

BEFORE THE BOARD OF OUTFITTERS  
STATE OF MONTANA

IN THE MATTER OF CASE NOS. 2013-OUT-LIC-1417 AND  
2013-OUT-LIC-1553 REGARDING:

THE PROPOSED DISCIPLINARY ) Case Nos. 1498-2014 and 1499-2014  
TREATMENT OF THE LICENSE OF )  
LEONARD HOWELLS, )  
Outfitter, License No. 3144. )  
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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

In this matter, the Business Standards Division of the Department of Labor and Industry alleged that Leonard Howells violated professional standards of conduct contained in Mont. Code Ann. § 37-1-316(5) (providing a misleading, deceptive, false or fraudulent advertisement or other representation in the conduct of the profession or occupation), Mont. Code Ann. § 37-47-301(5) (willfully and substantially misrepresenting facilities, prices, equipment, services, or hunting or fishing opportunities), and Admin. R. Mont. 24.171.2301(f) (charging a fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license).

Hearing Officer Gregory L. Hanchett conducted a contested case hearing in this matter on June 26, 2014. Mark Jette, agency legal counsel, represented the Department. The Licensee, though having proper notice of the time and date for hearing,<sup>1</sup> failed without cause to appear. Accordingly, the hearing proceeded in his absence.

BSD's Exhibits 1 through 3 were admitted into evidence. Based on the evidence submitted, the hearing officer finds that Howells has violated professional standards and recommends to the Board of Outfitters that sanctions should be

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<sup>1</sup>The licensee appeared at the scheduling conference in this matter and was made aware of and agreed with the time and date set for hearing. He was also provided notice of the hearing date in the scheduling order that was sent via United States Mail to the parties on March 28, 2014.

imposed against his license. The factual basis and legal rationale for this recommendation is set forth below.

## II. FINDINGS OF FACT

1. Jeff Butler and Keith Groshong filed complaints against the Licensee with the Montana Board of Outfitters in October 2013. Their complaints arose out of the facts that follow.

2. To celebrate Butler's birthday and complete one of the items on their "bucket list," Butler and Groshong incurred substantial costs in traveling several thousand miles from Missouri (Butler) and Kansas (Groshong) to Libby, Montana, for what they thought was going to be the "hunt of a life-time" for big game deep in the Rocky Mountains of Montana. They saved their money, used vacation days, and forfeited pay for their time away from work. They were eager with anticipation, and planned their adventure meticulously.

3. For months, Butler and Groshong looked for just the right opportunity. At a Safari Club International (SCI) banquet in Kansas City, Missouri, they thought they saw exactly what they were looking for: the "hunt of a lifetime" for elk in Montana guided by Licensee. The "SATURDAY LIVE AUCTION" flyer said:

Description Seven day hunt for 2 hunters in NW Montana, Region 1, Hunting districts 104 and 104. Choose archery hunting: elk, deer, bear, moose (if drawn), fishing and birds or choose rifle hunting: elk, deer, moose (if drawn). Deer is whitetail or mule deer. Archery hunt is from September to mid-October. Rifle hunt is from late October to November. No license permits or trophy fees are included. Elk and deer application date is March 15th; bear application date is August 31st; moose is May 1st. If driving, arrive at the ranch. If flying, arrive at Glacier International Airport. Stay in bunkhouse or cabin during the hunt. Hunt includes airport pickup and return, all meals, snacks, non-alcohol beverages, lodging, cook, guide, saddle/pack stock, skinning, camping and meat handling. Client provides all licenses, weapons, ammunition and arrows, personal effects, meat processing and shipping, gratuity to cook and guide. We now offer free stand and ground blind hunts. Value \$7,750.

4. Butler and Groshong each paid Licensee \$5,800.00 for the hunt. In addition, Licensee called before they arrived and said that because of weather and other conditions, he recommended they pay him an extra \$3,000.00 for three extra days of hunting. Still excited about their upcoming adventure and not wanting to

miss what could be a once-in-a-lifetime opportunity, they reluctantly agreed and each sent the additional \$3,000.00 to Howells before they arrived. They incurred additional expenses for gas and other traveling expenses, licenses, ammunition, etc.

5. Howells willfully and substantially misrepresented to Butler and Groshong the facilities, services, and hunting that he would provide to them. Rather than a bunkhouse or cabin, they stayed in Licensee's own house. And rather than any public accommodation, the house was unsanitary, unkempt, and included large, dirty, and foul-smelling pets throughout, in addition to the occasional pack-rat. Rather than professional guides, the complainants spent the week with assorted relatives of Licensee who constantly smoked, frequently quarreled using profane language, and spent much of their hunting time tending to personal business.

6. None of the Licensee's relatives was a professional guide. Rather than using saddle/pack stock, Butler and Groshong did not even see such stock or even a stock trailer, let alone hunt using it. Instead, they mostly rode around in trucks on public roads and walked once in a while. Rather than meals fit for public consumption, the food was insufficient and substandard, and pets (mainly cats) were usually present on the eating surface while they dined. Rather than "excellent company," as his website advertises, Licensee made Butler and Groshong uncomfortable because he blamed past clients for any failure to harvest, ridiculed them for their misadventures, and in fact, refused to even call them hunters, preferring to use a demeaning tone and the term "clients" instead.

7. Recognizing that most hunters improve their chances of harvest by not alerting game to their presence because of smell, Butler and Groshong took great care to manage the odors around them. However, Licensee, his guides, and the others living in his house smoked cigarettes constantly — including during the hunt — which gave them an overpowering non-natural odor and compromised the hunters' chances of success.

8. Licensee rarely guided the hunters, as he did not wake before 8:00 a.m. Instead, Licensee sent his son as a guide, although his son had never actually killed an elk. Licensee's son chain-smoked cigarettes during the hunt and attended to personal business (including naps) during hunting hours.

9. Based on their experience and from what locals told them, the frustrated hunters quickly realized they had been taken advantage of. Disappointed and dispirited, they cut their trip short by three days and drove all the way home. Butler and Groshong repeatedly, yet unsuccessfully, requested a return of their money, at least the \$3,000.00 for the three extra days they paid for, but did not get to hunt because of Howells' misrepresentations.

10. After Licensee ignored their requests, Butler and Groshong conducted their own Internet research. Their experience combined with what they found online convinced them to file these complaints, hoping the Board will prevent the Licensee from taking advantage of other hunters like he did to them.

11. On October 18, 2013, the Board sent Licensee a letter to inform him about the complaint, request his response, and inform him the Screening Panel would consider it on December 5, 2013. Licensee failed to respond or otherwise supply the Board with an alternative version of the facts.

### III. CONCLUSIONS OF LAW<sup>2</sup>

#### A. The Licensee Has Violated Both Statute And Rule.

1. The Board has subject matter jurisdiction and legal authority to bring the disciplinary action under Mont Code Ann. §§ 37-1-131, 37-1-136, 37-1-307, 37-1-309, and Title 37, Chapter 47.

2. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part that the following is unprofessional conduct:

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(5) a misleading, deceptive, false or fraudulent advertisement or other representation in the conduct of the profession or occupation;

4. Mont. Code Ann. § 37-47-301(5) prohibits outfitters from willfully and substantially misrepresenting their facilities, prices, equipment, services, or hunting or fishing opportunities.

5. Mont. Code Ann. § 37-47-341(3) provides that an outfitter who engages in fraudulent, untruthful or misleading advertising may have his license suspended.

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<sup>2</sup>Statements of fact in contained in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

6. Admin. R. Mont. 24.171.2301(f) provides that an outfitter may not charge any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license.

7. The preponderant evidence, as evidenced by the exhibits and findings of fact above, demonstrates that the Licensee violated Mont Code Ann §§ 37-1-316(5), Mont. Code Ann. § 37-47-301(5), Mont. Code Ann. § 37-47-341(3), and Admin. R. Mont. 24.171.2301(f).

B. The Appropriate Sanction Is Probation Of The License With Terms Which Include A Suspension, Remedial Education, And Restitution To The Complainants.

8. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may impose probation, remedial education requirements, a suspension, and restitution.

9. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

10. BSD has requested that the Licensee receive a one year suspension, remedial education, restitution, and that his license be placed on probation for a period of three years. BSD's suggestions are well taken in light of the facts surrounding this case. The Licensee blatantly misrepresented his facilities, services, and hunts which induced Butler and Groshong to travel several thousand miles, at great expense, to Montana. When they arrived, Licensee for no apparent reason failed and refused the promised lodgings, services, and hunts which Butler and Groshong had paid for. There is no excuse for this type of conduct. The public can only be protected and the Licensee rehabilitated if Licensee's license is placed on probation, his license is suspended, he is ordered to make restitution to Butler and Groshong, and he is ordered to attend remedial education.

#### **IV. RECOMMENDED ORDER**

Based on the foregoing, it is recommended that the Montana Board of Outfitters enter its final order finding that the Licensee violated Mont. Code Ann. § 37-1-316(5), Mont. Code Ann. § 37-47-301(5), Mont. Code Ann. § 37-47-341(3), and Admin. R. Mont. 24.171.2301(f). It is further recommended that the Board

sanction the Licensee's license by placing his license on probation for a period of three years with the terms that:

- (1) the Licensee's license be suspended for a period of 12 months;
- (2) that within 120 days of the Board's entry of the final order in this matter that the Licensee undertake and successfully complete the Montana Board of Outfitter's "Bad Outfitters" remedial training course;
- (3) the Licensee is ordered to repay in full the monies collected from each of the complainants for their hunts. Mont. Code Ann. § 37-1-312(1) These refunds shall be sent to the Board of Outfitters. They shall be paid within 30 days of entry of the Board's Final Order in this case and must be paid by cashier's check or money order, and must be made payable to the following individuals in the following amounts:

Jeff Butler                \$8,800.00

Keith Groshong        \$8,800.00<sup>3</sup>

- (4) at all times during his probation that the Licensee shall comply with all requirements applicable to outfitters under Title 37, Chapters 1 and 47 of the Montana Codes Annotated as well as all requirements applicable to outfitters under Title 24, Chapter 171 of the Administrative Rules of Montana.

DATED this 2nd day of July, 2014.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ GREGORY L. HANCHETT  
GREGORY L. HANCHETT  
Hearing Officer

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<sup>3</sup>Mr. Butler indicated in his complaint that he had incurred costs of \$12,000.00 altogether, including the \$8,800.00 he paid to Howells for his hunt. Mr. Groshong's complaint echoes this amount of loss. The hearing officer is only permitted to order restitution of the "costs and fees billed to and collected from a consumer." Mont. Code Ann. § 37-1-312(1)(j). The only evidence presented at hearing regarding the amounts billed to Butler and Groshong and collected by Howells are the amounts paid for the hunt. Therefore, the hearing officer can only order that those amounts be paid back to Butler and Groshong.

## NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.