31 DOS 99

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS
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In the Matter of the Complaint of

DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,

Complainant, **DECISION**

-against-

MOURINE P. BANDOO,

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on February 17, 1999 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent did not appear.

The complainant was represented by License Investigator III Richard Drew.

COMPLAINT

The complaint alleges that the respondent operated an unlicensed appearance enhancement business, failed to have a surety bond or liability insurance on the premises, and failed to have on file the material safety data sheets for chemicals being used in the shop.

FINDINGS OF FACT

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail delivered on December 24, 1999 (State's Ex. 1).

2) Since June 26, 1998 the respondent has been licensed to operate an appearance enhancement business d/b/a Mourine House of Styles at 142 W. First Street, Mount Vernon, New York 10550 (State's Ex. 2).

3) On April 16, 1998 License Investigator Carolyn L. Williams conducted an inspection of the respondent's shop, which was not yet licensed. Her inspection report, offered in evidence in her absence, notes, among other things, that there was no business license, that there was no bond or liability insurance on the premises, and that material safety data sheets were not available. It does not, however,

note what, if any, alleged appearance enhancement services were being provided (State's Ex. 3). Her subsequent affidavit, executed on February 9, 1999, contains the conclusory statement that "hair services" were being provided, but does not state what those alleged services were (State's Ex. 5).

OPINION AND CONCLUSIONS OF LAW

I- The holding of an ex parte quasi-judicial administrative hearing was permissible, inasmuch as there is evidence that notice of the place, time and purpose of the hearing was properly served. *Patterson v Department of State*, 36 AD2d 616, 312 NYS2d 300 (1970); *Matter of the Application of Rose Ann Weis*, 118 DOS 93.

II- As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, all of the elements of the charged violations. State Administrative Procedure Act (SAPA), §306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Gray v Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." *City of Utica Board of Water Supply v New York State Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

It is essential to all of the charges herein that the complainant establish that the respondent was operating an appearance enhancement business on April 16, 1998. To do so, it must prove that appearance enhancement services were being provided in her shop on that date. General Business Law (GBL) §§400 and 401. The investigator's conclusory statement that such services were being provided, without an explanation of what she based that conclusion on, is not sufficient. Neither is her report of an inspection conducted two months later (State's Ex. 4). Accordingly, the complainant has failed to meet its burden of proof and the charges must be dismissed.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the charges herein are dismissed.

Roger Schneier
Administrative Law Judge

Dated: February 22, 1999