

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Complaint of

DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,

Complainant,

DECISION

-against-

JULIO POMARICO,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 16, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of La Rosa Beauty Salon Inc., 146-05 Jamaica Avenue, Jamaica, New York 11435, did not appear.

The complainant was represented by Assistant Litigation Counsel Scott NeJame, Esq.

COMPLAINT

The complaint alleges that the respondent operated an appearance enhancement business using a barber shop license, and allowed two unlicensed operators to work in the shop in violation of General Business Law (GBL) §401.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on March 20, 1997 (State's Ex. 1).

2) Since September 29, 1995 the respondent has been licensed to operate a barber shop under the name "La Rosa Beauty Salon Inc." at 146-05 Jamaica Avenue, Jamaica, New York (State's Ex. 2).

3) On February 23, 1996 License Investigator Steven Wakely conducted an inspection of the respondent's barber shop. He observed Marie Pope shampooing the hair of a customer. Ms. Pope was not licensed under the appearance enhancement law (State's Ex. 3).

On August 14, 1996 License Investigator Richard McArthur conducted a follow up inspection in the shop. He observed Elias Alicea, who was not licensed under the appearance enhancement law, giving a customer a permanent (State's Ex. 4).

OPINION AND CONCLUSIONS OF LAW

Pursuant to GBL §401[1], a license issued pursuant to GBL Article 27 is required to engage in the practices of natural hair styling and cosmetology. The practice of natural hair styling includes the shampooing of the hair of a person (GBL §400[5]), and the practice of cosmetology includes the use of chemicals to curl the hair of a person (GBL §400[7]).

The unlicensed persons who were working in the respondent's shop were clearly in violation of GBL §401[1]. Likewise, by permitting the administration of a permanent in his barber shop the respondent violated GBL §401[2], which requires a license for the operation of an appearance enhancement business, which is a business that provides any of the services for which a license is required under GBL §401[1].

Had the respondent been licensed pursuant to GBL Article 27 his license could have been revoked or suspended, or a fine could have been imposed, because of the foregoing violations. GBL §410; 19 NYCRR 160.11. However, the respondent is licensed pursuant to GBL Article 28.

GBL Article 28, §441 lists nine grounds for the imposition of disciplinary sanctions against the holder of a license to conduct a barber shop. None of those grounds include violation of any of the provisions of GBL Article 27.

However, GBL §410[2][a] provides that this tribunal, acting on behalf of the Secretary of State, may issue an order directing any person to cease from operating an unlicensed appearance enhancement business and from employing unlicensed persons to provide services for which a license is required. Should the respondent not comply with such an order, the Secretary of State may request that the Attorney General seek court enforcement of the order, along with the imposition of a monetary penalty, pursuant to GBL §§410[2][b] and 412.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT, pursuant to General Business Law §410[2][a], Julio Pomarico is ordered to cease and desist from the operation of an appearance enhancement business without a license to operate such business, and from the employment of unlicensed persons to provide services for which a license issued pursuant to General Business Law §401[1] is required.

Roger Schneier
Administrative Law Judge

Dated: April 25, 1997