

**STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS FOR OPTICIANS**

La Lunetterie, LLC

Petition No. 2007-0207-057-001

MEMORANDUM OF DECISION

Procedural Background

The Connecticut Department of Public Health (“the Department”) presented the Connecticut Board of Examiners for Opticians (“the Board”) with a Statement of Charges (“the Charges”) brought against La Lunetterie, LLC (“respondent”) dated June 13, 2007. Dept. Exh. 1. On June 13, 2007, the Department requested that the Board issue a Summary Suspension Order (“the Order”) against respondent’s optical selling permit. Dept. Exh. 1.

On June 13, 2007, the Board granted the motion and summarily suspended respondent’s optical selling permit to operate an optical shop in Connecticut, pending a final determination by the Board regarding the allegations contained in the Charges. Dept. Exh. 1. The hearing was scheduled for June 27, 2007. Dept. Exh. 1.

The Charges, Order, and Notice of Hearing were served in-hand to Michael Baker at respondent’s business address by a Connecticut State Marshall on June 15, 2007. Dept. Exhs. 2, 5. Michael Baker is the respondent’s registered agent and is its sole member. Dept. Exh. 3.

An administrative hearing was held on June 27, 2007. Although the Department made actual service on respondent, respondent neither appeared nor was represented at the hearing. Dept. Exh. 2, Tr. p. 5. Attorney Joelle Newton represented the Department. Tr. p. 2.

At the hearing, the Department moved to deem the allegations admitted. Tr. pp. 3, 8. The Board denied the motion to deem the allegations admitted. Tr. p. 9.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act) and §§ 19a-9-1, *et seq.* of the Regulations of Connecticut State Agencies (“the Regulations”). All Board members involved in this decision received copies of the entire record. All Board members involved in this decision attest that they have heard the case or read the record in its entirety. This decision is based

entirely on the record. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn 1985).

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent is and has been at all times referenced in the Charges an optical shop that was issued optical selling permit number 001670.
2. In paragraph 2 of the Charges, the Department alleges that from November 2006 until the present, respondent has been operating without the personal and direct supervision of a licensed optician, in violation of Connecticut General Statutes §§20-151 and/or 20-153.
3. In paragraph 3 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to Connecticut General Statute §20-154.

Findings of Fact

1. The Department provided respondent actual notice of the hearing in this matter. The Notice of Hearing, Charges, and Order were delivered in-hand to respondent's agent at the respondent's business address by a Connecticut State Marshal on June 15, 2007. Dept. Exh. 2. Respondent's principal owner, Michael Baker, admitted to Gary Griffin on June 21, 2007 to having been served these documents in-hand by a Connecticut State Marshal. Tr. p. 34.
2. Respondent was issued optical selling permit number 001670 and such permit was current at all times referenced in the Charges. Dept. Exh. 3, Tr. p. 36.
3. Respondent did not file an Answer to the allegations contained in the Charges.
4. Respondent applied for an optical shop permit on Jan 19, 2005 that identified Rolf Solfrian as the licensed optician in charge of the optical department. Dept. Exh. 3 Tab B; Tr. p. 16.
5. Karen Wilson, Health Program Associate for the Department, testified to viewing respondent's optical shop permit, number 001670, during an unannounced spot check on February 6, 2006. Tr. p. 22. Gary Griffin, Investigations Supervisor for the Department, also observed the permit, displayed in a conspicuous location at respondent's address with Rolf Solfrian's name on the permit as licensed optician of record, during an unannounced inspection on February 5, 2007 and again on June 21, 2007. Dept. Exhs. 4 and 5; Tr. pp. 30, 35-36.
6. Respondent's principal owner, Michael Baker, admitted to Karen Wilson on February 6, 2006, during an unannounced inspection, that opticianry services are, at times, provided

to customers during business hours when the licensed optician of record is not on the premises. Dept. Exh. 4; Tr. p. 18.

7. Rolf Solfrian indicated in a letter dated February 5, 2007 that his employment as a licensed optician at respondent's address ended on December 1, 2006. Dept. Exh. 3, Tab C.
8. In February of 2006, respondent admitted to Karen Wilson that respondent was operating an optical shop without a licensed optician on the premises since the departure of Rolf Solfrian approximately around November 2006. Tr. pp. 17-20. In June of 2007, respondent admitted to Gary Griffin that at no time subsequent to Mr. Solfrian's departure on December 1, 2006, was a licensed optician employed by respondent. Resp. Exh. 4, Tr. pp. 32-39. During Gary Griffin's visit in June of 2007, respondent also admitted that he was performing the activities of an optician without a licensed optician on the premises. Id.
9. On June 13, 2007, the Board issued a Summary Suspension Order, suspending the respondent's optical shop permit. Dept. Exh. 1.
10. On June 15, 2007, the Order was served in-hand by a Connecticut State Marshal to the respondent's principal owner and member, Michael Baker, at the respondent's address. Dept. Exh. 2.
11. On June 21, 2007, an unannounced inspection found respondent open for business and under the operation of Michael Baker who does not hold a Connecticut optician's license. Dept. Exh. 5. At this time, Mr. Baker also acknowledged that a State Marshal had previously served him with the Order. Dept. Exh. 5; Tr. p. 34.
12. The Board finds the testimony of Karen Wilson and Gary Griffin to be credible and persuasive.

Discussion and Conclusions of Law

The Board finds that the Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Commissioner of Public Health*, Docket No. 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995, (Hodgson, J.).

Based upon a review of all the evidence in the record, including all of the documentary evidence and the credible testimony of Karen Wilson and Gary Griffin, the Board finds that the Department clearly sustained its burden of proof with regard to all of the allegations in the Charges. The Board finds that respondent's practice as an optical shop operating without a

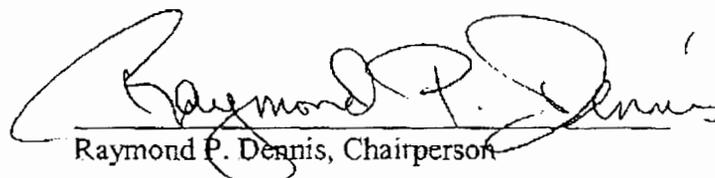
Connecticut licensed optician on the premises is in violation of Conn. Gen. Stat. §§ 20-151 and 20-153, and that such practice presents a threat to the public health and safety. In addition, the Board finds that respondent's conduct as described above constitutes fraudulent, dishonest, illegal, incompetent or negligent conduct in its business.

Order

Pursuant to the authority vested in it by Conn. Gen. Stat. §§ 20-154 and 19a-17, the respondent's optical shop permit is hereby REVOKED.

Connecticut Board of Examiners for Opticians

July 9, 2007


Raymond P. Dennis, Chairperson

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 9th day of July 2007, by certified mail, return receipt requested and first class mail, to:

La Lunetterie Optical Shop, LLC
c/o Michael Baker
71 Lewis Street
Greenwich, CT 06830

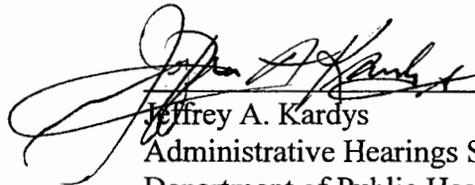
Certified Mail RRR #9171082133393205513943

Michael Baker
17A Harold Avenue
Greenwich, CT 06830

Certified Mail RRR #9171082133393205513950

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office