

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of Tiffany's

College of Hair Design,

Respondent.

Docket No. 93-26-ST

Student Financial Assistance
Programs

DECISION

This matter was set for hearing in Joplin, Missouri at 9:30 a.m. May 11, 1993. The Respondent was represented by Jay Cook, Esq. and Roger Hilfiger, Esq., from the firm Sandlin, Cook & Hilfiger in Muskogee, Oklahoma. The Student Financial Assistance Programs were represented by Carol Bengle, Esq., of the Department's Office of the General Counsel and by Dann Brittenham of the Compliance and Enforcement Division of the Student Financial Assistance Programs.

Shortly before the hearing was to begin on the morning of May 11, 1993, counsel jointly requested that the hearing be delayed to accommodate settlement discussions. After more than two hours of negotiation, counsel jointly indicated that a settlement had been reached.

At 12:10 p.m., the parties, through their respective counsel, stipulated to a settlement of this matter in open court on the record. The terms of the stipulated settlement are set forth in the transcript attached to this initial decision and order and incorporated herein by reference. I accepted the settlement and closed the record. Counsel were instructed to submit a motion requesting formal dismissal of the action.

The motion was not submitted, and on June 16, 1993, counsel for the Student Financial Assistance Programs requested that I convene a telephone conference to address the status of the case. SFAP counsel stated that Osa May Martin, owner of the Respondent, had employed new counsel, Peter Leyton, Esq., who had contacted her to inform her that Ms. Martin would not sign a formal settlement agreement that Ms. Bengle and Mr. Cook had prepared, reflecting the stipulated settlement terms.

Mr. Leyton filed a notice of appearance on June 16, 1993.

A telephone conference was convened on June 17, 1993 at 11:00 a.m. Both Jay Cook, Esq. and Peter Leyton, Esq. participated on behalf of Respondent and Ms. Martin. Carol Bengle, Esq. participated on behalf of the Student Financial Assistance Programs. Mr. Leyton stated that he viewed the settlement terms as inequitable. He specifically objected to provisions calling for Ms.

Martin's voluntary exclusion from Department of Education administered programs for 10 years and for termination of the Respondent's participation in the Title IV programs. Ms. Bengle requested that the stipulation be enforced, and stated that Ms. Martin was represented by counsel when she agreed to the settlement terms and was present in court and offered no objection when the stipulated settlement terms were read into the record.

I find that the stipulation of settlement, freely entered into by the parties, with advice and assistance of counsel, is fully enforceable. A stipulation agreement is enforceable as a contract and is subject to the same general principles governing construction, interpretation and law of contracts. In re Royster Co., 132 BR. 684 (Bankr., S.D.N.Y. 1991). The stipulations of attorneys may not be disregarded or set aside at will. U.S. v. Northern Colorado Water Conservancy District, 608 F. 2d 422 (10th Cir. 1979); U.S. v. Montgomery, 620 F. 2d 753, cert. den. 449 U.S. 882 (1980). Only in extenuating circumstances do courts refuse to enforce stipulations; for example, courts have refused to enforce stipulations where the stipulations were shown to violate public policy or where enforcing the stipulation would work a manifest injustice. U.S. v. McGregor, 529 F. 2d 928 (9th Cir. 1976) (Court will enforce stipulations absent circumstances tending to negate a finding of informed and voluntary assent of party to agreement); Hill v. Nelson, 676 F. 2d 1371 (5th Cir. 1982) (courts will normally enforce a stipulation unless manifest injustice would result) ; Sinicropi v. Milone, 915 F. 2d 66 (2d Cir. 1990) (no manifest injustice shown in absence of evidence that defendants did not knowingly and voluntarily enter into stipulation). Once a stipulation has been entered into and approved, the express agreement of the parties will be strictly enforced and a court will not use its equity power to disregard express agreement and allow defaulting party another chance to accomplish what it has failed to do. In re Borohardt, 47 B.R. 879 (Bankr., Minn. 1985).

The Respondent's new counsel did not offer any evidence that the enforcement of the stipulated settlement would work a manifest injustice on the Respondent or Ms. Martin. To the contrary, he conceded that (1) the Respondent and Ms. Martin were not challenging the competency of the legal representation they received at the time the settlement terms were agreed upon, and (2) there is no dispute that Ms. Martin's agreement to the settlement terms was knowing and voluntary. The crux of the objection to the settlement was that Ms. Martin had second thoughts after the proceeding was over, and Mr. Leyton and a financial aid consultant named Martin Niforth apparently advised her that the settlement terms were undesirable.

Giving legal advice is not an exact science, and I do not find one attorney's second-guessing another's legal advice in hindsight to be cause for disturbing a valid stipulation of settlement. The only material issue to be considered is whether Ms. Martin voluntarily and knowingly agreed to the settlement terms. The evidence shows that she did. Respondent had not one, but two, attorneys representing her. While I was not privy to counsel's discussions, I did observe counsel for both parties consulting with their clients repeatedly during the settlement discussions. Ms. Martin was present in open court when the settlement terms were read into the record and did not state any objection or reservations at that time. I observed no evidence of improper pressure or coercion with respect to the entry of a stipulation of settlement, and Ms. Martin has not alleged any.

I note also that the government expended a considerable sum to bring its staff and numerous potential witnesses to Joplin, Missouri for the hearing. I believe that it is substantially likely that the presence of state officials and students in the court room was one factor influencing the Respondent to settle this matter; and it would be inherently unfair to allow Ms. Martin to renege on the stipulated settlement after the government has sent its witnesses home.

Finally, I note that the settlement reflects give and take by both parties; for example, the potential fine against Respondent was reduced from \$56,000 to only \$2,000.

For all of these reasons, I find that the stipulation of settlement is fully enforceable, and fair, and I hereby dismiss this case on the terms stipulated to by the parties.

Paul S. Cross
Administrative Law Judge

Date: June 21, 1993

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Before the
UNITED STATES DEPARTMENT OF EDUCATION

In the Matter of:

TIFFANY'S COLLEGE OF HAIR DESIGN

Docket No.

93-26-ST

DATE:

May 11, 1993

PLACE:

Joplin, Missouri

PAGES:

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UNITED STATES DEPARTMENT OF EDUCATION

IN THE MATTER OF

TIFFANY'S COLLEGE OF HAIR DESIGN

Docket No. 93-26-ST

Student Financial
Assistance Proceeding

Hearing before the Honorable Paul S. Cross, at the Jasper County Courthouse, Division 3,
Second Floor, 6th & Pearl Street, Joplin, Missouri, at 9:30 a.m., on Tuesday, May 11, 1993.

APPEARANCES:

For Bd. of Education:

CAROL BENGLE, ESQ.
Office of the General Counsel
and
DANN BRITTENHAM, ESQ.
Compliance and Enforcement Div.

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For the Respondent:

R. JAY COOK, ESQ.
and
ROGER HILFIGER, ESQ.
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Muskogee, Oklahoma 74402-1934

Hilfiger. Our address is 330 North Fourth Street in Muskogee, Oklahoma. Also Mr. Roger Hilfiger is with the Respondent College.

THE COURT: Thank you very much. That completes the appearances.

My name is Paul Cross. I am an Administrative Law Judge assigned to the Department of Education for the purpose of this proceeding.

I would indicate that we were scheduled to open at 9:30, and we did not because of the request of counsel that they be permitted an opportunity to negotiate a settlement of this proceeding.

I would now receive the report. For the record it's 10 after 12:00.

MR. COOK: Thank you, Judge. I'll read it for the record, if you don't mind.

We have reached a stipulation for settlement in this case, and the settlement will read to this effect:

Now on this 11th day of May 1993 the parties have agreed to settle the above cause in the following manner:

No. 1 Tiffany's agrees to terminate its participation in the Title 4 Program (HEA), effective May 11, 1993.

No. 2 Osa Martin, as an individual, agrees to voluntarily exclude herself from any participation as a principal as defined in 34 CFR Section 85, in any program which is administered by the Department of Education for a period of 10 years, beginning May 11, 1993.

No. 3 As to any student formerly or presently enrolled in Tiffany's, who is or was a Pell grant applicant or recipient, Tiffany agrees to hold harmless any such student for those portions of tuition presently owing, provided, however, in the event that any such student elects to claim credit for hours accumulated at Tiffany's by virtue of transferring the hours to another institution,

or by using said hours as a credit in applying for licensing, then Tiffany's shall be entitled to make demand on said student for the pro rata cost for such hours which said student elects to claim credit for, to the extent that the credit hours have not been paid.

No. 4 Department of Education agrees to allow Tiffany's attorneys to cash a check for \$6,925, representing a portion of Tiffany's claims for Fell grants, Pell Grant Microcode Number 0865003460006043. The attorneys shall distribute 2,000 of this amount to the Department of Education in payment of a fine, described in Paragraph 5, by the date of May 31 1993. Tiffany waives any right or claim to any other payments from the Department stemming from its participation in the Title 4 programs.

Paragraph 5 The parties agree that Tiffany's will be fined a total of \$2,000 for any and all violations of Title 4 program statutes and regulations. We have further agreed in

Paragraph 6 That this above agreement constitutes the entire settlement of all claims between the parties resulting from the termination letter of February 5, 1993.

However, this agreement does not preclude any actions based on criminal acts or civil fraud or based on a program review determination in the event that one should issue in the future, and I believe that constitutes the entire agreement that we have reached in this cause, your Honor.

THE COURT: Okay. I have one question for you. When you were discussing Paragraph 4 of your settlement, you mentioned a Paragraph 5, and I wonder if that's the Paragraph 5 you next described.

MR. COOK: Yes, it was, your Honor. I went straight from there to Paragraph 5. I apologize. The end of Paragraph 4 should be a sentence that states Tiffany waives any rights or claims to any other payments from the Department stemming from its participation in the Title 4 programs, and then Paragraph 5 begins and it's just a one-line paragraph that states that the parties agree that Tiffany's will be fined a total of \$2,000 for violations of the Title 4 program statutes and regulations.

THE COURT: Okay. Then in all of this the predicate would be the February 5, 1993, letter that was sent to Mr. Martin?

MR. COOK: That's what we have referred to, your Honor, as the termination letter.

THE COURT: The termination letter.

Any comments by the Department of Education?

MS. BENGLE: No. That's a correct reflection of our settlement agreement.

THE COURT: Let's go off the record.

(Off the record.)

THE COURT: I accept the settlement. The Respondent will, just to complete the matter, will send a letter in with the -- just as he's read the stipulation and the Department of Education then will submit a motion to formally dismiss the action according to the terms of the settlement.

MS. BENGLE: That's correct.

THE COURT: Is there anything else that we can usefully do?

MS. BENGLE: No, your Honor.

MR. COOK: Accept our apologies for having to come down and settle the case, your Honor.

THE COURT: Thank you very much. The hearing is closed.

STATE OF MISSOURI

SS

COUNTY OF JASPER

I, Martha B. Fowks, a Notary Public within and for the State of Missouri, do hereby certify that I was personally present at the hearing in the above entitled cause, at the time and place set forth in the caption sheet hereof, and that the foregoing is a full, true and correct transcript of my Stenotype notes, so made at such time and place.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 12th day of May, 1993.

Notary Public - State of Missouri

My Commission Expires October 29, 1993.