

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-

**DOMINICK ANDRIANO and  
DOMINICK VINCENT SALON INC.,**

Respondents.

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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 January 13, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondents, of 410 Hillside Avenue, Williston Park, New York 11596, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINT**

The complaint in the matter alleges that the respondents posted their license to operate a beauty parlor without affixing a photograph to it; that Andriano engaged in the practice of hairdressing and cosmetology without posting his license conspicuously and failed to affix his photograph to the license; that a hairdresser gave a haircut to a customer in the respondents' shop without having her license on the premises; that another person gave a shampoo to a customer in the respondents' shop without posting her license and without having a photograph affixed to her license.

**FINDINGS OF FACT**

1) Notice of hearing together with copies of the complaint were served on the respondents by certified mail on December 11, 1993 (Comp. Ex. 1).

2) Dominick Andriano is duly licensed to engage in the practice of hairdressing and cosmetology and, on behalf of Dominick Vincent Salon Inc., to operate a beauty parlor at 410 Hillside Avenue, Williston Park, New York (Comp. Ex. 2).

3) On January 14, 1993 License Inspector Frances De Stefano conducted an inspection of the respondents' beauty parlor and observed the following:

- a) The license to operate a beauty parlor which was posted in the shop did not have a photograph affixed to it.
- b) Andriano, who was blow drying the hair of a customer, did not have his license posted conspicuously.
- c) Andriano's photograph was not affixed to his license to engage in the practice of hairdressing and cosmetology.
- d) The license of Janet De Literis (who was giving a customer a haircut) to engage in the practice of hairdressing and cosmetology was not on the premises.
- e) The license of Regina Holfester (who was giving a customer a shampoo) to engage in the practice of hairdressing and cosmetology was not posted and did not have a photograph affixed to it.

4) De Stefano issued to Andriano notice of violation listing him as corporate officer of Dominick Vincent Salon Inc, and Andriano signed the notice to acknowledge its service. By letter dated April 23, 1993 he was advised that he could either plead guilty to the charges and pay a fine of \$400.00, or could plead not guilty and have a hearing scheduled. In response, on April 29, 1993 Andriano pled guilty and attach the following letter of explanation to his plea:

"As per our conversation: All of these violations were taken care of the day after they occurred.

I think that \$400 is a bit much, when we had the licenses, they just weren't posted properly.

I understand a fine must be charged, and willing (sic) to pay one but not \$400~~xx~~." (Comp. Ex. 1).

#### **OPINION AND CONCLUSIONS OF LAW**

I- 19 NYCRR 161.2 provides that every licensee shall affix his or her photograph to the license. Inasmuch as Andriano's photograph was affixed neither to his shop license nor to his license to engage in the practice of hairdressing and cosmetology at the time of the inspection,

it is reasonable to conclude, as I do, that he violated that regulation with regards to both of those licenses. Division of Licensing Services v Yuran, 89 DOS 93.

II- General Business Law (GBL) §407[3] mandates that each license issued to engage in the practice of hairdressing and cosmetology shall be posted in some conspicuous place in which the licensee is engaged in the practice of hairdressing and cosmetology. The practice of hairdressing and cosmetology includes, among other things, the waving, cutting, arranging and cleansing the hair of any person. Therefore, by blow drying the hair of a customer in his beauty parlor without having his license to engage in the practice of hairdressing and cosmetology posted conspicuously, Andriano violated GBL §407[3].

III- A person, including a corporation, licensed to operate a beauty parlor is responsible for violations of the licensing statute which occur in that shop. Division of Licensing Services v Village Cutter of New Paltz Inc., 97 DOS 93. Accordingly, the respondents are liable for the violation of GBL §407[3] which occurred when Janet De Literis engaged in the practice of hairdressing and cosmetology in their shop without her license being on the premises and, therefore, without that license being posted, and for the violations of GBL §407[3] and 19 NYCRR 161.2 which occurred when Regina Holfester engaged in the practice of hairdressing and cosmetology in their shop without her license being posted and without her photograph being affixed to her license.

IV- Being an artificial entity created by law, Dominick Vincent Salon Inc. can only act through its officers, agents, and employees, and it is, therefore, bound by the knowledge acquired by and is responsible for the acts committed by its corporate officer, Andriano, within the actual or apparent scope of his authority. A-1 Realty Corporation v State Division of Human Rights, 35 A.D.2d 843, 318 N.Y.S.2d 120 (1970); Division of Licensing Services v First Atlantic Realty Inc., 64 DOS 88; RPL § 442-c.

V- The respondents contend that although it is proper that they be required to pay a fine for the violations, the fine of \$400.00 which they were told they could pay in settlement of the charges prior to hearing is excessive.

This is not a case of one or two violations. Rather, the respondents are guilty of six separate violations involving the failure to post three licenses and the failure to affix photographs to three licenses. Such violations frustrate the enforcement of General Business Law Article 27, particularly with regards to assuring that only licensed persons engage in the practice of hairdressing and cosmetology, which is required for the protection of the public (GBL §400). In light of the multiplicity of violations, which indicates that the respondents are guilty of a general disregard of the applicable provisions of the statute and regulations, asking the respondents to pay \$400.00 in settlement of the charges was not unreasonable.

Since the respondents rejected the proposed settlement the Department of State is not bound by its terms, and may impose a higher penalty in an amount supported by the record and the extent of the violations. Michael Don Vito Sr. v Jorling, NY Law Journal 11/3/93, p.21 (App. Div. 3rd Dept.).

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Dominick Andriano and Dominick Vincent Salon Inc. have violated 19 NYCRR 161.2 three times and General Business Law §407[3] three times, and accordingly, pursuant to General Business Law §§409[7] and [8], they shall pay a fine of \$600.00 to the Department of State on or before February 28, 1994, and should they fail to pay the fine, then their licenses to engage in the practice of hairdressing and cosmetology and to operate a beauty parlor shall be suspended for a period of two months, commencing on March 1, 1994 and terminating on April 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