

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

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In the Matter of

**ROBERT=S INSTITUTE OF HAIR DESIGN,**

Respondent.

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**Docket No. 00-24-SP**

Student Financial  
Assistance Proceeding

PRCN: 20317195

Appearances: Glenn L. Klavans, Esq., Glen Burnie, Maryland, for Respondent.

Russell B. Wolff, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Office of Student Financial Assistance Programs.

Before: Frank K. Krueger, Jr., Administrative Judge.

**DECISION**

On March 7, 2000, the Office of Student Financial Assistance Programs (SFAP) issued a final program review determination concerning the Respondent. SFAP determined that the Respondent, which participated in the Federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, had closed on July 31, 1997, but failed to submit a close-out audit. Under 34 C.F.R. ' 668.26(b) (1997), Respondent was obligated to submit an independent audit to account for all Title IV funds received by it from the period covered by its last periodic audit to the date that it went out of business. As a result of Respondent=s failure to do so, SFAP determined that Respondent owed the U.S. Department of Education \$52,585, the amount of student financial assistance funds received by the school for the award year 1996-97, the last year during which it participated in the Title IV programs, and for which it had not submitted an audit.

As noted by SFAP in its brief, this tribunal has issued a long series of decisions which has concluded that the failure of an institution to submit the required close-out audit, or otherwise account for Title IV funds received, results in an obligation to refund all of the Title IV funds for which there is no accounting.<sup>[1]</sup> Although it had the opportunity to file both a brief and a reply brief, Respondent chose to file neither. Instead, it filed a document entitled ASuggestion of Bankruptcy@ in which it made the following statement:

[T]he Respondent corporation filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the District of Maryland on October 8, 1997. The Respondent was adjudged to have no assets available for distribution to creditors and a full discharge was granted by the Bankruptcy Court. A copy of the Bankruptcy documents are attached hereto as Exhibit A.

The Respondent has no assets and has been defunct since July 31, 1997. Pursuant to U.S.

Bankruptcy law, any and all debts owed by Respondent to the United States Department of Education has been discharged. As a result, the action brought by the Department of Education should be dismissed or permanently stayed.

The Respondent elects to take no further action in this matter.

The only document attached to the so-called Suggestion of Bankruptcy was a Voluntary Petition which, assuming its authenticity, merely establishes that Respondent filed for bankruptcy, not that it has been adjudged to have no assets . . . and [that] a full discharge was granted by the Bankruptcy Court.<sup>[2]</sup> Although corporations do not actually have their debts discharged once they are found by a bankruptcy court to be bankrupt, corporations are liquidated, thus making a discharge unnecessary. *See National Training Service, Inc.*, Docket No. 92-101-SP, U.S. Dept. of Educ., note 6 (Oct. 6, 1995). However, as noted, there is nothing in the record which proves that Respondent has been liquidated. Although Respondent may in fact have no assets, and thus SFAP may never collect the Title IV funds for which Respondent has failed to file an accounting, this is not the proper forum to consider whether Respondent has any assets, or whether Respondent's owners are personally responsible for this liability.<sup>[3]</sup> As stated by the Administrative Law Judge in *National Training Service* at 5, A[w]ith regard to the practical difficulties or even impossibility of collection efforts, that is beyond the scope of the Judge's review responsibilities here, and I gladly leave the matter of collection efforts and collection mechanics to the Department's offices concerned with such matters (and possibly to the Department of Justice).<sup>@</sup> *See also Computer Processing Institute*, Docket No. 92-20-SP, U.S. Dept. of Educ. (Decision of the Secretary, April 13, 1995) (case not moot although the respondent was out of business and bankrupt).

### FINDINGS AND CONCLUSIONS

1. Respondent violated 34 C.F.R. ' 668.26(b) (1997) by failing to submit an acceptable close-out audit upon its ceasing to provide educational services on July 31, 1997.
2. Respondent violated its fiduciary duty and 34 C.F.R. ' 668.82(a) and (b)(1) (1999) by failing to account for Title IV funds received during the 1996-97 award year.
3. Respondent is liable for all Title IV assistance it received during the 1996-97 award year.

**ORDERED**, that Respondent repay the U.S. Department of Education \$52,585, the amount of Title IV assistance it received during the 1996-97 award year.

Dated: August 1, 2000

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Frank K. Krueger, Jr.  
Administrative Judge

### SERVICE

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

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<sup>[1]</sup> *Magic Touch Beauty Institute*, Docket No. 97-161-SP, U.S. Dept. of Educ. (July 2, 1998); *Tiffany=s College of Hair Design*, Docket No. 96-118-SP, U.S. Dept. of Educ. (June 29, 1998); *Interamerican Business College*, 96-20-SP, U.S. Dept. of Educ. (May 28, 1997); *Belzer Yeshiva*, Docket No. 95-55-SP, U.S. Dept. of Educ. (June 19, 1996); *Cosmetology College*, Docket No. 94-96-SP, U.S. Dept. of Educ. (August 23, 1995; *certified by Secretary*, Nov. 27, 1995); *Calvinade Beauty Academy*, Docket No. 93-151-SA, U.S. Dept. of Educ. (March 21, 1995; *certified by Secretary*, Sept. 18, 1995); *Long Beach College of Business*, Docket No. 94-78-SP, U.S. Dept. of Educ. (August 30, 1995); *CareerCom College of Business*, Docket No. 94-159-SP (May 4, 1995); *Metropolitan Career Institute*, Docket No. 94-6-SP, U.S. Dept. of Educ. (April 12, 1995); *Lehigh Technical School*, Docket No. 94-193-SP, U.S. Dept. of Educ. (March 17, 1995); *National Broadcasting School*, Docket No. 94-98-SP, U.S. Dept. of Educ. (Dec. 12, 1994).

<sup>[2]</sup>

Once a petition for bankruptcy is filed, All judicial, administrative, or other action or proceeding against the debtor is automatically stayed. 11 U.S.C. ' 362(a). This tribunal has consistently held that the automatic stay provision does not apply to program review appeals conducted under 34 C.F.R. Subpart H since the U.S. Department of Education is operating under its regulatory powers to establish whether its final program review determination is correct and is not an action taken to actually collect a debt. *See* 11 U.S.C. ' 362 (b)(4); *SamVerly College of Barber/Hairstyling*, Docket Nos. 96-144-SP & 96-45-ST, U.S. Dept. of Educ. (June 21, 2000); *CareerCom, supra*; *MTA School*, Docket No. 92-92-SP, U.S. Dept. of Educ. (June 30, 1994); *First School for Careers*, 89-60-S (Order issued by Administrative Law Judge, Jan. 29, 1990).

<sup>[3]</sup> Under 34 C.F.R. ' 668.15(c) (1999), the owners of a bankrupt institution could be precluded from future participation in the Title IV programs if a Subpart H liability of the bankrupt institution remains unpaid.