

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-

THUY T. LE,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 7, 1999 at the office of the Department of State located 41 State Street, Albany, New York.

The respondent, having been advised of his right to be represented by an attorney, chose to represent himself.

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

COMPLAINT

The complaint alleges that the respondent operated an appearance enhancement business with an expired shop license, permitted or employed unlicensed persons to engage in the practice of appearance enhancement in various of his shops, permitted violations of numerous regulations to occur in various of his shops, and that customers were injured due to the incompetence of various of the respondent's employees.

FINDINGS OF FACT

1) Notices of hearing together with copies of the complaint were served on the respondent at various addresses by certified mail (State's Ex. 1).

2) The respondent holds licenses to operate appearance enhancement businesses d/b/a Nail Studio at the following addresses: 440 Mohawk Mall D7, Schenectady, New York 12304; 182 Colonie Center, Albany, New York 12205; 2 Schwenk Dr., Suite 29B, Kingston, New York 12401; and Rotterdam Square Mall F102, Schenectady, New York 12306 (State's Ex.

3). In addition to those shops, which are referenced in the complaint, the complainant holds such licenses for other shops located in various areas of up-state New York (State's Ex. 5).

3) On November 27, 1996 License Investigator Jeffrey Staats conducted an inspection of the Colonie Center shop and observed and reported the existence of the following: Lin Hai Ho, Tran Quynh Q, and The Vinh H. Pham were engaged in the practice of nail specialty for compensation although not licensed to do so (State's Ex. 4); invoices for sterilants and disinfectants had not been retained; waste containers were uncovered; disinfectants were either not being used or were being used improperly; implements were stored improperly; used emery boards were being used for more than one person (State's Ex. 8).

4) On August 8, 1997 License Investigator John A. Goldman conducted an inspection of the Colonie Center shop and observed and reported that Long H. Tran was filing the nails of a customer for compensation although not licensed to do so (State's Ex. 4, 14, and 15).

5) On October 10, 1997 Investigator Goldman inspected the Colonie Center Shop and observed and reported that the shop was open and doing business although its license had expired and had not yet been renewed (State's Ex. 3), and Dung Ngoc Dinh was filing the nails of a customer for compensation although not licensed to do so (State's Ex. 4 and 17).

6) Sometime in December, 1997 Maria Degeorge had her acrylic nails filed and refilled at the Colonie Center shop. The employee of the respondent who performed the services damaged one of the nails, causing Ms. Degeorge to suffer an infection.

7) On December 4, 1997 License Investigator Christopher Peterson conducted an inspection of the Kingston shop and observed and reported the following: Loc Huynh was filing the nails of a customer for compensation although not licensed to do so (State's Ex. 4); there was no evidence of a bond or liability insurance on the premises; the sign mandated by 19 NYCRR 160.10(a) was not posted; the operator's license of Son Nguyen was not posted; waste containers were uncovered; material safety data sheets were not available; and there were no photographs affixed to either Son Nguyen's license or the respondent's shop license (State's Ex. 11).

8) On March 17, 1998 Investigator Peterson conducted an inspection of the Mohawk Mall shop and observed and reported the following: Long H. Tran was providing nail specialty services to a customer for compensation although not licensed to do so (State's Ex. 4); there was no evidence of a bond or liability insurance on the premises; the shop license was not posted; and waste containers were uncovered (State's Ex. 13).

9) On April 20, 1998 Investigator Staats conducted an inspection of the Rotterdam Square Mall shop and observed and reported the

following: Be T. Huynh and Phan M. Le were providing nail specialty services to customers for compensation although not licensed to do so (State's Ex. 4 and 10); emery boards were being used on more than one customer (State's Ex. 9).

10) The respondent maintains his office in California, where he operates a cosmetology school. He operates appearance enhancement shops in the States of New York, Alabama, Massachusetts, Missouri, Hawaii, Kansas, and Minnesota (Resp. Ex. B).

11) The respondent relies on local managers to operate his shops in accordance with company policy (Resp. Ex. A). However, he acknowledges that he has been unable to control the operation of the four shops in question because of the non-cooperation of the local managers, and claims to have sold the Colonie Center and Rotterdam Square Mall shops and to have closed the Mohawk Mall shop. He also claims that he is currently seeking to sell the Kingston shop.

OPINION AND CONCLUSIONS OF LAW

The inspections by the complainant's investigators disclosed numerous violations of statute and regulations in the respondent's shops: Unlicensed operators providing nail specialty services for compensation (GBL §401[1]); no evidence of a surety bond or liability insurance on the premises (19 NYCRR 160.9); no sign stating the license status of the shop and the operators (19 NYCRR 160.10[a]); operator's license not posted (19 NYCRR 160.10[b]); shop license not posted (19 NYCRR 160.10[c]); invoices for sterilants and disinfectants not retained (19 NYCRR 160.14[c]); uncovered waste containers (19 NYCRR 160.16[d]); disinfectants not used or used improperly (19 NYCRR 160.17[a]); improperly stored instruments (19 NYCRR 160.17[c][2]); emery boards used for more than one person (19 NYCRR 160.18[a][6]); material safety data sheets not available (19 NYCRR 160.25[e]); the photograph of an operator was not affixed to his license (19 NYCRR 160.28[a]); and the respondent's photograph was not affixed to a shop license (19 NYCRR 160.28[b]). In addition, a customer was injured because of the incompetence of one of the respondent's employees. As the licensee, the respondent is liable for all of the violations. 19 NYCRR 160.11.

The respondent testified that he has been unable to control the operation of the four shops in question. That testimony is an admission of incompetence. He was found in a prior hearing to have engaged in a practice of hiring unlicensed persons and to have failed to maintain the required proof of insurance in the Colonie Center shop (State's Ex. 6). Under such circumstances, to allow him to continue to hold the licenses for the shops in question would be a total abandonment of the Department of State's obligation to see to the proper operation of appearance enhancement businesses delegated to it by the Governor and Legislature pursuant to General Business Law Article 27.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Thuy T. Le has violated General Business Law §401[1] and 19 NYCRR 160.9, 160.10[a], 160.10[b], 160.10[c], 160.14[c], 160.16[d], 160.17[a], 160.17[c][2], 160.18[a][6], 160.25[e], 160.28[a], and 160.28[b], and has demonstrated incompetence. Accordingly, pursuant to General Business Law §410, his licenses to operate appearance enhancement businesses d/b/a Nail Studio at: Colonie Center, Albany, New York; 2 Schwenk Dr., Kingston, New York; Mohawk Mall, Schenectady, New York; and Rotterdam Square Mall, Schenectady, New York, are revoked, effective immediately. He is directed to send his license certificates to Usha Barat, Customer Service Unit, Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208.

Roger Schneier
Administrative Law Judge

Dated: January 15, 1999