

IN THE MATTER OF SPENCER COLLEGE,
Respondent.

Docket No. 93-27-ST
Student Financial Assistance Proceeding

DECISION

Appearances: James M. Fischer, Jr., President of Spencer College, Nashville, Tennessee, appearing pro se.

Edmund J. Trepacz, II, Esq., Office of the General Counsel,
U.S. Department of Education, Washington, D.C., for the Office of Student Financial
Assistance Programs.

Before: Thomas W. Reilly, Administrative Law Judge.

On May 12, 1995, counsel for Student Financial Assistance Programs (SFAP or ED) filed a motion for an order to show cause why an an Order For Default Judgment should not be issued in this proceeding based upon Respondent's expressed disinterest in further pursuing the school's appeal. Respondent did not reply to that Motion, even though both he and the Trustee in Bankruptcy for Fischer Technical Institute (parent company of Spencer College of Baton Rouge, Louisiana) were served. On May 22, 1995, an Order To Show Cause was issued (again, both the Respondent school president and the Trustee in Bankruptcy were served). That Order directed Respondent to show cause why an Order For Default Judgment should not be issued based upon Respondent's expressed disinterest in further pursuing the school's appeal, and Respondent's failure to comply with the Judge's Order Governing Proceedings (March 15, 1995), as well as failure to participate in the appeal prehearing process. Respondent had until June 6, 1995, to reply to that Order, but he has not done so, nor has there been anything filed by or on behalf of the Trustee in Bankruptcy.

Pursuant to 34 C.F.R. 668.89(c)(3), the Judge has the authority to terminate a hearing and issue a decision against a party if that party fails to meet time limits. [See also 34 C.F.R. 668.90(a)(1)(iii).] Additionally, it is an inherent part of the Judge's authority, in controlling the course and conduct of a proceeding, to terminate a proceeding if a party refuses to cooperate or to participate in that proceeding. It would be a vain and useless act to attempt to compel a party to continue to participate in a proceeding (an appeal for his own benefit) that he has clearly expressed a desire to ignore. Events relating to the school's filing for bankruptcy were set forth in the May 22d Order To Show Cause, which is incorporated by reference in this Decision, but some of the more significant events are restated below.

On January 27, 1995, the Secretary issued an Order of Remand vacating dismissal orders in this and three other termination and fine proceedings that had been dismissed by Judges in the Office of Hearings and Appeals (OHA) predicated on the Secretary's earlier decision in *In Re Bliss College*, Docket No. 93- 15-ST (Feb. 23, 1994). All four cases were remanded back to OHA "for full adjudication below" and "for decisions on the merits."

On March 15, 1995, the Judge issued an Order Governing Proceedings setting forth certain preliminary matters the parties were to undertake in preparation for a full evidentiary hearing on the merits of the appeal of action terminating the school's eligibility to participate in Title IV, Higher Education Act (HEA) programs, and imposing fines (\$46,000) for regulatory violations. The action was taken following an on-site program review conducted at the college July 6-10, 1992, by reviewers from the U.S. Department of Education's (ED) Dallas Regional Office, and the issuance of a Program Review Report (PRR) dated October 14, 1992. (See letter to school's president dated Feb. 12, 1993.) The school filed a timely appeal on February 26, 1993, culminating ultimately in a Judge's Order Dismissing the Appeal with prejudice, followed by the Secretary's Remand Order, referred to above.

Shortly after the Judge's March 15th Order Governing Proceedings, ED counsel contacted James M. Fischer, Jr., President of Spencer College, to ascertain whether Spencer College intended to pursue its appeal. Mr. Fischer replied in the negative, but referred counsel to the school's Trustee in Bankruptcy, John C. McLemore, who also stated that the school was not going to further pursue its appeal. ED counsel and the Trustee agreed that SFAP would file a Motion For a Default Judgment, and that upon issuance of an Order To Show Cause, Spencer College would not contest SFAP's Motion. The Order To Show Cause was issued May 22, 1995.

Accordingly, in view of the foregoing events and the lack of interest of Respondent in further prosecuting its own appeal, and the lack of participation in the prehearing matters specified in the Judge's Order Governing Proceedings, it is clear that Respondent has abandoned its appeal and it is subject to dismissal for lack of prosecution. [See *In Re Dayton Academy of Hair Design*, Dkt. No. 93-89-ST, U.S. Department of Education (ALJ Decision, January 11, 1994); *In Re Arnold International College of Cosmetology*, Dkt. No. 90-19-ST, U.S. Department of Education (ALJ Decision, March 1, 1991); *In Re Transwestern Institute*, Dkt. No. 90-86-ST, U.S. Department of Education (ALJ Decision, February 26, 1991); and *In Re Academia de Belleza Borinquen*, Dkt. No. 89-31-S, U.S. Department of Education (ALJ Decision, March 27, 1991)].

The details set forth in the February 12, 1993 letter to the school (giving notice of the intent to terminate eligibility to participate in Title IV HEA programs and to fine the school \$46,000), as well as the supporting documentation (ED-1), appear to fully support the action taken, and the imposition of the fine and termination action are warranted.

Respondent's appeal is hereby ordered DISMISSED for failure to prosecute, and a judgment in the nature of a DEFAULT JUDGMENT is entered against the Respondent school.

IT IS SO ORDERED.

Thomas W. Reilly
Administrative Law Judge

Issued: June 19, 1995.
Washington, D.C.

SERVICE LIST

On June 19, 1995, a copy of the attached document was sent by Certified Mail, Return Receipt Requested, to the following:

John C. McLemore, Esq.
Trustee in Bankruptcy
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