

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-

DEBRA A. ODDO,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 16, 1997 at the office of the Department of State located at 270 Broadway, New York, New York

The respondent, of Tangle's Hair Salon, 142 Union Street, Brooklyn, New York 11231, having been advised of her right to be represented by an attorney, appeared *pro se*.

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

COMPLAINT

The complaint in the matter alleges that the respondent did not have a proof of a surety bond or liability insurance on the premises of her appearance enhancement business in violation of 19 NYCRR 160.9.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on March 20, 1997 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to operate an appearance enhancement business (State's Ex. 2).

3) On February 2, 1996 License Investigator John Grimes conducted an inspection of the respondent's appearance enhancement business located at 142 Union Street, Brooklyn, New York, determined that there was no proof of a surety bond or liability insurance on the premises, and issued an inspection report to the respondent (State's Ex. 4).

4) On November 1, 1996 Senior License Investigator Richard McArthur conducted an inspection of the respondent's appearance enhancement business, determined that there was still no proof of a surety bond or liability insurance on the premises, and issued another inspection report to the respondent (State's Ex. 3).

5) On February 6, 1997 the respondent was issued a binder for an insurance policy for, among other things, general liability in the amount of \$300,000.00 (Resp. Ex. A).

6) Prior to service of the notice of hearing the respondent was offered the opportunity to settle the matter by paying a fine of \$250.00.

OPINION AND CONCLUSIONS OF LAW

I- 19 NYCRR 160.9, enacted pursuant to General Business Law §404, provides that the owner of an appearance enhancement business must maintain either a surety bond or accidental and professional liability insurance or general liability insurance in prescribed amounts, and that evidence of such bond or insurance must be maintained on the premises. The respondent failed to maintain such insurance until she had been served with two notices of violation and had received a notice to pay a fine, and thereby violated the regulation.

The respondent explains her failure to have insurance with the statement that her business was not doing well, and, therefore, she was not sure that she would continue it in operation. That does not excuse a knowing failure to abide by a condition of her license designed for the protection of the public for a period of at least a full year. Nor does the fact that she eventually obtained the insurance excuse the violation, even if one accepts as true her explanation that she believed from a conversation with an employee of the complainant that she had the option of either paying the fine or obtaining insurance. The law requires the insurance, and it does not grant the option of choosing between being insured or paying a fine.

II- In setting the penalty to be imposed for the respondent's violation, I have considered the fact that prior to the scheduling of the hearing she was offered the opportunity to resolve the matter through the payment of a fine. Where such an offer of settlement has not been accepted and the respondent has subsequently been found guilty, it is proper to impose a fine higher than that which was asked for in the settlement offer. *Vito v Jorling*, 197 AD2d 822, 603 NYS2d 64 (1993) (finding that it was proper to impose a fine of \$22,825.00 after an offer to settle for a \$500.00 penalty was rejected). Because of the respondent's financial difficulties, however, the increase in the fine will be limited to the approximate amount necessary to offset the costs of this proceeding.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Debra A. Oddo has violated 19 NYCRR 160.9, and accordingly, pursuant to General Business Law §410, she shall pay a fine of \$300.00 to the Department of State on or before June 30, 1997. Should she fail to pay the fine, then her all licenses issued to her under the provisions of General Business Law Article 27 shall be suspended commencing on July 1, 1997, and terminating two months after she has delivered her license certificates to the Division of Licensing Services. She is directed to send the fine or the license certificates to Thomas F. McGrath, Revenue Unit, Department of State, 84 Holland Avenue, Albany, New York 12208.

Roger Schneier
Administrative Law Judge

Dated: May 5, 1997