**41 DOS 99**

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-

**JEAN BAILEY and SCOTT GARLAND d/b/a**
**TOTAL CARE UNISEX HAIR SALON,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on February 25, 1999 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondents did not appear.

The complainant was represented by Legal Assistant Thomas Napierski.

## COMPLAINT

The complaint alleges that the respondents have engaged in the cosmetologist and appearance enhancement business without a license, and seeks a cease and desist order and the imposition of a civil penalty of $500.00.

## FINDINGS OF FACT

1) Notices of hearing together with copies of the complaint were sent to the respondents on January 7, 1999 by certified and regular first class mail addressed to them at their last known business address (State's Ex. 1 and 4). The certified mailing was returned by the United States Postal Service stamped "unclaimed" (State's Ex. 2). The regular first class mail was returned marked "undeliverable as addressed-no forwarding order on file" (State's Ex. 3).

2) On April 24, 1998 License Investigator Carolyn Williams conducted an inspection of premises located at 9 South Fulton Avenue, Mount Vernon, New York 10550. She observed Scott Garland cutting the hair of a paying customer. She also observed a posted, expired

cosmetologist's license in the name of Jean Abby Bailey, and a business certificate for Total Care Unisex Salon at that address (State's Ex. 1).

3) Neither of the respondents were licensed pursuant to either the Barber Law or the Appearance Enhancement Law, and there was no license issued to the shop (State's Ex. 1).

## OPINION AND CONCLUSIONS OF LAW

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. General Business Law (GBL) §441[2]; *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Pursuant to GBL §410[2][a], where it is found that a person is conducting an appearance enhancement business without a valid license, that person may be ordered to cease and desist from such unlicensed activities. An appearance enhancement business includes, among other things, the cutting of the hair of a person for compensation. GBL §400. Accordingly, the respondents having operated an unlicensed appearance enhancement business they should be ordered to cease and desist from doing so.

III- GBL §412 provides that where a person conducts an unlicensed appearance enhancement business in violation of an order directing him or her to cease such activity a monetary penalty may be imposed upon that person. Since there was no cease and desist order issued prior to the respondents' conduct, the penalty which the complainant seeks cannot be imposed.

## DETERMINATION

**WHEREFORE, IT IS HEREBY DETERMINED THAT**, pursuant to General Business Law §410, Jean Bailey and Scott Garland are directed to immediately cease and desist from the operation of an unlicensed appearance enhancement business.

Roger Schneier
Administrative Law Judge

Dated: March 3, 1999