

ARKANSAS DEPARTMENT OF HEALTH

COSMETOLOGY SECTION

COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

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BE IT REMEMBERED that on Monday, the 17th day of March, 2014 the meeting of the Arkansas Department of Health, Cosmetology Section, Cosmetology Technical Advisory Committee was held, at 9:00 a.m., at the Arkansas Department of Health, Freeway Medical Building, Suite 801, Little Rock, Pulaski County, Arkansas.

TECHNICAL ADVISORY COMMITTEE:

TRISH ANDERSON, Chair Person
KIMBERLY FORD
CYNTHIA STEELE
JESSICA PECK
ANGELA JACKSON
WENDY SULLIVAN

LINDA PARKER, Court Reporter

* * * * *

1 APPEARANCES:

2 ON BEHALF OF THE COMMITTEE:

3 ELIZABETH PITMAN, ESQ.

4 HEARING OFFICER:

5 PEGGY JOHNSON, ESQ.

6 Office of the Attorney General

7 323 Center Street, Suite 200

8 Little Rock, Arkansas 72201

9

10 STAFF MEMBERS PRESENT:

11 KELLI KERSEY - Section Chief

12 KEN ROBERTS

13 RENEE MALLORY

14 TERI PREACHERS - Administrative Specialist

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16 INSPECTORS PRESENT:

17 LAVONNE LESTER

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	<u>I N D E X</u>	
		Page No.
1		
2		
3	CAPTION	1
4	APPEARANCES	2
5	PAID VIOLATIONS	
6	ADMINISTRATIVE HEARING	
7	CAREER ACADEMY OF HAIR DESIGN	7
8	EXHIBIT RECEIVED	11
9	WITNESSES	
10	STATEMENT BY JIM BUTENSCHOEN, OWNER	12
11	Cross Examination by Ms. Pitman	14
12	KELLI KERSEY	
13	Direct Examination by Ms. Pitman	16
14	Motion	20
15	ADMINISTRATIVE HEARING	
16	LIZZIE'S TWO	21
17	EXHIBIT RECEIVED	22
18	WITNESSES	
19	VERA WOOD	
20	Direct Examination by Ms. Pitman	22
21	KELLI KERSEY	
22	Direct Examination by Ms. Pitman	24
23	Motion	34
24	CONTINUED MEETING	35
25	COURT REPORTER'S	39

P R O C E E D I N G S

1
2
3
4
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CHAIRPERSON MS. ANDERSON: I'd like to call the meeting to order and would like to recognize our new Court Reporter, Ms. Linda Parker, for the audience. And we have a new Committee Member, Adrian Tabb, and he is here now, so we can get started. We have approval - I need to do the role call. We have Adrian Tabb, if you'll just say here.

MR. TABB: Here.

CHAIRPERSON MS. ANDERSON: Cynthia Steele.

MS. STEELE: Here.

CHAIRPERSON MS. ANDERSON: Jessica Peck.

MS. PECK: Here.

CHAIRPERSON MS. ANDERSON: Angela Jackson.

MS. JACKSON: Here.

CHAIRPERSON MS. ANDERSON: And I have Wendy Sullivan.

MS. SULLIVAN: Here.

CHAIRPERSON MS. ANDERSON: Kim Ford.

MS. FORD: Here.

CHAIRPERSON MS. ANDERSON: And myself, Trish Anderson. We're all here. The gang's all here. We can get started. We have the approval of the minutes. You should have those in your packet.

MS. STEELE: I'd like to make a motion to

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approve the minutes from the November 18th, 2013 meeting.

CHAIRPERSON MS. ANDERSON: Okay. A motion.

Do I have a second?

MS. FORD: I'll second it.

CHAIRPERSON MS. ANDERSON: Kim seconded it.

Okay. I can call for a vote. All those in favor will you please say "Aye" and do it individually? Adrian?

MR. TABB: Aye.

MS. STEELE: Aye.

CHAIRPERSON MS. ANDERSON: Cynhia.

Jessica?

MS. PECK: Aye.

CHAIRPERSON MS. ANDERSON: Angela?

MS. JACKSON: Aye.

MS. SULLIVAN: Aye.

CHAIRPERSON MS. ANDERSON: Thank you. We do have the paid violations in front of us. If you would take a look at those please. I want you to look over those, if you have any corrections or addendums to those. I don't believe we have anything, but...

MS. SULLIVAN: I approve.

CHAIRPERSON MS. ANDERSON: Will you make a

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motion?

MS. SULLIVAN: I make a motion to approve.

CHAIRPERSON MS. ANDERSON: Okay. So I have
a motion.

MS. PECK: I'll second.

CHAIRPERSON MS. ANDERSON: And Jessica
seconds it. Okay. So the motion and the second.
All those in favor.

(ALL COMMITTEE MEMBERS ANSWERED "AYE")

CHAIRPERSON MS. ANDERSON: I hear everybody
with an aye. That has been passed and approved.
Thank you.

* * * * *

BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE
(CTAC)

IN THE MATTER OF:

ARKANSAS DEPARTMENT OF HEALTH PETITIONER

v.

CAREER ACADEMY OF HAIR DESIGN RESPONDENT

CHAIRPERSON MS. ANDERSON: At this time I
want to turn it back to Elizabeth for our hearing.
Oh, Ms. Johnson for our hearing. Okay.

HEARING OFFICER MS. JOHNSON: Thank you.

CHAIRPERSON MS. ANDERSON: Thank you.

HEARING OFFICER MS. JOHNSON: Good morning
everyone. We're on the record this morning before
the Cosmetology Technical Advisory Committee in a
matter brought by Career Academy of Hair Design and
that is owned by Chelsea Smith, is that correct?

MR. BUTENSCHOEN: No.

HEARING OFFICER MS. JOHNSON: No? Well
please correct me.

MR. BUTENSCHOEN: It's owned by Jim
Butenschoen.

HEARING OFFICER MS. JOHNSON: All right,
will you spell your last name?

MR. BUTENSCHOEN: B-U-T-E-N-S-C-H-O-E-N.

1 **MR. BUTENSCHOEN:** Maria Carmen.

2 **HEARING OFFICER MS. JOHNSON:** Okay. And you
3 are - have you brought anyone else here with you
4 today?

5 **MR. BUTENSCHOEN:** No.

6 **HEARING OFFICER MS. JOHNSON:** Just you? All
7 right. And I understand that you will be giving
8 testimony to the Board regarding this issue?

9 **MR. BUTENSCHOEN:** Yes.

10 **HEARING OFFICER MS. JOHNSON:** So at this
11 time - and will there be any other witnesses on
12 your behalf, Ms. Pitman?

13 **MS. PITMAN:** Yes.

14 **HEARING OFFICER JOHNSON:** Okay. So let me
15 start by swearing you both in. If you'll raise
16 your right hand. Do you swear or affirm that your
17 testimony this morning will be the truth, the whole
18 truth and nothing but the truth?

19 **(WITNESSES ANSWERED AFFIRMATIVELY)**

20 **HEARING OFFICER JOHNSON:** All right, thank
21 you. All right, now there are some - a packet of
22 documents regarding this issue that have been
23 compiled by Ms. Pitman and I'll let you describe
24 those.

25 **MS. PITMAN:** Do you want those passed out?

1 **HEARING OFFICER JOHNSON:** And as soon as we
2 enter them into the record, they'll be furnished.
3 Why don't you describe them for the record?

4 **MS. PITMAN:** (Inaudible).

5 **HEARING OFFICER JOHNSON:** All right. Well,
6 it appears - about how many pages are there in this
7 little packet of documents?

8 **MS. PITMAN:** I don't know the exact amount.
9 No ma'am.

10 **HEARING OFFICER JOHNSON:** Okay, it appears -
11 there's a compilation exhibit by the Board and the
12 first page is an email to Kathryn Kersey and the
13 email is from Chelsea Smith to Kathryn Kersey and
14 it begins, "To Whom It May Concern." And that
15 document is to be considered by the Board today.
16 Do you have any objection to that, Mr. Butenschoen?

17 **MR. BUTENSCHOEN:** No.

18 **HEARING OFFICER JOHNSON:** All right. Then
19 we'll go ahead and those are being passed out to
20 the Board Members now, as I speak.

21 **MS. PITMAN:** I believe it's nineteen (19)
22 pages. I counted them.

23 **HEARING OFFICER JOHNSON:** Okay. All right.
24 So it's approximately nineteen (19) pages. All
25 right.

1 **(THEREUPON,** the Exhibit was marked for
2 identification and admitted into evidence.)

3 **HEARING OFFICER JOHNSON:** And then is there
4 any other matter that you need to take up before we
5 begin with testimony?

6 **MS. PITMAN:** We don't have anything to
7 bring. I believe Mister...

8 **HEARING OFFICER JOHNSON:** Butenschoen.

9 **MS. PITMAN:** ...Butenschoen had a matter
10 that he wanted to take up before we began taking
11 testimony. Is that correct?

12 **HEARING OFFICER JOHNSON:** All right. Just
13 go ahead, sir. I believe there is an issue with
14 regard to a request for recusal?

15 **MR. BUTENSCHOEN:** Yes.

16 **HEARING OFFICER JOHNSON:** Now, it's my
17 understanding, and you all correct again, correct
18 me if I'm wrong, if I don't have the most recent
19 resolution of this matter, but it's my
20 understanding that the Chairperson for this
21 Committee has agreed to not vote or participate in
22 the deliberations of this matter. However, she
23 will continue to sit on the Board of course, and
24 you know with the rest of them, but she has agreed
25 not to participate or vote in this particular

1 matter. Is that an acceptable resolution to you?

2 **MR. BUTENSCHOEN:** Yes.

3 **HEARING OFFICER JOHNSON:** All right. Then
4 with that stated for the record, then we will go
5 abide by that and so we will go forward. All
6 right, thank you. Then if there's nothing further,
7 you may - or Mr. Butenschoen, do you want to bring
8 this matter before the Board, so I will let you do
9 so.

10 **MR. BUTENSCHOEN:** I think the email from
11 Chelsea is fairly clear. She made a mistake and
12 dropped this high school student at the end of - or
13 in June of last year. There's been some back and
14 forth on this. At one (1) point the Department
15 required us to drop all Juniors, who competed their
16 Junior year, in June and then re-permit them in
17 August when they restarted. And then that was
18 changed. So maybe she got confused, but I doubt
19 it. I think she screwed up and she fairly well
20 admits this. She dropped her, knew she was coming
21 back in August or September as an adult, because
22 she had finished her high school Senior year, left
23 the previous year, and would be coming back as an
24 adult to complete her hours for her license. And
25 Chelsea assumed to she had not dropped her, but in

1 fact she had dropped her. And when she - and left
2 the permit up on the bulletin board and the girl,
3 Carmen, you know signed an adult contract with us,
4 started accumulating hours in September, October,
5 November. Three (3) months. Chelsea missed it on
6 her monthly submission of hours. I can't explain
7 it. It's just wrong. I mean one (1) month, I can
8 understand maybe, but three (3) months? That's
9 unexplainable. And clearly that's an
10 administrative problem for us. It's not a problem
11 for the student or shouldn't be. She's a good
12 student and you know I would hate to see her hours
13 nullified because of this administration mistake on
14 our part. So I'm asking the Board to establish
15 her, her start date in September, as opposed to
16 when finally caught it in January, currently. I
17 don't know how else to - do you have any questions?

18 HEARING OFFICER JOHNSON: Does the Board
19 have any questions?

20 MS. PITMAN: If I could just ask one (1)
21 question...

22 HEARING OFFICER JOHNSON: Oh, sure.

23 MS. PITMAN: ...of Mr. Butenschoen, if
24 that's okay.

25 HEARING OFFICER JOHNSON: Yes.

1 to re-permit themselves...

2 **MR. BUTENSCHOEN:** No.

3 **MS. STEELE:** ...in September?

4 **MR. BUTENSCHOEN:** That's up to the school.

5 And Chelsea made, as her email indicates, she made
6 a mistake. What's perplexing to all of us, among
7 other things, is how she let it go three (3)
8 months. I can understand it happening one (1)
9 month, but three (3) months?

10 **HEARING OFFICER JOHNSON:** All right, Ms.
11 Sullivan.

12 **MS. SULLIVAN:** Where is Chelsea today?

13 **MR. BUTENSCHOEN:** Chelsea has been given a
14 grand opportunity to seek employment elsewhere.

15 **MS. SULLIVAN:** Because on the clips I don't
16 know how you could have missed...

17 **MR BUTENSCHOEN:** I understand.

18 **HEARING OFFICER JOHNSON:** Okay. Any other
19 questions? Is there anything else that you wanted
20 to state?

21 **MR. BUTENSCHOEN:** I can't say anything other
22 than we made a mistake. We're guilty as sin, but
23 that poor student is not. I asked, in the eight
24 (8) years that I've owned these schools, this has
25 never happened before. God forbid it ever happens

1 again, but in this case I would ask for you to
2 reinstate those hours that was accumulated from
3 September thru December to four hundred and twenty-
4 three (423).

5 HEARING OFFICER JOHNSON: All right, then
6 you may go ahead and question the witness.

7 KELLI KERSEY,

8 DIRECT EXAMINATION

9 DIRECT EXAMINATION BY MS. PITMAN:

10 Q. Ms. Kersey, will you state your full name?

11 A. Kelli Kersey.

12 Q. Tell us where you work.

13 A. Arkansas Department of Health Cosmetology Section,
14 Section Chief.

15 Q. Okay. And are you aware of the issue, the hours that
16 Mr. Butenschoen's referring to?

17 A. Yes.

18 Q. All right. Is it four hundred and twenty-three (423)
19 hours that are in question?

20 A. Yes.

21 Q. Ms. Kersey, can you explain the situation. Has this
22 ever happened in the history of Cosmetology, before the
23 Board?

24 A. It has happened one (1) other time.

25 Q. Okay. Can the cosmetology section, Department of Health

1 correct the issue without the cosmetology Technical Advisory
2 Committee?

3 A. We cannot.

4 Q. Okay. And why is that?

5 A. In rule, students aren't allowed to earn hours before a
6 permit is - what do you say?

7 **HEARING OFFICER JOHNSON:** Valid?

8 **MS. KERSEY:** Yeah.

9 **QUESTIONS CONTINUING BY MS. PITMAN:**

10 Q. Okay. Issued.

11 A. Yeah, there's my word. Issued.

12 Q. Okay. And so we can't violate the rules?

13 A. Right.

14 Q. Okay. And so that's why we're here today?

15 A. Correct.

16 Q. And this has happened before. Can you tell me what the
17 Board for the Cosmetology Technical Advisory Committee did in
18 the previous situation?

19 A. They prorated her student permit and we just gave her a
20 permit from the date that she actually started.

21 Q. Okay. So what Mr. Butenschoen is suggesting, that we
22 establish the start date back in September, that date would
23 be correct?

24 A. Correct.

25 Q. Is there anything else that you'd like the Board to know

1 about that?

2 A. I just - I mean as soon as they caught this, as soon as
3 the school caught, they contacted us. They got her a permit
4 at that time because - so she's been getting hours since
5 then. And - so the only question in time - and you know I
6 can almost see how that can happen when you have a high
7 school student like that. I know it was just an error, but
8 we still couldn't - we just couldn't fix it in the office.

9 MR. BUTENSCHON: I'd like to say that we
10 have worked diligently for hours, staff, managers,
11 to try to figure out how if this ever happens again
12 we can blame you and your staff, instead of
13 yourselves.

14 MS. KERSEY: Okay. That's okay, we get
15 blamed here a lot. We'll take it.

16 HEARING OFFICER JOHNSON: All right.

17 QUESTIONS CONTINUING BY MS. PITMAN:

18 Q. Ms. Kersey, just one (1) last question. Is it your
19 recommendation today that we take Mr. Butenschoen's
20 (inaudible)?

21 A. Yes ma'am.

22 Q. Okay. That's all I have.

23 HEARING OFFICER JOHNSON: All right.

24 Anything further from Board Members? Questions?
25 Comments? All right, is the Board ready to

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second. All those in favor?

(ALL BOARD MEMBERS ANSWERED AFFIRMATIVELY)

CHAIRPERSON MS. ANDERSON: The Committee
votes unanimously.

HEARING OFFICER MS. JOHNSON: All right.

Let the record reflect that the Committee has
unanimously decided to credit Ms. Mota four hundred
and twenty-three (423) hours. And that completes
this matter.

MR. BUTENSCHOEN: Thank you.

* * * * *

BEFORE THE COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

(CTAC)

IN THE MATTER OF:

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

v.

LIZZIE'S TWO

RESPONDENT

HEARING OFFICER MS. JOHNSON: All right.

The next matter before the Board is the matter of Arkansas Department of Health versus Lizzie's Two. Is there a representative for Lizzie's Two present today? Lizzie's Two? All right. It does not appear that there is a representative for this business present. However the Board is ready to proceed, I take it, Ms. Pitman. Is that correct?

MS. PITMAN: Yes.

HEARING OFFICER MS. JOHNSON: All right.

Ms. Vera Wood as well as Ms. Kelli Kersey, if you'll raise your right hand I'll swear you in. Do you swear or affirm that your testimony this morning will be the truth, the whole truth and nothing but the truth?

(WITNESSES ANSWERED AFFIRMATIVELY)

HEARING OFFICER MS. JOHNSON: All right,

thank you. All right, are there documents that you

1 want the Board to consider?

2 MS. Pitman: Yes ma'am. There is a green
3 packet. The first page is the notice of hearing
4 from the Arkansas Department of Health versus
5 Lizzie's Two. It is seven (7) pages.

6 HEARING OFFICER MS. JOHNSON: Okay. All
7 right. Well, that hearing packet will be entered
8 into the record and the Board - for the Board's
9 consideration for this hearing.

10 (THEREUPON, the Board's Exhibit was marked for
11 identification and admitted into evidence.)

12 HEARING OFFICER MS. JOHNSON: All right,
13 then if there's nothing further, you may go ahead
14 and call your first witness.

15 MS. Pitman: I call Ms. Wood.

16 VERA WOOD

17 DIRECT EXAMINATION

18 DIRECT EXAMINATION BY MS. Pitman:

19 Q. Ms. Wood, would you please tell us your full name and
20 where you work?

21 A. Vera Wood. Arkansas Department of Health, Cosmetology
22 Inspector.

23 Q. And Ms. Wood, did you do an inspection on Lizzie's Two?

24 A. Yes ma'am.

25 Q. Is Lizzie's Two currently licensed?

1 A. The license had expired as of 10-3-13.

2 Q. And so it looks like you had cited Lizzie's - who's the
3 owner of Lizzie's Two?

4 A. I'm assuming Lizzie Rushington. Raspberry or
5 Raspberry.

6 Q. Okay. Is it Lizzy Raspberry?

7 A. I think so.

8 Q. And is that name - is that the name on the Cosmetology
9 Section Report?

10 A. Yes ma'am.

11 Q. It on page five (5). Is Ms. Lizzie Raspberry herself
12 licensed?

13 A. Yes ma'am. She has a lifetime license.

14 Q. And so the only violation that day was that they were
15 operating the salon without a current license?

16 A. That and it was posted expired.

17 Q. Okay. And they had an expired license posted that day?

18 A. Yes.

19 Q. Now it looks like you have an inspection report here.
20 Did Ms. Raspberry see this inspection report?

21 A. She did.

22 Q. And you explained to her the violations?

23 A. Yes ma'am.

24 Q. Did she say anything about that day?

25 A. She said they had issues with it. That they had been in

1 contact with your office via certified letter.

2 Q. She said she had been in contact with the Cosmetology
3 office by a certified letter?

4 A. Yes ma'am.

5 Q. Okay. And would you know anything about that?

6 A. No.

7 Q. Okay. As part of your inspection, do you personally
8 check your Cosmetology records or does somebody else do that?

9 A. We turned this in and they do it.

10 Q. Okay. So outside of going to the salon that day and
11 seeing the license that had expired, did you do anything else
12 to complete this investigation?

13 A. No ma'am.

14 Q. Okay.

15 MS. PITMAN: I don't think I have any other
16 questions.

17 HEARING OFFICER MS. JOHNSON: All right,
18 does the Board have any other questions for Ms.
19 Wood? All right, now you may question Ms. Kersey.

20 KELLI KERSEY

21 DIRECT EXAMINATION

22 DIRECT EXAMINATION BY MS. PITMAN:

23 Q. All right, Ms. Kersey. Again, tell us your name and
24 where you work.

25 A. Kelli Kersey, Arkansas Department of Health, Cosmetology

1 Section, Section Chief.

2 Q. Okay. And did Ms. Wood come back with is violation
3 inspection report for Lizzie Two?

4 A. Yes, she did.

5 Q. And what did you do when you got it?

6 A. We checked for the license and it was expired 12-31-
7 2012. And she was sent a violation notice. And that's what
8 we always do.

9 Q. What date did you send the violation notice?

10 A. It was on November 18th, 2013.

11 Q. And is that also in this packet?

12 A. Yes. Third or fourth page.

13 Q. What happened you sent this letter?

14 A. I actually received a packet from Lizzie's Two and I
15 don't really understand the packet, but I was being sued.

16 Q. Okay. Yeah. Without going into all that, did they pay
17 the violation?

18 A. No, they did not pay the violation.

19 Q. Did they admit that they failed to renew their license?

20 A. Yes.

21 Q. What did they say about needing a license?

22 A. That they didn't need one (1) under some kind of law. I
23 don't know, because of their tribe.

24 Q. So what did you do when you received that?

25 A. We sent them a notice of hearing in response. Well,

1 to you and then we sent them a notice of hearing in response
2 to their packet.

3 Q. What day did you sent the notice of hearing?

4 A. We sent that - I'm sorry. I'm not sure the date of
5 that.

6 Q. Page three (3).

7 A. Oh yeah, sorry. It was delivered on February 14, 2014.

8 Q. Okay.

9 A. We actually sent them regular and certified.

10 Q. So it was delivered. Did they ever sign for it?

11 A. They refused it.

12 Q. And on that same day that you said - it looks like
13 February 3rd.

14 A. Yes.

15 Q. Is the date marked on here February 6?

16 A. Yes.

17 Q. You send it - you all sent it regular mail that day?

18 A. Yes.

19 Q. Have you hearing anything back from Lizzie's Two, since
20 sending this out February 6th?

21 A. I have not.

22 Q. Isn't the notice of hearing just to state the date and
23 time of this hearing?

24 A. Yes.

25 Q. Monday, March 17th at nine (9) a.m.?

1 A. Correct.

2 Q. That's where we are, right?

3 A. Yes.

4 MS. PITMAN: That's all I have.

5 HEARING OFFICER MS. JOHNSON: All right,
6 does the Board have any questions for Ms. Kersey?

7 MS. JACKSON: Was the threat from Lizzie
8 personally?

9 MS. KERSEY: Yes.

10 MS. STEELE: And are they Indian?

11 MS. KERSEY: I'm not really sure what they -
12 I didn't bring it. Sorry.

13 MS. STEELE: Kelli, was the regular mail
14 returned?

15 MS. KERSEY: No. The regular mail was not
16 returned.

17 MS. STEELE: Okay.

18 CHAIRPERSON MS. ANDERSON: Is there an
19 exemption for a tribal?

20 MS. KERSEY: What we had got from them we've
21 never - Elizabeth couldn't find anything on.

22 CHAIRPERSON MS. ANDERSON: So there's
23 nothing in our rules and regulations that exempt
24 anyone of any tribal decent to...

25 MS. KERSEY: I'm sorry, we do have that.

1 **CHAIRPERSON MS. ANDERSON :** They're not
2 claiming...

3 **MS. Pitman:** She's handing it out and we
4 should probably admit this.

5 **HEARING OFFICER MS. JOHNSON:** What is being
6 passed around to the Board currently is a copy of
7 what - and I will just read it the very top of it.
8 United States Department of Treasury, UCC Contract
9 Trust Account regarding - well, it looks like it's
10 a lawsuit. It says affidavit set for the notice of
11 proof of claim to Section Chief, Kelli Kersey, from
12 - by Primogeniture Heir, the Honorable and Noble
13 Leo-Rasbara and Lizzie Rasberry. And it appears to
14 be a notice of suit claiming some type of non tax
15 exempt status. It's an affidavit that's appearing
16 to claim some type of exempt status by virtue of
17 indigenous rights and treaty rights for real and
18 personal property of certain groups. And something
19 that's referenced in the document called the
20 Moroccan Treaty of Peace and Friendship of the
21 United States of America. And it is signed by a
22 Lizzie L. Rasberry.

23 **MS. PITMAN:** So to their knowledge there's
24 no - they're not claiming to be Moroccan, their
25 American.

1 **HEARING OFFICER MS. JOHNSON:** But there is -
2 whatever they're claiming to be, you're point is
3 there's no exemption that...

4 **MS. PITMAN:** Right. There's no exemption
5 for what they're claiming.

6 **HEARING OFFICER MS. JOHNSON:** Okay.

7 **CHAIRPERSON MS. ANDERSON:** Trish is just
8 stating there is an exemption for (sic) on all
9 levels due to the status being held in the United
10 States - and the United States Department of
11 Justice.

12 **MS. PITMAN:** I could find nothing that
13 verified anything that - it's also hasn't been
14 properly filed as a lawsuit.

15 **MS. SULLIVAN:** So if there is fines given,
16 it's not going to come back on us or the Department
17 or anything like that?

18 **MS. PITMAN:** This is against Ms. Kersey and
19 the Department of Health. It is not against the
20 Board at all.

21 **HEARING OFFICER MS. JOHNSON:** Right.

22 **MS. SULLIVAN:** But I'm saying if we - I mean
23 if there was anything that they could actually find
24 liable to come at her, the Committee and the State
25 fine them, then they might try to figure out

1 another way. Is that a potential?

2 MS. PITMAN: I can't tell you this won't
3 come to the Board.

4 HEARING OFFICER MS. JOHNSON: All right.

5 MS. SULLIVAN: Okay.

6 MS. PITMAN: Rick and I have both looked at
7 this.

8 MS. SULLIVAN: I mean I've never heard of
9 such, so I was just more curious.

10 MS. PITMAN: From what I can find about it
11 is that it was like in 1774 and it was about
12 hierarchy, so I'm not sure.

13 MS. SULLIVAN: Okay.

14 MS. PITMAN: I'm not sure.

15 MS. FORD: I have a question.

16 MS. KERSEY: That's two (2) different ones.

17 MS. FORD: The location of the store is not
18 within a reservation or protective tribal area
19 initially?

20 MS. PITMAN: That would be a question for
21 Ms. Wood.

22 MS. FORD: Is this on a main strip?

23 MS. WOOD: It's in Altheimer, Arkansas. I
24 don't know. Sorry.

25 MS. SULLIVAN: It doesn't seem to be in a

1 sacred spot of Moroccan...

2 MS. WOOD: Another one (1) of the
3 inspections I did for her, so I'm not aware of it.

4 CHAIRPERSON MS. ANDERSON: If we can have
5 one (1) person speak at a time. All of our outside
6 conversation needs to be directed back to the Chair
7 and sorry I'm not taking over you, because it is a
8 hearing, but I just know that Ms. Linda Parker
9 would like for us to direct our conversations so
10 she can hear and record it. Yes.

11 MS. STEELE: How many years have they had a
12 license in the past?

13 MS. KERSEY: I knew you were going to ask
14 that and I don't know, but I know they've had it
15 for years.

16 MS. STEELE: Okay.

17 MS. KERSEY: They just have not renewed it.

18 MS. STEELE: Okay.

19 CHAIRPERSON MS. ANDERSON: And to answer
20 your questions, lifetime license should be sixty-
21 five (65) and she would have to meet the
22 requirements for that lifetime license as well.

23 MS. STEELE: Which is a thirty-five (35)
24 year or what?

25 MS. KERSEY: Thirty (30). Sixty-five (65)

1 and thirty (30) year.

2 MS. STEELE: Okay.

3 MS. SULLIVAN: So does she just lose her
4 license?

5 MS. KERSEY: I don't know.

6 MS. PITMAN: If we're still on the record,
7 can I ask other questions?

8 MS. KERSEY: 1998.

9 MS. PITMAN: Yeah, has he always been part
10 of Lizzie's Two? Do you see him listed anywhere on
11 their license?

12 MS. KERSEY: I don't think so. No. Not to
13 my knowledge.

14 MS. PITMAN: So that is wrong. Is that
15 correct?

16 MS. KERSEY: Correct.

17 HEARING OFFICER MS. JOHNSON: Is there
18 anything further? Any other questions by the Board
19 of Ms. Kersey?

20 MS. SULLIVAN: What are the recommendations
21 of the Board?

22 HEARING OFFICER MS. JOHNSON: Any other
23 questions?

24 MS. STEELE: And re-issue of their license.

25 CHAIRPERSON MS. ANDERSON: Well, they have

1 to purchase it.

2 **MS. KERSEY:** Yes.

3 **MS. STEELE:** Before a certain time?

4 **MS. KERSEY:** Well, they would have to get a
5 new license now because it's been expired a year.
6 If it's expired a year, then you have to apply for
7 a new license. You can't just renew, first one
8 (1).

9 **MS. STEELE:** Are they a special, like
10 braiding?

11 **MS. KERSEY:** Just a regular salon.

12 **MS. STEELE:** Just a regular?

13 **CHAIRPERSON MS. ANDERSON:** Yes. Is the
14 Board ready to go off record to discuss this?

15 **MS. SULLIVAN:** Yes.

16 **HEARING OFFICER MS. JOHNSON:** All right, we
17 will go off the record.

18 **(OFF THE RECORD)**

19 **(BACK ON THE RECORD)**

20 **HEARING OFFICER MS. JOHNSON:** We're back on
21 the record in the matter of the Lizzie's Two. The
22 Board has deliberated and is not ready to entertain
23 a motion for a resolution of this matter and I'll
24 turn it over to the Chairman.

25 **CHAIRPERSON MS. ANDERSON:** Would you go

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ahead?

MS. SULLIVAN: I make a motion that Lizzie's
Two receive the total proposed penalty of the
proposed violation of three hundred dollars
(\$300.00).

MS. FORD: I second.

CHAIRPERSON MS. ANDERSON: And I have a
second. If I can call for a vote please. Andrew?

(ALL MEMBERS VOTED AFFIRMATIVELY)

CHAIRPERSON MS. ANDERSON: The Board votes
unanimously to fine Lizzie's Two three hundred
dollars (\$300.00) for non licensure.

HEARING OFFICER MS. JOHNSON: All right.
The Board has taken action in this matter and that
concludes this matter before the Board. Thank you.

* * * * *

MS. Pitman: Before everybody goes to sleep,
are we all here?

(PLAYING OF THE VIDEO)

MS. Pitman: Okay, so that was an Institute
Justice's video, not the Department of Health's
video, just to clarify. I just wanted to show you
that because they have an interest in this issue
and the State (inaudible) who they were and what

1 they are doing. And they have filed suits in seven
2 (7) States, like he says. He says they haven't
3 lost, which is not a false statement. They haven't
4 lost. They have then these through the entire
5 court system twice, in Utah and in California. In
6 both of those cases the State did lose and they did
7 win. And the other five (5) lawsuits that were
8 filed, the State changed their laws before the end
9 of the lawsuit. So that's why they say they
10 haven't lost, because they've never ended a case
11 with the State law staying the same. They have a
12 current case in Texas, so I'm going to talk to you
13 a little bit about the ones that this video is
14 first, because they're what we have now, which is
15 hair braiding falls under cosmetology and I don't
16 think that too many of us sitting on the Board
17 thinks that the way it should stay. So I mean I
18 haven't heard that from anybody, so you can correct
19 me if I'm wrong, but I don't think anybody thinks
20 we should leave to where you have to get sixteen
21 hundred (1,600) hours for hair braiding. So that's
22 what all these first seven (7) cases were primarily
23 about. The State law says hair braiding is part of
24 cosmetology, you had to get the full license and
25 that's why these lawsuits came about. Without

1 going into too many of the constitutional issues,
2 because I'm sure you guys really don't care as much
3 as I do, the test that they're using is the easiest
4 test for the State to have. It's the rational
5 basis test. As long as our law has no more
6 rational relation to the State interest we're
7 trying to protect, the law stands. But in these
8 cases it's not standing. So what does that tell
9 you? That courts are finding that - that finding
10 hair braiding to be part of cosmetology is not
11 reasonable. It's not rational. And like I said,
12 that's the easiest standard for a State to pass.
13 So without question I can't sit here today and tell
14 you that we should leave it the way it is. We
15 can't do that. The question is, what can we do?

16 **(DISCUSSION)**

17 **CHAIRPERSON TRISH ANDERSON:** So at this time
18 we're going to move forward and we're not tabling
19 this at all. We're going to move forward to Kelly
20 has an update for us please.

21 **MS. KERSEY:** Well, we have a new inspector.
22 She's been in the southeastern part of the State.
23 I guess what is that, three (3) weeks? Four (4)
24 weeks? It's been three (3) weeks. So welcome her.
25 We actually had another one (1) resign for the

1 north central part of the State. And Kim and I did
2 interviews, a week, two (2) weeks whatever ago and
3 we put that hire packet in, but I can't say who
4 that is until it goes through.

5 (DISCUSSION ABOUT CONFERENCE)

6 MS. KERSEY: The last thing I have is that
7 our - I know this is another broken record with us,
8 is our inspection piece. And it is supposed to be
9 ready for office testing within two (2) weeks.
10 That's just for the - that's not the laptop piece.
11 It's supposed to be about four (4) more weeks out.
12 So we are seeing the light at the end of the tunnel
13 with that. We hope. So everything seems to be
14 lining up. So we'll see. We're hopeful by summer
15 that we will have that.

16 (DISCUSSION)

17 (PUBLIC COMMENTS)

18 THEREUPON,

19 And there being no further questions, the Witness was
20 excused and the taking of the Meeting ended at 2:10 p.m.,
21 Monday, March 17, 2014.

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C E R T I F I C A T E

STATE OF ARKANSAS)

COUNTY OF PULASKI)

I, Linda Parker, a Certified Court Reporter before whom the foregoing testimony was taken, do hereby certify that the witnesses were duly sworn by me; that the testimony of said witnesses were taken by me and was thereafter reduced to typewritten form under my supervision; that the meeting is a true and correct record of the testimony given by said witnesses, to the best of my understanding and ability; that I am neither counsel for, related to, nor employed by the parties to the action in which this meeting was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the outcome of this action.

I further certify that in accordance with Rule 30(e) of the Rules of Civil Procedure review of the transcript was not requested.

I further certify that I have no contact with any parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties in the action.

WITNESS, MY HAND AND SEAL, THIS DATE: _____ day of _____, 2014.

LINDA PARKER

Certified Court Reporter #198