

STATE OF IOWA
BEFORE THE BOARD OF BARBERING

IN THE MATTER OF:)	NO. BA 08-010
)	DIA NO. 10DPHBE006
Robert Presswood)	
License No. 14440)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On April 27, 2010, the Iowa Board of Barbering (Board) issued a Notice of Hearing and Statement of Charges against Robert Presswood (Respondent), a licensed barber. Respondent was charged with failing to comply with the terms of a Board order, in violation of Iowa Code section 272C.3(2)(a)(2009) and 645 IAC 25.2(20). The initial hearing was held on July 27, 2010 at 11:50 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent Robert Presswood failed to appear for hearing. The state was represented by Assistant Attorney General Kristin Ensign. The following Board members were present for the hearing: Clark (Sam) Kauffman; Chairperson; Charles Wubbena; Robert VanVooren, Tammy Ortiz, and Rhonda D. Reif. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009), and was recorded by a certified court reporter.

On August 25, 2010, the state filed a request to present new evidence to the Board. Respondent did not file a response. Respondent and the state were provided written notice that the Board would consider and rule on the state's request at its October 26, 2010 meeting. The Board granted the state's request and later issued a Notice of Hearing To Consider Additional Evidence. On January 25, 2011, the hearing to consider additional evidence was held before Board members Clark (Sam) Kauffman, Charles Wubbena, Robert VanVooren, and Tammy Ortiz. Assistant Attorney General Kristin Ensign represented the state. Respondent failed to appear for the hearing.

After hearing additional testimony from Beth Jorgenson and receiving the state's additional exhibit (State Exhibit 7), the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of Beth Jorgenson and State Exhibits 1-7 (See Exhibit Index for description).

FINDINGS OF FACT

1. Respondent Robert Presswood was issued Iowa barber license #14440 on February 3, 2000. License #14440 had been due to expire on June 30, 2010. (Exhibit 1)
2. On December 14, 2009, the Board issued Findings of Fact, Conclusions of Law, Decision and Order to Respondent following a hearing. Pursuant to that Decision and Order, Respondent's license was placed on probation for a period of two years. Respondent was required to pay a civil penalty of \$250 within thirty days. Respondent was also required to file an application to correct the license issued for the barbershop at 2301 University Avenue (Platinum Kuts) to accurately reflect his claimed ownership interest. Respondent was also required to file quarterly typewritten reports with the Board that included the names of all persons providing barbering services at Platinum Kuts along with their license numbers and license expiration dates. Finally, Respondent was required to pay hearing fees of \$117.78. (Exhibit 5)
3. Respondent has not filed an application to correct the license for Platinum Kuts to reflect his ownership interest and has not filed the quarterly reports required by the December 14, 2009 Decision and Order. (Testimony of Beth Jorgenson)
4. Respondent was personally served with the Notice of Hearing and Statement of Charges on July 22, 2010 but did not appear for the July 27, 2010 hearing and did not request a continuance. (Exhibit 2)
5. At the time of the July 27, 2010 hearing, Board staff had checked Respondent's file and found no evidence that Respondent had paid the \$250.00 civil penalty or the \$117.78 in hearing fees. At the July 27, 2010 hearing, Board staff testified that Respondent had not paid the civil penalty and hearing fees. In August 2010, Respondent went to the Board office and staff conducted another search of his file. This time staff discovered copies of two money orders totaling \$380.00 and a receipt, dated March 23, 2010, indicating that the money orders were received from Respondent. The receipt was signed by a staff member of the Board who is now retired. These items had

not been recorded on the flow sheet. The receipt indicates that the money orders were for a civil penalty and hearing fees totaling \$367.78 and that the difference of \$12.22 would be refunded. Testimony concerning the discovery of these items and the copies of the money orders and receipt are the additional evidence that was offered by the state at the January 25, 2011 hearing. (Testimony of Beth Jorgenson; State Exhibit 7)

CONCLUSIONS OF LAW

Iowa Code section 272C.3(2)(a)(2009) and 645 IAC 25.2(20) provide that the Board may impose a wide range of disciplinary sanctions for failure to comply with a Board order. The preponderance of the evidence established that Respondent has failed to fully comply with the requirements of the Board's Decision and Order that was issued on December 14, 2009. Although Respondent has paid the civil penalty and hearing fees, he has not filed an application to correct the license issued for the barbershop at 2301 University Avenue in Des Moines, and he has not filed the required quarterly reports. Respondent has left the Board with little choice but to suspend his license.

DECISION AND ORDER

IT IS THEREFORE ORDERED that License Number 14440, issued to Respondent Robert Presswood, is hereby SUSPENDED, effective immediately upon service of this Decision and Order. IT IS FURTHER ORDERED that the license suspension will continue until Respondent fully complies with the requirements of the Board's December 14, 2009 Decision and Order. Before the suspension will be lifted, Respondent must:

- file a new barbershop application that reflects his ownership interest in Platinum Kuts;
- file all required quarterly reports.

IT IS FURTHER ORDERED that if Respondent has not fully complied with these requirements within sixty (60) days of his receipt of this Decision and Order, then the Board will issue an Order Revoking License Number 14440.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Robert Presswood shall pay \$75.00 for fees associated with the July 27, 2010 disciplinary hearing and \$13.75 for the court reporter fees. The total fees of \$88.75 shall be paid within thirty (30) days of receipt of this decision.

Dated this 7th day of March, 2011.

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2009) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.