

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-

**LUCY BROWN,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 16, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Smitty All Star Beauty Salon, 1801 Amsterdam Avenue, New York, New York 10031, did not appear.

The complainant was represented by Assistant Litigation Counsel Scott L. NeJame, Esq.

**COMPLAINT**

The complaint alleges that the respondent provided appearance enhancement services in a rental area without renewing her area rental license, and did not have a surety bond or liability insurance on the premises in violation of 19 NYCRR 160.9.

**FINDINGS OF FACT**

1) On March 18, 1997 notice of hearing together with a copy of the complaint was sent to the respondent by certified mail addressed to her at Smitty All Star Beauty Salon, 1801 Amsterdam Avenue, New York, New York 10031, her last known business address, but was returned by the United States Postal Service marked "ATTEMPTED NOT KNOWN." A second copy of the notice and complaint was mailed to the respondent at the same address by regular first class mail on April 7, 1997 (State's Ex. 1, 2 and 3).

2) From June 30, 1994 until June 30, 1996 the respondent was licensed as a space renter at Smitty All Star Beauty Salon, 1801 Amsterdam Avenue, New York, New York 10031, an appearance enhancement business (State's Ex. 2 and 3).

3) On July 2, 1996 License Investigator Ernest Delany conducted an inspection of Smitty All Star Beauty Salon. He determined that there was no surety bond or liability insurance on the premises, and issued an inspection report to an unidentified person.

#### **OPINION AND CONCLUSIONS OF LAW**

I- Pursuant to General Business Law (GBL) §411[2], a person charged with a violation of the provisions of GBL Article 27 and the regulations enacted thereunder must be served with notice of hearing. Such service may be made by, among other things, mailing a copy of the notice to the respondent by certified mail at the respondent's last known business address. The complaint complied with that requirement and, therefore, the holding of an *ex parte* hearing was permissible.

II- As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, the truth of the charges contained in the complaint. State Administrative Procedure Act (SAPA), §306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Gray v Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." *City of Utica Board of Water Supply v New York State Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

III- The complainant has offered no evidence whatever that would establish that the respondent was providing appearance enhancement services, or was even on the premises, at the time of the inspection alleged in the complaint. Accordingly, the charge that she provided appearance enhancement services in a rental area for which the license had expired must be dismissed.

IV- 19 NYCRR 160.9, enacted pursuant to General Business Law §404, provides that the owner of an appearance enhancement business must maintain either a surety bond or accidental and professional liability insurance or general liability insurance in prescribed amounts, and that evidence of such bond or insurance must be maintained on the premises. 19 NYCRR 160.11 extends that requirement to area renters who, by the terms of that regulation, are responsible for compliance with all regulatory requirements with respect to the practices of the business in which they rent space.

The evidence establishes that there was an apparent violation of 19 NYCRR 160.9. However, it does not establish that the respondent, who was not licensed at the time of the inspection, was an area renter at the time of that violation. Therefore, that charge must also be dismissed.<sup>1</sup>

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<sup>1</sup> The tribunal is not aware of whether a notice of violation was issued to the actual owner of the shop.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the charges herein against Lucy Brown are dismissed.

Roger Schneier  
Administrative Law Judge

Dated: May 5, 1997