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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,

**ORDER**

-against-

**MALVINA SCHNOEBELEN and HEARING  
INC.,**

**SERVICES**

Respondents.

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**WHEREAS**, a hearing in this matter commenced on April 20, 1999 and continued on several subsequent dates, and

**WHEREAS**, by decision on a motion for summary judgement dated August 11, 1999 the Hon. James W. McCarthy, Acting Justice of the Supreme Court, County of Onondaga made the following findings of fact in *The People of the State of New York v Hearing Services, Inc and Malvina Schnoebelen*, R.J.I. 98-0956, Index No. 33-98-249:

"Respondent, Hearings Services, Inc. is a New York Corporation incorporated on September 14, 1993 for the purpose of selling hearing aids to customers in northern, central and western New York. Respondent, Malvina Schnoebelen, named herein in her individual capacity as well as the president of Hearing Services, Inc., managed and operated the corporation from her home since September of 1993. It is undisputed that Schnoebelen was actively involved in the day to day operation, direction and management of the corporation and its financial affairs. In addition, she acted as a sales representative performing hearing examinations and selling hearing aids to consumers.

"Petitioner contends that it has received over forty-five complaints from consumers regarding Hearing Services, Inc. which allege, *inter alia*: that respondents falsely represented to consumers that they were offering free home hearing exams on behalf of local agencies and senior citizen groups; that they were not trying to sell a product, but were only offering a free home hearing exam;

that respondents' representatives misrepresented the scope and quality of their services; misrepresented that the respondents would provide prompt 'in home' service; refused to provide refunds or return deposits; billed consumers for 'free' hearing exams and billed their insurer for the services; had consumers sign 'blank credit card applications' and imposed,

without consumer approval or knowledge, a service charge and from September of 1994 through January of 1995 and (sic) sold hearing aids without being registered with the State of New York in violation of New York General Business Law §709[1].

"Respondent, Schnoebelen, in her individual capacity, does not deny any of the allegations against her, but contends that she '...[has] always conducted business regarding the sales and service of hearing devices through the corporation' and cannot be held personally liable. Respondent, Hearing Services, Inc. through its president, Schnoebelen allege (sic) that: the 43 complaints comprise only 2.7% of the corporation's business and '....even if true cannot establish a pattern of dealing sufficient to justify the preliminary or the ultimate relief sought.' In addition, the corporation makes reference to four of the forty three affidavits, but fail (sic) to take issue with the specific allegations therein, choosing to attack the veracity of two of its workers who provided affidavits to the Attorney Generals' Office and averring that two of its salesmen that were referenced in the Attorney General's attached affidavits had been fired. In essence, the respondents allege that the petitioner has failed to meet its burden of establishing a pattern of illegal or fraudulent acts sufficient to justify the requested relief.

"Petitioner alleges that the conduct of the respondents violated New York Executive Law §63[12], New York General Business Law §349, predicated on alleged violations of New York General Business Law §§790[1][a], 792[3]-[4], New York Personal Property Law §429[1] and New York General Obligations Law §5-531[1], and seeks injunctive relief, restitution and penalties against the respondents", and

**WHEREAS**, the Court found that there were un rebutted allegations that Hearing Services, Inc. engaged in conduct in violation of General Business Law (GBL) §349 (deceptive acts or practices in the conduct of any business or trade), GBL Art. 37-A (selling hearing aids without providing an itemized receipt, refusing to provide refunds to those who return hearing aids within thirty days after delivery), Personal Property Law §429[1] (refusing to provide refunds to customers who canceled their purchase within three days), and General Obligations Law §5-531[1](charging more than .5% of purchase price to arrange financing), and that Malvina Schnoebelen was personally and individually responsible for that conduct, and

**WHEREAS**, the Court granted extensive relief requested by the Attorney General, including enjoining the respondents from engaging in various forms of conduct and directing them to pay restitution, damages, various civil penalties, and costs, and

**WHEREAS**, the findings of fact of the Court support numerous of the allegations contained the complaint herein, which allegations the respondents are now precluded by the doctrine of *collateral estoppel* from contesting, and

**WHEREAS**, contrary to representations to the tribunal made on September 15, 1999 by James Resti, Esq., counsel for the respondents, that he would be moving to vacate the Court's decision, expected that his motion would be granted, and would provide the tribunal with a copy of the Court's order vacating its decision, no such order or any other further communication from Mr. Resti has been received by the tribunal, and

**WHEREAS**, I find that health, safety, and welfare of the public imperatively requires emergency action to protect it from the dangerous and predatory conduct of the respondents in the operation of their Hearing Aid Dealer's business as found by the Court,

**NOW, THEREFORE**, pursuant to State Administrative Procedure Act §401[3] and General Business Law §799[2], any and all Hearing Aid Dealer's registrations issued to the respondents are suspended effective immediately and until such other action as may be necessary and proper.

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ROGER SCHNEIER  
ADMINISTRATIVE LAW JUDGE

Dated: October 18, 1999

To: Malvina Schnoebelen  
Hearing Services, Inc.  
144 Grant Boulevard  
Syracuse, NY 13206

James Resti, Esq.  
Suite 1200  
The Hills Building  
217 Montgomery Street  
Syracuse, NY 13202

Scott L. NeJame, Esq.  
NYS Department of State  
84 Holland Avenue  
Albany, NY 12208