

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

CUONG TRAN,

Appellant,

vs.

OHIO STATE BOARD OF
COSMETOLOGY,

Appellee.

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Case No. 14CVF12-12596

JUDGE FAIS

**DECISION AND ENTRY GRANTING APPELLEE,
OHIO STATE BOARD OF COSMETOLOGY’S MOTION TO DISMISS FOR
LACK OF SUBJECT-MATTER JURISDICTION,
FILED JANUARY 12, 2015**

This matter is before the Court upon the Motion to Dismiss for Lack of Subject-Matter Jurisdiction, filed by Appellee, Ohio State Board of Cosmetology (hereinafter “Appellee Board”), on January 12, 2015. No Memorandum Contra has been filed.

I. Background

On December 4, 2013, in response to a complaint, Appellee Board investigated Appellant’s salon, World Salon. Certified Record, Ex. H at 207-208. Appellee Board contends that this investigation uncovered numerous sanitation violations, with many of these sanitation violations being repeated offenses. *Id.* at 200-207. As a result, Appellee Board issued a Notice of Violation to Appellant, informing him of the various sanitation violations against his salon, and his right to request a hearing regarding the charges. Certified Record, Ex. O. Thereafter, Appellant requested a hearing, which was held on September 26, 2014 in accordance with R.C. 119. Certified Record, Ex. F and G. The hearing examiner issued a Report and Recommendation on October 6, 2014. Certified Record, Ex. F. Appellant then filed a letter with Appellee Board asking for a reduced

penalty. Certified Record, Ex. E. Appellee Board contends that it treated the letter as an objection to the Report and Recommendation, and considered it when it issued its Order on November 20, 2014. Certified Record, Ex. E and C. Appellee Board further contends that under the authority of R.C. 4713.64, it assessed a civil penalty of \$3,800 against Appellant, and issued a 30-day suspension of World Salon. Certified Record, Ex. C. Appellee Board further contends that its Order contained a statement of appeal rights, as required by R.C. 119.12, and informed Appellant that a notice of appeal must be filed with both the Court and the Board. *Id.*

On December 3, 2014, Appellant filed a Notice of Appeal with this Court. However, Appellee Board contends that Appellant failed to file a Notice of Appeal with Appellee Board. Certified Record, Index to Record of Proceedings.

On January 12, 2015, Appellee Board filed the Motion to Dismiss for Lack of Subject-Matter Jurisdiction, which is now before the Court.

II. Discussion

Appellee Board contends that because Appellant has failed to comply with the requirements of R.C. 119.12, this Court lacks jurisdiction and should dismiss Appellant's Appeal. Specifically, Appellee Board contends that Appellant's Notice of Appeal fails to allege that Appellee Board's order was "not supported by reliable, probative, and substantial evidence and is not in accordance with law", as required by R.C. 119.12. In addition, Appellee Board contends that Appellant failed to file a copy of their Notice of Appeal with Appellee Board. R.C. 119.12, states in pertinent part:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The

notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. *The notice of appeal shall also be filed by the appellant with the court.* In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. [Emphasis provided.]

In addition, in *Foreman v. Lucas County Court of Common Pleas*, 2010-Ohio-4731, ¶15, 189 Ohio App. 3d 678, 685, 939 N.E.2d 1302, 1307, 2010 Ohio App. LEXIS 3995, 10 (Ohio Ct. App., Franklin County 2010), the Tenth District Court of Appeals stated:

The amended statute [R.C. 119.12] requires an appellant's notice of appeal to, at least, state "that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law," even while eliminating the requirement of any specificity "beyond [that] statement."

Foreman, 2010-Ohio-4731, at ¶15.

Furthermore, in a similar case, the Franklin County Court of Appeals also stated:

This court has previously held that the requirement that the notice of appeal be filed with the agency and a copy with the court is mandatory and jurisdictional. *Carnes, supra*. See, also, *Harrison v. State Med. Bd. of Ohio* (June 15, 1995), Franklin App. No. 94APE10-1457, unreported (on motion for reconsideration); *In re Namey* (1995), 103 Ohio App.3d 322, 659 N.E.2d 372, discretionary appeal not allowed (1995), 74 Ohio St.3d 1408, 655 N.E.2d 187.

Smith v. Ohio DOC (Aug. 21, 2001), Franklin Cty. App. No. 00AP-1342, 2001 Ohio App. LEXIS 3660. See also, *Hughes v. Ohio DOC*, 2007-Ohio-2877, ¶¶ 17-18.

Therefore, pursuant to *Foreman*, *Smith*, and *Hughes, supra*, the Court finds that because Appellant failed to include the required statutory language, and also failed to file

his Notice of Appeal with Appellee Board, Appellant's Notice of Appeal was not filed in compliance with R.C. 119.12. As such, this Court lacks jurisdiction over Appellant's appeal, and the Court accordingly hereby **GRANTS** Appellee Board's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

IT IS SO ORDERED.

Copies to:

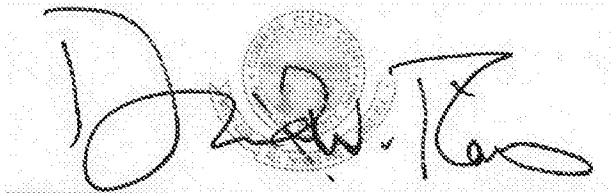
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Franklin County Court of Common Pleas

Date: 02-06-2015
Case Title: CUONG TRAN -VS- OHIO STATE BOARD COSMETOLOGY
Case Number: 14CV012596
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'D. W. Fais', is written over a circular embossed seal. The signature is fluid and cursive.

/s/ Judge David W. Fais

Court Disposition

Case Number: 14CV012596

Case Style: CUONG TRAN -VS- OHIO STATE BOARD
COSMETOLOGY

Case Terminated: 08 - Dismissal with/without prejudice

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0125962015-01-1299980000
Document Title: 01-12-2015-MOTION TO DISMISS
Disposition: MOTION GRANTED