

STATE OF IOWA  
BEFORE THE BOARD OF BARBERING

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IN THE MATTER OF:	)	NO. BA 09-017
	)	DIA NO. 10DPHBE002
Imperial Kuttz,	)	
License No. 02931	)	FINDINGS OF FACT,
And	)	CONCLUSIONS OF LAW,
Samora Clay,	)	DECISION AND ORDER
License No. 14719	)	

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On November 9, 2009, the Iowa Board of Barbering (Board) filed a Notice of Hearing and Statement of Charges against Imperial Kuttz and Samora Clay (Respondents). Respondents were charged with the following four counts:

- Count I: Failing to post a copy of the most current sanitation rules and the inspection report in a conspicuous place in the barber shop, in violation of 645 IAC 25.2(12) and 22.2.
- Count II: Failing to have a hazardous waste container available, in violation of 645 IAC 25.2(12) and 22.16(3).
- Count III: Engaging in unsanitary practices, in violation of Iowa Code section 158.5 and 645 IAC 25.2(12), 22.10(6), 22.11(1), and 22.2.
- Count IV: Permitting an unlicensed person under Respondent's control to perform activities requiring a license, in violation of 645 IAC 25.2(29).

The hearing was initially scheduled for April 26, 2010 at 3:00 p.m. but was continued at Respondents' request. The hearing was held on July 27, 2010 at 11:25 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondents 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. After

hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2009), 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 Investigator Corey Powell and State Exhibits 1-6 (Exhibit 6 is proof of service for the notice rescheduling the hearing).

### FINDINGS OF FACT

1. Respondent Imperial Kuttz is located at 1604 6<sup>th</sup> Avenue in Des Moines, Iowa and was issued Iowa license 02931 on February 13, 2006. Respondent Samora Clay was issued barber license 14719 on November 2, 2005. Mr. Clay is the owner of Imperial Kuttz. (Exhibits 2, 3, 4)

2. The Board received a complaint that Richard Daniels was performing barbering services while his license was on inactive status. On May 8, 2009, the complaint was referred to the Department of Inspections and Appeals (DIA) for investigation. On May 15, 2009, DIA Investigator Corey Powell interviewed the complainant, who reported that Richard Daniel's license was inactive, but that he continued to provide barbering services at Imperial Kuttz at 1604 Sixth Avenue in Des Moines, Iowa.

Investigator Powell performed an unannounced visit/inspection of Imperial Kuttz at 1:45 p.m. on May 15, 2009. Powell observed two persons cutting hair when he entered the barbershop. Powell identified these two persons as Richard Daniels and Kevin Turner. (Exhibit 1; Powell testimony)

3. Individual barbering licenses were posted at four of the five workstations inside Imperial Kuttz. Three of the four licenses did not have a current renewal card posted with the license. The licenses without current renewal cards included the licenses belonging to Richard Daniels (#14279), Kevin Turner (#14736), and Jarvis Smith (#14557). The license of Samora Clay was also posted and did have a current renewal card. Kevin Turner told Investigator Powell that Rodney Benson also worked at Imperial Kuttz but was not working that day. (Powell testimony; Exhibit 1)

4. At the time of his March 15, 2009 visit to Imperial Kuttz, Corey Powell observed a number of sanitation and posting violations, including:

- There were no biohazard bags or containers.
- Razor blades were placed back in their plastic containers and thrown away with the rest of the garbage.
- Each station had a dust brush (neck duster).
- Kevin Turner had his personal hair brush at his work station.
- Clipped hair was present on the floor and counter tops of each work station.
- The current sanitation rules were not posted.
- The most recent inspection report was not posted. However, Samora Clay told Powell that the barber shop had not yet been inspected.

Investigator Powell provided Samora Clay with a copy of the current sanitation rules to post at the barber shop. (Powell testimony; Exhibit 1)

5. The original Notice of Hearing and Statement of Charges were served on Imperial Kuttz and Samora Clay by restricted certified mail on March 20, 2010. (State Exhibits 3, 5) The Order rescheduling the hearing to July 27, 2010 at 11:00 a.m. was served on Imperial Kuttz and Samora Clay by restricted certified mail on or about June 1, 2010. (Exhibit 6) Mr. Clay did not appear for hearing and did not request a continuance.

#### CONCLUSIONS OF LAW

Iowa Code section 158.12 authorizes the Board to suspend, revoke, or deny the renewal of any license issued under the provisions of chapter 158 for any violation of chapter 158 or any violation of the rules of the Board. 645 IAC 25.2(12) provides that the Board may impose any of the disciplinary sanctions provided in rule 645 IAC 25.3 when the Board determines a licensee has violated any regulation, rule, or law of this state, another state, or the United States, which relates to the practice of barbering.

Count I: *Failing To Post Most Current Sanitation Rules and Inspection Report*

645 IAC 22.2 requires a copy of the most current sanitation rules and the most recent inspection report to be posted in a conspicuous place in the barbershop for the information and guidance of all persons employed therein and the general public. The

preponderance of the evidence established that the most current sanitation rules were not properly posted at Imperial Kuttz. As the owner, Respondent Samora Clay was responsible for ensuring that the sanitation rules were properly posted.

Count II: Failure To Have Hazardous Waste Containers Available

645 IAC 22.16(3) provides that hazardous waste containers and bags shall be available for use at all times when services are being performed, and the absence of containers shall be prima facie evidence of noncompliance. The preponderance of the evidence established that there were no hazardous waste containers or bags at Imperial Kuttz at the time of the May 15, 2009 inspection. As an owner of Imperial Kuttz, Respondent Samora Clay was responsible for ensuring that there were hazardous waste containers on the premises.

Count III: Engaging in Unsanitary Practices

The legislature has authorized the Iowa Department of Public Health to prescribe sanitary rules for barbershops and barber schools which shall include the sanitary conditions necessary for the practice of barbering and for the prevention of infectious and contagious diseases. Iowa Code section 158.5. The Department of Public Health has promulgated rules governing sanitation at 645 IAC chapter 22. 645 IAC 22.15(5) specifically provides that neck dusters shall not be used in any barbershop. In addition, 645 IAC 22.11(1) requires all barbershops to have at least one covered receptacle for the disposal of all waste, including hair. The preponderance of the evidence established that there were neck dusters at each work station in Imperial Kuttz at the time of the May 15, 2009 inspection. There was also clipped hair present on the floor and countertops of each work station and throughout the barber shop. As the owner of Imperial Kuttz, Respondent Samora Clay was responsible for ensuring that neck dusters were not present on the premises and that clipped hair was removed from all surfaces and disposed of properly in a covered container.

Count IV: Permitting An Unlicensed Person To Perform Activities That Require A License

645 IAC 25.2(29) provides that licensees may be disciplined for permitting an unlicensed employee or person under the licensee's or entity's control to perform activities that require a license. The preponderance of the evidence established that Imperial Kuttz and Samora Clay employed three persons to provide barbering services

(Richard Daniels, Jarvis Smith, and Kevin Turner) who not hold current barber licenses. As the owner of Imperial Kuttz, Respondent Robert Samora Clay was responsible for ensuring that the individuals who provided barbering services in the barbershop had current barber licenses.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that License Number 02931, issued to Respondent Imperial Kuttz, and License Number 14719, issued to Respondent Samora Clay, are hereby placed on probation for a period of two (2) years, subject to the following terms and conditions:

A. Within ten (10) days of receipt of this Decision and Order, Respondents shall provide the Board with:

- a current list of all employees;
- the license number for each employee who provides barbering services;
- verification that each employee who performs barbering services has completed the required continuing education for license renewal;
- verification that Respondent Samora Clay has completed the eight hour continuing education required for his license renewal;
- written assurance that the required hazardous waste container and bags have been placed in the barber shop and that all neck dusters have been removed from the barber shop.

B. Respondents shall pay a total civil penalty of \$1000 within sixty (60) days of receipt of this Decision and Order. Failure to pay the penalty as required will result in the immediate indefinite suspension of both licenses.

C. Respondents must file quarterly typewritten reports with the Board during the period of probation. The written reports shall include the names of all persons providing barbering services (whether the persons are employees or independent contractors who rent chairs) in the barbershop at 1604 6<sup>th</sup> Avenue in Des Moines, Iowa. The reports shall also include the persons' license numbers and license expiration dates.

D. Respondents' barbershop will be subject to random unannounced inspections at the discretion of the Board throughout the period of Respondents' probation.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Imperial Kuttz and Samora Clay shall pay \$75.00 for fees associated with the disciplinary hearing and \$68.75 for the court reporter fees. The total fees of \$143.75 shall be paid within thirty (30) days of receipt of this decision.

FINALLY, if Respondents fail to comply with any of the terms of this Order, the Board may hold a hearing, pursuant to Iowa Code section 272C.3(2)"a"(2009), and may impose further sanctions, up to and including license revocations.

This Findings of Fact, Conclusions of Law, Decision and Order is approved by the board August 30, 2010

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.