



minnesota department of health

717 s.e. delaware st.

p.o. box 9441

minneapolis 55440

(612) 623-5000

HDC - 93533
Eff. 01-22-1994

May 31, 1991

Ms. Barbara Betz
[REDACTED]

RE: In the Matter of Barbara Betz, Hearing Instrument Seller.

Dear Ms. Betz:

Enclosed please find an original of the Stipulation and Consent Order signed by the Acting Commissioner of Health on May 29, 1991. As stated in the Stipulation itself, all of its terms are effective on the date you receive it.

You agreed to the following terms and conditions in the Stipulation:

1. You admitted the facts as presented in paragraph two of the Stipulation;
2. You agreed to pay a \$1300 refund to J.C. within 120 days of the date you receive this Stipulation;
3. You agreed to provide the balance number of hearing aid batteries to B.L. (8 packages), R.V.L. (6 packages), M.W. (ten packages), V.K. (ten packages), I.B. (8 packages), and E.T. (ten packages) within 60 days of the date you receive this Stipulation. If you do not provide all the batteries, you agreed to provide proportionate refunds to the consumers within 60 days of the date you receive this Stipulation. See paragraph 8, item b on page 6 for the proportionate refund amounts;
4. You agreed to pay a civil penalty of \$378 to the Department of Health for costs incurred in investigation. The civil penalty must be mailed to the Department within 90 days of the date the Stipulation is received by you. You may make the check or money order payable to the State of Minnesota and mail it to: Hearing Instrument Sales Analyst, Health Occupations Program, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, Minnesota 55440;
5. You agreed to provide the Department with the names and addresses of every Audio Hearing of MN, Inc. consumer who was a member of the battery club from January of 1989 to the date Audio Hearing of MN, Inc. ceased to do business. You agreed to provide the Department with the number of batteries promised to the consumers, the amount paid by the consumers, and the number of batteries actually delivered to each consumer. This list shall be mailed to the Department within 60 days of the date the Stipulation is received by you. You should mail the list to: Hearing Instrument Sales Analyst, Health Occupations Program, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. Box 9441,

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Minneapolis, Minnesota, 55440;

6. You agreed to comply with Minnesota Statutes, §§145.43 and 153A.15; and
7. You agreed that if you failed to comply with the terms, conditions and requirements of the Stipulation, the Commissioner may suspend your permit without a hearing or right to judicial review until you successfully complete the requirements or for two months whichever is longer.

If you have any questions, you may write me at the above address.

Sincerely yours,



Tom Hiendlmayr, Director
Health Occupations Program

Enclosure

cc: Richard Wexler, Assistant Attorney General
Susan Winkelmann, Hearing Instrument Sales Analyst

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Barbara Betz,
Hearing Instrument Seller

STIPULATION
AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Barbara Betz, (hereinafter "Permittee"), and the Minnesota Department of Health (hereinafter "Department"), and that without trial or adjudication of any issue of fact or law herein and without any evidence or admission by any party with respect to any issue:

1. During all times herein, Permittee has been and is subject to the jurisdiction of the Commissioner of Health from whom she holds a permit to sell hearing instruments in the State of Minnesota;

2. For purposes of this Stipulation and Consent Order only, both parties agree that the following shall constitute the factual basis for the order:

a. Permittee has a valid hearing instrument seller permit issued by the Commissioner of Health pursuant to Minn. Stat. Ch. 153A. She was the owner and operator and hearing instrument seller at Audio Hearing of MN, Inc., 1349 South Robert Street, West St. Paul, Minnesota 55118 at the time the facts below occurred.

b. On December 20, 1989 J.C. signed a purchase agreement in which he agreed to purchase two hearing instruments from Permittee. J.C. paid Permittee \$400 on the same date, \$300 on January 25, 1990 and the balance of \$600 on February 14, 1990. Permittee delivered the aids to J.C. in March of 1990. In May of 1990, Permittee returned J.C.'s hearing instruments to the manufacturer for repair. To date, Permittee has not returned J.C.'s two hearing instruments to him. The following outlines J.C.'s and the Commissioner's attempts to obtain his two hearing instruments back from Permittee:

1) J.C. went to Permittee's office and Permittee told him that they were lost in the mail;

2) J.C. attempted to call Permittee at her office and found that the telephone had been disconnected. J.C. left messages at Permittee's home to have her telephone J.C., but Permittee did not return J.C.'s telephone calls;

3) In a letter dated January 23, 1991, Department staff notified Permittee that the Health Systems Development Division had received a complaint about her services, detailed the facts of the complaint, and requested a written response by February 6, 1991. Permittee did not respond to this inquiry;

4) In a letter dated February 8, 1991, Department staff wrote Permittee again and requested a response in writing to the Department by February 22, 1991. Permittee did not respond to this inquiry;

c. In April of 1990, D.S. sent his left hearing instrument into Permittee to be repaired. D.S. received it back in May of 1990 and sent it back to Permittee after two weeks. Permittee returned his aid to D.S. on March 22, 1991 in response to the Department's inquiries regarding this matter. The following outlines D.S.'s attempts to recover his left hearing instrument from Permittee:

1) D.S. telephoned Permittee in September of 1990 and Permittee explained that she had mailed D.S.'s aid to him. D.S. telephoned Permittee again and Permittee told him that she had found his left hearing instrument in her car when she cleaned it out. Permittee promised to mail it out to D.S. When he did not receive his hearing aid from Permittee, D.S. telephoned Permittee again and Permittee told D.S. she had not yet mailed it out to him, but that she would do so right away. D.S. did not receive his aid until six months later, after the Department contacted Permittee;

2) In a letter dated February 4, 1991, Department staff notified Permittee that the Health Systems Development Division had received a complaint about her services, detailed the facts of the complaint, and requested a written response by February 18, 1991. Permittee did not respond to this inquiry;

3) In a letter dated February 21, 1991, Department staff wrote Permittee again and requested a written response by March 6, 1991. Permittee did not respond to this inquiry;

d. B.L. signed a purchase agreement to buy two hearing instruments from Permittee on April 4, 1989. The purchase agreement states that there is a two year warranty to have them repaired. Permittee charged B.L. \$145 for the repair cost of the aids. When B.L. realized that the repair cost was covered by the two-year warranty, she had a friend telephone Permittee. Permittee responded to B.L.'s friend by promising to refund B.L. on her \$145. To date, B.L. received \$125 from Permittee. The purchase agreement B.L. signed on April 7, 1989 did not have the correct language as required in Minnesota Statutes, §145.43. Additionally, B.L. paid Permittee \$20 for ten packages of hearing instrument batteries. To date, Permittee has only delivered two packages of batteries to B.L. B.L.'s and the Commissioner of Health's attempts to recover her refund and batteries are as follows:

1) In a letter dated December 4, 1990, Department staff notified Permittee that the Health Systems Development Division had received a complaint about her services, detailed the facts of the complaint, and requested a written response by December 18, 1990. Permittee did not respond to this inquiry;

2) In a letter dated December 20, 1990, Department staff wrote Permittee again and requested a response in writing to Department staff's December 4, 1990 letter to her by January 11, 1991. On January 2, 1991,

Permittee telephoned Department staff and explained that she went out of business and had not been picking up her mail. Department staff explained that Permittee needed to respond to the Department in writing;

3) In response to the Department's contact with Permittee, Permittee telephoned B.L. on January 3, 1991 and told B.L. that she would mail the repair refund check and batteries to B.L. on January 7, 1991. Permittee did not mail B.L. the refund check nor the batteries;

4) On January 14, 1991 Department staff received the written response of Permittee. Permittee explained that she had talked to the people she owes refunds and that when she is financially able, she will fulfill all of her obligations to her clients;

5) Permittee telephoned B.L.'s daughter on January 16, 1991 and told B.L.'s daughter to expect the refund check by January 18 or 19, 1991. Permittee did not mail the refund check to B.L.;

6) On January 23, 1991 B.L.'s daughter telephoned Permittee to request the refund check and batteries. Permittee told B.L.'s daughter that Permittee would mail the check and batteries on the same day. Permittee did not mail the refund check or batteries to B.L.;

7) Permittee told B.L.'s daughter that she would mail the check and the batteries on January 28, 1991. On February 1, 1991, B.L.'s daughter called Permittee and Permittee told her that she would receive the check and batteries within a day. By February 5, 1991, B.L. had not received the check or the batteries;

8) On February 8, 1991, Permittee gave B.L. a check in the amount of \$125;

e. R.V.L. is a member of Permittee's hearing aid battery club which she offered through Audio Hearing of MN, Inc. R.V.L. paid Permittee \$20 for ten packages of batteries and he received only four packages of batteries. R.V.L.'s and the Commissioner's attempts to obtain either the remaining batteries or a refund from Permittee are as follows:

1) R.V.L. tried to telephone Permittee at her place of business, but found that her telephone line was disconnected;

2) In a letter dated January 29, 1991 to Permittee, Health Department staff notified Permittee that the Health Systems Development Division had received a complaint about her services, detailed the facts of the complaint and requested a written response by February 12, 1991. Permittee has not provided a written response to the Department;

3) In response to the January, 29, 1991 Department letter to Permittee, Permittee telephoned R.V.L. and told him that she mailed his batteries to him and that if he had not already received the batteries, he should expect the batteries soon. To date, R.V.L. has not received the remaining six packages of batteries;

4) In a letter dated February 14, 1991, Department staff again wrote Permittee and requested a response by February 28, 1991. Permittee did not respond to this inquiry;

f. M.W. is a member of a hearing aid battery club which Permittee offered through Audio Hearing of MN, Inc. On December 4, 1990 M.W. paid Permittee \$20 for ten packages of batteries. By the end of January, 1991, M.W. had not received any of the batteries. M.W.'s check to Permittee was cashed by Permittee on December 19, 1990. M.W.'s and the Commissioner's attempts to recover the batteries or a refund are as follows:

1) In a letter dated January 29, 1991 to Permittee, Health Department staff notified Permittee that the Health Systems Development Division had received a complaint about her services, detailed the facts of the complaint, and requested a written response by February 12, 1991. Permittee did not respond to this inquiry;

2) In response to the January 29, 1991 Department staff letter to Permittee, Permittee telephoned M.W. to ask whether she had received her batteries from Permittee. M.W. had not received her ten packages of batteries;

3) On February 5, 1991, M.W. received two packages out of the ten packages of batteries from Permittee;

4) In a letter dated February 14, 1991, Department staff again wrote Permittee and requested a written response by February 28, 1991;

g. V.K. is a member of a hearing aid battery club which permittee offered through Audio Hearing of MN, Inc. On October 15, 1990, V.K. paid Permittee \$20 for ten packages of batteries. On October 23, 1990, Permittee cashed V.K.'s check. To date, V.K. has not received any of her ten packages of hearing aid batteries. V.K.'s and the Commissioner's attempts to recover the batteries or a refund are as follows:

1) In a letter dated January 29, 1991 to Permittee, Health Department staff notified Permittee that the Health Systems Development Division had received a complaint about her services, detailed the facts of the complaint, and requested a written response by February 12, 1991. Permittee did not respond to this inquiry;

2) In response to the Department's letter dated January 29, 1991, Permittee wrote V.K. and enclosed two packages of the batteries out of the eight packages owed;

3) In a letter dated February 14, 1991, Department staff again wrote Permittee and requested a response by February 28, 1991. Permittee did not respond to this inquiry;

h. I.B. is a member of a hearing aid battery club which Permittee offered through Audio Hearing of MN, Inc. On July 2, 1990 I.B. paid Permittee \$20 for

ten packages of batteries. To date, I.B. has only received two packages out of the ten packages ordered. I.B. has not received the other eight packages or a refund to date;

i. E.T. is a member of a hearing aid battery club which Permittee offered through Audio Hearing of MN, Inc. On July 2, 1990 E.T. paid Permittee \$20 for ten packages of batteries. To date, E.T. has not received any of the packages of batteries or a refund;

3. For purposes of this Stipulation, Permittee expressly waives all procedures and proceedings before the Commissioner of Health to which Permittee may be entitled under the Minnesota and/or United States constitutions, statutes, rules and also waives the right to any judicial review or appeal under the Administrative Procedures Act, by writ of certiorari under Minn. Stat. §480A.06 or otherwise from the order issued by the Commissioner of Health pursuant to this stipulation;

4. Except as otherwise specified herein, this Stipulation and Order, investigative reports, and related documents shall constitute the entire record of the proceedings herein upon which this order is based and shall be filed with the Department. Any reports or other material related to this action and received after the date this Stipulation and Order is executed shall become part of the record and may be considered by the Department in future aspects of this proceeding. These items shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13. They shall not be considered a part of this Stipulation and Order and shall not, to the extent they are not already public documents, become public merely because they are referenced herein;

5. In the event the Commissioner in her discretion does not approve this settlement, or a lesser remedy than specified herein, this Stipulation and Order shall be null and void and shall not be used for any purpose by either party hereto; provided, however, that if this should occur and thereafter an administrative contested case is initiated pursuant to Minn. Stat. Ch. 14 and §153A.15, Permittee agrees she will not raise any objection on any administrative level or in any court action to the Department's proceeding and hearing the case on the basis that the Commissioner has become disqualified due to her review and consideration of this Stipulation and record. In exchange for this agreement by Permittee, the Commissioner agrees, in the event she does not approve this stipulation, to grant Permittee all legal rights and remedies available to her under the Minnesota and United States constitutions, Minnesota Statutes, and rules of the Department, except as expressly provided for in this paragraph;

6. Permittee admits and acknowledges that for the purpose of this Stipulation and Consent Order only, the facts and conduct specified in paragraph 2 above constitute violations of Minn. Stat. §§145.43, subd. 1a(b) and 153A.15, subd. 1(6) and are grounds for disciplinary action by the Commissioner. Permittee further acknowledges and admits that the Commissioner has a reasonable basis of law and fact to justify the actions specified in the order and waives any argument that no such reasonable basis exists.

7. This Stipulation shall not in any way or manner limit or affect the authority of the Commissioner to proceed against Permittee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Permittee justifying disciplinary action which occurred before or after the date of this stipulation and which is not directly related to specific facts and circumstances set forth herein;

8. Upon this Stipulation and Consent Order and all of the facts, records, and proceedings herein, and without further notice or hearings herein, Permittee does hereby consent that the Commissioner may make and enter an Order affecting Permittee's permit to sell hearing instruments in the State of Minnesota as follows:

a. Permittee agrees to provide a full refund to J.C. within 120 days of the date this Stipulation and Consent Order is fully executed and received by Permittee. Permittee agrees to refund the amount of \$1300 directly to J.C. The Permittee may make installment payments as long as all payments are received by J.C. within 120 days of the date this Stipulation and Consent Order is received by Permittee;

b. Permittee agrees to provide the balance number of hearing aid batteries owed to B.L. (8 packages), R.V.L. (6 packages), M.W. (ten packages), V.K. (ten packages), I.B. (8 packages) and E.T. (ten packages) within 60 days of the date this Stipulation and Consent Order is fully executed and received by the Permittee. If Permittee cannot provide all of the batteries owed to these consumers, Permittee agrees to provide proportionate refunds to the consumers within 60 days of the date this Stipulation and Consent Order is received by Permittee. The amounts of the proportionate refunds are: B.L. (\$16), R.V.L. (\$12), M.W. (\$20), V.K. (\$20), I.B. (\$16), and E.T. (\$20);

c. Permittee agrees to pay a civil penalty of \$378 to the Department for costs incurred in investigating the cases described in paragraph 2. Permittee agrees to provide this civil penalty within 90 days of the date the Consent Order is fully executed and received by Permittee. Permittee shall mail the civil penalty to: Hearing Instrument Sales Analyst, Minnesota Department of Health, Health Occupations Program, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, Minnesota 55440;

d. Permittee agrees to provide to the Department the names, and addresses of every Audio Hearing of MN, Inc. consumer who is a member of the battery club from January of 1989 to the date Audio Hearing of MN, Inc. ceased to do business. Permittee also agrees to provide the Department with the number of batteries promised by Permittee to each consumer, the amount paid by each consumer to Permittee, and the number of batteries delivered to each consumer by Permittee and the date on which delivery was made by Permittee. Permittee shall mail the Department the information within 60 days of the date this Stipulation and Order is fully executed and received by the Permittee. Permittee shall mail the report to: Hearing Instrument Sales Analyst, Minnesota Department of Health, Health Occupations Program, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, Minnesota 55440;

e. Permittee agrees to comply with Minnesota Statutes, §§145.43 and

153A.15;

9. If Permittee fails to comply with the terms, conditions and requirements specified in paragraph 8 above, the Commissioner may suspend Permittee's permit without a hearing or right to judicial review until she successfully completes the requirements or for two months whichever is longer. Before suspending Permittee's permit, the Department shall inform the Permittee of the violation and ask for an explanation. If the explanation is unsatisfactory as determined by the Department, then the Commissioner shall be informed of the violation and of Permittee's explanation. The Commissioner may then suspend the Permittee's permit. The Commissioner shall be the sole judge of whether Permittee violated this Stipulation and Order and of whether Permittee's permit should be suspended. The Commissioner's Order of Suspension shall not be subject to judicial review or appeal under the Administrative Act, by writ of certiorari under Minn. Stat. §480A.06 or otherwise. The Commissioner may also initiate a hearing under Minn. Stat. Ch. 14 to determine what additional disciplinary action should be taken;

10. After Permittee's permit has been suspended pursuant to paragraph 9 above, Permittee may petition the Commissioner to have the suspension lifted. The Commissioner shall grant the petition upon a clear showing by Permittee that Permittee has corrected all violations of this Stipulation and Order which were the basis for the suspension of the permit. The Commissioner may impose additional conditions upon reinstating the permit;

11. Any appropriate federal or state court shall, upon application of the Commissioner, enter an order of enforcement of any or all of the terms of this Stipulation and Consent Order;

12. Permittee hereby acknowledges that she has read, understood, and agreed to this Stipulation and Order and has freely and voluntarily signed it. In signing this Stipulation and Order, Permittee acknowledges that she is fully aware that it must be approved by the Commissioner. The Commissioner may either approve the Stipulation and Order as proposed, approve it subject to specified changes or reject it. If the Commissioner approves the stipulation or makes a change acceptable to Permittee, the Commissioner will issue the Order and the Stipulation will take effect. If the changes are unacceptable to Permittee or the Commissioner rejects the Stipulation and Order, it will be of no effect, except as specified in paragraph 5 above;

13. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this stipulation;

14. Upon this Stipulation and Order and all other evidence made available to the Commissioner, the Commissioner may at any time after she has approved this Stipulation and Consent Order issue it to Permittee without further notice. Copies of the Stipulation and Consent Order when issued by the Commissioner shall be served by first class mail on Permittee and/or Permittee's legal counsel, which service will be considered personal service upon Permittee. This Stipulation and Consent Order is effective upon service.

Dated: 5-22, 1991

Barbara J. Betz
Barbara Betz, Permittee

Dated: _____, 1991

Legal Counsel for the Permittee
(If applicable)

Dated: 5/28, 1991

Tom Hiendlmayr
Tom Hiendlmayr, Director
Health Occupations Program
Minnesota Department of Health

Upon consideration of this stipulation and all the files, records and proceedings herein by the Commissioner,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Commissioner this 29 day of May, 1991.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

Mary Jo O'Brien
MARY JO O'BRIEN
Acting Commissioner