

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matters of the Complaints of

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

Complainant,

**DECISION**

-against-

**FERNANDO CALDERON,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 20, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Le Jazz Beauty Salon and of Milly Beauty Salon Corp., both located at 95-01 Roosevelt Avenue, Jackson Heights, New York 11372, did not appear.

The complainant was represented by Assistant Litigation Counsel Scott NeJame, Esq.

**COMPLAINTS**

The complaints in the matters, which in the interest of economy were heard together, allege that the respondent:

1) Allowed an unlicensed person to perform barbering services in violation of General Business Law (GBL) §432, did not have evidence of a surety bond or liability insurance on the premises in violation of 19 NYCRR 160.9, and failed to post a business license at Le Jazz Beauty Salon in violation of 19 NYCRR 160.10[c]; and

2) Provided appearance enhancement services without obtaining a business license therefore in violation of GBL §401, and did not have evidence of a surety bond or liability insurance on the premises at Milly Beauty Salon Corp., in violation of 19 NYCRR 160.9.

**FINDINGS OF FACT**

1) On May 16, 1997 copies of the notices of hearing and complaints were mailed to the respondent by certified mail addressed to him at, respectively, Le Jazz Beauty Salon and Milly Beauty Salon Corp., 95-01

Roosevelt Avenue, Jackson Heights, New York 11372. On May 2, 1997 additional copies of the notices of hearing and complaints were mailed to the respondent at the same address by regular first class mail (State's Ex. 1 and 2).

2) Since February 20, 1996 the respondent has been licensed to operate a barber shop on behalf of Milly Beauty Salon Corp. at 95-01 Roosevelt Avenue, Jackson Heights, New York 11372 (State's Ex. 3). Since March 8, 1997 he has been licensed to operate an appearance enhancement business on behalf of the same corporation at the same address (State's Ex. 4).

3) Since at least July 1, 1987 there has been no license for the operation of an appearance enhancement business under the name "Le Jazz Beauty Salon" (State's Ex. 5).

4) On February 22, 1996 Senior License Investigator Richard Mc Arthur conducted an inspection of the respondent's shop.<sup>1</sup> He determined that there was no shop license on the premises, that Gloria Borga, who was unlicensed, was cutting the hair of a customer, and that there was no evidence of a surety bond or liability insurance on the premises (State's Ex. 7).

On June 18, 1996 License Investigator Sang Lee conducted an inspection of the respondent's shop. While no one was working at the time, he observed a price list which included charges for permanent waves and nail care (State's Ex. 8).

On October 8, 1996 Investigator Mc Arthur conducted yet another inspection of the respondent's shop. He observed Ms. Borga, who was still not licensed, cutting the hair of a customer, and determined that there was still no evidence of a surety bond or liability insurance on the premises (State's Ex. 7).

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

I- The respondent is charged with acting in violation of GBL Articles 27 and 28. Pursuant to GBL §411[2], notice of charges brought pursuant to GBL Article 27 may be served on a respondent by, among other things, mailing a copy to that respondent by certified mail at his/her last known business address. GBL §442 provides for similar service of notice of charges brought pursuant to GBL Article 28, with the exception that the statute does not specify that the mailing must

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<sup>1</sup> Inasmuch as both Le Jazz Beauty Salon and Milly Beauty Salon Corp. were both located in the same facility at a single address, they will be referred to collectively as the respondent's shop, which it appears was organized as a corporation (Milly Beauty Salon Corp.) doing business under a trade name (Le Jazz Beauty Salon).

be to the last known business address.<sup>2</sup> Therefore, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served, the holding of an ex parte quasi-judicial administrative hearing was permissible. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Pursuant to GBL §432, no person may engage in the practice of barbering for compensation unless licensed to do so. Barbering includes, among other things, the cutting of the hair of humans. Pursuant to GBL §444 it is unlawful for the owner of a barbershop to allow a violation of GBL §432 in his/her shop.

Gloria Borga, an unlicensed person, was observed cutting the hair of customers in the respondent's shop on two separate occasions. The fact that a price list was posted creates a presumption that the work was being done for compensation, and I infer, from the fact that such activity was observed on two widely separated occasions, that Ms. Borga was working in the respondent's shop with his permission. I find, accordingly, that the respondent violated GBL §444.

III- Pursuant to GBL §401[2], it is unlawful for the owner of a shop to provide appearance enhancement services in that shop without first obtaining a appearance enhancement business license. Appearance enhancement services include, among other things, nail care (GBL §400[4]) and the use of chemicals for the curling of hair (GBL §400[7]). When Investigator Lee conducted his inspection of the respondent's shop, which at the time was not a licensed appearance enhancement business, he observed a price list which included charges for nail care and permanent waves. From that I conclude that the respondent was providing appearance enhancement services in his shop and, therefore, that he violated GBL §401[2].

IV- The respondent is charged with violating 19 NYCRR 160.9 and 19 NYCRR 160.10[c]. Both of those regulations were enacted pursuant to GBL Article 27, and relate to the operation of licensed appearance enhancement businesses. Inasmuch as at the time of the alleged violations the respondent was not licensed to operate an appearance enhancement business he could not have violated those regulations and, therefore, those charges must be, and are, dismissed.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Fernando Calderon has violated General Business Law §§401[2] and 444, and accordingly, pursuant to General Business Law §§410 and 441, he shall pay a fine of

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<sup>2</sup> While GBL §422 refers to mailing by registered mail, since there is no substantive difference between the delivery procedures for it and certified mail, the use of certified mail is deemed to be in compliance with the statute.

\$500 to the Department of State on or before June 30, 1997. Should he fail to pay the fine his licenses to operate an appearance enhancement business and to operate a barber shop shall be suspended for a period commencing on July 1, 1997 and terminating one month after the receipt by the Department of State of his license certificates. He is directed to send the fine or his license certificates to Thomas F. McGrath, Revenue Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier  
Administrative Law Judge

Dated: June 2, 1997