

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-

**DAVID W. HARGROVE,**

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on February 15, 1995 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The respondent, of 50 Main Street, Cooperstown, New York 13326, having been advised of his right to be represented by an attorney, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINT**

The complaint alleges that the respondent operated a beauty parlor without affixing a photograph to his shop license, and permitted Marianne Benton to operate as a renter in his shop without a renter's license.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail (State's Ex. 1).

2) At all times hereinafter the respondent was duly licensed to engage in the practice of hairdressing and cosmetology and to operate a beauty parlor at 50 Main Street, Cooperstown, New York (State's Ex. 2).

3) On June 15, 1994 License Investigator Michael Slabicki conducted an inspection of the respondent's beauty parlor, and observed that there was no photograph on the respondent's shop license.

Mr. Slabicki also observed Marianne Benton curling the hair of a customer. Ms. Benton was not an employee of the respondent. Rather, in return for 10% of the payments she received from customers, the respondent permitted her to use a space in his shop and to use his supplies.

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

I- 19 NYCRR 161.2, as in effect at the time of the inspection, provided that every licensee shall affix his or her photograph to the license. Inasmuch as the respondent's photograph was not affixed to his shop license, he violated that regulation. Division of Licensing Services v Yuran, 89 DOS 93.

II- 19 NYCRR 160.25[b], as in effect at the time of the inspection, stated:

"A shop owner's license shall be required by any licensed barber or cosmetologist operating as an independent contractor in a designated area within any licensed beauty shop, which shall be referred to as a renter's license."

Ms. Benton did not have such a license, although she was paying the respondent for permitting her to engage in the practice of hairdressing and cosmetology in his shop.<sup>1</sup> As the owner of the shop the respondent is responsible for that violation of the regulation. Division of Licensing Services v Tyo, 60 DOS 94; Division of Licensing Services v Watkin, 67 DOS 93; Division of Licensing Services v Valeriano, 146 DOS 92.

I have considered in mitigation the respondent's testimony that he was doing Ms. Benton a favor by allowing her to work in his shop while hers was being re-done, and that because of how little he was charging her he did not make a profit on the arrangement.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** David W. Hargrove has violated 19 NYCRR 161.2 and 160.25[b], and accordingly, pursuant to General Business Law §410, he shall pay a fine of \$250.00 to the Department of State on or before April 28, 1995. Should he fail to pay the fine and should his license to engage in the practice of cosmetology and/or his license to operate an appearance enhancement business have been renewed, then such license or licenses shall be suspended for a period of one month, commencing on May 1, 1995 and terminating on May 31, 1995, both dates inclusive. Should he not be currently licensed,

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<sup>1</sup> Pursuant to General Business Law §401[5], as in effect at the time of the inspection, the practice of hairdressing and cosmetology included, among other things, the curling of hair.

then no license to practice cosmetology or to operate an appearance enhancement business shall be issued to him until he shall have paid the fine.

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:

ALEXANDER F. TREADWELL  
Secretary of State  
By:

Michael E. Stafford, Esq.  
Chief Counsel