

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

**JESSIE MILLER**

**DECISION**

For a License to Operate a Barber Shop

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on March 22, 2000 at the office of the Department of State located at 123 William Street, New York, New York.

The applicant did not appear.

The Division of Licensing Services (hereinafter "DLS") was represented by Legal Assistant II Thomas Napierski.

**ISSUE**

The issue before the tribunal is whether the applicant should be denied a license to operate a barber shop because he was previously convicted of various crimes.

**FINDINGS OF FACT**

1) By application received on September 7, 1999 the applicant applied for a license to operate a barber shop. He answered "yes" to question #2: "Have you ever been convicted of a crime or offense (other than a minor traffic violation) in this State or elsewhere...?" (State's Ex. 2).

2) The applicant has the following record of criminal convictions (State's Ex. 3):

3/2/92-Robbery;

4/14/92-Murder in the 2nd degree;

3/2/95-Conspiracy to Possess Heroin With Intent to Distribute, Possession of Heroin With Intent to Distribute, and Distribution of Heroin.

3) By letter dated October 13, 1999 the applicant was advised by DLS that it proposed to deny his application because his

"criminal history indicates a lack of good moral character and trustworthiness required for licensure," and that he could request a hearing, which he did by letter dated November 10, 1999. Accordingly, the matter having been referred to this tribunal on January 13, 2000, notice of hearing was served by certified mail addressed to the applicant at the address appearing on his application, and delivered on a date not indicated on the return receipt (State's Ex. 1).

#### **OPINION AND CONCLUSIONS OF LAW**

I- The holding of an *ex parte* quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- A hearing on an application for licensure or registration is held at the request and instance of an applicant who has been notified of the proposed denial of the application. 19 NYCRR 400.4[b]. At the hearing it would have been the applicant's burden to establish that he is qualified to be licensed to operate a barber shop. General Business Law §438; State Administrative Procedure Act §306.

The applicant made a request for a hearing, but, although properly served with notice, failed to appear at the appointed time and place. He is, therefore, deemed to have withdrawn the request for a hearing and, more than 35 days having elapsed since he was advised of the proposed denial, the decision to deny the application is final. 19 NYCRR 400.4[b]; *Matter of the Application of Delroy Antonio*, 79 DOS 95, *Matter of the Application of Edward Davis*, 58 DOS 94; *Matter of the Application of Jeffery H. Mintz*, 35 DOS 94.

#### **DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application of Jessie Miller for a license to operate a barber shop is denied.

Roger Schneier  
Administrative Law Judge

Dated: March 30, 2000