

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

vs.

Case No. 15-0951

MARTIN ROSALES,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Tampa and Tallahassee, Florida, on April 24, 2015, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen Lowell Johnson, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-2202

For Respondent: Martin Rosales, pro se  
3318 Maple Mex Street  
Wimauma, Florida 33598

STATEMENT OF THE ISSUES

Whether Respondent, Martin Rosales<sup>1/</sup> (Respondent), engaged in the practice of barbering without a license and displayed as his own the barbering license of another, and, if so, what administrative penalty should be imposed.

PRELIMINARY STATEMENT

On or about January 5, 2015, Petitioner, the Department of Business and Professional Regulation (Petitioner), issued an Administrative Complaint against Respondent. The Administrative Complaint alleges that Respondent engaged in the practice of barbering without a license in violation of section 476.204(1)(a), Florida Statutes (2014),<sup>2/</sup> and that Respondent, in violation of section 476.204(1)(d), presented as his own the barbering license of another person. Respondent timely requested a formal hearing, and the matter was referred to the Division of Administrative Hearings on February 19, 2015, for assignment of an administrative law judge to conduct a disputed-fact hearing.

At the hearing, Petitioner presented the testimony of its employee John Miranda, who works for Petitioner as an inspector. Petitioner's Exhibits 1 through 8, 10 and 11, were received into evidence. Respondent testified and his Exhibit 1 was received into evidence.

A transcript of the final hearing was not filed with the Division of Administrative Hearings. Petitioner filed its

Proposed Recommended Order on May 14, 2015. As of the date of this Recommended Order, Respondent has not filed a proposed recommended order.

FINDINGS OF FACT

1. At all times material hereto, Respondent was not licensed as a barber by the Department's Board of Barbers for the State of Florida.

2. John Miranda, during all times relevant to this proceeding, was employed by Petitioner as an inspector. Mr. Miranda's job responsibilities include conducting inspections of barbershops.

3. On September 13, 2014, Petitioner, through its employee, Mr. Miranda, inspected the premises of Sanchez Barbershop/Salon (Barbershop). During the inspection, Mr. Miranda observed, and photographed, Respondent performing barbering services on a customer. Specifically, Respondent was cutting a customer's hair.

4. During the inspection on September 13, 2014, Mr. Miranda briefly exited the barbershop in order to retrieve something from his vehicle. As Mr. Miranda was returning to the shop, he observed Respondent fleeing the premises. Mr. Miranda did not give chase, and Respondent did not return to the Barbershop prior to Mr. Miranda completing the inspection.

5. Upon re-entry to the Barbershop, Mr. Miranda saw, at the work-station where he observed Respondent, a barber's license

displaying Respondent's photographic image and the name Joseph Garcia. Respondent and Joseph Garcia are not the same person. Respondent publicly displayed the barber's license of another as if it were his own.

6. Respondent does not challenge the merits of the Administrative Complaint but instead defends against the action on the ground that he is the victim of mistaken identity. According to Respondent, he is not the person appearing in the photographs taken by Mr. Miranda on September 13, 2014.

7. Mr. Miranda testified, without hesitation or reservation, that Respondent is the person that he observed in the Barbershop on September 13, 2014. His certainty as to Respondent's identity is bolstered by the fact that he had dealings with Respondent prior to September 13, 2014, and, at the time of the inspection, was familiar with Respondent's appearance.

8. During the final hearing, Mr. Miranda, while sitting approximately five feet from Respondent, affirmed that Respondent is the person that he observed providing barbering services on September 13, 2014. Additionally, the person depicted in the photographs taken during the inspection by Mr. Miranda bears a definite physical resemblance to Respondent. The undersigned is convinced that Respondent is the person that Mr. Miranda observed performing barbering services at the Barbershop on the day in question.

## CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and chapters 455 and 476, Florida Statutes.

10. Petitioner, pursuant to section 20.165 and chapters 455 and 476, Florida Statutes, is the state agency charged with the regulation of barbers and barbershops in the State of Florida.

11. In the instant case, Petitioner alleges that Respondent committed acts prohibited by 476.204(1) (a) and (d), Florida Statutes, and seeks to impose an administrative fine.

12. Section 476.204(1) (a) provides that it is unlawful for any person to "[h]old himself or herself out as a barber unless duly licensed."

13. Section 476.204(1) (d) provides that it is unlawful for any person to "[p]resent as his or her own the license of another."

14. In its Proposed Recommended Order, Petitioner specifically requests that Respondent be ordered to "pay an administrative penalty in the amount of \$500.00." This proposed penalty is authorized by section 476.204(2) (c), which provides that a violation of any provision of section 476.204 shall result in the "[i]mposition of an administrative fine not to exceed \$500 for each count or separate offense."

15. Because Petitioner seeks to impose an administrative penalty, which is a penal sanction, Petitioner has the burden of proving by clear and convincing evidence the specific allegations in the Administrative Complaint. See, e.g., Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Pou v. Dep't of Ins. and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

16. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997).

17. Petitioner has met its burden of proof in this case.

18. Petitioner proved by clear and convincing evidence that Respondent engaged in the practice of barbering without a license issued to him by the Department and that Respondent unlawfully presented as his own the barber's license of another.

19. There is no evidence that Respondent previously engaged in conduct similar to that alleged in the Administrative Complaint. Accordingly, an administrative fine of \$250 for each count is reasonable and in accordance with statutory guidelines.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

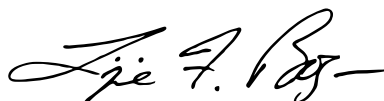
RECOMMENDED that Petitioner, Department of Business and Professional Regulation, enter a final order finding that Respondent, Martin Rosales:

1) Engaged in the unlicensed practice of barbering, an act proscribed by section 476.204(1) (a);

2) Displayed as his own the barber's license of another, an act proscribed by section 476.204(1) (d); and

3) Imposing an administrative fine of \$500 payable to Petitioner within 30 calendar days of the effective date of the final order entered in this case.

DONE AND ENTERED this 22nd day of May, 2015, in Tallahassee, Leon County, Florida.



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LINZIE F. BOGAN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of May, 2015.

ENDNOTES

<sup>1/</sup> The Administrative Complaint lists "Martin Rosales" as Respondent. During the final hearing, Respondent confirmed that "Rosalez" is the correct spelling of his surname. Given its use in the caption of the Administrative Complaint, the incorrect spelling of "Rosales" will be used herein for purposes of consistency. It is recommended that the caption of the final order reflect the correct spelling of Respondent's name.

<sup>2/</sup> All subsequent references to Florida Statutes will be to 2014, unless otherwise indicated.

COPIES FURNISHED:

Stephen Lowell Johnson, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-2202  
(eServed)

Martin Rosales  
3318 Maple Mex Street  
Wimauma, Florida 33598

J. Yvette Pressley, Hearing Officer  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-2202  
(eServed)

William N. Spicola, General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202  
(eServed)



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.