

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

In the matter of:

Red Persimmon Nails, Owner Hung Le
Personal Manicuring License No. 9095
Shop License No. 2250
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2015-09

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Gary Trottier, Vice Chairman
Aaron Losier, Board Member
Michelle Kapos, Board Member
Kimberly Hannon, Board Member

Appearances: Ryan Kuehne, Hearing Counsel
Sandra Hodgdon, Board Inspector

BACKGROUND

On November 15, 2015 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Hung Le ("the Respondent") had violated RSA 313-A:22 II and Barbering, Cosmetology and Esthetics Administrative Rules ("Bar") 501.02.

As set forth in the Notice of Hearing the purpose of the hearing was to determine whether Respondent violated:

- RSA 313-A:22 II (i) by failing to observe the requirements of any rule adopted by the Board;
- RSA 313-A:22 II (g) by repeatedly violating rules and regulations of the Board;
- Bar 501.02 (e) by failing to maintain his salon in a sanitary and hygienic manner;

- Bar 501.02 (h) by aiding or abetting the practice of a person or persons who were not duly licensed; and
- RSA 313-A:22 II (d) as a result of the repeated violations of the provisions of RSA 313-A, the Respondent is unfit or incompetent by reason of her negligent habits or negligent or willful acts performed in a manner inconsistent with the health or safety of customers relying on his expertise.

The Notice of Hearing noticed the hearing for February 8, 2016 at 10:30 a.m. Indeed, on February 8, 2016, the hearing was held *in absentia* given that the Respondent did not appear at the scheduled time of 10:30 a.m. After the hearing was concluded, the Board deliberated the merits of the hearing and voted on findings.

Hearing Counsel introduced nine (9) exhibits at the hearing:

- Exhibit 1, Red Persimmon Nails' Shop Inspection Form dated December 20, 2012.
- Exhibit 2, Letter of Concern addressed to Respondent dated January 17, 2013.
- Exhibit 3, Red Persimmon Nails' Shop Inspection Form dated July 18, 2013.
- Exhibit 4, Addendum to the Red Persimmon Nails' Shop Inspection Form Dated July 18, 2013.
- Exhibit 5, Red Persimmons Nails' Shop Inspection Form dated June 20, 2014.
- Exhibit 6, Complaint from K.E., dated July 28, 2014.
- Exhibit 7, Red Persimmons Nails' Shop Inspection Form dated July 31, 2014.
- Exhibit 8, Red Persimmons Nails' Shop Inspection Form dated March 17, 2015.
- Exhibit 9, Red Persimmons Nails' Shop Inspection Form dated June 16, 2015.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On January 19, 1998, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #9095. 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. The Board also has the authority to grant shop licensure to an individual/owner who does not have a personal license, if the shop has a manager. See RSA 313-A:19 IV. On or about November 15, 2001 the Respondent opened Red Persimmon Nails. The Respondent holds shop license 2250.

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.

Hearing Counsel proposed an Offer of Proof for Exhibits one (1) and two (2) with Board Inspector Beulah Green and Board Director Kathryn Wantuck available for testimony. The Board accepted the Offer of Proof for both Exhibits. On December 20, 2012, Inspector Green

inspected Red Persimmon Nails. See Exhibit 1. Inspector Green found Eight (8) footspas which were not sanitized or disinfected properly, no record of cleaning for all eight footspas, multiple implements which were not sanitized or disinfected properly, numerous implements that were not discarded as required, towels that were not deposited into a container as required, and an individual working without a New Hampshire license.

On January 17, 2013, the Respondent was issued a Letter of Concern regarding the multiple sanitation violations at Red Persimmon over many years. See Exhibit 2.

Inspector Sandra Hodgdon (“Inspector Hodgdon”) testified at the hearing relative to Exhibits three (3) through (9).

On July 18, 2013, Inspector Hodgdon inspected Red Persimmon Nails. See Exhibit 3. The inspector found five (5) footspas that were not sanitized or disinfected properly, no record of cleaning for seven (7) footspas, multiple implements that were not sanitized and disinfected or stored properly, multiple implements that were not discarded as required, and an individual working without a New Hampshire license. The inspector imposed a \$1523.00 fine. Inspector Hodgdon also identified Exhibit 4 as a letter she wrote detailing the inspection of July 18, 2013. See Exhibit 4.

On June 20, 2014, Inspector Hodgdon inspected Red Persimmon Nails. See Exhibit 5. The inspector found multiple implements and appliances that were not sanitized, disinfected, or stored properly, and implements that were not discarded as required. Inspector Hodgdon further found the inspection report was not displayed as required. Inspector Hodgdon testified that the salon was very busy that day and all the pedicure chairs were in use. Inspector Hodgdon imposed a fine of \$122.00.

On July 31, 2014, Inspector Hodgdon inspected Red Persimmon Nails. See Exhibit 7. Inspector Hodgdon found six footspas that were questionable and issued a warning. Inspector Hodgdon testified that she discussed the disinfection process and issued a warning for a few

implements that were not discarded as required. No fines were imposed. Inspector Hodgdon identified Exhibit 6 as a complaint received by the Board regarding the sanitation of Red Persimmon Nails. See Exhibit 6.

On March 17, 2015, Inspector Hodgdon inspected Red Persimmon Nails. See Exhibit 8. Inspector Hodgdon found three (3) footspas which were not sanitized and disinfected properly, one individual working with an expired permit, and a warning was issued for brushes which were not fully immersed in EPA registered disinfectant and wax strips and tweezers which were not stored in a closed container. The inspector imposed a \$325.00 fine.

On June 16, 2015, Inspector Hodgdon inspected Red Persimmon Nails. See Exhibit 9. The inspector found numerous implements and appliances not sanitized or stored properly, numerous implements and supplies that were not discarded, MSDS sheets were not available, and the inspection report was not displayed. The inspector imposed a \$704.00 fine.

Inspector Hodgdon further testified the Red Persimmon Nails had recently undergone a change of ownership.

II. Respondent's Case

The Respondent failed to appear for the scheduled hearing. The Notice of Hearing was sent to the Respondent by certified mail and signed for on November 12, 2015.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented showed the multiple and repeated fines to Red Persimmon Nails. The fines listed were issued for the sanitation violations of implements not being properly discarded, sanitized, or maintained, manicuring tables not cleaned, implements and appliances not sanitized and stored properly, pedicure tubs not cleaned and disinfected, and soiled towels not deposited in a container. The

Respondent was further fined for not displaying the inspection report, no MSDS sheets, expired licenses, and unlicensed individuals working.

The Board found the testimony of Inspector Hodgdon to be credible and the inspection reports accurate and professional. The Board further found the notice of imposed fines to be accurate.

RULINGS OF LAW

The Board makes the following rulings of law:

1. The Board may undertake disciplinary proceedings against its licensees. See RSA 313-A:22. If the Board finds sufficient misconduct pursuant to subsection II, it may impose disciplinary action pursuant to subsection III. See RSA 313-A:22.
2. On December 20, 2012:
 - a. The Respondent violated RSA 313-A:22, II (d) by failing by performing acts in a manner inconsistent with the health and safety of the clients relying on his expertise .
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon Nails in a sanitary and hygienic manner.
 - c. The Respondent violated Bar 501.02 (h) by having a technician working who did not have a New Hampshire license.
 - d. The Respondent violated RSA 313-A:II 22 (i) by failing to observe the requirements of any rule adopted by the Board.
3. On July 18, 2013:
 - a. The Respondent violated RSA 313-A:22, II (d) by failing by performing acts in a manner inconsistent with the health and safety of the clients relying on his expertise.

- b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon Nails in a sanitary and hygienic manner.
 - c. The Respondent violated Bar 501.02 (h) by having a technician working who did not have a New Hampshire license.
 - d. The Respondent violated RSA 313-A:II 22 (i) by failing to observe the requirements of any rule adopted by the Board.
 - e. The Respondent violated RSA 313-A:II 22(g) by having repeated violations of the provisions of RSA 313-A.
4. On June 20, 2014:
- a. The Respondent violated RSA 313-A:22, II (d) by failing by performing acts in a manner inconsistent with the health and safety of the clients relying on his expertise.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon Nails in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:II 22 (i) by failing to observe the requirements of any rule adopted by the Board.
 - d. The Respondent violated RSA 313-A:II 22(g) by having repeated violations of the provisions of RSA 313-A.
5. On March 17, 2015:
- a. The Respondent violated RSA 313-A:22, II (d) by failing by performing acts in a manner inconsistent with the health and safety of the clients relying on his expertise.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon Nails in a sanitary and hygienic manner.

- c. The Respondent violated RSA 313-A:II 22 (i) by failing to observe the requirements of any rule adopted by the Board.
 - d. The Respondent violated RSA 313-A:II 22 (g) by having repeated violations of the provisions of RSA 313-A.
6. On June 16, 2015:
- a. The Respondent violated RSA 313-A:22, II (d) by performing acts in a manner inconsistent with the health and safety of the clients relying on his expertise.
 - b. The Respondent violated and BAR 501.02 (e) by failing to maintain Red Persimmon Nails in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:II 22 (i) by failing to observe the requirements of any rule adopted by the Board.
 - d. The Respondent violated RSA 313-A:II 22(g) by having repeated violations of the provisions of RSA 313-A
7. The Respondent violated RSA 313-A:22 II (d) as a result of the repeated violations of the provisions RSA 313-A. The Board found the Respondent negligent in allowing sanitation and licensing violations to continually occur therefore jeopardizing the health and safety of the public.

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 has determined that the Respondent engaged in professional misconduct by failing to maintain his salon premises, Red Persimmon Nails, in a sanitary and hygienic manner.

The Board relied on the exhibits presented as evidence and testimony given by a State Inspector to conclude that the Respondent violated sections RSA 313-A and Bar 500 for failure to maintain his salon premises in a sanitary and hygienic manner and by having unlicensed individuals working. The fines imposed at each inspection demonstrate a repeated, willful violation of the Board's Administrative Rule requirements for proper sanitation and proper licensing of technicians.

The Board found inspection reports that were introduced into evidence to be valid, unbiased and accurate. The Board reviewed that two different Board Inspectors signed the introduced inspection reports. The Board concluded that the Board Inspectors routinely give direction to salon owners, managers and employees on how to correct violations at the time of each inspection. The Board concluded that there was no deviation of the standard practice here.

The Board concluded that these repeated violations specified in the inspection reports are evidence that the Respondent does not wish to correct the sanitation and licensing issues he, his manager and/or employee(s) were instructed to correct at every inspection. The numerous sanitation and licensing violations over approximately 3 years as an owner conveyed a blatant disregard for the rules of the Board. Therefore, the Board concludes suspension of licensure is necessary to ensure the safety and health of the public from these continued unsanitary practices and violations to licensing requirements.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicurist license number 9095 shall be **SUSPENDED** for a period of five (5) years, effective on the date an authorized representative of the Board signs this Order;

IT IS FURTHER ORDERED, that the Respondent shall pay all fines/monies owed to the Board within 90 days of the effective date of the order in a single payment by certified bank check or postal money order payable to the "Treasurer State of NH." Failure to pay these fines within 90 days of the effective date of this order may result in legal action necessary to enforce this obligation;

IT IS FURTHER ORDERED, that if/when the Respondent reapplies for licensure the following pre-conditions shall be complied with:

A. The Respondent shall complete a course on bacteriology, safety, diseases and disorders, blood spill procedures and infection control, and general sanitation and disinfection procedures in a school licensed by the Board, or an online course approved by the Board.

B. The Respondent shall complete comprehensive testing on topics described in A above at the Board office with a passing grade of 75% or greater.

IT IS FURTHER ORDERED, that if/when the Respondent is reinstated for licensure, the Respondent shall not own or manage any shop and any further fines issued to the Respondent for any violation in will automatically result in a hearing order for revocation of his personal manicuring license.

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; and

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.

Date 3-14-16

BY ORDER OF THE BOARD



Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics