UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

UNITED ACADEMIES OF COSMETOLOGY,

Chicago, IL

Respondent.

Docket No. 92-85-ST

Student Financial Assistance Proceeding

DECISION

MR. PAUL SCARDINO,for Respondent. RUSSELL B. WOLFF, Esq., for Office of Student Financial Assistance, U.S. Department of Education.

Before:
Paul J. Clerman, Administrative Law Judge.

By letter/notice dated June 25, 1992, in accordance with the Student Assistance General Provisions at 34 CFR § 668.86, the United States Department of Education (ED) through its Division of Audit and Program Review (DAPR) notified the general manager, Joseph F. Roberts, Jr. (Roberts), of United Academies of Cosmetology (United) at Chicago, IL that ED intended to terminate the eligibility of United, or more precisely the eligibility of United's component educational institutions [identified below], to participate in programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 USC 1070 et seq. and 42 USC 2751 et seq. (the Title IV programs). United was also notified, through Roberts, that pursuant to 34 CFR § § 668.84 and 668.92 ED intended to impose upon these educational institutions fines aggregating more than one million dollars. United was informed that the eligibility of these institutions to participate in Title IV programs would terminate and the fines would be levied unless respondent requested a hearing, in which case the matter would be referred to ED's Office of Hearings and Appeals (OHA) for assignment for hearing before an Administrative Law Judge.

United's component educational institutions in June 1992 consisted of: Mid-America School of Beauty Culture (Mid-America); Riviera School of Beauty Culture (Riviera) Rome Academy of Cosmetology (Rome); Sunny Hill Beauty School (Sunny Hill), and Mr. T's School of Beauty Culture (Mr. T's), all of Chicago; and also Continentale Beauty School (Continentale), of Elmwood Park, IL; Paul's Academy of Cosmetology (Paul's), of Berwyn, IL, and European School of Beauty (European), of Des Plaines, IL. European, by its individual counsel on July 8, 1992, requested a hearing in this matter, and the other institutions on July 13, 1992, by counsel representing all seven institutions in individual letters filed on behalf of each institution also requested a hearing. On August 5, 1992, at the request of ED's Office of Student Financial

Assistance (OSFA), the Director of OHA designated the undersigned Administrative Law Judge as the presiding officer in this proceeding and so notified all parties.

Counsel for OSFA notified me in December 1992 that he had been informed by European' s counsel that European ceased its operations in October 1992 and no longer desired to participate in this proceeding. At OSFA's request I dismissed European as a respondent by my order issued December 15, 1992. As used below the term "respondent" will refer to each of the seven remaining institutions and also to all of them acting in concert as United. On June 21, 1992, counsel for these seven institutions, who had represented them in this proceeding since its inception, withdrew as counsel in this case for what he called circumstances beyond his control and for professional reasons. Also, on July 9, 1993, Roberts notified me that since May of 1992 he has had no connection with United or with any of the component institutions and that he desired no longer to be served with process in this case.

By a motion dated July 2, 1993, OSFA seeks termination of this proceeding and the entry of judgment against respondent. OSFA notes that my notice served September 4, 1992, directed the parties to consult and to endeavor to agree upon a suitable date for hearing in this matter, and that this directive was repeated in orders issued February 10, 1993, and May 11, 1993. OSFA states that it made continuing efforts to comply but received no cooperation from respondent. As a result, according to OSFA, respondent's failure to comply with my directive has delayed this proceeding for more than a year, with no further resolution in sight.

In support of its motion OSFA contends that ED in the letter/notice dated June 25, 1992, established a prima facie case for termination and fine to which respondent has offered no rebuttal or other substantive response. The violations noted in that letter/notice included, among others, failure on the part of the component institutions to pay refunds to lenders after student withdrawals, to properly administer ability-to-benefit tests to students, to comply with appropriate standards of administrative capability or to adhere to fiduciary standards of conduct, or to demonstrate financial responsibility. The letter/notice referred to almost twelve million dollars in student financial assistance awarded to the component institutions over a three year period, and indicated that fines assessed are based in part on the amount of Title IV funds awarded as well as on the gravity of the violations, among other factors. Respondent was notified that the aggregate fine imposed on the institutions, including European, was $1,026,500, of which $60,000 was against European. OSFA alleges that under the governing statutes, regulations, and precedent the presiding Judge has the authority in the given circumstances to issue a decision terminating the proceeding and entering judgment as requested. No response was filed on behalf of United.

In lieu of granting OSFA's motion, however, I issued my order dated July 15, 1993, in which, in a final effort to set this proceeding in motion toward resolution, United was given additional time to comply with my prior orders. That additional period of time has now expired without substantive response from United or any of the component institutions.

As accurately pointed out by OSFA, ED regulations at 34 CFR § 668.89 give to the presiding Judge the authority and the responsibility to take all steps necessary and appropriate to expedite the proceeding, including the setting of time limits for hearings and the submission of

documents, and to terminate hearings and issue decisions against parties which fail to meet such time limits. United has now been given every reasonable opportunity to comply with my orders and to present its defense in this proceeding but has failed to do so. In these circumstances I conclude that justification appears for the decision sought by OSFA, and it will be issued.

I find that respondent, particularly and specifically Mid- America, Riviera, Rome, Sunny Hill, Mr. T's, Continentale, Paul's, and European, have been shown to have violated HEA as set forth in the letter/notice dated June 25, 1992, in this proceeding, and that for this reason there is justification shown for termination of the eligibility of those named institutions to participate further in student financial assistance programs under Title IV of HEA, and for the imposition of fines for such violations as set forth in the aforesaid letter/notice. I further find that such termination of eligibility and such imposition of fines should be ordered, and that this proceeding should be thereupon terminated.

ACCORDINGLY, IT IS ORDERED:

That the eligibility of respondent, specifically Mid-America, Riviera, Rome, Sunny Hill, Mr. T's, Continentale, Paul's and European, as identified in the letter/notice dated June 25, 1992, in this proceeding, to participate in student financial assistance programs under Title IV of HEA is terminated.

That respondent shall, in the manner provided by law, pay a fine to the United States Department of Education in the aggregate amount of $1,026,500, each institution to be liable for a portion of that amount as follows: Mid-America, $335,000; Riviera, $195,000; Rome, $76,000; Sunny Hill, $40,500; Mr. T's, $107,500; Continentale, $169,500; Paul's, $43,000, and European, $60,000.

That this proceeding be terminated.

And that this Decision shall take effect when it is served.

By Paul J. Clerman, Administrative Law Judge, on August 13, 1993, at Washington, D.C.

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