

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 TRONG LE,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 17, 1997 at the office of the Department of State located at 41 State Street, Albany, New York.

The respondent, of Nail Studio, 182 Colonie Center, Albany, New York 12205, having been advised of his right to be represented by an attorney, appeared *pro se*.

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

COMPLAINT

The complaint in the matter alleges that the respondent allowed unlicensed individuals to perform nail services in his shop in violation of General Business Law (GBL) §401, and did not have proof of a surety bond or liability insurance on the premises in violation of 19 NYCRR 160.9.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on March 24, 1997 (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 Nail Studio at 182 Colonie Center, Albany, New York (State's Ex. 2 and 3).

3) On September 18, 1996 License Inspector Jeffrey Staats conducted an inspection of the respondent's shop and observed Tran Quoc Truong filing and coloring a customer's nails and Giang Ho painting a

customer's nails. Neither Ms. Truong nor Ms. Ho was licensed pursuant to GBL Article 27. He also determined that there was no proof of a surety bond or liability insurance on the premises. The services performed by Ms. Truong and Ms. Ho were being provided for consideration¹ (State's Ex. 4).

4) On October 16, 1996 Mr. Staats conducted a compliance inspection of the respondent's shop. He again observed the unlicensed Tran Quoc Truong filing a customer's nails. He also observed Hoa Truong filing a customer's nails and determined that there still was no proof of a surety bond or liability insurance on the premises (State's Ex. 5).

5) The respondent operates a large chain of nail salons in upstate New York, and has a history of employing unlicensed persons to perform nail services in his shops, as established by the following:

a) A complaint dated June 5, 1996 charging that, among other things, the respondent employed six unlicensed nail specialists (State's Ex. 7), and a check for a fine of \$500.00 paid in settlement of the charges in that complaint (State's Ex. 8);

b) A complaint dated July 18, 1996 charging that the respondent employed three unlicensed nail specialists (State's Ex. 10), and a money order for a fine of \$500.00 paid in settlement of the charges in that complaint (State's Ex. 11).

c) A consent Agreement dated September 18, 1996, in which the respondent, acting through his authorized agent, plead no contest to a charge of employing eight unlicensed nail specialists, agreed to pay a fine of \$1,750.00, acknowledged that a license as a nail specialist is required for anyone performing manicures, nail enhancement or any of functions set forth in GBL §400[4], and agreed not to allow unlicensed person to perform nail specialty functions in his shops (State's Ex. 6); and

d) A complaint dated November 22, 1996 charging that the respondent employed seven unlicensed nail specialists (State's Ex. 12), and a check in the amount of \$1,750.00 paid in settlement of the charges in that complaint (State's Ex. 13).

OPINION AND CONCLUSIONS OF LAW

I- Pursuant to GBL §401[1], no person may engage in the practice of nail specialty without being licensed to do so pursuant to the terms

¹ I have concluded that services were being provided for consideration based on the price list obtained by Mr. Staats. It is also noted that at no time did the respondent claim that consideration was not being paid and received. His only defense to the charge was his assertion that the manicurists were licensed in California.

of GBL Article 27. The practice of nail specialty includes the providing of services for a fee or any consideration to cut, shape or enhance the appearance of the nails of the hands or feet. GBL §400[4]. As the owner of appearance enhancement businesses, the respondent is liable for any unlicensed activity which occurs in his shops, 19 NYCRR 160.11, and he is, therefore responsible for the resulting violations of GBL §401[1].

The employment of the unlicensed persons was not an isolated occurrence. The respondent has made it a practice to employ unlicensed nail specialists in his shops, and does not appear to have been deterred by the repeated payment of fines. His explanation that the violations were the fault of Andy Ton, a once trusted employee whom he claims he no longer trusts, is of no value, both because the respondent is personally responsible for the lawful operation of his business, and because Mr. Ton is still in the respondent's employ and the respondent has offered no evidence to show that Mr. Ton has been demoted or otherwise disciplined.

The respondent's chronic unlawful conduct cannot be countenanced, and it's deterrence apparently requires more than just another fine. Accordingly, his license should be suspended for a definite term, and he is admonished that any future violations may very well result in the revocation of one or more of his licenses.

II- 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. The respondent violated that regulation. His explanation that the certificate of insurance is in his headquarters in California is insufficient. Copies of the current certificate must always be maintained in each of his shops.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Thuy Trong Le has violated General Business Law §401 and 19 NYCRR 160.9, and accordingly, pursuant to General Business Law §410, his license to operate an appearance enhancement business d/b/a Nail Studio at 182 Colonie Center, Albany, New York is suspended effective June 1, 1997 for a period ending two months after the receipt by the Division of Licensing Services of his license certificate, and is further suspended until he shall have provided proof satisfactory to the Department of State that all of his shop are in full compliance with the requirements of 19 NYCRR 160.9.

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He is directed to send the fine and proof of compliance, or the license certificates, to Thomas F. McGrath, Revenue Unit, Department of State, 84 Holland Avenue, Albany, New York 12208.

Roger Schneier
Administrative Law Judge

Dated: May 8, 1997