

STATE OF IOWA
BEFORE THE BOARD OF COSMETOLOGY ARTS & SCIENCES

IN THE MATTER OF:)
) NO. CO-043
CITY LOOKS) DIA NO. 01DPHCE003
 License No. 002-008251)
)
and)
) NO. CO-003
THOMAS ROSENFELDT) DIA NO. 01DPHCE007
 License No. 843-46188)
) FINDINGS OF FACT,
RESPONDENTS) CONCLUSIONS OF LAW,
) DECISION AND ORDER

On August 24, 2001, the Acting Board Administrator for the Iowa Board of Cosmetology Arts & Sciences (Board) issued a Statement of Charges against City Looks, a salon licensed in the state of Iowa. A Notice of Hearing was issued on August 17, 2001. On September 10, 2001, a Statement of Charges was issued against Thomas D. Rosenfeldt, a licensed cosmetologist and owner of City Looks. A Notice of Hearing was issued, and the two cases were consolidated for hearing.

The Statement of Charges against City Looks alleged that it permitted an employee or person under its control to perform activities requiring a license, in violation of Iowa Code sections 157.2, 157.3, 157.13 (1999, 2001) and 645 IAC 65.12(9)(a) [now 645 IAC 65.1(9)(a)]. The Statement of Charges against Thomas Rosenfeldt alleged that he practiced cosmetology arts and sciences while his license was lapsed or otherwise delinquent, in violation of Iowa Code sections 157.2, 157.9 (1999, 2001) and 645 IAC 65.12(6) [now 645 IAC 65.1(6)].

A consolidated hearing was held on November 8, 2001 at 10:00 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent appeared and was not represented by counsel. The state was represented by John Lundquist, Assistant Attorney General. The following Board members were present for the hearing: Curtis Stamp, Chairperson; Sheila O'Hern; Mary Beth Myers; Teresa Mertens; Janet Fisher; David Creighton; and Jack Moreland. Margaret LaMarche, administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board with the conduct of the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2001), and was recorded by a certified court reporter.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2001) to deliberate its decision. The administrative law judge was instructed to prepare the Board's decision, in accordance with its deliberations.

THE RECORD

The record includes the Notices of Hearing and Statements of Charges, the testimony of the witnesses, and the state's exhibits. The state offered Exhibits 1-8 in the case against City Looks and Exhibits 1-7 in the case

against Thomas Rosenfeldt. In each case, Exhibit 1 was the relevant Statement of Charges. Exhibits 2-7 in both cases were identical. Exhibit 8 is the Licensee Status Sheet for City Looks.

FINDINGS OF FACT

1. The Board issued cosmetology license number 843-46188 to Thomas Rosenfeldt on November 22, 1983. Mr. Rosenfeldt's cosmetology license expired on March 31, 1994. (Testimony of Sharon Cook; State Exhibit 7)

2. The Board issued cosmetology salon license number 002-008251 to City Looks, 211 North Federal Avenue, Mason City, Iowa on February 14, 2000. Thomas Rosenfeldt is the owner of City Looks Salon. The salon license is current through December 31, 2002. The salon employs eight cosmetologists, one esthetician, and two nail technicians. All of the employees have current licenses. (Testimony of Sharon Cook; Thomas Rosenfeldt; State Exhibit 8)

3. When reviewing the application for the salon license, the Board administrator discovered that Mr. Rosenfeldt's license to practice cosmetology had lapsed. On January 7, 2000, the Board Administrator called Mr. Rosenfeldt and informed him that his license was lapsed four renewals. She told him that she would send a reinstatement application. Mr. Rosenfeldt did not return the reinstatement application. (Testimony of Sharon Cook; State Exhibit 2)

4. On February 23, 2000, the Board sent Mr. Rosenfeldt a certified letter ordering him to cease practicing cosmetology until his license was reinstated. He was further informed that he needed to pay past due renewal and penalty fees and complete all past due continuing education to a maximum of four years. (Testimony of Sharon Cook; State Exhibit 2)

5. Thomas Rosenfeldt came to the Board office and asked questions about the reinstatement process. He stated that he was planning to take some continuing education courses.

On June 2, 2000, the Board sent another letter to Mr. Rosenfeldt, reminding him that he still needed to submit proof of completion of a refresher course and schedule a date to take the Theory and Law examinations. He was told to complete these requirements by July 3, 2000. (Testimony of Sharon Cook; State Exhibit 3)

6. On October 31, 2000, the Board sent its investigator to the City Looks Salon to speak to Mr. Rosenfeldt. Mr. Rosenfeldt admitted that he had been cutting hair for the past six years without a current license, and that he continued to cut hair. (State Exhibit 6; Testimony of Thomas Rosenfeldt)

7. On January 12, 2001, the Board Administrator sent Mr. Rosenfeldt a letter acknowledging receipt of the reinstatement application, fees, and continuing education certificates for 16 hours of continuing education and 8 hours of education in state law. Mr. Rosenfeldt was told that he still needed to submit proof of an additional 8 hours of cosmetology refresher education. Mr. Rosenfeldt did not reply to this letter. (Testimony of Sharon Cook; State Exhibit 4)

8. A similar letter was sent to the Mr. Rosenfeldt on March 9, 2001. He was informed that he would be expected to complete the 8 hour refresher course and complete other requirements for reinstatement within 30 days or disciplinary action would be taken against him and his salon. The Board has not received any further documentation from Mr. Rosenfeldt. (Testimony of Sharon Cook; State Exhibit 5)

9. Mr. Rosenfeldt appeared at the hearing to explain his failure to renew his license. He has suffered from severe depression, both he and his wife have had health problems, and he has had serious financial problems.

After the visit from the Board's investigator, Mr. Rosenfeldt broke his hand and had back surgery. His recovery delayed completion of the reinstatement requirements. In addition, his wife has been very ill and was hospitalized over the past year. Mr. Rosenfeldt has been responsible for caring for their daughter. Finally, Mr. Rosenfeldt admitted that while he stopped cutting hair after the visit from the Board investigator, he resumed cutting hair in May 2001, because he had serious financial problems and tax delinquencies. He stopped cutting hair after he received the Statement of Charges. (Testimony of Thomas Rosenfeldt)

10. As of the date of the hearing, Mr. Rosenfeldt stated that he had completed the last 8 hours of continuing education required for reinstatement, but had not yet provided the Board with documentation of its completion. He intends to follow through with the requirements for reinstating his license and wants to continue the practice of cosmetology, which he enjoys. (Testimony of Respondent)

CONCLUSIONS OF LAW

The Iowa Board of Cosmetology Arts & Sciences Examiners was created by the legislature, pursuant to Iowa Code chapters 147 and 157, and was directed to adopt rules to implement the provisions of Iowa Code chapter 157. Iowa Code section 157.14 (2001). Any license issued by the department can be suspended, revoked, or renewal denied for violation of any provision of Iowa Code chapter 157 or the rules promulgated by the Board. Iowa Code section 157.9 (2001).

Cosmetology License

The Statement of Charges issued against Thomas Rosenfeldt alleges that he practiced cosmetology arts and sciences while his license was lapsed. Iowa Code section 157.2 provides that it is unlawful for a person to practice cosmetology unless a person possesses a license.

645 IAC 65.1(6) [formerly 645 IAC 65.12(6)] provides that the Board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2)"a" to "f", including the imposition of a civil penalty which shall not exceed \$1,000, for practicing the profession while the license is under suspension, lapsed, or delinquent for any reason.

The preponderance of the evidence established that the Respondent violated Iowa Code section 157.2 and 645 IAC 65.1(6) when he failed to renew his license and continued practicing cosmetology on a lapsed license. This

violation was established through the Board's licensing records, the investigator's report, and the Respondent's admissions.

Salon License

The Statement of Charges issued against City Looks alleges that the Respondent salon permitted an employee or person under its control to perform activities requiring a license. Iowa Code section 157.13 provides that it is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless the individual is licensed or has obtained a temporary permit.

645 IAC 65.1(9)(a) [formerly 645 IAC 65.12(9)(a)] provides that the Board may impose any of the disciplinary methods outlined in Iowa Code section 272C.3(2)"a" to "f", including the imposition of a civil penalty which shall not exceed \$1,000, for permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

The preponderance of the evidence established that the Respondent salon violated Iowa Code section 157.13 and 645 IAC 65.1(9)(a) when it permitted an unlicensed person to perform activities (i.e., cutting hair) requiring a license. This violation was established through the Board's licensing records, the investigator's report, and Mr. Rosenfeldt's admissions.

Sanction

These are serious violations. The licensure and continuing education requirements are critical to ensuring that the cosmetology arts and sciences are practiced by qualified persons in a manner that is consistent with public health and safety. Mr. Rosenfeldt cannot continue to practice cosmetology without a current license.

Mr. Rosenfeldt has faced difficult personal circumstances and setbacks in the past eight years. The Board appreciates that he has attempted to cooperate and has made efforts to reinstate his license. At this time, the Board believes that Mr. Rosenfeldt is making a good faith effort to comply with the licensure requirements. He has paid the reinstatement fees, and states that he has completed the continuing education requirements for reinstatement. He still must successfully complete the Theory and Iowa Law Examinations.

These circumstances were considered by the Board in mitigation of the penalty. If Mr. Rosenfeldt promptly complies with fulfilling the requirements for reinstatement of his license, he may avoid the imposition of a civil penalty for this violation. However, the Respondent salon must be held accountable for permitting his practice without a license.

DECISION AND ORDER

Cosmetology License

IT IS THEREFORE ORDERED, that the license to practice cosmetology arts and sciences, issued to Thomas Rosenfeldt, license no. 843-46188, is hereby SUSPENDED until all requirements for reinstatement have been satisfied.

IT IS FURTHER ORDERED, that the Respondent, Thomas Rosenfeldt, shall successfully complete all requirements for reinstatement of his license within thirty (30) days of the date of issuance of this order. Failure to complete the requirements for reinstatement within thirty (30) days will result in the automatic imposition of a one hundred dollar (\$100.00) civil penalty.

IT IS FURTHER ORDERED, that when the Respondent, Thomas Rosenfeldt, completes the requirements for reinstatement, his license to practice cosmetology arts and sciences will immediately be placed on probation for a period of one (1) year, subject to the following terms and conditions:

1. During this one year probation, the Respondent's license will come up for renewal. As a condition of probation, the Respondent must complete the required continuing education and renew his license in a timely manner. This continuing education requirement is **in addition to** the hours of continuing education which were required to reinstate his license.
2. The Respondent shall comply with all laws and regulations governing the practice of cosmetology arts and sciences.
3. If at any time during this probation the Respondent violates any provision of this Order, the Board may hold a hearing pursuant to Iowa Code section 272C.3(2)"a"(2001), because of failure of the Respondent to comply with the terms of this Order. Any such violation would result in consideration by the Board of more serious sanctions, including revocation.
4. Successful completion of the probationary period shall constitute a final disposition of this matter.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6(6)(2001), that the Respondent shall pay a hearing fee of \$75.00, within thirty (30) days of the issuance of this order.

Salon License

IT IS THEREFORE ORDERED, that the salon license issued to Respondent City Looks, license no. 002-008251, is hereby placed on probation for a period of one (1) year, subject to the following terms and conditions:

1. That within thirty (30) days of the date of issuance of this Order, the Respondent City Looks shall pay a civil penalty of one hundred dollars (\$100.00) for permitting an unlicensed person to perform activities requiring a license.
2. That the Respondent City Looks shall file written quarterly reports, with the first report due three months after the issuance of this Order, stating the salon's compliance with all laws and regulations governing its license. The written reports shall include information on the license status of all persons employed by the salon.

3. If at any time during this probation the Respondent City Looks violates any provision of this Order, the Board may hold a hearing pursuant to Iowa Code section 272C.3(2)"a"(2001), because of failure of the Respondent to comply with the terms of this Order. Any such violation would result in consideration by the Board of more serious sanctions, including revocation.

4. Successful completion of the probationary period shall constitute a final disposition of this matter.

Dated this 23 day of November, 2001.

Pursuant to Iowa Code section 17A.19(2001) 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.