

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Complaint of

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

Complainant,

DECISION

-against-

JOANN CAPORRIMO,

Respondent.

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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 June 6, 1994 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 984 Morris Park Avenue, Bronx, New York 10461, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent permitted three licensed hairdresser/cosmetologists to engage in the practice of hairdressing and cosmetology in her beauty parlor without having their licenses on the premises, and that she failed to affix her photograph to her own license to engage in hairdressing and cosmetology.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail, and a subsequent notice of adjournment was served on her by regular first-class mail (Comp. Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to operate a beauty parlor d/b/a Hair Future Today By Joann at 984 Morris Park Avenue, Bronx, New York (Comp. Ex. 2 and 4). Under the name Giovanna Caporrino she is, and at all time hereinafter mentioned was, duly licensed to engage in the practice of hairdressing and cosmetology (Comp. Ex. 3 and 4).

3) On October 8, 1993 Senior License Investigator Ernita Gantt conducted an inspection of the respondent's beauty parlor. She observed the respondent and three other licensed hairdresser/cosmetologists styling the hair of customers. The respondent's license did not have her photograph affixed to it, and the licenses of the three other hairdresser/cosmetologists were not on the premises. Gantt spoke with the respondent, who told her that the licenses were not posted because the shop had been painted several days before.

OPINION AND CONCLUSIONS OF LAW

Pursuant to General Business Law (GBL) §407[3] a license to engage in the practice of hairdressing and cosmetology must be conspicuously posted in the beauty parlor in which the licensee is engaged in the practice of hairdressing and cosmetology, which, pursuant to GBL §401[5], includes, among other things, the arranging, cutting, curling and waving of the hair of any person. Therefore, the failure to have on the premises the licenses of three hairdresser/cosmetologists who were styling hair in the respondent's beauty parlor constituted three violations of GBL §407[3]. As the owner and licensee of the shop, the respondent is liable for those violations. Division of Licensing Services v Watkins, 67 DOS 93; Division of Licensing Services v Valeriano, 146 DOS 92.

Pursuant to 19 NYCRR 161.2[a], every licensed hairdresser and cosmetologist must affix her photograph to her license. By failing to have her photograph affixed to her license at the time of the inspection the respondent violated that regulation.

In a written response to the complaint, sent prior to the institution of the formal hearing procedures, the respondent plead "not guilty," with the explanation that "at the time of the inspection the store was under renovation for painting and wallpaper and the Licenses in question were temporarily removed, and in the possession of each hairdresser" (Comp. Ex. 4). That conflicts with what she told the investigator (that painting had been done several days before), and, in any case, in no way explains why there was no photograph on her license or why the other three licenses were not even on the premises. Therefore, absent the testimony and cross examination of the respondent, I find her explanation unpersuasive.

DETERMINATION

WHEREFORE IT IS HEREBY DETERMINED THAT Joann Caporrino, a/k/a Giovanna Caporrino, has violated General Business Law §407[3] three (3) times, and has violated 19 NYCRR 161.2[a] one (1) time, and accordingly, pursuant to General Business Law §4089[8], she shall pay a fine of \$700.00 to the Department of State on or before July 29, 1994, and should she fail to pay the fine then her licenses to operate a beauty parlor and to engage in the practice of hairdressing and

cosmetology shall be suspended for a period of two months, commencing on August 1, 1994 and terminating on September 30, 1994, both dates inclusive.

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 N. Baldwin
Executive Deputy Secretary of State