

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT JAN 15 2016

Carolyn C. Matthews, Administrative Law Judge

SC Court of Appeals

Case No. 2015-001435

Angel Nails,

Appellant,

v.

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

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Angel Nails,)	Docket No. 14-ALJ-11-0339-AP
Appellant,)	
)	
vs.)	
)	FINAL ORDER AND DECISION
South Carolina Department of Labor,)	
Licensing, & Regulation, State Board of)	The Honorable Carolyn C. Matthews
Cosmetology,)	June 1, 2015
Respondent.)	
)	

Hearing Date:	April 7, 2015
For the Appellant:	Prentiss Counts Shealy, Esquire
For the Respondent:	Suzanne Hawkins, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") for a final order and decision following a contested case hearing pursuant to S.C. Code Ann. § 1-23-600(A) (Supp. 2014). The South Carolina Department of Labor, Licensing, and Regulation's Board of Cosmetology ("Department" or "Board") placed the license of Angel Nails ("Appellant salon") on probation for three (3) years and issued a fine of nine thousand three hundred and no/100ths Dollars (\$9,300.00) based on violations of applicable law including S.C. Code Ann. §§ 40-13-110(A)(1), 40-13-110(A)(8), and 40-13-20(2), and (8) (1976, as amended); and S.C. Code Ann. Reg. §§ 35-20(D)(2), 35-20(H)(1), 35-20(M)(1) and (2), and 35-20(c). Van Tran ("Appellant"), owner of Angel Nails, filed a Notice of Appeal with this Court on or about July 10, 2014. After notice to the parties, the court held a hearing on April 7, 2015. Present at the call of the case were the attorneys, as listed above. Evidence was introduced and testimony presented. After carefully reviewing all of the evidence, this Court finds that the Department's sanctions imposing on Appellant a public reprimand and three (3) years' probation are upheld. However, the \$9,300.00 fine is reduced to \$6,300.00 based on the following analysis.

FINDINGS OF FACT

Having observed the arguments of counsel presented at the hearing, and taking into consideration the burden of persuasion by the parties, the court makes the following Findings of Fact by the existence of substantial evidence:

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1. On or about October 28, 1997, Appellant salon was issued a license by Respondent. Appellant also applied for a license as a Nail Technician.
2. On four (4) separate incidents in 2012, Appellant salon was inspected by a designated inspector for the Board of Cosmetology, and multiple infractions were found, as follows:
 - a. On or about May 3, 2012, an inspector found used buffers and nail files that were not properly discarded and a wax room that appeared to have been used recently (though no employees were licensed to perform waxing services). An inspection report was created and left with Appellant.
 - b. On or about June 28, 2012, a re-inspection was conducted. The inspector found a wax canister that was plugged in, but hidden in a cabinet, as well as a sleeper sofa in the back of the premises and used buffers that had not been discarded properly. An inspection report was created and left with Appellant.
 - c. On or about August 24, 2012, another re-inspection was conducted, and the inspector found dirty filters in the pedicure chairs and towels left out in the open. The sleeper sofa was still on the premises. An inspection report was created and left with Appellant.
 - d. On or about November 9, 2014, another re-inspection was conducted. The inspector found used graters, buffers, and nail files, and the sleeper sofa was still on the premises. An inspection report was created and left with Appellant.
3. As a result of these inspections and their resulting reports, a formal complaint was issued by the Respondent on March 19, 2014, along with a notice of hearing for April 28, 2014. Before the hearing date, the parties entered into a Memorandum of Agreement ("MOA") that was drafted by the Respondent and signed by the Appellant on March 24, 2014. This was referred to at the subsequent hearing. Appellant undertook both the execution of the MOA and appearance at the hearing without the assistance of an attorney or other representation.
4. The hearing went forward on April 28, 2014, with Appellant again representing herself and Ms. Melanie C. Thompson, chair of the South Carolina Board of Cosmetology, serving as hearing officer. Appellant gave basic testimony regarding the operation of the shop and her understanding of the violations. She stated that she was away from the shop due to health problems and the birth of her child, and that her sister-in-law watched the

shop. (A different sister-in-law has subsequently purchased the business, and is now having trouble obtaining a license due to these violations.) Appellant further testified that some of the violations, such as the couch in the back room, had been in place since before she purchased the salon.

5. It appears from the transcript that the members of the board who were present agreed on the sanctions that were ultimately imposed: a public reprimand; license placed on probation for three (3) years; and fines in total of nine thousand three hundred and no/100ths Dollars (\$9,300.00) to be paid within one hundred twenty (120) days. However, the final order issued on June 11, 2014 states that "the hearing officer deferred ruling and requested that the matter be brought before the full Board. The full Board, with Melanie C. Thompson recused, considered the MOA at its meeting on May 13, 2014, with a quorum present" and that a *de novo* hearing was held in accordance with the applicable sections of the Administrative Procedures Act.
6. The imposed sanctions were justified by reference to the following code sections and regulations that were included in the MOA and agreed to by the Appellant:
 - a. S.C. Code Ann. § 40-13-110(A)(1) (1976, as amended), in that Respondent violated or failed to comply with any provision of this chapter, a regulation promulgated under this chapter, or an order of the board;
 - b. S.C. Code Ann. Reg. § 35-20(D)(1) (1976, as amended), in that Respondent failed to keep furnishings and fixtures clean and in good repair;
 - c. S.C. Code Ann. Reg. § 35-20(H)(1) (1976, as amended), in that Respondent failed to dispose of instruments that come into direct contact with a patron and that cannot be disinfected in a waste receptacle immediately after use;
 - d. S.C. Code Ann. Reg. § 35-20(M)(1) & (2) (1976, as amended), in that Respondent failed to discard used towels into a closed receptacle after use and failed to store towels in a closed cabinet before use;
 - e. S.C. Code Ann. § 40-13-20(2) & (8) (1976, as amended), in that Respondent allowed Nail Technicians to practice outside of the scope of their license by performing waxing services which require a cosmetology license;
 - f. S.C. Code Ann. Reg. § 35-20(c) (1976, as amended), in that Respondent used its premises for sleeping and living quarters;

- g. S.C. Code Ann. § 40-13-110(A)(8) (1976, as amended) and S.C. Code Ann. § 40-13-20(2) (1976, as amended), in that Respondent used devices not intended for cosmetic use and outside the scope of cosmetology..
7. Appellant filed the instant appeal on July 10, 2014, by and through her counsel of record Suzanne Hawkins, Esq. A hearing was held on April 7, 2015.
8. Appellant contended at the hearing that the sole issue was with the fine issued by the Board, and alleged two (2) arguments. Argument 1 was that S.C. Code Ann. § 40-1-120(a) (1976, as amended) is the only method for fining, and that its plain reading allows for a maximum fine of Five Hundred and no/100ths Dollars (\$500.00).¹ Argument 2 was that if stacking of multiple fines is permitted under the reading of that code section, the method that the Board used in the instant case was random and arbitrary.
9. For the reasons set forth below, I find that all punitive measures must stand, but the fine shall be decreased.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the court concludes the following as a matter of law:

1. Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2007). As such, the Administrative Law Judge sits in an appellate capacity under the APA rather than as an independent finder of fact. The abilities of an Administrative Law Judge in such a role are dictated by S.C. Code Ann. § 1-23-380(5) (Supp. 2007):

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been

¹ "SECTION 40-1-120. Sanctions. (A) Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions the board is authorized to take pursuant to its respective licensing act, the board may: (1) issue a public reprimand; (2) impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board; (3) place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs; (4) permanently revoke the license." S.C. Code Ann. § 40-1-120(a) (1976, as amended)

prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

2. “Substantial evidence” has been defined both as “evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action”² and requiring “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³ The fact that the record, when considered as a whole, presents “[t]he possibility of drawing two inconsistent conclusions from the evidence will not mean the agency’s conclusion was unsupported by substantial evidence.” Waters v. South Carolina Land Resources Conservation Comm’n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); *see also* Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

3. If substantial evidence exists for a certain agency decision, that decision may not be disturbed unless there is an abuse of discretion evidenced by a showing that the action of the agency was arbitrary or unlawful. S.C. Code Ann. § 1-23-600(A) (Supp. 2014). “A decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” Deese v. South Carolina State Bd. Of Dentistry, 286 S.C. 182, 184-5, 332, S.E.2d 539, 541 (Ct.App. 1985).

4. Pursuant to the Cosmetology Board Practice Act as contained in S.C. Code Ann. § 40-13-110(A) (2014), “the board may revoke suspend, or restrict a license” upon a showing of a violation of a statutory or regulatory requirement. Additionally, “upon a determination...that one

² Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

³ Midlands Utility, Inc. v. S.C. Dep’t of Health and Environmental Control, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989).

or more of the grounds for discipline exists,” the board may issue a public reprimand, impose a fine not to exceed five hundred dollars unless otherwise specified by a statute or regulation of the board, place a licensee on probation or restrict the individual’s license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs.

5. Appellant contends that the Board’s stacking of the fines “not to exceed five hundred dollars” as authorized by S.C. Code Ann. § 40-13-110(A) (2014) for a finding of “one or more grounds for discipline” is without adequate legal or factual basis and was an abuse of discretion. In the alternative, Appellant contends that if the Board is permitted to stack fines under the statute, many of the fines in the instant case were without factual or legal basis.

6. Though there is no specific case law regarding the issuance of sanctions by the South Carolina Board of Cosmetology, similar cases arising from other occupations overseen by Labor, Licensing, and Regulation have been taken to the South Carolina Supreme Court. A prime example of this is the matter of Hibah O. Osman, M.D., v. South Carolina Department of Labor, Licensing, and Regulation, South Carolina State Board of Medical Examiners, 382 S.C. 244, 676S.E.2d 672 (2009). In this case, the Supreme Court reversed a ruling by this Court that a portion of the Board’s order requiring Dr. Osman to reestablish her competency in surgical obstetrics before resuming medical practice in South Carolina was outside the bounds of its authority. This opinion defined the Supreme Court’s view that S.C. Code Ann. § 40-1-120(a) (1976, as amended), the governing statutory section from which all regulatory boards within South Carolina draw the power to issue sanctions, will be construed very broadly. As such, I conclude that the issuance of different types of sanctions as well as the stacking of fines is permissible in this matter.

7. Generally, courts defer to the relevant administrative agency’s decisions with respect to its own regulations unless there is a compelling reason to differ. Dunton v. South Carolina Bd. of Exam’rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). Though I must defer to the Board’s ruling regarding the number and types of violations in four (4) of the seven (7) statutory categories, I cannot uphold the sanctions that merely cite to organizational or definitional sections to justify the imposition of fines. For this reason, the following fines will be deleted:

- a. S.C. Code Ann. § 40-13-110(A)(1) (1976, as amended), in that Respondent violated or failed to comply with any provision of this chapter, a regulation promulgated under this chapter, or an order of the Board.
 - i. Appellant was fined five hundred and no/100ths Dollars (\$500.00) for each of two (2) violations of this section; however, this section does not specifically allow for the imposition of a fine, but rather provides general authority to the Board to revoke, suspend, or restrict a license.
 - ii. These fines are therefore disallowed;
 - b. S.C. Code Ann. § 40-13-20(2) & (8) (1976, as amended), in that Respondent allowed Nail Technicians to practice outside of the scope of their license by performing waxing services, which require a cosmetology license.
 - i. Appellant was fined five hundred and no/100ths Dollars (\$500.00) for each of two (2) violations of these two (2) subsections; however, neither allows for the imposition of a fine, but rather define an aspect of the practice of cosmetology.
 - ii. These fines are deleted;
 - c. S.C. Code Ann. § 40-13-110(A)(8) (1976, as amended) and S.C. Code Ann. § 40-13-20(2) (1976, as amended), in that Respondent used devices not intended for cosmetic use and outside the scope of cosmetology.
 - i. Appellant was fined five hundred and no/100ths Dollars (\$500.00) for each of two (2) violations of these sections; however, these sections do not allow for the imposition of a fine; rather, they allow the Board to revoke, suspend, or restrict a license if it has found an incident where a substance or device not labeled for cosmetic use was used in the practice of cosmetology;
 - ii. Because these sections authorize the Board only to revoke, suspend, or restrict a license, and does not allow imposition of a fine, the monetary penalties are deleted.
8. The fines imposed thus total six thousand three hundred and no/100ths Dollars (\$6,300.00), in addition to the public reprimand and three (3) year probationary period. A public

reprimand plus probation is a powerful sanction and, when combined with the reduced fine, is still a very serious punishment for the Appellant.

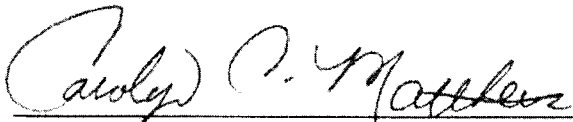
ORDER

Based upon the Findings of Fact and Conclusions of Law stated above, it is

ORDERED that the Department's decision to place Appellant's cosmetology license on probation for three (3) years is upheld; the Department's decision to issue a public reprimand is upheld; and the Department's imposed fine is reduced to a total of six thousand three hundred and no/100ths (\$6,300.000) for the reasons described above.

IT IS SO ORDERED.

June 1, 2015
Columbia, South Carolina


CAROLYN C. MATTHEWS
Administrative Law Judge

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF COSMETOLOGY**

IN THE MATTER OF:

ANGEL NAILS,

License No.: SAL.696

OIE : 2012-124 AND 2013-27

Respondent.

FINAL ORDER

This matter initially came before Melanie C. Thompson, a hearing officer appointed by the State Board of Cosmetology ("Board") for hearing on April 28, 2014, to consider the Memorandum of Agreement and Stipulations signed by the above named Respondent on March 26, 2014 ("MOA"). In the MOA, Respondent waived formal hearing procedures and elected to dispose of the matter pursuant to S.C. Code Ann. § 1-23-320(f)(1976, as amended), in lieu of, *inter alia*, a formal contested hearing before the Board. The hearing was held pursuant to S.C. Code Ann. §§40-1-90, 40-13-120, and the provisions of the Administrative Procedures Act, S.C. Code Ann. §1-23-10, *et seq.* (1976 as amended) to determine what sanctions, if any, were appropriate.

After receiving the MOA and hearing argument and mitigating testimony from the State and the Respondent, the hearing officer deferred ruling and requested that the matter be brought before the full Board. The full Board, with Melanie C. Thompson recused, considered the MOA at its meeting on May 13, 2014, with a quorum present. A *de novo* hearing was held pursuant to S.C. Code Ann. §§40-1-90, 40-13-120, and the provisions of the Administrative Procedures Act, S.C. Code Ann. §1-23-10, *et seq.* (1976 as amended) to determine what sanctions, if any, were appropriate.

Prentiss Counts Shealey, Esq., Assistant Disciplinary Counsel, represented the State. Van Tran, Respondent's owner at the time of the violations, appeared on behalf of Respondent, waived the right to counsel and proceeded *pro se*, presenting mitigating testimony. After consideration, the Board voted to accept the MOA, with the sanctions specified in this Order.

FINDINGS OF FACT

In the MOA Respondent admitted the following facts, which are accepted by the Board.

1. Angel Nails, located at 5809 Calhoun Memorial Highway, Suite G, Easley, South Carolina, (hereinafter referred to as "Respondent") is currently licensed as a Salon to practice in South Carolina. The Salon was first issued a license on October 28, 1997. Respondent is owned and operated by Van Tran (NT.7033).
2. On or about May 3, 2012, an Inspector for the Board conducted an inspection of Respondent's location. The Inspector found used buffers and nail files that were not properly discarded. The Inspector also found a wax room that appeared as if it had been used recently. No employees are licensed to perform waxing services. The Inspector warned Respondent of all violations.
3. On or about June 27, 2012, an Inspector for the Board conducted a re-inspection of Respondent's location. The Inspector found a wax canister which was plugged in but hidden in a cabinet. No employees are licensed to perform waxing services. The Inspector also found sleeping quarters in the back of the premises. The Inspector also found used buffers that had not been discarded properly and towels that were not stored properly. The Inspector warned Respondent of all violations.
4. On or about August 24, 2012, an Inspector for the Board conducted a re-inspection of Respondent. The Inspector found dirty filters in the pedicure chairs and towels left out. The Inspector also found sleeping quarters in the back of the premises being utilized by an employee. The Inspector warned Respondent of all violations.
5. On November 9, 2012, the Inspector performed a re-inspection of Respondent. The Inspector found used graters which are not allowed for cosmetic use. The Inspector also found used buffers and nail files that had not been properly discarded. The Inspector also found that sleeping quarters were still present in the back of the premises.

At the hearing, the evidence of the following mitigating circumstances was received:

6. During the time the above violations were found, Respondent's owner, Van Tran was not present in Respondent Salon, due to family and medical matters. Respondent Salon was being managed by a family member.
7. No violations were found during the inspections when Ms. Tran was able to be present in Respondent Salon.
8. Ms. Tran was aware of the above inspection reports and violations, but when she asked the family member who was operating Respondent Salon for her in her absence about them, the family member provided an excuse for the reported violations and told her any problems had been remedied.
9. The sofa was present in the break room of Respondent Salon at the time it was inspected when Ms. Tran purchased the salon, and no comments were made at that time that it was not acceptable.

10. Respondent Salon has since been purchased by a different family member, as Ms. Tran has been unable to return to the salon.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. Respondent admits that the acts of Respondent set out in Paragraphs 1 - 5 of the Findings of Fact above present grounds that constitute a violation of:

- a. S.C. Code Ann. § 40-13-110(A)(1) (1976, as amended), in that Respondent violated or failed to comply with any provision of this chapter, a regulation promulgated under this chapter, or an order of the board;
- b. S.C. Code Ann. Reg. § 35-20(D)(1), in that Respondent failed to keep furnishings and fixtures clean and in good repair;
- c. S.C. Code Ann. Reg. § 35-20(H)(1), in that Respondent failed to dispose of instruments that come into direct contact with a patron and that cannot be disinfected in a waste receptacle immediately after use;
- d. S.C. Code Ann. Reg. § 35-20(M)(1) & (2), in that Respondent failed to discard used towels into a closed receptacle after use and failed to store towels in a closed cabinet before use;
- e. S.C. Code Ann. § 40-13-20(2) & (8), in that Respondent allowed Nail Technicians to practice outside of the scope of their license by performing waxing services which require a cosmetology license;
- f. S.C. Code Ann. Reg. § 35-20(C), in that Respondent used its premises for sleeping and living quarters;
- g. S.C. Code Ann. §40-13-110(A)(8) and S.C. Code Ann. §40-13-20(2), in that Respondent used devices not intended for cosmetic use and outside the scope of cosmetology.

2. The Board has jurisdiction in this matter. S.C. Code Ann. § 40-1-120(1976 as amended) 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; place a licensee on probation; or restrict or suspend the individual's license for a definite or indefinite time; prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a

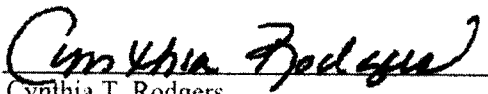
supervisory period, or of continuing education programs; or, permanently revoke a license. Additionally, pursuant to S.C. Code Ann. §§ 40-1-170 and 40-13-170, the Board may impose upon a violator the reasonable costs of the investigation and prosecution.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Memorandum of Agreement and Stipulations is ACCEPTED.
2. Respondent is publicly reprimanded.
3. Respondent is assessed a civil penalty of Nine Thousand Three Hundred Dollars (\$9,300.00). This represents \$500.00 each for two violations of S.C. Code Ann. § 40-13-110(A)(1) (1976, as amended); \$500.00 each for six violations of S.C. Code Ann. Reg. § 35-20(D)(1); \$100.00 each for twelve violations of S.C. Code Ann. Reg. § 35-20(H)(1); \$200.00 each for three violations of S.C. Code Ann. Reg. § 35-20(M)(1) & (2); \$500.00 each for two violations of S.C. Code Ann. § 40-13-20(2) & (8); \$500.00 each for three violations of S.C. Code Ann. Reg. § 35-20(C); and \$500.00 each for two violations of S.C. Code Ann. §40-13-110(A)(8) and S.C. Code Ann. §40-13-20(2)(1976, as amended). The \$9,300.00 civil penalty shall be paid within 120 days of the date of this Order.
4. Respondent's license shall be on probation for a period of three (3) years from the date of this hearing. Should Respondent fail to comply with any of the terms of this Order, or if Respondent has any additional violations of the statutes and regulations governing the practice, Respondent's license may be administratively suspended until further Order of the Board or Respondent's compliance with this Order.

AND IT IS SO ORDERED.

STATE BOARD OF COSMETOLOGY

BY: 
Cynthia T. Rodgers,
Acting Chair

June 11, 2014.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF COSMETOLOGY**

IN THE MATTER OF:

ANGEL NAILS,

License No.: SAL.696

OIE : 2012-124 AND 2013-27

Respondent.

**MEMORANDUM OF
AGREEMENT**

WHEREAS, the South Carolina State Board of Cosmetology (hereinafter referred to as the "Board"), has received an initial complaint with respect to the above referenced Respondent, Angel Nails; and

WHEREAS, an investigation based on the allegations contained in the initial complaint was conducted, which determined sufficient evidence existed to bring formal charges against Respondent for misconduct in violation S.C. Code Ann. § 40-13-05, *et seq.* (1976, as amended) and S.C. Code Ann. § 40-01-10, *et seq.* (1976, as amended). Respondent has engaged in misconduct in the practice of cosmetology by allowing unlicensed practice to occur in the salon; and

WHEREAS, Respondent admits that certain facts, as further described below, constitute grounds for a finding of misconduct and has advised that it wishes to waive formal hearing procedures and dispose of this matter pursuant to S.C. Code Ann. § 1-23-320(f) (1976, as amended), in lieu of, *inter alia*, a formal contested hearing before the Commission; and

WHEREAS, Respondent will participate in a hearing before the full Board (**Date, Time, and Location of hearing to be announced**) for the purpose of determining an appropriate sanction.

THEREFORE, RESPONDENT STIPULATES AND ADMITS to the following facts, to be considered by the Board in determining an appropriate disposition in connection with the disciplinary matter pending against Respondent:

1. Angel Nails, located at 5809 Calhoun Memorial Highway, Suite G, Easley, South Carolina, (hereinafter referred to as "Respondent") is currently licensed as a Salon to practice in South Carolina. The Salon was first issued a license on October 28, 1997. Respondent is owned and operated by Van Tran (NT.7033).

2. On or about May 3, 2012, an Inspector for the Board conducted an inspection of Respondent location. The Inspector found used buffers and nail files that were not properly discarded. The Inspector also found a wax room that appeared as if it had been used recently. No employees are licensed to perform waxing services. The Inspector warned Respondent of all violations. Inspection Report dated May 3, 2012 herein attached as **EXHIBIT 1**.
- ~~3. On or about June 27, 2012, an Inspector for the Board conducted a re-inspection of Respondent's location. The Inspector found wax canister which was plugged in but hidden in a cabinet. No employees are licensed to perform waxing services. The Inspector also found sleeping quarters in the back of the premises. The Inspector also found used buffers that had not been discarded properly and towels that were not stored properly. The Inspector warned Respondent of all violations. Inspection Report dated June 27, 2012 herein attached as **EXHIBIT 2**.~~
4. On or about August 24, 2012, an Inspector for the Board conducted a re-inspection of Respondent. The Inspector found dirty filters in the pedicure chairs and towels left out. The Inspector also found sleeping quarters in the back of the premises being utilized by an employee. The Inspector warned Respondent of all violations. Inspection Report dated August 24, 2012 herein attached as **EXHIBIT 3**.
5. On November 9, 2012, the Inspector performed a re-inspection of Respondent. The Inspector found used graters which are not allowed for cosmetic use. The Inspector also found used buffers and nail files that had not been properly discarded. The Inspector also found that sleeping quarters were still present in the back of the premises. Inspection Report dated November 9, 2012 herein attached as **EXHIBIT 4**.
6. Respondent waives any further findings of fact in this matter.

RESPONDENT ADMITS that the aforementioned acts of Respondent present grounds that constitute a violation of:

- a. S.C. Code Ann. § 40-13-110(A)(1) (1976, as amended), in that Respondent violated or failed to comply with any provision of this chapter, a regulation promulgated under this chapter, or an order of the board; and/or
- b. S.C. Code Ann. Reg. § 35-20(D)(1), in that Respondent failed to keep furnishings and fixtures clean and in good repair; and/or
- c. S.C. Code Ann. Reg. § 35-20(H)(1), in that Respondent failed to dispose of instruments that come into direct contact with a patron and that cannot be

disinfected in a waste receptacle immediately after use; and/or

- d. S.C. Code Ann. Reg. § 35-20(M)(1) & (2), in that Respondent failed to discard used towels into a closed receptacle after use and failed to store towels in a closed cabinet before use; and/or
- e. S.C. Code Ann. § 40-13-20(2) & (8), in that Respondent allowed Nail Technicians to practice outside of the scope of their license by performing waxing services which require a cosmetology license; and/or
- f. S.C. Code Ann. Reg. § 35-20(C), in that Respondent used its premises for sleeping and living quarters; and/or
- g. S.C. Code Ann. §40-13-110(A)(8) and S.C. Code Ann. §40-13-20(2), in that Respondent used devices not intended for cosmetic use and outside the scope of cosmetology; and/or

RESPONDENT AGREES that at the Hearing, Respondent shall appear and, under oath, answer questions, if any, by the Board concerning their practice as a licensee. The Board, in rendering its decision, may consider Respondent's answers. Respondent may present mitigating testimony and other evidence to the Board regarding an appropriate decision regarding a sanction in this matter.

IN WITNESS WHEREOF, the parties hereto, having agreed to the matters related above, have executed this Memorandum of Agreement and Stipulations, to be effective the latter date appearing below.

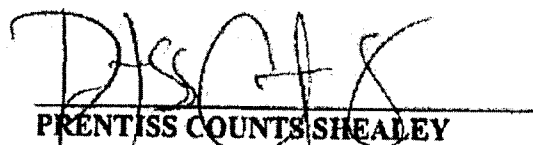
AND IT IS SO AGREED.

th
March 24, 2014



ANGEL NAILS
License No: SAL.696
RESPONDENT

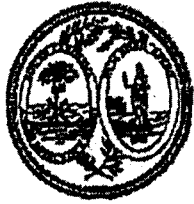
4/11, 2014



PRENTISS COUNTS SHEALEY
Assistant General Counsel
South Carolina Department of
Labor, Licensing, & Regulation
P. O. Box 11329
Columbia, South Carolina 29211
803.896.4852

000018

EXHIBIT 1



South Carolina Department of Labor, Licensing and Regulation
Board of Cosmetology

P. O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4494 FAX (803) 896-4484

No. 1911

INSPECTION REPORT

Salon Name Angel Nails License No. 696

Address 5809 Calhoun Memorial Hwy Ste 6 Easley SC 29640
City State Zip Phone

Owners Name VAN TRAN License # 7033

- Sanitary rules displayed Yes No
- Shampoo bowl and sink Yes No
- Shampoo chair and all-purpose chair Yes No
- Hot and cold running water Yes No
- Hand washing facilities Yes No
- Licenses displayed and valid for location Yes No
- Last inspection report displayed Yes No
- Sanitizer (wet) Yes No
- Sanitizer (dry) Yes No
- Restroom facilities Yes No
- Fire extinguisher and first aid kit Yes No
- Trash containers Yes No
- Connecting door to living quarters Yes No
- Animals in salon Yes No
- Salon used as sleeping quarters Yes No
- Other Ped: LUBEX B Yes No
- Other NAIL STATION X 9 Yes No
- Other Yes No

Licensee Name	BR#	Ind#	Violations
1. <u>Phuong T TRAN</u>		<u>3071</u>	
2. <u>Tuyen H VO</u>		<u>58639</u>	
3. <u>Phu Dung Dang</u>		<u>6877</u>	
4.			
5.			
6.			
7.			
8.			
9.			
10.			

I have received a copy of this inspection report Tuyen H VO

Inspected by Dave W. Bana Date 5-3-12 Time 1:50 pm

Warning Issued? <input checked="" type="radio"/> Yes <input type="radio"/> No	Citation Issued? Yes <input checked="" type="radio"/> No <input type="radio"/>	C&D Issued? Yes <input checked="" type="radio"/> No <input type="radio"/>
---	--	---

*4 STATIONS FOUND WITH DIRTY BLOCK BUFFER AND NAIL FILES.
WAX RUBBER FOUND NO LICENSES TO CONDUCT SERVICES
Need 30 day reinspection. Need sharp coats wax.
LAST INSPECTION: 5-30-11

000020

EXHIBIT 2



South Carolina Department of Labor, Licensing and Regulation
Board of Cosmetology
P. O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4494 FAX (803) 896-4484

2012-4140

No. 1873

INSPECTION REPORT

Salon Name Angel Nails License No. 696

Address 5809 Calhoun Memorial Hwy Ste G, Eastley SC
City State Zip Phone

Owners Name Van Tran License # 7033

- | | | | | | |
|---|--------------------------------------|----|-------------------------------------|--------------------------------------|-------------------------------------|
| Sanitary rules displayed | <input checked="" type="radio"/> Yes | No | Restroom facilities | <input checked="" type="radio"/> Yes | No |
| Shampoo bowl and sink | <input checked="" type="radio"/> Yes | No | Fire extinguisher and first aid kit | <input checked="" type="radio"/> Yes | No |
| Shampoo chair and all-purpose chair | <input checked="" type="radio"/> Yes | No | Trash containers | <input checked="" type="radio"/> Yes | No |
| Hot and cold running water | <input checked="" type="radio"/> Yes | No | Connecting door to living quarters | Yes | <input checked="" type="radio"/> No |
| Hand washing facilities | <input checked="" type="radio"/> Yes | No | Animals in salon | Yes | <input checked="" type="radio"/> No |
| Licenses displayed and valid for location | <input checked="" type="radio"/> Yes | No | Salon used as sleeping quarters | Yes | <input checked="" type="radio"/> No |
| Last inspection report displayed | <input checked="" type="radio"/> Yes | No | Other <u>sharp cuticles</u> | <input checked="" type="radio"/> Yes | No |
| Sanitizer (wet) | <input checked="" type="radio"/> Yes | No | Other | Yes | No |
| Sanitizer (dry) | <input checked="" type="radio"/> Yes | No | Other | Yes | No |

Licensee Name	BR#	Ind#	Violations
1. <u>Phuong T Tran</u>		<u>3031</u>	
2. <u>Phuc Quang Dang</u>		<u>6979</u>	
3. <u>Van Tran</u>		<u>7033</u>	
4. <u>Tuyet Vo</u>		<u>58639</u>	
5. <u>Thang Nguyen</u>		<u>4023</u>	
6.			
7.			
8.			
9.			
10.			

I have received a copy of this inspection report ahao han

Inspected by [Signature] Date 6/27/12 Time 11:15

Warning Issued?	Yes	No	Citation Issued?	Yes	No	C&D Issued?	Yes	No
-----------------	-----	----	------------------	-----	----	-------------	-----	----

Way found plugged in (back break area) - advised to not allow sleeping in back area to remove waste from facility; 4 used buffers found; towels should remain in proper receptacle

This was a re-inspection re-inspection in 30 days

000022

EXHIBIT 3



South Carolina Department of Labor, Licensing and Regulation
 Board of Cosmetology
 P. O. Box 11329
 Columbia, South Carolina 29211-1329
 (803) 896-4494 FAX (803) 896-4484

000023
 2012-5698

No. 1010

INSPECTION REPORT

Salon Name Angel Nails License No. 6916

Address 5809 Calhoun Memorial Hwy Easley SC
 City State Zip Phone

Owners Name Van Tran License # 7033

- | | | | |
|---|---|-------------------------------------|---|
| Sanitary rules displayed | <input checked="" type="radio"/> Yes <input type="radio"/> No | Restroom facilities | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Shampoo bowl and sink | <input checked="" type="radio"/> Yes <input type="radio"/> No | Fire extinguisher and first aid kit | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Shampoo chair and all-purpose chair | <input checked="" type="radio"/> Yes <input type="radio"/> No | Trash containers | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Hot and cold running water | <input checked="" type="radio"/> Yes <input type="radio"/> No | Connecting door to living quarters | <input type="radio"/> Yes <input checked="" type="radio"/> No |
| Hand washing facilities | <input checked="" type="radio"/> Yes <input type="radio"/> No | Animals in salon | <input type="radio"/> Yes <input checked="" type="radio"/> No |
| Licenses displayed and valid for location | <input checked="" type="radio"/> Yes <input type="radio"/> No | Salon used as sleeping quarters | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Last inspection report displayed | <input type="radio"/> Yes <input checked="" type="radio"/> No | Other <u>sharps container</u> | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Sanitizer (wet) | <input checked="" type="radio"/> Yes <input type="radio"/> No | Other _____ | <input type="radio"/> Yes <input type="radio"/> No |
| Sanitizer (dry) | <input checked="" type="radio"/> Yes <input type="radio"/> No | Other _____ | <input type="radio"/> Yes <input type="radio"/> No |

Licensee Name	BR#	Ind#	Violations
1. <u>Tuyen Vo</u>		<u>58039</u>	<u>lic w/pic</u>
2. <u>Thang Nguyen</u>		<u>4023</u>	
3. <u>Phuc Dang</u>		<u>6879</u>	
4. <u>Phuong Tran</u>		<u>3031</u>	
5.			
6.			
7.			
8.			
9.			
10.			

Salon failed Re-inspection in 30 days

I have received a copy of this inspection report Thao Han

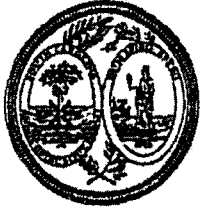
Inspected by [Signature] Date 8/24/12 Time 1:00

Warning Issued?	Yes	No	Citation Issued?	Yes	No	C&D Issued?	Yes	No
-----------------	-----	----	------------------	-----	----	-------------	-----	----

Inspection passed from 9/2012; sleeping in salon (P), towels left out, 16 pedicure chairs dirty (told last cleaned 10 days ago by PT) Advised to clean chairs after each customer and run sanitizer through periodically wet sanitation

000024

EXHIBIT 4



South Carolina Department of Labor, Licensing and Regulation
 Board of Cosmetology
 P. O. Box 11329
 Columbia, South Carolina 29211-1329
 (803) 896-4494 FAX (803) 896-4484

2012-1166
 000025
 893-693-0457
 Van Tran

No. 2650

INSPECTION REPORT

Salon Name Angel Nails License No. 1096

Address 5809 Calhoun Memorial Hwy Ste G Easley SC 29640
City State Zip Phone

Owners Name Van Tran License # 7033

- | | | | |
|---|---|-------------------------------------|---|
| Sanitary rules displayed | <input checked="" type="radio"/> Yes <input type="radio"/> No | Restroom facilities | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Shampoo bowl and sink | <input checked="" type="radio"/> Yes <input type="radio"/> No | Fire extinguisher and first aid kit | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Shampoo chair and all-purpose chair | <input checked="" type="radio"/> Yes <input type="radio"/> No | Trash containers | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Hot and cold running water | <input checked="" type="radio"/> Yes <input type="radio"/> No | Connecting door to living quarters | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Hand washing facilities | <input checked="" type="radio"/> Yes <input type="radio"/> No | Animals in salon | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Licenses displayed and valid for location | <input checked="" type="radio"/> Yes <input type="radio"/> No | Salon used as sleeping quarters | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Last inspection report displayed | <input checked="" type="radio"/> Yes <input type="radio"/> No | Other <u>sharps container</u> | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| Sanitizer (wet) | <input checked="" type="radio"/> Yes <input type="radio"/> No | Other _____ | <input type="radio"/> Yes <input type="radio"/> No |
| Sanitizer (dry) | <input checked="" type="radio"/> Yes <input type="radio"/> No | Other _____ | <input type="radio"/> Yes <input type="radio"/> No |

Licensee Name	BR#	Ind#	Violations
1. <u>Phuong Tran</u>		<u>3031</u>	
2. <u>Phuc Dang</u>		<u>6879</u>	
3. <u>Van Tran</u>		<u>7033</u>	
4. <u>Thang Nguyen</u>		<u>4023</u>	
5. <u>Luget Vo</u>		<u>58639</u>	<u>no photo attached to license; warning given</u>
6.			
7.			
8.			
9.			
10.			

I have received a copy of this inspection report 11/9/12 Re-inspection after 30 days
 Inspected by [Signature] Date 11/9/12 Time 1:04
 This was a re-inspection

Warning Issued?	Yes	No	Citation Issued?	Yes	No	C&D Issued?	Yes	No
-----------------	-----	----	------------------	-----	----	-------------	-----	----

Range found in salon; 4 used buffers 3 used files found; towels left out of stations; advised to dispose of used tools after use; 2 crates found; Professional by Debra Lynn, callus removal; wax station still in salon; advised to remove sleeping quarters from salon.

000026

Transcript of the Testimony of
ANGEL NAILS V. SC LLR

Date: April 7, 2015



CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

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Columbia, SC 29201
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Fax: (803) 799-5668
Email: contact@creelreporting.com
Internet: www.creelreporting.com

1 STATE OF SOUTH CAROLINA
 2 ADMINISTRATIVE LAW COURT DIVISION
 3 Docket No. 14-ALJ-11-0339-CC
 4 Angel Nails,)
 5)
 6 Petitioners,)
 7)
 8 v.)
 9)
 10 South Carolina Department of Labor,)
 11 Licensing and Regulation,)
 12)
 13 Respondents.)
 14)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

ADMINISTRATIVE HEARING

Tuesday, April 7, 2015
 2:10 p.m. - 2:35 p.m.

The hearing before the Honorable Carolyn C. Mathews was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 7th day of April, 2015 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.

1 THE COURT: I'm Judge Carolyn Matthews. I'm the
 2 administrative law judge who's been assigned to
 3 hear the case before me this afternoon. And
 4 that case is entitled Angel Nails, Appellant,
 5 versus South Carolina Department of Labor,
 6 Licensing and Regulation, South Carolina Board
 7 of Cosmetology, Respondents. It's our docket
 8 number 14-ALJ-11-0339-AP. And representing the
 9 Petitioner, we have Ms. Suzanne Hawkins,
 10 Esquire. And representing the Respondent, the
 11 South Carolina Department of Labor, Licensing
 12 and Regulation, we have Ms. Prentiss Counts
 13 Shealey, Esquire. Welcome. The way we would
 14 normally proceed is the classic Appellant
 15 argument style with the Appellant going first,
 16 and of course bearing the burden of proof. And
 17 we will block you 20 minutes for your argument
 18 and 20 for the Respondent. And with 10 saved
 19 for reply. The case today involves a matter,
 20 essentially, the validity of the fine imposed
 21 by the Department of Labor, Licensing, and
 22 Regulation upon Ms. Tran, the owner -- original
 23 owner of Angel Nails. The parties were working
 24 to attempt to resolve some issues having to do
 25 with some alleged violations, and entered into

1 APPEARANCES
 2 Suzanne Hawkins, Esquire
 3 Hawkins Law
 4 Post Office Box 61048
 5 Columbia, South Carolina 29260
 6 Attorney for the Petitioner
 7 Prentiss C. Shealey, Esquire
 8 Assistant General Counsel
 9 South Carolina Labor, Licensing and Regulation
 10 110 Centerview Drive
 11 Post Office Box 11329
 12 Columbia, South Carolina 29211-1329
 13

INDEX

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11 ARGUMENT BY MS. SHEALEY.....	12
12 REPLY BY MS. HAWKINS.....	17
14 Certificate	20

EXHIBITS

(No exhibits were admitted during the hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.

1 memorandum of agreement. And then they went
 2 before the full board, which imposed, on June
 3 11th, 2014, various conditions, put the license
 4 on probation for 2 years, and issued a fine of
 5 \$9,300 for various violations of Title 40,
 6 Section -- Chapter 13 of the code. And, on
 7 appeal, basically Angel Nails contends that
 8 those fines are excessive, or not taking into
 9 account, with all mitigation circumstances, and
 10 therefore are arbitrary and outside the Board's
 11 discretion. And the Board, by contrast,
 12 contends that the sanctions imposed were well
 13 its discretion, its statutory authority, and
 14 were valid in light of the severity of the
 15 offenses. So whenever you're ready, I'll be
 16 glad to hear from counsel for Appellant, Ms.
 17 Hawkins.

18 ARGUMENT BY MS. HAWKINS:
 19 MS. HAWKINS: Thank you, Your Honor. Good
 20 afternoon. May it please the court? I'm
 21 Suzanne Hawkins for Angel Nails and Ms. Van
 22 Tran. We're here today for a very simple
 23 reason. As you have already summarized, we're
 24 not appealing the findings of fact. My client
 25 stipulated to the facts and to the violations,

1 or I guess I should say some violations. My
 2 client is also not appealing probationary
 3 period that was imposed by the Board. Our sole
 4 issue is with the fine. As you know, the state
 5 Supreme Court in Deese versus the State Board
 6 of Dentistry back in '85 ruled that a decision
 7 by one of the licensing boards is arbitrary if
 8 it's without rational basis. It is based alone
 9 on one's will and not upon any course of
 10 reasoning in exercise of judgement, is made a
 11 pleasure without adequate determining
 12 principals, or is governed by no fixed rules or
 13 standards. Our argument to you is that a fine
 14 of \$9,300, in this case, is the very definition
 15 of arbitrary under that standard. As you know,
 16 we have, sort of, two alternative arguments
 17 here. The first one is that given the fact
 18 that the Cosmetology Practice Act does not have
 19 a provision allowing for a fine, their only
 20 authority to impose a fine is under the engine
 21 at Section State Code 40-1-120(a), which
 22 indicates that, upon a determination by a board
 23 that one or more of the grounds for discipline
 24 exists. In addition to the actions the Board
 25 is authorized to take under it's own practice

1 law a warning. The second one doesn't indicate
 2 warning, or citation, or C and D. All that is
 3 blank, the yes and no, there's no indication of
 4 any of those. Same for the third, no
 5 indication of warning or citation, and same for
 6 the fourth. So you have four inspections, one
 7 of which was clearly a warning, the others
 8 don't indicate whether a citation was issued or
 9 warnings were issued. And during those
 10 inspections, the inspector saw used tools, and
 11 saw towels that were not properly stored. They
 12 saw a waxing machine that had been plugged in
 13 when there's no one there who was licensed to
 14 perform waxing. They saw a sofa in the break
 15 room. And they saw that the pedicure chairs
 16 had not been cleaned properly. They took those
 17 four inspection reports, none of which have
 18 numbers of violations, numbers of anything, and
 19 turned that into the order which fined my
 20 client 30 separate times in increments of \$500
 21 or less to total the \$9,300. First of all,
 22 they -- and as you know, my client did admit
 23 the violation. She admitted to several
 24 categories of violations. So we are not,
 25 again, trying to argue today that she did not

1 act, the Board may -- in subsection 2, is
 2 imposed a fine not to exceed \$500. Our
 3 contention is that the plain reading of that
 4 statute limits the Board to a maximum of \$500,
 5 even for multiple violations, because the
 6 statute itself says one or more of the grounds
 7 for discipline exists. So that's our very
 8 simple first argument is that their authority
 9 only reached to \$500, period. They should have
 10 only fined her \$500. And to go above that was
 11 beyond their discretion and therefore should be
 12 overturned. Our alternative argument, even if
 13 you assume that the Board may stack the fines,
 14 we would contend that their method of doing so
 15 in this case was arbitrary. There not factual
 16 findings to support the number of fines that
 17 they stacked up in this case. And they seem
 18 random, almost. As you know, the -- the facts
 19 in this case were all based on four inspections
 20 of the salon. And we have the four inspection
 21 reports in the record, starting at page 12.
 22 They are the exhibits to the memorandum of
 23 agreement. Those four inspection reports, the
 24 first one indicates that they gave her a
 25 warning -- or actually not her, her sister-in-

1 violate the law. We see in the memorandum of
 2 agreement on page -- beginning on page eight,
 3 what she admits that she violated and your --
 4 you know, categories of violations. There are
 5 no numbers there. From that, the Board fined
 6 two violations of 500 each for Section South
 7 Carolina Code 40-13-110(a)(1), which is sort of
 8 a catch all section.
 9 THE COURT: Part of the engine as they call it?
 10 MS. HAWKINS: Yes. Exactly, Your Honor.
 11 THE COURT: All of the board.
 12 MS. HAWKINS: And it just allows the Board to
 13 revoke, suspend, or restrict a license if
 14 there's a showing that there's been a violation
 15 of any part of the chapter, any section of the
 16 statute. That section doesn't allow for an
 17 additional fine. It clearly says revoke,
 18 suspend, or restrict. So we are submitting to
 19 you that the reliance on that to add \$1,000 to
 20 the fine was beyond the Board's discretion.
 21 There is also a \$500 fine, times 6, for
 22 violations of Code of Regulations 35-20(d)(1),
 23 which relates to cleanliness and repair. There
 24 is no detail on either of the inspection
 25 reports or in the memorandum of agreement as to

1 a number of instances of an issue of
 2 cleanliness and repair. My client did admit to
 3 the category of cleanliness and repair. But
 4 how the Board came to six instances of that is
 5 not clear from the order, and therefore it is
 6 arbitrary. Next, we have 12 violations of
 7 Regulation 35-20(h)(1), which is the disposal
 8 of supplies and instruments. And they fined
 9 her 12 times for that at \$100 each, again
 10 without any detail about the number of
 11 violations or specificity about how many used
 12 buffers they found or anything like that.
 13 There's nothing like that in the order or the
 14 memorandum. As to the towels, we have \$200
 15 each for three violations of the regulation
 16 section 35-20 in 1 and 2, which relates to
 17 disposal of towels and laundering towels. We
 18 actually don't dispute that there were three
 19 violations of that regulation, because that is
 20 in the inspection reports. And there are three
 21 different inspection reports that discuss the
 22 towels, so we don't -- we don't have an issue
 23 with that if the Board is allowed to stack
 24 fines. Next we have \$500 each for two
 25 violations of 40-13-20, 2 and 8, which are

1 substance or device which is not labeled for
 2 cosmetic use. And then a -- sort of a reuse of
 3 40-13-20 subset 2, which is the definition of
 4 cosmetology again. Neither of these sections
 5 allow for a fine. The first section is revoke,
 6 suspend, or restrict the license, and the
 7 second section is really the definition of the
 8 practice of cosmetology. So as you can see,
 9 the Board sort of put together an array of
 10 regulatory and statutory sections. The method
 11 in which they -- or by which they chose the
 12 numbers for each one of these types of
 13 violations is completely unclear. There's no
 14 factual basis for the numbers of violations in
 15 either the agreement that my client signed or
 16 the order itself, which is basically an
 17 agreement. Therefore, it's our contention that
 18 this stacking of the fines, with a clear intent
 19 to punish my client, is arbitrary, it's unduly
 20 harsh, it's an abuse of the Board's discretion.
 21 We are not asking you to overturn the order.
 22 We are not asking you to fine her nothing.
 23 We're asking you to either -- depending on
 24 which of our arguments you chose, either reduce
 25 the fine to \$500 or to reduce the fine to an

1 definitions of the Practice of Cosmetology and
 2 Nail Technician. We dispute that those
 3 sections provide any authority for additional
 4 fines because they're merely definitions of
 5 what a cosmetologist is and what a nail tech
 6 is. And again, two violations versus six,
 7 versus eight, versus 12, there doesn't seem to
 8 be any rationale that applies ---
 9 THE COURT: Instead of a correlation in what they
 10 were -- reports that were given to me versus
 11 their number of fines imposed and the number of
 12 citations for each alleged violation is what
 13 you mean?
 14 MS. HAWKINS: Yes, Your Honor. And almost finally,
 15 we have \$500 each for three violations of the
 16 regulation at Section 35-20, which is the
 17 separate insurance for clients, which entrance
 18 shall not open from living, dining, or sleeping
 19 quarters. We do admit that the Board
 20 inspectors observed a sofa in the break room of
 21 the salon three separate times, so that does
 22 seem to be grounded in specificity.
 23 THE COURT: Okay.
 24 MS. HAWKINS: And finally, we have \$500 each for two
 25 violations of 40-13-110(a)8, which is using a

1 amount that's actually based on the factual
 2 findings in the Board order, rather than ---
 3 THE COURT: Pursuant to what 123-380 South Carolina
 4 Code, the whole Administrative Procedures Act,
 5 I am to review that the agency has exceeded its
 6 statutory authority and that the exercise of
 7 what statutory authority it had, pursuant to
 8 the code and the regs, was without factual
 9 basis. And these incident reports or anything
 10 used in adhering this, is essentially your
 11 contention?
 12 MS. HAWKINS: Yes, you're honor.
 13 THE COURT: Okay. I believe I understand. Thank
 14 you, Ms. Hawkins.
 15 MS. HAWKINS: Thank you.
 16 THE COURT: All right. Now, I'll be glad to hear
 17 from you in response, Ms. Shealey.
 18 MS. SHEALEY: May it please the court? I'm Prentiss
 19 Shealey from the Department of Labor, License
 20 and Regulation. The Board of Cosmetology
 21 believes that the sanctions were appropriate,
 22 that they had the authority to impose that
 23 amount of sanctions due to the amount of
 24 violations. There were four different
 25 inspections that occurred over a six-month

1 period. There were 30 separate violations,
 2 some of these were reoccurring, they were
 3 warned, they -- there was no corrective action.
 4 And as had been mentioned before, there was --
 5 the State presented a good bit of mitigation
 6 about the Respondent to the Board, and the
 7 Board took all of that -- they heard that, so
 8 they considered that, took it into
 9 consideration, when they made their findings.
 10 I think the Board felt that these were
 11 extremely serious. And though there was
 12 mitigation, there wasn't -- the Respondent, or
 13 the salon, had still violated the practice act
 14 30 different times. The first and last
 15 inspection, the first inspection was in May,
 16 the last inspection was in November. Each time
 17 they were -- on the inspection report, they
 18 were given a copy of the inspection report.
 19 The violations were listed at the bottom, and
 20 they weren't corrected. The Board does not
 21 believe that the fines were arbitrary and
 22 capricious. There was a rational basis. They
 23 did exercise judgement. The Board disagrees
 24 with Ms. Hawkins' interpretation of the engine
 25 40-1-120. It says -- that states that a fine

1 The 12 violations of 35-20-(h) was for 12
 2 different instruments. And if you look at the
 3 -- there are -- on May, there were four
 4 stations with dirty buffer and nail files. In
 5 June, there were four buffers found, and in
 6 November there were four buffers and four
 7 files. So those are the 12 violations that
 8 they are using for the disposal of instruments.
 9 Outside the scope of waxing -- outside the
 10 violations for 40-13-22 and 8 were outside the
 11 scope, so they gave the definitions of what
 12 cosmetologists can do and what a nail tech can
 13 do. And a nail tech -- it's outside of their
 14 scope to do waxing. So they fined them --
 15 because they found the wax plugged in twice,
 16 they fined her two times for the waxing. And
 17 then the 110(a)8, two violations, that's for
 18 the graters that the Board does not feel are
 19 for cosmetic use. So two graters were found,
 20 so for each grater, she was fined \$500. So the
 21 -- though at first glance it may look -- may
 22 not look like there's rhyme or reason to the
 23 fines themselves, the Board had calculated it
 24 actually, very specifically, to a formula of,
 25 well, we found 12 dirty buffers and 12 dirty

1 cannot exceed \$500 for the violation. The
 2 Board interprets that as per violation, for
 3 each time they go in and find a violation, the
 4 Respondent can be fined \$500.
 5 THE COURT: And is there a case law on that, Ms.
 6 Shealey?
 7 MS. SHEALEY: There is no case law on that. That is
 8 how the Board of Cosmetology interprets that --
 9 -
 10 THE COURT: That's how they interpret it? And
 11 deference is you're asking for here?
 12 MS. SHEALEY: The Board feels that the fines were
 13 within that range through that -- their
 14 interpretation, that some of the fines weren't
 15 \$500. Some of them were \$100, so they didn't
 16 max her out, they didn't revoke her. And as to
 17 the -- the rhyme or reason of the fines, I
 18 think though it may not be clear from the
 19 transcript, if you kind of piece together the
 20 inspection reports with the MOA, the -- when we
 21 -- when Ms. Hawkins said the six violations of
 22 35-20-(d)1, the fixtures in good repair, there
 23 were six dirty pedicure chair filters, so she
 24 was fined for each chair, \$500 for each chair.
 25 So that's the reason that it was not arbitrary.

1 nail files, so we're going to fine her 12 times
 2 for it. So that is -- I don't think that
 3 there's -- the Appellant had an issue with the
 4 towels or the living quarters, but I do think
 5 that does give some explanation to what they
 6 Board was trying to do here.
 7 THE COURT: So your contention is, essentially, that
 8 under our substantial evidence review standard,
 9 there is substantial evidence in the record to
 10 support the Board's both computation of number
 11 of violations and the value they assigned to
 12 each of those violations?
 13 MS. SHEALEY: That's the Board's position.
 14 THE COURT: So the record is replete then with
 15 substantiation of all those violations. And
 16 are there any prior orders of this Court that
 17 deal with cosmetology violations and
 18 computation of fines?
 19 MS. SHEALEY: Not that I could find, Your Honor
 20 THE COURT: I was going to say, I do not believe I
 21 have one. In fact, one of my last duties, I
 22 believe, at the Attorney General's Office, and
 23 I was still there -- and back then, there were
 24 no lawyers at LLR. You just were assigned
 25 various lawyers. And one of the last ones I

1 had was a cosmetology issue. And, yes, I
 2 remember it was -- it was very hotly contested
 3 at the time, very intriguing to try to
 4 interpret both the statutes and the regs,
 5 because -- in all of these boards. As you
 6 know, I'm sure Ms. Shealey, there's a lot of
 7 discretion in the boards, and there's a lot of
 8 room for interpretation. And they seldom
 9 practically last long enough to make it up to
 10 the Court of Appeals from here. Going back to
 11 the Supreme Court, they pretty much reported
 12 Appellant law. So I -- believe me, I
 13 understand you both are working very hard to
 14 interpret when there's not a whole lot of case
 15 law on the subject. Okay. Anything else you'd
 16 like to tell the court, Ms. Shealey?
 17 MS. SHEALEY: That's all from the State, Your Honor.
 18 THE COURT: All right. Thank you. How about in
 19 reply, Ms. Hawkins?
 20 REPLY BY MS. HAWKINS:
 21 MS. HAWKINS: I don't think I have -- really have a
 22 lot to add. This issue is very simple. I
 23 think we've laid it out for you, and I think
 24 our briefs covered everything you need to know.
 25 Again, we just ask that you look at the impact

1 boards in the state and dealing with each of
 2 those boards. And they are sometimes very
 3 varying interpretations of their own regs and
 4 statutes, and it's not an easy job to do the
 5 appellant work on that. But I do have what I
 6 call my 30-day policy, and I try to get all the
 7 orders out within 30 days after a hearing, or
 8 30 days after proposed orders are submitted.
 9 So I will pledge that I will do that for you
 10 today being the 6th -- 7th, 7th of April, and
 11 I'll get it out to you on or before the --
 12 yeah, we'll say before May 8th. And thank you
 13 very much, and good luck to your client and
 14 good luck to everybody over at LLR. (There
 15 being nothing further, the hearing concluded at
 16 2:35 p.m.)

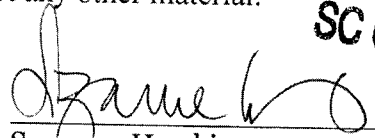
1 on my client and the Board's -- and our
 2 position, their apparent intent to punish her
 3 rather than to ---
 4 THE COURT: Than to protect the public?
 5 MS. HAWKINS: Exactly.
 6 THE COURT: Which is, you know, at the same time I
 7 understand. Well, I thank you very much, and
 8 I realize that sometimes there are issues that
 9 -- we have a good deal of 403 folks here,
 10 right? There are times when issues are very
 11 narrow. But even if they're very narrow
 12 sometimes, that doesn't mean they're complex in
 13 the greater scheme of things, and that there
 14 isn't a lot of statutory interpretation to be
 15 done. And a lot of room for a judge to make
 16 errors in such interpretation. Nonetheless, it
 17 is my job, and I appreciate it first of all,
 18 Ms. Hawkins, that your client is very concerned
 19 about it, concerned about her reputation and
 20 her future. And that she -- if she does feel
 21 it's punitive, then she has every right to
 22 argue that and to make the arguments that she's
 23 made. And I also understand Ms. Shealey and
 24 her agency's charge with the statutory duty of
 25 administrative -- what 49 or 50 licensing

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 25, 2015



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2015-001435

Angel Nails,

Appellant,

v.

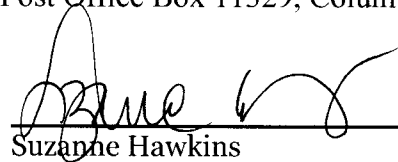
South Carolina Department of
Labor, Licensing and
Regulation, State Board of
Cosmetology,

Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 25, 2015, addressed to the attorney of record for Respondent, Prentiss Counts Shealey, Post Office Box 11329, Columbia, South Carolina 29211-1329.

November 25, 2015



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