

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-

BRUCE ROBERT MOSTACHETTI,

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 Rte. 9 Poughkeepsie Plaza Mall, Poughkeepsie, New York 12601, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent operated a beauty parlor at an address for which he did not have a license.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail, and a subsequent notice of adjournment was served on him by regular first class mail (State's Ex. 1).

2) The Bruce R. Mostachetti is, and at all times hereinafter mentioned was, duly licensed to engage in the practice of cosmetology, and is also currently licensed to operate an appearance enhancement business on behalf of Bruce Robert Salon Inc. at Rte. 9 Poughkeepsie Plaza Mall, Poughkeepsie, New York (State's Ex. 2). At the time in question in these proceedings he was licensed to operate a beauty parlor (the term then in effect) on behalf of Bruce Robert Salon Inc. at 81 North Road, Poughkeepsie, New York (State's Ex. 3 and 4).

3) On September 16, 1993 License Inspector Carolyn L. Williams conducted an inspection of premises being operated by the respondent under the name "Bruce Robert Salon Inc." at Rte. 9 Poughkeepsie Mall, Poughkeepsie, New York. She observed Rosetta Viola curling the hair of a customer, and accordingly issued a notice of violation to the respondent charging him with operating a beauty parlor without a license (State's Ex. 1).

OPINION AND CONCLUSIONS OF LAW

I- Pursuant to General Business Law GBL §402[2], as in effect at the time of the inspection, it was unlawful for any person to conduct a beauty parlor without first having received a license to do so at a specified address. A "beauty parlor" was any premises wherein the practice of hairdressing and cosmetology were practiced (GBL §401[4]), and the "practice of hairdressing and cosmetology" included, among other things, the curling of hair (GBL §401[5]). Accordingly, by operating a shop in which hair was curled, at a location for which a shop license had not been issued, the respondent violated GBL §402[2].

In his written response of January, 1994 to the notice of violation (State's Ex. 1) the respondent stated that the shop was relocated by the New York State Department of Transportation, and that notification was sent to the complainant. That response does not state, however, when such notification was sent. Specifically, the respondent does not indicate that the notification was sent before the shop began operating at the new address, or even whether it was sent before the inspection. The records of the Department of State indicate that the shop was not licensed at the new address at the time of the inspection, and the respondent failed to appear at the hearing to offer a defense. It is logical to infer therefore, as I do, that the notification of change of address was not sent until after the inspection and the issuance of the notice of violation.

II- 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 he was offered the opportunity to resolve the matter through the payment of a fine of \$250.00, and was advised that his rejection of the offer could result in a hearing (State's Ex. 1). Where such an offer of settlement has been refused and the respondent has subsequently been found guilty after a hearing, 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 Bruce R. Mostachetti has violated General Business Law §492[2], and accordingly, pursuant to General Business Law §410, he shall pay a fine of \$350.00 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.

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