

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-

**RODERICK ODOM d/b/a COMMUNITY
BARBER SHOP & SALON,**

Respondent.

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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 respondent, of 10 Middle Country Road, Middle Island, New York 11953, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that a registered barber apprentice engaged in the practice of barbering in the respondent's shop without a master barber present and without his registration certificate being on the premises.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on December 11, 1994 (Comp. Ex. 1).

2) At all times hereinafter mentioned Roderick Odom was duly licensed to operate a beauty parlor d/b/a Community Barber Shop & Salon¹ at 10 Middle Country Road, Middle Island, New York (Comp. Ex. 3).

¹ Although called a barber shop, the respondent's business is licensed as a beauty parlor.

3) On January 5, 1993 License Inspector Sam Napolitano conducted an inspection of the respondent's beauty parlor. He observed certified barber apprentice Ahmed Abdeen giving a haircut to a customer without a master barber being present and without his registration certificate being on the premises.

OPINION AND CONCLUSIONS OF LAW

I- General Business Law (GBL) §437 provides for the registration of apprentice barbers, which are, pursuant to GBL §431[7] persons "pursuing in good faith a course of study in the practice of barbering under the tutelage, supervision and direction" of a licensed barber. Therefore, for an apprentice barber to legally engage in the practice of barbering, which includes, among other things, the cutting of hair (GBL §431[a]), a licensed master barber must be present to supervise the apprentice. Otherwise, the apprentice is engaging in the unlicensed practice of barbering, in violation of GBL §432. Division of Licensing Services v Finnie, 115 DOS 92. Clearly, then, Abdeen's giving a haircut to a customer in the respondent's shop without a master barber being present was a violation of GBL §432.

II- GBL §439[3] provides that any certificate issued pursuant to GBL Article 28² shall be "posted and kept posted in some conspicuous place in the barber shop in which the...registrant is engaged as an apprentice." That section makes no reference to posting in beauty parlors. In fact, there is no reference whatsoever in GBL Articles 27 or 28 to barber apprentices being employed in beauty parlors. Therefore, the failure of Abdeen to post his certificate in the respondent's beauty parlor was not a violation of any statute.

III- By permitting Abdeen to engage in the practice of barbering when no licensed barber was present the respondent violated GBL Article 28, §444, Division of Licensing Services v Finnie, *supra*. Inasmuch as his conduct placed a member of the public in jeopardy by permitting the unsupervised practice of barbering by an unqualified person, that conduct was an act of incompetency.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Roderick Odom has demonstrated incompetency as the owner of a beauty parlor, and accordingly, pursuant to General Business Law §409[6], he shall pay a fine of \$500.00 to the Department of State on or before February 28, 1994, and upon failure to pay the fine any license to operate a beauty parlor or a barber shop issued to him shall be suspended for a period of one month, commencing on March 1, 1994 and terminating on March 31, 1994, or, if he has not renewed his license or obtained a new license,

² The practice of barbering is regulated under GBL Article 28. The practice of hairdressing and cosmetology, including the licensing of beauty parlors, is regulated under GBL Article 27.

should he ever apply for issuance of a license to operate a beauty parlor or a barber shop such application shall not be considered until he has 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:

GAIL S. SHAFFER
Secretary of State
By:

James N. Baldwin
Executive Deputy Secretary of State