

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-

SOON PARK,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on December 14, 1999 at the office of the Department of State located at 123 William Street, New York, New York.

The respondent did not appear.

The complainant was represented by License Investigator III Richard Drew.

COMPLAINT

The complaint alleges that the respondent allowed the reuse of emery boards in the respondent's shop in violation of 19 NYCRR 160.18.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served by certified mail, addressed to the respondent at the respondent's last known business address, delivered on November 10, 1999 (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 Golden Nail at 89-31 165th Street, Jamaica, New York 11432 (State's Ex. 2).

3) On April 9 and June 4, 1999 License Investigator I Janet Allen conducted inspections of the respondent's shop and observed, among other things, used nail files at various stations (both dates) and in use (June 4th).

OPINION AND CONCLUSIONS OF LAW

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. General Business Law §411[2]; *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 19 NYCRR 160.18[6] the reuse of emery boards in an Appearance Enhancement business is forbidden. The inspection reports, however, refer to used "files," a term which is not used in the regulation. Inasmuch as absent the testimony of the investigator to that effect it is not possible for me to conclude that the files in question were emery boards, I am compelled to find that there is a failure of proof and to dismiss the complaint (the complainant relied solely on the investigator's written reports to establish the alleged violation).

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the complaint herein is dismissed.

Roger Schneier
Administrative Law Judge

Dated: December 14, 1999