

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

BILLIE J. CLARK,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 13, 2000 at the New York State Office Building located at 333 East Washington Street, Syracuse, New York.

The respondent did not appear.

The complainant was represented by Supervising License Investigator Michael Coyne.

COMPLAINT

The complaint alleges that the respondent provided Appearance Enhancement services without a renter's license in violation of General Business Law (GBL) §401.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served by certified mail sent to the respondent at her last known business address on March 20, 2000. That mail was returned by the Postal Service marked "Attempted-Not Known" (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to engage in the practice of Nail Specialty pursuant to GBL Article 27 (State's Ex. 3).

3) On October 25, 1999 Senior License Investigator George Monroe conducted an inspection of Hair Elegance, 76 Ovid Street, Seneca Falls, New York 13148 and observed the respondent filing the nails of a customer for compensation. The respondent stated that she was "working as a chair renter" (State's Ex. 4).

OPINION AND CONCLUSIONS OF LAW

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. GBL §411[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II-As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, all of the elements of the alleged violation. 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).

The complaint alleges that the respondent worked as an area renter without a license. While the complainant presented evidence which established that the respondent is licensed to engage in the practice of Nail Specialty, that she engaged in the practice at an Appearance Enhancement business, and that she stated that she was engaging in that practice as an area renter, it presented no evidence that she did not possess an area renter's license. Accordingly, the charge must be dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charge herein is dismissed.

Roger Schneier
Administrative Law Judge

Dated: April 14, 2000