

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

In Re:
Bella House of Nail Spa, Inc.,
Shop License #4780

Dongge Bo (Shop Owner),
Unlicensed

Docket No.: 22-BAR-003

FINAL DECISION AND
ORDER- 04/11/22

I. ATTENDEES:

Jeanne Chappell, Board Chair
Joshua Craggy, Board Member
Kassie J. Dubois, Board Member
Kimberly A. Hannon, Board Member
Sarah Partridge, Board Member
Jessica Kennedy, Board Administrator
Collin Phillips, Esq., Hearing Counsel
Sheri Phillips, Esq., Board Counsel
Nikolas K. Frye, Esq., OPLC Hearings Examiner and Presiding Officer
Dongge Bo, Licensee Shop Owner
Huijuan Ren, Translator for Shop Owner
John Garrigan, Esq., OPLC Prosecutor (Observing)
John Brown, Esq., Assistant Attorney General, New Hampshire Department of Justice (Observing)
Sandra Hodgdon, OPLC Enforcement Inspector

II. CASE SUMMARY/PROCEDURAL HISTORY:

On or about 01/04/22, the Board of Barbering, Cosmetology and Esthetics (“Board”), through the Office of Professional Licensure and Certification (“OPLC”), conducted a routine inspection of Bella House of Nails Spa, Inc. (“Licensee”). During that inspection, the investigator allegedly discovered multiple hygiene/sanitation violations, identified three unlicensed individuals performing manicures

without a license, learned there was a licensed individual performing waxing without proper licensure, observed a displayed license without a photograph, did not see a past inspection report displayed, and noted one of the individuals without a license was dishonest and evasive with her about licensure of the individuals present. After learning about and discussing the matter at its 01/24/22 meeting, the Board voted to schedule an adjudicative/disciplinary hearing. A Notice of Adjudicative Hearing was sent to the Licensee on or about 02/15/22 for an adjudication to be held on 03/21/22. On 03/21/22 the Board continued the hearing. After providing the Licensee with a rescheduled notice of hearing, the adjudicatory hearing was held 04/11/22. This Final Order follows.

III. SUMMARY OF THE EVIDENCE:

The Board received the following evidence pursuant to RSA 541-A:33 and Rule 213.03:

a. Exhibits were submitted by Hearing Counsel, numbered as follows:

1. Shop Inspection Report dated 01/04/22
2. Photograph of NH Manicurist License: Chen Chen
3. Photograph of Driver's License: Tao Chen
4. Photograph of Driver License: Qingli Yan
5. Photograph of Driver License: Lei Lei
6. Photograph of Wax Pot
7. Photograph of Implements
8. Photograph of NH Manicurist License: Niu Ye
9. Photograph of 1/8, 2/8, 3/8 Spas
10. Photograph of 4/8 and 5/8 Spas
11. Photograph of 6/8 and 7/8 Spas
12. Photograph of 8/8 Spas
13. Email containing Dongge Bo's Response to Inspection
14. Memorandum of Inspection Report
15. Initial Shop Application Documents

b. Exhibits were submitted by Licensee, alphabetized as follows:

- A. Niu Ye New York License for Practicing Waxing: 1191303
- B. Niu Ye New York License for Practicing Nail Specialty: 1191302
- C. Photograph of NH Manicurist License: Niu Ye
- D. Picture of Several Documents: Certificates of Study, etc.
- E. Certificate of Completion of Waxing and Certificate of Completion of Nail Specialty from ABC Beauty Academy Earned by Niu Ye

F. Certificate of Completion of Waxing from ABC Beauty Academy Earned by Niu Ye

c. Testimony was received from:

1. Sandra Hodgdon, Inspector
2. Dongge Bo, Licensee Shop Owner (with assistance of a translator)

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee appeared for the hearing through its authorized representative/shop owner, Dongge Bo, who had the assistance of a translator. Pursuant to Rule 211.02(a), Hearing Counsel has the burden of proving its case by a preponderance of the evidence. There being no objections from the parties as to any of the exhibits submitted, the Presiding Officer admitted all as full exhibits. Hearing Counsel called one witness, Sandra Hodgdon. Licensee then called himself. The credible evidence presented at the hearing allows the Board to find the following facts.

Sandra Hodgdon, OPLC Investigator

Sandra Hodgdon was sworn and testified that she is an inspector for OPLC Enforcement and has training and experience in investigating and inspecting, as well as in operating a salon. She explained that in her role as an inspector, she became acquainted with Licensee through conducting an inspection on 01/04/22. Her testimony revealed that OPLC records show Licensee's shop license #4780 is held by Dongge Bo, but there is no manager listed.

She further testified that at the outset of her 01/04/22 inspection of Licensee, she noted the following individuals were manicuring at the shop: Tao Chen, Yan Qingli, Lei Lei, and Niu Ye. She clarified that she identified who these individuals were by reviewing their government issued photograph identifications. According to her testimony, the reason she requested to view their government issued identifications was because one of the licenses posted on the shop's bulletin board had no photograph on it. While reviewing that same bulletin board, she also noted the shop did not have the previous inspection report posted as required.

Ms. Hodgdon next authenticated Exhibit 1 through her testimony, which is her 01/04/22 Inspection Report of Licensee. It shows violation points totaling 3,200 points for the following types of violations: three unlicensed individuals working, a license without a photograph on it, failure to display the past inspection report, eight dirty foot spas, no cleaning logs for foot spas, use of a wax pot with no licensed New Hampshire practitioner, and unprofessional behavior on the part of one of the employees toward the inspector. In testifying about the specifics of each of these violations, Ms. Hodgdon authenticated Exhibits 2 through 12.

Exhibit 2 shows a manicurist license for Chen Chen. Ms. Hodgdon explained that one of the individuals she had asked for photo identification from claimed to be Chen Chen; however, his driver's license identified him as Tao Chen. *See* Exhibit 3. OPLC records confirmed for Ms. Hodgdon that the pictures of the drivers' licenses on file for Licensee did not match and that Tao Chen does not have a New Hampshire Manicurist license, despite the fact that he was acting in such a capacity when Ms. Hodgdon inspected Licensee on 01/04/22. For these reasons, Ms. Hodgdon cited Licensee for Mr. Chen working as an unlicensed employee and displaying unprofessional behavior. Exhibits 4 and 5 were drivers' licenses for Yan Qingli and Lei Lei respectively. According to Ms. Hodgdon's testimony, like Tao Chen, these employees were also performing manicures at Licensee's shop on 01/04/22, and OPLC records confirm neither were licensed as a New Hampshire Manicurist at the time of the inspection. Consequently, as Ms. Hodgdon explained in her testimony, she also cited Licensee for having these two employees working as unlicensed manicurists. Upon reviewing Exhibits A, B, E, and F during her testimony, Ms. Hodgdon also noted none of those documents allowed for those individuals to perform waxing or manicurist services in New Hampshire.

Ms. Hodgdon next testified as to the authenticity of Exhibits 6 and 7. As with respect to all the photographs in Hearing Counsel's Exhibits, Ms. Hodgdon testified that she took the photographs during

the 01/04/22 inspection of Licensee's shop. She identified Exhibit 6 as showing a wax pot she found at the shop, which was on and filled. She further explained Exhibit 7 showed drawers containing waxing implements. She noted she took these pictures because OPLC records confirmed that nobody at Licensee's shop holds a license to perform waxing. That coupled with the fact that the equipment and the waxing pot was on and filled indicated Licensee's shop was providing this service without a license. Ms. Hodgdon confirmed this by speaking with Niu Ye, the fourth individual working in Licensee's shop that day. Unlike the other three individuals, Niu Ye held a New Hampshire Manicurist license on the date of the inspection. *See* Exhibit 8. Ms. Hodgdon testified that Niu Ye told her that she was doing the waxing. Thus, Ms. Hodgdon explained she cited the Licensee for operating a shop with waxing without a New Hampshire licensed individual to perform the service.

Ms. Hodgdon then went on to testify about the portion of the inspection in which she checked for any hygiene-related issues in Licensee's shop. She explained that Exhibits 9-12 show eight of Licensee's foot spa agitators. She described the photographs in Exhibits 9-12 as showing debris, lint, scum, biofilm, and grease on those agitators. She emphasized that the Exhibits do not show any duplicate pictures of an agitator, but eight total agitators—all in poor hygiene condition. Ms. Hodgdon testified that as a result of the condition of these foot spa agitators, she cited the licensees for eight hygiene violations. She also noted that there was no record of a cleaning for the foot spas. Hence she cited the Licensee for that issue too.

Finally, Ms. Hodgdon testified as to the authenticity of Exhibit 13, which is an email she received from the Licensee's shop owner on or about 01/05/22. The email explains why the shop owner was not present for the inspection and more or less admits that there were problems during the inspection. Ms. Hodgdon then authenticated Exhibit 14, which was her confidential memorandum to the Board pertaining to this matter. She explained that it accurately reflects her memory of her 01/04/22 shop inspection of the Licensee. Lastly, she authenticated Exhibit 15, which is Licensee's initial shop application documents.

Licensee, through its shop owner Dongge Bo, elected not to cross examine Ms. Hodgdon. Hearing Counsel rested his case-in-chief after Ms. Hodgdon's testimony.

Dongge Bo, Licensee Shop Owner

Dongge Bo, Licensee Shop Owner, was sworn in under oath and testified for his case-in-chief.¹ He explained it was nerve racking to be in the hearing. He apologized for bringing these troubles to the Board. He testified COVID-19 had caused a lot of pressure on his business and he had a difficult time getting employees. For these reasons, he had sought out-of-state employment. He noted that it was difficult getting employees licensed during the state of emergency. He explained the significance of his Exhibits, which he said show the individuals who were practicing without a New Hampshire License have licenses in New York. Combined, he argued these license cover both the manicurist work the unlicensed employees were conducting as well as waxing. He was confused about the New Hampshire manicurist license Niu Ye had and thought it incorporated waxing as well.

On cross examination the shop owner acknowledged that he was a licensee. He agreed that he had reviewed the shop application and had someone translate the laws and rules when he reviewed it. He agreed that he knew he was not allowed to have unlicensed workers and knew the three individuals at the center of the 01/04/22 investigation were not licensed in New Hampshire. Board questioning further clarified that Niu Ye serves as the Licensee's manager and when and how the shop's ownership transferred to Licensee, officially and unofficially, from the previous owner.

V. DISCUSSION AND FINDINGS OF FACTS / CONCLUSIONS OF LAW:

After reviewing all the evidence, accounting for the the presentation and demeanor of all the witnesses, and drawing all reasonable inferences therefrom the Board finds, by a preponderance of the

¹ The translator was also sworn in under oath and assisted Mr. Bo throughout the proceedings. Mr. Bo indicated when he needed assistance.

evidence, that the Licensee committed professional misconduct. The Exhibits and witness testimony more than adequately support the conclusions that the 01/04/22 shop violations noted by Ms. Hodgdon at Bella House of Nail Spa, Inc. occurred and that 2) the Licensee knew the three unlicensed workers were unlicensed at the time they were working. As part of this decision, the Board makes the following specific findings of fact and conclusions of law:

- A. On or about 01/04/22, Licensee was the holder of the shop license for Bella House of Nail Spa, Inc. in Windham, New Hampshire. *See* Exhibits 13, 14, 15, and testimony of Sandra Hodgdon.
- B. Pursuant to RSA 313-A:22(II)(c) and (i) and Rule 404.09, Licensee engaged in professional misconduct by, on 01/04/22, operating a shop with: 1) multiple health code violations pertaining to 8 dirty foot spa agitators and no foot spa cleaning log; 2) three employees without a New Hampshire manicurist license performing manicures; 3) an employee who attempted to deceive Ms. Hodgdon as to who he was when asked; 4) waxing services with no New Hampshire licensed employee/individual to perform those services; 5) a last inspection report not displayed; and 6) a license displayed without a photograph. The total assessed points for those violations is 3,200. *See* Exhibits 1 through 15 and testimony of Sandra Hodgdon.
- C. The Licensee knew the three unlicensed workers were unlicensed at the time they were working. *See* Exhibit 13 and testimony of Dongge Bo.
- D. Pursuant to RSA 313-A:22(III)(b), and upon a finding of professional misconduct under section (II), the Board hereby **SUSPENDS** Licensee's shop license until the following occurs:
 - a. Pursuant to RSA 313-A:22(III)(d) and upon a finding of professional misconduct under section (II), the Board directs the Licensee's shop owner *and* manager to *each* participate in 10 hours of program(s) of continuing education in the areas of sanitation and disinfection control within thirty (30) days of the signed date of this order. To document successful completion of the course(s), the Licensee shall provide the Board with written documentary proof issued/authored by the program offering the course(s). **Whether any program(s) meets the requirements of this section shall be determined by the Board. Therefore, the Licensee is strongly encouraged to seek the Board's pre-approval of program(s) before taking them.** The Board has authorized the Board Chair to pre-approve courses on its behalf, so that the Licensee does not have to wait until a meeting to learn whether coursework he and/or the manager wish to take is acceptable. The Licensee can submit information about proposed programs to the Board's Administrator, who shall present same to the Board Chair for determination.

- b. Within 30 days, the Licensee shall come into compliance with all matters noted in the inspection report of 01/04/22 and discussed in this Order, including but not limited to the licensing and sanitation issues.
- c. The Licensee's shop passes an inspection conducted by a Board inspector with no licensing or sanitation-related violations. The Licensee shall schedule this inspection with the Board inspector to occur *after* the Licensee has fulfilled sections F.a and F.b above, at a time that is convenient for the Board inspector.
- E. Pursuant to RSA 313-A:22(III)(b) and upon a finding of professional misconduct under section (II), Licensee's license is subject to a period of **PROBATION** for three years commencing from the below signed date of this final order. Any violation of the Board's rules relating to licensing and/or sanitation and hygiene over 100 points within the probationary period shall constitute misconduct pursuant to RSA 313-A:22, and a separate and sufficient basis for further disciplinary action by the Board against the Licensee. The Board is putting Licensee on notice that it may enforce this order specifically using unannounced inspections.
- F. Pursuant to RSA 313-A:22(III)(c) and Rule 404, and upon a finding of professional misconduct under section (II), the Board affirmatively imposes an administrative fine of \$3,200.00, representing the cumulative point values for the violations noted in the 01/04/22 inspection report. Said administrative fine is assessed after hearing pursuant to Rule 404.11. In doing so the Board considered the Licensee's 1) awareness of RSA 313-A and the board's rules.
- G. Pursuant to RSA 332-G:11, the Board affirmatively assesses Licensee and Dongge Bo, as the owner of shop license #4780, the reasonable cost of investigation and prosecution of this disciplinary proceeding in the amount of \$500.00.
- H. The administrative fines and cost of investigation shall be paid within 90 days of the below signed date of this final order.
- I. Pursuant to RSA 313-A:22(g), if Licensee fails to comply with any terms or conditions imposed by this Final Decision, said failure shall constitute misconduct pursuant to RSA 313-A:22, and a separate and sufficient basis for further disciplinary action by the Board against the Licensee.
- J. In determining what sanctions to impose, the Board considered RSA 313-A:22 and the factors enumerated in Rule 402.01(d).
- K. Pursuant to RSA 313-A:22 and Rule 402.01(d), the Licensee is subjected to the above-referenced discipline as the minimum sanction that the Board believes will, based on the facts and circumstances of this particular case, both protect the public and deter Licensee and any other licensees from engaging in such misconduct in the future.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 313-A:22 and Rule 402, the Board hereby **SUSPENDS** Licensee's license, and subjects it to further discipline as outlined above.

DATED: 4/15/2022

_____/s/ Nikolas K. Frye, Esq._____
Nikolas K. Frye, Esq., Hearings Examiner
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