

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

-against-

JOSEPH CORULLA,

Respondent.

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on November 3, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of John's Branch Barber Shop, 116 East Main Street, Smithtown, New York, having been advised of his right to be represented by an attorney, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent failed to post his barber's license conspicuously in the shop in which he was engaged in the practice of barbering.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to engage in the practice of barbering (State's Ex. 2).

3) On March 16, 1994 License Inspector Sam Napolitano conducted an inspection of John's Branch Barber Shop, where the respondent was giving a customer a haircut. The respondent's barber license was lying face down on the counter at his work station, and the inspector issued a notice of violation to him (State's Ex. 3).¹

¹ The notice of violation also indicated that there was no photograph on the license. That charge was not, however, recited in the complaint attached to the notice of hearing, and was not litigated at the hearing. Accordingly, it cannot be considered by
(continued...)

OPINION AND CONCLUSIONS OF LAW

Pursuant to General Business Law §439[3], a license issued to a barber must be conspicuously posted in the barber shop in which the licensee is engaged in the practice of barbering. By leaving his license face down on a counter the respondent violated that statute.

In setting the penalty to be imposed for the respondent's violation, I have considered the fact that prior to the scheduling of the hearing he was offered the opportunity to resolve the matter through the payment of a fine of \$100.00 (State's Ex. 1). Where such an offer of settlement has been refused and the respondent has subsequently been found guilty, it is proper to impose a fine higher than that which was asked for in the settlement offer. Vito v Jorling, 197 AD2d 822, 603 NYS2d 64 (1993) (finding that it was proper to impose a fine of \$22,825.00 after an offer to settle for a \$500.00 penalty was rejected).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Joseph Corulla has violated General Business Law §439[3], and accordingly, pursuant to General Business Law §441, he shall pay a fine of \$150.00 to the Department of State on or before December 30, 1994. Should he fail to pay the fine his license to engage in the practice of barbering shall be suspended for a period of one month, commencing on January 1, 1995 and terminating on January 31, 1995, both dates inclusive.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier
Administrative Law Judge

Concur and So Ordered on:

GAIL S. SHAFFER
Secretary of State
By:

James N. Baldwin
Executive Deputy Secretary of State

¹(...continued)
this tribunal. Cooper v Morin, 91 Misc.2d 302, 398 NYS2d 36, 46 (Supreme Ct. Monroe County, 1977), mod. on other grnds. 64 AD2d 130, 409 NYS2d 30 (1978), aff'd. 49 NY2d 69, 424 NYS2d 168 (1979).