

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
BOARD OF COSMETOLOGY,)
)
Petitioner,)
)
vs.) Case No. 05-0994PL
)
MARK SLAYDEN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 26, 2005, before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings, by means of video teleconference between sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Charles F. Tunnickliff, Esquire,
Christopher T. Roberts, Qualified
Representative
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: No appearance on behalf of the Respondent.

STATEMENT OF THE ISSUE

This is a case in which the Petitioner seeks to impose an administrative fine against the Respondent by reason of

statutory violations described in an Administrative Complaint which are alleged to have taken place in the course of the operations of the Respondent's cosmetology salon.

PRELIMINARY STATEMENT

Following service of the Administrative Complaint, the Respondent requested an evidentiary hearing and in due course this case was referred to the Division of Administrative Hearings. Following assignment of an Administrative Law Judge, a written Notice of Hearing was sent to all parties setting forth the details regarding the scheduling of the final hearing.

The final hearing was scheduled to begin at 9:00 a.m. on May 26, 2005. The Petitioner made a timely appearance at the hearing. There was no appearance by or on behalf of the Respondent. The commencement of the evidentiary hearing was delayed until approximately 9:27 a.m. in order to afford the Respondent an opportunity to appear. The hearing was held without any participation by the Respondent. There has been no explanation as to the reason for the Respondent's failure to appear at the hearing.

At the commencement of the final hearing the Petitioner requested that Mr. Christopher T. Roberts be allowed to serve as its Qualified Representative in this case. The request was granted. During the hearing, the Petitioner presented the

testimony of one witness and offered four exhibits, all of which were received in evidence. Official Recognition was also taken of three provisions of the current version of the Florida Statutes.¹

The one-volume transcript of the final hearing was filed with the Division of Administrative Hearings on July 1, 2005. Thereafter the Petitioner filed a Proposed Recommended Order, which has been carefully considered during the preparation of this Recommended Order. The Respondent has not filed any document since the date of the final hearing.

FINDINGS OF FACT

1. At all times material to this case, the Respondent has been licensed as a Cosmetologist, having been issued license number CL205771. The Respondent's last-known business address is 2600 Hammondville Road, Pompano Beach, Florida 33069, at which location he operates a Cosmetology Salon named Cut Creation. At all times material to this case, Cut Creation has been licensed as a Cosmetology Salon, having been issued license number CE53077.

2. On February 5, 2004, the Respondent's business premises were inspected by Norma Fishner, an Investigative Specialist employed by the Department of Business and Professional Regulation. During the course of her inspection on February 5, 2004, Norma Fishner observed Christopher Mason

cutting a customer's hair on the premises of Cut Creation. On that date Christopher Mason was not licensed as a Cosmetologist in the State of Florida.

3. On February 5, 2005, Norma Fishner also observed an unidentified male cutting a customer's hair on the premises of Cut Creation. This unidentified male ran out the front door before he could be questioned or identified by Norma Fishner.

4. Norma Fishner questioned the Respondent about the unidentified male who ran out the door and asked the Respondent to provide identifying information about that person. The Respondent refused to provide any information about that person. It was clear that the Respondent knew the identity of the unidentified male who ran out the door and that the Respondent knew that the unidentified male did not have a Cosmetologist license.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes.

6. The Department of Business and Professional Regulation, Board of Cosmetology, is the state agency charged with regulating the practice of Cosmetology.

7. The definition at Section 477.013(4), Florida Statutes, includes "hair cutting" as one of the activities that constitutes the practice of Cosmetology.

8. Section 477.028, Florida Statutes,² reads as follows, in pertinent part:

(1) The board shall have the power to revoke or suspend the license of a cosmetologist licensed under this chapter, or the registration of a specialist registered under this chapter, and to reprimand, censure, deny subsequent licensure or registration of, or otherwise discipline a cosmetologist or a specialist licensed or registered under this chapter in any of the following cases:

* * *

(c) Upon proof that the holder of a license or registration is guilty of aiding, assisting, procuring, or advising any unlicensed person to practice as a cosmetologist.

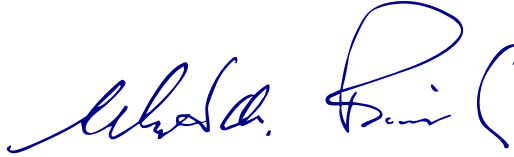
9. Section 477.029, Florida Statutes, authorizes the Board of Cosmetology to impose penalties that include: "[i]mposition of an administrative fine not to exceed \$500 for each count or separate offense."

10. In this case the Respondent allowed two unlicensed people to practice Cosmetology in his Cosmetology Salon. Each of these unlicensed acts constitutes a separate violation for which an administrative fine in the amount of \$500.00 may be imposed.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered in this case concluding that the Respondent is guilty of the violations alleged in the Administrative Complaint and imposing an administrative fine in the total amount of one thousand dollars (\$1,000.00).

DONE AND ENTERED this 27th day of July, 2005, in
Tallahassee, Leon County, Florida.



MICHAEL M. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of July, 2005.

ENDNOTES

1/ Unless otherwise indicated, all references to the Florida Statutes are to the current version of the Florida Statutes.

2/ Some of the statutory provisions mentioned in the Administrative Complaint are not the statutory provisions that should have been mentioned. However, in view of the similarities of the statutory provisions that were mentioned and the ones that should have been mentioned, the Administrative Complaint put the Respondent on adequate notice of the factual and legal basis for the proposed disciplinary action. The incorrect citation to statutory provisions is not such as to impair the fundamental fairness of the notice to the Respondent, nor does it deprive the Respondent of due process.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.