
In the Matter of

Docket No. 93-93-DA

The Proposed Debarment of

CURTIS RIENDEAU

DECISION OF GOVERNMENTWIDE DEBARMENT
FROM FEDERAL NONPROCUREMENT TRANSACTIONS

This **DECISION** is issued by the United States Department of Education (Department) pursuant to 34 CFR § 85.314. I have jurisdiction to act in this matter by virtue of a Delegation of Authority from the Secretary to me to act as the Department's Designated Deciding Debarment and Suspension Official. The regulations, 34 CFR Part 85, and the Nonprocurement Debarment and Suspension Procedures mailed to Mr. Riendeau with the notice of proposed debarment govern this action.

On April 8, 1993, Mr. Curtis Riendeau, President of Dudley Hall Career Institute (Institute) of Worcester, Massachusetts, was issued a "Notice of Proposed Governmentwide Debarment from Federal Nonprocurement Transactions" pursuant to 34 CFR § 85.312. The notice informed Mr. Riendeau that the proposed debarment was based upon the adverse findings of an October 1991 program review conducted by the Massachusetts Higher Education Assistance Corporation (MEHAC), and Department's Region I, jointly. The violations uncovered therein were attributable to him under the provisions of 34 C.F.R. § 85.325(b)(2). Mr. Riendeau was also given notice of his right to submit information and argument in opposition to the proposed debarment.

Mr. Riendeau did not request a hearing but submitted a written opposition to his proposed debarment and the Department's Notice Official, represented by Jennifer L. Woodward, Esq., of the Office of the General Counsel submitted a brief in support of the proposed debarment. I have considered both these presentations as well as the evidence contained in the official case file and have determined that there is no dispute as to material facts.

As stated earlier, the Department's action is based primarily on the joint Department and MEHAC findings. The allegations include: repeated failures to make required tuition refunds of guaranteed student loans (GSL), pursuant to 34 C.F.R. § 682.607(c)(1); failure to implement adequate procedures to evaluate satisfactory progress, in violation of 34 C.F.R. § 668.7(c); and failure to adhere to the fiduciary standards required in administering the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq. (Title IV), as specified at 34 C.F.R. § 668.13(c). Specifically, the Department alleges that at least 68

refund checks claimed as having been issued by the Institute, were voided. Moreover, the Department imputes the failure of the Institute in its administration of the Title IV Programs to Mr. Riendeau. I find that the evidence included in the file is sufficient to establish each of the violations enumerated above.

The Department argues that the violations are serious and that Mr. Riendeau knew or should have known of them. Also, the Department argues that since he was in a position of authority he should be debarred so as to preclude the possibility that he will again be put in a position where he could jeopardize federal funds.

In his written presentation, Mr. Riendeau argued that he was hired as Director of Admissions in October 1989, with no responsibility for financial aid. In February 1991, he was appointed Director and President of the School. Therefore, he asserts it was impossible for him to have corrected the problems at the Institute between that time and the time of the program review. He iterated that he should not be held personally responsible for those failings at the Institute.

Based on the presentations of the parties and evidence submitted, I find that Mr. Riendeau knew of serious violations of regulations applicable to the programs authorized under Title IV. He was the titular manager of the institute, exercising control over the school's operations. He was in a position to have effectuated some amelioration of the problems, and, as such, he is fully responsible for the violations of federal student financial assistance program requirements. It is abundantly clear that these violations were serious, significant, and resulted in the loss of program funds. Consequently, I find that the Department has established, by a preponderance of the evidence, that Mr. Riendeau is subject to debarment under 34 C.F.R. § 85.305 (b) and (d). In reaching this conclusion, I have considered only those violations which occurred during Mr. Riendeau's management.

As stated in 34 C.F.R. § 85.115, it is the policy of the Federal Government to conduct business only with responsible persons. It seems clear that in order to support the governmentwide debarment from federal nonprocurement transactions of an individual, some degree of personal culpability must be shown. My review of the facts and circumstances in this case reveals the seriousness of the violations and the degree of personal wrongdoing envisioned by the debarment process have been established. Mr. Riendeau was responsible for the violation of provisions dealing with his responsibility to account for federal funds. This adversely affects his present responsibility to participate in federal programs. See generally, Sellers v. Kemp, 749 F.Supp. 1001 (W.D.Mo. 1990). I note as significant that the failure to pay refunds in the Title IV Program can now lead to criminal penalties. 20 U.S.C. § 1097(a). I also note, that during the period of time when refunds were not made, Dr. Carl Simmons, Institute's co-owner, paid the Institute's funds to other companies owned by him for sundry reasons, and that therefore he is probably more culpable than Mr. Riendeau. This fact, however, does not excuse Mr. Riendeau, who had an independent responsibility to act as a fiduciary and account for the federal funds entrusted to his care.

In light of the foregoing, I find that the Department has met its burden of proof and persuasion that the debarment of Mr. Riendeau is warranted. Under the provisions of 34 C.F.R. § 85.320, the period of debarment is to be commensurate with the seriousness of the cause(s) of debarment,

generally not to exceed three years. Based upon the circumstances here, I have determined that the period of debarment shall be three years.

I order that Curtis Riendeau be DEBARRED from initiating, conducting, or otherwise participating in any covered transaction under the nonprocurement programs and activities of any Federal agency, and is ineligible to receive Federal financial and nonfinancial assistance or benefits from any Federal agency under nonprocurement programs and activities. He may not act as a principle, as defined in 34 C.F.R. § 85.105(p), on behalf of any person in connection with a covered transaction. This debarment is effective for all covered transactions unless an agency head or authorized designee grants an exception for a particular transaction in accordance with 34 C.F.R. § 85.215.

ERNEST C. CANELLOS,
Deciding Debarment and
Suspension Official

Dated: April 20, 1994