

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

GEORGE ALAN

DECISION

For a License as a Cosmetologist

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on November 3, 1997 at the office of the Department of State located at 270 Broadway, New York, New York. It had previously come before the Hon. Felix Neals on July 10, 1997, after which the matter had been dismissed in light of the applicant's failure to appear, and again, on the applicant's request to re-open the matter, on September 18, 1997, at which time, because of various difficulties, Judge Neals recused himself and transferred the matter to me.

The applicant, of 527 West 22nd Street, New York, New York, having been advised of his right to be represented by an attorney, chose to represent himself.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator Bernard Friend.

ISSUE

The issue before the tribunal is whether the applicant's application for a license to engage in the practice of cosmetology should be denied because it is supported by unlicensed activity.

FINDINGS OF FACT

1) By application received on March 10, 1997 the applicant applied for a license to engage in the practice of cosmetology (State's Ex. 2). He based the application on a claim of 14 years of unlicensed experience in Brazil, and of 7 years experience in New York beginning in 1990 (State's Ex. 3).

2) Contrary to his testimony, since at least July 1, 1987 the applicant has not been licensed in the State of New York to engage in any of the aspects of appearance enhancement (State's Ex. 4). He does not claim to have been licensed as a barber.

3) By letter dated March 24, 1997 the applicant was advised by DLS that it proposed to deny his application because of the unlicensed activity, and that he could request an administrative review, which he did on April 8, 1997. By letter dated April 29, 1997 he was advised by

DLS that it continued to propose to deny the application, and that he could request a hearing, which he did by letter dated May 5, 1997. Accordingly, notice of hearing was served on the applicant by certified mail delivered on May 19, 1997 (State's Ex. 1).

OPINION AND CONCLUSIONS OF LAW

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is entitled to be granted a license to engage in the practice cosmetology. State Administrative Procedure Act (SAPA), §306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Gray v Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." *City of Utica Board of Water Supply v New York State Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- In order to qualify for a license to engage in the practice of cosmetology an applicant must establish either that he or she has successfully completed an approved course of study and has passed the required examination, that he or she has performed the functions of a cosmetologist while licensed as a barber in the State of New York for at least two years prior to July 5, 1994, or that he or she has lawfully engaged in the practice of cosmetology in a jurisdiction outside of New York State pursuant to a license granted in compliance with standards not lower than those in this state, which jurisdiction extends similar reciprocity to licensees of this state. General Business Law [GBL] §406

The applicant bases his experience on a claim of unlicensed experience in both Brazil and New York. Since neither of those types of experience satisfy the requirements of GBL §406, the applicant has failed to meet his burden of establishing his entitlement to licensure, and his application must be denied.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT, pursuant to General Business Law §§406 and 411, the application of George Alan for a license to engage in the practice of cosmetology is denied.

Roger Schneier
Administrative Law Judge

Dated: November 20, 1997