

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-

DUDLEY A. CHURCH, JR.,

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on February 15, 1995 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The respondent, of 13 West Street, New Berlin, New York 13411 did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent failed to affix his photograph to his shop license, and that the license of a hair-dresser/cosmetologist employed in his shop was not posted conspicuously.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on January 24, 1995 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to operate an appearance enhancement business d/b/a Hair Necessities at 13 West Street, New Berlin, New York, and to engage in the practice of cosmetology (State's Ex. 2).¹

¹ At the time of the inspection in question in these proceedings, which was prior to the July 5, 1994 effective date of amendments to
(continued...)

3) On June 7, 1994 License Investigator Michael Slabiki conducted an inspection of the respondent's beauty parlor. He observed that there was no photograph on the respondent's shop license, and that the license of Sheila M. Randall, a hairdresser/cosmetologist employed in the shop, was not posted. At the time, Ms. Randall was not a work in the respondent's shop.

OPINION AND CONCLUSIONS OF LAW

I- 19 NYCRR 161.2, as in effect at the time of the inspection, provided that every licensee shall affix his or her photograph to the license. Inasmuch as the respondent's photograph was not affixed to his shop license, he violated that regulation. Division of Licensing Services v Yuran, 89 DOS 93.

II-Pursuant to GBL §407[3], as in effect at the time of the inspection, a license to engage in the practice of hairdressing and cosmetology was required to be posted in some conspicuous place in the shop in which the licensee was engaged in the practice of hairdressing and cosmetology. At the time of the inspection Ms. Randall was not engaged in the practice of hairdressing and cosmetology in the respondent's shop. Accordingly, her license was not required to be posted at that time, the failure to have it posted was not a violation of statute or regulation, and the charge of failing to post her license must be dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Dudley A. Church, Jr. has violated 19 NYCRR 161.2, and accordingly, pursuant to General Business Law §410, he shall pay a fine of \$75.00 to the Department of State on or before April 28, 1995. Should he fail to pay the fine his licenses to engage in the practice of cosmetology and to operate an appearance enhancement business shall be suspended for a period of one month, commencing on May 1, 1995 and terminating on May 31, 1995, both dates inclusive, and

IT IS FURTHER DETERMINED THAT the charge that Dudley A. Church, Jr. operated a beauty parlor without the license of a hairdresser/cosmetologist who was employed in that shop being posted conspicuously is dismissed.

¹(...continued)

General Business Law (GBL) Article 27, the licenses where known, respectively, as a license to operate a beauty parlor and a license to engage in the practice of hairdressing and cosmetology.

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:

ALEXANDER F. TREADWELL
Secretary of State
By:

Michael E. Stafford, Esq.
Chief Counsel