7-19-2013

Khanh Van Kinh vs. Department of Commerce & Insurance

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BEFORE THE TENNESSEE BOARD OF COSMETOLOGY

IN THE MATTER OF:

KHANH VAN KINH (License No. 159041)
3722 Meadow Ridge Lane
Clarksville, TN 37040

Respondent.

DOCKET NO: 12.09-119289A

INITIAL ORDER – NOTICE OF DEFAULT

This contested case was heard in Nashville, Tennessee on July 9, 2013, before Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division (APD), to sit on behalf of the Tennessee State Board of Cosmetology. The Petitioner, the Tennessee Department of Commerce and Insurance, Division of Regulatory Boards, was represented by Assistant General Counsel Mark K. Green. The Respondent did not appear and was not represented by counsel.

ENTRY OF DEFAULT

Pursuant to TENN. CODE ANN. §§ 4-5-307 and 62-4-130, on December 18, 2012, the Petitioner filed a NOTICE OF HEARING AND CHARGES. After two continuances to allow for service of the NOTICE on the Respondent, the matter was finally heard on July 9, 2013, in the absence of the Respondent. Based upon the Respondent’s failure to appear for the hearing, the Petitioner moved for a default pursuant to TENN. CODE ANN. § 4-5-309.

In support of the motion for default, the Petitioner presented evidence demonstrating that attempts were made to serve the Respondent with the NOTICE OF HEARING AND CHARGES. Service attempts were made at the Respondent’s last known address as found in the Regulatory Board System (RBS), where this address was recorded based on information provided by the Respondent. TENN. CODE ANN. § 62-4-113 required the Respondent to maintain a current address with the
Board. The **NOTICE OF HEARING AND CHARGES** was returned by the post office marked “unclaimed.” (HEARING EX. 1). Further evidence presented showed that the Department attempted personal service noted in the record by affidavit of Kerry Little, Investigator for the Department of Commerce and Insurance (Hearing Ex. 2). In addition, Hosam William, Paralegal for the State of Tennessee Department of Commerce and Insurance, Division of Regulatory Boards, testified as to the additional attempts to locate and contact the Respondent for service of process which included calling the telephone number on file with the Board office and searching databases for the name and address of the Respondent listed with the Board.

It is also noted that the **ORDER** issued on March 11, 2013, continuing this matter until May 7, 2013, and the subsequent **ORDER** issued on May 7, 2013, continuing this matter until July 9, 2013, identified the date, time, and place of the hearing; were mailed by the APD to the Respondent’s address of record; and were not returned.

It is, therefore, determined that the Petitioner made sufficient attempts to serve the **NOTICE OF HEARING AND CHARGES** in compliance with **RULE 1360–04–01–.06** of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies. The Respondent did not appear for the hearing. Accordingly, pursuant to **TENN. CODE ANN. § 4-5-309** and **RULE 1360–04–01–.15**, the Respondent is held in Default for failure to appear at the hearing. Pursuant to **RULE 1360–04–01–.15(2)(b)**, the hearing was held as an uncontested hearing.

**FINDINGS OF FACTS**

1. On January 31, 2012, the Board issued manicurist license number 159041 to Respondent, after application was made for licensure by reciprocity from the State of Washington.

2. Respondent, or someone on behalf of Respondent, paid the fifty ($50.00) fee for manicurist license number 159041 on January 17, 2013.
3. Upon application for licensure, it was represented to the Board that Respondent had a valid cosmetology license from the state of Washington and six hundred (600) hours of pre-licensing education.

4. An audit conducted in June of 2012 revealed that the Board office did not have proper documentation to support the Respondent’s manicurist license number 159041 based on reciprocity with Washington.

5. Upon inquiry, the state of Washington Department of Licensing certified that the Respondent did not have a manicurist license from that state.

6. Respondent’s manicurist license number 159041 was not granted in accordance with the reciprocity requirements of Tenn. Code Ann. § 62-4-116.

ANALYSIS AND CONCLUSIONS OF LAW

1. Tenn. Code Ann. § 62-4-116 provides the following criteria for licensure by reciprocity –

   Upon receipt of a fee of fifty dollars ($50.00), the board may, in its discretion, grant a license without examination to any applicant who:

   (1) Holds a valid license issued by another state or the District of Columbia and has substantially met the qualifications for licensure in this state; or

   (2) Furnishes satisfactory proof that the applicant has continuously and lawfully engaged in the occupation or practice for which a license is applied for a period of at least five (5) years immediately preceding the date of application.

2. By failing to provide the Board office with the documentation necessary to comply with the requirements for issuance of a manicurist license by reciprocity, as specified above, the Respondent has violated the provisions of TENN. CODE ANN. § 62-4-116.

3. Respondent’s violation of TENN. CODE ANN. § 62-4-116 constitutes grounds for the revocation of Respondent’s manicurist license number 159041 pursuant to Tenn. Code Ann. § 62-4-127(b), which states, in pertinent part,
(b) The board may suspend, revoke, or refuse to issue or renew any license this chapter for any of the following causes:

(1) Fraud in procuring a license;

(5) Unlawful invasion in the field of practice of any profession;

(8) Any cause for which issuance of a license could have been refused had it existed and been known to the board at the time of issuance;

(9) A violation of this chapter or of any rules duly promulgated under this chapter;” . . .

Having found that the State of Tennessee has met its burden of proof in this matter, it is hereby ORDERED that Respondent’s Manicurist License Number 159041 is hereby REVOKED. Respondent shall immediately CEASE and DESIST from operating under the license herein revoked.

The policy reason for this ORDER is to protect the health, safety and welfare of the citizens of the State of Tennessee.

Costs of this action are taxed to the State of Tennessee.

It is so ORDERED.

This INITIAL ORDER entered and effective this the _____ day of ______________ 2013.

DKSummers
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 _____ day of ______________ 2013.

J. Richard Collier, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE