



3-9-2010

TENNESSEE DEPARTMENT OF
COMMERCE & INSURANCE, Petitioner, v.
ZURI BODY SPA, and KRISTIN SUE
ALEXANDER, Respondents,

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**BEFORE THE BOARD OF COSMETOLOGY
FOR THE STATE OF TENNESSEE**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE & INSURANCE,**

Petitioner,

v.

**ZURI BODY SPA, and
KRISTIN SUE ALEXANDER,**

Respondents,

DOCKET NO: 12.09-106044A

INITIAL ORDER

This contested case was heard in Nashville, Tennessee on March 9, 2010, before Administrative Judge Mary M. Collier, assigned by the Secretary of State Administrative Procedures Division to sit on behalf of the Tennessee State Board of Cosmetology. The Tennessee Department of Commerce and Insurance, Division of Regulatory Boards (hereinafter "Petitioner") was represented by Laura R. Betty and Terrance L. Bond, Assistant General Counsels. The Respondent Kristin Sue Alexander (hereinafter "Respondent") represented herself and the Respondent Zuri Body Spa (hereinafter "Respondent Shop") *pro se*, waiving the right to legal counsel.

At the close of the hearing, a Transcript of the hearing was ordered and the parties were given 15 days after the Transcript was filed in which to submit proposed findings of fact and conclusions of law. The Transcript was filed on March 26, 2010. Thereafter, on April 9, 2010, the Petitioner timely filed proposed findings of fact and conclusions of law. To date, the Respondents have not filed any proposed findings of fact and conclusions of law.

The issue of the hearing was the Respondents' failure to have a shop license for Respondent Shop. After consideration of all of the evidence and arguments of the parties, it is determined that the Department of Commerce and Insurance proved by a preponderance of the evidence that the Respondents operated Respondent Shop without a shop license during the time in question. This decision is based upon the following.

FINDINGS OF FACT

1. Respondent has been a licensed cosmetologist in the State of Tennessee since April 2000.

2. At all times pertinent hereto, Respondent has been the owner and manager of Respondent Shop, Zuri Body Spa.

3. Respondent Shop was first opened on October 16, 2007. Respondent Shop provided skin care and hair care services. Respondent Shop operated Tuesdays through Saturdays from October 16, 2007, through April 15, 2009, without a shop license.

4. On February 6, 2009, State Board Inspector, Evelyn Burgett ("Inspector"), visited Respondent Shop in response to a complaint indicating that Respondent was operating Respondent Shop without a license. Although Inspector Burgett had been inspecting shops in the area where Respondent Shop is located over the past fifteen years, she had never before visited Respondent Shop. Respondent Shop had not been inspected since it had opened.

5. During her February 6, 2009, visit, the Inspector observed that Respondent Shop was open for business and had at least one customer. The inspector also observed that there were three (3) Board-licensed aestheticians and cosmetologists present in Respondent Shop and that no shop license was displayed.

6. While the Inspector was at Respondent Shop on February 6, 2009, the Inspector issued a NOTICE OF VIOLATION regarding the fact that there was no Shop License. Respondent signed the NOTICE OF VIOLATION.

7. After the inspection and issuance of the NOTICE OF VIOLATION on February 6, 2009, the Respondent continued to operate Respondent Shop without a valid shop license.

8. On February 24, 2009, the Respondent paid the State the fee for application for a shop license.

9. On April 15, 2009, the Board duly issued a Full Service Cosmetology Shop License to Respondent Shop.

10. Between October 16, 2009, and April 15, 2009, Respondents did not hold a valid shop license issued by the Board authorizing the Respondents to operate an establishment where skin care or hair care could be offered or provided.

ANALYSIS and CONCLUSIONS OF LAW

1. Pursuant to RULE 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-1 (June 2004 (Revised)), the Petitioner bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the AMENDED NOTICE OF HEARING AND CHARGES are true and that the issues raised therein should be resolved in its favor.

2. The Respondent's acts and conduct, as determined above in the FINDINGS OF FACT, constitute violations of TENN. CODE ANN. § 62-4-118(a) which provides:

Operation of a shop. --

- (a) Except as otherwise provided under this chapter, it is unlawful to operate a shop without conspicuously displaying a valid license issued by the board under this chapter.

3. The Petitioner has proven beyond a preponderance of the evidence that the Respondent violated TENN. CODE ANN. § 62-4-118(a) by operating a cosmetology shop without possessing and conspicuously displaying a valid shop license issued by the Board.

4. The Respondent's acts and conduct, as determined above in the FINDINGS OF FACT, constitute violations of TENN. CODE ANN. § 62-4-119, which provides:

Responsibilities of owner and manager of shop. --

The owner and manager of a shop shall be responsible for ensuring that:

(1) Only persons duly licensed by the board perform cosmetology services in the shop;

(2) Persons duly licensed by the board perform only those services authorized by their licenses; and

(3) The shop and its operation conform to this chapter and any rules duly promulgated under this chapter.

5. The Petitioner has proven beyond a preponderance of the evidence that the Respondent violated TENN. CODE ANN. § 62-4-119 by operating a cosmetology shop without a valid shop license and thereby failing to ensure that the shop and its operation conformed to the Tennessee Cosmetology Act and the rules duly promulgated under the Act.

6. The Respondent's violations of TENN. CODE ANN. §§ 62-4-118 and 62-4-119 constitute grounds for the revocation, suspension or refusal to renew the Respondent's personal license and/or the revocation, suspension or refusal to renew the Respondent's license to operate the Respondent Shop pursuant to TENN. CODE ANN. § 62-4-127(b). Specifically, TENN. CODE ANN. § 62-4-127(b) provides in pertinent part that "[t]he board may suspend, revoke or refuse to issue or renew any license under this chapter for . . . [a] violation of this chapter or any rules duly promulgated under this chapter."

7. The Respondent's violations of TENN. CODE ANN. §§ 62-4-118, 62-4-119 and 62-4-127 constitute grounds for disciplinary action against the Respondent, including the imposition of civil penalties against the Respondent pursuant to TENN. COMP. R. & REGS. R. 0440-1-.14 (Civil Penalties), which provides that the Board may assess a civil penalty of up to one thousand dollars (\$1,000.00) for each violation. In addition, TENN. CODE ANN. § 56-1-308(a) explains that each day of continued violation constitutes a separate violation.

8. The Respondent's violations of TENN. CODE ANN. §§ 62-4-118, 62-4-119 and 62-4-127 constitute grounds for the imposition of costs pursuant to TENN. CODE ANN. § 56-1-311, and TENN. COMP. R. & REGS. R. 0780-5-11-.01 (Assessment of Investigatory and Hearing Costs) of the Rules of the Department of Commerce and Insurance, Division of Regulatory Boards.

9. The Petitioner has met its burden of proof by a preponderance of the evidence, in showing that Respondent operated an unlicensed shop for the period from October 16, 2007, to April 15, 2009 in violation of Tennessee law. Included within this time period, was a 12 day time period during which the Respondents operated the Respondent Shop after receiving the NOTICE OF VIOLATION but prior to applying for a shop license.

10. Accordingly, the Respondent Kristin Sue Alexander is assessed a total civil penalty of Three Thousand Dollars (\$3,000.00). This \$3000 civil penalty consists of a civil penalty of Two Hundred Fifty Dollars (\$250.00) per day for each of the twelve (12) days that Respondent Shop was open during the period of time beginning when the State Board Inspector issued the NOTICE OF VIOLATION (February 6, 2009) through the date when Respondent first submitted her application fee to obtain a valid shop license (February 24, 2009).

11. All investigation and hearing costs are assessed to the Respondent Kristin Sue Alexander.

12. This INITIAL ORDER is issued to protect the safety and welfare of the citizens of the State of Tennessee.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 2nd day of July, 2010.

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 2nd day of July, 2010.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE