
PROPOSED DEBARMENT OF MARY SHUMACHER,
Respondent. Debarment Action

DECISION

Appearances: Mary C. Suffoletta, Esq., and Kenneth Joel Haber, Esq., Law Office of Kenneth Joel Haber, P.C., for Mary Schumacher.

Edmund J. Trepacz, II, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Richard F. O'Hair

On July 7, 1994, Ms. Mary Schumacher was issued a "Notice of Proposed Governmentwide Debarment from Federal Nonprocurement Transactions," pursuant to 34 C.F.R. § 85.312 which alleged the violation of regulations applicable to the programs authorized under Title IV of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. § 1070 et seq. The Notice referred to the fact that Ms. Schumacher submitted a falsified financial statement to the U.S. Department of Education (ED) along with an Application for Institutional Eligibility and Certification for Adrian Beauty Academy (Adrian), a proprietary institution of higher education she recently had purchased. The basis for this allegation is that the author of the purported financial statement and accompanying transmittal letter denied that he prepared either item for Ms. Schumacher. I have jurisdiction to decide this matter by virtue of a Delegation of Authority from the Director, Office of Hearings and Appeals.

Ms. Schumacher exercised her right to oppose this proposed debarment in accordance with the provisions of 34 C.F.R. § 85.313, and a hearing was conducted on this matter on February 7, 1995. At this hearing, ED presented documentary evidence indicating that on or about April 7, 1993, Ms. Schumacher submitted to ED an Application for Institutional Eligibility and Certification for Adrian. In conjunction with this application, she submitted a financial statement labeled as an Audit Report for Adrian. This document is dated December 31, 1992, and it includes a one month income statement, an assets statement, and a cover letter dated February 11, 1993. This cover letter was purportedly a transmittal letter for the financial statement from Mr. Alan E. Beatty, a certified public accountant (CPA), to Ms. Schumacher.

When ED personnel had a question regarding the format of this audit, they contacted Mr. Beatty, who told them that he neither prepared the financial statement nor signed the February 11, 1993, transmittal letter. Mr. Beatty indicated that he had performed previous accounting services for Ms. Schumacher, but that he did not prepare the financial statement she submitted to ED with her application. Mr. Beatty also explained that although he did not sign the transmittal letter, the signature was that of his secretary. He surmised that his secretary had signed his name on a

document which previously had been sent to Ms. Schumacher and that she submitted an altered copy of that cover letter to ED.

Ms. Schumacher admitted at the hearing that the document she submitted as an income statement was actually a part of an accountant's compilation letter which had been prepared by her accountant, who was not a certified public accountant. Mr. Beatty had performed accounting services for Ms. Schumacher before December 1992, but at the time of this submission to ED he had moved away from the area. Ms. Schumacher stated that she was in a rush to submit this Application for Institutional Eligibility to ED and that in a moment of weakness and desperation she attached a portion of the compilation letter to a copy of a cover letter she had previously received from Mr. Beatty's office. This previous letter had been prepared for an audit of another institution she owned, Tecumseh Beauty College (Tecumseh). She altered this previous letter as follows:

1) changing the addressee to:

Board of Directors
Adrian Beauty Academy
117 West Maumee Street
Adrian, MI 49221

2) replacing a reference to "Tecumseh Beauty College" in the body of the letter with "Adrian," and

3) adding a date of "February 11, 1993" to the bottom of the letter.

Ms. Schumacher characterized her substitution and changes to Mr. Beatty's letter not as a forgery, but as a misrepresentation. She exhibited remorse for what she described as an error of judgment, admitted it was a very stupid act, and explained that this occurred at a time when her personal life was in a turmoil, noting that there was some urgency in submitting the application for eligibility. She testified that Mr. Beatty had performed accounting work for Tecumseh for her in the past, but after he relocated from the area, she utilized another accounting service which did not employ a CPA. Additionally, at about this same time she suffered some additional, unexpected financial burdens which materialized after her purchase of Adrian. These amounted to obligations ED determined that she, as the owner of Adrian, owed the Department. These obligations arose because of misconduct by Adrian's former owner and of which she had no prior knowledge at the time she purchased Adrian.

Ms. Schumacher reiterated that she had no explanation for this misconduct, but attempted to moderate the seriousness of it. In this regard she explained that she has made amends with Mr. Beatty and he has resumed performing professional accounting services for her. He also began exchanging correspondence and information about Adrian with the Compliance and Enforcement Division in an effort to forestall any adverse reactions caused by her submission of the falsified financial statement. One further point she made during the hearing was that the data included in the accountant's compilation letter was accurate and, therefore, not misleading to ED, a fact which she assured me was confirmed by a later audit of Adrian.

At the conclusion of Ms. Schumacher's testimony, she asked that she not be debarred because this would place an additional financial strain on her. She emphasized that she has already been punished for this misconduct because ED used this as a basis for denying her application for eligibility for Adrian. After that occurred she was left with no other option than to convert Adrian into a beauty salon. Then, in February 1994, ED terminated the institutional eligibility for Tecumseh on the basis of the same falsified financial statement. This termination caused additional serious problems for her in that many of her former students relied upon student financial assistance to pay their tuition and were unable to continue their education without it. She concluded by explaining that all of this has created tremendous financial hardship and mental anguish for her and predicting that if she is debarred, this may worsen her financial position to the point that she may be required to sell her home to pay her creditors.

When Ms. Schumacher submitted her application for eligibility for Adrian, she signed an oath stating that the contents of the application were true and correct. I find that she violated this oath when she falsified the letter containing Mr. Beatty's signature, attached it to the accountant's compilation letter, and then forwarded it to ED to satisfy the requirement that she submit a current audit for Adrian. Federal regulations provide for the debarment of an individual or institution for a violation of the terms of a public agreement if the violation is so serious as to affect the integrity of an agency program, such as the one for which Ms. Schumacher was applying, or for any other cause of such a serious or compelling nature that it affects the present responsibility of a person. 34 C.F.R. §§ 85.305(b) and (d). In such debarment cases, ED has the burden of proof and must present evidence that proves the alleged misconduct by a preponderance of the evidence. 34 C.F.R. § 85.314(c). In this instance, I believe ED has satisfied that burden, and I find Ms. Schumacher should be debarred. Even though the contents of the income statement were supposedly accurate and did not differ from those reflected in a legitimate audit of Adrian, I find that her willingness to attempt to circumvent the requirements of the application procedures, under oath or not, raises serious questions about her integrity and character. The fact that ED suffered no direct financial loss because of her misconduct does not exonerate her.

Under the provisions of 34 C.F.R. § 85.320, the period of debarment generally should not exceed three years. I believe there are mitigating facts set out in this case which warrant a shorter period of debarment. Recognizing that the purpose of a debarment is to protect the public interest, rather than punish Ms. Schumacher, I have determined the period of debarment shall be two years.

I order that Ms. Mary Schumacher 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 for a period of two years. She may not act as a principal, as defined in 34 C.F.R. § 85.105(p), on behalf of any participant 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.

Judge Richard F. O'Hair
Deciding Debarment and Suspension Official

Issued: February 27, 1995
Washington, D.C.

S E R V I C E

A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to the following:

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