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

In the Matter of
UNIVERSIDAD EUGENIO MARIA de HOSTOS,

Respondent.

Docket No. 97-61-SF
Student Financial Assistance Proceeding

Appearances:

Arcadio J. Reyes, Esq., for Universidad Eguenio Maria de Hostos

Paul G. Freeborne, Esq., and Russell B. Wolff, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Judge Richard F. O'Hair

DECISION

The Universidad Eugenio Maria de Hostos (UNIREMHOS), a proprietary educational institution located in Santo Domingo, the Dominican Republic, operates a medical school in which a number of Americans are enrolled as full-time students. Since 1988, UNIREMHOS has been participating in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), specifically the Federal Family Education Loan (FFEL) Program.See footnote 1[1] 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq*. On May 2, 1997, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) notified UNIREMHOS that it intended to fine the institution $1,725,000 for improperly certifying 69 FFEL Program loans. UNIREMHOS denied it engaged in any improprieties and requested a hearing to contest the appropriateness of the fine.

This fine proceeding refers back to July 3, 1995, when SFAP imposed an emergency actionSee footnote 2[2] on UNIREMHOS by notifying the institution that it could no longer participate in the Department's student financial assistance programs. The emergency action was predicated upon the institution's repeated and widespread failure to comply with Title IV, HEA regulatory requirements and it specifically included a bar on initiating commitments of Title IV, HEA program aid to students by certifying applications for FFEL Program loans. The July 3, 1995, letter told the institution that the emergency action would stay in effect until the termination proceeding was concluded. On July 27, 1995, SFAP supplemented the emergency action by initiating a termination proceeding against UNIREMHOS and this was concluded on October 22, 1997, when the Secretary of Education terminated UNIREMHOS's eligibility to

participate in any Title IV, HEA programs. *Universidad Eugenio Maria de Hostos*, 95-128-ST, U.S. Dept. of Educ. (January 21, 1997); Certified by the Secretary (October 22, 1997).

Alleging that UNIREMHOS acted contrary to the prohibitions imposed by the emergency action, on May 2, 1997, SFAP issued a notice of intent to fine UNIREMHOS $1,725,000 because it illegally certified 69 FFEL Program loans for 59 of its students after imposition of the July 3, 1995, emergency action. SFAP amended this amount at the hearing by reducing the fine to $1,425,000 based on only 57 improper loan certifications.

SFAP presented evidence that between July 3, 1995, and April 9, 1997, UNIREMHOS violated the terms of the emergency action by certifying 79 student loan applications, with a loan value of $1,441,650. During this time period, the medical students followed the normal practice of taking their loan applications to UNIREMHOS personnel who signed the applications, thus certifying that they were enrolled students. The students sent the applications to one of five different guaranty agencies, and ultimately loan checks were disbursed to the student borrowers. UNIREMHOS certified 11 loans in July and August, 1995; 42 loans in 1996; and 26 loans between January 1 and April, 9, 1997.See footnote 3[3] Even though SFAP maintains a computer data base that contains the names of all current Title IV eligible schools, and which it shares with the guaranty agencies, for some inexplicable reason this data base was not properly annotated during the period of time addressed here. Although the facts are not clear, it appears that the system properly noted that the institution was ineligible beginning on July 3, 1995; however sometime later, beginning in March 1996 and ending on April 9, 1997, the data base indicated the institution was once again eligible to participate. Therefore, when 67 certified loan applications were submitted by UNIREMHOS students during that 13 month period, the guaranty agency personnel mistakenly approved the loans, assuming they were otherwise acceptable. With the April 9 revelation that the data base incorrectly listed UNIREMHOS as an eligible institution, the guaranty agencies approved no more loans for its students.

UNIREMHOS conceded it received the emergency action notification sometime in late July or early August 1995 and upon receipt of the notification it certified no more loan applications until March 1996 when it was given what it considered to be a confirmation that its eligibility had been restored. The American students were understandably concerned about the financial burdens this emergency action placed upon them. For this reason, they were interested in finding out exactly why the FFEL Program eligibility had been removed and what was necessary to reinstate it. To obtain this information, the students made frequent telephone calls to the Department and to their respective guaranty agencies, seeking explanations. Two ladies who worked in various administrative positions in the medical school, Ms. Cooper and Ms. Matos, testified that in March 1996 several of the students told them that representatives from guaranty agencies were reporting that UNIREMHOS was once again included in the SFAP data base as being an eligible school. Ms. Matos, a school counselor who at that time was filling a temporary vacancy in the school's student financial aid office, testified that she obtained telephone confirmation of the school's eligibility from Ms. Terry Peterson, an employee with the USA Funds guaranty agency.See footnote 4[4] Ms. Matos said she also called someone in the Department's headquarters in Washington and spoke with a female named Janice “who worked in a department that had to do with loans.” Apparently “Janice” confirmed that UNIREMHOS had been reinstated as eligible to certify FFEL Program loans and Ms. Matos conveyed this information to the president/director of UNIREMHOS who authorized the certification of loans. It should be noted that although Ms. Matos is bilingual in English and Spanish, she did not feel sufficiently comfortable with her English to testify before this tribunal in English, but chose to testify in Spanish and use an interpreter.

Ms. Matos testified she could not remember Janice's last name or her telephone number, but she thought that she had recorded this information on a fax the Department sent to the school which verified that the school was again eligible to certify loans. Ms. Matos did not have the fax with her at the hearing, but was asked to locate it and provide a copy to the tribunal. This, however, was never accomplished. UNIREMHOS was able only to provide a copy of its long distance telephone bills for early 1996. An SFAP employee called all of the numbers assigned to the Department which appeared on the bills, but that person was unsuccessful in locating any information about an employee named “Janice” or anyone else who might have provided Ms. Matos with information regarding FFEL Program eligibility.

UNIREMHOS called seven of its American medical students to testify regarding their frustration at being unable to obtain student loans after July 1995 and of their many telephone calls to find out why the school was suspended and when the suspension might be lifted. In late 1996 and into 1997, these students all found out from their respective

guaranty agencies that the school's eligibility had been restored, but none of them discovered this as early as March 1996, the date Ms. Cooper and Ms. Matos said they were approached by students with word of reinstated eligibility. Therefore, it is unknown which student or students brought information of the reinstatement of eligibility to the attention of school personnel in March 1996.

Word that UNIREMHOS was once again eligible to certify student loan applications spread quickly among the student body. Interested students promptly submitted loan applications to the school, which were certified, and the students submitted them to the appropriate guaranty agencies. This practice continued until April 9, 1997, when someone discovered the error and the Department took immediate action to ensure that all guaranty agencies were notified that UNIREMHOS was not then, and had not been since July 3, 1995, an eligible FFEL Program participant.

UNIREMHOS attempts to lessen the severity of its improper loan certifications by raising an often cited, and perhaps valid, complaint that once a foreign school has signed a Title IV, HEA program participation agreement, the Department provides it with minimal guidance or assistance in the administration of these programs, so it should not be penalized for resulting failures or deficiencies. In support of this proposition, UNIREMHOS refers to the absence of any training for its personnel in the administration of the FFEL Program and the many telephone calls it and its students made to various offices of the Department which were motivated by a desire to find out why and for how long UNIREMHOS was going to be suspended from participating in the FFEL Program. Unable to receive any satisfaction from departmental employees, in desperation the parties ultimately turned to the guaranty agencies. This resulted in a further complication of the problem because the guaranty agencies were dispensing inaccurate information that UNIREMHOS was once again eligible to certify loans. Further evidence of the confusion which envelopes this scenario is that in March 1997, almost two years after the implementation of the emergency action, the Department sent correspondence to UNIREMHOS to assist with its FFEL Program recertification. This incident is supportive of the school's argument that there was sufficient ambiguity about its status that it should not be sanctioned to the degree sought by SFAP.

As mitigating as some of these facts may be, it is incomprehensible how any school could ignore the July 3, 1995, correspondence from the Department which unequivocally barred it from initiating commitments of the Title IV, HEA program aid to students by certifying applications for FFEL Program loans solely on the strength of oral reports from students and two telephone calls, one to a guaranty agency, and the other to an unidentifiable person in the Department. Relying on oral representations that UNIREMHOS's eligibility was reinstated is especially suspect since the two telephone calls were made by an employee whose native language is Spanish and who does not have sufficient command of the English language to testify comfortably before the tribunal without an interpreter. The responsible course of action would have demanded that UNIRMEHOS refrain from certifying any loan applications until it had received written correspondence from SFAP which negated the emergency action and reinstated the institution's FFEL Program eligibility. Relying on anything less was foolish. Of course, SFAP is not blameless in this situation either. If the data base of eligible participants which it maintains and shares with the guaranty agencies were current and accurate between March 1996 and April 1997, most likely, no students would have been misinformed by the guaranty agency personnel, UNIREMHOS would not have been encouraged to certify any of the loans, and the guaranty agencies would not have approved them.

There is no evidence that UNIREMHOS personnel were attempting to defraud SFAP when it certified the 79 student loans in question or otherwise improperly circumvent the emergency action. Looking at the facts in a light most favorable to the school, however, this conduct was at the very least irresponsible and deserves a sanction which will not only punish the institution for its negligent attempts to ascertain its eligibility status, but will also hopefully deter other participating institutions from engaging in this same careless approach to similar limitations. For these reasons, I believe SFAP's request for the imposition of a fine is appropriate for all loans certified after UNIREMHOS physically received notice of the emergency action in late July or early August 1995. Of the total of 79 loans in question, 11 were certified in July and August 1995 and the school should not be penalized for those in the absence of proof this occurred after its receipt of the emergency action. This leaves a balance of 68; however, at the hearing, SFAP reduced its demand for a fine for only 57 loan applications. There is evidence that at least 57 loan applications were certified in 1996 and 1997, so my fine calculations will be based upon that figure.

For each violation of a program requirement, the Secretary may impose a fine of up to $25,000. 20 U.S.C. § 1094(c)(3)(B)(i); 34 C.F.R. § 668.84(a). The amount of the fine is a reflection of the gravity of the violation and the institution's

size. 34 C.F.R. § 668.82(a). Having taken these matters into consideration, I believe a fine of $1000 for each of the 57 violations is appropriate, and this translates into a fine of $57,000.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Universidad Eugenio Maria de Hostos be fined $57,000.

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Judge Richard F. O'Hair

Dated: February 6, 1998

SERVICE

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

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Footnote: 1 [1] *The federal student loan program provides students from eligible institutions of higher education with the opportunity to obtain loans for tuition and living expenses from private participating lenders. 20 U.S.C. § 1071; 34 C.F.R. § 682.100. Repayment of these loans is insured by a state or a private guaranty agency which, in turn, is reinsured by the Department. 20 U.S.C. §1078(b),(c); 34 C.F.R. § 682.404. The Department also subsidizes the loans by paying special allowances to the lenders to ensure they receive a competitive return on the student loans and by paying the loan interest during the period the students are attending school on at least a half-time basis. 34 C.F.R. § 682.209; § 682.300.*

Footnote: 2 [2] *An emergency action is a remedy employed by the Department in which it withholds Title IV, HEA program funds from a participating institution or withdraws the authority of an institution to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds. It is imposed after a determination has been made that it is necessary to prevent misuse of federal funds, and that the loss from that misuse outweighs the importance of completing any proceeding that may be initiated to limit, suspend, or terminate the institution's FFEL Program participation. 34 C.F.R. § 668.83.*

Footnote: 3 [3] *This table shows all loans certified by UNIREMHOS between July 3, 1995, and April 9, 1997. ED. Exhibit-17.*

MONTH	1995	1996	1997
January		1	11

February			12
March		11	
April		32	
May		1	
June		2	
July	10		
August	1	11	
September		2	
October		10	
November		3	
December		8	
TOTAL LOANS	11	42	26

Footnote: 4 [4] *SFAP did not call Ms. Peterson as a witness and counsel for UNIREMHOS asserted that her employer refused to make her available to speak with him or to testify on behalf of the school.*
