

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

In the Matter of:
Nghia Huynh
Personal Manicuring License Number 22042
(Adjudicatory Proceedings)

Docket No. 2014-05

DECISION AND ORDER

By the Board: Deborah Robinson, Public Member and Presiding Officer
Michelle Kapos, Board Member
Aaron Losier, Board Member
Kimberly Hannon, Board Member
Absent were Holly Rodrigues, Gary Trottier, and Christine Infantine.

Appearances: Laurel O'Connor, Hearing Counsel
Sandra Hodgdon, Board Inspector
Kathryn Wantuck, Executive Director
Nghia Huynh, Respondent
Huong Le, Wife of Respondent and Owner of Modern Nails

BACKGROUND

On March 3, 2014 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Nghia Huynh ("Respondent") had violated RSA 313-A:22, II (c), and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 501.02 (d).

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), by yelling and using offensive language when speaking to the Board's Inspector, RSA 313-A:22 II (c) by yelling at the Board's Executive Director, and Bar 501.02 (d) by failing to deal with colleagues with integrity when he yelled at the Board's Inspector and Executive Director.

The Notice of Hearing noticed the hearing for 11:30 am on April 14, 2014. On April 9, (the other Decision states April 7th) 2014, the Board received a letter from the Respondent asking to postpone the hearing due to a family tragedy. The Board reviewed this request at their meeting on April 14, 2014 and voted to postpone the hearing until the August 4, 2014 meeting. Another Notice of Hearing was issued, noticing the hearing for August 4, 2014 at 10:00 am. The Respondent appeared as scheduled.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's 2 (two) exhibits:

- Exhibit 1, Shop Inspection Form for Modern Nails dated October 3, 2013.
- Exhibit 2, Notice of Hearing dated April 15, 2014.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On October 31, 2007, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license number 22042. 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 Sandra Hodgdon ("Inspector Hodgdon") testified at the hearing on an inspection she conducted on October 3, 2013. See Exhibit 1. Inspector Hodgdon testified she found one footspa that was dirty when swabbed with a cotton swab. Inspector Hodgdon testified she explained her findings of the dirty footspa and assessment of a \$100.00 fine to the shop owner, Huong Le, ("Ms. Le"). Ms. Le then explained the findings to the Respondent. Inspector Hodgdon further testified that the Respondent began yelling at her as she was trying to leave the salon that she was raping him. Inspector Hodgdon testified she asked the Respondent to stop using such language or she would assess a fine for unprofessional behavior. Inspector Hodgdon testified the Respondent continued to call her a rapist two more times. Inspector Hodgdon also testified that she did not assess any further fines for unprofessionalism as the Respondent became so agitated, she did not want to make the situation worse and left the salon.

The Executive Director for the Board, Kathryn Wantuck ("Ms. Wantuck"), testified she received a call from the Respondent sometime after the inspection where the Respondent screamed at her. Ms. Wantuck further testified every time she tried to speak, the Respondent would scream over her stating the Board discriminates against Vietnamese and that the inspector was unprofessional. Ms. Wantuck also testified the Respondent appeared for a pre-hearing conference in which the Respondent stated he disagreed with the fine and he would not pay and would protest in front of the Board office until the fine was waived. Ms. Wantuck further testified that the Respondent did picket the Board office for two days holding a sign stating "inspectors are bloodsucking bullies" and "stop discrimination".

II. Respondent's Case

The Respondent testified that he did not yell at anyone and he speaks loudly in general using his throat. The Respondent also testified that he believed he was not acting unprofessional, only tired of hearing from friends and family that the state issues fines to nail salons. The Respondent further testified that he was sorry if the Board believed he crossed the line by using strong language but he would not apologize for standing up for his rights. The Respondent testified he asked Inspector Hodgdon "why are you raping us", and that he did not call her a rapist. The Respondent further testified he said this out of frustration for being fined. The Respondent stated he knows of several hair salons, barber shops, and resorts that never get fines, further stating only nail salons get fined. The Respondent stated the shop should get a warning before fines are issued. The Respondent testified he appeared for a pre-hearing to request a hearing before the Board and state that he would peacefully protest the Board office.

FINDINGS OF FACT

The Board took into consideration all testimony and exhibits. The Board found Inspector Hodgdon's testimony to be forthright and credible. The Board also found Ms. Wantuck's testimony to be credible. The Board found the Respondent's testimony to be less credible than Inspector Hodgdon's testimony.

Findings:

- The Board first granted a license to practice to the Respondent on October 31, 2007.
- Respondent holds personal manicuring license number 22042.
- On October 3, 2013 an inspection of the Respondent's workplace, Modern Nails, was conducted.
- As a result of the inspection of Modern Nails on October 3, 2013, the inspector imposed a fine of \$100.00 for a footspa that was not cleaned properly.
- When learning of the results of the inspection, Mr. Huynh yelled at the Inspector, insinuating that the inspector was "raping" the salon.
- After the inspection, Mr. Huynh called the Executive Director and screamed about the inspection that had occurred prior.

RULINGS OF LAW

The Board makes the following rulings of law:

1. On or about October 3, 2013, the Respondent violated RSA 313-A:22 II (c), by yelling and using offensive language when speaking to the Board's Inspector,

2. On or about October 4, 2013, the Respondent violated RSA 313-A:22 II (c) by yelling at the Board's Executive Director,
3. During the months of October and November 18, 2013, the Respondent violated Bar 501.02 (d) by failing to deal with colleagues with integrity when he yelled at the Board's Inspector and Executive Director.

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 Board finds yelling, screaming, and using offensive language when speaking to a Board Inspector or an Executive Director to be unprofessional conduct by a licensee, regulated by RSA 313-A. The Board therefore concludes the Respondent violated RSA 313-A:22, II(c) unprofessional conduct, or dishonorable conduct unworthy of, and affecting the practice of, the profession and Bar 501.02(d) failing to deal with colleagues with integrity, by yelling at the Board's Inspector and Executive Director.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED, that the Respondent is REPRIMANDED.

IT IS FURTHER ORDERED, that the Respondent is assessed an administrative fine of \$50.00 for unprofessional conduct. The Respondent shall pay the \$50.00 fine to the Board within 30 days of the effective date of this order. Payment shall be made in a single payment for a total amount of Fifty Dollars (\$50.00) by a certified bank check or money order made payable to "Treasurer State of New Hampshire" and delivered to the Board's office at 121 South Fruit St, Concord NH, 03301.

IT IS FURTHER ORDERED, that failure to pay the fine within 30 days of the effective date of this order may result in legal action necessary to enforce this obligation.

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 an authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date: 12-1-14



Deborah Robinson, Barber Member
Board of Barbering, Cosmetology, & Esthetics

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