

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner

v.

MICHAEL SMITH

Respondent

Case No.: 2011-DCRA-S702429

NOI No.: S702429

FINAL ORDER

I Introduction

This Order concludes that Respondent Michael Smith is liable for operating his barbershop without a business license as charged in Notice of Infraction (NOI) S702429 and must pay a fine of \$300. The case against Ben Epstein & Associates, LLC, who owns the property where the barbershop is located and leases it to Mr. Smith, is dismissed because it was not engaged in the business of operating a barbershop and was consequently not required to have a business license for that activity.

The Department of Consumer and Regulatory Affairs (DCRA) charged Respondent Ben Epstein & Associates, doing business as Michael Smith, with operating a barber shop without a business license in violation of D.C. Official Code § 47-2851.03 and seeks a \$2,000 fine. Ben Epstein and Associates was not doing business as Michael Smith, as explained below.. Respondent filed a timely plea of deny. On January 3, 2012, I held an evidentiary hearing at

which Inspector Terrell Hill appeared for DCRA. Tracy Mathews, Property Manager for Ben Epstein, appeared for Ben Epstein & Associates, LLC, and Michael Smith appeared for himself. Inspector Hill, Ms. Mathews, and Mr. Smith testified. Petitioner's Exhibits (PX) 100-104, 107, and 108; and Respondent's Exhibit (RX) 200 were admitted. Based on the evidence presented at the hearing and the entire record in this case, I make the following findings of fact and conclusions of law:

II Findings of Fact

Ben Epstein Associates owns the building at 1433 Good Hope Road, SE (the Property). PX 103. Michael Smith is a barber who leases space from Ben Epstein Associates to operate a barbershop at the Property.

Michael Smith has a Certificate of Occupancy for a barbershop at the Property, trading as KUTT-N-UPP UNISEX, effective September 12, 2002. PX 104. Michael Smith also has certification from the Barber and Cosmetology Boards as a Barber Manager at Kutt-N-Upp, PX 108, and as Barber Owner. RX 200.

On April 18, 2011, Juva Hepburn from the Business License Division of the Business and Professional Licensing Administration at the Department of Consumer and Regulatory Affairs certified that in a search for records for Michael Smith and Ben Epstein and Associates, LLC, "A Basic Business **Public Health: Public Accommodation** license endorsement for "**Barber Shop**" has not been issued for the premise **1433 Good Hope Road, S.E., Washington, DC 20020** for the period of **April 1, 2010 to the present.**" PX 100, 101.

On April 19, 2011, DCRA Inspector Terrell Hill inspected Kutt-N-Upp at 1433 Good Hope Road, SE, and determined it was operating without a basis business license. On October

25, 2012, he issued the NOI at issue here, specifying that Respondent was “operating with[out] a basic business license: public health: public accommodation-barber shop.”

Inspector Hill and Respondent Smith have had several conversations about paperwork needed to operate the shop. Inspector Hill told Mr. Smith he needed a Basic Business license. Not knowing what that meant, Mr. Smith asked those at the “licensing building in southwest” what he needed. It is unclear what Mr. Smith thought he needed. But he expected “something in writing” before receiving a Notice of Infraction. After he received the NOI, he again asked the licensing agency what he needed, received all the necessary information and obtained the required license.

III. Jurisdiction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01–2-1802.05, Title 47 of the Code, and Titles 16 and 20 of the District of Columbia Municipal Regulations (DCMR).

IV. Conclusions of Law

DCRA charged Ben Epstein and Associates, LLC, doing business as Michael Smith, with a violation of D.C. Official Code § 47-2851.03, a statute that requires a basic business license with the applicable endorsements for the business activity.

Motion to Dismiss

Tracy Mathews moved to dismiss the action against Ben Epstein and Associates, LLC, the owner of the Property, because the owner is not engaged in the business against which

DCRA issued the NOI. I granted the motion because Ben Epstein, LLC is not a proper party. The caption in this Order reflects that Order, leaving Michael Smith as Respondent.

Ms. Mathews also moved to dismiss this action based on the plain language of the NOI, which left out the “not” in the charge: “operating **with** a basic business license: public health: public accommodation-barber shop.” (emphasis added). I denied that motion because Respondent was not prejudiced by the scrivener’s error.

Merits of the Charge

The NOI describes the infraction as “operating with[out] a basic business license: **public health: public accommodation-barber shop.**” (emphasis added), in violation of D.C. Official Code 47-2851.03, which specifies endorsement categories. The subsection of the charged statute corresponding with the description in the NOI states “Public Health: Public Accommodations.” § 47-2851.03(a)(10)(D). DCRA proved by a preponderance of the evidence that Respondent did not have a basic business license with a public health endorsement on April 12, 2011. A violation of D.C. Official Code §47-2851.03 is a Class 1 offense, 16 DCMR 3301.1(w), punishable by a \$2,000 fine. 16 DCMR 3200.1; 16 DCMR 3201.1(a).

Although Respondent is liable for the violation, I may reduce the fine based on equitable mitigating factors unique to the case, including but not limited to, acceptance of personal responsibility, good faith efforts to comply with the law, corrective action, and concrete steps to prevent future violations. Mitigating factors weigh in favor of reducing the fine on the record presented. Although the inspector told Mr. Smith he needed a basic business license, Mr. Smith did not fully understand that requirement. He was a licensed barber, had a barber owner license, and a certificate of occupancy for the shop. Respondent accepted responsibility by candidly

admitting that he did not have a basic business license until he made a couple of visits to the licensing office and finally understood what he needed. When he obtained the information he needed, Mr. Smith obtained the license. These are good faith efforts to comply with the law, corrective action and a concrete step to prevent future violations. Hence, I reduce the fine \$300.

IV. Order

Based on the above findings of fact, conclusions of law, and the entire record in this matter, it is this 11th day of April, 2012:

ORDERED, that Respondent is **LIABLE** for violating D.C. Official Code § 47-2851.03, and must pay a **THREE HUNDRED DOLLAR (\$300)** fine for this violation. It is further

ORDERED, that Respondent shall pay the above amount in full in accordance with the attached instructions within 20 calendar days of the service date of this order (15 days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest shall accrue on the unpaid balance at the rate of 1½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified may authorize additional sanctions, including suspending Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), placing liens on

Respondent's property pursuant to D.C. Official Code § 2-1802.03(i) and sealing Respondent's business premises or work site pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Order are stated below.

Margaret A. Mangan
Administrative Law Judge

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to "D.C. TREASURER." Enclose full payment and mail the check in an envelope with required postage to:

Clerk
Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714

IMPORTANT: Please do not call the D.C. Court of Appeals with questions about how to make any payments required under this Order. The D.C. Court of Appeals does not accept any payments in cases decided by the Office of Administrative Hearings. **If you have questions, please call the Clerk's Office at the Office of Administrative Hearings on 202-442-9094.**

After an administrative law judge has issued a Final Order, a party may ask the judge to change the Final Order and ask the District of Columbia Court of Appeals to change the Final Order. There are important time limitations described below for doing so.

HOW TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO CHANGE THE FINAL ORDER

Under certain limited circumstances and within certain time limits, a party may file a written request asking the administrative law judge to change a final order. OAH Rule 2828 explains the circumstances under which such a request may be made. Rule 2828 and other OAH rules are available at www.oah.dc.gov and at OAH's office.

A request to change a final order does not affect the party's obligation to comply with the final order and to pay any fine or penalty. If a request to change a final order is received at OAH **within 10 calendar days** of the date the Final Order was filed (**15 calendar days** if OAH mailed the final order to you), the period for filing an appeal with the District of Columbia Court of Appeals does not begin to run until the Administrative Law Judge rules on the request. **A request for a change in a final order will not be considered if it is received at OAH more than 120 calendar days of the date the Final Order was filed (125 calendar days if OAH mailed the Final Order to you).**

HOW TO APPEAL THE FINAL ORDER TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing a Petition for Review and six copies with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
430 E Street, NW, Room 115
Washington, DC 20001

The Petition for Review (and required copies) may be mailed or delivered to the Court of Appeals, and must be received there within 30 calendar days of the mailing date of this Order, pursuant to D.C. App. R. 15(a)(2). There is a \$100 fee for filing a Petition for Review. Persons who are unable to pay the filing fee may file a motion and affidavit to proceed without the payment of the fee when they file the Petition for Review. Information on petitions for review can be found in Title III of the Court of Appeals' Rules, which are available from the Clerk of the Court of Appeals, or at www.dcappeals.gov.

Certificate of Service:

By First Class Mail (Postage Paid):

BEN EPSTEIN & ASSOCIATES LLC
962 WAYNE AVENUE, SUITE 901
SILVER SPRING, MD 20910-4480

MICHAEL SMITH
1433 GOOD HOPE ROAD, SE
WASHINGTON, DC 20020

By Interagency Mail:

Melinda Bolling, Esquire
Terrell Hill
Dep't of Consumer and Regulatory Affairs
1100 4th Street, SW – 5th Floor
Washington, DC 20024

I hereby certify that on _____, 2012 this document was served upon the parties named on this page at the address(es) and by the means stated.

Clerk/Deputy Clerk