

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-

NICOLAS ABREU,

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on April 18 and July 7, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 539 W 162nd Street, Apt. 54, New York, New York 10032, was not present at the first session of the hearing. He arrived sometime after the matter had been concluded for the day, and was told that he would receive an adjournment notice.¹ He was present at the second session and, 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 barber shop without a license.

FINDINGS OF FACT

1) The notice of hearing, together with a copy of the complaint, was delivered to Ramon Perez, manager of the Abreu Barber Shop located at 1991 University Place, Bronx, New York on March 22, 1995, and was subsequently given to the respondent, who appeared at the hearing without making objection to the method of service.

¹ The matter had not been concluded because the complainant did not have proof of proper service of the notice of hearing.

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to engage in the practice of barbering. From July 15, 1993 until July 15, 1995 he was licensed to operated a barber shop d/b/a Abreu Barber Shop at 1516 Watson Avenue, Bronx, New York. Since August 18, 1994, pursuant to a license expiring on August 18, 1996, he has been licensed to operate a barber shop d/b/a Abreu Barber Shop at 1991 University Avenue, Bronx, New York (State's Ex. 2).

3) On July 29, 1994 License Inspector Juanita Davis conducted an inspection of a shop being operated under the name "Abreu Barber Shop" at 1991 University Avenue, Bronx, New York (State's Ex. 4), and observed a man being given a haircut. No shop license had been issued for that location, although sometime previously the respondent had filed a certificate of doing business to operate a barber shop there.

OPINION AND CONCLUSIONS OF LAW

I- The notice of hearing was not served in compliance with the requirements of General Business Law (GBL) §442. However, by appearing and not interposing an objection the respondent consented to personal jurisdiction. Gager v White, 53 NY2d 475, 442 NYS2d 463 (1981).

II- Pursuant to GBL §438[1], no person may own or operate a barber shop without first obtaining a barber shop owner's license. As established by Inspector Davis' observation of a haircut being administered on unlicensed premises being operated under the respondent's name and for which he had filed a certificate of doing business to operate a barber shop, the respondent violated that statute. In view of those facts, the respondent's testimony that the shop was not open for business is not credible.

III- 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 he was offered the opportunity to resolve the matter through the payment of a fine of \$250.00 (State's Ex. 1). Where such an offer of settlement has been refused 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). I have also taken into consideration the respondent's attempt to mislead the tribunal through his testimony. United States v Dunnigan, 113 S.Ct. 1111 (1993).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Nicolas Abreu has violated General Business Law §438[1], and accordingly, pursuant to General Business Law §441, he shall pay a fine of \$500.00 to the Department of State on or before August 31, 1995. Should he fail to pay the fine, then his licenses to engage in the practice of barbering and to operate a barber shop shall be suspended for a period of two months commencing on the date of his surrender of the license certificates to the complainant.

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