

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 NDIAYE and
MARIAMA HAIR BRAIDING INC.,**

Respondents.

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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 December 20 1993 at the office of the Department of State located at 270 Broadway, New York, New York.

The respondents, of 2152-B Grand Concourse, Bronx, New York 10452, were represented by Assatou Nday, a shareholder and employee of respondent corporation.

The complainant was represented by Compliance Officer William Schmitz.

COMPLAINT

The complaint in the matter alleges that the respondents 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 served on the respondents by certified mail (Comp. Ex. 1).

2) Amadou Faff Ndiaye is, and at all times hereinafter mentioned was, duly licensed as a hairdresser and cosmetologist. Since December 21, 1994, pursuant to an application signed by Ndiaye as shop owner and corporate officer on November 24, 1992, Mariama Hair Braiding Inc. (Mariama) has been licensed to operate a beauty parlor at 2153-B Grand Concourse, Bronx, New York 10453. Mariama was incorporated on May 18, 1992, with Ndiaye's address listed for service of process (Comp. Ex. 2 and 3).

3) On November 19, 1992, at a time when the respondents' beauty parlor was not licensed, License Investigator Stephen Mayer conducted an inspection of the shop and observed four persons who were licensed as neither hairdressers nor barbers braiding the hair of a customer, and issued a notice of violation to Ndiaye (Comp. Ex. 1).

OPINION AND CONCLUSIONS OF LAW

I- General Business Law (GBL) §402[2] provides that "no person shall conduct a beauty parlor without having first received a license...to conduct said beauty parlor...." A "beauty parlor" is any place in which hairdressing and cosmetology is practiced. GBL §401(4). "Hairdressing and cosmetology" includes, among other things, the arranging of the hair of the head of any person. GBL §401(5).

It is clear from the evidence that the respondents were operating an unlicensed beauty parlor at the time of the inspection, and that, therefore, they violated GBL §402(2). The fact that they applied for and obtained a shop license soon thereafter, apparently in response to receipt of the notice of violation, does not in any way excuse the violation.

II- GBL §412 provides that it is a misdemeanor for any person to directly or indirectly employ, permit or authorize any unlicensed person to engage in the practice of hairdressing or cosmetology. Therefore, by permitting four unlicensed persons to arrange the hair of a customer in their beauty parlor the respondents violated that statute four times.

The respondents argue that they should not be penalized for those violations. They claim that before opening their shop they spoke with some unidentified employee of the complainant and were told that as of then there was no license for hair braiding, and that the only license available was as a hairdresser and cosmetologist. A new license for the practice of natural hair styling, which includes braiding, becomes effective on April 1, 1994, pursuant to the comprehensive changes to GBL Article 27 contained in L. 1992, c. 509, and the respondents state that they were anticipating having their hair braiders become licensed under those changes. They also assert that since approved schooling in hair braiding was not available it was not possible for the braiders to become licensed.

The respondents' arguments are not persuasive. The purpose of the enactment of L. 1992, c. 509, as set forth in §1 thereof, was to modernize the licensing scheme in response to the evolution of the appearance enhancement industry which has occurred since GBL Article 27 was enacted in 1946. It was intended to eliminate education and testing in areas of hairstyling which are unrelated to the specialties in which some persons wish to engage by establishing licenses restricted to those specialties. In other words, the reason for the new law is to make it easier, as of April 1, 1994, for persons such as hair braiders to become licensed. The Legislature did not say that prior to

April 1, 1994 hair braiders did not need to be licensed as hairdressers and cosmetologists, and did not authorize persons to work without any licenses pending the issuance of the new licenses.

Likewise, the fact that the hair braiders who worked for the respondents were unable to qualify for licenses does not somehow give them the right to work without them. There is absolutely no element of the public good or welfare which could in anyway been seen as creating justification for such violations of the law. Simply put, if the respondents were unable to hire properly licensed hairdressers to perform hair braiding they were obliged to refrain from doing business.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Amadou Faff Ndiaye and Mariama Hair Braiding Inc. have violated General Business Law §§402[2] and 412, and accordingly, pursuant to General Business Law §409[8], they shall pay a fine \$1000.00 to the Department of State on or before February 28, 1994, and should they fail to pay the fine then their licenses as a hairdresser and cosmetologist and to conduct a beauty parlor, and any successor licenses issued to them under the new General Business Law Article 27 as effective on April 1, 1994, shall be suspended for a period of two months, commencing on March 1, 1994 and terminating on April 30, 1994, both dates inclusive.

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