



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

July 2015

Larry Horton vs. Commerce and Insurance

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

July 13, 2015

Commissioner Julie Mix McPeak
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Larry Horton
610 Westernpark Drive
Memphis, TN 38109

D. Denard Mickens, Esq.
Assistant General Counsel
Tennessee Department of Commerce &
Insurance
Office of Legal Counsel
Davy Crockett Tower, 5th Floor
500 James Robertson Parkway
Nashville, TN 37243-0569

RE: In the Matter of: Larry Horton

Docket No. 12.09-130099J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

LARRY HORTON

DOCKET NO. 12.09-130099J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **July 28, 2015**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE TENNESSEE STATE BOARD OF COSMETOLOGY AND BARBER
EXAMINERS**

IN THE MATTER OF :)	
)	Docket No. 12.09-130099J
LARRY HORTON)	Complaint No. 2013021741
610 WESTERNPARK DRIVE)	
MEMPHIS, TN 38109)	
BARBER LIC. # 17517)	

INITIAL ORDER

This contested case hearing was heard on May 13, 2015, in Nashville, Tennessee, before Judge Michael Begley, Administrative Law Judge assigned to the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee State Board of Cosmetology and Barber Examiners. B. Denard Mickens, Assistant General Counsel for the Tennessee Department of Commerce and Insurance represented the State of Tennessee. Respondent Larry Horton was not present at the hearing, nor did an attorney or any other parties appear on Respondent's behalf. No motion for a continuance had been received from the Respondent. Upon consideration of the testimony of witnesses, exhibits filed in this matter, and upon the entire record, the Court is of the opinion and finds as follows:

AUTHORITY

Authority and jurisdiction are conferred upon the Tennessee State Board of Cosmetology and Barber Examiners (hereinafter "Board") to take appropriate disciplinary action, including the revocation or suspension of a license or the refusal to renew a license, against any person required to be licensed by the Board pursuant to the Tennessee Cosmetology Act of 1986, TENN. CODE ANN. § 62-4-101, et seq., for the violation of any provision of that chapter or any rule or regulation duly promulgated thereunder.

Authority and jurisdiction are further conveyed upon the Board to assess investigatory, prosecutorial, and hearing costs against the Respondent are conferred upon the Commission by TENN. CODE ANN. § 56-1-311 and TENN. COMP. R. & REGS. 0780-5-11-.01.

ORDER OF DEFAULT

The Department moved for a default judgment against Respondent for failure to participate in the hearing after due notice. The State presented a “Notice of Filing Return on Service” with a signed “Return Receipt – Certified Mail” showing that Respondent received the Notice of Hearing and Charges on March 21, 2015. The “Return Receipt” was entered as Exhibit 1 at the hearing. It was determined that Respondent had actual notice of the hearing. It appearing that proper notice was sent to Respondent at the address attributed to Respondent and that Respondent did fail to appear, the State’s Motion for Default is well taken and is hereby **GRANTED** pursuant to TENN. CODE ANN. § 4-5-309(a). *See also* TENN. COMP. R. & REGS.1360-04-01-.15(1).

FINDINGS OF FACT

1. In June 2009, Respondent filed a sworn (notarized) application for a Master Barber license with the State of Tennessee.
2. Respondent’s application stated that Respondent completed barber school in the United States Navy and was accompanied by a Department of Defense Form DD-214 which stated that Respondent held a military occupational skill rating in the U.S. Navy for two (2) or more years which required Respondent to perform the duties of a barber.
3. On July 24, 2009, relying upon Respondent’s application and supporting documents, the Board issued Master Barber Certificate of Registration (License) 17517 to Respondent pursuant to TENN. CODE ANN. § 62-3-115(3).

4. In 2013, in response to information received by the Department of Commerce and Insurance, the Board performed an administrative audit of Master Barber licenses issued by the State via reciprocity.

5. The audit revealed that Respondent never served in the Navy and that his statement of completing barber school in the Navy was a fraudulent misrepresentation.

6. Further, the DD-214 form submitted by Respondent was falsified and a fraudulent replication of actual or legitimate DD-214 forms.

7. Counsel for the Department sent a letter to Respondent requesting additional information with respect to his claimed qualifications for a master barber license. Respondent failed to respond.

8. The Department contacted the U.S. Naval Criminal Investigations Services and requested verification of Respondent's alleged military service.

9. NCIS representative Gary McIntyre investigated Respondent's claims of military service and provided the Department with notarized certification that Respondent has never served in any branch of the military and that the DD-214 form submitted to the state was fraudulent.

10. Respondent does not and cannot meet the requirements for reciprocal Master Barber licensure based upon military service and training.

CONCLUSIONS OF LAW

1. Respondent did not fulfill the State of Tennessee's qualifications for master barbers as set forth in TENN. CODE ANN. § 62-3-119 when he applied for a Master Barber license. The State of Tennessee issued Respondent Master Barber license 17517 based upon false and counterfeit information.

2. TENN. CODE ANN. § 62-3-107 states: “No person shall practice or attempt to practice barbering in this state...without a valid certificate of registration [license] issued pursuant to this chapter by the Board of Barber Examiners.”

3. Respondent obtained license No. 17517 based upon submitting a fraudulent application which contained a forged DD-214 Form stating that Respondent had served in the military, trained as a barber, and worked as a barber in the Navy for at least two years.

4. Respondent’s acts and conduct, as described in the foregoing Findings of Fact, constitute a violation of TENN. CODE ANN. § 62-3-107 which states “No person shall practice or attempt to practice barbering in this state...**without a valid certificate of registration issued pursuant to this chapter by the Board of Barber Examiners** (emphasis added). A certificate of registration or license which was issued based upon fraudulent documentation is not valid.

5. Respondent’s acts and conduct, as described in the foregoing Findings of Fact, constitute violations of TENN. CODE ANN. § 62-3-121 which states in pertinent part:

The Board may either refuse to issue or renew or may suspend or revoke any certificate of registration for any one or combination of the following causes...(6) immoral or unprofessional conduct...(7) A violation of this chapter or any rules adopted under this chapter.

6. Respondent’s violations of Tennessee law, as set forth above, constitute grounds for the imposition of other lawful discipline, including the imposition of civil penalties pursuant to TENN. CODE ANN. § 56-1-308(a) and TENN. COMP. R. & REGS. 0200-1-.18, which provide that the Board may assess a violation of up to one thousand dollars for each violation.

7. Respondent’s violations of TENN. CODE ANN. §§ 62-3-107, 62-3-119, and 62-3-121, as set forth above, constitute grounds for the Board to assess the actual and reasonable costs of the investigation, prosecution and hearing of the contested case hearing pursuant to TENN. CODE ANN. § 56-1-311 and TENN. COMP. R. & REGS. 0780-5-.01.

ORDER

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

1. Respondent's Master Barber Certificate of Registration Number 17517 shall be immediately **REVOKED**.

2. Assessment of a civil penalty in a total amount of \$3,000 for all violations enumerated herein.

3. Assessment of all investigatory and hearing costs attendant with bringing this action. The State will file and serve Respondent with its Itemized Bill of Costs in this matter.

4. Respondent shall cease and desist from all unlicensed activity until such time as Respondent is properly licensed by the Tennessee State Board of Cosmetology and Barber Examiners.

Respondent is **ORDERED** to pay the total cost within thirty days of entry of this order.

REVIEW OF INITIAL ORDER

Within fifteen (15) days after the effective date of this Initial Order, any party may petition the Administrative Procedures Division, Office of the Secretary of State for reconsideration of the Initial Order pursuant to TENN. CODE ANN. § 4-5-317. If no action is taken within twenty (20) days of the filing of the petition, it is deemed denied.

Any party may petition the Administrative Procedures Division, Office of the Secretary of State for a stay of this Initial Order within seven (7) days after the effective date of this Initial Order pursuant to TENN. CODE ANN. § 4-5-316.


Any party may file an appeal from this Initial Order directly with the Tennessee State Board of Cosmetology and Barber Examiners. within fifteen (15) days after the entry of this Initial Order pursuant to TENN. CODE ANN. § 4-5-315.

This Initial Order shall become a Final Order unless reviewed in accordance with TENN. CODE ANN. § 4-5-315. If this Initial Order is not reviewed in accordance with TENN. CODE ANN. § 4-5-315, it is effective as a Final Order upon the filing of this Initial Order with the Administrative Procedures Division of the Office of the Secretary of State.


Any party may seek judicial review of the Final Order by filing a petition for review in Chancery Court having jurisdiction within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend this sixty (60) day period; however, if the petition is granted, then this sixty (60) day period commences from the effective date of the Final Order disposing of the petition.

Any petition relative to a review of the Final Order or petition to stay the Judgment of a Final Order is to be filed with the Administrative Procedures Division, Office of the Secretary of State, and the Commissioner of the Tennessee Department of Commerce and Insurance.

This Initial Order entered this 13th day of JULY, 2015


Michael Begley
Administrative Judge

13th Filed in the Administrative Procedures Division, Office of the Secretary of State, this the JULY day of JULY 2015.


J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.