

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-

PATRICIA HAYDEN,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 13, 1998 at the New York State Office Building, 333 East Washington Street, Syracuse, New York.

The respondent, of Max Hair Salon, 4502 East Genesee Street, De Witt, New York 13214, did not appear.

The complainant was represented by Supervising License Investigator Michael Coyne.

COMPLAINT

The complaint in the matter alleges that the respondent provided appearance enhancement services as a renter without a renter's license.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was sent to the respondent at her last known business address by both certified and regular first class mail on April 8, 1998, and was returned by the Postal Service marked "not deliverable as addressed--unable to forward" (State's Ex. 1 and 2).

2) From November 4, 1995 until November 4, 1997 the respondent was licensed to operate an appearance enhancement business as a space renter at Max Hair Salon, 4502 East Genesee Street, De Witt, New York. She is currently licensed to engage in the practice of cosmetology pursuant to a license expiring on October 31, 1998 (State's Ex. 4).

3) On December 10, 1997 Senior License Investigator Dale R. Bolton conducted an inspection of Max Hair Salon. He observed that the respondent was operating an appearance enhancement business as a renter in that shop, but that her license had expired (State's Ex. 1).

4) Prior to the hearing the respondent was offered the opportunity to settle the matter by paying a \$300 fine, but she failed to accept the offer (State's Ex. 3).

OPINION AND CONCLUSIONS OF LAW

I- Pursuant to General Business Law (GBL) §441[2], a notice of hearing and complaint seeking the imposition of disciplinary sanctions against a person licensed pursuant to GBL Article 27 may be commenced by mailing the notice and complaint to the respondent by certified mail addressed to her last known business address, the procedure followed by the complainant in this matter. Therefore, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served, the holding of an *ex parte* quasi-judicial administrative hearing was permissible. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- Pursuant to General Business Law §401[2], it is unlawful for any person to own, control or operate an appearance enhancement business without being licensed therefore. That requirement extends to persons who rent space in shops owned by others. 19 NYCRR 160.4. The respondent violated that statute by operating her business after her license had expired.

III- 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 \$300.00. 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 Patricia Hayden has violated General Business Law §401[2], and accordingly, pursuant to General Business Law §410, she shall pay a fine of \$400.00 to the Department of State on or before June 30, 1998. Should she fail to pay the fine, her license to engage in the practice of cosmetology shall be suspended for a period commencing with the receipt of her license certificate by the complainant and terminating two months thereafter.

The respondent is directed to send the fine or her license certificate to Diane Ramundo, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier
Administrative Law Judge

Dated: May 15, 1998