
IN THE MATTER OF THE CITTONE Docket No. 94-131-SA
INSTITUTE, Student Financial
 Assistance Proceeding
Respondent.

DECISION

Appearances: Leslie H. Wiesenfelder, Esq., of Dow, Lohnes & Albertson, for The Cittone Institute.

 Sarah L. Wanner, 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

This appeal addresses Audit Report Findings #6 and #17 contained in the May 27, 1994, Final Audit Determination (FAD) which was issued to The Cittone Institute (TCI) by the Chief, Audit Resolution Branch, Institutional Monitoring Division, Student Financial Assistance Programs, U.S. Department of Education (ED). [See footnote 1 /](#) The FAD was prepared following departmental review of an institution-wide financial and compliance audit which was prepared for TCI by an independent auditor. TCI submitted this audit of its student financial assistance programs for the two award years ending June 30, 1992, in compliance with the requirements of 34 C.F.R. § 668.23. [See footnote 2 2](#)

Audit Report Finding #6 identified a Pell Grant overpayment of \$900 to a student who received both a first and second Pell Grant disbursement, but withdrew from the institution prior to completion of the number of clock hours required for a second disbursement. Apparently TCI recognized the overpayment, but mistakenly refunded this amount to a lender as opposed to reimbursing the Pell Grant account. Even though TCI does not contest this liability and has agreed to refund this amount to ED, it has appealed this finding because it believes this

overpayment is also at issue in a finding contained in a Final Program Review Determination (FPRD) which is currently pending before this tribunal in Docket No. 94-134-SP. TCI is concerned that it may be held responsible for this \$900 obligation in both the audit proceeding before me and the program review proceeding. Nonetheless, ED has convinced me that the overpayment liability assessed in the FPRD for excess Pell Grant disbursements is not a duplication of Audit Report Finding #6 and, therefore, this audit report finding liability is properly addressed in this proceeding. The \$900 assessment is valid and should be enforced.

Audit Report Finding #17 addresses a discrepancy in the cash-on-hand balances in TCI's Pell Grant program accounts. The audit prepared for the 1990 award year indicates a cash-on-hand balance at the end of that year of \$12,682, whereas the cash-on-hand balance for the beginning of

the 1991 award year for the same Pell Grant account is \$5,476. It is ED's position that these two balances should be identical and that the difference between them, \$7,206, demonstrates TCI's failure to properly account for its receipt and expenditure of Pell Grant funds. Because of TCI's inability to satisfactorily explain this discrepancy, the FAD required the institution to reimburse ED in the amount of \$7,206.

An institution has a fiduciary responsibility to ED to accurately "account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles." 34 C.F.R. § 690.81(a)(2). [See footnote 3 3](#) To accomplish this, an institution must maintain a record of each program transaction and account for all drawdowns and expenditures. Thus, when an end-of-year audit shows a cash-on-hand balance of one amount, but the beginning cash-on-hand balance for the subsequent year is a lesser amount, and the institution cannot account for the difference between the two figures, the institution has violated its fiduciary duties. The institution is liable to ED for the difference between the two amounts unless it can satisfy its burden of accounting for these missing funds. 34 C.F.R. § 668.116(d).

TCI presents two theories to explain the \$7,206 discrepancy. The first explanation is that the audits for the two award years were prepared by two different auditors. The auditor for the second year suggests that the previous auditor erred in reporting a cash-on-hand balance at the end of the 1990 award year of \$12,682, insisting instead that \$5,476 is the correct figure for the cash-on-hand balance at both the end of the 1990 award year and also the beginning of the 1991 award year. In the alternative, TCI's brief explains the discrepancy as being "simply a matter of a difference in method [sic] of reporting."

I am not persuaded that either of TCI's theories adequately explains the \$7,206 discrepancy in the Pell Grant funds account. To arrive at this conclusion, I must accept the audits for both years as being a correct representation of the funds on hand. In doing this, I find that this leaves \$7,206 unaccounted for, which is a violation of TCI's fiduciary responsibility.

TCI's only means of avoiding pecuniary liability for this amount would have been for it to have completed "a comprehensive review of drawdowns and expenditures for the audit period," as was suggested by the auditor for the 1991 award year. In the absence of such a review, I must find that TCI has not properly accounted for \$7,206 of Pell Grant funds and must reimburse ED in this amount.

ORDER

Based on the foregoing, it is hereby--
ORDERED, that TCI must refund to ED \$8,106.

Judge Richard F. O'Hair

Issued: April 7, 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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[Footnote: 1](#) 1 Although Audit Report Findings # 7 and #18 were appealed by TCI, the deficiencies identified in those findings have been corrected and, therefore, those findings are dismissed without prejudice.

[Footnote: 2](#) 2 Student financial assistance programs are administered under Title IV of the Higher Education Act of 1964, as amended (HEA). 20 U.S.C. §1070 et seq. and 42 U.S.C. 2751 et seq.

*[Footnote: 3](#) 3 See *In the Matter of Romar Beauty Schools*, Dkt. No. 90-90-ST, U.S. Dep't of Educ. (September 7, 1994); *In the Matter of Pan American School, Inc.*, Dkt. No. 92-118-SP, U.S. Dep't of Educ. (October 18, 1994).*