

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-

**BERNARDO ACOSTA, d/b/a
MARINA UNISEX SALON,**

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 August 5, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 2012 2nd Avenue, New York, New York 10029, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondent operated a beauty parlor without a shop license on the premises, and permitted an unlicensed person to engage in the practice of hairdressing and cosmetology in his shop.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail received by him on July 12, 1993 (Comp. Ex. 1).

2) The respondent is duly licensed to operate a beauty parlor at 2012 2nd Avenue, New York, New York 10029 under the trade name "Marina Unisex Salon" (Comp. Ex. 2).

3) On January 7, 1993 License Investigator Sandra Fontanez conducted an inspection of the respondent's beauty parlor. She ascertained that there was no shop license on the premises, and

observed Maribel Lara setting and styling the hair of a customer. She asked Lara if she was a licensed hairdresser, and Lara answered "no." A search of the complainant's records confirmed the lack of a license (Comp. Ex. 3).

OPINION AND CONCLUSIONS OF LAW

I- General Business Law (GBL) §407(3) provides that each license issued pursuant to GBL Article 27 must be posted in the beauty shop in which the licensee is engaged in the practice of hairdressing and cosmetology. The "practice of hairdressing and cosmetology" includes, among other things, the waving, arranging, dressing and curling of hair. GBL §401[5]. The respondent was engaged in the practice of hairdressing and cosmetology in his beauty parlor through the setting and styling activities of Lara, and, therefore, by not having his shop license on the premises, he violated GBL §407(3).

II- GBL §412 provides that it is a misdemeanor for any person to directly or indirectly employ, permit or authorize any unlicensed person to engage in the practice of hairdressing or cosmetology. Therefore, by permitting Lara to set and style the hair of a customer in his shop when she was not licensed as a hairdresser and cosmetologist the respondent violated GBL §412.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Bernard Acosta violated General Business Law §412, and accordingly, pursuant to General Business Law §409[8], he shall pay a fine of \$500.00 to the Department of State on or before September 30, 1993, and upon failure to pay the fine his license to operate a beauty parlor shall be suspended for a period of two months, commencing on October 1, 1993 and terminating on November 31, 1993, 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:

James N. Baldwin
Executive Deputy Secretary of State