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, & Regulation,
State Board of Cosmetology, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. Did the Administrative Law Court err in finding that the State Board of Cosmetology ("the Board") had the authority to fine Appellant in excess of five hundred dollars?

ARGUMENTS

I. The plain language of the statutes and regulations governing the imposition of fines by the Board authorize the Board to fine a licensee for *each* violation, thus allowing the stacking of fines upon finding multiple violations.

Based on the plain language of the applicable statutes and regulations governing the practice of cosmetology, this Court should find that the applicable statutes and regulations provides for the stacking of fines upon finding multiple violations. Accordingly, the Board may impose fines that, in the aggregate, exceed five hundred dollars.

In South Carolina, the practice of cosmetology is primarily governed by S.C. Code Ann. § 40-13-5, et seq. ("the Cosmetology Practice Act" or "Act") and S.C. Code Ann. Regs. 35-1, et seq. The Board's authority to sanction licensees is set forth in S.C. Code Ann. § 40-13-110 of the Act, which enumerates the various grounds for which disciplinary action may be taken against licensees.

Pursuant to well-established rules of statutory construction and interpretation, this Court must in turn look at *all* relevant statutes and regulations, not only S.C. Code Ann. §§ 40-1-110 and 40-13-110 as cited by Appellant, in order to ascertain and effectuate the intent of the Legislature. Further, this Court must take into account the relevant statutes, including all relevant *sections* of the statutes, in order to effectuate the Legislature's intent.

Regulations are construed using the same canons of construction as statutes. See S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n, 389 S.C. 380, 389, 699 S.E.2d 146, 151 (2010). Accordingly, "[t]he words of a regulation must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the regulation's

operation." Byerly v. Connor, 307 S.C. 441, 444, 415 S.E.2d 796, 799 (1992). Furthermore, the regulation must be construed as a whole rather than read in its component parts in isolation. Spruill v. Richland Cnty. Sch. Dist. 2, 363 S.C. 61, 64, 609 S.E.2d 524, 526 (2005). Finally, "[a]s a general principle, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." Lloyd v. Lloyd, 295 S.C. 55, 57-58, 367 S.E.2d 153, 155 (1988).

S.C. Code Ann. Regs. 35-6(B) specifically provides that "[s]eparate citations may be issued and separate administrative penalties may be assessed for each violation; however, no more than five hundred dollars in administrative penalties may be assessed against an entity or an individual per offense." The plain language of the regulations governing the practice of cosmetology clearly provide that *each* offense in violation of the Cosmetology Practice Act may be assessed a penalty of up to $500. Following, if a licensee commits multiple violations, the fines necessarily will be stacked and would, in the aggregate, be greater than $500.

Pursuant to the June 1, 2015 Final Order and Decision from the Honorable Carolyn C. Matthews of the Administrative Law Court ("ALC"), the following fines against Respondent were upheld: $500.00 each for six violations of S.C. Code Ann. Regs. 35-20(D)(1); $100.00 each for twelve violations of S.C. Code Ann. Regs. 35-20(H)(1); $200.00 each for three violations of S.C. Code Ann. Regs. 35-20(M)(1) and (2); and $500.00 each for three violations of S.C. Code Ann. Regs. 35-20(C). In the aggregate, Respondent was fined $6,300 for 24 violations of the Cosmetology Practice Act. Accordingly, for each violation, Appellant was fined within the statutorily-prescribed maximum of $500. As evident by Judge Matthews' decision, Respondent was often fined well below the maximum statutory penalty allowed per violation.

In addition to the plain, specific language of S.C. Code Ann. Regs. 35-6(B), the governing statutes further support the issuance of fines for each violation, rather than limiting the Board's

ability to protect the public by only allowing a maximum fine of $500, regardless of the number of violations.

Importantly, the Cosmetology Practice Act expressly provides that it does not act in isolation with respect to the enforcement of disciplinary actions against licensees. Before listing the specific grounds for disciplinary action as they relate to the practice of cosmetology, S.C. Code Ann. § 40-13-110(A) provides that the listed grounds for disciplinary action are "in addition to the grounds for disciplinary action provided for in Section 40-1-110." Accordingly, in order to ascertain the South Carolina Legislature's intent regarding the discipline of licensees who have violated the Cosmetology Practice Act, it is necessary to examine S.C. Code Ann. § 40-1-110.

Title 40, Chapter 1 of the South Carolina Code of Laws (S.C. Code Ann. § 40-1-10, et seq. or "Engine") provides the legislative framework for the South Carolina Department of Labor, Licensing and Regulation ("LLR"). Accordingly, the Engine's various statutes apply to all of the boards that fall within LLR's jurisdiction, in addition to each of the professional licensing boards' individual practice acts.

Most pertinent to the present issue, S.C. Code Ann. § 40-1-110 of the Engine, which provides grounds for disciplinary action in addition to the other grounds contained in the Engine and the respective board's chapter, expressly provides that "[e]*ach incident* is considered a separate violation." (emphasis added). Appellant's argument, as provided in its Brief, fails to abide by the principle of statutory and regulatory construction as presented in Spruill by reading S.C. Code Ann. § 40-1-120[1] of the Engine in isolation to support its argument that a licensee found to have numerous violations cannot be fined more than $500.

[1] S.C. Code Ann. § 40-1-120(A)(2) provides, in pertinent part, that "[u]pon 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 . . . impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board."

II. Legislative intent and public policy support the stacking of fines against licensees with multiple violations.

In addition to a plain reading of the applicable statutes and regulations governing the practice of cosmetology, the legislative intent behind the Engine and the Cosmetology Practice Act supports the stacking of fines against licensees that commit multiple violations.

It is well-established that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 621, 611 S.E.2d 297, 301 (Ct. App. 2005). Further, statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction. Tillotson v. Keith Smith Builders, 357 S.C. 554, 558, 593 S.E.2d 621, 624 (Ct. App. 2004). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002).

In examining the statutes and regulations at issue with respect to the aforementioned rules of statutory construction and interpretation, it is clear that the Legislature intended the Board to be able to fine licensees whom violate the Cosmetology Practice Act for each violation, rather than be limited to a $500 fine in total without regard to the number of violations a licensee committed.

S.C. Code Ann. § 40-1-10(A) of the Engine provides that both the U.S. Constitution and the Constitution of the State of South Carolina clearly protect the "[t]he right of a person to engage in a lawful profession, trade, or occupation of choice," and the State can only abridge this right as a

"reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public."

Based on the foregoing, the Legislature clearly granted LLR the ability to reasonably exercise its police powers in order to preserve the public's health, safety, and welfare. In the present case, the Administrative Law Judge found that 24 violations, each within the statutorily-prescribed maximum of $500, were properly supported by evidence and thus upheld fines totaling $6,300 against Appellant.

Appellant's position, that the Board is not authorized to fine a licensee in excess of five hundred dollars, would substantially interfere with the State's ability to protect the public in the event that, like Appellant in the present case, a licensee commits multiple violations. Treating all licensees who violate the law equally with a fine of, at most, $500, regardless of the number of violations found, effectively puts an arbitrary limit on an errant licensee's culpability. According to Appellant's argument, a licensee that has committed twenty violations should be treated the same as another licensee that has only committed one violation of the Cosmetology Practice Act. Following, once a licensee has committed one violation, said licensee has no monetary incentive to curb his or her behavior and follow the Cosmetology Practice Act, as he or she can be fined no more. Thus, limiting the monetary penalty to five hundred dollars effectively gives the Board no teeth in enforcing the Cosmetology Practice Act.

In contrast and as supported by the plain language of the applicable statutes and regulations, the stacking of fines furthers LLR's stated policy of protecting the public. Stacking fines against licensees that have violated the Cosmetology Practice Act multiple times furthers public policy by imposing greater sanctions against more egregious offenders. Further, by imposing the appropriate fines for each violation of the Act, licensees are deterred from engaging in unlawful practice.

CONCLUSION

For all of the foregoing reasons, the ALC's decision should be affirmed.

December 31, 2015
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CERTIFICATE OF SERVICE BY MAILING

I hereby certify that I have this day served a copy of the Final Brief of Respondent on the person hereafter named, by depositing same in an envelope, securely wrapped in the United States mail, by certified mail, properly addressed to the said person hereafter named, at the place and address stated below, which is the last known address for same:

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CERTIFICATE OF COUNSEL

I hereby certify that this Brief complies with Rule 211(b), SCACR.

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