e).

As set forth in the Notice of Hearing the purpose of the hearing was to determine whether Respondent violated RSA 313-A:22 II (c), RSA 313-A:22 II (g), RSA 313-A:22 II (d), and Bar 501.02 (e) by failing to maintain her shop, K&T Nails, in a sanitary and hygienic manor.

The Notice of Hearing noticed the hearing for January 3, 2011 at 9:30am. Ms. Thanh appeared on time for the hearing along with her husband who in part translated and/or

testified for the Respondent.

Twelve exhibits were introduced at the hearing:

1. Transfer of K&T Nails from Peter V Tran to Thuy Thanh Than and the initial Shop Inspection Form dated June 11, 2004.
2. Shop Inspection Form dated August 25, 2005.
3. Shop Inspection Form dated February 22, 2006.
4. Shop Inspection Form dated March 15, 2006.
5. Shop Inspection Form dated June 1, 2006.
6. Shop Inspection Form dated June 14, 2006.
7. Letter of Concern from the Board of Barbering, Cosmetology, and Esthetics dated June 26, 2006.
8. Shop Inspection Forms dated August 25, 2006, March 22, 2007, and February 7, 2008 showing that K&T Nails was in compliance for the inspections conducted on those dates.
9. Shop Inspection Form dated August 5, 2008.
10. Shop Inspection Form dated February 24, 2010.
11. Complaint from Jana Allen dated July 1, 2010.
12. Shop Inspection Form dated July 28, 2010.

#### BACKGROUND NARRATIVE

The Board has authority to grant manicuring licenses. See RSA 313-A:12. In 2000 the Board granted the Respondent a license to practice manicuring in the State of

NH. The Respondent holds manicuring license #10841. The manicuring license is the Respondent's personal license.

The Board has the authority to grant shop licensure in accordance with RSA 313-A:19. Pursuant to this authority, the Board may grant shop licensure to an individual who is the owner of the shop if this individual has a personal license as a barber, cosmetologist, manicurist, or esthetician. See RSA 313-A:19, II. In 2006 The Board granted shop license 2035 to the Respondent.

The Board employs inspectors. See RSA 313-A:21. At least twice a year, the inspectors are "to enter and make reasonable examination and inspection of any salon ... during business hours for the purpose of ascertaining whether or not the administrative rules of the board and the provisions of this chapter are being observed." See RSA 313-A:21, I and III. If the inspector finds violations, the inspector may impose administrative fines. See RSA 313-A:8, XVII; 313-A:22, III; Bar 404.09; Bar 404.10. For each inspection, the inspector must file a written report of his/her findings. See RSA 313-A:21, I.

Inspector George Cacavas testified at the hearing. Inspector Cacavas has four and a half years of experience. Through Inspector Cacavas, Hearing Counsel introduced ten exhibits. All ten were inspection reports. These are the current reports used by Board Inspectors to conduct shop inspections. Inspector Cacavas testified to the date of each inspection, the fines issued for each inspection, and the reason for such fines.

On June 10, 2004 a Board Inspector inspected K&T Nails (K&T). See Exhibit 1. The Respondent was owner at the time. The inspector found the lavatory facility needs cleaning, metal implements were not being cleaned and sanitized or stored properly, and

implements and supplies were not being discarded. The inspector noted she “went over sanitation with the owner and manager”.

On August 25, 2005 a Board Inspector inspected K&T. See Exhibit 2. The Respondent was the owner and manager of K&T at this time. The inspector found, among other violations, the floors, furniture, and tables needed cleaning and sanitizing, the whirlpool foot spas were not cleaned and disinfected, and there were no records of cleaning the foot spas. The inspector further found metal implements were not sanitized or stored properly, implements were not discarded properly, two personal licenses were expired, and there was no drill certification as required. The inspector noted “salon overall needs to be cleaned”. The inspector imposed a \$1004 fine.

On February 22, 2006 a Board inspector inspected K&T. See Exhibit 3. The Respondent was owner and manager of K&T at this time. The inspector found the floors, walls, tables and chairs needed cleaning, implements and drills were not being cleaned and sanitized properly, and implements and supplies were not being discarded after use. The inspector imposed a \$100 fine.

On March 15, 2006 a Board inspector inspected K&T. See Exhibit 4. The Respondent was owner and manager of K&T at this time. The inspector found floors and tables needed cleaning and sanitizing, there was no record of whirlpool foot spa cleaning, files and clippers were not cleaned and sanitized properly nor stored properly. The inspector issued a warning for licenses not being displayed and no proper nail drill certifications and signs posted as required. The inspector noted, “salon should have follow up”. The inspector imposed a \$239 fine.

On June 1, 2006 a Board inspector inspected K&T. See Exhibit 5. The Respondent was owner and manager of K&T at this time. The inspector found the furniture and tables needed cleaning, the whirlpool foot spas were not cleaned and disinfected as required and there was no record of cleaning and disinfecting. Moreover, the inspector found metal implements and files were not cleaned, sanitized, and stored properly. The inspector further found there was no proper nail drill certification and sign. The inspector imposed a \$538 fine.

On June 14, 2006 a Board inspector inspected K&T. See Exhibit 6. The Respondent was owner and manager of K&T at the time. The inspector found that there was no bleach on the premises to clean the whirlpool foot spas. The inspector further found that whirlpool foot spas were not being cleaned and sanitized properly, and personal licenses were not posted. The inspector noted, "overall the salon has improved on cleanliness". The inspector imposed a fine of \$325.

On August 25, 2006, March 22, 2007 and February 7, 2008 a Board inspector inspected K&T Nails. See Exhibit 8. The Respondent was owner and manager of K&T during each of the inspections. The inspector noted the salon was in compliance. No fines were issued.

On August 5, 2008 a Board inspector inspected K&T. See Exhibit 9. The Respondent was owner and manager of K&T at the time. The inspector found two pedicure chairs were not cleaned and sanitized, implements were not cleaned, sanitized, or stored properly, and there was no nail drill sign. The inspector noted, "must follow cleaning and sanitizing procedures, left procedures with salon". The inspector imposed a \$255 fine.

On February 24, 2010 a Board inspector inspected K&T. See Exhibit 10. The Respondent was owner and manager of K&T at this time. The inspector found there was no record of cleaning the whirlpool foot spas, powder puffs or sponges not sanitized or discarded after use, implements not cleaned, sanitized, or stored properly and implements not discarded properly. The inspector further found a personal license for the Respondent could not be found and there were no drill signs posted. The inspector imposed a \$471 fine.

On July 28, 2010 a Board inspector inspected K&T. See Exhibit 12. The Respondent was owner and manager of K&T at this time. The inspector found 3 pedicure chairs were not cleaned and sanitized properly, implements not cleaned, sanitized, or stored properly. Moreover, the inspector found the Respondent still had no personal license posted. The Inspector imposed a \$529 fine.

Hearing Counsel introduced two exhibits through Kathryn Wantuck, Executive Director for the Board of Barbering, Cosmetology, and Esthetics. Kathryn Wantuck, testified that, pursuant to the Board's official records, kept in the ordinary course of business, the Respondent purchased K&T on April 27<sup>th</sup>, 2004 from one Peter V. Tran. See Exhibit 1. Kathryn Wantuck also provided testimony that the Board issued a non-public non-disciplinary confidential letter of concern to the Respondent on June 26, 2006. See Exhibit 7.

The letter of concern was issued to the Respondent after the Board conducted four consecutive inspections that resulted in fines and receiving a complaint indicating the salon was not practicing appropriate sanitation procedures. The letter of concern warned the respondent that failure to adhere to licensure and sanitation requirements may

constitute a violation of RSA chapter 313-A and further, may be unprofessional conduct within the meaning of RSA 313-A:22. The Respondent was further warned the Board could impose penalties for violations of RSA 313-A and applicable administrative rules. The letter of concern also explained to the Respondent that continuation of the violations could result in future disciplinary proceedings that could include revocation of Respondent's shop licensure. The Respondent was directed to adhere to all sanitation rules and regulations immediately.

#### FINDINGS OF FACT

The Board took into consideration all exhibits. The exhibits presented showed multiple violations and fines at each inspection. The fines listed were for sanitation violations of unclean lavatory facilities, dirty floors, furniture; and tables, implements not being cleaned and sanitized nor stored properly, implements not discarded after use, whirlpool foot spas not cleaned and sanitized, and no record of cleaning for the whirlpool foot spas.

In addition to making the finding that the above Background Narrative was true, the Board found that the fines listed also included licenses not being properly displayed, no nail drill certifications, and no drill signs posted.

#### Findings:

- The Board first granted a license to practice to the Respondent on May 9, 2000.
- Respondent holds personal manicuring license number 10841. Respondent's personal manicuring license will expire on October 31, 2011.
- Respondent is the owner of K&T Nails license number 2035. Respondent's shop license will expire on October 31, 2011.

- Peter V. Tran sold K&T to Respondent on or about April 27, 2004. At all times relevant, the Respondent was the owner of K&T.
- K&T was inspected on or about June 10, 2004 and the inspector noted that the lavatory facility needed cleaning and implements must be cleaned and sanitized properly and stored properly.
- At the June 10, 2004 inspection, the inspector went over sanitation with the owner and manager.
- An inspection of K&T was conducted on or about August 25, 2005 at which the inspector noted that the salon needed an overall cleaning, implements were not being properly cleaned, sanitized, or discarded properly.
- As a result of the August 25, 2005 inspection, the inspector imposed a fine of \$1004.
- At the inspection of K&T conducted on or about February 22, 2006 the inspector found that the shop was not properly cleaned and implements and supplies were not discarded or properly sanitized.
- As a result of the February 22, 2006 inspection, the inspector imposed a fine of \$100.
- Another inspection of K&T was conducted on or about March 15, 2006 at which the inspector found that there was a continued failure to properly clean the shop and that an employee failed to have a license posted.
- As a result of the March 15, 2006 inspection, the inspector imposed a fine of \$239.
- At the inspection of K&T conducted on or about June 1, 2006 the inspector found that there was a continued failure to properly clean the shop and the implements.

- As a result of the March 15, 2006 inspection the inspector imposed a fine of \$538
- At the inspection of K&T conducted on or about June 14, 2006 the inspector noted that overall the salon had improved on cleanliness; however the shop was still not being cleaned properly.
- As a result of the inspection of K&T on June 14, 2006 the inspector imposed a fine of \$325.
- As a result of the ongoing complaints and violations, on or about June 26, 2006, the Board issued a letter of concern to the Respondent directing her to adhere to all sanitation rules and regulations immediately.
- The June 26, 2006 letter of concern also explained to the Respondent that that continuation of the violations could result in future disciplinary proceedings that could include revocation of Respondent's shop licensure.
- Inspections of K&T Nails in August 2006, March 2007, and February 2008 all found the shop to be in compliance.
- At an inspection of K&T on or about August 5, 2008 the inspector found that Respondent had not followed cleaning and sanitizing procedures for the pedicure chairs and that implements were not being cleaned and sanitized.
- As a result of the inspection on August 5, 2008, the inspector imposed a fine of \$255.
- At the inspection of K&T conducted on or about February 24, 2010 the inspector found that several cleaning and/or sanitizing violations and several implements were not properly stored.
- As a result of the inspection on February 24, 2010 the inspector imposed a fine of

\$471.

- On or about July 1, 2010 the Board received a complaint from Jana Allen alleging that K&T Nails was filthy.
- At the inspection of K&T conducted on July 28, 2010 the inspector indeed found a dirty and unsanitary salon.
- As a result of the inspection of K&T on July 28, 2010 the inspector imposed a fine of \$528.

#### RULINGS OF LAW

- 1) Respondent engaged in professional misconduct by failing to maintain her salon premises in a sanitary and hygienic manner in violation of RSA 313-A:22, II (c) and/or Bar 501.02 (e) by failing to maintain K&T Nails in a sanitary and hygienic manner; the Board finds this professional misconduct to have occurred on 6/11/04; 8/25/05; 2/22/06; 3/15/06; 6/1/06; 6/14/06; 8/5/08; 2/24/10; 7/28/10.
- 2) Respondent engaged in professional misconduct by the willful or repeated violations of the provisions of RSA 313-A in violation of RSA 313-A:22 II (g), notably on 8/25/05; 2/22/06; 3/16/06; 6/1/06; 6/14/06; 8/5/08; 2/24/10; and 7/28/10.
- 3) As a result of her repeated violations of the provisions of RSA 313-A, Respondent is unfit by reason of her negligent habits or negligent or willful acts performed in a manner consistent with the health or safety of customers relying on her expertise pursuant to RSA 313-A:22 II (d).

## DISCUSSION AND CONCLUSION

The Board has authority to undertake disciplinary action against a licensee, after a hearing and a finding that the licensee has committed misconduct as described above or has engaged in acts that pose a threat to public health or safety. RSA 313-A:22; Bar 402.01

The Board heard the Respondent's testimony and took into consideration the Respondent's assertion that she does not work at K&T Nails, and that she is home with her children. The Respondent stated that she employs a manager to run the salon on a daily basis, yet she took responsibility for the violations. The Respondent admitted that the Board's official record does not have record of anyone but the Respondent listed as manger for K&T. The Respondent testified that the salon is currently in compliance, all the drill signs and licenses are posted and new equipment has been installed.

The Board members asked the Respondent to describe her cleaning procedure for the pedicure tubs with pipes. The Respondent stated that after each client they clean the chair and wipe it down, at the end of the day they add two teaspoons of bleach into hot water and run the tubs for 10 minutes, then they wipe it down. The procedure the Respondent described does not follow administrative rule requirements of the Board. See Bar 302.05. Based upon the above, the Respondent is required to take a course on bacteriology, safety, and sanitation and pay a civil penalty of \$500.00.

## DISCIPLINARY ACTION

The Respondent's repeated failure to ensure compliance with all the Board's administrative rules willfully violates RSA 313-A.

THEREFORE, IT IS ORDERED, AS TO THE RESPONDENT'S PERSONAL

LICENSE that the Respondent is assessed an administrative fine of \$500. The Respondent shall file with the Board a Money Order or Cashier's check payable to the Treasurer State of New Hampshire in the amount of \$500.00 in disciplinary fines within 30 days of the effective date of this order.

IT IS FURTHER ORDERED, that the Respondent's personal manicuring license be suspended until successful completion of a pre-approved course on bacteriology, safety and sanitation of implements, pedicure tubs and overall cleanliness in a salon, in a school licensed by the Board. This course shall also include comprehensive testing with a passing grade of 75% or greater.

IT IS FURTHER ORDERED, that the Respondent shall file with the Board proof of her successful completion of the course and payment of the administrative fine before her personal license suspension will be lifted.

IT IS FURTHER ORDERED AS TO THE RESPONDENT'S SHOP LICENSE, (specifically the K&T Nails shop license) that the Respondent's license is revoked. The Board allows K&T 90 days from the effective date of this order to obtain new ownership or to be closed.

IT IS FURTHER ORDERED, that the Respondent shall not own any shop as defined by RSA 313-A:19. Any future shop license application that is submitted to the Board, where the Respondent is owner and/or manager, shall be automatically denied as a result of this Order.

IT IS FURTHER ORDERED, that the Respondent shall not manage any shop as defined by RSA 313-A:19. To the extent that any shop currently employs the Respondent as its manager, it must name a new manager within 30 days of the effective date of this

Order.

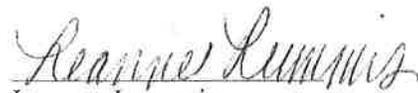
IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute a basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED, that this Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date Feb 7, 2011

  
Leanne Lummis  
Board Chairperson

