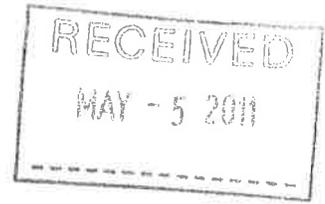


State of New Hampshire
Board of Barbering, Cosmetology and Esthetics
Concord, New Hampshire 03301



In the Matter of:

Elieu ~~M.~~ De Aviz

Personal License Number 14529

Cesar's Hair Design Shop License Number 232 - *Closed.*

(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of barbering, cosmetology and esthetics, the New Hampshire Board of Barbering, Cosmetology and Esthetics ("Board") and Elieu De Aviz ("Mr. De Aviz" or "Respondent"), a cosmetologist licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 313-A:22, RSA 541-A and Board of Barbering, Cosmetology & Esthetics Administrative Rule ("Bar") 206.01 et seq., the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by the Board's licensees. Pursuant to RSA 313-A:8, and Bar 217.02(c) the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. Respondent holds cosmetology license number 14529 and shop number 232.
3. On July 29, 2010, Mr. Aviz's shop, Cesar's Hair Design was inspected by the Board and the inspector found the unauthorized use of credo blades and a credo blade holder.
4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to inspections of Respondent's shop.

5. The Board's investigation revealed and Respondent freely admits to the following facts:
- A. On or about November 28, 2005 the Board's inspector found one credo blade implement and three razor blades at Respondent's shop, Cesar's Hair Design. Respondent was fined \$1,000.
 - B. On or about May 20, 2006, the Board inspector found one razor blade meant for a credo, a blade and two empty boxes at Respondent's shop, Cesar's Hair Design. Respondent was fined \$580.
 - C. In May 2002, November 2004, and November 2005, the Board's inspectors found unlicensed individuals working at Respondent's shop, Cesar's Hair Design.
 - D. On or about January 19, 2006, Lynda Elliott, Board Administrator for the Board of Barbering, Cosmetology and Esthetics issued Respondent a Letter of Concern. In that letter, Respondent was notified that "All professional services are to be performed by an individual who is personally licensed in New Hampshire and these services are to be performed in a shop licensed by the Board. To provide services licensed under this chapter without the appropriate licenses is a misdemeanor in the state of New Hampshire. All services provided under this chapter shall be performed in a licensed shop in accordance with RSA 313-A:17 and the boards administrative rules by New Hampshire licensed barbers, cosmetologists, estheticians, and manicurists."
 - E. The Letter of Concern also notified Respondent that his continuation of allowing unlicensed individuals to work in his shop and his unauthorized use of credo blades would result in disciplinary proceedings in the future to revoke or suspend

Respondent's shop and personal licenses as well as imposition of additional administrative fees.

F. On or about July 29, 2010, the Board's inspector found a credo blade holder and two packs of credo blades in Respondent's shop, Cesar's Hair Design.

6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 313-A:22, II (g) and (i).

7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a cosmetologist in the State of New Hampshire and to operate a salon in the State of New Hampshire.

8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 313-A:22, III:

A. Respondent's license to practice as a licensed cosmetologist is REPRIMANDED.

B. Respondent's shop license is REPRIMANDED.

C. Respondent is assessed an ADMINISTRATIVE FINE in the amount of \$2000.

Respondent shall pay this fine in full within thirty (30) days of the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 2 Industrial Park Drive, Suite 2, Concord, New Hampshire **OR** in TWENTY (20) installments of \$100 each. The first payment shall be due within thirty (30) days of the effective date of this agreement. The remaining payments shall be due within thirty (30) days of the previous payment. All payments shall be made in the form of a money order or bank check made

payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at 2 Industrial Park Drive, Suite 2, Concord, New Hampshire.

- D. By signing this *Settlement Agreement* Respondent acknowledges that he is required to remove all credo blade holders and all credo blades from Cesar's Hair Design and assures that Board that he will never again use credo blades at Cesar's Hair Design.
 - E. By signing this *Settlement Agreement* Respondent agrees that if credo blade holders or credo blades are found in his shop in the future, his personal cosmetology license and his shop license will be automatically suspended for six months.
 - F. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 313-A, 22 II (c), and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.
16. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
17. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
18. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-

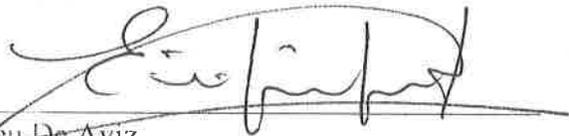
examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.

19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date:

04/29/2010


Elicu De Aviz
Respondent

Date: _____

Counsel for Respondent

FOR THE BOARD

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date:

5/9/11


(Signature)

LEANNE LUMMIS

(Print or Type Name)

Authorized Representative of the
New Hampshire Board of Barbering,
Cosmetology & Esthetics