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Hong Nhung T. Nguyen vs. Department of Commerce & Insurance

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BEFORE THE TENNESSEE BOARD OF COSMETOLOGY

IN THE MATTER OF:

HONG NHUNG T. NGUYEN  
(License No. 157186)  
3722 Meadow Ridge Lane  
Clarksville, TN 37040

Respondent.

DOCKET NO: 12.09-119294A

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 August 5, 2011, the Board issued cosmetology license number 157186 to Respondent, after application was made for licensure by reciprocity from the state of Texas.
2. Respondent, or someone on behalf of Respondent, paid the fifty ($50.00) fee for cosmetologist license number 157186 on August 3, 2011.
3. Upon application for licensure, it was represented to the Board that Respondent had a valid cosmetology license from the state of Texas and one thousand five hundred (1500) 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 cosmetology license number 157186 based on reciprocity with Texas.

5. Upon inquiry, the state of Texas Board of Professional Licensing certified that the Respondent did not have a cosmetology license from that state.

6. Respondent's cosmetology license number 157186 was not granted in compliance 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 demonstrate compliance with the requirements for issuance of a cosmetologist 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 cosmetology license number 157186 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 Cosmetology license number 157186 is hereby REVOKED. Respondent shall immediately CEASE and DESIST from operating under the license revoked herein.

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.

_________________________________
D.K. Summers
KIM SUMMERS
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
J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE