

In the Administrative Matter of the Appeal of the Denial of the Business License of
My Tyme Barber Shop
5658 Paramount Blvd.
Long Beach, California 90808

Case No. BU 20419231

PROPOSED DECISION

On February 7, 2006, Hearing Officer Taylor Schneider, heard this matter in Long Beach, California.

Cristyl Meyers, Deputy City Attorney, represented the City of Long Beach (hereinafter the City).

Gino James Fleming represented himself and My Tyme Barber Shop.

The City introduced Exhibits 1 through 10, which were admitted into evidence. Mr. Fleming introduced no exhibits.

The matter was argued and submitted on February 6, 2006.

FACTUAL FINDINGS

1. On November 4, 1999, Edward J. Howell applied for an establishment license with the Board of Barbering and Cosmetology, State of California. City Exhibit No. 7.

2. On November 14, 2002, Gino Antonio Fleming applied for a business license with the City of Long Beach. City Exhibit No. 6.

3. In his application, Mr. Gino Antonio Fleming does not refer to any California State license. City Exhibit No. 6.

4. On April 22, 2004, Mr. Gino James Fleming (hereinafter Mr. Fleming) applied for a business license with the City of Long Beach. City Exhibit No. 5; testimony of Mr. Fleming, Ms. Montoya.

5. In his application for a business license, Mr. Fleming stated under penalty of perjury that his business had a California State license (Number 207382). In

fact, Mr. Fleming did not have a California State license at any time up to and including the date of the hearing. Exhibit No. 5; testimony of Mr. Fleming, Ms. Montoya.

6. In his application, Mr. Fleming acknowledged receiving a copy of "Operating a Business in Long Beach", and that his establishment must comply completely or be in violation of LBMC 3.80.421.5. City Exhibit No. 5.

7. On May 1, 2004, Mr. Fleming acquired 100% ownership of My Tyme Barbershop. City Exhibit No. 5; testimony of Mr. Fleming.

8. On March 19, 2005, officers from the Long Beach Police Department conducted an undercover operation at My Tyme Barber, 5658 Paramount Blvd., Long Beach, California, after receiving complaints that subjects in the barber shop were selling drugs out of the location. Long Beach Police Department Incident Information Report and supplemental Report, 05-22992, City Exhibit No. 1; testimony of O. Valenzuela, T. Hubert, S. Irving.

9. On March 19, 2005, Officer Hubert observed the undercover informant buying marijuana from a man named Henderson, who appeared to retrieve the marijuana from inside the My Tyme barber shop. Long Beach Police Department Incident Information Report and Supplemental Report 05-22992, City Exhibit No. 1; testimony of T. Hubert, O. Valenzuela.

10. On March 19, 2006, Mr. Baldwin and Mr. Henderson were placed under arrest for selling marijuana. Long Beach Police Department Incident Information Report and Supplemental Report 05-22992, City Exhibit No. 1; testimony of T. Hubert, O. Valenzuela.

11. On March 31, 2005, Long Beach Police Officers Richardson and Hubert served a search warrant at My Tyme Barber, 5658 Paramount Blvd., Long Beach, California. Long Beach Police Department Incident Information Report 05-26433, City Exhibit No. 2; testimony of T. Hubert.

12. On March 31, 2005, Mr. Fleming told Officer Hubert that he was the owner of the barbershop. Long Beach Police Department Incident Information Report 05-26433, City Exhibit No. 2; testimony of T. Hubert.

13. On March 31, 2005, Officer Hubert saw business being conducted but saw no license displayed. Mr. Fleming told Officer Hubert that he did not have a current business license on display inside his business. Long Beach Police

Department Incident Information Report 05-26433, City Exhibit No. 2; testimony of T. Hubert.

14. On March 31, 2005, Mr. Fleming told Long Beach Police Officer Robertson that a backpack found inside an automobile, and later found to contain marijuana, belonged to him. Long Beach Police Department Incident Information Report 05-26433, City Exhibit No. 2; testimony of T. Hubert.

15. On March 31, 2005, Mr. Fleming and Mr. English were arrested for violations of Health and Safety Code §11359 (possession of marijuana for sale), LBMC §§ 3.80.210 (no business license), and 5.04.120 (no license displayed). Long Beach Police Department Incident Information Report 05-26433, City Exhibit No. 2; testimony of T. Hubert, Mr. Fleming.

16. On May 3, 2005, Anthony W. Batts, Chief of Police wrote a memo to Michael A. Killebrew, Director of Financial Management, requesting that the application for a business license for My Tyme Barbershop be denied, due to criminal activity, and failure to have or post a business license. City Exhibit No. 8; testimony of Ms. Montoya.

17. On May 26, 2005, Long Beach Police Officers Urbina and Irving conducted a business check on My Tyme Barbershop. Andre Michael Joseph admitted to cutting hair without a business permit. At that time, they cited Andre Michael Joseph under LBMC 5.04.120 (no business license displayed), and LBMC 3.80.425.1 (no business license). Long Beach Police Department Incident Information Report 05-43286, City Exhibit No. 4; testimony of S. Irving.

18. On May 28, 2005, Long Beach Police Officers Urbina and Irving conducted a business check at My Tyme Barbershop, 5658 Paramount Blvd., Long Beach, California. Officer Irving observed two people cutting hair. Long Beach Police Department Incident Information Report 05-43830, City Exhibit No. 3; testimony of S. Irving.

19. On May 28, 2005, My Tyme Barbershop was open, did not have a business permit, and the barber on duty did not have a permit. Long Beach Police Department Incident Information Report 05-43830, City Exhibit No. 3; testimony of S. Irving.

20. On May 28, 2005, Andre Michael Joseph was cited at My Tyme Barbershop, for operating without a business permit. Long Beach Police

Department Incident Information Report 05-43830, City Exhibit No. 3; testimony of S. Irving.

21. On May 28, 2005, the following citations were issued at My Tyme Barber: Gino Fleming, LBMC 3.80.210 (no business license); and LBMC 3.80.425.5 (no business license posted); Andre Michael Joseph, LBMC 3.80.210 (no business license), and LBMC 3.80.425.5 (no business license posted); Lamar Deshun Rotan, LBMC 3.80.210 (no business license or permit), and LBMC 3.80.425.5 (no business license posted). Long Beach Police Department Incident Information Report 05-43830, City Exhibit No. 3; testimony of S. Irving.

22. On May 28, 2005, Mr. Fleming said that he was aware that his business was not licensed and that the barbers working there did not have permits. Long Beach Police Department Incident Information Report 05-43830, City Exhibit No. 3; testimony of S. Irving.

23. On June 23, 2005, the City of Long Beach Department of Financial Management informed Mr. Fleming by mail that his application to operate a barbershop business was denied pursuant to LBMC 3.80.421.5. City Exhibit No. 9.

24. On September 20, 2005, the City of Long Beach, Department of Financial Management wrote to Mr. Fleming, affirming the denial of his business license application, but providing ten days from September 20, 2005, within which Mr. Fleming could request an appeal. City Exhibit No. 9.

25. On September 20, 2005, Mr. Fleming wrote to the City of Long Beach requesting an appeal of the denial of a business license. City Exhibit No. 10.

26. On October 18, 2005, Michael A. Killebrew recommended to the Mayor and City Council that the appeal of the denial of a business license to My Tyme Barber shop be referred to a hearing officer. City Exhibit No. 10.

27. As of January 2006, The Board of Barbering and Cosmetology issued no license of any type to Lamar D. Rotan, David Boston, John H. English, Andre M. Joseph, or Mr. Fleming. City Exhibit No. 7.

28. My Tyme has no current license and no license was ever issued to Mr. Fleming. City Exhibit No. 7; testimony of Ms. Montoya.

29. My Tyme has no current City or State license. City Exhibit No. 7; testimony of Mr. Fleming, Ms. Montoya.

30. Between April 22, 2004 and September 20, 2005, Mr. Fleming operated My Tyme Barber Shop without a City license. Testimony of Montoya.

SUMMARY OF RELEVANT EVIDENCE

Mr. Gino James Fleming submitted an application for a license with the City of Long Beach on February 22, 2004, for My Tyme Barber Shop (hereinafter "My Tyme"). He had been previously running the business with his father, Gino A. Fleming, who had originally purchased the business from a Mr. Edward J. Howell. Mr. Howell had a state license.

In his application (City Exhibit 5), Mr. Gino James Fleming stated that he had a California State license. This was a false statement. Mr. Fleming testified that he wrote Mr. Howell's license in that space, believing he had purchased the license together with the business.

As a result of complaints of illegal drug activities at the premises of My Tyme, Long Beach Police Officers Valenzuela, Hubert, and Irving testified as to the undercover investigations conducted by the Long Beach Police Department on two occasions. Persons including Mr. Fleming were arrested for possession of marijuana for sale. The Long Beach Police Department further found that no barber at My Tyme had a state license; that no City business license was displayed for My Tyme; and that My Tyme had no State business license.

Ms. Jeanine Montoya (Supervisor of the Business License Section of the City of Long Beach) testified that submitting an application for a business license does not entitle someone to operate the business; that My Tyme had no current license, and no license was ever issued to My Tyme; and that failure to pay arrears on a prior license would be grounds to reject the application.

She further testified that the State of California requires every establishment to have an establishment license, and that individual barbers were required to have state licenses as well. My Tyme had no City or State license; and Mr. Fleming had no individual barber's license.

Ms. Montoya further testified that a change of ownership such as occurred in April of 2004, requires a new business license and the prior license ceased to exist. The prior license expired in November of 2003. She also testified that a valid state license is a prerequisite to issuance of a City license. Thus, since My Tyme did not have a valid state license, they would not be able to qualify for a City License.

It was Ms. Montoya's opinion that the license should not be granted, because the information on the Application was incorrect, and My Tyme did not have a valid State license.

On June 23, 2005, the Director of Financial Management of the City of Long Beach denied the application pursuant to LBMC 3.80.421.5.

In this appeal, Mr. Fleming argued that the accusations in the various police reports were untrue; that no drugs were found inside My Tyme; that no drugs belonged to Mr. Fleming; and that no charges were actually filed as a result of any arrest. He also argued that he was being harassed as a young black man running a young black business, and that his business was treated differently than other businesses in the area¹.

Mr. Fleming further testified that he had personally seen the licenses of David Boston, Andre Michael Joseph and Lamar Deshun Rotan many times.

Mr. Fleming admitted that My Tyme was opened and doing business without a valid city license before the instant appeal was filed in September of 2005, but testified that he was working with a Ms. Jamie Morris in the Business License Section, to acquire a valid license and that she had assured him that he would not be cited for operating the business without a license in the interim. He testified that he had been in and out of the hospital for about a year and that My Tyme was being run by others.

Mr. Fleming testified that did not know that he needed a new license and could not use the prior license of Mr. Howell; that he did not understand the procedures; and that he had made some mistakes regarding the license and the paperwork. Mr. Fleming testified that he was making payments to the City for the prior license which was delinquent. According to Ms. Montoya's testimony, only one payment was made and the balance was never paid².

¹ Mr. Fleming was unable to offer any evidence as to harassment or unequal treatment, other than his opinion.

² However, Ms. Montoya later testified that Mr. Fleming had paid all arrearages and owed no money to the City. Consequently, the City failed to sustain its burden that the application should be denied for failure to pay delinquencies.

Mr. Fleming introduced no documentary evidence and no witnesses other than himself. Other than his testimony, he offered no evidence that the State license had been issued, or that the barbers he employed were licensed.

STATEMENT OF ISSUES

The issue was whether the City of Long Beach was correct in denying the application of My Tyme Barber Shop for the reason that the business proposed to be conducted will not comply with applicable laws and ordinances.

ANALYSIS

Long Beach Municipal Code §3.80.421.5 provides that the director of financial management "shall not issue" a license where the business or location at which the business is proposed will not comply with applicable laws and ordinances.

Mr. Fleming admitted being the sole owner of the My Tyme Barber Shop since May 1, 2004, and co-owning the shop with his father from November of 2002, to May 1, 2004. Findings of Fact 2, 4 and 7. Mr. Fleming applied for a license in his own name (Findings of Fact 4), and acknowledged that he had received a copy of "Operating a Business in Long Beach", and that his establishment must comply with completely or be in violation of LBMC 3.80.421.5 (Finding of Fact 6).

1. The City of Long Beach proved, by a preponderance of the evidence, that My Tyme Barber Shop was a location of criminal activity. Findings of Fact Nos. 8-16.

Three Police Officers testified that complaints were received that drugs were being sold out of My Tyme Barber Shop, and an undercover operation resulted in two arrests for possession of marijuana for sale. One of the men arrested was Mr. Fleming. Mr. Fleming did not deny the arrests. He claimed that no marijuana was found inside the barber shop; that no charges were filed as a result of the arrests; and that he was being harassed because he was a young black man trying to start a young black business. Mr. Fleming offered no proof of the harassment (other than his own speculation), and no witnesses testified on his behalf as to this point.

2. The City of Long Beach proved by a preponderance of the evidence that My Tyme Barber Shop was transacting business without a license, in violation of LBMC 3.80.210, from April 2003 to September 20, 2005. Findings of Fact Nos.

13, 15-19, 21-22, 28-29, and 30.

Mr. Fleming admitted that My Tyme Barber Shop was operating from May 1, 2004, to September 20, 2005, without a license from the city of Long Beach. Ms. Montoya testified that submitting an application for a business license does not entitle someone to operate the business; and that My Tyme had no current license.

3. The City of Long Beach proved by a preponderance of the evidence that Mr. Fleming never had a California State license, in violation of Business & Professions Code §7347. Findings of Fact Nos. 5, 6, 13, 15, 16, 17, 19, 21, 22 and 29.

Mr. Fleming's testimony that he thought he could use the State license of the prior owner of the barbershop was not credible. Further, Mr. Fleming first testified that he had obtained a State establishment license and, upon further questioning, admitted that he was only in the process of obtaining a State establishment license. He was unable to produce any paperwork or other evidence that he had applied for a State license.

4. The City of Long Beach proved by a preponderance of the evidence that the barbers working in My Tyme Barber Shop were not licensed, in violation of Business & Professions Code §7317, 7396, 7397. Findings of Fact Nos. 17-22, and 27.

Mr. Fleming's testimony that he had personally seen the state licenses of David Boston, Andre Michael Joseph, and Lamar Deshun Rotan was not credible in the face of Exhibit 7, attesting that no licenses had ever been issued to these persons.

5. The City of Long Beach proved by a preponderance of the evidence that My Tyme Barber Shop failed to display a license as required by LBMC 3.80.425.5A and C, and 5.104.120. Findings of Fact Nos. 13, 15, 17-19, 21-22, and 28-30.

Mr. Fleming admitted that My Tyme Barber Shop was operating from May 1, 2004, to September 20, 2005, without a license from the city of Long Beach.

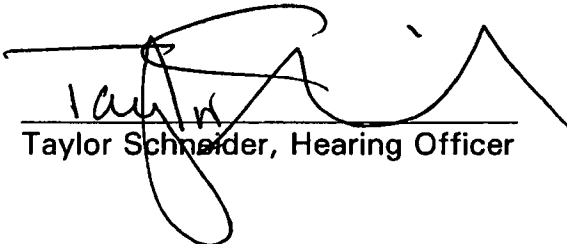
6. The City of Long Beach proved by a preponderance of the evidence that Mr. Fleming misrepresented information on his application for a license. Findings of Fact Nos. 4, 5, and 29.

The application falsely stated that My Tyme Barber Shop had a California State license. Mr. Fleming admitted that he did not have a California state license. Ms. Montoya testified that a State license is a prerequisite for a City license, and that no City license would issue unless and until a California State license was obtained. She also testified that providing false information on an application was grounds for rejecting an application.

RECOMMENDED DECISION

For the reasons set forth above, it is recommended that the denial of the issuance of a business license to My Tyme Barbershop be upheld.

Dated: February 13, 2006


Taylor Schneider, Hearing Officer