UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

IN THE MATTER OF

COMPUTER PROCESSING INSTITUTE,

Respondent.

Docket No. 92-20-SP

Student Financial Assistance
Assistance Proceeding

DECISION

This is an appeal of a final program review determination. However, respondent, Computer Processing Institute (CPI), which filed the appeal, no longer exists. See my prior decision April 6, 1993, at page 2, wherein it is noted that CPI has entered bankruptcy, has ceased all operations, and has surrendered its authority to operate. Also, see a letter dated January 25, 1994, attached hereto from former counsel for CPI to me which indicates that CPT has "no assets, no employees and for all practical purposes no longer exists."

It thus appears that the matter of CPI's appeal of the program review is mooted. In this regard, the attached decision of the Secretary of Education, In the Matter of Bliss College, may be controlling. Of course, CPI may still exist on paper in some form. Thus, although I am dismissing the appeal of CPI as moot, I alternatively am adopting the attached recomputation dated March 28, 1994, of CPI's liability under the subject program review. (The recomputation serves to reduce liability of CPI and was prepared in the light of prior findings herein by me and by the Secretary of Education.)

It may be noted that the Student Financial Assistance Programs (SFAP) of the Department of Education served a copy of the March 28, 1994 recomputation on David S. Shefrin c/o Andrew Shefrin.

Neither Shefrin is a party herein, and neither is shown to be liable for the debts of CPI. Also, neither appears to represent CPT, which as noted, is defunct.

The appeal of CPI to the final program review determination of December 17, 1991, is dismissed for mootness. As well, in the unlikely event that CPI is resurrected, its liability under the final program review determination is limited to the amount specified in the March 28, 1994, recomputation of SFAP which is hereby adopted as my own determination.

Dated this 28th day of April, 1994.

Paul S. Cross
Administrative Law Judge
Office of Higher Education Appeals
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-3644

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Docket No. 93-15-ST

ATTACHMENTS

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LESLIE H WIESENFELDER
DIRECT DIAL NO.

January 25, 1994

The Honorable Paul S. Cross
Administrative Law Judge
Office of Hearings and Appeals
U.S. Department of Education

400 Maryland Avenue, S.W., FOB 6
Washington, D.C. 20202-3727

Re: In the Matter of Computer Processing Institute Docket No. 92-20-SP

Dear Judge Cross:

I am in receipt of your January 14, 1994 Order in the above-captioned matter. However, as I advised the Tribunal in my letter July 30, 1993, my law firm no longer represents Computer Processing Institute and did not represent it before the Secretary. Accordingly, I am not in a position to take any action on behalf of Computer Processing Institute in response to your Order. Nevertheless, with regard to your request for an update concerning the financial status of Computer Processing Institute, the last information I had is that it had no assets, no employees and for all practical purposes no longer exists.

Sincerely yours,

Leslie H. Wiesenfelder

LHW:cds
cc: Russell B. Wolff, Esquire
The Honorable Paul S. Cross [courtesy copy]

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

In the Matter of

BLISS COLLEGE,

Respondent

Docket Nol. 93-15-ST

Student financial Assistance

Decision of the Secretary

This case comes to me on respondent Bliss College's (Bliss) Motion to Vacate Initial Decision on Grounds of Mootness filed October 13, 1993. Counsel for the Student Financial Assistance Programs (SFAP) filed its opposition to the motion on November 26, 1993. Pursuant to my request, supplemental briefs were timely filed by both parties on January 14, 1994.

In both its Motion to Vacate and supporting Supplemental Brief, Bliss argues that because it "permanently closed all of its campuses on October 4, 1993.. . Bliss College is no longer eligible to participate in ally Title IV Programs. Bliss Brief (Br. at 1). By removing itself from the field

of institutions eligible to participate in federal student financial assistance programs (authorized under Tide W of the Higher Education Act, as amended), Bliss argues the September 7, 1993, decision of Administrative Judge Paul S. Cross (Au) terminating Bliss from further participation in all Tide IV Programs, should be vacated, as a matter of law, on grounds of mootness.

In opposition, SFAP argues, among other things, that the case presents an actual, live controversy to adjudicate because it has specific future effects on Bliss. SFAP Br. at 3.

For the reasons outlined below, X bold that the September 7, 1993, decision of the AU be vacated on grounds of mootness.

In its simplest terms, "a case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on die existing controversy." Leonhart v. McCormick, 395 F. Supp. 1073, 1077 (1975). In the present a requisite case or controversy ceased to exist on October 4, 1993, when Bliss College permanently closed all of its campuses. Thereby, Bliss College rendered itself ineligible to participate in any and all student financial assistance programs authorized under Tide IV programs. Certainly, if Bliss College does not exist as an institution of higher education, that it is prescribed from participating in SFAP programs is of no consequence whatever, and can have no practical affect.

Nor do the policy concerns raised by SFAP create a necessary actual case OT controversy where one ceased to exist. SFAP argues that if Bliss is riot specifically precluded from eligibility, it would not be subject to 34 C.F.R. §668.96(a)(2) - which requires an institute whose eligibility has been terminated to wait 18 months after the date of termination before it may apply for reinstatement. SFAP Br. at 3. SFAP further argues that effectiveness of the Department's accountability regulations would be diluted if Bliss or its owners apply for reinstatement after the expiration of the 18 period. SFAP Br. at 3. But, whether Bliss may apply for reinstatement within 18 months or only after 18 months, or whether the Department is aided in "its gatekeeping role to use a prior termination decision to gain sufficient assurances that the conduct by Bliss or by Bliss owners does not recur, " id., does not make the case an actual, live controversy presently to adjudicate. Moreover, the Secretary notes that Bliss has affirmatively represented that "it will not seek to participate in any federal financial assistance program within the l8-month period contemplated by 34 C.F.R. Sec. 668.96 (a)(2), and indeed, that it has no intention ever to seek such eligibility." Bliss Supplemental Brief at 3.

In Friends of Keesville, lace v. Federal Energy Regulatory Comm'n, 859 F.2d 230, 232 (D.C. Cir. 1988), the Court of Appeals held:

Unquestionably the petitioner suffered legally cognizable injury as a result of the agency's decision. The case must nevertheless be dismissed as moot 'if the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. " Powell v. McCormack, 395 U.S. 436, 496, 89 S.Ct, 1944, 1951, 21 L.Ed.2d 491 (1969).

Finally, SFAP's arguments ignore the procedural posture of this case. SFAP asks this tribunal to preserve a decision that but for the circumstances of Bliss' closure, may well have been appealed

and reversed. The importance of this could not have been more clearly stated in United States v. Munsingwear, 71 S.Cte 104, 107(1950), where the court held:

[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment review of which was prevented through happenstance. When that procedure is followed. the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary.

allegedly financially irresponsible institutions is inconsistent with long-established jurisprudence on this issue.

Accordingly, it is the decision of this tribunal that respondent Bliss College's Motion to Vacate Initial Decision on Grounds of Mootness, filed October 13, 1993, is granted. So ordered this 23rd day of February, 1994

Richard W. Riley

Washington, D.C.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

March 28, 1994

Honorable Paul S. Cross
Office of Higher Education Appeals
U.S. Department of Education
490 L'Enfant Plaza, S.W.
2100 Corridor, 2d Floor
Washington, D.C. 20024

Re: In the Matter of Computer Processing Institute; Docket No. 92-20-SP

Dear Judge Cross:

In accordance with your Order dated January 14, 1994, enclosed please find a recomputation of the potential liabilities in the above-referenced matter. I am serving a copy of this recomputation on the school's owner, given counsel's withdrawal from this case.

Respectfully submitted,

Russell B. Wolff
Office of the General Counsel

cc: Mr. David Shefrin

I. INTRODUCTION

A final program review determination (FPRD) dated December 17, 1991, found that Computer Processing Institute (CPI) failed to administer properly student financial assistance funds received incident to Title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1070 et seq., and imposed liabilities of $753,880 to be repaid to the Department of Education (Department), with an additional $947,902 to be refunded to holders of Stafford Loans and Supplemental Loans to Students (SLS). (E-l.)

CPI appealed the FPRD and the administrative law judge (ALJ) issued a decision on April 6, 1993 in which he upheld some of the findings, dismissed others, and encouraged the parties to compromise the amount of liabilities ultimately owed by CPI to avoid a costly exercise to determine a precise dollar figure. In the Matter of Computer Processing Institute, U.S. Dept. of Education, Dkt. No. 92-20-SP (April 6, 1993) (Decision on Administrative Hearing). Much of the ALJ's decision was predicated on a factual finding that CPI suffered a massive flood that should excuse it from retaining many student records. (Id. at 3.)

The Student Financial Assistance Programs (SFAP) accepted much of the ALJ's decision, but appealed to the Secretary of Education (Secretary) the factual finding concerning the occurrence of the flood, and provided specific liabilities sought for each student incident to each finding that remained within the ALJ's opinion. SFAP invited the Secretary to impose those liabilities based upon the existence of substantial evidence to support them.

In his decision, the Secretary reversed the ALJ's finding concerning the occurrence of the flood, but declined to impose final liabilities. Instead, he remanded the matter to the ALJ to establish specific dollar liabilities. In the Matter of Computer Processing Institute, U.S. Dept. of Education, Dkt. No. 92-20-SP (July 23, 1993)(Decision of the Secretary).

In an Order dated January 14, 1994, the ALJ directed SFAP to provide a recomputation of liabilities owed by CPI in light of the Secretary's decision. This brief is intended to satisfy that Order. In effect, however, SFAP previously fulfilled this requirement in its appeal to the Secretary on May 12, 1993, in which it identified remaining liabilities on a student by student basis. Accordingly, SFAP includes a copy of that appeal and incorporates it by reference in this brief. That appeal with its enclosures provides the evidentiary support for the recomputed liabilities SFAP currently seeks.

II. LIABILITIES SOUGHT

Finding 2

SFAP currently seeks no liabilities for this finding.

Finding 3

SFAP seeks the following recomputed liabilities for this finding:

(1) $17,910 for students who did not possess valid Student Aid Reports, for whom full repayment was not made, and records were not destroyed (Appeal Brief at 7-8);

(2) $8,100 for students who improperly received second Pell Grants and were not on academic probation at the time (Appeal Brief at 14) ; and

(3) $97,575 for students who improperly received second Pell Grants, absent evidence that they were on academic probation, given the Secretary's finding that the purported flood did not excuse missing records (Appeal Brief at l4-15).

Total Pell Grant liabilities owed to the Department for finding 3 = $123,585.

Finding 4

SFAP seeks the following recomputed liabilities for things finding:

(1) $6,088 for students who improperly received Supplemental Educational Opportunity Grants (SEOG) and were not on academic probation at the time (Appeal Brief at 15-16); and

(2) $2,223 for students who improperly received SEOGs, absent evidence that they were on academic probation, given the Secretary's finding that the purported flood did not excuse missing records (Appeal Brief at 16).

Total SEOG liabilities owed to the Department for finding 4 = $8,311

Finding 7

SFAP seeks the following recomputed liabilities for this finding:

(1) $159,922 for improper Stafford Loan disbursements where there is no evidence that the student was On academic probation at the time (Appeal Brief at 17-19) ;

(2) $30,850 for improper Stafford Loan disbursements, absent evidence that the students were on academic probation, given the Secretary's finding that the purported flood did not excuse missing records (Appeal Brief at 19);

(3) $56,029 for improper SLS disbursements where there is no evidence that the student was on academic probation (Appeal Brief at 19-20); and

(4) $4,918 for improper SLS disbursements, absent evidence that the students were on academic probation, given the Secretary's finding that the purported flood did not excuse missing records (Appeal Brief at 20).

Total Stafford Loan liabilities owed to the holders of the notes for finding 7 = $190,772.

Total SLS liabilities owed to the holders of the notes for finding 7 = $60,947.

Finding 8 (1)

SFAP seeks the following recomputed liabilities for this finding:

(1) $42,809 for improper Stafford Loan disbursements which were made after termination of student enrollments (Appeal Brief at 8);

(2) $94,203 for improper SLs disbursements where the student received a SLS without first receiving a Stafford Loan (Appeal Brief at 8-9); and

(3) $2,086 for an improper SLS disbursement, given the absence of evidence that the student first received a Stafford Loan, given the Secretary's finding that the purported flood did not excuse missing records (Appeal Brief at 9).

Total Stafford Loan liabilities owed to the holders of the notes for finding 8 = $42,809.

Total SLS liabilities owed to the holders of the notes for finding 8 = $96,289.

Finding 9-12 (2)

SFAP seeks the following recomputed liabilities for these findings:

(1) $17,884 in improper Pell Grant awards where the school was missing records and provided no response (Appeal Brief at 10-11);

(2) $200 in an improper SEOG disbursement where the school was missing records and provided no response (Appeal Brief at 11);

(3) $36,824 in improper Stafford 'Loan disbursements where the school was missing records and provided no response (Appeal Brief at 11-12); and

(4) $15,017 in improper SLS disbursements where the school was missing records and provided no response (Appeal Brief at 12).

Total Pell Grant liabilities owed to the Department for findings 9-12 = $17,884.

Total SEOG liabilities owed to the Department for findings 9-12 = $200.

Total Stafford Loan liabilities owed to the holders of the notes for findings 9-12 = $36,824.

Total SLS liabilities owed to the holders of the notes for findings 9-12 = $15,017.

III. CONCLUSION

The FPRD sought liabilities to be imposed against CPI of $605,531 for improper Stafford Loan disbursements, and $342,371 for improper SLS disbursements, to be repaid to the holders of the notes. (Ex. E-1-17.) The FPRD further sought $753,880 to be repaid to the Department for improper Pell Grant and SEOG disbursements, as well as for excess interest payments. (Id.) As a result of the ALJ's initial decision, as modified by the Secretary, and as explained herein, SFAP now seeks recomputed Stafford Loan liabilities of $270,405 and recomputed SLs liabilities of $172,253 to be repaid to the holders of the notes. In addition, SFAP seeks recomputed liabilities of $149,980 to be repaid directly to the Department. 3

Respectfully submitted,

Russell B. Wolff
Counsel for SFAP

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served by certified mail, return receipt requested, 09-12 David S. Shefrin, c/o Andrew Shefrin, Computer Processing Institute, 122 Tromley Road, East Windsor, Connecticut 06088, this 28th day of March 1994

Russell B. Wolff

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1 While the Order did not request a recomputation of liabilities from SFAP for this finding, since this remains a valid finding, SFAP offers the following information.

2 While the Order did not request a recomputation for these findings, the following amounts consist solely of liabilities where CPI provided no reconstructed records of any kind, did not claim the existence of any natural disaster, and still was missing required records

3 The Order also requests an update on the financial position of CPI. SFAP does not possess this information beyond its acknowledgment of the school's Closure in October 1992.