

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

KASI SPA FOR MEN SHOP/JALONNIE :
F. KASI (OWNER), :
Petitioner¹, :

Docket No.: OSAH-PLBD-BARBER-
1653672-33-Howells

v. :

GEORGIA STATE BOARD OF :
COSMETOLOGY AND BARBERS, :
Respondent. :



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INITIAL DECISION

Kevin Westray, Legal Assistant

Petitioner appealed Respondent's decision to deny Petitioner's application for a cosmetology or barber salon/shop license. An administrative hearing was held before the undersigned administrative law judge on September 30, 2016. Respondent was represented by Janet K. Jackson, Senior Assistant Attorney General. Jeffery Hood, Esq., of the Hood Law Group, appeared on behalf of Petitioner. For the reasons set forth below, Respondent's decision is hereby **AFFIRMED**.

I. Findings of Fact

1.

On December 23, 2015, Petitioner filed an Application for Licensure as a Cosmetology or Barber Salon/Shop ("Application"). The business name of the salon/shop seeking licensure was Kasi Spa for Men Shop and the owner was Jalonnie F. Kasi. (Testimony of Petitioner; Testimony of Andrew Turnage; Exhibit P-1.)

¹ Although this matter was originally captioned with the Georgia State Board of Cosmetology as Petitioner, and Kasi Spa for Men/Jalonnie F. Kasi as Respondent, that captioning was in error, as Jalonnie F. Kasi requested the hearing on behalf of Kasi Spa for Men.

2.

On the Application, Petitioner answered "yes" to the following question:

Have the owner(s) ever been arrested, convicted, sentenced, entered a plea of guilty, or nolo contendere, or been given a First Offender status for any felony, misdemeanor, or any offense other than minor traffic violations? DUI and DWI are not minor traffic violations.

(Testimony of Petitioner; Testimony of Turnage; Exhibit P-1.)

3.

In response to the question regarding his criminal history, Petitioner disclosed the following information:

A. On November 15, 2002, in the Circuit Court of Tuscaloosa, Alabama, Petitioner pleaded guilty to felony Forgery in the Second Degree and was sentenced to one year and one day in confinement.

B. On July 16, 2003, in the State Court of Cobb County, Georgia, Petitioner pleaded guilty to misdemeanor Removal of Property Subject to Security Interest and was sentenced to twelve months, with eleven months and fifteen days of that sentence to be served on probation. An additional count of Theft by Conversion was nolle prossed.

C. On July 14, 2004, in the State Court of Cobb County, Georgia, Petitioner pleaded guilty to misdemeanor Deposit Account Fraud and was sentenced to twelve months, with eleven months and ten days of that sentence to be served on probation, and ordered to pay restitution of \$84.70.

D. On July 10, 2006, in the Superior Court of Cobb County, Georgia, Petitioner pleaded guilty to one count of felony Theft by Conversion and was sentenced to five years on probation and ordered to pay a \$1000.00 fine.

(Testimony of Petitioner; Testimony of Turnage; Exhibits P-1, P-2, P-3, P-4, P-5(a).)

4.

Petitioner also disclosed to the Respondent that he received a citation for No Alcohol License on March 19, 2013, in Cobb County, Georgia. Petitioner pleaded nolo contendere to the citation on February 11, 2014. (Testimony of Turnage; Exhibits P-1, P-6.)

5.

Petitioner failed to disclose that, on October 18, 2004, in the Superior Court of Fulton County, Georgia, he pleaded guilty to one count of Pimping² and was sentenced to twelve months, consisting of four months incarceration with the remaining eight months to be served on probation. Petitioner was also ordered to pay a \$1,500 fine and have no contact with any female under the age of 18. (Testimony of Turnage; Exhibits P-1, 8.)

6.

On the Application, Petitioner also answered “yes” to the following question:

Have the owner(s) ever had a license revoked, suspended, or otherwise sanctioned by any professional licensing board or agency, or . . . ever been denied issuance of, or pursuant to disciplinary proceedings refused renewal of a license by any professional licensing board or agency in Georgia or any other state?

(Testimony of Turnage; Exhibit P-1.)

7.

In August 2013, the Secretary of State’s Office of Investigations sent investigators to Kasi Spa for Men, to investigate allegations of unlicensed practice of massage therapy. Upon their arrival, the investigators requested massage therapy services. Petitioner inquired as to what type of massage the investigators would like. The investigators requested a deep tissue massage. Petitioner then provided an employee by the name of “Jamie” to perform the requested service, and subsequently accepted payment for the deep tissue massage. Petitioner knew that Jamie was not a license massage therapist. During the course of their investigation, the investigators

² A person commits the offense of pimping when he: (1) offers or agrees to procure a prostitute for another; (2) offers or agrees to arrange a meeting of persons for the purpose of prostitution; (3) directs or transports another person to a place when he knows or should know that the direction or transportation is for the purpose of prostitution; (4) receives money or another thing of value from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or (5) aids or abets another in the commission of prostitution where the proceeds or profits are to be divided on a pro rata basis. O.C.G.A. § 16-6-11.

learned that Jamie was not licensed to practice massage therapy in the State of Georgia. (Testimony of Turnage; Testimony of Petitioner; Exhibit P-9.)

8.

On November 24, 2014, the Georgia State Board of Massage Therapy and Petitioner entered into a Voluntary Cease and Desist Order prohibiting Kasi Spa for Men from engaging in the unlicensed practice of massage therapy. Petitioner Jalonnie Kasi, as the owner of Kasi Spa for Men, signed the Voluntary Cease and Desist Order, which imposed a fine of \$500.00. (Testimony of Petitioner; Testimony of Turnage; Exhibit P-9.)

9.

On February 9, 2015, the Georgia State Board of Massage Therapy and Jamie Martin entered into a Voluntary Cease and Desist Order prohibiting Jamie Martin from engaging in the unlicensed practice of massage therapy. (Testimony of Petitioner; Testimony of Turnage; Exhibit P-10.)

10.

On March 3, 2016, Petitioner submitted a sworn statement retracting his previous response to the question regarding previous revocation, suspension, or sanctions by any professional licensing board. The sworn statement reads: "I Jalonnie Kasi, owner of Kasi Spa for Men Shop retract my answer concerning any disciplinary action by a licensing agency. I marked yes by mistake." (Testimony of Turnage; Exhibit P-7.)

11.

Petitioner's Application was denied by a vote of the Georgia Board of Cosmetology and Barbers. In response, Petitioner requested a hearing. (Testimony of Turnage.)

II. Conclusions of Law

1.

The Petitioner bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The Respondent is the entity responsible for the registration and licensure of all beauty shops, beauty salons, barber shops, schools of cosmetology, schools of hair design, schools of esthetics, schools of nail care, and schools of barbering in the state of Georgia. All of the above-listed entities must be registered with the Respondent by the owner or manager of that entity. In order to register, entities must submit an application to Respondent. O.C.G.A. § 43-10-11. It is unlawful for any person to operate one of the above-listed entities without a certificate of registration from Respondent. O.C.G.A. § 43-10-8(h).

3.

In this case, Respondent denied Petitioner's Application. A professional licensing board has the authority to refuse to grant a license to an applicant for numerous reasons, including if the applicant "practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession." O.C.G.A. § 43-1-19(a)(2); see also O.C.G.A. § 43-10-15(a)(1). Here, Petitioner failed to disclose his 2004 conviction for Pimping, which constitutes grounds for the Respondent to deny his Application.

4.

A professional licensing board also has the authority to refuse to grant a license to an applicant upon a finding that the applicant has been convicted of any felony or of any crime involving moral turpitude. O.C.G.A. § 43-1-19(a)(3).

5.

The criminal offenses of Forgery, Deposit Account Fraud, Theft by Conversion, and Pimping are crimes of moral turpitude. Pel Asso v. Joseph, 262 Ga. 904, 910 (1993) (forgery); Paradise v. State, 212 Ga. App. 166, 169 (1994) (deposit account fraud); In re Cook, 256 Ga. 386, 387 (1986) (theft by conversion); Warren v. State, 179 Ga. App. 890 (1986) (pimping); see also Lewis v. State, 148 Ga. App. 16, 17 (1978) (crimes of dishonesty). Therefore, as crimes of moral turpitude, Petitioner's convictions for Forgery, Deposit Account Fraud, Theft by Conversion, and Pimping constitute grounds for the Respondent to deny his Application under O.C.G.A. § 43-1-19(a)(3). Petitioner's felony convictions for Forgery and Theft by Conversion are also sufficient grounds for Respondent to deny his Application under O.C.G.A. § 43-1-19(a)(3).

6.

The newly adopted provision of O.C.G.A. § 43-1-19(q), effective July 1, 2016, narrows the above-mentioned subsection (a)(3) to disallow a professional licensing board from refusing to grant a license due to a conviction of a felony, unless such felony directly relates to the occupation for which the license is sought. To determine if the felony directly relates to the occupation, the professional licensing board must consider:

- (A) The nature and seriousness of the felony and the relationship of the felony to the occupation for which the license is sought or held;
- (B) The age of the person at the time the felony was committed;
- (C) The length of time elapsed since the felony was committed;
- (D) All circumstances relative to the felony, including, but not limited to, mitigating circumstances or social conditions surrounding the commission of the felony; and
- (E) Evidence of rehabilitation and present fitness to perform the duties of the occupation for which the license is sought or held.

O.C.G.A. § 43-1-19(q)(2). Petitioner argues that this provision should apply to his felony convictions, and that Respondent should therefore have granted his Application. Petitioner, however, is incorrect.

7.

Georgia laws generally apply prospectively. O.C.G.A. § 1-3-3. Statutes only apply retroactively when they are “looking only to the remedy or mode of trial.” Laws affecting substantive rights, rather than procedural rights, are only applied prospectively. Enger v. Erwin, 245 Ga. 753, 754 (1980). Because O.C.G.A. § 43-1-19(q)(2) affects substantive rights—as it creates rights or obligations as opposed to procedures for enforcing such rights or obligations—it should not be applied retroactively. Crane Composites, Inc. v. Wayne Farms, LLC, 296 Ga. 271, 272 (2014).

8.

Based on the evidence presented at the hearing, Petitioner’s Application was denied prior to July 1, 2016, and before O.C.G.A. § 43-1-19(q)(2) went into effect.³ However, even if Petitioner’s Application was denied after July 1, 2016, Petitioner’s convictions for Forgery, Deposit Account Fraud, Theft by Conversion, and Pimping are crimes of moral turpitude, and thus remain grounds to deny Petitioner’s Application.

9.

A professional licensing board also has the authority to refuse to grant a license to an applicant upon a finding that the applicant:

³ The record is unclear as to the exact date of the denial; however, the appeal was received by the Office of State Administrative Hearings on July 14, 2016. Given testimony that Petitioner’s Application was denied in the spring of 2016, and the administrative necessity of time for Petitioner to receive the denial, appeal the denial, and the appeal to reach OSAH, it appears most likely that Petitioner’s Application was denied prior to July 1, 2016.

Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person . . . to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority . . . when such statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title and when the licensee or applicant knows or should know that such action violates such statute, law, or rule.

O.C.G.A. §§ 43-1-19(a)(7), (8).

10.

As evidenced by the Voluntary Cease and Desist Orders issued by the massage therapy board against Kasi Spa for Men and employee Jamie Martin for the unlicensed practice of massage therapy, Petitioner has aided and assisted the unlicensed practice of a profession covered by Title 43 of the Georgia Code and violated a statute, law, rule, or regulation pertaining to a business or professional covered by Title 43 of the Georgia Code. Either violation was sufficient grounds for the Respondent to deny the Petitioner's Application.

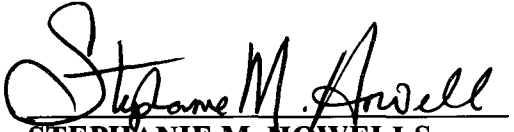
11.

Petitioner's convictions for crimes of moral turpitude, his failure to disclose his conviction for Pimping, and his previous sanction from the massage therapy board, show a pattern of deception and disregard for law and regulations. Accordingly, denial of Petitioner's Application for a Cosmetology or Barber Salon/Shop license was proper.

III. Decision

Accordingly, based on the above Findings of Fact and Conclusions of Law, the Respondent's decision to deny Petitioner's license is **AFFIRMED**.

SO ORDERED, this 31st day of October, 2016.


STEPHANIE M. HOWELLS
Administrative Law Judge

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

GEORGIA STATE BOARD OF BARBERS,	:	
Petitioner,	:	
	:	
v.	:	Docket No.: OSAH-PLBD-BARBER-1653672-33-Schroer
	:	
KASI SPA FOR MEN SHOP,	:	Agency Reference No.: 1653672
Respondent.	:	

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Kevin Westray, kwestray@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

APPLICATION FOR AGENCY REVIEW

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Georgia State Board of Barbers
Professional Licensing Board Division
Secretary of State
237 Coliseum Drive
Macon, Georgia 31217-3858

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review according to O.C.G.A. §§ 50-13-17 and 50-13-41. In the event a party disagrees with the Final Decision a party must seek judicial review within thirty (30) days. See O.C.G.A. § 43-1 *et seq.*, and § 43-1-19 generally.