

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

In the Matter of

Docket No. 02-77-SA

**MORENO VALLEY TECHNICAL
SKILLS CENTER**

Student Financial
Assistance Proceeding

Respondent.

ACN: 09-01-27072

Appearances: Roger Silliman, President, for Moreno Valley Technical Skills Center.

Russell B. Wolff, Esq., Office of the General Counsel, United States Department of Education,
Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

Moreno Valley Technical Skills Center (Moreno), the Respondent in this proceeding, was a participant in the Federal Pell Grant and Federal Family Education Loan programs, authorized under Title IV of the Higher Education Act of 1965 (Title IV), as amended. 20 U.S.C. §§1070 *et seq.* and 42U.S.C. §§2751 *et seq.* These programs are administered by the Office of Federal Student Aid (FSA), U.S. Department of Education (Department). Following a review of Moreno's close-out audit of its administration of the Title IV programs, FSA determined that Moreno, following a change of ownership on June 22, 2001, was an ineligible recipient of, and improperly dispersed, \$19,445 in Federal Family Education Loan Program funds and \$6,525 in Federal Pell Grant funds. Moreno disputes this assessment and filed an appeal.

Moreno began participating in the Title IV programs on February 8, 2000, following its execution of a Program Participation Agreement (PPA) with the Department. The PPA was due to expire on June 30, 2001. Prior to November 30, 2000, Moreno's owner, Mr. Roger N. Silliman, decided to sell Moreno to Mr. Edward R. Brien. In consequence of that decision, Mr. Silliman submitted a preliminary change of ownership application to the Department for a pre-acquisition review, pursuant to 34 CFR § 668.12(f)(1). In this situation, if the provided information is suitable to the Department, it has the authority to issue an interim, or temporary, PPA to the institution, thus allowing the institution to have uninterrupted access to Title IV funds up to and beyond the date of the sale. The Department reviewed the application and communicated to Mr. Silliman the flaws it said must be corrected before a temporary PPA could be issued. Mr. Brien, the prospective owner, responded to the Department's concerns and assured the Department that he would correct the deficiencies, and he provided an assurance that Weber & Associates would continue as Moreno's third-party servicer and process all paperwork for the institution. In April 2001 the Department informed Weber & Associates that a temporary PPA could not be issued without receiving a "same day balance sheet...which shows the financial condition of the institution immediately after the change in ownership" and "a formal letter from the new owner stating that the sale has taken place."

On June 26, 2001, the Department received both an e-mail from Weber & Associates indicating "the closing of the sale is completed," and a letter from Mr. Brien which stated "I became the new owner of (Moreno)...on Friday, June 22, 2001, at the close of the business day." Mr. Brien also reported that "we have applied for approval from the State of California and the accrediting agency," and that all information necessary for the preparation of a same day balance sheet had been provided to Mr. Silliman's accountant. In a July 20 letter, Mr. Brien sent the Department an Audited Balance Sheet as of the close of business on June 22, 2001, along with a notation that the State of California had been provided with a copy of the sales contract. In a July 24 facsimile transmission to the Department from Mr. Brien, he reported: "Since I am buying the stock of the corporation, it is necessary to record that sale with the California State Department of Corporations. This has been done." He further stated that when it was received he would send copies of this recordation to the relevant accreditation and state education offices.

The information and materials Mr. Brien provided to the Department as of the end of June 2001 did not satisfy the Department's requirements for the issuance of a Temporary PPA and none was issued; however, it appears that approximately a month elapsed before either gentleman discovered this fact. In Mr. Silliman's July 30 facsimile transmission to the Department, he expressed surprise that Moreno had not been given a temporary PPA because both he and Mr. Brien had been under the impression that one had been granted. Finally, in a letter from Mr. Silliman which is dated July 1, 2001, (but was presumably written on July 31) and received by the Department on August 3, 2001, Mr. Silliman reiterated his position that he thought Moreno had been issued a temporary PPA since he had heard nothing to the contrary and that he had been receiving payments from the Department as late as mid-July. He also relayed the impression that Mr. Brien had lost all enthusiasm for owning a school when he learned that Moreno would have to return all funds disbursed since June 22. Mr. Silliman concluded by stating that "Mr. Brien no longer wishes to

complete the transfer, and we have mutually agreed to rescind the entire transaction.” On August 6 Mr. Brien wrote to the Department claiming that Mr. Silliman had misinterpreted his remarks about a possible rescission of the sales contract and that he and Mr. Silliman were still interested in finalizing Mr. Brien’s purchase. In accordance with that decision, Mr. Brien included with his correspondence conformed copies reflecting the transfer of stock ownership from the Department of Corporation, Secretary of State’s Office. He also reported that it was his intention to submit other required documents to the Department with the hope that these materials would provide a sufficient basis for finalizing his application for a temporary program participation agreement. The Department responded to Mr. Brien by confirming that it had not issued Moreno a temporary PPA, but that he could submit a complete eligibility application which would be given appropriate consideration.

In Mr. Silliman’s appeal in this proceeding, he asserts that the proposed sale of Moreno was never consummated, so there was no change of ownership on June 22, 2001, and no resulting premature cancellation of its PPA. Mr. Silliman admits that both he and Mr. Brien engaged in a multitude of preliminary efforts which, if pursued to completion, would have resulted in Moreno’s sale, but that they stopped short of this because of the decision by the Department not to issue a temporary PPA to Mr. Brien. When Mr. Brien discovered there was no temporary PPA, he said he informed Mr. Silliman who expressed his reluctance to finalize the sale without one. Based on this, Mr. Silliman said he incorrectly assumed that Mr. Brien was withdrawing his offer to buy the school. Mr. Silliman was naturally disappointed with this decision, but believed it was still possible to cancel the transaction because they had yet to obtain approval of the sale by the California Bureau of Private Post-Secondary Education, and to transfer of the corporate stock through the California Secretary of State’s office. In Mr. Silliman’s opinion, the completion of those two transactions were a prerequisite to the sale of the institution and that since neither had occurred by June 22, 2001, or at any subsequent date, there was never a change of ownership which would have resulted in the subsequent demand for the recovery of Title IV funds. On August 6, Mr. Brien wrote to the Department and apologized for the confusion of the previous several weeks, and he reaffirmed the desire of both parties that the sale be completed as originally planned. Apparently, a week later, on August 13, the parties decided not to complete the sale and sent a letter to the Department informing it of their decision.

The express terms of the original PPA provide that, among other reasons, a PPA expires on the date “[t]he institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600.” 34CFR §600.31(a)(1). Pursuant to this authority, FSA determined that Moreno’s PPA expired on June 22, 2001, the date reported to the Department by Mr. Brien as the date he purchased Moreno from Mr. Silliman. This being the case, FSA alleged that all Title IV funds disbursed by Moreno between that date and June 30, 2001, were improperly awarded and must be refunded.

Neither party disagrees with this interpretation of the law governing this case. It is the interpretation of the facts of the case which are in dispute: Was there a change of ownership of Moreno on June 22, 2001, which resulted in a change of control within the meaning of the regulations? In this proceeding the respondent, Moreno, has the burden of persuading the tribunal that the questioned expenditures were proper. 34 CFR § 668.116(d). In order for the challenged disbursements of Title IV funds to be found to be proper, Moreno must prove that it did not suffer a change of ownership as of June 22, 2001, which would have prematurely terminated its PPA.

In the absence of a copy of the sales agreement between Messrs. Silliman and Brien, we have only the several miscellaneous letters about this transaction between these two gentlemen and the Department to consider. From this correspondence it must be concluded that Mr. Silliman accepted Mr. Brien’s offer to purchase Moreno and the parties arbitrarily selected June 22, 2001, as the target date for completion of the transaction. To this end, they notified the education and corporation licensing agencies within the state government of California, Moreno’s accrediting agency,

and the Department. From each of these agencies, they received, and presumably followed, directions for effecting the transfer of Moreno from Mr. Silliman to Mr. Brien on, or by, June 22. They also arranged with an accountant to prepare the required Same Day Balance Sheet. There is no evidence of when, or if, any money changed hands in the course of this sales transaction.

Although these activities show that the parties had a genuine intent to conclude the sale on June 22, there is no signed document which memorializes this. The only evidence which supports the conclusion that the sale was consummated as planned is the June 26 letter from Mr. Brien to the Department in which he states in the first sentence that he became Moreno's new owner as of the close of business on June 22. In that letter he further explains that they have sought approval from the several California agencies mentioned above and the accrediting agency, and that the accountant has been provided with the necessary information to prepare a same day balance sheet. Mr. Silliman uses these pending actions as support for his position that the sale was never completed. I disagree. The pending approvals from the mentioned California agencies and the accrediting agency were certainly prerequisites for Moreno's continued Title IV eligibility. Their absence was not a legal impediment to the actual sale of the institution. Granted, Moreno would have been worth significantly less if it did not receive approvals from its accrediting agency and the California educational licensing agency, but none of these agencies had to the authority to block its sale.

Mr. Brien's statement of June 26 that he became Moreno's new owner on June 22 is very persuasive and not refuted by the failure of various public and private agencies to act prior to June 22 on relevant applications that were necessary for Moreno to continue as an accredited, Title IV eligible postsecondary educational institution. These approvals were not conditions precedent to the completion of the sale. Accordingly, I find that a change of ownership of Moreno occurred on June 22, 2001, and concurrently, the PPA awarded to Mr. Silliman on February 8, 2000, expired. As of June 22, 2001, Moreno was no longer eligible to receive Title IV funds and any it did receive must be returned.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Moreno Valley Technical Skills Center pay the United States Department of Education \$6525 for improper Pell Grant disbursements and reimburse the lenders for \$19,445 of improper Federal Family Education Loan Program disbursements.

Judge Richard F. O'Hair

Dated: April 30, 2003

SERVICE

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

Roger Silliman

President

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