

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **9/9/2010**
File # **2010-08257**

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF COSMETOLOGY**

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
BOARD OF COSMETOLOGY**

Petitioner,

v.

CHIC AND SASSY,

Respondent.

_____ /

FILED
2010 SEP 10 A 11:37
DIVISION OF
ADMINISTRATIVE
HEARINGS

**DOAH CASE NO.: 09-1659
LICENSE NO.: CE-84418**

FINAL ORDER

THIS CAUSE came before the BOARD OF COSMETOLOGY (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on July 20, 2010, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order. Petitioner was represented by Jason White, Esquire. Respondent was present and was represented by Kwesi Korreh, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent, substantial evidence to support the findings of fact found by the Board.

CONCLUSIONS OF LAW

3. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 477, Florida Statutes.
4. The conclusions of law set forth in the Recommended Order in Paragraphs 16-30 and 32 are approved and adopted and incorporated herein by reference.
5. The Board voted to reject in their entirety paragraphs numbered 31 and 33 of the Recommended Order after determining the rejections are as reasonable or more reasonable than what had been put forth by the Administrative Law Judge. The Board found that the conclusion that the Board had no authority to apply an aggravated punishment is incorrect because enhancement of a penalty is permitted by Rule 61G5-30.001, Disciplinary Guidelines.
6. Paragraph 31 of the Recommended Order shall read as follows:

Subsection 477.029(2), Florida Statutes (2008), provides, in relevant part, as follows:

477.029 Penalty.--

- (2) Any person who violates the provisions of this section shall be subject to one or more of the following penalties, as determined by the Board:
 - (a) Revocation or suspension of any license or registration issued pursuant to this chapter.
 - (b) Issuance of a reprimand or censure.
 - (c) Imposition of an administrative fine not to exceed \$500 for each count or separate offense.
 - (d) Placement on probation for a period of time and subject to such reasonable conditions as the Board may specify.

Florida Statutes §455.224(6) directs Boards to adopt rules to permit the issuance of citations. Rule 61G5-30.001, Disciplinary Guidelines, which was adopted by the Board pursuant to this authority, states that the Board shall impose a penalty within the range of each applicable disciplinary violation set forth below unless the Board finds an aggravating or mitigating circumstance, in which case the Board may deviate the guideline penalty. Rule 61G5-30.001(4) enumerates specific instances where departure from

the guidelines may be appropriate. The Board is specifically permitted to depart from the guidelines based on the number of complaints filed against the Licensee, which was the stated reason for imposing an aggravated penalty herein. *See* Rule 61G5-30.001(4)(c).

7. Paragraph 33 of the Recommended Order shall read as follows:

The Petitioner's Proposed Recommended Order seeks a fine of \$750 per count based on "aggravating factors". The Board has authority to depart from the guidelines to enhance a penalty for the number of complaints filed against the Licensee, pursuant to Rule 61G5-30.001(4)(c).

8. There is competent, substantial evidence to support the conclusions of law adopted by the Board.

DISPOSITION

The Administrative Law Judge's Recommendation is approved and adopted by the Board in its entirety.

WHEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

- A. Respondent violated the statutes and rules referenced herein;
- B. Respondent shall pay an administrative fine in the amount of \$3,000.00. Said fees shall be paid within thirty (30) days of the filing of this final order to the Executive Director, Board of Cosmetology, Department of Business and Professional Regulation, Post Office Box 5377, Tallahassee, Florida 32314-5377.
- C. Respondent's Cosmetology Salon License is hereby REVOKED.
- D. Respondent shall immediately surrender or mail all evidence of salon registration to:
Executive Director, Board of Cosmetology, Department of Business and Professional Regulation, Post Office Box 5377, Tallahassee, Florida 32314-5377.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 27th day of August, 2010.


Robyn Barineau,
EXECUTIVE DIRECTOR
BOARD OF COSMETOLOGY

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Kwesi Korreh, Esquire, Post Office Box 2487, Orlando, FL 32802; and to William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and by interoffice mail to Jason White, Prosecuting Attorney, Department of Business and Professional Regulation, 1940 N. Monroe Street, Tallahassee, Florida 32399-0790;, and to Jaime Doyle Liang, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 9th day of September, 2010.

Brandon M. Nichols