

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-

MARY PETERS d/b/a MANE EVENT HAIR DESIGNS,

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 March 16, 1993 at the office of the Department of State located at 162 Washington Avenue, Albany, New York.

The respondent, 110 East Schuyler Street, Boonville, New York, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondent failed to post both her beauty parlor and her hairdresser and cosmetologist licenses in her beauty parlor.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail sent to her care of Gordon P. Jeffrey, Esq., 9 East Park Row, Clinton, New York 13323-1595, the attorney who had appeared on her behalf after the respondent was originally served with a notice of violation (Comp. Ex. 1).

2) The respondent is duly licensed to engage in the practice of hairdressing and cosmetology and to operate a beauty parlor d/b/a Mane Event Hair Designs at 110 East Schuyler Street, Boonville, New York.

3) On March 5, 1992 senior license investigator Dona Clark conducted an inspection of the respondent's licensed premises. While no hairdressing and cosmetology services were being performed at the

time, the shop was open, and Clark observed a sink, a chair, hair rollers, and a large sign stating "Mane Event Hair Design." The respondent was not present, but a person who identified himself as her husband, Dave Peters, was present and accepted, but refused to sign for, a notice of violation (Comp. Ex. 1).

OPINION AND CONCLUSIONS OF LAW

General Business Law (GBL) §407(3) provides:

"Each license issued pursuant to this article shall be posted and kept posted in some conspicuous place in the beauty shop in which the licensee is engaged in the practice of hairdressing and cosmetology."

The practice of hairdressing and cosmetology includes, among other things, the curling of hair. GBL §401(5).

While the investigator did not observe the active practice of hairdressing and cosmetology, the respondent's shop was open and equipped to provide such services. Therefore, the shop license should have been posted, and her failure to do so was a violation of GBL §407(3). However, absent any proof that it was the respondent, and not some employee, who provided the services, the failure to post the respondent's license as a hairdresser and cosmetologist cannot be held to be in violation of the statute.

DETERMINATION

WHEREFORE IT IS HEREBY DETERMINED THAT Mary Peters has, by failing to post her shop license, violated General Business Law §407(3), and accordingly, pursuant to General Business Law §409, she shall pay a fine of \$250.00 to the Department of State on or before April 30, 1993, and upon failure to pay the fine her licenses as a hairdresser and cosmetologist and to operate a beauty parlor shall be suspended for a period of one month, commencing on May 1, 1993 and terminating on May 31, 1993, and

IT IS FURTHER DETERMINED THAT the charge that Mary Peters violated General Business Law §407(3) by failing to post her license as a hairdresser and cosmetologist is dismissed.

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