UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON. D.C. 20202

In the Matter of

Seminar Network International School of Massage Therapy,

Respondent.

Docket No. 96-130-EA

Emergency Action
Show Cause Proceeding

DECISION

On October 11, 1996, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) imposed an emergency action against the Seminar Network International School of Massage Therapy (Seminar) of Lake Worth, Florida, in accordance with 20 U.S.C. § 1094(c)(l)(G) and 34 C.F.R. § 600.41 and §668.83. On October 16, 1996, Seminar requested an opportunity to show cause why the emergency action is unwarranted.

Pursuant to the Delegation of Authority from the Secretary to me to conduct proceedings and issue final decisions in circumstances where educational institutions request an opportunity to show cause why an emergency action is unwarranted, I conducted a hearing by teleconference on November 4, 1996. At the hearing, Seminar was represented by Sheldon Slatkin, Esq., and Seminar's Administrator, Larry E. Loving. SFAP was represented by Kelly Andrews, Esq., and Russell Wolff, Esq.

The basic facts are not in dispute. Seminar was notified on October 11, 1996, by David L. Morgan, Director, Compliance and Enforcement Division of SFAP, that the emergency action was based on a notice from the United States Bankruptcy Court for the West Palm Beach District that the school filed for bankruptcy protection on July 15, 1996. Section 481(a)(4) of the HEA, effective July 23, 1992, specifically provides that an institution that has filed for bankruptcy is not an eligible institution for purposes of participating in the student financial assistance programs authorized by Title IV of the HEA. 20 U.S.C. § 1088(a)(4). The relevant language there provides that:

(4) An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if--
(A) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy....

It was on the basis of Seminar's voluntary petition for filing of Chapter 11 bankruptcy, and its failure thereby to continue meeting the definition of an institution of higher education that would qualify it for participation under Title IV of the HEA. that this emergency action was brought. Section 481(a)(4) of the HEA, as pertinent, states:

(4) An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if--
(A) such institution has filed for bankruptcy....

A copy of the bankruptcy action titled In Re: Seminar Network International, Inc.. (a/k/a SNI School of Massage and Beauty Therapy, filed with the Bankruptcy Court for the Southern District of Florida in West Palm Beach, reflects the assigned case number as No. 96-32847. Seminar's counsel confirmed the bankruptcy filing during the teleconference and letters referencing the bankruptcy under signature of both Messrs. Loving and Slatkin are part of the record of this proceeding. Seminar's counsel, however, claims that there were special circumstances surrounding the filing of the bankruptcy which should not be held against the school and he recounted efforts to have the bankruptcy petition withdrawn and to reach an agreement with the school's debtor, the Small Business Administration. SFAP counsel responds that despite any current efforts by Seminar to withdraw its bankruptcy petition, SFAP had no discretion but to proceed with the emergency action after the petition was filed.

I have considered the actions taken by Seminar and I find that special circumstances or efforts to explain the bankruptcy filing are not relevant given the lack of discretion SFAP has in the matter. The only other issue or objection raised by Seminar's counsel was that the emergency action comes under the automatic stay provision of the Bankruptcy Code and that I should not proceed further with this matter since the Bankruptcy Court grants debtor protections and does not defer to other proceedings. During the teleconference, I reviewed the fact that the automatic stay provision did not apply to Title IV, HEA actions, inasmuch as there was a special exception to the stay for such matters. I cited the provision in 11 U.S.C. Section 362(b)(16) and will reiterate it here for benefit of both sides. The provision states:

(b) The filing of a petition under section 301,302, or 303 of this title,... does not operate as a stay--

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act.

I find the provision at 11 U.S.C. § 362 (b) (16) to be clearly dispositive of the issue of the automatic stay and note, as I did during the teleconference, that there are prior cases which have dealt with the same issue and which found that the automatic stay does not apply. See In the Matter of Charms Beauty School, Emergency Action Proceeding, issued June 8, 1993 (Judge Canellos).

The three conditions for imposing an emergency action are found at 34 C.F.R. § 668.83(c). They are : 1) there is reliable evidence that Seminar is violating the provisions of Title IV of the HEA: suspension. and termination actions. 1 First, it is an undisputed fact that Seminar is a party to a bankruptcy proceeding. Due to its bankruptcy filing, Seminar no longer meets the definition of an institution of higher education and is not eligible for receipt of Title IV, HEA Program funds. Second, any further participation in Title IV. HEA Programs by Seminar would constitute a misuse of federal funds and immediate action is necessary to prevent such further misuse of funds. Third. because all aid disbursed by an ineligible institution is invalid and done in error, the likelihood of loss does outweigh the importance of awaiting completion of the procedures for termination of eligibility. Accordingly, I find that the three criteria for imposing the emergency action are satisfied.

Having found that the three-pronged test for imposition of an emergency action has been met, and that the automatic stay provisions of the Bankruptcy Court do not apply, I affirm the emergency action.

Judge Richard I. Slippen

Issued: November 6, 1996
Washington, D.C.

SERVICE

A copy of the attached decision was sent to the following:

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1 During the teleconference I reviewed the limited nature of emergency actions. I did contrast it with the Subpart G-termination type hearings in which the parties have further procedural and evidentiary opportunities. SFAP counsel did state their intention to file a termination action against Seminar. but whether they do or not, this has no bearing on the present case and the three criteria which I must address here.