IN THE MATTER OF Phillips Colleges, Inc.,
Respondent.

Docket No. 93-48-SP
Student Financial Assistance Proceeding

DECISION

Appearances: Leslie H. Wiesenfelder, Esq., Michael B. Goldstein, Esq,, Blain B. Butler, Esq., and Thomas Dorer, Esq., Dow, Lohnes & Albertson of Washington, D.C., for Phillips Colleges, Inc.

Carol S. Bengle, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Richard I. Slippen.

BACKGROUND

On February 11, 1993, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education "Department) issued a final audit determination finding that from July 1, 1987, through April 1, 1990, Phillips Colleges, Inc. (PCI), carried out a corporate-wide policy known as "OneStop Shopping." This policy required PCI institutions to employ commissioned admissions representatives to promote the availability of the Guaranteed Student Loan (GSL) Programs in violation of 34 C.F.R. . 682.200.See footnote 1 [1] The final audit determination requires PCI to repay the appropriate lenders an estimated liability of $155,000,000 and reimburse the Department for excess interest and special allowances (ISA) paid by the Department to lenders of GSLs.See footnote 2 [2]

This case comes before the tribunal as a result of an appeal by PCI of finding 1 of the final audit determination. For the reasons stated below, finding 1 of the final audit determination citing that from July 1, 1987, through April 1, 1990, PCI required its institutions to employ commissioned admissions representatives to promote the availability of the GSL programs in violation of 34 C.F.R. . 682.200 is affirmedSee footnote 3 [3]

DISCUSSION

To be eligible to participate in Title IV programs, institutions must satisfy the definition of an eligible institution set forth at 20 U.S.C. . 1085 (a). Additionally, 34 C.F.R. . 682.200 (1988) provides that an eligible institution is prohibited from employing commissioned salespersons to promote the availability of any loan that is a part of the Title IV program. Consequently, an institution that has disbursed Title Iv funds during a period for which the school has also employed commissioned salespersons to promote the availability of any loan under Title IV is ineligible to participate in Title IV programs. When an institution is found to have violated the above cited regulation and, hence, deemed an ineligible institution, it is obligated to repay the

Title IV lenders the funds that it improperly received and disbursed. In the Matter of Long Beach College of Business, Dkt. No. 92-132-SP, U.S. Dep't of Education (July 14, 1994)

SFAP contends that in July 1987, PCI set up a self described policy of One-Stop-Shopping whereby admissions representatives, who were paid bonuses based on student enrollment, provided prospective students with information designed to encourage students to finance their education at PCI with GSL program funds. According to SFAP, PCI's One-StopShopping policy continued throughout the audit period, and therefore, PCI must refund to the appropriate lenders all of the GSL program funds the institution disbursed to its students during the audit period because it was ineligible to participate in Title Iv programs.

In its defense, PCI argues that its commissioned salespersons did not engage in prohibited conduct by following the corporate mandated One-Stop-Shopping policy. According to PCI, the One-Stop-Shopping policy was intended to provide prospective students with all the information required to make an informed decision about whether to enroll in a PCI institution, and that this conduct did not violate the regulatory prohibition against promoting the availability of GSLs set forth in Section 682.200. PCI's position, however, is at odds with the resolution of the same legal question and similar factual issues litigated by the same parties in In the Matter of Phillips College of Atlanta, Dkt. No. 91-96-SA, U.S. Dep't of Education (February 28, 1994) (Atlanta).See footnote 4 [4]

PCI's argument that the use of its One-Stop-Shopping policy does not violate Section 682.200 was carefully considered and rejected by the administrative law judge's decision in Atlanta. In that proceeding, the administrative law judge held that the institution's "own corporate policy statements and internal memoranda . . . [leave] little doubt . . . that [PCI's Phillips College of Atlanta] was violating the explicit prohibition in . 682.200." Id. at 20, 1?. A thorough analysis of the record in this case reveals facts similar to those in Atlanta. In Atlanta, the administrative law judge was convinced that the evidence in the record before him supported a finding that some of PCI's "commissioned admissions representatives were intricately involved in the promotion of the availability of GSLP and PLUS program loans." Id. at 17 The judge's decision includes a thorough and comprehensive review of the same arguments PCI presents here with regard to Section 682.200 and this tribunal does not see the need to restate or reconsider those arguments.

This tribunal's review of the issues in this proceeding persuade me that the judge's decision in Atlanta is entitled to an appropriate degree of deference which, as I have explained, involved the same parties, the same audit period, and substantially the same factual disputes as in this case.See footnote 5 [5] Indeed, the evidence supporting a finding that PCI violated Section 682.200 is more overwhelming in this case than it was in Atlanta. The evidence in this case includes the results of audits and investigations of at least nine PCI institutions carrying out the One-Stop-Shopping policy. In addition, PCI concedes that as a result of the One-Stop-Shopping policy, PCI students did, in fact, finance at least a portion of their educations at PCI institutions with GSL funds. Accordingly, I agree with the judge's decision in Atlanta and, based upon the evidence in this proceeding, find that PCI's One-Stop-Shopping policy violated Section 682.200.See footnote 6 [6]

I also find that the evidence in this case, as it did in Atlanta, convincingly demonstrates that the One-Stop-Shopping policy was pervasive at PCI institutions. Edward James Addison, Jr., vice president for college support for PCI, stated in his affidavit that the "vast majority of all [PCI] colleges" paid their admissions representatives on a:commission compensation basis. PCI Ex. 3 at 12. PCI's financial aid manual detailed how its institutions were to carry out the One-Stop-Shopping policy through the use of commissioned admissions representatives. ED Ex 19. Further, SFAP submitted in evidence several PCI internal memoranda that specified how PCI institutions were to follow the One-Stop-Shopping policy. ED Exs. 24, 25, & 30. Consequently, if, after Atlanta, there was any question whether PCI's One-StopShopping policy was a corporate policy implemented throughout PCI's institutions, that question was laid to rest by the weight of the evidence in this case which clearly demonstrates that the One-Stop-Shopping policy was pervasive at PCI institutions during the audit period.

II

PCI argues that, should its arguments on the merits be deemed unpersuasive, this tribunal still should not uphold the liability that SFAP seeks to impose because SFAP's calculation of GSL liability is based on a series of approximations and assumptions not supported by fact. According to PCI, the proposed liability does not reflect the fact that PCI refunded $40,491,830.80 to lenders of GSL funds during the audit period, and also fails to reflect the actual amount of GSLs disbursed by PCI institutions in existence during the audit period. Although SFAP's calculation of liability is based upon a series of estimations of Title Iv disbursements to PCI during the audit period, I am persuaded that SFAP has sufficiently established the factual predicates that could justify imposition of a $155,000,000 GSL liability.See footnote 7 [7]

According to SFAP, its calculation of liability is based on internal data system records of GSL funding for 1990 and Pell Grant and campus-based Title Iv funding for 1991 received by PCI during a portion of the audit period. See PCI Ex. R-14 at 1; ED Ex. 42 . SFAP's audit work papers indicate that PCI's estimated $155,000,000 liability reflects a deduction of over $5,000,000 in proposed liability that SFAP has sought to recover from individual PCI institutions through other administrative proceedings. See ED Ex. 42 In addition, SFAP's final audit determination directs PCI to repay the estimated liability only in the event that PcI cannot determine the actual amount of GSLs the institution disbursed over the course of the audit period.

In this proceeding, the institution has the burden of proving that the questioned expenditures were proper. 34 C.F.R. . 668.116(d); see also In the Matter of Sinclair Community College, Dkt. No. 89-21-S, U.S. Dep't of Education (Decision of the Secretary September 26, 1991). concurrent with the institution's burden, SFAP has the proper expectation that, in cases where the institution challenges SFAP's calculation of liability, the institution must show that the proposed liability is unsupported by presenting an alternative calculation of liability based on actual disbursements of Title IV funds. PCI has not presented an alternative calculation of liability based on the actual amount of GSL funds disbursed directly to the school from GSL lenders or PcI students during the audit period. Accordingly, PCI must repay the estimated liability. To the extent that PCI can demonstrate to SFAP that it already has repaid $40,491,830.80 to lenders of

GSL funds covering the audit period at issue or can show that other credits are due, SFAP should deduct those amounts from the estimated 5155,000,000 liability.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED, that Phillips Colleges, Inc. reimburse United States Department of Education for interest and special allowances paid by the Department to PCI's GSL lenders from July 1, 1987, through April 1, 1990, and repay $155,000,000 to the appropriate GSL lenders.

Richard I. Slippen

Administrative Judge
Issued: August 23, 1994

Washington, D.C.

Footnote: 1 [1] */1 The GSL programs are the predecessor student loan programs for the current Federal Family Education Loan (FFEL) programs. The GSL programs are authorized by Title IV of the Higher Education Act of 1965, as amended, Pub. L. No. 89-329, 79 Stat. 1219 (HEA) (to be codified as amended at 20 U.S.C. . 1070 et seq.).*

Footnote: 2 [2] *2/ The Federal Government pays GSL program lenders a portion of the interest that accrues on a GSL on behalf of eligible student borrowers, and also pays a percentage of the average unpaid principal balance of the loan -- called a special allowance -- while the student remains eligible for the ISA benefits See 34 C.F.R. Part 682, Subpart C.*

Footnote: 3 [3] *3/ Both parties present arguments challenging the admissibility of the other party's exhibits. PCI seeks to "strike" from the record over 50 of SFAP's exhibits while SFAP "objects" to 3 of PCI's exhibits. Recognizing that the admission of evidence does not carry along with it any indicia of how much probative weight the tribunal should give to the evidence, the exhibits of both parties are admitted into evidence. In accordance with the Secretary's decision in In the Matter of Bayton Technical School. Inc., Dkt. No. 91-40-sP, U.S. Dep't of Education (April 12, 1994) and consistent with my obligation to provide the parties with a fair hearing, I find no grounds for finding that the submissions of the parties should not be duly considered in my fact finding in this case.*

Footnote: 4 [4] *4/ The administrative law judge's decision in Atlanta has been appealed to the Secretary of Education. Upon issuance of this decision, the Secretary had not issued a decision on the appeal.*

Footnote: 5 [5] *5/ Phillips College of Atlanta is owned and operated by PCI.*

Footnote: 6 [6] *6/ To the extent that PCI renews its argument that this Subpart H proceeding is not the proper forum for institutional eligibility issues, I adopt the rule followed in Atlanta. In*

Atlanta, the judge recognized that it is axiomatic that a Subpart H proceeding is an appropriate forum to challenge a final audit determination that finds that an institution fails to meet the statutory and regulatory definitions of an eligible institution because the institution employs commissioned salespeople to promote the availability of GSLs. Atlanta at 14; see also In the Matter of Macomb Community College, Dkt. No. 91-80-SP, U.S. Dep't of Education (Final Decision June 28, 1993)

Footnote: 7 [7] *7/ In determining the amount of liability, mathematical accuracy of proof is not required. See In the Matter of Macomb Community College, Dkt. No. 91-80-SP, U.S. Dep't of Education (Final Decision June 28, 1993) (citing National Merchandising Corp. v Leyden, 348 N.E.2d 771, 774 (Mass. 1976).*