

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

-----X

In the Matter of the Complaint of

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

Complainant,

**DECISION**

-against-

**CANAVERAL BARTON,**

Respondent.

-----X

The above noted matter came on for hearing before the undersigned, Roger Schneier, on September 8, 1999 at the New York State Office Building, 65 Court Street, Buffalo, New York.

The respondent did not appear.

The complainant was represented by License Investigator III Marcia Reinagel.

**COMPLAINT**

The complaint in the matter alleges that the respondent provided appearance enhancement services as a renter without a renter's license.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on July 28, 1999 (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).

3) On April 23, 1999 Senior License Investigator George Monroe conducted an inspection of Katie's Hair Boutique, 1071 Portland Avenue, Rochester, New York 14621. He observed that the respondent was operating an appearance enhancement business as a renter in that shop, but that she was not licensed to do so (State's Ex. 6).

4) Prior to the hearing the respondent was offered the opportunity to settle the matter by paying a \$250 fine, but she failed to accept the offer or to appear for a pre-hearing conference to discuss the

charges (State's Ex. 4 and 5). At the hearing Ms. Reinagel advised the tribunal that the day before the hearing the respondent telephoned her and offered to pay a \$100.00 fine, but that offer was declined by her. On September 15, 1999 Ms. Reinagel advised the tribunal by telefax that the respondent had sent in a money order for \$100.00 with a note indicating that it was in payment of the fine. Ms. Reinagel further advised the tribunal that she was unwilling to accept the fine and asked if she should hold the money order or return, and she was advised, also by telefax, to return it.

#### **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) §411[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 §401[2], it is unlawful for any person to own, control or operate an appearance enhancement business without being licensed therefore. That requirement extends to persons who rent space in shops owned by others. 19 NYCRR 160.4. The respondent violated that statute.

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 she was offered the opportunity to resolve the matter through the payment of a fine of \$250.00. 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** Canaveral Barton has violated General Business Law §401[2], and accordingly, pursuant to General Business Law §410, she shall pay a fine of \$350.00 to the Department of State on or before October 29, 1999. Should she fail to pay the fine, her license to engage in the practice of cosmetology shall be suspended for a period commencing with the receipt of her license certificate by the complainant and terminating two months thereafter. The respondent is directed to send the fine or her license

certificate to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier  
Administrative Law Judge

Dated: September 17, 1999