

SETTLEMENT AGREEMENT BETWEEN
MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS
AND DIANE SUTTON

Come now Diane Sutton (“Licensee” or “Sutton”) and the Missouri Board of Cosmetology and Barber Examiners (“Board”) and enter into this settlement agreement for the purpose of resolving the question of whether the crossover establishment license and “Class CA – Hairdressing and Manicuring” operator license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri (“AHC”) regarding cause to discipline Licensee’s licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee’s own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney’s fees incurred in defending this action against Licensee’s licenses. Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's "Class CA – Hairdressing and Manicuring" operator license, license number 067620, and crossover establishment license, license number 2016006592 are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621, 328, and 329, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Board of Cosmetology and Barber Examiners is an agency of the State of Missouri created and established pursuant to § 329.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee holds a "Class CA – Hairdressing and Manicuring" operator license, license number 067620, which expired September 30, 2013.

3. Licensee holds a crossover establishment license, license number 2016006592, for an establishment doing business as Jazzy Cuts and Styles, located at 12020 Blue Ridge, Grandview, Missouri 64030 ("the establishment"). The establishment license expires on September 30, 2021.

4. On or about October 6, 2020, the Board's inspector conducted an inspection of the establishment.

5. The Board's inspection revealed that the expired establishment license was posted in violation of 20 CSR 2085-10.060(1); that no photos were attached to two posted operator licenses in violation of 20 CSR 2085-10.010(3); and Anthony Powell was working within the establishment without a rental establishment license in violation of 20 CSR 2085-10.060(1).

6. On or about October 19, 2020, the Board sent Licensee a violation notice regarding the October 6, 2020 inspection.

7. On or about December 11, 2020, the Board's inspector conducted an inspection of the establishment.

8. The Board's inspection revealed that Aaron Black had posted within the establishment a photocopy of his operator license in violation of 20 CSR 2085-4.030(1), and that Marquese Garlington and Anthony Powell were working within the establishment without rental establishment licenses in violation 20 CSR 2085-10.060(1).

9. On or about December 22, 2020, the Board sent Licensee a violation notice regarding the December 11, 2020 inspection.

10. On or about March 23, 2021, the Board's inspector conducted an inspection of the establishment.

11. The Board's inspection revealed that no establishment license was posted within the establishment in violation of 20 CSR 2085-10.010(3); that no photo was attached to Aaron Black's posted operator license in violation of 20 CSR 2085.10.010(3); and that three individuals were working within the establishment without rental establishment licenses in violation of 20 CSR 2085-10.060(1).

12. On or about March 25, 2021, the Board sent Licensee a violation notice regarding the March 23, 2021 inspection.

13. On or about April 16, 2021, the Board's inspector conducted an inspection of the establishment.

14. The Board's inspection revealed that four individuals were working within the establishment without rental establishment licenses in violation of 20 CSR 2085-10.060(1).

15. On or about April 19, 2021, the Board sent Licensee a violation notice regarding the April 16, 2021 inspection.

16. Regulation 20 CSR 2085-4.030 states, in relevant part:

(1) No person shall use or post any certificate, registration or license issued by the board within any barber or cosmetology establishment that has been photocopied or reproduced. Valid duplicate licenses may only be obtained from the board's office.

17. Regulation 20 CSR 2085-10.010 states, in relevant part:

(3) Display of License. Establishment licenses shall be posted within the establishment in plain view at all times so that it may be easily seen by the public. Establishment licenses issued to a station or booth rental establishment shall be posted in plain view at the respective work station.

(A) Operator licenses, apprentice licenses, or student temporary permits shall either be posted at each respective assigned work station or all posted together in one (1) conspicuous, readily accessible, central location within the establishment area that will allow easy identification of the persons working in the establishment by clients, board representatives, or the general public.

(B) A two inch square (2" x 2") photograph taken within the last five (5) years shall be attached to operator licenses.

18. Regulation 20 CSR 2085-10.060 states, in relevant part:

(1) Pursuant to Chapters 329 and 329, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permit holder is an employee of the establishment or holds a current and active renter establishment license issued by the board.

19. Licensee's conduct, as set forth above, constitutes misconduct, misrepresentation, and/or dishonesty in the performance of the functions or duties of a cosmetologist and establishment, for which the Board has cause to take disciplinary action against Licensee's "Class CA – Hairdressing and Manicuring" operator and crossover establishment licenses pursuant to § 329.140.2(5), RSMo.

20. Licensee's conduct, as set forth above, constitutes a violation of, or assisting or enabling any person to violate, Chapter 329, RSMo, and lawful regulations adopted pursuant to Chapter 329, RSMo, for which the Board has cause to take disciplinary action against Licensee's "Class CA – Hairdressing and Manicuring" operator and crossover establishment licenses pursuant to § 329.140.2(6), RSMo.

21. Licensee's conduct, as set forth above, constitutes a failure to display a valid certificate or license as required by Chapter 329 or any rule promulgated pursuant to Chapter 329, for which the Board has cause to take disciplinary action against Licensee's "Class CA – Hairdressing and Manicuring" operator and crossover establishment licenses pursuant to § 329.140.2(12), RSMo.

22. Licensee's conduct, as set forth above, constitutes a violation of a professional trust and/or confidence for which the Board has cause to take disciplinary action against Licensee's "Class CA – Hairdressing and Manicuring" operator and crossover establishment licenses pursuant to § 329.140.2(13), RSMo.

23. Cause exists for the Board to take disciplinary action against Licensee's "Class CA – Hairdressing and Manicuring" operator and crossover establishment licenses under § 329.140.2(5), (6), (12) and (13), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

...

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Chapters 621 and 329, RSMo:

I. Licensee's "Class CA – Hairdressing and Manicuring" operator license, license number 067620, and Licensee's crossover establishment license, license number 2016006592, shall be placed on **PROBATION** for a period of three (3) years. During the three (3) years of probation (the "disciplinary period"), Licensee shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all the terms of this Settlement Agreement.

REQUIREMENTS

A. Within thirty days of the effective date of this Agreement, Licensee shall correct all violations of Board statutes and regulations identified in this Settlement Agreement.

B. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

C. Licensee shall keep the Board apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

D. Licensee shall comply with all provisions of Chapter 329, RSMo, and all Board regulations; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

E. During the disciplinary period, Licensee shall timely renew Licensee's license(s) and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license(s) in a current and active state.

F. If at any time during the disciplinary period, Licensee removes from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 329.140.3, RSMo.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.

H. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, including imposition of revocation.

2. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapters 328 and/or 329, RSMo, by Licensee not specifically mentioned in this document.

3. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 328, 329, 610 and 324, RSMo.

4. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

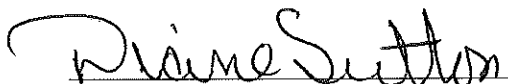
5. Licensee, together with Licensee's heirs, assigns, and attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the

remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

6. Licensee understands that Licensee may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit Licensee's request to: Administrative Hearing Commission, United States Post Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

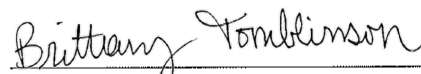
7. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's licenses. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE


Diane Sutton
COA License Number 067620
BSH License Number 2016006592

Date Jun 21 - 2021

BOARD


Brittany Tomblinson, Executive Director
Board of Cosmetology and Barber Examiners

Date 6/28/2021