

IN THE MATTER OF RS Men's Hair Styling, Inc.,
Respondent.

Docket No. 91-42-ST
Student Financial Assistance Proceeding

DECISION

Appearances: Michael A. Lamson, Esq. of Houston, Texas, for the Respondent

Donald C. Phillips, Esq. of Washington, D.C.,
Office of the General Counsel, United States
Department of Education for the Office of Student
Financial Assistance

Before: Judge Allan C. Lewis

This case was suspended pending a decision by the Secretary in a disqualification proceeding in *In re Michigan Paraprofessional Training Institute*, Dkt. No. 90-7-ST. The Secretary rendered a decision on August 28, 1991. As a result of the Secretary's decision in Michigan, this case is now ripe for consideration. In his decision, the Secretary determined that a disqualification proceeding pursuant to Section 432(h)(3) of the Higher Education Act of 1965, as amended by Section 402(a) of the Higher Education Amendments of 1986, Pub. L. No. 96-374, 100 Stat. 1263 (to be codified at 20 U.S.C. 1082(h)(3)) is limited in its scope. According to the Secretary, "the guaranty agencies determine the facts within a framework established by the Secretary, with the Secretary's review limited to whether the framework was appropriately applied." *In re Aristotle College*, Dkt. No. 89-35- S, U.S. Dep't of Education (Sec. Dec. Oct. 25, 1991) at 4. Under this standard as applied in the instant case, it is concluded that RS Men's Hair Styling, Inc., d/b/a RS Institute and RS Barber College (RS) is disqualified from its participation in the guaranteed student loan programs.

Under the standards promulgated by the Secretary in Michigan and Aristotle, the present review is limited to four issues:

1. Whether the guaranty agency's action was in accordance with procedures that were substantially the same as those that govern the limitation, suspension, or termination of a school's eligibility under the Federal Insured Student Loan Program (FISLP) as of January 1, 1985;
2. Whether the agency took its action on the basis of substantive agency requirements regarding initial or continuing eligibility that were not more onerous than those in effect for schools participating in FISLP as of January 1, 1985;
3. Whether factual findings of the guaranty agency are insupportable as a matter of law; and

4. Whether, as a matter of law, the guaranty agency correctly interpreted and applied the substantive requirements.

The Texas Guaranteed Student Loan Corporation's (TGSLC) procedural rules governing the termination of an institution from participation from the guaranteed student loan program are set out in Procedure 6.0 of "How an Institution Shall be Limited, Suspended, or Terminated from the TGSLP [sic]." RS stated in its brief that it does not contest the procedural aspect of its termination. For the sake of completeness, however, this matter will be addressed. TGSLC's procedural rules are practically taken verbatim from 34 C.F.R. Part 668. For example, the notice requirements, hearing procedures and rules for appeals of decisions are the same with the exception that TGSLC allows new evidence to be introduced in an appeal, while the Department does not. See Procedure 6.0 "How an Institution Shall be Limited, Suspended, or Terminated from the TGSLP [sic]" and 34 C.F.R. §§ 668.77 and 668.81. Therefore, TGSLC's procedural rules are substantially the same as the Department's procedural rules governing terminations as of January 1, 1985, and this criterion for disqualification is satisfied.

The second criterion is whether the substantive agency requirements were not more onerous than those requirements in the Department's regulations as of January 1, 1985.

TGSLC's termination of RS was based upon findings that RS failed to adhere to federal and state student loan regulations over a sustained period of time. For purposes of the audit which examined RS's activities from January 1, 1988 to September 30, 1989, and the subsequent termination proceeding, TGSLC adopted and applied the Department's substantive rules and regulations in effect as of January 1, 1985, as its governing substantive rules to determine the continuing eligibility of an institution to participate in the guaranteed student loan programs. [See footnote 1 1/](#)

Therefore, its substantive rules and regulations were not more onerous than the Department's regulations in effect as of January 1, 1985.

The third criterion for consideration in a disqualification action is whether the factual findings of the guaranty agency are insupportable as a matter of law. Aristotle at 5. Under this standard, a factual finding is upheld upon review unless it is clearly erroneous. *Salve Regina College v. Russell*, 111 S. Ct. 1217, 1221 (1991) (citing Fed. R. Civ. P. 52(a)).

Applying this deferential standard in the instant case, it is determined that TGSLC's factual findings will stand. RS admitted in its brief that it gave loans to ineligible students, certified SLS loans before Stafford loans were utilized, and failed to provide timely refunds. In addition, TGSLC documented each of these violations in its Compliance Review Report which audited RS's activities from January 1, 1988 to September 30, 1989. The clearly erroneous standard does not require a measuring of the evidence, it merely requires that there be an evidentiary basis for the factual determination. Under this analysis, it is clear that TGSLC's factual findings are supportable based on the record. Therefore, the third criterion is satisfied.

The final criterion, a corollary to the third criterion, is whether, as a matter of law, the guaranty agency correctly interpreted and applied the substantive requirements. RS has not contended in

this proceeding that TGSLC incorrectly interpreted or applied the substantive requirements for continuing eligibility. RS's position is that termination was not justified under the facts. It argues that good faith defenses exist or that the regulations were themselves faulty and, on that basis, RS declined to follow them. Upon review of TGSLC's determination to terminate RS, it is concluded that, as a matter of law, TGSLC correctly interpreted and applied the substantive regulations for termination of an institution's eligibility as in effect on January 1, 1985. Thus, the fourth criterion for disqualification is satisfied. Therefore, it is appropriate to disqualify RS from participation in the guaranteed student loan programs.

In view of the above, it is HEREBY ORDERED that RS is disqualified from its eligibility to participate in the guaranteed student loan programs.

Allan C. Lewis

Administrative Law Judge
Issued: November 17, 1992
Washington, D.C.

Footnote: 1 1/ TGSLC determined that RS violated the following regulations which justified termination. It violated 34 C.F.R. § 682.608(a) (1984) which mandates that all programs under Title IV of the Higher Education Act of 1965, as amended, must have in place "a fair and equitable refund policy under which it will make a refund of unearned tuition, fees and room and board charges to a student who receives a GSLP loan..." In this case, RS failed to calculate refunds correctly and to make timely refunds to lenders which are grounds for terminating an institution from its participation in the guaranteed student loan programs.

TGSLC determined that RS failed to give accurate information regarding the eligibility of some of its students to receive guaranteed student loans. RS relied upon an unacceptable Immigration and Naturalization Service form in determining the eligibility of students for loans after it had been informed by the Department in a Dear Colleague Letter (Gen-87-26, June 1987) that this particular form should not be used for this purpose. In TGSLC's view, such actions violated 34 C.F.R. § 682.605 (1984), a regulation in effect as of January 1, 1985.

Lastly, TGSLC determined that RS did not administer the institution's certification practices in accordance with federal policy, a violation of 20 U.S.C. § 1094(a) (1984). It found that RS certified loans under the Supplemental Loans for Students program without first utilizing Stafford loans in direct contravention of instructions set forth in the Department's Dear Colleague Letter, GEN-88-34 (October 1988). Such action violated, in TGSLC's view, Section 1094(a)'s requirement that any funds received by the institution must be used for the "purposes specified in, and in accordance with, the provisions of that program."