

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

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JAN 04 2016

SC Court of Appeals

Case No. 2015-001435

Angel Nails,

Appellant,

v.

South Carolina Department of Labor Licensing & Regulation,
State Board of Cosmetology,

Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. THE BOARD'S ORDER IS DEFICIENT IN THAT IT DID NOT RELY ON S.C. CODE ANN. REGS. 35-6(B) TO CALCULATE ITS FINE

The Board asserts in its brief that its authorization for the calculation of fines in this matter is S.C. Code Ann. Regs. 35-6(B), which allows for more than one administrative citation to be issued to a licensee upon an inspection of a salon. However, the Board order in this matter contains no reference to this regulation, as cited in Respondent's brief. Rather, the order asserts "S.C. Code Ann. §40-1-120 provides that upon a finding of a violation of §40-13-110 or the Board's regulations, the Board has the authority to do the following: issue a public reprimand; impose a fine *not to exceed five hundred dollars.*" (emphasis added). (R. p. 12, Line 26-29)

"An administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). "Thus, what is necessary is that the reviewing body clearly identify the findings of fact, the conclusions of law, and the rationale used to reach those findings and conclusions." Thomas R. King v. S.C. Dept. of Labor, Licensing and Regulation, Bd. of Architectural Examiners, 01-ALJ-11-0091-AP (S.C. Admin. L. Ct. Aug. 21, 2001).

The Board's proper opportunity to assert its legal authorization for its actions was in its final order. Absent even a reference to the law that the Board now asserts is the basis for its sanction in this matter, the order is clearly insufficient and must be overturned, or this matter must be remanded for reconsideration pursuant to the Board's proper authority.

II. THE BOARD'S STACKING OF FINES WAS UNDULY HARSH AND AN ABUSE OF DISCRETION

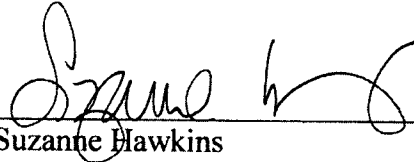
Even assuming that the Board is authorized to fine in excess of five hundred dollars for a finding of one or more violations in a disciplinary matter, the Board clearly abused its discretion in the calculation of the fine against Appellant. The intent to maximize the fine to punish Appellant is apparent. The Board stretched four inspections, in which inspectors observed the same violations (used tools that had not been disposed of, improperly stored towels, dirty pedicure filters, the existence of a waxing room and the existence of a sofa in the break room) into an order fining Appellant thirty separate times in increments of five hundred dollars or less, to total \$9,300. (R. p. 13, line 7). The scheme by which the Board imposed a fine of \$9,300 against this nail technician salon owner is unduly harsh and therefore an abuse of its discretion.

The Board has stacked an assortment of statutory and regulatory provisions, not all of which provide a basis to fine a licensee, and based upon inadequate findings of fact to support the number of separate fines. The result is a significant impact on Appellant's substantial rights. The imposition of such an outrageous fine is the very definition of an abuse of discretion and should be overturned.

CONCLUSION

Based on the foregoing, the fine imposed should be reduced to \$500, or, in the alternative, remanded to the Board for reconsideration pursuant to the Board's proper authority to sanction the Appellant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Suzanne Hawkins", written over a horizontal line.

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December 15, 2015
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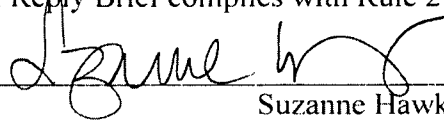
v.

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.



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CERTIFICATE OF SERVICE BY MAILING

I certify that on December 15, 2015, I served the Respondent with copies of the Appellant's Final Brief and Final Reply Brief, by United States Mail, with proper postage attached, addressed as follows: Prentiss Counts Shealey, Esquire, Assistant Disciplinary Counsel, SCDLLR, Post Office Box 11329, Columbia, SC 29211-1329.

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