

**STATE OF VERMONT
BOARD OF BARBERS AND COSMETOLOGISTS**

In re: Caleb Garner

}
}
}

21-0507
Docket No. CO ~~H-0807~~

Appearances:

Petitioner, State of Vermont: Robert H. Backus
Respondent: did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board of Barbers and Cosmetologists held a hearing on the above matter on November 19, 2007 at the Office of Professional Regulation hearing room at the National Life Bldg., North, FL2 in Montpelier, Vermont. Mr. Garner did not attend and was not represented by counsel.

Findings of Fact

1. Mr. Garner is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, Chapter 6 of Title 26 of the Vermont Statutes Annotated, the Administrative Rules of the Board of Barbers and Cosmetologists, and the Rules of the Office of Professional Regulation. Jurisdiction is founded on 3 V.S.A. § 129a. Unprofessional conduct by a licensee or an applicant or person who later becomes an applicant,
2. Mr. Garner was an apprentice registered with the office. As an apprentice he is subjected himself to the jurisdiction of the board as an applicant.
3. Mr. Garner was sent notice of the Charges against him by certified mail on September 12, 2007 to his last known address.
4. Notations on the envelope indicate that it was returned and that Mr. Garner had not worked at that address in "two years."
5. Notice of the default hearing scheduled for today was mailed to that same address by certified mail on October 22, 2007. It was returned October 30, 2007.
6. Mr. Garner has not answered the charges against him.
7. Upon hearing the State's presentation and taking notice of its own file, the Board finds Mr. Garner to be in default. The allegations contained in the State's specification of charges dated September 7, 2007 (copy attached) are therefore treated as the facts on which the Board's order is based. OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

The Respondent has received adequate notice of the charges against him as indicated by the Board's file and the State's presentation. Because the Respondent has failed to answer the charges, the State's factual allegations are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, in the default hearing held pursuant to 3 V.S.A. §809(d), that the Respondent has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

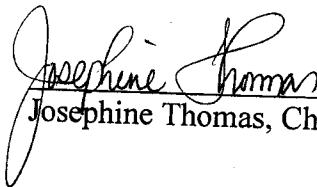
In accordance with the above findings of fact and conclusions of law, Mr. Garner's apprenticeship registration is hereby revoked, effective as of the date of the hearing.

Appeal Rights

This is a final administrative determination by the Vermont Board of Barbers and Cosmetologists.

A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, National Life Bldg., North, FL2 Montpelier, VT 05620-3402 within 30 days of the entry of this order. If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a. To request a stay of the Board's decision, please refer to the attached stay instructions.

By:


Josephine Thomas, Chair

Date: November 19, 2007

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 11/26/07

**STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF BARBERS AND COSMETOLOGISTS**

**IN RE:
CALEB GARNER**

)
)

Docket No: CO21-0507

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Caleb Garner:

Board Authority

1. The Vermont Board of Barbers and Cosmetologists has jurisdiction to investigate and adjudicate allegations of unprofessional conduct pursuant to 3 V.S.A. §129 and 129a; 26 V.S.A. Chapter 6; the Rules of the Board of Barbers and Cosmetologists ("RBBC"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. At all times relevant, the Respondent, Caleb Garner, owned Amaci Hair Studio (the Studio), a licensed as a Cosmetology Shop in the State of Vermont holding license number 012-0002230, located in Montpelier, Vermont. This license was originally issued on or about January 16, 2005 and lapsed on November 30, 2005.
3. At all times relevant, Walter D. Wood owned Metropolitan Hair (the Shop), a licensed Cosmetology Shop in the State of Vermont holding license number 012-0000761, located in Burlington, Vermont. This license was originally issued on or about December 7, 1984 and is currently set to expire on November 30, 2007.
4. On or about February 3, 2005, the Vermont Secretary of State's Office received notification that Mr. Wood would be acting as Apprentice Supervisor for the Respondent as the Respondent completed the apprenticeship requirements for obtaining a cosmetology license.
5. Both the Studio and the Shop were listed as locations on the Supervisor/Apprentice Notification where the apprenticeship would take place.
6. On or about October 28, 2005 Board Chair Janice Crossan conducted a routine inspection of the Studio. Ms. Crossan submitted an inspection report noting the following:
 - a. Upon entry into the Studio, Ms. Crossan observed the Respondent working on a client without Mr. Wood present. Although the Respondent was the registered owner of the Studio at the time of the inspection, he had not yet fulfilled his cosmetology

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

apprenticeship requirements and therefore was not licensed. When Ms. Crossan asked the Respondent why he was working on a client without Mr. Wood's supervision, the Respondent replied that Mr. Wood had stepped out of the Studio and would be back shortly. Ms. Crossan waited for approximately thirty (30) minutes, but Mr. Wood did not return.

7. During an investigation of the Shop conducted by State Investigator Pamela Barney in December of 2006, Investigator Barney observed a male individual referred to as "Caleb" blow drying a client's hair. Investigator Barney also observed cut hair on the floor that was the same color as the client's hair that "Caleb" was blow drying. Upon inquiry as to where Mr. Wood was, the male referred to as "Caleb" advised Investigator Barney that Mr. Wood was on vacation and would not be returning until the next week. During that time, Investigator Barney obtained an appointment card which had the name "Caleb Garner" listed on the front. These appointment cards were available at the front desk. Throughout Investigator Barney's visit, "Caleb" continued to blow dry and style the client's hair.

8. Upon information and belief, the Respondent still has not completed the apprenticeship hours required for licensure as a cosmetologist in the State of Vermont.

Charges

9. For each of the two (2) instances in which the Respondent provided cosmetology services to clients as an apprentice without his supervisor present, the Respondent has committed unprofessional conduct in violation of:

- i. RBBC, Part 3., Rule 3.9(2) (At no time shall a supervisor of an apprentice have more than one apprentice nor shall the apprentice be allowed to work if the supervisor is not available);
- ii. 3 V.S.A. §129a(b)(2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct. Failure to practice competently includes failure to conform to the essential standards of acceptable and prevailing practice.); and
- iii. 3 V.S.A. §129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

Relief Requested

WHEREFORE, the license of Caleb Garner should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 7th day of September 2007.

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

co.garner.soc

Robert H. Backus
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107