
IN THE MATTER OF LANIN SCHOOL Docket No. 94-191-SF
OF AESTHETICS, Student Financial
 Assistance Proceeding
Respondent.

DECISION

Appearances: Jorge R. Davila, Esq., for Lanin School of Aesthetics.

Russell B. Wolff, 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

Lanin School of Aesthetics (Lanin) participated in the various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED). On September 8, 1994, SFAP issued a Notice of Intent to Fine for Lanin. The findings in the notice were based on the program review report for the award years 1988-89 and 1989-90. Specifically, the notice alleged that Lanin withdrew \$22,216 from the federal Pell Grant account and transferred those funds to the school's operating account prior to determining or documenting the intended beneficiaries. Lanin filed a request for hearing on September 30, 1994.

The tribunal issued an Order Governing Proceedings on November 23, 1994, in which SFAP was required to file its brief on or before December 21, 1994, and it did so. The Order required Respondent to file its brief on or before January 18, 1995. Because Respondent failed to file either its brief or a request for extension, on February 1, 1995, counsel for SFAP filed a Motion for Termination of Proceedings and Entry of Judgment Against Respondent. As a result, the tribunal issued an Order to Show Cause on February 2, 1995, which required Lanin to respond within fifteen days in order to avoid a default judgment. On February 21, 1995, counsel for Lanin submitted a letter to the tribunal requesting that the proposed \$8,000 fine be reduced or eliminated on equitable grounds. Lanin submitted no exhibits and requested that the letter substitute for its brief.

In the letter, Lanin notes that the owner of the school, Mrs. Lanin Santana, passed away on June 24, 1994, and that in May 1994 she notified ED that the school would be closing as of

August 31, 1994, which it did. Counsel for Lanin contends that because Lanin was a one-person operation founded by Mrs. Santana, her heirs do not have the personnel, knowledge, or resources necessary to obtain the information necessary to challenge the final program review of April 14, 1994, upon which the proposed \$8,000 fine is based.

Based upon the program review report and the other exhibits submitted with SFAP's brief, I find that SFAP has presented a prima facie case for a fine. Additionally, I do not find the present case to be moot, based upon the recent holding of the Secretary of Education that, "I very obviously did not intend for the Bliss decision to stand for the proposition that any time a school closes, pending actions against it become moot." *In the Matter of Fischer Technical Institute*, Dkt. No. 92-141-ST, U.S. Dep't of Educ. (Decision of the Secretary) (January 27, 1995). Nor do I find that Lanin was a small school as contemplated under 34 C.F.R. § 668.92(a), given the Secretary's decision in *In the Matter of Bnai Arugath Habosem*, Dkt. No. 92-131-ST, U.S. Dep't of Educ. (August 24, 1993). The exhibits demonstrate that Lanin disbursed \$438,772 in Pell Grant funds in 1990, well above \$220,633, which, according to the Secretary's decision in *Bnai*, was the median Pell Grant expenditure for participating institutions in 1990. Nonetheless, I find that the equitable considerations discussed above merit a reduction of the proposed fine to \$3,000.

ORDER

Based on the foregoing, it is hereby--

ORDERED, that the Lanin School of Aesthetics should be fined \$3,000.

Judge Richard F. O'Hair

Issued: March 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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