

STATE OF NEW YORK
DEPARTMENT OF STATE

-----X

In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

DECISION

-against-

MORRIS ANGELOU,

Respondent.

-----X

This matter came on for hearing before the undersigned, Roger Schneier, on January 11, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 421 Grand Boulevard, Long Beach, New York 11561, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent operated an unlicensed beauty parlor, engaged in the practice of hairdressing and cosmetology without having his license posted conspicuously, and permitted two other hairdresser/cosmetologists to engage in the practice of hairdressing and cosmetology in his shop without having their licenses posted conspicuously.

FINDINGS OF FACT

1) On November 30, 1994 notice of hearing together with a copy of the complaint was served at the respondent's residence on an adult male who identified himself as the respondent's son, and a copy was mailed to the respondent at his residence on December 1, 1994 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to engage in the practice of cosmetology (State's Ex. 3).¹

¹ Prior to the July 5, 1994 effective date of amendments to General
(continued...)

3) On June 3, 1993 License Investigator Frances DeStefano conducted an inspection of "Andrez NU Era" a beauty parlor operated by the respondent at 152 West Park Avenue, Long Beach, New York. She observed the respondent cutting the hair of a customer, Yosi Saban, a licensed hairdresser/cosmetologist, cutting and blow drying the hair of a customer, and Marianne Spahr, also a licensed hairdresser/cosmetologist, shampooing the hair of a customer. Neither the respondent's nor Saban's or Spahr's licenses were posted conspicuously (State's Ex. 2), and the shop was unlicensed (State's Ex. 3).

OPINION AND CONCLUSIONS OF LAW

I- Pursuant to General Business Law (GBL) §402[2], as in effect at the time of the inspection of the respondent's shop, it was unlawful to operate a beauty parlor without being licensed to do so. A "beauty parlor" was any place or premises in which hairdressing and cosmetology were practiced. (GBL §401[4]). "Hairdressing and cosmetology" included, among other things, the cutting, arranging, and cleansing of the hair of any person. (GBL §401[5]). Accordingly, by operating an unlicensed premises in which the cutting, blow drying, and shampooing of hair by hairdressers took place the respondent violated GBL §402[2].

II- Pursuant to General Business Law (GBL) §407[3], as in effect at the time of the alleged violations, each license issued to engage in the practice of hairdressing or cosmetology was required to be posted in some conspicuous place in the beauty parlor in which the licensee was engaged in the practice of hairdressing and cosmetology. Accordingly, the respondent's license and the licenses of Saban and of Spahr were required to be conspicuously posted in the respondents' shop. As operator of the shop, the respondent is liable not only for the failure to conspicuously post his license, but also for the failure to conspicuously post Saban's and Spahr's licenses. Division of Licensing Services v Santarpia, 124 DOS 94.

III- In setting the penalty to be imposed for the respondent's violations, 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 of \$550.00 (State's Ex. 1). Where such an offer of settlement has been rejected and the respondent has subsequently been found guilty of the violations charged, 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).

¹(...continued)

Business Law Article 27 the license was known as a license to engage in the practice of hairdressing and cosmetology.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Morris Angelou has violated General Business Law §§402[2] and 407[3] (three times), and accordingly, pursuant to General Business Law §410, he shall pay a fine of \$750.00 to the Department of State on or before March 31, 1995. Should he fail to pay the fine then his license to engage in the practice of cosmetology shall be suspended for a period of two months, commencing on April 1, 1995 and terminating on May 31, 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:

ALEXANDER F. TREADWELL
Secretary of State
By:

Phillip M. Sparkes
Special Deputy Secretary of State