

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-

PHILLIP ANDREWS,

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 June 6, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 455-C Nassau Road, Roosevelt, New York 11575, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent permitted an unlicensed person to engage in the practice of hairdressing and cosmetology in his beauty parlor, and operated that beauty parlor without having his photograph affixed to his shop 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) The respondent is, and at all times hereinafter mentioned was, duly licensed to operate a beauty parlor d/b/a Haircut Hair Salon and Nails Salon at 455C Nassau Road, Roosevelt, New York 11575 (Comp. Ex. 2).

3) On August 18, 1993 License Inspector Frances De Stefano conducted an inspection of the respondent's beauty parlor. She observed Dennis Thompson, who was not licensed as a hairdresser/

cosmetologist, barber, or barber apprentice, cutting the hair of a customer.¹ She also noted that the respondent's photograph was not affixed to his shop license (Comp. Ex. 1).

OPINION AND CONCLUSIONS OF LAW

I- De Stefano, the inspector, was not present at the hearing. Therefore, the only evidence offered by the complainant to support the allegations in the complaint was the hearsay notice of violation signed by De Stefano at the time of the inspection.

As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges. 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).

Hearsay can constitute substantial evidence, and the written report of an inspector may be the sole basis of an administrative determination. Cf. Gray v Adduci, *supra*; 705 Ninth Ave. Restaurant v Liquor Auth., 187 AD2d 349, 589 NYS2d 466 (1992). Since the respondent did not appear and offer testimony or other evidence to contradict the contents of the notice of violation, and since there is nothing in the record which would indicate that the contents notice of violation are inaccurate, it is proper to base findings that violations did in fact occur on that notice. Cf. Division of Licensing Services v Calloway, 11 DOS 91.

II- It is unlawful for the owner of a beauty parlor to permit an unlicensed person to engage in the practice of hairdressing and cosmetology in his or her shop. General Business Law (GBL) §412. The "practice of hairdressing and cosmetology" includes, among other things, the cutting of the hair of any person. GBL §401[5]. Accordingly, by permitting an unlicensed person to cut the hair of a customer in his beauty parlor the respondent violated GBL §412. Division of Licensing Services v Ndiaye, 154 DOS 93.

III- 19 NYCRR 161.2 provides that every licensee shall affix his or her photograph to the license. By failing to affix his photograph to his shop license the respondent violated that regulation.

¹ Thompson became licensed as a barber apprentice on September 17, 1993 (Comp. Ex. 3).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Phillip Andrews has violated General Business Law §412 and 19 NYCRR 161.2, and accordingly, pursuant to General Business Law §409[8], he shall pay a fine of \$500.00 to the Department of State on or before July 29, 1994, and should he fail to pay the fine then his license to operate a beauty parlor shall be suspended for a period of two months, commencing on August 1, 1994 and terminating on September 30, 1994, 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