

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-

**AMADOU FAFF NOIAYE d/b/a
MARIYAMA HAIR BRAIDING,**

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 October 21, 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 2153B Grand Concourse, Bronx, New York 10453, did not appear.

The complainant was represented by Compliance Officer William Schmitz.

ISSUE

The issue is whether the respondent operated a beauty parlor without a license, and employed unlicensed hairdressers in that shop.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was sent by certified mail to the respondent in care of Frederick J. Miller, Esq., 22 West 1st Street, Suite 623, Mt. Vernon, New York 10550, an attorney who had sent a letter to the complainant about the notice of violation which had been served on the respondent prior to the commencement of these proceedings (Comp. Ex. 1).

2) The respondent is currently licensed to operate a beauty parlor pursuant to a license issued on December 21, 1992. Until April 5, 1993 he was also licensed to engage in the practice of hairdressing and cosmetology (Comp. Ex. 2).

OPINION AND CONCLUSIONS OF LAW

In view of the method of service of the notice of hearing, it is not necessary to consider any of the underlying facts in this case.

Pursuant to General Business Law (GBL) §410, a disciplinary hearing against a person licensed under GBL Article 27, as in this case, must be commenced by service of notice upon the licensee. However, the notice of hearing herein was served on an attorney who had only communicated with the complainant about the charges prior to the commencement of the proceedings. There is no evidence in the record that the respondent or the attorney ever requested that any notices be sent to the attorney, that the attorney had formally appeared on behalf of the respondent, or that the respondent was aware of the service of notice on the attorney. Accordingly, to proceed with the matter would be a denial of the respondent's right to due process of law.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charges herein against the respondent are dismissed without prejudice to the matter being reinstated through the proper service upon the respondent of a notice of hearing and complaint.

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