

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-

CHARLES E. FAIRCLOTH d/b/a SURE SUCCESS

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 February 23, 1994 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The respondent, of 366 Main Mall, Poughkeepsie, New York 12601, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINTS

The complaints in the matter allege that the respondent engaged in the practice of barbering in his barber shop without current licenses.

FINDINGS OF FACT

1) Notice of hearing calendared for January 18, 1994 together with copies of the complaints was served on the respondent by certified mail. A notice of adjournment to February 23, 1994, dated December 30, 1993, was subsequently served on the respondent by first class mail (Comp. Ex. 1).

2) Prior to the expiration of the licenses on June 25 and 30, 1992, the respondent was licensed, respectively, to operate a barber shop under the name "Sure Success" at 366 Main Mall, Poughkeepsie, New York, and as a master barber (Comp. Ex. 3). Subsequent to their expiration those licenses have not been renewed (Comp. Ex. 2).

3) On February 23, 1993 License Inspector Carolyn Williams observed the respondent cutting the hair of customer in his barber shop and being

paid for his services. Since current shop and barber licenses were not posted she issued notices of violation to the respondent.

OPINION AND CONCLUSIONS OF LAW

I- General Business Law (GBL) §432 provides that no person may engage in the practice of barbering for compensation, or operate a barber shop, without being licensed therefore. GBL §431[4] defines "practice of barbering" as including, among other things, the cutting of the hair of humans, and GBL §431[8] defines "barber shop" as "any store, establishment, place or premises or part thereof where the practice of barbering is engaged in." Therefore, by cutting, for compensation, the hair of a person in his shop at a time after his licenses as a barber and to operate a barber shop had expired, the respondent violated GBL §432 twice.

II- Although the respondent's licenses have expired, in view of his right to automatically renew those licenses (GBL §439[4]) the Department of State retains jurisdiction to impose sanctions for his violations of the licensing law.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Charles E. Faircloth has violated General Business Law §432 twice, and accordingly, pursuant to General Business Law §441[8], no license as a master barber or to operate a barber shop shall be issued to him until he has paid a fine of \$500.00 to the Department of State.

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