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September 2014

Carl T. Stewart vs. COMMERCE AND INSURANCE

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Investigator John McClain that the Respondent Carl Stewart was personally served a copy of the Notice of Hearing and Charges on March 14, 2014. The Certificate of Service indicates that John McClain personally served Carl Stewart on March 14, 2014 at 3053 N. Thomas, Memphis, TN 38127.

It is determined that the Petitioner properly served the Notice of Hearing and Charges upon the Respondent in compliance with TENN. COMP. R. & REGS. 1360-04-01-.06(2). June 2004 (Revised). The Respondent failed to appear at the hearing. Accordingly, pursuant to TENN. CODE ANN. § 4-5-309 and RULE 1360-04-01-.15(1), the Respondent is held in Default for failing to appear at the hearing. Pursuant to RULE 1360-04-01-.15(2)(b), the hearing was held as an uncontested hearing.

FINDINGS OF FACT

1. At all times hereinafter relevant, Respondent held master barber license No. 17617, which was issued by the Board on September 16, 2009 after the Respondent made application for licensure by reciprocity on the basis of military service. Respondent renewed such license in 2011 and 2013. The Respondent's master barber license expires on September 30, 2014.
2. The Board's administrative records indicate that, as part of the Respondent's application for a master barber license, the Respondent submitted a Department of Defense Form 214 ("DD 214") which states that the Respondent has held a military occupational skill (MOS) rating in a branch of the military service for two (2) or more years that required the Respondent to perform the duties of a barber as required by TENN. CODE ANN. § 62-3-115(3). The Board issued a master barber license to the Respondent based, in part, on the DD 214 submitted by the Respondent.

3. In 2013, the Board performed an administrative review of license files issued by reciprocity upon information and belief that the Respondent's application for reciprocity was fraudulent.

4. On September 9, 2013, the Board contacted the U.S. Naval Criminal Investigation Service ("NCIS") and specifically requested certification regarding the Respondent's DD 214 and/or military or veteran status.

5. NCIS Supervisory Special Agent Michael C. Cote provided the Board with a report dated October 17 and 18, 2013 and later provided a certification that his office conducted a review of the Respondent's history as a military member utilizing the Department of Defense Interactive Database System (DEIDS) and the records of the Veterans Administration. These databases store information regarding current and past military members' information and status. NCIS found that the Respondent has no record of military service or veteran status and as such, the DD 214 submitted by the Respondent was fraudulent.

6. On October 30, 2013, counsel for the Board sent a letter to Respondent via certified and first class mail sent to the Respondent's address of record as listed with the Board. The letter requested the Respondent to contact the Board and provide proof of having valid military barber experience pursuant to TENN. CODE ANN. § 62-3-115(3) or that Respondent met the statutory requirements for licensure in Tennessee. The Respondent failed to respond to that letter and/or failed to provide sufficient proof to the Board that the Respondent possessed sufficient military experience to obtain a master barber license on the basis of such military service.

7. Respondent failed to provide the documentation necessary to meet the statutory requirements for issuance of master barber license No. 17617.

8. In order to obtain a master barber license in the State of Tennessee, other than by a form of reciprocity, an applicant must first obtain 1,500 hours from a certified barber college. Such education costs between \$5,000-\$20,000 and takes approximately one (1) year to complete. The education curriculum at a barber college requires the testing of usage of numerous caustic chemicals, some of which are only available for sale to licensed master barbers. Further, master barbers are trained to utilize special tools such as straight razors and the sterilization of those tools.

9. The Respondent, failing to have any formal barber education, poses a serious potential threat to consumers of the State of Tennessee by practicing as a barber without first obtaining the educational requirements to conduct such activity and pass the state examination.

ANALYSIS and CONCLUSIONS OF LAW

1. The State, as the petitioning party in this matter, pursuant to TENN. COMP. R. & REGS. 1360-4-1-.02(7), has the burden to provide by a preponderance of credible evidence that it is legally entitled to impose discipline upon the Respondent. The Court hereby concludes that the State has met that burden in this case.

2. Respondent's act and conduct, as described in paragraphs 1-9 of the foregoing Findings of Fact, constitute a failure to provide the Board with documentation necessary to meet the requirements for issuance of a master barber license No. 17617 by any form of reciprocity in violation of TENN. CODE ANN. § 62-3-115, which states:

The board may issue a certificate of registration as a master barber without examination to a nonresident who:

- (1) Holds a valid license or certificate of registration as a master barber in another jurisdiction that:

- (A) Has substantially the same requirements for licensing or registration of barbers as are contained in this chapter, exclusive of the tenth-grade education requirements set forth in § 62-3-110(b)(2); or
 - (B) Has entered into a reciprocal agreement with the Board permitting licenses or certificates of registration to be issued without examination to master barbers resident in and registered by this state;
- (2) Proves by sworn affidavits that the nonresident has continuously and lawfully practiced as a barber in another jurisdiction for the immediately preceding five (5) years; or
 - (3) Has held a military occupational skill (MOS) rating in a branch of the military service for two (2) or more years that required the person to perform the duties of a barber.

3. Respondent's act and conduct, as described in the foregoing paragraphs 1-9 of the Findings of Fact, constitute a failure to obtain requisite military occupation skill training for the issuance of a master barber's license in violation of TENN. CODE ANN. § 62-3-115(3), which states that:

The board may issue a certificate of registration as a master barber without examination to a nonresident who:

- (3) Has held a military occupational skill (MOS) rating in a branch of the military service for two (2) or more years that required the person to perform the duties of a barber.

4. Respondent's act and conduct, as described in the foregoing paragraphs 1-9 of the Findings of Fact in obtaining a master barber's license by submitting a false application of military service and further engaging in the activity as a master barber after submitting a false application, constitute a violation of TENN. CODE ANN. § 62-3-130, which states in pertinent part:

Each of the following constitutes a Class C misdemeanor:

- (1) The violation of any of the provisions of this chapter;

...

- (3) Obtaining or attempting to obtain a certificate of registration for money other than the required fee or any other thing of value or by fraudulent misrepresentations;
- (4) Practicing or attempting to practice by fraudulent misrepresentations;

5. Respondent’s violations of TENN. CODE ANN. §§ 62-3-115(3), 130(1), (3)-(4) as set forth in the foregoing paragraphs 1-9 of the Findings of Fact constitute grounds for the revocation of Respondent’s master barber license No. 17617 pursuant to TENN. CODE ANN. § 62-3-121, which states, in pertinent part, as follows:

The board may either refuse to issue or renew or may suspend or revoke any certificate of registration for any one (1) or combination of the following causes:

....

- (6) Immoral or unprofessional conduct; or
- (7) A violation of this chapter or any rules adopted under this chapter.

6. Respondent’s violations of TENN. CODE ANN. §§ 62-3-115(3), 130(1), (3)-(4) as set forth in the foregoing paragraphs 1-9 of the Findings of Fact constitute grounds for the imposition of civil penalties pursuant to TENN. CODE ANN. § 56-1-311, TENN. COMP. R. AND REGS. 0200-1-.18, along with the assessment of investigatory and hearing costs pursuant to TENN. CODE ANN. § 56-1-311 and TENN. COMP. R. AND REGS. 0780-5-11-.01.

56-1-308. Penalty for violation of statute, rule or order – Recovery.

(a) With respect to any person required to be licensed, permitted, or authorized by any board, commission or agency attached to the division of regulatory boards, each respective board, commission or agency may assess a civil penalty against the person in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a statute, rule or order pertaining to the board, commission or agency. Each day of continued violation constitutes a separate violation.

56-1-311. Assessment of investigatory and hearing costs – Rules and regulations.

(a) Notwithstanding any contrary law, the division of regulatory boards or any board, commission or agency attached to the division of regulatory boards may assess the actual and reasonable costs of the investigation, prosecution and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and in which sanctions of any kind are imposed on any person required to be licensed, permitted registered or otherwise authorized by the division or respective board, commission or agency. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges and any other persons involved in the investigation, prosecution and hearing of the action.

0780-5-11-.01 ASSESSMENT OF INVESTIGATORY AND HEARING COSTS.

(1) The Division of Regulatory Boards (“Division”) or any board, commission or agency attached thereto is authorized to assess the actual and reasonable costs of the investigation, prosecution and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Tenn. Code Ann. Title 4, Chapter 5, Part 3 in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the Division or any board, commission or agency attached thereto.

JUDGMENT

WHEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. The revocation of Respondent’s master barber license number 17617 pursuant to TENN. CODE ANN. §§ 62-3-115, 121(6)-(7), 130(3)-(4).
2. The Respondent is assessed a total of \$1,500 in civil penalties, for which execution shall issue if necessary, pursuant to TENN. CODE ANN. § 56-1-308(a), (c)(1) and TENN. COMP. R. & REGS. 0200-1-.18, calculated as follows:
 - a. \$500 civil penalty for immoral conduct of obtaining a master barber license through fraudulent means pursuant to TENN. CODE ANN. § 62-3-121(6).

- b. \$500 civil penalty for a violation of Chapter 62-3 pursuant to TENN. CODE ANN. § 62-3-121(7) for acting as a master barber in the State of Tennessee without proper licensure as required under TENN. CODE ANN. § 62-3-115(3).
 - c. \$500 civil penalty for obtaining a certificate of registration and acting as a master barber by fraudulent misrepresentation pursuant to TENN. CODE ANN. § 62-3-130(3), (4).
3. The Respondent is assessed the payment of hearing and investigatory costs pursuant to TENN. CODE ANN. § 56-1-311(a) and TENN. COMP. R. & REGS. 0780-5-11-.01 as listed in the State’s Itemized Assessment of Costs for which execution shall issue if necessary as follows:

a.	Court Reporter – 1/9 th per diem of \$300	\$33.33
b.	Administrative Procedures Division of the Secretary of State’s Office:	\$200.00
c.	Investigatory Cost for Personal Service by Investigator John McClain 1/8 * 31 hours @ 39.48/hr.	\$152.98

TOTAL COSTS ASSESSED	\$386.31
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POLICY REASONS FOR DECISION

Tennessee state laws requires that, as a prerequisite for licensure, each applicant successfully graduate from a qualified barber college or provide proof of reciprocal licensure by other means, which contemplates having previously obtained a formal education as a barber. Further, all applicants must pass a state examination. These requirements are to ensure that each master barber practicing is competent in barbering methods, the usage of specialized tools and in safeguarding customers from harm due to exposure to caustic chemicals, accidental cuts or

lacerations and the spread of communicable diseases. The Respondent, in fraudulently bypassing this requirement and practicing as a barber without completing a required formal education process, poses a serious risk of harm to the citizens of the State of Tennessee. Therefore, the revocation of the master barber license, issuance of civil penalties in the amounts above along with the payment of costs is warranted.

It is so **ORDERED**.

This Initial Order entered and effective this the _____ day of _____, 2014.

Ann Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
_____ day of _____ 2014.



J. Richard Collier, Director
Administrative Procedures Division