

IN THE MATTER OF PBI CAREER CENTER, INC.  
Respondent.

Docket No. 92-136-SP  
ACN: 03-10000  
Student Financial Assistance Proceeding

ORDER DISMISSING APPEAL FROM PROGRAM

DETERMINATION

AND ENTERING DECISION AGAINST RESPONDENT

On January 28, 1993, I issued an Order Governing Proceedings and established a briefing schedule for the parties to follow. On March 11, 1993, counsel for OSFA filed a Motion for Dismissal of Proceeding and for Entry of Judgment against Respondent for its failure to meet established time limits for filings. Based upon OSFA's Motion and the nonreceipt of Respondent's brief, I issued a Show Cause Order on March 11, 1993, and advised Respondent if it filed no response by March 26th, the appeal would be dismissed and judgment entered against it. Victor Cianca, Respondent's President, filed a handwritten letter response basically requesting that the instant proceeding be delayed pending the final disposition of the criminal case against the Respondent and himself personally. The response, like its November 16, 1992 request for review, were both prepared by Victor Cianca who throughout this proceeding has been the sole representative of PBI.

On April 27, 1993, I issued an Order which denied OSFA's Motion for Dismissal of Proceeding and granted Respondent a limited extension, until May 21, 1993, in which to file its brief and supporting documents. I further stated that if no brief was filed by that time, I would reconsider the Motion to Dismiss and act on the same immediately. Respondent was advised that no extensions of the deadline would be granted unless extraordinary circumstances were presented and sufficiently stated to my satisfaction.

On May 21, 1993, Mr. Cianca filed a letter in lieu of a brief stating that he has no financial resources with which to secure proper counsel for presenting his defense. OSFA counsel, in turn, has filed a further Motion to Dismiss the proceeding based on Respondent's failure to comply with the outstanding Order.

Under the appeal procedures for audit and program review determinations, it is clear that Respondent has the burden of proving its case. 34 C.F.R. 668.116(d). Yet, Respondent has failed to offer any substantive argument or basis in response to the alleged violations discussed in the final program review determination letter of September 28, 1992. Instead, it has only offered excuses and proposed reasons why there should be a delay of the proceeding. Respondent's latest letter raises for the first time its dilemma about securing legal counsel. There is no evidence of an earlier effort to obtain counsel despite the fact that Respondent has been fully notified of the

pending violations since its receipt of the final program review letter. Moreover, Respondent has already submitted three filings without benefit of counsel and never once indicated it could not proceed without presence of counsel.

Accordingly, I find that Respondent's May 21st letter is unresponsive to the clear instructions of my Order of April 27, 1993. It does nothing to dissuade me from ruling on the Motion to Dismiss and entering a Decision against Respondent for failure to meet filing time limits. 34 C.F.R. 668.117(c)(3). Now therefore, is hereby ORDERED:

That this appeal of final program determination be, and is hereby DISMISSED. DECISION is issued against Respondent holding it liable for the repayment amounts specified in the final program review letter.

SO ORDERED.

Judge Ernest C. Canellos

Issued: May 25, 1993  
Washington, D.C.