

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-

HERIBERTO LOPEZ,

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 26, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 2418 University Avenue, Bronx, New York 10468, having been advised of his right to be represented by an attorney, appeared pro se. He was accompanied by his son, Domingo Lopez, who assisted as translator.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent operated a barber shop without a shop license and without conspicuously posting his barber license or the barber license of another person who was working in the 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 all times hereinafter mentioned was, duly licensed to engage in the practice of barbering (State's Ex. 2). Since May 6, 1994 he has been duly licensed to operate a barber shop at 353 South 3rd. Street, Brooklyn, New York.

3) On March 18, 1994 License Investigator Cherie Fernandez conducted an inspection of the respondent's barber shop. At the time the shop, which was open for business and providing barber services to paying customers, was not licensed. Besides the respondent, one Louis Marelo, who was not a licensed barber (State's Ex. 3), was also serving customers. The only license which was posted in the shop was the respondent's barber license.

OPINION AND CONCLUSIONS OF LAW

I- Pursuant to General Business Law (GBL) §432, it is unlawful to operate a barber shop without a license to do so. By operating a barber shop without a license the respondent violated that statute. In mitigation, I have considered the respondent's testimony that he purchased the shop from another party who did not advise him that he needed a shop license, and that until the inspection he was unaware of that need. From his demeanor at the hearing, and his apparent continuing confusion as to what is required,¹ I have concluded that his testimony was honest. I have also considered the fact that he obtained a shop license shortly after the inspection. He is admonished that any future violations may result in the imposition of significant penalties.

II- Pursuant to GBL §439[3], licenses to engage in the practice of barbering must be posted in the barber shop in which the licensee is engaged in such practice. Contrary to the charges in the complaint, the evidence establishes that the respondent's barber license was posted. No license was posted by Louis Marelo, but as he was not licensed, he had no license to post. Accordingly, the failure to have a license posted for him was not a violation of GBL §439[3]. Division of Licensing Services v Rosati, 18 DOS 94.²

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Heriberto Lopez has violated General Business Law §432, and accordingly, pursuant to General Business Law §441[8] he is reprimanded therefore.

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

¹ After the hearing the respondent was advised as to exactly what licenses he needs by persons employed by the complainant.

² The respondent could have been, but was not, charged with allowing a unlicensed person to engage in the practice of barbering in violation of GBL §444.