

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BARBERS' BOARD

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/20/2014
File #	2014-03737

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

DOAH Case No. 13-4589 PL
DBPR Case No. 2012-007259
License No. 8890016

ANDREW ARCHIBALD,

Respondent.

FINAL ORDER

This matter appeared before the Barbers Board at a duly-noticed public meeting on May 5, 2014, in Fernandina Beach, Florida, for consideration of the Administrative Law Judge's Recommended Order (Attachment A), and Petitioner's Exceptions to the Recommended Order (Attachment B). Petitioner was represented by Danijela Janjic, Assistant General Counsel for the Department of Business and Professional Regulation ("DBPR"). Respondent was not present and was not represented by counsel.

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.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the Petitioner's Exceptions to Recommended Order,

and its rulings are provided below.

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 476, Florida Statutes (2013).

2. The Administrative Law Judge (“ALJ”) ALJ determined that the Board did not carry its burden of proof because the record lacked competent substantial evidence that the barbershop was open for business at the time of the inspection. As noted by Petitioner, there was no need to reach any other legal issue in order to find respondent not guilty. In pursuing the legal analysis that he did, the ALJ misconstrued the Chapter 476 and its implementing rules.

3. Petitioner’s Exception 1, to paragraph 36 of the RO, is GRANTED in part and DENIED in part. Paragraph 36 is deleted, as requested by Petitioner, but is replaced with the following:

Count I of the Administrative Complaint attempts to charge Petitioner with the failure of all barbers who may have been employed at the shop to display their licenses. Paragraph 9 of the Administrative Complaint states “. . . Respondent violated or refused to comply with a rule of the board by failing to display current personal licenses” Use of the plural “licenses” indicates that Petitioner intended to charge Respondent for the failure of all barbers working at the shop to display their personal licenses. First, as noted by the ALJ, the record does not identify the number of barbers, if any, employed at the shop at the time of the inspection. Second, the Respondent was charged under Rule 61G3-19.009(1), which requires that a “current personal license be displayed at all times.” By use of the term “personal” and singular of “license”, the Rule requires each individual barber to be responsible for the display of his or her own license. Accordingly, there is no factual or legal basis for charging Respondent with the failure to display all the personal licenses of each barber who may have worked at the shop at the time of the inspection.

4. Petitioner’s Exception 2, to paragraph 37 of the RO, is GRANTED. Paragraph 37 of the Recommended Order is deleted. Rule 61G3-19.009(1) sets very clear and simple standards of conduct for barbers. As discussed above, each barber must display his or her own personal license at his or her place of employment.

5. Petitioner's Exception 3, to paragraph 38 of the Recommended Order, is granted. The paragraph is deleted for the reasons discussed in response to Exceptions 1 and 2.

5. Petitioner's Exception 4, to paragraph 41 of the Recommended Order, is GRANTED and the paragraph is deleted. The "foregoing legal principles" referenced in paragraph 41 misconstrue the rules implementing Chapter 476, Florida Statutes, and the balance of the paragraph is based on said principles. Furthermore, we note that Respondent was very clearly put on adequate notice. Paragraph 5 of the Administrative Complaint alleges that Respondent was the owner or operator of the barbershop. Each Count of the Administrative Complaint states "Respondent violated . . .". Furthermore, the record reflects that he never disavowed ownership of the shop and the ALJ did not make any findings that Respondent was not the owner. When the shop owner is also a licensee the alleged violations, except for those in Count I, can be charged against the personal license or the shop license.

6. Petitioner's Exception 5, to paragraph 42 of the RO, is GRANTED for all of the reasons provided above.

7. Petitioner's Exception 6, to paragraph 47 of the RO, is GRANTED for all of the reasons provided above.


8. The Conclusions of Law, with the above modifications, are adopted.

Accordingly, IT IS HEREBY ORDERED AND ADJUDGED that Respondent is not guilty.

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

DONE AND ORDERED this 16th day of May, 2014.

BARBERS' BOARD



Robyn Barneau,
Executive Director *on behalf of*
Herman White, Chair

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 HEALTH 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 **Andrew Archibald**, 114 SW Peacock Blvd., Bldg. 8 #101, Port St. Lucie, FL 34986; by electronic mail to aaafresh7@yahoo.com; and, by interoffice mail to **Marlene K.**

Stern, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol,

Tallahassee, Florida 32399-1050, and **Danijela Janjic**, Assistant General Counsel, Department of Business and Professional Regulation, Suite 86, 1940 N. Monroe St., Tallahassee, Florida

32399 this 20th day of May, 2014.

