

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

In the Matter of

Docket No. 01-06-SP

BUSINESS TRAINING INSTITUTE,

Student Financial
Assistance Proceeding

Respondent.

PRCN: 200010417027

Appearances: Luis B. Celorio, President, Business Training Institute, Snellville, GA, for Respondent.

Steven Z. Finley, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Richard I. Slippen, Administrative Judge

DECISION

Business Training Institute (BTI) operated as a proprietary institution of higher education. Until its May 28, 2000, closure, the school participated in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2752 *et seq.* On December 21, 2000, the U.S. Department of Education, Office of Student Financial Assistance Programs (SFAP),^[1] issued a final program review determination (FPRD). The FPRD alleged that BTI failed to submit a close-out audit report, covering the period of January 1, 2000, until the date of closure. The FPRD also charged that BTI had failed to submit compliance audits for the two prior award years ending in

1998 and 1999. The FPRD assessed \$318,724.00 in liability for all Title IV funds disbursed by the school from January 1998 through May 2000. ^[2]

The procedural history of the above-captioned proceeding is convoluted. On February 21, 2001, I issued my original Order Governing Proceedings setting forth a briefing schedule. SFAP's original counsel left the case and current counsel entered his appearance on June 28, 2001. On July 6, 2001, I issued a request for a status report. On August 2, 2001, BTI submitted a letter stating that it failed to understand why this proceeding was continuing as the school already ceased operations. On August 7, 2001, SFAP filed a status report and a motion for stay. From early August 2001, until July 2002, this proceeding was stayed in order for the parties to discuss settlement.

On July 29, 2002, after failing to reach a settlement, SFAP submitted a motion to lift the stay and reinstitute a briefing schedule. SFAP stated that it has been unable to obtain an acceptable settlement proposal with the owner of the school. On July 30, 2002, I issued an order lifting the stay and setting forth a new briefing schedule. Pursuant to my July 30, 2002, order, Respondent's brief was due on August 30, 2002, and SFAP's brief was due on September 30, 2002. On September 18, 2002, BTI's owner submitted a motion for a 60-day stay stating that he had not been able to maintain a permanent domicile, and that he had not heard from counsel for SFAP for several months. BTI requested additional time to resolve this matter. SFAP raised no objection to BTI's request for an additional stay. The 60-day stay was granted on September 17, 2002.

On November 15, 2002, BTI submitted another motion for a 60-day stay in order to finalize an acceptable settlement. On November 19, 2002, SFAP filed its opposition to Respondent's request for an additional 60-day stay. In its motion, SFAP stated that it had advised the school that SFAP would not entertain further requests to resolve this proceeding through settlement. On November 21, 2002, I issued an order denying BTI's request for an additional stay and setting forth a new briefing schedule. Pursuant to my order, BTI's brief was due on or before December 31, 2002, and SFAP's brief was due on or before January 30, 2003. BTI did not submit its brief nor request additional time in which to file its brief. On February 28, 2003, SFAP filed a motion for default judgment.

On March 4, 2003, I issued an order to show cause as to why I should not issue a default judgment. On March 7, 10, and 18, 2003, BTI submitted three letters. The first letter requested that this legal action be dismissed and the owner stated that he had closed the school properly. In the second letter, BTI's owner claimed he had not received correspondence indicating his request for a stay was denied. BTI also claimed, for the first time, that two auditors from the Department's Regional IV office had performed a compliance audit of the school and cleared the school's account. In the third letter, BTI's owner again stated that he properly closed down the school and insured that all of the graduates' needs were met. BTI reiterated its claim that two auditors from the Department performed a 100 percent program review audit of the school. Contrarily, BTI also conceded that it failed to provide a financial audit for its last year of operation. From its letters, it appears BTI may have mistakenly equated an on-site visit by Department staff with compliance and close-out audits required by the regulations. However, there is no evidence that any audits were performed by Department staff or any outside auditors hired by the school.

A school is required to submit a close-out audit covering the period from its last submitted audit to the date of closure within 45 days after the date the school's participation in the Title IV programs end. 34 C.F.R. § 668.26(b)(ii). It is a school's fiduciary responsibility to account for its expenditure of federal funds. *See In re Magic Touch Beauty Institute*, Docket No. 97-161-SP (July 2, 1998), certified by the Secretary (November 17, 1999); *In re Belzer Yeshiva*, Docket No. 95-55-SP, U.S. Dep't of Educ. (June 19, 1996). It is well established by this tribunal that in the absence of a close-out audit, unless a school can otherwise account for the federal funds received, the school is liable for all Title IV funds received since the last submitted audit. *See In re Belzer Yeshiva; In re Midland Career Institute*, Docket Nos. 96-140-SP and 96-141-SP, U.S. Dep't of Educ. (July 30, 1998); *In re Magic Touch Beauty Institute; In re Excelsis Beauty College*, Docket No. 98-108-SA, U.S. Dep't of Educ. (October 4, 1999).

The reasons why a school is unable to submit a close-out audit do not alter the requirement that it do so. *See In re Magic Touch Beauty Institute*. BTI's owner has stated that due to personal problems he was unable to submit a close-out audit or compliance audits for the previous two award years. BTI also states that although it failed to submit the required audits, it closed the school properly and that all student records were properly catalogued and given to the state agency. However, BTI's mere assertion that it has properly expended federal funds without any demonstration that it has done so is not sufficient. While the unfortunate personal circumstances affecting the school's owner may make it difficult to comply with the audit regulations, the school cannot rely upon these excuses as a defense or shield from liability. It is also beyond the authority of a hearing official to waive the close-out audit requirement. *See In re Magic Touch Beauty Institute*. Consequently, BTI's request that this proceeding be terminated is categorically rejected.

In a Subpart H proceeding, the tribunal must also determine whether the institution has met its burden of proof showing that the Title IV expenditures questioned in the FPRD were disbursed properly. 34 C.F.R. § 668.116(d). In this regard, the tribunal must examine the record to determine whether the evidentiary submissions from the institution document or account for the institution's expenditure of Title IV funds. *See In re Jesode Hatorah*, Docket No. 95-57-SP, U.S. Dep't of Educ. (June 29, 1995). BTI has not submitted any evidentiary proof that has accounted for any of the Title IV funds at issue.^[3] In accordance with my obligation to regulate the course of this proceeding and the conduct of the parties, I have the authority and the discretion to terminate the hearing process and issue a decision against the institution if it fails to pursue its administrative appeal. *See* 34 C.F.R. § 668.117(c)(3). As such, I find that BTI's failure to file a brief as well as its failure to show cause as to why it did not file a brief warrants the termination of this proceeding.

Accordingly, I find that BTI failed to submit a close-out audit or compliance audits or otherwise account for its expenditure of Title IV funds. BTI has also failed to meet its burden in demonstrating that it properly expended Title IV funds for the 1998-1999 and 1999-2000 award years. Therefore, BTI remains liable for the amount of \$318,724.00, as

assessed in the FPRD.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Business Training Institute pay to U.S. Department of Education the sum of \$318,724.00.

Judge Richard I. Slippen

Dated: May 23, 2003

SERVICE

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

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[1] Since the submission of this appeal, SFAP has changed its name to the Office of Federal Student Aid (FSA). For purposes of this decision, it will be referred to by its former name as the charging document, the FPRD, names SFAP as the Department's authorized office for initiating this action.

[2] The FPRD also charged that BTI failed to make timely refunds, failed to make loan proration, and failed to confirm citizenship status for some students. Liability for these findings was subsumed in the audit finding.

[3] In fact, BTI never submitted a brief, as such, although, I have reviewed the letters submitted by the school in

response to my various orders.