



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

In the Matter of  
Emergency Action Against  
Tiffany's College of Hair Design

DECISION

On January 8, 1993, the Office of Student Financial Assistance (OSFA) of the U.S. Department of Education (ED) imposed an emergency action against the Tiffany's College of Hair Design (Tiffany) of Carthage, Missouri, in accordance with 20 U.S.C. §1094(c)(1)(G) and 34 CFR §668.83. In response to the notice, on January 13, 1993, Tiffany requested an opportunity to show cause why the emergency action is unwarranted. Further, ED notified Tiffany on February 5, 1993, of its intent to terminate Tiffany's eligibility to participate in the federal student financial assistance programs.

Pursuant to the Delegation of Authority from the Secretary to me to conduct proceedings and issue final decisions in circumstances where educational institutions request an opportunity to show cause why an emergency action is unwarranted, I conducted a hearing in Washington, D.C., on March 9, 1993. At the hearing, Tiffany was represented by R. Jay Cook, Esq., while OSFA was represented by Carol Benge, Esq., from the Office of the General Counsel. The proceeding was transcribed by a Court Reporter.

ED's main contention in this case is that an emergency action is necessary because Tiffany provided erroneous information to ED when it submitted its application for certification to participate in federal student financial assistance programs. If the correct information had been submitted, Tiffany would not have met the standards of financial responsibility and, therefore, would not have been certified. In addition, during a program review conducted at Tiffany between August 4-6, 1993, reviewers from ED noted that instruction was apparently not being provided to students, and that attendance records were neither kept in an orderly fashion, nor reliable for the assessment of satisfactory academic progress. Also during the three day program review, the reviewers observed that there were only a few students present at the school, and that they just "sat around," and that no instruction occurred.

Osa May Martin, the school's co-owner, testified that the information provided to ED was not fraudulent and substantially

correct - it may have been somewhat in error, but that was a result of a mistake by the school's accountant; the school's attendance records were correct and reliable, and the school provided proper instruction, consistent with its catalog which had been approved by its accrediting agency.

Tiffany invoked the argument that the test to uphold an Emergency Action was not satisfied in this case. Specifically, it claimed that Tiffany's had rebutted the essence of ED's case and that it was unfair to continue the emergency action pending the completion of the termination hearing because although they would win on the merits, the school would have to close because of the insolvency caused by the stoppage of federal funds.

Upon my review of the evidence, and consideration of respective arguments of counsel, I find that:

(a) there is reliable information that Tiffany's College of Hair Design is violating provisions of Title IV of the HEA;

(b) immediate action is necessary to prevent misuse of Federal funds, and

(c) in light of the serious nature of the violations, the likelihood of financial loss outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions. Bolstering that determination is the fact that all of Tiffany's records are now suspect, leaving ED with no assurance that further substantial losses might not occur.

The holder of Federal funds, such as student grants and loans, acts as a fiduciary. I find that Tiffany failed in its regulatory obligation to adequately account for such funds. What Tiffany is charged with is drawing funds for an invalid, ineligible program. This is a very serious charge and, however one characterizes it, clearly indicates a violation of fiduciary duties.

I find that the three conditions for imposing emergency actions, as enumerated in 34 CFR §668.83, are met in this case. Specifically, I find that Tiffany failed to carry its burden of showing why the emergency action is unwarranted. At most, Tiffany raised questions of fact, dispute of which must be resolved by the trier-of-fact assigned to hear the termination proceeding. Therefore, I hereby **AFFIRM** the emergency action.

  
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Judge Ernest C. Canellos

Dated: March 12, 1993  
Washington, DC