

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-

**ISABEL MARIZAN, ISABEL'S BEAUTY SALON**

Respondent.

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on April 20, 1998 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondent, of 4441 Broadway, New York, New York 10040, having been advised of her right to be represented by an attorney, chose to represent herself.

The complainant was represented by Legal Assistant Thomas Napierski.

**COMPLAINT**

The complaint in the matter alleges that the respondent allowed an unlicensed person to engage in appearance enhancement activity in the respondent's 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 April 8, 1998 (State's Ex. 1).

2) The respondent is, and at all times hereinafter mentioned was, duly licensed to operate an appearance enhancement business d/b/a Isabel's Beauty Shop at 4441 Broadway, New York, New York (State's Ex. 2).

3) On August 27, 1997 License Investigator Judith Sandy conducted an inspection of the respondent's shop and observed Brunilda Batista, who was not licensed pursuant to General Business Law (GBL) Article 27 (State's Ex. 3), blow drying the hair of a woman.

Ms. Batista had come to the respondent's shop seeking employment. She had told the respondent that she was licensed, and, as a tryout, it was the respondent's hair which was being dried.

**OPINION AND CONCLUSIONS OF LAW**

I- As the party which initiated the hearing, the burden is on the complainant to prove, by substantial evidence, all of the elements of the violation charged in the complaint. 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).

II- GBL §401[1] provides that no person may engage in any of the practices defined in GBL §400 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. Included in those practices is the blow drying of hair for a fee or any other consideration. GBL §401[5].

The respondent permitted an unlicensed person to blow dry hair in her shop. However, the hair dried was that of the respondent. The drying was done as a tryout for employment, and there is no evidence that any fee or other compensation was involved. Accordingly, the complainant has not proved one of the essential elements of the violation charged, and the complaint must be dismissed.

**DETERMINATION**

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

Roger Schneier  
Administrative Law Judge

Dated: April 23, 1998