



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

In the Matter of

THOMAS KOONS,
Respondent.

Docket No. 03-105-DA

Debarment Proceeding

Appearances: Thomas Koons, *pro se*.

Before: Judge Richard F. O'Hair

DECISION

On December 17, 2003, the Notice Debarment and Suspension Official of the Department of Education (Department) issued to Mr. Thomas Koons a "Notice of Proposed Government-Wide Debarment from Federal Procurement and Non-Procurement Transactions," pursuant to 34 C.F.R. § 85.312. The Notice informed Mr. Koons that the proposal to debar him was based upon his conviction of knowingly and willingly conspiring to defraud the United States in violation of 18 U.S.C. §371. More specifically, Mr. Koons pleaded guilty to Count 1 of a 17 count Superseding Indictment which alleged that he and other named individuals conspired: to cause the Department to pay Pell Grant funds to Beacon Career Institute (Beacon) for which it was not entitled, to not refund to the Department moneys that should have been refunded, and to have wrongfully misapplied such moneys. As a result of this conspiracy, during the period in or about January 1996 to in or about January 1999, Beacon failed to refund \$721,341.50 of unused Pell Grant funds to the Department.

At the time of the offense, Beacon was participating in the federal student aid programs administered by the Department and authorized under Title IV of the Higher Education Act of 1965, as amended. 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. §§2751 *et seq.* As a consultant for Beacon, Mr. Koons submitted false and fraudulent documents to the Department that made it appear that students were attending Beacon and that the Pell Grant funds received were appropriately disbursed when, in fact, this was knowingly

false. For his part in the conspiracy, Mr. Koons was sentenced to 21 months imprisonment and a one year supervised release.

Mr. Koons exercised his right to oppose this proposed debarment in accordance with the provisions of 34 C.F.R. §85.313 by filing a personal letter in which he professes to be innocent, claiming that Beacon's owners, the co-defendants, conspired against him by attempting to place the blame for their misfortunes on him. He explained that he pleaded guilty to one count because he expected to receive more lenient sentence treatment and because he was told the school's owners would testify against him. The plea agreement also provided that in return for his cooperation with federal authorities, Counts 14-16 of the indictment against him would, and were, dismissed. In his appeal letter, he related that he was neither the authorizing agent nor the disbursing agent for the institution. Moreover, when he drew down federal Pell Grant funds, he was first instructed by the co-defendants to deposit the funds in the institution's federal trust account to which he had no access. Furthermore, Mr. Koons said he was never responsible for identifying refunds or mailing them to the trust account. Finally, with regard to the charge of submitting false reports to the Department, Mr. Koons explained that information supplied by the financial aid disbursing office was included in the reports and that he was not the responsible party authorizing those payments. He concluded by saying he has been an exemplary prisoner, has received excellent work reviews, and has been granted community custody so he could work at the U. S. Department of Veterans Affairs Medical Center where he works on a volunteer basis.

Federal regulations provide that a debarring official may impose a debarment for the conviction of the commission of fraud, embezzlement, making false statements, or any other offense indicating a lack of business integrity directly affecting the present responsibility of a person. 34 C.F.R. §85.305(a)(1), (3), and (4). The cause for debarment must be established by a preponderance of the evidence. If the proposed debarment is based upon a conviction, the standard of proof is presumed to have been met. 34 C.F.R. §85.314(c)(1). Accordingly, I find that Mr. Koons' December 19, 2002, conviction for fraud against the United States supports the proposed Government-wide debarment. His misconduct indicates a lack of business integrity and honesty, which, in turn, questions the propriety of Federal government transactions with him for a specified period of time.

Under the provisions of 34 C.F.R. §85.320(a), the period of debarment should be commensurate with the seriousness of the cause and, generally, should not exceed three years. Although Mr. Koons was not the owner of Beacon, and may not have orchestrated this fraud, he was a facilitator in this misconduct that spanned approximately three years. Regardless of Mr. Koons' protestations of his innocence before me and his attempt to minimize his participation in the fraud, it is undisputed that he voluntarily pleaded guilty to the charged misconduct. He presented no information in the nature of clemency, other than his statement that he did not profit from this offense. After considering all of these factors, however, I believe his misconduct is less serious than that of his co-defendants and, therefore, the period of his debarment should be for less than the normal three-year period. In this case, a debarment for a period of two years is appropriate.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Mr. Thomas Koons be debarred from initiating, conducting, or otherwise participating in any covered transaction under the nonprocurement programs and activities of any Federal agency, and is ineligible to receive Federal financial and nonfinancial assistance or benefits from any Federal agency or activity for a period of two years, effective with the date of this decision. He may not act as a principal, as defined in 34 C.F.R. § 85.105, on behalf of any person in connection with a covered transaction. This debarment is effective for all covered transactions unless an agency head or authorized designee grants an exception for a particular transaction in accordance with 34 C.F.R. § 85.215.

Judge Richard F. O'Hair
Deciding Debarment and Suspension Official

Dated: March 15, 2004

SERVICE

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

Mr. Thomas W. Koons
Reg #62573-004-CE
Federal Prison Camp
P.O. Box 1000
Butner, NC 27509-1000

Mary E. Gust
Notice Debarment and Suspension Official
Administrative Actions and Appeals Division
U.S. Department of Education