

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-

ANGELA BASCIANO,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 27, 1999 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent did not appear.

The complainant was represented by License Investigator III Richard Drew.

COMPLAINT

The complaint alleges that the respondent allowed an unlicensed person to work in her appearance enhancement shop.

FINDINGS OF FACT

1) On April 19, 1999 notice of hearing together with a copy of the complaint was sent to the respondent by certified and regular first class mail addressed to her at her last known place of business, Hello Gorgeous Tremont Nail & Tanning Salon I, 3764 E. Tremont Avenue, Bronx, New York 10465. The certified mail was returned by the Postal Service marked "unclaimed" (State's Ex. 2 and 3). An additional copy of the notice of hearing was sent to the respondent on May 12, 1999 by certified mail addressed to her at Hello Gorgeous Tremont Nail & Tanning Salon I, 4030 E. Tremont Avenue, Bronx, New York 10465, and was delivered on May 17, 1999 (State's Ex. 1). I take official notice that there is no record in the Department of State's computerized records of an appearance enhancement business license having been issued at that address.

2) From at least May 15, 1997 until May 15, 1999 the respondent was licensed to conduct an appearance enhancement business d/b/a Hello Gorgeous Tremont Nail & Tanning Salon I, 3764 E. Tremont Avenue, Bronx, New York 10465 (State's Ex. 5).

3) On September 4, 1998 License Investigator Ralph Bryam conducted an inspection of the respondent's shop and observed Christie A. Casucci, who was not licensed to engage in appearance enhancement activities (State's Ex. 6 and 7) filing the nails of a customer for compensation (State's Ex. 8).

4) By letter dated January 21, 1999 the respondent was given the opportunity to settle the charge herein by paying a \$250.00 fine (State's Ex. 9). She did not respond to that offer.

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 §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- The Department of State has jurisdiction to conduct this hearing, which was begun while the respondent was licensed, even though her license has expired of its own terms. *Albert Mendel & Sons, Inc. v N.Y. State Department of Agriculture and Markets*, 90 AD2d 567, 455 NYS2d 867 (1982); *Main Sugar of Montezuma, Inc. v Wickham*, 37 AD2d 381, 325 NYS2d 858 (1971).

III- GBL §401[1] provides that no person may engage in any of the practices defined in GBL §400 without being licensed therefore, and, pursuant to 19 NYCRR 160.11, the owner of an appearance enhancement business is liable for any violation of that statute occurring in his or her shop. Included in those practices is the filing of nails. Since there is evidence that the filing was provided for a fee, GBL §400[5], the complainant has met its burden of proving that the respondent is guilty of the alleged violation. *Division of Licensing Services v Kouame*, 104 DOS 97, aff'd. 6 DOS APP 97.

IV- 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 she was offered the opportunity to resolve the matter through the payment of a fine of \$250.00 (State's Ex. 1). 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 Angela Basciano has violated General Business Law §401[1], and accordingly, pursuant to General Business Law §410, she is directed to pay a fine of \$500.00 to the Department of State, and until payment of the fine no application for the issuance of a license to her pursuant to General Business Law Article 27 shall be granted.

Roger Schneier
Administrative Law Judge

Dated: May 27, 1999