

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

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In the Matter of

**Docket No. 96-151-ST**

**THOMAS SERRA PHILADELPHIA**

**ACADEMY OF BEAUTY,**

Respondent.

Student Financial Assistance Proceeding

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Appearances:

Thomas Serra, President, Thomas Serra Philadelphia Academy of Beauty, Philadelphia, Pennsylvania, for Respondent

Kelly J. Andrews, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Chief Judge Ernest C. Canellos

**DECISION**

On July 30, 1996, the U.S. Department of Education (ED) Office of Student Financial Assistance Programs (SFAP) initiated an action to terminate and fine Thomas Serra Philadelphia Academy of Beauty (Academy) \$40,000 for violating Title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1070 *et seq.* (Title IV programs). SFAP initiated the termination and fine proceedings pursuant to 20 U.S.C. § 1094(c)(1)(A)(i) and 34 C.F.R. § 668.23(c), [See footnote 1](#)<sup>1</sup> which require institutions to submit a compliance audit report for each Title IV program in which they participate. As of the date SFAP initiated the proceedings, the Academy had failed to submit two required biennial audit reports covering the 1990-91, 1991-92, 1992-93, and 1993-94 award years.

On August 2, 1996, a certified public accountant wrote to SFAP on behalf of the Academy requesting that the school not be terminated and explaining that a prior conversation he had with SFAP in May 1996 indicated that the Academy would be granted an extension until September 15, 1996, to submit the missing audit reports. On August 13, 1996, the certified public accountant sent another letter to SFAP stating that an additional phone conversation with SFAP confirmed the Academy's extension to September 15, 1996. [See footnote 2](#)<sup>2</sup> On August 23, 1996, David L. Morgan, Director of the Compliance and Enforcement Division of SFAP, sent the institution a letter verifying the Academy's extension to September 15, 1996, and indicating that the case would not be submitted to the Office of Hearings and Appeals if the audits were submitted on time and met program requirements. SFAP acknowledges in its brief that the Academy mailed the audit reports on September 13, 1996, and that SFAP received them on September 17, 1996. *See* SFAP Brief at 2.

SFAP withdrew the termination action before me and reduced the fine sought from \$40,000 to \$20,000. Presumably, the fine was reduced because the Academy submitted the required audit reports in an acceptable format. [See footnote 3](#)<sup>3</sup> SFAP bases its decision to fine the Academy \$20,000, in spite of eventual receipt of the audit reports, on the fact that

the audit reports were not timely. According to regulations, the report for the 1990-91 and 1991-92 award years originally was due March 31, 1993, and the report for the 1992-93 and 1993-94 award years originally was due March 31, 1995.<sup>4</sup> Therefore, SFAP found that the Academy's submission of the audit reports on September 17, 1996, made the reports seventy-two and eighteen months late, respectively. In accordance with this, SFAP maintained that the Academy violated 34 C.F.R. § 668.82(b)(1) by failing to meet the standard of conduct required of a fiduciary.

To support its position, SFAP cites *In the Matter of Institute of Multiple Technology*, Dkt. No. 92-26-ST, U.S. Department of Education (November 26, 1993), aff'd by the Secretary (Decision of the Secretary, April 18, 1994). In *Multiple Technology*, SFAP denied the institution's request for a fourth extension of an audit report due date. Thereafter, the institution submitted the audit reports in question one year and six months after the last extension expired. Subsequently, termination and a \$10,000 fine were upheld in that case. *Multiple Technology*, however, has limited application to the facts of this case. Unlike the Academy, which was granted an extension by SFAP in the August 23, 1996, letter and mailed the audit reports prior to expiration of that extension, the institute in *Multiple Technology* submitted its audit reports well after SFAP denied its request for an additional extension of time.

I note that the Administrative Law Judge (ALJ) in *Multiple Technology* determined that granting an extension for audit reports constitutes an effective waiver of a violation of 34 C.F.R. § 668.23(c)(4)(ii) (1989) by ED, and that a violation does not occur until after the extension expires. The Decision of the Secretary upheld the ALJ's finding that the date of the last extension is the date when the violation accrued. Therefore, *Multiple Technology* indicates that the Academy's audit reports cannot be considered seventy-two and eighteen months late as SFAP maintains because a timeliness violation cannot have begun to accrue until after September 15, 1996. In addition, the August 23, 1996, letter from SFAP to the Academy stated that the case would not be submitted to the Office of Hearings and Appeals until after the extended deadline expired, indicating that SFAP was using September 15, 1996, as the relevant due date. Using the date of receipt as the date of submission, the audit reports received by SFAP on September 17, 1996, were one day late.<sup>5</sup> Thus, I find unpersuasive SFAP's argument that a \$20,000 fine is justified because the audit reports were "extremely late." SFAP Brief at 7.

SFAP also cites *Hi-Tech Institute of Hair Design and Rickerson Beauty Academies #3 and #5*, Dkt. No. 94-66-ST, U.S. Department of Education (November 22, 1994), aff'd by the Secretary (July 18, 1995) to support its argument. Again, even though that case involved a termination and fine after late submission of audit reports, it does not control the case before me. Unlike the Academy, *Hi-Tech Institute of Hair Design and Rickerson Beauty Academies #3 and #5* were not granted extensions of audit report due dates. Therefore, the case is not analogous to the present one and does not provide support for SFAP fining the Academy \$20,000.

Although failure to submit an audit report is a serious violation of 34 C.F.R. § 668.23(c) mandating termination under 34 U.S.C. § 668.90(a)(3)(v), and an untimely submission warrants a fine under 34 C.F.R. § 668.84(a), the facts of the present case do not support imposition of a \$20,000 fine. The amount of the fine imposed is to reflect the gravity of the violation and the size of the institution. 34 C.F.R. § 668.92(a). Here, the Academy mailed the audit reports prior to an extended deadline and SFAP received them only one day after that deadline. In addition, the Academy was a small institution, maintaining an average enrollment of only thirty to fifty students. Furthermore, SFAP imposes such fines in an effort to deter the school and others like it from committing similar violations. See *In the Matter of Bnai Aurgath Habosem*, Dkt. No. 92- 131-ST, U.S. Department of Education (March 11, 1993), aff'd by the Secretary (Decision of the Secretary, August 24, 1993). SFAP has not demonstrated that imposing a \$20,000 fine on a small school, which has since ceased operations and filed for bankruptcy, for submitting an audit report one day after an extended deadline will serve a deterrent purpose. Finally, since the record indicates that SFAP has not contested the acceptability of the audit reports submitted, it appears that the Academy accounted for all funds it received from Title IV programs and has not violated 34 C.F.R. § 668.82(b) by failing to meet the standard of care of a fiduciary.

Although the precedent of *Multiple Technology* and the above factors support mitigation of the \$20,000 fine SFAP seeks to impose on the Academy, the facts involved in this case do not support waiving the fine entirely. SFAP gave the Academy ample time to meet the September 15, 1996, deadline and the Academy failed to get the audit reports to SFAP on time. Furthermore, the Academy has offered no credible explanation as to why it ignored the original deadlines of March 15, 1991, and March 15, 1993. Participating in the Reimbursement Program and having difficulty meeting costs of audits, two reasons proffered by the Academy for its failure to submit timely biennial audit reports, are unacceptable

excuses for violating 20 U.S.C. § 1094(c)(1)(a)(i) and 34 C.F.R. § 668.23(c). Therefore, I find that a fine is warranted. In light of the mitigating factors discussed above, I find that a reduced fine of \$2,500 is appropriate for the Academy's untimely submission of audit reports.

## **FINDINGS AND CONCLUSIONS**

1. The Academy submitted untimely biennial audit reports for the 1990-91, 1991-92, 1992-93, and 1993-94 award years in violation of 20 U.S.C. § 1094(c)(1)(A)(i) and 34 C.F.R. § 668.23(c).

2. The record does not indicate that the Academy's audit reports, submitted within one day of an extended deadline, inadequately accounted for all the funds it received from Title IV programs. Therefore, the Academy has not violated 34 C.F.R. § 668.82(b) by failing to meet the standard of care of a fiduciary.

3. The Academy's submission of the audit reports only one day after an extended deadline, the school's small size, the lack of proof of a possible deterrent effect under the attendant circumstances, and the indication in the record that SFAP did not contest the acceptance of the audit reports, serve as factors warranting mitigation of the \$20,000 fine.

## **ORDER**

ORDERED, that the Academy pay a fine of \$2,500 for untimely submission of audit reports for award years 1990-91, 1991-92, 1992-93, 1993-94.

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Chief Judge Ernest C. Canellos

Dated: July 30, 1997

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## SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

Thomas Serra  
President  
Thomas Serra Philadelphia Academy of Beauty  
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Philadelphia, PA 19128

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*Footnote: 1* <sup>1</sup> Unless otherwise noted, all citations to the Code of Federal Regulations are to the 1995 edition.

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*[Footnote: 2](#) <sup>2</sup> Also included in the August 13 correspondence from the certified public accountant was a letter from the institution requesting a hearing to contest the termination and fine action and verifying that the audit reports would be sent in time to meet the September 15 deadline.*

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*[Footnote: 3](#) <sup>3</sup> SFAP did not indicate that the audit reports were not in compliance with program requirements, therefore it must be assumed that SFAP found them acceptable. The record does not indicate a reason for SFAP's withdrawal of the termination action. In a Motion for Termination of Proceedings and Entry of Judgment Against Respondent dated March 26, 1997, counsel for SFAP apparently mistakenly asked to uphold the termination of the Academy even though that motion was submitted subsequent to SFAP's withdrawal of the termination action.*

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*[Footnote: 4](#) <sup>4</sup> Although institutions currently are required to conduct annual audits under 34 C.F.R. § 23 (c)(1)(i) (1996), prior to 1994, the period concerning the audits in question, institutions were required to conduct biennial audits. 34 C.F.R. § 668.23 (c)(3) (1992). Regulations also specify that audit reports for institutions not participating in campus-based programs, such as the Academy, are due January 31 of the year following the last year covered by the audits. 34 C.F.R. § 668.23(c)(4)(ii) (1993). The Office of the Inspector General (OIG), however, extended the deadline in its March 1990 Audit Guide to make March 31 the date such audits were due.*

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*[Footnote: 5](#) <sup>5</sup> September 15, 1996, the specified due date for the audit reports, was a Sunday. Therefore, the reports were actually due on September 16, 1996.*