

IN THE MATTER OF ENDICOTT INTERNATIONAL BEAUTY SCHOOL,
Respondent.

Docket No. 90-12-SP
Student Financial Assistance Proceeding

DECISION

Appearances: Carol S. Bengle, Esq., Office of the General Counsel, for the Office of Student Financial Assistance, United States Department of Education.

None at present for Endicott International Beauty School.[See footnote 1](#)

Before: Judge John F. Cook

On January 18, 1990, the Office of Student Financial Assistance (OSFA), initiated a final program review determination proceeding against Endicott International Beauty School (Endicott). Endicott then filed a request for a hearing dated March 29, 1990.

A Notice of Receipt of Request for Hearing and Prehearing Order was issued April 24, 1990, by the undersigned. This Order required the parties' counsel to exchange exhibits, witness lists, file joint stipulations of fact, an initial brief and a reply brief. These statements were also to be submitted to the tribunal.

On June 1, 1990, OSFA and Endicott filed a joint motion for a Stay for 90 days to explore settlement possibilities. On June 5, 1990, a Stay was granted until September 4, 1990, for the parties to investigate settlement prospects.

OSFA and Endicott filed a joint motion for an additional Stay on October 18, 1990, to continue to work toward settlement. A Stay was granted until January 21, 1991.

On April 8, 1991, the parties again requested a Stay of 60 days to facilitate settlement negotiations. A Stay was granted until June 7, 1991.

On September 18, 1991, counsel for the respondent, Endicott, requested permission to withdraw from the case. On September 24, 1991, counsel for OSFA filed motions to dissolve the stay and terminate the proceedings and enter judgement for OSFA based upon 34 C.F.R. § 668.117(c). OSFA's request was based upon the fact that Respondent's former attorney advised OSFA and the tribunal in a teleconference that the Respondent institution had closed, and that the owner or owners had not responded to her requests for information as to their intentions to proceed in defending this matter.

On September 27, 1991, an Order was issued terminating the stay and restoring Endicott to the active docket. A briefing schedule was set pursuant to 34 C.F.R. § 668.117(c). This Order was based upon the following:

1. OSFA's motion requesting that the stay be dissolved and the case restored to the active docket, since settlement discussions were unsuccessful and had been terminated.
2. That Respondent's attorney notified OSFA and the undersigned that the Endicott school had been closed.

Thus, a new briefing schedule was set, ordering Endicott to file its brief, a memorandum of law and exhibit list on or before October 11, 1991. OSFA's brief was due October 25, 1991. Endicott failed to file its initial brief by October 11, 1991.

On October 21, 1991, David H. Cohen, Esq. wrote a letter on behalf of Mr. Fred Hubert, one of the owners of Endicott requesting a 30 day stay. Mr. Cohen notified the tribunal that he was not representing Endicott in these proceedings. On October 31, 1991, OSFA filed a Motion to Exclude the October 21, 1991, Letter from the Record and to Renew its Motion for Judgement. On November 4, 1991, the tribunal sent Mr. Cohen a copy of the cover letter and Messers Hubert and Catucci a copy of OSFA's motion to renew their motion for judgement.

Endicott's failure to comply with the tribunal's briefing schedule constituted a failure to comply with 34 C.F.R. § 668.117(c). This regulation vests the administrative law judge with the authority to terminate the hearing process and issue a decision against the party if that party does not meet the time limits established by the administrative law judge.

Therefore, Endicott's failure to comply with the order of September 27, 1991, providing that Endicott's brief, memorandum of law, and exhibit list were due by October 11, 1991, comprises a violation of that order. IT IS ORDERED:

1. That the findings of the Final Program Review Determination letter of January 18, 1990, issued by the Office of Student Financial Assistance, Institutional Review Branch, is supportable in whole.
 2. That Endicott immediately and in the manner provided by law pay to the United States Department of Education the amount of \$24,700.10
 3. The amount of \$12,500.98 must be returned to the holders of the Guaranteed Student Loans as directed in the Final Program Review Determination letter of January 18, 1990.
 4. That these proceedings be terminated.
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John F. Cook
Administrative Law Judge

Issued: December 31, 1991, Washington, D.C.

SERVICE LIST

A copy of the attached document was sent by certified mail return receipt requested to the following:

Elaine M. Pers, Esq.
O'Connell and Aronowitz
100 State Street
Albany, New York 12207-1885

Mr. Fred Hubert
12 Johnson Avenue
Binghamton, New York 13905

Mr. Cosmo Catucci
316 Robble Avenue
Endicott, New York 13760

Carol S. Bengle, Esq.
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Footnote: 1 Originally the Respondent, Endicott International Beauty School, was represented by Elaine M. Pers, Esq. of O'Connell and Aronowitz, 100 State Street, Albany, New York 12207-1885. However, on September 18, 1991, Ms. Pers withdrew as counsel for Respondent, Endicott. No one else has appeared for Respondent since that time.