

**STATE OF NEW HAMPSHIRE
BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS
121 SOUTH FRUIT ST
CONCORD, NEW HAMPSHIRE 03301**

In the Matter of:
Kim Ong
Personal Manicuring License Number 16161
(Adjudicatory Proceedings)

Docket No. 2014-10

DECISION AND ORDER

By the Board: Holly Rodrigues, Chair and Presiding Officer
Gary Trottier, Vice Chairman
Christine Infantine, Board Member
Michelle Kapos, Board Member
Kimberly Hannon, Board Member

Appearances: Laurel O'Connor, Hearing Counsel
Beulah Stockman, Board Inspector
Kathryn Wantuck, Executive Director
Kim Ong, Respondent

BACKGROUND

On August 8, 2014 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Kim Ong ("Respondent" or "Ms. Ong") had violated RSA 313-A:22, II (c), RSA 313-A:22 II (d), RSA 313-A:22 II (g), and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 501.02 (c) and 501.02 (e).

As set forth in the Notice of Hearing, the purpose of the hearing was to determine whether the Respondent violated RSA 313-A:22 II (c) and Bar 501.02 (c) by failing to comply with the Settlement Agreement she signed on January 14, 2014, RSA 313-A:22 II (d) and Bar 501.02 (e) by failing to maintain Kim's Spa & Nails in a sanitary and hygienic manner, RSA 313-A:22 II (g) by knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, and Esthetics.

The Notice of Hearing noticed the hearing for 9:30 am on October 6, 2014. The Respondent appeared for the hearing over two hours late; therefore the hearing did not commence until 11:51 am.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's 6 (six) exhibits:

- Exhibit 1, Email complaint from Monica Squires dated June 5, 2014.
- Exhibit 2, Shop Inspection Form for Kim's Spa & Nails, LLC dated June 10, 2014.
- Exhibit 3, Settlement Agreement signed by Kim Ong on January 27, 2014.
- Exhibit 4, Report of Investigation dated July 16, 2014.
- Exhibit 5, Notice of Hearing dated August 8, 2014.
- Exhibit 6, Domestic Return Receipts dated August 9, 2014.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On September 11, 2003, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license number 16161. The manicuring license is the Respondent's personal license.

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 (converting violation points to administrative fines). For each inspection, the inspector must file a written report of his/her findings. See RSA 313-A:21, I.

Inspector Beulah Stockman ("Inspector Stockman") testified at the hearing to a complaint the Board office received on June 05, 2014 from Monica Squires. See Exhibit 1. Inspector Stockman further testified about an inspection she conducted as a result of the complaint on June 10, 2014. See Exhibit 2. Inspector Stockman testified she found four footspas which q-tipped dirty with debris, lint and skin pieces on them as well as pedicure cleaning logs which were incomplete for the third time. Inspector Stockman testified she found 58 metal implements that were not disinfected properly, 40 files and 4 pumice stones that were not disposed of properly.

Inspector Stockman also testified that the Respondent's personal license was expired and there was a possible unlicensed individual who ran out of the door when Inspector Stockman announced herself. Inspector Stockman testified about the wax area of the salon, which had 3 metal implements that were not disinfected properly and 4 wax sticks that were not disposed of. Inspector Stockman further testified the salon was in violation for not having any licensed individuals working with a cosmetology or esthetic license to perform the waxing services. Inspector Stockman stated Sandra Hodgdon, the Board's additional inspector, was also with her

during the time of the inspection and witnessed the violations as well. Inspector Stockman testified she explained her findings and the fine total of \$1726.00 to the Respondent and gave her 5 days to renew her expired personal license.

Kathryn Wantuck ("Ms. Wantuck"), Executive Director for the Board, testified at the hearing. Ms. Wantuck identified Exhibit 3 as a Settlement Agreement ("Agreement") the Respondent signed on January 27, 2014, for previous violations and complaints. See Exhibit 3. Ms. Wantuck further testified the Respondent agreed to a period of probation on her licenses for two years, a pre-approved sanitation course within 90 days of the Agreement, to stay in compliance with all the rules of the Board regarding sanitation and licensed workers, to pay all outstanding fines to the Board within 60 days of the Agreement, and reimburse Amanda LeBlanc by a money order sent to the Board's address within 30 days of the Agreement. Ms. Wantuck also testified that the Respondent has not complied with any of the terms of the Agreement.

II. Respondent's Case

Ms. Ong briefly testified about her situation and the difficulties she's had recently in her personal life. Ms. Ong testified she had to take her mother, who had a stroke, to Vietnam and was going through a divorce. Ms. Ong testified she takes full responsibility for everything and has already sold her shop. Ms. Ong stated she had owned a salon in Hooksett for 5 years and never had a fine or violation from the Board. Ms. Ong further testified that she had left her nephew in charge as manager of the salon and he was not doing his job. Ms. Ong also testified that she was not normally at the salon. Ms. Ong testified the individuals the inspectors believed to be unlicensed were there for interviews and they left when the inspectors came in because they could not wait for Ms. Ong. Ms. Ong further testified that she had left responsibility to pay the fines with her bookkeeper, who passed away, and was surprised that neither the fines had been paid, nor Amanda LeBlanc reimbursed. Ms. Ong stated she called the Board and spoke with the Director regarding the situation, but had not taken any steps to send payment since.

FINDINGS OF FACT

The Board took into consideration all testimony and exhibits. The Board found Ms. Wantuck and Inspector Stockman, to be forthright, professional, and credible. The Board found the entire narrative, in the above-captioned "Hearing Testimony Section I. Hearing Counsel's Case" to be true.

RULINGS OF LAW

The Board makes the following rulings of law:

1. The Respondent violated RSA 313-A:22, II (c) and (d) by committing professional misconduct for failing to comply with the Settlement Agreement by failing to enroll in a sanitation course.

2. The Respondent violated RSA 313-A:22, II (c) and (d) by committing professional misconduct for failing to comply with the Settlement Agreement by failing to stay in compliance with the rules of the Board regarding sanitation.
3. The Respondent violated RSA 313-A:22, II (c) and (d) by committing professional misconduct for failing to comply with the Settlement Agreement by failing to pay all outstanding fines to the Board.
4. The Respondent violated RSA 313-A:22, II (c) and (d) by committing professional misconduct for failing to comply with the Settlement Agreement by failing to reimburse Amanda LeBlanc.
5. On or about June 10, 2014, the Respondent violated Bar 501.02 (e) by failing to maintain her shop in a sanitary and hygienic manner.
6. On or about June 10, 2014, the Respondent violated RSA 313-A:22 II (g) by knowingly or willfully violating the statutes related to Barbering, Cosmetology, or Esthetics by working with an expired license.
7. On or about June 10, 2014, the Respondent violated RSA 313-A:22 II (g) by knowingly or willfully violating the statutes related to Barbering, Cosmetology, or Esthetics by allowing waxing services without the proper licensure.

DISCUSSION AND CONCLUSION

The Board has the 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 and safety. RSA 313-A:22; Bar 402.01.

The Respondent signed a Settlement Agreement with the Board, which resulted from a complaint filed by Amanda LeBlanc and several inspection violations between 2011 and 2013. The Settlement Agreement subjected the Respondent's licenses to a two-year probationary period and imposed several requirements. The Respondent testified at the hearing that she has not complied with the terms of the Agreement. Although the Board is sympathetic to the Respondent's plight as to her difficulties in her personal life, ample time and opportunity was given to rectify the non-compliance of the Settlement. The Agreement made it clear that the Respondent's breach of any of the provisions of the Agreement will constitute unprofessional conduct and be a sufficient basis for the imposition of additional disciplinary action by the Board.

Furthermore, the Board received an additional sanitation complaint regarding Kim's Spa and Nails. An inspection was conducted as a result of the complaint, which revealed multiple sanitation violations. Fines were assessed to the Respondent for footspas not cleaned and disinfected properly, incomplete records of footspa cleaning, numerous implements and supplies

not disinfected or stored properly, unauthorized use of wax, and for her personal license being expired since April 30, 2013.

The Board concludes the Respondent violated RSA 313-A and/or Bar 500 including (1) failure to comply with her Settlement Agreement (2) failure to maintain her shop in a sanitary and hygienic manner, and (3) knowingly or willfully violating statutes and rules related to Barbering, Cosmetology, and Esthetics.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED, THE RESPONDENT'S PERSONAL LICENSE IS SUSPENDED until the requirements of the Settlement Agreement of January 27, 2014, are complied with OR for a period of five years.

IT IS FURTHER ORDERED, that the Respondent shall not own or manage any salon 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's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A:22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

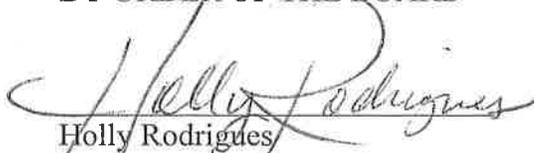
IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

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

BY ORDER OF THE BOARD

Date:

12-1-14



Holly Rodrigues
Authorized Representative of the Board