

**STATE OF FLORIDA
BOARD OF COSMETOLOGY**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/19/2017
File #	2017-00429

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case No.: 2014-000858

TANIA JORGE,

License No.: CL 1196463

Respondent.

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 October 4, 2016, in Tampa, Florida. The purpose of the cause was for consideration of the Honorable F. Scott Boyd's Recommended Order issued on ~~March 11, 2013~~ ^{July 22nd, 2016 (Bme)} (attached hereto as Exhibit "A"); Respondent filed Exceptions (attached hereto as Exhibit "B"); and Petitioner filed a Response to Exceptions (attached hereto as Exhibit "C"). Petitioner was represented by Dillon Hunter Samuels Jess, Assistant General Counsel. Respondent was present at the meeting and represented by Elizabeth P. Perez, Esquire.

APPEARANCES

For Petitioner:

Dillon Hunter Samuels Jess, Esquire
Department of Business and Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32309

For Respondent:

Elizabeth P. Perez, Esquire
Elizabeth P. Perez, P.A.
8004 NW 154th St #280
Miami Lakes, Florida 33016-5814

Upon review of the Recommended Order, the Exceptions, and the complete record in this case, the Board makes the following findings and conclusions:

RULINGS ON EXCEPTIONS

1. Respondent's First Exception: **REJECTED AS NOT LEGALLY SUFFICIENT.** The Respondent takes exception to Finding of Fact No. 4 on page 4 for failure to consider evidence presented by the Respondent. The Board rejects this exception as not legally sufficient, because the exception fails to identify the legal basis for the exception. Section 120.57(1)(k), Florida Statutes; Fla. Admin. Code R. 28-106.217.
2. Respondent's Second Exception: **REJECTED AS NOT LEGALLY SUFFICIENT.** The Respondent takes exception to Finding of Fact No. 6 on page 5 for failure to consider evidence presented by the Respondent. The Board rejects this exception as not legally sufficient, because the exception fails to identify the legal basis for the exception. Section 120.57(1)(k), Florida Statutes; Fla. Admin. Code R. 28-106.217.
3. Respondent's Third Exception: **REJECTED AS NOT LEGALLY SUFFICIENT.** The Respondent takes exception to Finding of Fact No. 12 on pages 7-8 for failure to consider evidence presented by the Respondent. The Board rejects this exception as not legally sufficient, because the exception fails to identify the legal basis for the exception. Section 120.57(1)(k), Florida Statutes; Fla. Admin. Code R. 28-106.217.
4. Respondent's Fourth Exception: **DENIED.** Respondent takes exception to Finding of Fact No. 14 on page 8 for lack of competent substantial evidence and for failure to address evidence and arguments presented by the Respondent. As the court explained in *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985), cited by *Walker v. Board of Professional Engineers*, 946 So. 2d 604, 605 (Fla. 1st DCA 2006), it is the Administrative Law Judge's function "to consider all the evidence

presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence.” When “the evidence presented supports two inconsistent findings, it is the hearing officer’s role to decide the issue one way or the other.” *Id.* “The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Id.*

The Administrative Law Judge’s Finding of Fact No. 14 is based on competent, substantial evidence. Transcript pages 22:25 through 23:1; page 25:9-15; page 37:17 through page 38:12; page 58:24 through page 61:8.

5. Respondent’s Fifth Exception: **DENIED.** Respondent takes exception to Conclusion of Law No. 23 on page 11, stating that the conclusion of law is not supported by a finding of fact based on competent substantial evidence. The Respondent is re-arguing her exception to Finding of Fact No. 12. The record shows that finding of fact No. 12 is supported by competent substantial evidence, including the Respondent’s own testimony at the hearing. Transcript page 61:1-2, 14-15.
6. Respondent’s Sixth Exception: **DENIED.** The Respondent takes exception to Conclusion of Law No. 25 and corresponding Note 6 on pages 12 and 17, respectively, stating that the conclusion of law is not supported by a finding of fact based on competent substantial evidence and is contrary to applicable law. The Respondent is re-arguing her exception to Finding of Fact No. 12 as stated in her Fifth Exception. The record shows that finding of fact No. 12 is supported by competent substantial evidence, including the Respondent’s own testimony at the hearing. Transcript page 61:1-2, 14-15; 62:22-25.
7. Respondent’s Seventh Exception: **DENIED.** The Respondent takes exception to Conclusion of Law No. 26 on page 12 and its corresponding footnote 7, page 17, stating

that for the reasons set forth in Respondent's exception to Conclusion of Law 23, the ALJ's conclusion is incorrect. Respondent claims that the conclusion improperly concludes that Petitioner has met its burden of proof by merely showing that the Respondent signed the application, because it is unsupported by competent substantial evidence and is not sufficient to support a finding that Petitioner has met its burden of proof.

The hearing officer has the authority and discretion to reach the ultimate finding of fact, and the agency can only alter this finding if it is not supported by competent, substantial evidence. *Heifetz* at 1282. That finding that Respondent signed the application is supported by competent substantial evidence. Transcript page 61:1-2, 14-15; 62:23-25.

In a matter of pure law, the agency can only change a conclusion of law if the proposed conclusion is as or more reasonable than that of the ALJ. That the Petitioner has not met its burden of proof is a conclusion of law that is not as or more reasonable than that of the ALJ.

FINDINGS OF FACT

1. There is competent, substantial evidence to support the Findings of Fact made in the Recommended Order;
2. Accordingly, the Findings of Fact set forth in the Recommended Order are hereby approved, adopted, and incorporated herein by reference as the Findings of Fact of the Board.

CONCLUSIONS OF LAW

1. The Board has personal and subject matter jurisdiction of this cause pursuant to sections 120.569; 120.57(1); and Chapter 477, Florida Statutes.

2. The Board does not find a more reasonable interpretation of the law than that which was found by the Administrative Law Judge;
3. Accordingly, the Conclusions of Law set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

VIOLATION

Upon a complete review of the record in this case, the Findings of Fact and Conclusions of Law of the Administrative Law Judge's Recommended Order are **ACCEPTED**.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that the Respondent is found in **VIOLATION** of Section 477.029(1)(e), Florida Statutes, by submitting false documentation in support of her signed application for licensure by endorsement.

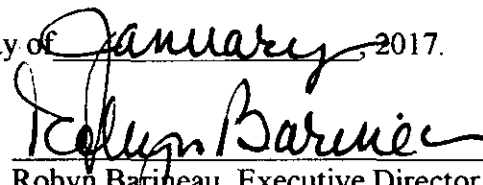
PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be **ACCEPTED** without modification.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED**:

1. Respondent's license CL 1196463 to practice as a cosmetologist in the State of Florida is hereby **REVOKED**.

DONE AND ORDERED this 13th day of January, 2017.



Robyn Barneau, Executive Director
Florida 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 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 Final Order has been furnished by U.S. Mail to **Tania Jorge, c/o Elizabeth P. Perez, Esq., 8004 NW 154 Street #280, Miami Lakes, Florida 33016; Honorable F. Scott Boyd, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060;** and by interoffice mail to **Dillon Hunter Samuels Jess, Assistant General Counsel, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399;** and by electronic mail to **Lynette Norr, Assistant Attorney General, at Lynette.Norr@myfloridalegal.com** this 19th day of January, 2017.


Brandon M. Nibbs