

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
BOARD OF COSMETOLOGY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-4112  
 )  
MAYELIN UNISEX BEAUTY SALON, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this cause before the Division of Administrative Hearing through its duly-designated Administrative Law Judge Florence Snyder Rivas, on January 26, 2005, via video teleconference at locations in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Renee Alsobrook, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1015

For Respondent: Juana Blanco, pro se  
Mayelin Unisex Beauty Salon  
16551 Northeast 8th Avenue  
North Miami Beach, Florida 33162

STATEMENT OF THE ISSUE

Whether Respondent committed the violation alleged in the

Administrative Complaint dated January 29, 2004, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated January 29, 2004, Petitioner charged Respondent with violating Chapter 477, Florida Statutes, pertaining to the practice of cosmetology.

Respondent petitioned for a formal administrative hearing to dispute the charge.

The identity of witnesses, exhibits and attendant rulings are contained in the one-volume transcript of the proceeding filed March 16, 2005.

Both parties were afforded an opportunity to submit proposed findings of fact and conclusions of law. Petitioner timely filed its Proposed Recommended Order. Respondent has not filed a proposed recommended order.

FINDINGS OF FACT

Based upon the evidence and the testimony of witnesses presented, and the entire record in this proceeding, the following facts were established:

1. Petitioner is the state agency charged with regulating the operation of establishments providing cosmetology services, including hair care and styling, to the public. Petitioner's regulatory authority derives from Chapter 477, Florida Statutes.

2. Respondent has at all times material to this case been subject to Petitioner's jurisdiction by virtue of its license to operate Mayelin Unisex Beauty Salon (Respondent or Mayelin), a hair salon located in North Miami Beach, Florida.

3. At all times material to this case, Respondent was under a legal duty to refrain from permitting unlicensed individuals to perform cosmetology services, including hair care, upon members of the public.

4. On or about April 26, 2003, Abdel Cedeno (Cedeno), a duly-qualified inspector employed by Petitioner and whose job includes monitoring compliance with Chapter 477, Florida Statutes, went to Mayelin's during its regular business hours for the purpose of conducting a routine inspection.

5. On that occasion, Cedeno observed one Yomaira Payero (Payero) performing cosmetology services on a customer.

6. More specifically, Payero was observed styling or arranging the customer's hair, utilizing a blow-dryer and other cosmetology implements. Payero was not licensed to perform such services within Florida.

7. At all times material to this case, Payero was a paid employee of Respondent. Payero's activities, which Respondent authorized and facilitated, constituted a violation by Respondent of Section 477.0265(1)(d), Florida Statutes.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter and parties in this proceeding. § 120.57, Fla. Stat.

9. The burden of proof is on Petitioner to show by clear and convincing evidence that Respondent committed the violation alleged in the administrative complaint and the reasonableness of any proposed penalty. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

10. Petitioner has fulfilled its burden of proof.

11. The state has a substantial interest in assuring the health and safety of patrons of establishments such as Mayelin's where customers seek services aimed at enhancing the appearance of their hair or skin. Businesses such as Respondent's have a high potential for spreading disease if employees are not trained in and compliant with sanitation and other principles taught to persons who seek a state license to engage in the businesses regulated by Chapter 477, Florida Statutes.

12. Respondent offered no mitigating factors which would militate against penalties at the upper end of those authorized by law for its violation. § 477.029, Fla. Stat.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be issued assessing Respondent an administrative penalty in the amount of \$500.

DONE AND ENTERED this 8th day of April, 2005, in Tallahassee, Leon County, Florida.

*Florence Snyder Rivas*

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FLORENCE SNYDER RIVAS  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of April, 2005.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.