

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-

**ANTHONY MARTINO
FATHER'S BARBER SHOP**

MY

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 October 28, 1992 at the office of the Department of State located at 84 Holland Avenue, Albany, New York.

The respondent, of 42 S. Montgomery Street, Walden, New York 12586, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondent operated an unlicensed barber shop and engaged in the practice of barbering without a license.

FINDINGS OF FACT

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

2) Anthony S. Martino is currently licensed to engage in the practice of barbering and to operate a barber shop d/b/a My Father's Barber Shop located at 35 East Main Street, Walden, New York. At all times hereinafter mentioned those licenses had expired and had not yet been renewed (Comp. Ex. 1, 2, 3, and official notice of the records of the Department of State).

3) On February 28, 1991 License Inspector Carolyn L. Williams conducted an inspection of the respondent's barber shop, at which time she observed the respondent cutting a person's hair.

OPINION AND CONCLUSIONS OF LAW

General Business Law (GBL) §432 provides that no person may engage in the practice of barbering for compensation, or operate a barber shop (with no reference to compensation) without being licensed therefore. GBL §431(4) defines "practice of barbering" as including, among other things, the cutting of the hair of humans, and GBL §431(8) defines "barber shop" as "any store, establishment, place or premises or part thereof where the practice of barbering is engaged in." Therefore, by cutting the hair of a person in his shop at a time after his license to operate a barber shop had expired and had not yet been renewed, the respondent violated GBL §432. However, in the absence of any evidence as to whether the respondent was being compensated for his barbering, it cannot be held that the barbering by itself, regardless of the license status of the shop, constituted a violation of the statute.

In view of the respondent's failure to appear at the hearing, his contention, made in a letter to the complainant, that prior to the inspection he had made unsuccessful attempts, by mail and telephone, to obtain renewal applications, will not be considered, since to do so would deny the complainant and this tribunal the opportunity to question the respondent as to the details and veracity of that claim.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Anthony S. Martino has violated General Business Law §432, and accordingly, pursuant to General Business Law §441, he shall pay a fine of \$250.00 to the Department of State on or before November 30, 1992, and should he fail to pay the fine then his licenses to practice barbering and to operate a barber shop shall be suspended for a period of one month, commencing on December 1, 1992 and terminating on December 31, 1992.

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 Coon
Deputy Secretary of State