IN THE MATTER OF Docket No. 92-92-SP
MTA SCHOOL, Student Financial
Respondent. Assistance Proceeding

DECISION

Appearances: Yolanda R. Gallegos, Esq., Dow, Lohnes & Albertson for MTA School

Edmund J. Trepacz, II, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Richard F. O'Hair.

The Office of Student Financial Assistance Programs (SFAP) (formerly known as the Office of Student Financial Assistance (OSFA), of the U.S. Department of Education (Department), through its Atlanta, Georgia, regional office, issued a final program review determination (FPRD) dated June 2, 1992, to respondent, MTA School (MTA). The FPRD is based on a program review of MTA's administration of Title IV, Higher Education Act of 1965, as amended (HEA), Programs for the two year period from July 1, 1989, to June 30, 1991. The FPRD alleged MTA had disbursed financial assistance under HEA without complete verification of conflicting information in a Student Aid Report and a failure to properly document the independent status of that same student. SFAP contends that MTA is liable for the amount of the federal funds advanced to this student because of these deficiencies. MTA appealed the FPRD and this case was referred to the Office of Hearings and Appeals for a hearing pursuant to 34 C.F.R. § 668.116.

The regulations governing a school's participation in Title IV Programs prohibit the disbursement of Pell Grants or the certification of guaranteed student loans until the student verifies or corrects information on an application that is inaccurate. 34 C.F.R. § 668.58(a)(1). Because of the discrepancies noted above, MTA had an obligation to make further inquiries of the student before disbursing a Pell Grant of $2300 and certifying a Guaranteed Student Loan (GSL) in the amount of $2625. Furthermore, MTA failed to maintain documentation supporting its certification of a $2500 Supplemental Loans for Students (SLS) loan for the student as required by statute. 20 U.S.C. §1078-1(a)(1). These infractions require that MTA remit $2300 in Pell Grant funds to the Department and remit

$2625 to the holder of the GSL, and $2500 to the holder of the SLS loan.

MTA acknowledges its liability, but asserts that it has made appropriate restitution of $5125 to the holders of the respective student loans and, therefore, is responsible for payment of, at most, $2300 to the Department for the Pell Grant. In support of its position that a portion of the liability has been satisfied, MTA attached to its brief what are purportedly copies of the front side of two reimbursement checks issued to the holders of the two loans. There is no evidence

anywhere on the copies of the checks which would convince anyone that these checks were negotiated and the liabilities satisfied. SFAP strongly objects to the use of these two documents to prove MTA's payment and I agree. As far as I am concerned, MTA remains obligated to reimburse the holders of the two loans and should be ordered to do so, unless they can provide satisfactory proof these payments were made.

In its second line of defense, MTA points out that it filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code on December 16, 1992 and that the Department had until May 18, 1993, to file proof of its claim in this matter. Inasmuch as no such claim has been filed, MTA asserts that the Department's claim became moot from that date and this matter should be dismissed. SFAP disagrees with this interpretation of the laws of bankruptcy and argues that, under Chapter 11 of the Bankruptcy Code, corporations do not receive a discharge of their debts, so any liability that is established in this administrative proceeding cannot be discharged by the bankruptcy court, thus negating the mootness argument MTA presented.

The more troubling issue, though not raised by MTA, is whether the Department is in violation of the automatic stay provisions of 11 U.S.C. § 362(a) by continuing with this administrative proceeding to determine whether MTA improperly disbursed a Pell Grant and certified student loans. If the Department were in the position of being a typical creditor of MTA, the automatic stay provisions would undoubtedly bar further attempts to collect its debt. The distinction here is that the Department is not a typical creditor attempting to obtain possession of, or to exercise control over, the institution's property, but rather, it is a governmental unit which argues it is attempting to enforce its police or regulatory powers. In this role, SFAP believes that the Department is exempt from the provisions of the automatic stay. SFAP relies on the provision of 11 U.S.C. §362(b)(4) which provides an exemption from the automatic stay for governmental units which are attempting to enforce their police or regulatory powers. In support of its position, SFAP cites Board of Governors of the Federal Reserve System v. MCorp Financial Inc, 112 S.Ct. 459 (1991) wherein the Supreme Court refused to apply the automatic stay provisions to ongoing, nonfinal administrative proceedings by the Board of Governors which were initiated to determine whether the defendant corporation had violated specified statutory and regulatory provisions. The court held that the fact that the proceedings might conclude with an order that would affect the Bankruptcy Court's control over the property of the corporation's estate was not sufficient to justify the operation of the stay. Id. at 464.

There is also Departmental support for the position that the automatic stay does not

apply to the current proceeding against MTA. In the well-written decision of In the Matter of First School for Careers, Dkt. No. 89-60-S, U.S. Dep't of Educ. (January 29, 1990), Judge Lewis found that the automatic stay provision does not apply to the Department's efforts to determine whether an educational institution is financially liable for purported violations of the law and regulations governing the student loan programs. He reasoned that the proceeding related primarily to the government's enforcement of its police or regulatory powers, rather than the protection of the government's pecuniary interest in the debtor's property. The Department, in proceedings such as this, he explained, is pursuing its Congressional mandate to promote the general welfare of the United States by providing oversight of student financial assistance programs and insuring a proper utilization of federal funds. Thus the Department was permitted

to continue with its administrative proceedings to determine the financial liability of the institution.

I am persuaded by both of these precedents that, in the case before me, the Department is properly exempted from the automatic stay provisions under 11 U.S.C. § 362(b)(4). It is free to pursue administrative proceedings in furtherance of its police and regulatory powers to determine whether MTA has violated specified statutory and regulatory provisions governing the proper administration of Title IV Higher Education Act Programs. Accordingly, I find MTA is obligated to reimburse: 1) the holders of the two student loans in the amount of $5125, or provide the Department with proof that this obligation has been satisfied, and, 2) the Department for $2300 in Pell Grant funds.

SO ORDERED.

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Judge Richard F. O'Hair

Issued: June 30, 1994
Washington, D.C.