

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Complaints of

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

Complainant,

DECISION

-against-

**MICHAEL J. BOURGEOIS and
VALERIE KELLY**

Respondents.

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on October 28, 1992 at the office of the Department of State located at 84 Holland Avenue, Albany, New York.

The respondents, both of whom have a current business address of 105 Main Street, Boonville, New York 13309, where not present.

The complainant was represented by Compliance Officer William Schmitz.

THE COMPLAINTS

The complaints in the matter allege that Bourgeois permitted Kelly to engage in the practice of hairdressing and cosmetology in Bourgeois' beauty parlor without her license to do so being posted; permitted Kelly to operate as a space renter in his beauty parlor without a license to do so; and permitted Susan J. Bailey to operate as a space renter in his beauty parlor without a license to do so.

FINDINGS OF FACT

1) Notices of hearing together with copies of the complaints were mailed to the respondents by certified mail. The notice to Bourgeois was addressed to him at 32 Main Street, Boonville, New York 13309, and was signed for by a Sue Pfendler (Comp. Ex.1). The notice to Kelly was addressed to her at 132 Main Street, Boonville, and was signed for by the same person. The evidence submitted by the complainant establishes that the respondents were never licensed at and do not reside at the addresses to which their notices were sent (Bourgeois, not Kelly, was licensed at 132 Main Street, the address to which Kelly's notice was sent, and neither was licensed at the address to which Bourgeois' notice was sent) (Comp. Ex. 3, 4, 5, and 6).

OPINION AND CONCLUSIONS OF LAW

General Business Law (GBL) §410 provides that before disciplinary sanctions can be imposed on a person licensed pursuant to GBL Article 27 that person must first be served with notice of hearing. While it might be presumed that in a town the size of Boonville (which I take official notice has a population of under 2,500), when mail is sent to addresses which closely approximate the correct addresses it will be delivered. However, when, as here, the notices of hearing were not sent to the correct address, the respondents have not appeared and have not contacted either the tribunal or the complainant's representative, and there is no identification of the person who signed the receipts for the notices, it would violate the principals of due process of law to proceed with the matter at this time.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charges herein against Michael J. Bourgeois and Valerie Kelly as dismissed pursuant to General Business Law §410, without prejudice to the complainant reinstating the proceedings through the proper service of notices of hearing.

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:

GAIL S. SHAFFER
Secretary of State
By:

James Coon
Deputy Secretary of State