

IN THE MATTER OF HOUSE OF JAMES BEAUTY COLLEGE,
Respondent.

Docket No. 94-140-SP
Student Financial Assistance Proceeding
DECISION

On February 4, 1994, House of James Beauty College, Indianapolis, Indiana (Respondent) was notified by the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED) that, as a result of its closure and its cessation of operations, it had lost its eligibility to participate in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). The SFAP notice informed the Respondent that, under the provisions of 34 C.F.R. § 668.25, it was required to comply with certain "close out" procedures so as to fully comply with its fiduciary duty to account for the Title IV funds entrusted to it. Included was a requirement for an independent audit.

No audit was contracted for by the Respondent and, as a result, on June 27, 1994, SFAP issued a "final non-site program review determination (FPRD)." The major finding was that since the Respondent had not provided an independent audit, it was responsible for the return of all Title IV funds received during the 1991-92, 1992-92, and 1993-94 award years. On August 10, 1994, the Respondent filed a notice of appeal, but did not file any evidentiary matters in defense.

This matter was assigned to me on September 20, 1994, and, on the next day, I issued an Order Governing Proceedings which directed the Respondent to submit its brief and supporting evidence within four weeks. On October 27, 1994, the Respondent notified me that it had filed a petition in bankruptcy, there were no remaining assets, and would not be filing a brief. On November 25, 1994, SFAP filed its brief and asked that I enter judgement against the Respondent on the basis of its failure to satisfy its burden of proving that it had properly accounted for Title IV funds.

On November 29, 1994, I issued an Order to Show Cause requiring counsel to respond to two threshold issues. First, Counsel was asked why the present proceeding is not governed by the automatic stay provisions of the Bankruptcy Act since it is a monetary matter only, and does not fall within the exemptions for specified actions in the student financial assistance area as provided under 11 U.S.C. §362 (b)(14-16). Second, I asked Counsel to explain why I should not dismiss the appeal for Respondent's failure to present evidence rebutting the demand contained in the FPRD and issue a judgement against the Respondent.

The issue of the applicability of the automatic stay provision is now moot based on representations, filed in Respondent's Brief of January 6, 1995, that the Respondent has already been discharged by the bankruptcy court. As such, I need not reach the question of whether actions initiated by SFAP under Subpart H, 34 C.F.R. § 668.111 et seq., fall within the exception to the automatic stay provisions of the Bankruptcy Act as provided in 11 U.S.C. §362 (b)(4), as asserted by Counsel for SFAP.

Since this action will not be stayed, I must address the matter of Respondent's evidentiary presentation or lack thereof. Respondent did not file any substantive response to the findings of the FPRD. At best, it submitted, with its January 6, 1995 brief, a number of facsimile copies of what appear to be school records. They are neither authenticated nor explained, and clearly are insufficient to establish that federal education funds were properly accounted for. SFAP points out in its brief that Respondent does not dispute it failed to submit a close-out audit, as required under 34 C.F.R. §668.25, and its only explanation is that it is in bankruptcy and cannot afford to engage an independent auditor.

I find that the Respondent has failed to offer evidence sufficient to meet its burden of proof in this Subpart H proceeding, as required by 34 C.F.R. § 668.116 (d). Specifically, I find that the Respondent failed to meet its burden of proving that the expenditures questioned in the FPRD were proper and that it complied with program requirements. As a consequence, I affirm the FPRD and order the Respondent to remit to ED the full liability sought in the FPRD, \$594,966.00.

SO ORDERED.

Judge Ernest C. Canellos

Issued: January 17, 1995
Washington, D.C.