

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-

ERROL L. CLARKE,

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 October 21, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 3433 Boston Road, Bronx, New York 10469, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent cut the hair of a customer in his barber shop after the expiration of his license as a master barber.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on September 15, 1993 (Comp. Ex. 1).

2) The respondent is duly licensed to operate a barber shop d/b/a Lloyds Hair Cutting Salon, and since February 3, 1993 has been licensed as a master barber (Comp. Ex. 2). His previous license as a master barber expired, and was not renewed, on October 16, 1991 (Comp. Ex. 2).

3) On November 13, 1992, at a time when the respondent was not licensed as a master barber, License Investigator Stephen A. Mayer conducted an inspection of the respondent's barber shop and observed the respondent cutting the hair of a male patron.

OPINION AND CONCLUSIONS OF LAW

General Business Law (GBL) §432 provides that no person may engage in the practice of barbering for compensation unless licensed therefore. Since the "practice of barbering" includes, among other things, the cutting of hair (GBL §431[4][a]), and since the evidence establishes that the respondent was observed cutting hair at a time that he was not licensed, it is clear that he was engaging in the practice of barbering without a license. However, what is missing from the complainant's case is proof that the respondent was being compensated. Since the complainant has failed to prove that essential element of the alleged violation, the complaint must be dismissed. Division of Licensing Services v Martino, 142 DOS 92; State Administrative Procedure Act §306[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charge herein against Errol L. Clarke is dismissed.

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