

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-

CARLO OPPEDISANO, JR.,

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 November 14, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Rosa Hair Stylists, 110-48 73rd Road, Forest Hills, New York 11375, was not present, but was represented by Janice Brown, Esq., of the law firm of Michael K. Benimowitz, Esq., 299 Broadway, Suite 165, New York, New York 10007.

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 beauty parlor and to his barber's license, and that he failed to have his barber's license and the license of a hairdresser/cosmetologist who worked in his beauty parlor posted conspicuously.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on September 14, 1994 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, a duly licensed barber (State's Ex. 3) and duly licensed to operate an appearance enhancement business on behalf of Rosa Hair

Stylists Inc. at 110-48 73rd Road, Forest Hills, New York (State's Ex. 2).¹

3) On October 14, 1993 Senior License Investigator Tedi Ringel conducted an inspection of the respondent's shop. She observed the respondent, who was also working as manager of the shop, shaving the face of a customer, and Zhanfar Shanaz, a licensed hairdresser/cosmetologist, washing a customer's hair. None of their licenses were posted where she could see them, and when they were presented to her the respondent's barber and shop licenses did not have photographs affixed to them. In response she issued a "Shop Notice of Violation" to the respondent (State's Ex. 4).d

4) The complainant subsequently sent the respondent a notice of violation, to which was affixed the Shop Notice of Violation, and in which he was offered the option of pleading guilty to the charges and paying a fine of \$500.00 in settlement, or of pleading not guilty, in which case he would be scheduled for additional proceedings. The respondent chose to plead not guilty, with the additional statement: "Was not aware that operator license had to be posted conspicuously and the same was an oversight and was not willful" (State's Ex. 1).

OPINION AND CONCLUSIONS OF LAW

I- Pursuant to 19 NYCRR 161.2[b], as in effect at the time of the inspection, the person who managed a beauty parlor licensed to a corporation was required to affix his photograph to that license. Pursuant to 19 NYCRR 165.3[a] a barber is required to affix his photograph to his barber's license. By failing to affix his photograph to either of his licenses the respondent violated both of those regulations.

In mitigation, I take official notice that the shop license certificates generated by the complainant's computer system, unlike the certificates issued for barber's licenses, contain no indication that a photograph is required.

II- Pursuant to GBL §407[3], as in effect at the time, the license of a hairdresser/cosmetologist was required to be conspicuously posted in the shop in which the licensee was engaged in the practice of hairdressing and cosmetology. The practice of hairdressing and cosmetology was defined by GBL §401[5] as including, among other things, the cleansing of hair. Accordingly, the failure to post Zhanfar Shanaz's license in the beauty parlor

¹ At the time in question in this matter, and until the July 5, 1994 effective date of amendments to General Business Law (GBL) Article 27, the shop license was known as a license to operate a beauty parlor.

was a violation of GBL §407[3]. As the manager of the shop who obtained the shop license on behalf of the corporation, the respondent is liable for that violation. Division of Licensing Services v Caporrimo, 75 DOS 94.

III- Pursuant to GBL §439[3], a barber must keep his license posted in some conspicuous place in the barber shop in which he is employed. The respondent's barber license was not posted, but he was employed in a beauty parlor. Accordingly, his failure to post that license was not in violation of law.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Carlo Oppedisano, Jr. violated 19 NYCRR 161.2[b] and 165.3[a] and General Business Law §407[3], and accordingly, pursuant to General Business Law §§410 and 441, he shall pay a fine of \$300.00 to the Department of State on or before January 31, 1995. Should he fail to pay the fines then his licenses as a barber and to operate an appearance enhancement business shall be suspended for a period of one month, commencing on February 1, 1995 and terminating on February 28, 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:

GAIL S. SHAFFER
Secretary of State
By:

Phillip M. Sparkes
Special Deputy Secretary of State