



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 202027

In the Matter of

BARONE BEAUTY ACADEMY (PA)

Respondent

Docket No. 17-46-SA

Federal Student Aid Proceeding

ACN: 03-2016-6200

DECISION

By letter dated August 7, 2017, Frank Barone, president of Barone Beauty Academy (BBA) filed a written Request for Review in the above-styled proceeding. BBA did not submit a close-out audit for the period from September 1, 2015 to September 28, 2016. As a result, the Department, through its Federal Student Aid (FSA) division, issued a liability of \$99,689.34 against BBA. That amount consisted of \$85,710 for Federal Pell Grant funds, \$4,585.34 for Supplemental Opportunity Grand funds, and \$9,394 for closed school discharges under 34 C.F.R. §§ 682.402(d) and 685.214.

BBA's review request was filed pursuant to 34 C.F.R. § 668.113 (a). The appeal procedures for these proceedings are set forth in 34 C.F.R. Part 668, Subpart H.

BBA has the burden of proof in this proceeding. *See* 34 C.F.R. § 668.116 (d). On September 6, 2017, an order governing proceedings was issued directing BBA to file its brief and supporting evidence by October 9, 2017. The order also noted that BBA had incorrectly filed partial social security numbers which is not permitted under the Privacy Act of 1974, 5 U.S.C. § 552a, and the order also returned to BBA the documents containing the social security numbers. Those documents contained sensitive personally identifiable information (PII). BBA was granted leave to refile the appeal and all the returned exhibits with the PII fully redacted, and the Order Governing Proceedings noted that the return of the exhibits did not affect BBA's filing date of its Request for Review.

BBA then filed its initial brief, but despite being directed to remove it, BBA again included large quantities of sensitive PII. A second order was therefore issued, returning the brief and resetting an October 26, 2017 deadline for BBA to comply with the previous order to redact PII. The second order stated:

BBA is to please take note that if it fails to redact the PII this time, it may lose the right to file its brief. BBA is also to take note that it must serve a copy of anything it files upon opposing counsel as well. (Emphasis in the original).

BBA failed to respond to the second order by the October 26, 2017 deadline, and on November 27, 2017, FSA filed a motion for default judgment. On December 13, 2017, this tribunal entered an order on FSA's motion for default judgment, giving BBA one final opportunity to comply. BBA was once again given notice that if it failed to comply the hearing process could be terminated, and the existing record could be dismissed for a decision. To be certain that BBA was given every opportunity to file, BBA was then given a final extension until January 10, 2018 to comply. BBA did not comply by the final deadline, and on January 19, 2018, FSA renewed its motion for default judgment.

Because BBA has not provided any filing after repeatedly being ordered to do so, the administrative record in this appeal is ordered closed. The Respondent has abandoned its appeal.

34 C.F.R. §668.117(c)(3) provides in relevant part that:

The hearing official shall take whatever measures are appropriate to expedite the proceedings. These measures may include terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the hearing official.

Because BBA failed to provide its brief and supporting evidence, this decision must be based on a review of the administrative record as it exists. The record shows the liability for this appeal is based on BBA's failure to provide a close-out audit, which has resulted in a \$99,689.34 liability.

34 C.F.R. § 668.82 imposes a fiduciary obligation on a participating institution for administration of Title IV, HEA programs. That obligation requires the highest standard of care and diligence administering the program and accounting to the Department for funds it receives under the program. The Final Audit Determination notes that BBA ceased participating in Title IV programs on September 28, 2016. Under 34 C.F.R. § 668.26(b)(ii), BBA was required to have a close-out audit performed and the resulting report filed with the Department within 90 days after it ceased participating in the program. As of the date of this decision, this Tribunal has been provided no evidence indicating that the Department has received the close-out audit. BBA has not shown it provided a close-out audit, and, therefore, BBA has failed to account for the Title IV, HEA funds it received during the unaudited period. Because no close-out audit was submitted, the Department has identified as liabilities all the Title IV funds BBA received during the period. The amount due to the Department is \$99,689.34, including interest.

BBA indicated that it needed more time to hire an attorney to represent it in this appeal, repeatedly indicated more time was needed, alleged (without any substantiating evidence) that the Department's figures were incorrect, and argued that this liability should be covered by an unidentified insurance source. All of these indications and arguments were not part of any filing, but were included in emails sent to individuals at OHA.

The record above reflects that BBA has been given a more than reasonable period of time to comply with the order governing proceedings, the second order, and the order to show cause, all issued to allow BBA to submit evidence in support of its appeal. In its initial request for

review, BBA contested the closing dates and otherwise contended it had earned the disbursements, but on the threshold question of submitting the mandatory close-out audit, BBA has never submitted any evidence of compliance. Under 34 C.F.R. § 668.116(d), BBA has the burden of proof, but has not filed its brief or evidence in this proceeding. BBA has failed to meet its burden of proof.¹

ORDER

On the basis of the above findings, it is ordered that BBA pay to the U.S. Department of Education the sum of \$99,689.34, including interest, as demanded in the Final Audit Determination.

Robert G. Layton
Judge

Dated: January 29, 2018

¹ The initial request for review also indicated BBA would be filing Chapter 7 bankruptcy, and that Chad Julius, Esq. may be representing BBA in this matter. As a result, a courtesy copy of the initial order governing proceedings was sent to Julius, who has not entered any appearance in this matter. This tribunal has not received any further pleadings or documentation pertaining to any bankruptcy proceeding.

SERVICE

This order has been sent via certified mail and by email scan, delivery confirmation receipt requested to:

Frank Barone, President
Barone Beauty Academy
501 East Third Street
Williamsport, PA 17701-5316

(sent via email scan with delivery receipt requested to frank@bba.edu)

This order has also been sent via certified mail and by email scan, delivery confirmation receipt requested, to:

Oluwaseun O. Ajayi, Esq.
Attorney
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 6E318
Washington, DC 20202

(sent via email scan with delivery receipt to: oluwaseun.ajayi@ed.gov)