

IN THE MATTER OF THE BALIN INSTITUTE OF TECHNOLOGY,  
Respondent.

Docket No. 90-67-ST  
Student Financial Assistance Proceeding

DECISION

Appearances: Russell B. Wolff, Esq., Office of the General Counsel, and Nan Shepard, Esq.,  
for the Office of Student Financial Assistance, United States Department of Education.

None at present for the Balin Institute of Technology. [See footnote 1](#)

Before: Judge John F. Cook

On August 30, 1990, the Office of Student Financial Assistance (OSFA) commenced a proceeding to terminate Respondent's (Balin's) eligibility to participate in Federal student financial assistance programs authorized by Title IV of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. § 1070 et seq. (Title IV programs) and to fine Balin \$500,000.00 based on certain alleged violations of law. Thereafter, Balin filed a request for hearing dated September 19, 1990.

A hearing was held in Atlanta, Georgia from February 26 through March 1, 1991. At the conclusion of the hearing a posthearing order was orally issued by the judge setting a briefing schedule. In accordance with that order OSFA filed its brief and proposed findings of fact.

On May 7, 1991, Balin filed a Motion for an Extension of Time to file Balin's posthearing brief. Additional time was requested because Balin is in Chapter 11 reorganization, and approval of attorney's fees by the Bankruptcy Court was required. Balin's attorney's stated that they would have no recourse but to withdraw from the case if a motion for extension was not granted. OSFA opposed Balin's motion. In view of the fact that an emergency action to withhold funds from the respondent institution or its students was previously rescinded after hearing by the Director of Student Financial Assistance Programs, and in order to preserve due process, on May 16, 1991, an order amending the briefing schedule was issued granting Balin an extension until June 28, 1991, to file its brief and proposed findings of fact and conclusions of law. However, the order provided further that--

if respondent's attorney for any reason withdraws from the case before the brief is filed, then the respondent itself will be responsible for filing its brief by that same deadline. For this reason counsel for the respondent will be required to inform respondent's president, of this requirement by Friday, May 31, 1991.

On May 21, 1991, Balin's attorneys filed a notice stating that they had informed Balin's president--

that the tribunal had amended the briefing schedule to provide that Balin's Brief, Proposed Findings of Fact, and Conclusions of Law are due by June 28, 1991, and that respondent itself will be responsible for filing these documents by that date in the event that the undersigned counsel withdraws from the case.

On June 17, 1991, Balin's attorneys filed a notice of withdrawal as counsel. The attorneys stated that the Bankruptcy Court had granted the interim fee application with modifications on May 30, 1991, but that, notwithstanding, Balin had not paid the fees and costs approved by the Court. The attorneys stated that it was necessary to advise the tribunal that they were withdrawing as counsel to Balin, effective immediately. They stated that the president of Balin had been advised that this would occur if the approved amounts were not paid by June 14, 1991. They stated further that:

A copy of this Notice is being sent to him and to his local bankruptcy counsel by facsimile and by first class mail, postage prepaid. Dr. Hecht has been previously advised, as the tribunal ordered, that Balin Institute's post-hearing brief, proposed findings of fact and conclusions of law with respect to the proposed termination and fine proceeding are due no later than June 28, 1991, and that no further extensions of time will be granted.

Balin has not filed a post-hearing brief or any proposed findings of fact or conclusions of law in this proceeding.

On July 5, 1991, OSFA filed a Motion for Termination of Proceedings and Entry of Judgement Against Respondent. In that motion OSFA stated, in part, as follows:

9. In accordance with 34 C.F.R. § 668.89(c)(2), the court has the authority to terminate a hearing and issue a decision adverse to a party if that party does not comply with established time limits for submission of written documents. (See also, Fed. R. Civ. P. 55.)

10. Such a decision is most appropriate in this case given Respondent's willful noncompliance with the Order Amending Briefing Schedule of May 16, 1991. Respondent's counsel has advised the court on more than one occasion that Respondent was aware of the June 28, 1991, deadline for posthearing submissions. Respondent's counsel has further represented that assuming he was compensated, he would comply with the Order on behalf of his client. Nonetheless, when the Bankruptcy Court authorized Respondent to provide counsel with costs and fees, Respondent refused to do so. This action by Respondent followed counsel's specific advisement to Respondent that counsel would withdraw from the case if the approved amounts were not paid by June 14, 1991. (See, Notice of Withdrawal of Counsel, June 17, 1991.)

11. The court was more than accommodating of Respondent's situation when it granted the initial extension, especially since this extension allowed Respondent continued access to Federal funds. Respondent's current actions place it in intentional defiance of the court's Order and should not be tolerated.

12. This Motion to terminate proceedings is also consistent with the decisions in *In The Matter of Transwestern Institute*, Docket No. 90-86-ST (February 26, 1991) and in *In the Matter*

of Arnold International University of Cosmetology, Docket No. 90-19-ST (March 1, 1991), and the Orders of Dismissal issued in In Re: Metropolitan Business College, Docket No. 90-93-ST (February 26, 1991) and in In The Matter of Mar-Pel's Beauty Academy, Docket No. 91-19-SP (June 6, 1991). In all these cases, decisions were issued adverse to a party for failure to timely file prehearing matters.

13. The fact that Respondent has failed to timely file a posthearing brief and proposed findings of fact warrants the same result. The posthearing submissions are an integral aspect of the hearing, and may be of greater significance than prehearing matters in cases such as this, where considerable evidence was presented at the hearing through witness testimony. Moreover, a party that seeks a hearing on the record cannot be allowed to decide which parts of the process it wants to participate in and which aspects of the hearing it desires to avoid. The court was careful to note at the conclusion of the taking of witness testimony that this only concluded a 'particular phase of the case.' (Tr. at 919, 920.) To potentially benefit from the process, Respondent has to participate in all 'phases' of the case, not only those it chooses. To excuse Respondent's violation of the court's Order would establish a dangerous precedent for other Respondents to ignore specific filing deadlines or attempt to manipulate the process to their advantage.

....

Wherefore, OSFA respectfully requests that an initial decision be issued by the court terminating these proceedings and terminating Respondent's eligibility to further participate in the Federal student financial assistance programs and imposing a fine of \$500,000.

On July 11 and 15, 1991, OSFA filed statements concerning the fact that OSFA was not able to deliver a copy of the motion of July 5, 1991, to the Respondent at the address of 18062 Irvine Boulevard, Tustin, CA 92680 because Respondent had moved and left no forwarding address, and a forwarding telephone number had been disconnected. OSFA's counsel stated in a letter of July 11, 1991, that he used the above address because it was used by Balin's then attorney to serve copies on his client of the matters he filed on May 7, 9, 13, and June 17, 1991.

Since OSFA had not achieved actual delivery of a copy of its motion to Balin an Order to Show Cause was issued by the undersigned on August 8, 1991, which stated, in part:

ACCORDINGLY, IT IS ORDERED, That the Respondent show cause within 14 days, i.e. by August 22, 1991, why a decision should not be issued terminating this proceeding and entering a decision against the respondent, based upon the reasons set forth in Appendix A [a copy of OSFA's motion of July 5, 1991].

Service by certified mail was then attempted upon Balin at four different addresses which are the same as those set forth on the service list attached to this decision. These included (1) the address used on the original notice of intent to terminate eligibility to participate in Title IV, HEA programs and to fine Balin dated August 30, 1990, (2) the address given by Balin's president during the hearing in this case as his home address, (3) the address used by OSFA in Tustin, CA, as stated above, and (4) a post office box address supplied by one of Balin's

attorneys. A certified mail return receipt was returned from the 18062 Irvine Blvd., Tustin, CA address which contained a signature of a person who signed as an agent of Balin and indicated that the Order to Show Cause had been received on August 12, 1991. The envelope containing the Order to Show Cause which had been sent to 20945 Cayuga Lane, Lake Forest, CA was returned with a notation on the outside: "Refused 8-10-91." The envelope containing the Order to Show Cause which had been sent to 1285 Peachtree Street, Atlanta, GA was returned with a notation: "Moved Left No Address."

Under 34 C.F.R. § 668.89(c) (1990), the administrative law judge is authorized to--

take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following--

- .....
- (2) Setting time limits for hearings and submission of written documents; and
  - (3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

34 C.F.R. § 668.91 provides as follows:

**Verification of mailing and receipt dates.**

- (a) Verification of the Department of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.
- (b) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution refuses to accept the notice.

Balin has not to this date ever filed a post-hearing brief, proposed findings of fact, or conclusions of law, or a response to the order to show cause.

In view of Balin's failure to comply with the order of May 16, 1991, providing that Balin's post-hearing brief, proposed findings of fact and conclusions of law were due by June 28, 1991, and in view of Balin's failure to respond to the Order to Show Cause by August 22, 1991, which constitute a failure to comply with 34 C.F.R. § 668.89(c), IT IS ORDERED:

1. That a decision be entered against Balin terminating its eligibility to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, and
2. That Balin immediately and in the manner provided by law pay to the United States Department of Education a fine in the amount of \$500,000.00, and
3. That these proceedings be terminated.

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John F. Cook  
Administrative Law Judge

Issued: September 6, 1991  
Washington, D.C.

Distribution: Respondent/Representative

Designated Department Official/Representative

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SERVICE LIST

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

Dr. Donald Hecht  
Balin Institute of Technology  
18062 Irvine Blvd.  
Tustin, CA 92680

Dr. Donald Hecht  
Balin Institute of Technology  
20945 Cayuga Lane  
Lake Forest, CA 92630

Dr. Donald Hecht  
Balin Institute of Technology  
P.O. Box 1307  
Tustin, CA 92681

Dr. Donald Hecht  
Balin Institute of  
Technology  
1285 Peachtree Street, N.E.  
Suite 100  
Atlanta, GA 30309

Russell B. Wolff, Esq.  
Office of the General Counsel

U.S. Department of Education  
400 Maryland Avenue, S.W.  
Room 4083, FOB-6  
Washington, D.C. 20202-2110

Molly Hockman  
Director, Audit and Program Review  
Office of Student Financial Assistance  
Room 3923, ROB-3  
7th and D Streets, S.W.  
Washington, D.C. 20202-5254

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*Footnote: 1 Originally the Respondent, Balin Institute of Technology, was represented by Peter S. Leyton, Esq. and Richard A. Fulton, Esq. of White, Fine and Verville, 1156 Fifteenth Street, N.W., Washington, D.C. 20005. However, on June 17, 1991, these attorneys withdrew as counsel for Respondent for reasons which are set forth in the decision. No one else has appeared for Respondent since that time.*