UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

HAIR FASHIONS BY KAYE BEAUTY COLLEGE,

Respondent.

Docket No. 17-45-SP

Federal Student Aid Proceeding

PRCN: 2014-3072-8655

Appearances: Kaye Maxwell, Carmel, Indiana, for Hair Fashions by Kaye Beauty College.

Denise Morelli, Esq., Office of the General Counsel, U. S. Department of Education, Washington, D.C., for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Hair Fashions by Kaye Beauty College (Hair Fashions) operated as a proprietary institution of higher education in Indianapolis, Indiana, providing up to one-year programs in cosmetology. It was accredited by the National Accrediting Commission of Cosmetology Arts and Sciences (NACAS), and it had participated in the Federal Pell Grant and Direct Loan student financial assistance programs that are authorized under the provisions of Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et seq*, and 42 U.S.C. § 2751 *et seq*. The Office of Federal Student Aid (FSA) is the organization within the U.S. Department of Education (ED) that administers these programs. Hair Fashions closed on October 15, 2016, and no longer is participating in the Title IV programs.

PROCEDURAL MATTERS

The procedural history of this appeal has been unusual and somewhat convoluted. Program reviewers from the FSA Third Party Servicer Oversight Group, located in Kansas City, Missouri, conducted an on-site program review at GEMCOR, Inc., between July 14, 2014 and

July 17, 2014. As envisioned in 34 C.F.R. § 668.25, GEMCOR was authorized to act as a contract servicer for certain aspects of eligible institutions' participation in the Title IV programs and had acted as such for Hair Fashions. As a normal component, the review at GEMCOR also included a simultaneous off-site examination of the records of Hair Fashions' participation in the Title IV programs for the 2012-2013 award year. The resulting Program Review Report (PRR) of Hair Fashions, dated July 25, 2016, contained 14 adverse findings. Hair Fashions submitted an input as to 11 of the findings and on July 6, 2017, FSA issued a Final Program Review Determination (FPRD) that resulted in FSA's demand for the return of $2,479,734. By letter dated July 17, 2017, Hair Fashions filed an appeal in accordance with 34 C.F.R § 668.113 (a).

My involvement in this appellate procedure began on August 28, 2017, the date I was assigned to preside as the Hearing Official. On September 5, 2017, after first determining that Hair Fashions had closed on October 15, 2016, I issued an Order Governing Proceedings (OGP) first requiring FSA to provide certain procedural information relative to who issued the FPRD, and whether there were any other adverse actions pending against Hair Fashions. My inquiry involved the question of whether or not Hair Fashions had submitted a close-out audit. In the OGP, I encouraged the parties to consult and engage in a good faith effort to exhaust all possibilities of settlement during the pendency of these proceedings. On September 25, 2017, FSA counsel provided the requested information and, as consequently, on October 2, 2017, I issued a Follow-on Order Governing Proceedings, wherein I determined that, pursuant to 34 C.F.R § 116(d), Hair Fashions had the burden of proving that its expenditures were proper and it had complied with all program requirements found in Title IV. As such, I directed Hair Fashions to file its brief on or before November 7, 2017. In addition, FSA was directed to file its responsive brief by December 11, 2017.

Hair Fashions did not file its brief as directed and, on that basis, FSA filed a Motion for Default Judgment on December 11, 2017. In consideration of the fact that Hair Fashions appeared *pro se* through its owner, and was not represented by counsel, on December 19, 2017, under authority of 34 C.F.R § 668.117(c), I issued an Order to Show Cause, informing Hair Fashions that I would issue a Default Judgment against it unless Hair Fashions complied with my order and submitted its brief by the amended date of January 19, 2017.

Finally, although not labeled a brief, I received a submission from Hair Fashions, dated January 12, 2018. I reviewed the submission and determined that, although it was received in a rather circuitous manner and not captioned as a brief, Hair Fashions had presented an argument defending itself from the claim levied by FSA. Upon that determination, I issued an Amended Order Governing Proceedings in which I denied FSA's Motion for Default Judgment and directed FSA to file its brief by February 28, 2018. On February 23, 2018, FSA timely filed its brief and evidentiary submission.

DISCUSSION

In the administration of the Title IV program, third part servicers contract with participating postsecondary institutions to help those schools perform functions related to

administering the program. As with other Title IV participants, these contract servicers are subject to review by FSA to assure that they are in compliance with Title IV requirements. As a means of assuring such compliance, FSA performs on-site reviews at the servicer's location. This type of on-site review focuses on the functions the servicer provides to the institutions with whom they contract. Such functional areas could include the awarding of financial aid, the drawdown of federal funds, the reporting to FSA and reconciliations of data. As pertinent to the issues before me, in July 2014, FSA conducted a program review of GEMCOR, Inc., a general Title IV servicer contracting with a number of Title IV participants, as customers. Consistent with their general oversight practice, FSA selected 6 institutions that contract with GENCOR for integrated off-site program reviews. Hair Fashions was one of those six customers. In such off-sight review, FSA program reviewers selected a small sample of files to review for overall Title IV compliance, and an additional small sample of files to test compliance with the school's leave of absence requirements. These limited file reviews of Hair Fashions uncovered a number of violations including: failure to maintain adequate attendance records; failure to develop and apply adequate satisfactory academic progress policy; failure to properly calculate Title IV refunds; and the improper use of Title IV funds to pay over-contract charges. As indicated above, on July 25, 2016, a PPR was issued directing Hair Fashions to provide GEMCOR with the documentation necessary to resolve the apparent violations. On November 10, 2016, Hair Fashions notified FSA that it would not be providing the requested information and would not assist in full-file reviews as had been directed in the report.

Without the cooperation of Hair Fashions in securing required documentation, FSA issued its FPRD finding that, without that requested documentation, it was impossible to determine what, if any of the federal funds, were properly disbursed. Consequently, FSA demanded the return of $2,479,734, all the Title IV funds Hair Fashions received during the award years in question. As indicated above in the Procedural Matters section, after an extended period, the parties filed their respective arguments. To summarize the respective arguments of the parties in their briefs is quite simple. FSA argues that, "Since Hair Fashions did not complete the required file reviews and did not submit additional documentation, it is impossible for the Department to determine if any of the Title IV funds were properly disbursed." Hair Fashions argument is best captured by its own words, "In the end, the Department's requests were so onerous, overwhelming and ridiculously labor intensive, the employees (Judy and Ross in particular) threw their hands up and said 'I quit,' which is their right."

The applicable law in this case is abundantly clear. Hair Fashions, as the Respondent in an appeal from a FPRD, under 34 C.F.R §668.111 *et seq.*, has the burden of proving that the questioned expenditures were proper. 34 C.F.R § 668.116 (d). Also, all Title IV participating institutions act as a fiduciary in their handling of Title IV funds. 34 C.F.R. § 668.82. As such a fiduciary, a participating institution is subject to the highest standard of care and diligence in administering the Title IV program and accounting to the Secretary for all the funds it received under the program. With that as a background, I will review the evidence presented to me for adjudication. First: in order to properly allocate the burden of proof to an institution in any Subpart H proceeding, it must be established that the Respondent was afforded adequate notice of the allegations made against it. I find that the FPRD with attachments, dated July 6, 2017,

provides such notice. In its defense, in a letter dated July 17, 2017, the owner of Hair Fashions asserts that she, Kaye Maxwell, is 83 years old, with varied health problems. Significantly, she asserts that because of her age and health issues, she has not worked at the school for at least two years and had to rely on others to handle the business of the school. In summary, she claimed that she was always in good standing with the State and its accrediting agency, and had "good annual audits with very minor findings." I do note that a participating Title IV institution is required to submit a timely close-out audit at prescribed times, when it ceases to provide educational services, in accordance with the provisions of 34 C.F.R. § 668.26. Such an audit might have provided evidence relative to some Title IV compliance. I assume from the tenor of the parties arguments that no such audit was performed.

On the other hand, Counsel for FSA argues in essence that Hair Fashions has, as a matter of law, failed to satisfy its burden of proof in establishing that all its expenditure were correctly accounted for. Without the required input from Hair Fashions, it is impossible for FSA to comply with its oversight responsibilities and to assure those federal funds were correctly allocated. I have recognized in past decisions that when an institution is ordered to return all the Title IV funds it had disbursed, there is likelihood that some of those funds were correctly disbursed, however, it is impossible for FSA or me to comply with our respective responsibilities without the submission of some recognizable proof, such as a close-out audit or some other verifiable evidence. Significantly, there is no evidence that Hair Fashions has submitted a close-out audit or any other like proof. *See, In the Matter of Velma B's College of Hair Design,* Docket No. 13-09-SA, U.S. Dep't of Educ. (Dec. 4, 2013). Without any substantive input from Hair Fashions, I am led inexorably to a finding of liability.

FINDINGS and ORDER

I find that Hair Fashions by Kaye Beauty College has failed to submit any credible evidence sufficient to meet its burden of proof that the Title IV funds in issue were properly accounted for. Consequently, it is ORDERED that Hair Fashions by Kaye Beauty College return to the United States Department of Education the sum of $2,479,734, for the approved findings of its actionable failure to comply with Title IV reporting requirements.

Ernest C. Canellos
Chief Judge

Dated: April 10, 2118

SERVICE

A copy of the attached document was sent by U.S. certified mail to the following:

Kaye Maxwell, Owner.
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