

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-

MARIA PEREZ,

Respondent.

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This matter came on for hearing before the undersigned, Roger Schneier, on March 14, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Elegance #2, 1683 University Avenue, Bronx, New York 10453, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint alleges that the respondent operated an appearance enhancement business without a license and failed to post her license to engage in the practice of 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 (State's Ex. 1).

2) The respondent is, and at the time of the alleged violations was, duly licensed to engage in the practice of cosmetology (State's Ex. 2 and 3).

3) On July 28, 1994 License Inspector Juanita Davis conducted an inspection of an appearance enhancement business located at 1683 University Avenue, Bronx, New York, where she observed the respondent styling the hair of a person with a hair dryer and a brush. A photocopy of the respondent's license to engage in the practice of cosmetology was posted. When Ms. Davis asked to see the shop license the respondent showed her a certificate from the Department of Taxation

and Finance bearing the respondent's signature, and was told by the respondent that she was one of several partners owing the shop. The respondent did not have a license to operate an appearance enhancement business.

Ms. Davis did not observe any schedule of fees for services, and did not see any money changing hands.

OPINION AND CONCLUSIONS OF LAW

Pursuant to General Business Law (GBL) §408[5] a license to engage in the practice of cosmetology must be posted conspicuously in the place where the licensee is engaged in such practice, and pursuant to GBL § 401[2] it is unlawful to operate an appearance enhancement business without being licensed to do so. An appearance enhancement business is defined by GBL §400[8] as the business of providing any or all of the services licensed pursuant to GBL Article 27, which includes the practice of cosmetology. The practice of cosmetology includes, among other things, the arranging of hair for a fee or any consideration or exchange. GBL §400[7].

The complainant has established that the respondent's license to engage in the practice of cosmetology was not posted,¹ that she was engaged in arranging hair, that she was operating the shop, and that she had no shop license. However, it has not established that she was charging, or expected to receive, any fee, consideration, or exchange for her services. Accordingly, it failed to meet its burden of proving by substantial evidence one of the elements of the violations charged (State Administrative Procedure Act §306[1]), and the complaint must be dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charges herein that Maria Perez operated an appearance enhancement business without a license and failed to post her license to engage in the practice of cosmetology in her shop are dismissed.

¹ There is no provision in either the governing statutes or the regulations which permits the posting of a photocopy of a license.

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