

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND TYMICA JONES

Come now Tymica Jones ("Licensee") 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 Licensee's crossover establishment license and "Class CA – hairdressing and manicuring" license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

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.

Licensee acknowledges that Licensees had the opportunity to review the inspection reports and other documents relied upon by the Board in determining there was cause to discipline Licensee's licenses, along with citations to law and/or regulations the Board believes were violated.

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 crossover establishment license,

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

numbered 2010016945, and operator license, numbered 2000159592, 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 Missouri Board of Cosmetology and Barber Examiners ("Board") 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 crossover establishment license issued by the Board on or about June 2, 2010, license number 2010016945, for Top of The Line Hair Designs, located at 1419 Chambers Road, St. Louis, Missouri 63135. Licensee also holds a "Class CA – hairdressing and manicuring", license number 2000159592 issued by the Board on June 23, 2000. Both licenses are active and not expired.

3. On or about October 21, 2016, the Board conducted an inspection at Top of The Line Hair Designs. The inspection revealed the following violations: Dawn Kelly and Lakeisha Bradford were unlicensed renters working within the establishment, in violation of 20 CSR 2085-10.060 and; Dawn Kelly's operator license was expired due to non-renewal, in violation of 20 2085-7.040. On or about November 29, 2016, the Board sent Licensee a violation notice following the October 21, 2016 inspection.

4. On or about March 17, 2017, the Board conducted an inspection at Top of The Line Hair Designs. The inspection revealed the following violations: Dawn Kelly and Michael Rachel were unlicensed renters working within the establishment, a violation of 20 CSR 2085-10.060. On or about April 4, 2017, the Board sent Licensee a violation notice following the March 17, 2017 inspection.

5. On or about June 2, 2017, the Board conducted an inspection at Top of The Line Hair Designs. The inspection revealed the following violations: Dawn Kelly, Michael Rachel, and Marcia Lakeisha Bradford were unlicensed renters working within the establishment, a violation of 20 CSR 2085-10.060. On or about June 14, 2017, the Board sent Licensee a violation notice following the June 2, 2017 inspection.

6. On or about April 23, 2019, the Board conducted an inspection at Top of The Line Hair Designs. The inspection revealed the following violations: Marcia Bradford and Michael Rachel were unlicensed renters working within the establishment, a violation of 20 CSR 2085-10.060. On or about May 1, 2019, the Board sent Licensee a violation notice following the April 23, 2019 inspection.

7. Regulation 20 CSR 2085-7.040 states, in relevant part:

(2) Renewals. Every two (2) years (biennially) the renewal application for active licensees must be completed, signed, accompanied by the appropriate renewal fee, and returned to the board office prior to the expiration date of the license. All licenses shall expire on September 30 of each odd-numbered year. Any application postmarked after September 30 will be returned and the applicant will be required to reinstate.

(A) Any cosmetologist whose license has expired who wishes to restore the license shall make application to the board by submitting the following within two (2) years of the license renewal date:

1. Reinstatement application for renewal of licensure; and
2. The current renewal fee and the late fee, as set forth in 20 CSR 2085-7.050.

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

(1) Pursuant to Chapters 328 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.

(3) Prohibited Practices Within An Establishment. In a licensed establishment, only persons properly licensed by the board shall be allowed to perform barbering, hairdressing, manicuring, or esthetician services on any person within the establishment. The provisions of this section shall apply even if services are being provided for no compensation.

9. As a result of the violations, as described above in paragraphs 3 through 6, in violation of the statutes and regulations contained in paragraphs 7 through 8, Licensee violated lawful regulations adopted pursuant to Chapters 328 and 329, RSMo, for which the Board has cause to take disciplinary action against Licensee's establishment and operator licenses.

10. Cause exists for the Board to take disciplinary action against Licensee's operator and establishment licenses under § 329.140.2(6) and (12), RSMo, which states in pertinent part:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, 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 the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(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 license if so required by this chapter or any rule promulgated hereunder[.]

11. Cause exists for the Board to take disciplinary action against Licensee's establishment license under § 328.150.2(6) and (12), RSMo, which states in pertinent part:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, 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:

(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 license if so required by this chapter or any rule promulgated hereunder[.]

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 § 621.045.3, RSMo:

12. The terms of discipline shall include that Licensee's crossover establishment license, numbered 2010016945, and operator license, numbered 2000159592, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to operate an establishment and, offer and engage in the practice of barbering and cosmetology under Chapters 328, and 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. GENERAL REQUIREMENTS

- A. Licensee shall correct all noted violations within thirty-(30) days of the effective date of 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 the Chapters 328, and 329, RSMo; 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 licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.
- F. If at any time during the disciplinary period, Licensee moves from the state of Missouri, ceases to be currently licensed under provisions of Chapters 328 and 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, 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 the revocation).
- I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapters 328 and 329, RSMo, by Licensee not specifically mentioned in this document.

13. 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.

14. 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.

15. Licensee, together with Licensee's heirs and assigns, and Licensee's 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.

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16. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: **Administrative Hearing Commission, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.**

17. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Tymica Jones
Tymica Jones, Owner/Operator

BOARD

Brittany Tomblinson
Brittany Tomblinson, Executive Director
Missouri Board of Cosmetology
and Barber Examiners

RECEIVED

Date 8-31-19

Date 9-12-2019 SEP 06 2019



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