In the Matter of Docket No. 94-53-DA

RABBI JACOB ROSENBAUM, Proposed Debarment

Respondent.

Appearances:

Leigh M. Manasavit, Esq., and Diane L. Vogel, Esq., of Brustein and Manasevit, Washington, D.C., for Rabbi Rosenbaum.

Russell B. Wolff, Esq., of the Office of the General Counsel, Washington, D.C., for the Notice Debarment and Suspension Official, U.S. Department of Education.

Before: Judge Ernest C. Canellos

DECISION OF GOVERNMENTWIDE DEBARMENT

FROM FEDERAL NONPROCUREMENT TRANSACTIONS

This **DECISION** is issued by the United States Department of Education (Department) pursuant to 34 CFR § 85.314. I have jurisdiction to act in this matter by virtue of a Delegation of Authority to me to act as the Department's Designated Deciding Debarment and Suspension Official. The regulations, 34 CFR Part 85, and the Nonprocurement Debarment and Suspension Procedures mailed to the Respondent with the notice of proposed debarment govern this proceeding.

On January 27, 1994, Rabbi Jacob Rosenbaum, Administrator, Beth Rochel Seminary (Beth Rochel) of Monsey, New York, was issued a Notice of Proposed Governmentwide Debarment from Federal Nonprocurement Transactions pursuant to 34 CFR § 85.312. The proposed debarment was based on alleged violations of Title IV of the Higher Education Act of 1965, as amended, at Beth Rochel which were imputed to him. 34 CFR § 85.305(b) and (d). These alleged violations were: disbursement of Pell Grant funds to students who were not eligible because they were simultaneously enrolled in high school, 34 C.F.R. § 688.7(a)(2); establishment and maintenance of false and inaccurate student records; expenditure of Pell Grant funds for fictitious students; and failure to use student's home address on Pell Grant applications, 34 C.F.R. § 690.12(b). Rabbi Rosenbaum was also given notice of his right to submit any information and argument in opposition to the proposed debarment.

Rabbi Rosenbaum filed a timely opposition to the debarment. Briefs, supplementary briefs, and documentary evidence were submitted by both parties. On July 14, 1995, I closed the record and took the case under advisement for issuance of a decision.

As indicated above, the Department seeks to attribute violations of Title IV regulations by Beth Rochel to Rabbi Rosenbaum personally. 34 C.F.R. § 325(b)(2). These violations had resulted in an Emergency Action under 34 C.F.R. § 668.83 and in a Termination and Fine Action under 34 C.F.R. § 668.86. I was the Hearing Official in the Termination and Fine proceeding which included an evidentiary hearing. At the conclusion of that hearing process, I issued a Decision in which I terminated the eligibility of Beth Rochel to participate in the Title IV programs and fined the school $74,000. As it is pertinent to this debarment proceeding, I found that Beth Rochel: disbursed Pell Grant funds to students who were ineligible because they were simultaneously enrolled in high school; established and maintained erroneous records; and breached its duties as a fiduciary. I also determined that these violations were aggravated by the fact that the high school students had been certified by the school to receive state aid (subsidized transportation, books, and lunches) at the same time they were receiving federal postsecondary aid.

In addition, as part of its proof in this proceeding, the Notice Official tendered a report from the General Accounting Office (GAO) which detailed, in a case study, violations of Title IV which its agents uncovered at Beth Rochel. In his defense, Rabbi Rosenbaum asserts that the GAO report is a one-sided report relying on hearsay information which is clearly unreliable. As such, I should not consider it. Contrariwise, a report generated by the independent investigative arm of the government has an indicia of reliability and, where probative, is entitled to some evidentiary weight. I find that the GAO report is corroborative of the evidence which was presented in the termination hearing and, despite its hearsay nature, I will consider it.

The Notice Official seeks to attribute the violations at Beth Rochel to Rabbi Rosenbaum personally by pointing out he was the hands-on administrator of both Beth Rochel and the high school to which the aforementioned students were enrolled. In addition, it was shown that these two schools were co-located. As such, Rabbi Rosenbaum knew, or should have known, of these serious violations and, as a result, he should be debarred. I agree.

I find that Rabbi Rosenbaum participated in the violation of Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq. It is abundantly clear that these violations were substantial and resulted in the loss of program funds. Consequently, I find that the Notice Official has established, by a preponderance of the evidence, that causes for the debarment of Rabbi Rosenbaum do exist. 34 C.F.R. §85.305(b) and (d). I note that 34 C.F.R. § 85.325(b)(2), which is cited by the Department as a basis for attributing the wrongdoing at Beth Rochel to Rabbi Rosenbaum provides that the fraudulent, criminal, or other seriously improper conduct of the participant (Beth Rochel) may be imputed to any officer who participated in, knew of, or had reason to know of that conduct. See generally In re Marcus Katz, Docket No. 93-115-EA, U.S. Dep't of Educ. (January 18, 1994). Although Rabbi Rosenbaum argues that the evidence of violations by Beth Rochel should not be used to debar him personally, I find that such imputation is appropriate in this case.

The debarment of an individual has serious consequences. The individual is precluded from participating in any way in a covered transaction under the nonprocurement programs and activities of any Federal agency, and is not eligible to receive any Federal financial and nonfinancial assistance or benefits from any Federal agency under nonprocurement programs and activities. Also, such individual may not act on behalf of any person in connection with any covered transaction.

As stated in 34 CFR § 85.115, the policy of the Federal Government is to conduct business only with responsible persons. It seems clear that in order to support the governmentwide debarment from federal nonprocurement transactions of an individual, a degree of personal culpability must be shown. Applying that standard, my review of the facts and circumstances in this case reveals the seriousness of the violations and the degree of personal wrongdoing envisioned by the debarment process has been established. Rabbi Rosenbaum was responsible for the failure to properly account for federal funds. This adversely affects whether he is a responsible person so as to be eligible to participate in federal programs. See generally Sellers v. Kemp, 749 F.Supp. 1001 (W.D.Mo. 1990).

In light of the foregoing, I find that the Department has met its burden of proof and persuasion that the debarment of Rabbi Rosenbaum is warranted. The period of debarment is to be commensurate with the seriousness of the cause(s) of debarment, generally not to exceed three years. 34 C.F.R. § 85.320. Based upon the circumstances here, I have determined that the period of debarment shall be three years from the date of this decision.

I order that Rabbi Jacob Rosenbaum 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. He may not act as a principle, as defined in 34 C.F.R. § 85.105(p), on behalf of any person 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.

SO ORDERED:

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ERNEST C. CANELLOS,
Deciding Debarment and
Suspension Official

Dated: July 19, 1995