

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-

JILL LYONS d/b/a HAIR DIRECTORS 2,

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 14, 1994 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The respondent, of 14 Millpond Parkway, Monroe, New York 10950, having been advised of her right to be represented by an attorney, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent permitted an unlicensed person to engage in the practice of hairdressing and cosmetology in her shop.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified 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 Directors at 14 Millpond Parkway, Monroe, New York (Comp. Ex. 2).

3) On April 15, 1993 License Inspector Carolyn L. Williams conducted an inspection of the respondent's beauty parlor. She observed Denise Ann Wagner, who was alone in the shop after having opened for the respondent, who had not yet arrived, combing a person's hair. Ms. Wagner, who was not licensed to engage in the practice of

hairdressing and cosmetology (Comp. Ex. 3), her temporary license having expired on February 12, 1992, told Ms. Williams that she was scheduled to take the written licensing examination the next week.

OPINION AND CONCLUSIONS OF LAW

It is a violation of General Business Law (GBL) §412 for any person to permit an unlicensed person to engage in the practice of hairdressing and cosmetology. The "practice of hairdressing and cosmetology" includes, among other things, the arranging of the hair of any person. GBL §401[5].

Ms. Wagner had opened the respondent's shop, and was present in it in the respondent's absence with the respondent's permission. I find, therefore, that, in violation of GBL §412 the respondent permitted Ms. Wagner to engage in the unlicensed practice of hairdressing and cosmetology.

The respondent and Ms. Wagner contend that the charge in the complaint is untrue. They claim that Ms. Wagner only worked in the shop as an unpaid receptionist, and had opened it up the day in question only for the purpose of answering the telephone. They testified that Ms. Wagner, in spite of having studied hairdressing, obtaining her temporary license, and arranging to take the written test, has no interest in working as a hairdresser. This testimony is belied, however, by the letters which they previously sent to the complainant (Comp. Ex. 1).

In her letter, Ms. Wagner made no reference to a lack of interest in working as a hairdresser. To the contrary, she stated "I do not practice Hair Dressing at Hair Directions nor do I intend to until I take my State Boards" (emphasis added). Likewise, in her letter, the respondent said "I'm sure one day she'll be working on the floor next to me...." From these statements I have concluded that the testimony that Ms. Wagner has no interest in working as a hairdresser was concocted for the purposes of the hearing, and was untrue.

I have not given any weight to the unsworn statements of customers presented by the respondent (Resp. Ex. A). Those statements consist of a printed form prepared by the respondent, on which various persons have written their names and address and the number of years which they claim to have been "coming to Hair Directors," and state that the signatory has never seen Ms. Wagner perform "any hair dressing skills on patrons that happen to be in the shop." In no way do the statements indicate that the signatories were in the respondent's shop at the time of the inspection. Therefore, they do not refute the allegation that at that time Ms. Wagner was engaging in the practice of hairdressing and cosmetology.

In setting the penalty to be imposed, I have considered the respondent's attempt to mislead the tribunal through what was apparently false testimony.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Jill Lyons has violated General Business Law §412, and accordingly, pursuant to General Business Law §409[8], she shall pay a fine of \$500.00 to the Department of State on or before July 29, 1994, and should she fail to pay the fine her license to operate a beauty parlor 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