

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-

ELIYAHN AMIT,

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 Ilan Hair Studio, Inc., 596 Kings Highway, Brooklyn, New York 11223, did not appear.

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

COMPLAINT

The complaint in the matter alleges that the respondent did not have a proof of a surety bond or liability insurance on the premises of his appearance enhancement business in violation of 19 NYCRR 160.9.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was sent to the respondent by certified mail addressed to his last known business address on March 18, 1997, and was returned by the United States Postal Service marked "MOVED-NOT FORWARDABLE" (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to operate an appearance enhancement business on behalf of Ilan Hair Studio, Inc. at 596 Kings Highway, Brooklyn, New York (State's Ex. 2).

3) On March 19, 1996 License Investigator Sang Lee conducted an inspection of the respondent's shop and determined that there was no evidence of a surety bond or liability insurance on the premises (State's Ex. 3).

4) On October 18, 1996 Investigator Lee conducted another inspection of the respondent's shop and determined that there was still no evidence of a surety bond or liability insurance on the premises (State's Ex. 4).

5) I take official notice that prior to service of the notice of hearing the respondent was offered the opportunity to settle the matter by paying a fine of \$250.00 and did not avail himself of that opportunity.

OPINION AND CONCLUSIONS OF LAW

I- Pursuant to General Business Law (GBL) §411[2], a person charged with a violation of the provisions of GBL Article 27 and the regulations enacted thereunder must be served with notice of hearing. Such service may be made by, among other things, mailing a copy of the notice to the respondent by certified mail at the respondent's last known business address. The complaint complied with that requirement and, therefore, the holding of an *ex parte* hearing was permissible.

II- 19 NYCRR 160.9, enacted pursuant to General Business Law §404, provides that the owner of an appearance enhancement business must maintain either a surety bond or accidental and professional liability insurance or general liability insurance in prescribed amounts, and that evidence of such bond or insurance must be maintained on the premises. The respondent violated that regulation and has offered no explanation for that violation.

III- In setting the penalty to be imposed for the respondent's violation, I have considered the fact that prior to the scheduling of the hearing he was offered the opportunity to resolve the matter through the payment of a fine. Where such an offer of settlement has not been accepted and the respondent has subsequently been found guilty, it is proper to impose a fine higher than that which was asked for in the settlement offer. *Vito v Jorling*, 197 AD2d 822, 603 NYS2d 64 (1993) (finding that it was proper to impose a fine of \$22,825.00 after an offer to settle for a \$500.00 penalty was rejected).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Eliyahn Amit has violated 19 NYCRR 160.9, and accordingly, pursuant to General Business Law §410, his license to operate an appearance enhancement business is suspended, effective immediately, until such time as he shall produce proof satisfactory to the Division of Licensing Services that the business is in full compliance with the requirement of 19 NYCRR 160.9 and he shall have paid a fine of \$500.00 to the Department of State. He is directed

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to send the fine and proof of compliance, or the license certificates, to Thomas F. McGrath, Revenue Unit, Department of State, 84 Holland Avenue, Albany, New York 12208.

Roger Schneier
Administrative Law Judge

Dated: May 6, 1997