

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE

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In the Matter of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Appellant,

-against-

DECISION AND ORDER

3 DOS APP 01

(462 DOS 00)

THUY T. LE,

Respondent/Cross-Appellant.

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Department of State, Division of Licensing Services [hereinafter “Appellant”] appeals to the Secretary of State from a decision of the Office of Administrative Hearings that revoked six of Thuy T. Le’s [hereinafter “Respondent”] fourteen appearance enhancement business licenses.

Appellant submitted a Memorandum of Appeal objecting to the determination below.

Respondent submitted a Memorandum in Opposition as well as a Cross-Appeal.

ISSUE

This appeal considers whether the Office of Administrative Hearings committed error in determining that only six of Respondent’s fourteen appearance enhancement business licenses should be revoked pursuant to General Business Law (GBL) Article 27, including sections 401 (1), 401 (2), 405 (2), 408 (5), 410 (1)(c), as well as numerous sections of Title 19 of New York Codes, Rules and Regulations part 160. This appeal also considers whether there is evidence to support any revocation. Specifically, the question is whether it is within the Department of State’s discretion to revoke all appearance enhancement business licenses upon the finding of incompetence or untrustworthiness on the part of the owner of such licenses.

FINDINGS OF FACT

Respondent is the owner of at least fourteen appearance enhancement businesses throughout the state of New York. He has been penalized numerous times by the Department of State for assorted violations of laws controlling the appearance enhancement business. Respondent has been the subject of two hearings, amounting to fines and the revocation of four business licenses. As a result of Respondent's unsavory record, the Appellant executed six investigations at six different nail speciality businesses throughout 1999. Based upon the findings from the investigations, the Appellant filed a complaint against the Respondent.

On October 16, 2000, the Department of State, Office of Administrative Hearings, found Respondent in violation of the following provisions of law and regulations: General Business Law, §§ 401 (1), 401 (2), 405 (2), 408 (5), and 410 (1) (c); 19 New York Codes, Rules and Regulations, §§ 160.2, 160.3, 160.9, 160.10 (a), 160.10 (b), 160.10 (c), 160.14 (e), 160.16 (d), 160.17 (e), 160.18 (a), 160.18 (d), 160.19 (c), 160.22 (b), 160.25 (d), 160.26, 160.28 (a), and 160.28 (b). This resulted in the immediate revocation of the six appearance enhancement business licenses owned by Respondent.

Appellant now appeals this decision, claiming the Administrative Law Judge (ALJ) erred by not revoking all fourteen appearance enhancement business licenses after a showing of incompetency and untrustworthiness of the investigated businesses. Respondent filed a cross-appeal alleging Appellant did not submit sufficient evidence to warrant the revocation of any of Respondent's fourteen appearance enhancement business licenses.

OPINION

The ALJ's findings below were accurate in part, however, the decision is modified. Where an appearance enhancement business owner has demonstrated untrustworthiness or incompetency as a business owner, the Department of State may revoke or suspend the license of that businessman pursuant to GBL § 410 (1)(c). This power extends to all licenses held by the business owner.¹

Respondent has continuously displayed his unwillingness to responsibly manage and operate his numerous nail speciality businesses. In fact, on January 15, 1999, the ALJ found Respondent incompetent to effectively own and operate four of Respondent's businesses after testimony from Respondent himself stating his inability to control the operation of the four shops in question. This resulted in the revocation of the licenses pursuant to GBL § 410 (1)(c). Moreover, the October 16, 2000 administrative hearing resulted in revocation of six of Respondent's business licenses for, among other things, untrustworthiness. This tendency toward incompetent and deceitful ownership will not be condoned. Therefore, all of Respondent's appearance enhancement business licenses shall be revoked in accordance with GBL § 410 (1)(c).

As for Respondent's cross-appeal, the record fails to support any of the arguments alleged. Respondent failed to comply with the laws and guidelines set out specifically for appearance enhancement businesses. He is obligated by the State of New York to manage and supervise his stores in accordance with such laws.

¹ See Maneri v. New York Dept. of State, 240 A.D.2d 748, 660 N.Y.S.2d 26 (2d Dep't 1997); see also Fox v. Schenck, 33 N.Y.2d 750, 350 N.Y.S.2d 130 (1973); Fox v. Stewart, 28 N.Y.2d 814, 321 N.Y.S.2d 915 (1971).

DETERMINATION

The determination of the Administrative Law Judge is modified. Respondent shall comply with the order below which revokes the following six appearance enhancement business licenses:

1. Nail Studio (21NA1066216), 1 Galleria Dr., Middletown, NY 10940,
2. Nail Studio (21NA1083199), Rts. 5 and 5A, Apt. L01, New Hartford, NY 13413,
3. Nail Studio (21NA1053678), Galleria at Crystal Run, Ste. 8201, Middletown, NY 10940,
4. Professionail (21PR1099700), 4545 Transit Road, Suite 836, Williamsville, NY 14221,
5. Nail Studio (21NA1034830), 1008 Eastview Mall, Victor, NY 14564,
6. Professionail (21PR1100641), 115A Cobblestone Dr., Victor, NY 14564.

Furthermore, Respondent's remaining appearance enhancement business licenses are likewise revoked immediately. The Respondent shall send all appearance enhancement business licenses to the Department of State, Division of Licensing Services, forthwith and the Division of Licensing Services is directed to take action necessary to effectuate the terms of this Decision and Order..

So ordered on:

Alexander F. Treadwell
Secretary of State