

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-1659  
 )  
CHIC AND SASSY, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On March 10, 2010, an administrative hearing in this case was held by video teleconference in Orlando and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: LeChea C. Parson, Esquire  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-0792

For Respondent: Kwesi Korreh, Esquire  
Post Office Box 2487  
Orlando, Florida 32802

STATEMENT OF THE ISSUES

The issues in the case are whether the allegations of the Administrative Complaint are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By an Administrative Complaint dated January 9, 2009, the Department of Business and Professional Regulation (Petitioner) alleged that the Chic and Sassy salon (Respondent) had violated certain sanitary and licensing requirements. The Respondent filed a request for a formal administrative hearing. On March 30, 2009, the Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled the formal hearing for June 5, 2009.

At the June 5, 2009, hearing, the then-assigned Administrative Law Judge (ALJ) granted a Motion to Continue at the request of legal counsel, who appeared on behalf of the Respondent. The hearing was thereafter scheduled and continued several times due to a variety of conflicts and witness unavailability. The case was transferred to the undersigned ALJ on October 2, 2009.

At the hearing, the Petitioner presented the testimony of two witnesses and had Exhibits 1 through 14 admitted into evidence. The Respondent presented no testimony or witnesses.

The Transcript of the hearing was filed on April 14, 2010. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was a Florida-licensed cosmetology salon, holding license CE-84418, located at 2702-B Silver Star Road, Orlando, Florida 32818.

2. On April 11, 2008, Evelyn Williams, an inspector employed by the Petitioner, conducted a routine inspection of the Respondent.

3. During the inspection, Ms. Williams observed three individuals, identified as O'Brian Breedlove, Charley James Hawks, and Shawn Johnson, using clippers to cut the hair of salon customers.

4. Mr. Breedlove is a Florida-licensed hair braider, holding license number HB4110.

5. Mr. Hawks is a Florida-licensed hair braider, holding license number HB4217.

6. Mr. Johnson is a Florida-licensed hair braider, holding license number HB3935.

7. A licensed hair braider is essentially authorized only to weave or interweave human hair and is not allowed to perform hair-cutting.

8. Mr. Breedlove, Mr. Hawks, and Mr. Johnson were operating outside the scope of their licenses when Ms. Williams observed each man using clippers to cut the hair of the salon's customers.

9. Ms. Williams additionally observed that photographs of Mr. Hawks and Mr. Johnson were not displayed with their licenses.

10. During the inspection, Ms. Williams observed that the hair-cutting tools in use at the salon were not being properly disinfected or stored. Sterilizers contained excessive amounts of accumulated hair. Some combs, brushes, and clippers were kept in a drawer that contained used neck strips and other paper products, as well as personal items including cash. Some hair-cutting tools were left on top of workstation counters rather than contained within closed storage drawers.

11. There was excessive accumulated hair on the floor and baseboards, as well as around the workstations.

12. The Respondent's most recent health inspection report was not conspicuously displayed near the front entrance of the salon.

13. The lavatory at the salon was not in good repair. A sink was leaking, and a bucket had been placed underneath the sink to catch leaking water. There were no sanitary towels present, and no mechanical hand dryer was provided. Ms. Williams noted the strong smell of urine in the lavatory and observed that the ventilation appeared to be inadequate.

14. The owner of the Respondent was not present at the time of the inspection.

15. Ms. Williams prepared a report of her inspection and presented a copy of the report to Mr. Breedlove.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2009).

17. The Petitioner is the state agency charged with the regulation of cosmetology salons in the State of Florida. See Ch. 477, Fla. Stat. (2009).

18. The Petitioner has the burden of proving the allegations set forth in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The burden has been met.

19. It is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a cosmetology salon or specialty salon in which a person not licensed or registered as a cosmetologist or a specialist is permitted to perform cosmetology services or any specialty. See § 477.0265(1)(b)2., Fla. Stat. (2008).

20. Section 477.013, Florida Statutes (2008), provides, in relevant part, as follows:

477.013 Definitions.--As used in this chapter:

\* \* \*

(3) "Cosmetologist" means a person who is licensed to engage in the practice of cosmetology in this state under the authority of this chapter.

(4) "Cosmetology" means the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

\* \* \*

(9) "Hair braiding" means the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.

21. Subsection 477.029(1), Florida Statutes (2008), provides, in relevant part, as follows:

It is unlawful for any person to:

(a) Hold himself or herself out as a cosmetologist, specialist, hair wrapper, hair braider, or body wrapper unless duly licensed or registered, or otherwise authorized, as provided in this chapter.

\* \* \*

(c) Permit an employed person to practice cosmetology or a specialty unless duly

licensed or registered, or otherwise authorized, as provided in this chapter.

\* \* \*

(h) Violate any provision of s. 455.227(1), s. 477.0265, or s. 477.028.

(i) Violate or refuse to comply with any provision of this chapter or chapter 455 or a rule or final order of the board or the department.

22. The evidence establishes that the Respondent permitted licensed hair braiders to perform hair-cutting services in violation of Subsections 477.0265(1)(b)2. and 477.029(1)(c), Florida Statutes (2008).

23. Florida Administrative Code Rule 61G5-20.002 provides, in relevant part, as follows:

61G5-20.002 Salon Requirements.

(1) Prior to opening a salon, the owner shall:

\* \* \*

(c) Meet the safety and sanitary requirements as listed below and these requirements shall continue in full force and effect for the life of the salon:

1. Ventilation and Cleanliness: Each salon shall be kept well ventilated. The walls, ceilings, furniture and equipment shall be kept clean and free from dust. Hair must not be allowed to accumulate on the floor of the salon. Hair must be deposited in a closed container. Each salon which provides services for the extending or sculpturing of nails shall provide such services in a separate area which is adequately ventilated

for the safe dispersion of all fumes resulting from the services.

2. Toilet and Lavatory Facilities: Each salon shall provide--on the premises or in the same building as, and within 300 feet of, the salon--adequate toilet and lavatory facilities. To be adequate, such facilities shall have at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning material, sanitary towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle. Such facilities and all of the foregoing fixtures and components shall be kept clean, in good repair, well-lighted, and adequately ventilated to remove objectionable odors.

\* \* \*

(2) Each salon shall comply with the following:

\* \* \*

(d) Sanitizers: All salons shall be equipped with and utilize wet sanitizers with hospital level disinfectant or EPA approved disinfectant, sufficient to allow for disinfecting practices.

1. A wet sanitizer is any receptacle containing a disinfectant solution and large enough to allow for a complete immersion of the articles. A cover shall be provided.

2. Disinfecting methods which are effective and approved for salons: First, clean articles with soap and water, completely immerse in a chemical solution that is hospital level or EPA approved disinfectant as follows:



a. Combs and brushes, remove hair first and immerse in hospital level or EPA approved disinfectant;

\* \* \*

(e) After cleaning and disinfecting, articles shall be stored in a clean, closed cabinet or container until used. Undisinfected articles such as pens, pencils, money, paper, mail, etc., shall not be kept in the same container or cabinet. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container, provided such area is clean and provided the cutting edges of such clippers have been disinfected.

24. The evidence establishes that the Respondent violated Florida Administrative Code Rule 61G5-20.002(1)(c)1., related to cleanliness of the salon, and thereby violated Subsection 477.029(1)(i), Florida Statutes (2008).

25. The evidence establishes that the Respondent violated Florida Administrative Code Rule 61G5-20.002(1)(c)2., related to toilet and lavatory facilities in the salon, and thereby violated Subsection 477.029(1)(i), Florida Statutes (2008).

26. The evidence establishes that the Respondent violated Florida Administrative Code Rule 61G5-20.002(2)(d) and (e), related to sanitation, disinfection, and storage of equipment, and thereby violated Subsection 477.029(1)(i), Florida Statutes (2008).

27. Florida Administrative Code Rule 61G5-20.004 provides, in relevant part, as follows:

61G5-20.004 Display of Documents.

(1) All holders of a cosmetology or specialty salon license shall display within their salons in a conspicuous place which is clearly visible to the general public upon entering the salon the following documents:

(a) The current salon license,

(b) A legible copy of the most recent inspection sheet for the salon.

(2) All holders of a cosmetology or specialty salon license shall require and ensure that all individuals engaged in the practice of cosmetology, any specialty, hair braiding, hair wrapping, or body wrapping display at the individual's work station their current license or registration at all times when the individual is performing cosmetology, specialty, hair braiding, hair wrapping, or body wrapping services. The license or registration on display shall be the original certificate or a duplicate issued by the Department and shall have attached a 2'' by 2'' photograph taken within the previous two years of the individual whose name appears on the certificate. The certificate with photograph attached shall be permanently laminated as of July 1, 2007.

28. The evidence establishes that the Respondent violated Florida Administrative Code Rule 61G5-20.004(1)(b) by failing to conspicuously display the salon's most recent inspection sheet and thereby violated Subsection 477.029(1)(i), Florida Statutes (2008).

29. The evidence establishes that the Respondent violated Florida Administrative Code Rule 61G5-20.004(2) by failing to require that all employees display photographs along with their licenses and thereby violated Subsection 477.029(1)(i), Florida Statutes (2008).

30. The Respondent has asserted that it did not receive the inspection report, had no notice of the alleged violations, and had no opportunity to challenge the Administrative Complaint. Although the Respondent was not present during the inspection, the Respondent clearly had notice of the allegations and requested an administrative hearing to challenge them. The previously assigned ALJ granted an ore tenus request to continue the hearing at the June 5, 2009, commencement of the proceeding, and more than sufficient time elapsed from that date upon which to resolve any questions related to the allegations at issue in this case. The opportunity to challenge the allegations was the reason for which an administrative hearing was conducted, when the Petitioner presented the witnesses and exhibits in support of their Administrative Complaint. The Respondent offered nothing to refute the testimony and evidence presented by the Petitioner, which has been fully credited.

31. 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.

(e) Refusal to certify to the department an applicant for licensure.

32. The Administrative Complaint in this case contained four separate counts, three of which were related to the three persons performing hair-cutting services outside the scope of their licenses, and a fourth that referenced the sanitation violations.

33. In part, the Petitioner's Proposed Recommended Order seeks a fine of \$750 per count based on "aggravating factors," but Subsection 477.029(2), Florida Statutes (2008), makes no provision for aggravation of the penalty.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and

Professional Regulation, Board of Cosmetology, enter a final order, stating that the Respondent violated the statutes and rules referenced herein; imposing a \$3,000 administrative fine; and revoking the Respondent's cosmetology licensure.

DONE AND ENTERED this 17th day of May, 2010, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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WILLIAM F. QUATTLEBAUM  
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Filed with the Clerk of the  
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this 17th day of May, 2010.

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.