

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

In the matter of:

Tan Le
Manicuring License Number: 29174
Shop License Number: 2271
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2018-03

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Jeanne Chappell, Vice Chairperson
Kassie Dubois, Board Member
Kimberly Hannon, Board Member
Joshua Craggy, Board Member

Appearances: John Brown, Hearing Counsel
Kathryn Wantuck, Board Director
Beulah Green, Board Inspector

BACKGROUND

On June 11, 2018 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Tan Le ("the Respondent") had violated RSA 313-A:22 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 (d), and/or (i) and Bar 501.02 (e) by failing to maintain Red Persimmon Nails and Spa ("Red Persimmon") in a sanitary and hygienic manner;

- RSA 313-A:22 II (g) and/or Bar 501.02 (c) by knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics;

HEARING TESTIMONY

I. Hearing Counsel's Case

The Notice of Hearing noticed the hearing for August 13, 2018 at 10:30 a.m. The Respondent did not appear; therefore the hearing was held *in absentia*. After the hearing was concluded, the Board deliberated the merits of the hearing and voted on findings.

Hearing Counsel introduced six (6) exhibits at the hearing:

- Exhibit 1, Shop Inspection Form for Red Persimmon dated January 9, 2014.
- Exhibit 2, Shop Inspection Form for Red Persimmon dated February 21, 2015.
- Exhibit 3, Shop Inspection Form for Red Persimmon dated January 22, 2016.
- Exhibit 4, Shop Inspection Form for Red Persimmon dated July 19, 2016.
- Exhibit 5, Shop Inspection Form for Red Persimmon dated November 21, 2017.
- Exhibit 6, Letter of Concern dated February 5, 2014.

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On or about February 11, 2014, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #29174. The manicuring license is the Respondent's personal license. The Board also 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. On or about June 19, 2013 the Respondent opened Red Persimmon. The Respondent holds shop license 2271.

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.

The Director for the Board, Kathryn Wantuck (“Ms. Wantuck”), testified at the hearing. Ms. Wantuck has ten years of experience as Director for the Board. Ms. Wantuck testified Tan Le was the owner of Red Persimmon Nails. Ms. Wantuck further testified that the Notice of Hearing was returned the office. Ms. Wantuck also testified she wrote a Letter of Concern to the Respondent on February 5, 2014 which was mailed to the Red Persimmon shop address. See Exhibit 6.

The Letter of Concern listed the violations the Board had previously documented and instructed the Respondent how to correct the violations. The letter also explained that further discipline would be imposed for failure to comply with the Board’s rules.

Inspector Beulah Green (“Inspector Green”) testified at the hearing. Inspector Green has six years of experience as an inspector for the Board. Inspector Green testified about all of the inspection reports. These reports are the current reports used by Board Inspectors to conduct shop inspections. Inspector Green testified to the date of each inspection, the fines issued for each inspection, and the reason for such fines. Ms. Green testified that the Board received a

complaint on or about December 23, 2013, and explained standard procedure was to conduct an inspection of the facility after receiving a complaint.

On January 9, 2014, Inspector Green conducted an inspection of Red Persimmon. See Exhibit 1. Inspector Green found nine (9) footspas that were not cleaned and disinfected properly, 2 sponges that were not disposed of properly, 16 implements that were not cleaned and disinfected properly, 4 towels not deposited in a container properly, and two individuals who were working in the salon without a New Hampshire license. A fine of \$2032.00 was imposed. Inspector Green also testified that she explains what her findings are at each inspection to the owner, manager, or employee.

On February 21, 2016, Inspector Green inspected Red Persimmon. See Exhibit 2. Inspector Green found 1 footspa that was not disinfected properly, 50 implements that were not cleaned and disinfected properly, 34 implements or nail files that were not discarded properly, and no EPA registered disinfectant. The inspector imposed a fine. Inspector Green further testified that she went over disinfection to the owner, manager, or employee.

On January 22, 2016, Inspector Green inspected Red Persimmon. See Exhibit 3. Inspector Green testified she conducted the inspection with the other state inspector Sandra Hodgdon (“Inspector Hodgdon”). Inspector Green found 21 implements that were not cleaned and disinfected properly, 18 implements that were not discarded properly, and a warning was issued for 2 footspas that were mildly dirty. The inspector imposed a \$234.00 fine.

On July 19, 2016, Inspector Green and Inspector Hodgdon inspected Red Persimmon. See Exhibit 4. The inspectors found nine footspas that were not cleaned and disinfected properly, 37 implements that were not cleaned or disinfected properly, and 50 implements that were not discarded properly. Inspector Green noted on the inspection report that the UV box had nail

clippings in it and that the nail liquid smelled very strongly. Inspector Green noted that the proper Material Safety Data Sheet for the liquid needed to be faxed to the Board office. The inspector imposed a \$1422.00 fine. Inspector Green further testified that she went over disinfection to the owner, manager, or employee.

On November 21, 2017, Inspector Green inspected Red Persimmon. See Exhibit 5. The inspector found 8 implements that were not cleaned and disinfected properly and 6 implements that were not discarded properly. The inspector imposed an \$84.00 fine.

II. Respondent's Case

The Respondent did not appear as scheduled and therefore did not provide any testimony.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented showed the multiple and repeated fines to Red Persimmon. The fines listed were issued for the disinfection violations of implements not being properly discarded, sanitized, disinfected or maintained, implements and appliances not sanitized, disinfected, and stored properly, pedicure tubs not cleaned and disinfected. In addition to making a specific finding that the above Hearing Counsel's Case (Section I) was true, the Board found that individuals without a New Hampshire license were allowed to work in Red Persimmon.

The Board found the testimony of Inspector Green to be credible and the inspection reports accurate, detailed, and professional. The Board further found the notice of imposed fines to be accurate. The Board found the testimony of Ms. Wantuck to be credible and 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 or about January 9, 2014:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
3. On or about February 21, 2015:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
4. On or about January 22, 2016:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
5. On or about July 19, 2016:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Red Persimmon in a sanitary and hygienic manner.

- b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
6. On or about November 21, 2017:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Red Persimmon in a sanitary and hygienic manner.
7. Between January 2014 and November 2017, the Respondent violated RSA 313-A:22, II (g) and Bar 501.02 (c) by willful or repeated violations of the provisions of RSA 313-A.

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, 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. The fines imposed at each inspection demonstrate a repeated, willful violation of the Board's Administrative Rule requirements for proper sanitation and proper licensing.

The Board found inspection reports that were introduced into evidence to be valid, unbiased and accurate. 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 the Respondent violated RSA 313-A and the Board's administrative rules and therefore voted to suspend the Respondent's personal license to ensure the health and safety of the public is protected.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicuring license #29174 shall be **SUSPENDED** for a period of five (5) years, or until the Respondent appears before the Board for an adjudicatory proceeding. This Order is effective on the date an authorized representative of the Board signs it.

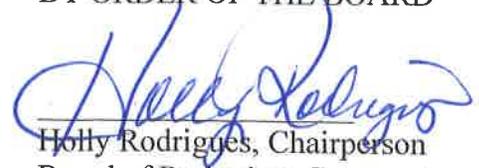
IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,;22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

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 10/15/18

BY ORDER OF THE BOARD



Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics