

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-

LESLIE GRANT,

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on March 14, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 1242 East Gun Hill Road, Bronx, New York, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent failed to affix his photograph to his license to operate a barber shop.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail (State's Ex. 1).

2) The respondent is, and at the time of the alleged violation was, duly licensed to operate a barber shop d/b/a Grant Barber Shop at 1242 East Gunhill Road, Bronx, New York (State's Ex. 3). At the time of the alleged violation he was also a registered barber apprentice. That license expired on February 2, 1995 (State's Ex. 2).¹

¹ There is nothing in the record which would explain how a license to operate a barber shop was issued to a barber apprentice in apparent violation of General Business Law (GBL) §438[2-a].

3) On July 28, 1994 License Inspector Juanita Davis conducted an inspection of the respondent's barber shop, and noted that there was no photograph on the shop license.

OPINION AND CONCLUSIONS OF LAW

Pursuant to 19 NYCRR 165.3, the holder of a license to operate a barber shop must affix his photograph to his license. By reason of there being no photograph affixed to the respondent's shop license at the time of the inspection it is concluded that he violated that regulation.

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 \$100.00 (State's Ex. 1). Where such an offer of settlement has been made and not accepted, 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).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Leslie Grant has violated 19 NYCRR 165.3, and accordingly, pursuant to General Business Law §441, he shall pay a fine of \$150 to the Department of State on or before April 28, 1995. Should he fail to pay the fine his license to operate a barber shop shall be suspended for a period of one month, commencing on May 1, 1995 and terminating on May 31, 1995, both dates inclusive.

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