

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-

**COUMBA GAYE,**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 15, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of Goree Senegalese Sisters Professional African Hair Braiding, 9042 Parsons Boulevard, Jamaica, New York 11432, having been advised of her right to be represented by an attorney, appeared *pro se*.

The complainant was represented by Assistant Litigation Counsel Scott L. NeJame, Esq.

**COMPLAINT**

The complaint alleges that the respondent was working in an unlicensed appearance enhancement salon, and allowed an unlicensed operator to perform services on a client in that shop.

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on March 15, 1997 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to engage in the practice of natural hairstyling (State's Ex. 2).

3) On March 15, 1996 Senior License Investigator Tedi Ringel conducted an inspection of Goree Senegalese Sisters Professional African Hair Braiding located at 90-42 Parsons Boulevard, Jamaica, New York 11432 and observed, among other things, that the shop had no

appearance enhancement business license (State's Ex. 3). The respondent had obtained a certificate of doing business under an assumed name for the shop, but was unaware of the need for a shop license.

4) On August 14, 1996 Senior License Investigator Richard Mc Arthur conducted a compliance inspection of the shop. Among other things, he observed that the shop was still not licensed, and that Fatou Fofana, who was not licensed pursuant to General Business Law Article 27, was braiding the hair of a customer without a license. No evidence was offered as to whether the braiding was being done for compensation.

5) The respondent was issued a license for the shop on November 26, 1996. She had originally applied for the license on April 15, 1996, but its issuance had been delayed by some deficiency not appearing in the record.

#### **OPINION AND CONCLUSIONS OF LAW**

I- The respondent violated General Business Law (GBL) §401[2], which provides that it is unlawful to for any person to own, control or operate, an appearance enhancement business without having a license for such. In mitigation, however, it is noted that at the time of the first inspection she was unaware of the need to have a shop license, and that shortly after that inspection she applied for one. While that does not excuse the violation, it does eliminate the element of willfulness. In considering what, if any, penalty to impose, I also take official notice of the complainant's practice of not bringing charges against a shop owner where a violation has been corrected prior to a compliance inspection.

II- GBL §401[1] provides, among other things, that no person may engage in the practice of natural hair styling without being licensed therefore, and, pursuant to 19 NYCRR 160.11, the owner of an appearance enhancement business is liable for any violation of that statute occurring in his or her shop. The respondent is charged with such a violation because an unlicensed person was braiding hair in her shop. However, although the braiding of hair is a function of natural hairstyling, in order for such braiding to constitute the "practice of natural hair styling" the person doing the braiding must be doing so for a fee or other consideration. GBL §400[5]. The complainant has failed to present any evidence on the issue of consideration and has, therefore, failed to meet an essential element of its burden of proof. Accordingly, the charge of allowing an unlicensed person to work in the respondent's shop must be, and is, dismissed. *Division of Licensing Services v Anon Ba Kouame*, 104 DOS 97.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** Coumba Gaye violated General Business Law §402[2], and accordingly, pursuant to General Business Law §410, she is reprimanded therefore.

Roger Schneier  
Administrative Law Judge

Dated: May 19, 1997