



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

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In the Matter of

**Docket No. 10-09-SP**

**HAWAII BUSINESS COLLEGE,**

Federal Student Aid Proceeding

Respondent.

PRCN: 200930926867

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Appearances: Ronald L. Holt, Esq., Dunn & Davison, LLC, Kansas City, Missouri, for Hawaii Business College.

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

Before: Judge Ernest C. Canellos

**DECISION**

Hawaii Business College (HBC) had operated as a proprietary institution of higher education in Honolulu, Hawaii, offering programs leading to Associate Degrees. These programs were accredited by the Accrediting Commission for Independent Colleges and Schools and were eligible to participate in the Pell Grant and Federal Family Education Loan (FFEL) 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. § 2751 *et seq.* The Office of Federal Student Aid (FSA) administers these programs within the U. S. Department of Education (ED).

HBC ceased providing education and closed on June 28, 2007.\* As a consequence of HBC's closure, a number of its students could not complete their respective programs. Under the provisions of 20 U.S.C. §1087(c), the Secretary of Education is directed to pay off the Title IV loans of any such student and then discharge the obligations of those students who apply to ED for such discharge and certify that they were unable to complete their education because of the

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\* Separately, HBC timely filed a required close-out audit and, on September 11, 2007, FSA issued a Final Audit Determination (FAD), thereon.

closure of their school. Once the student is discharged, the statute directs the Secretary, as the subrogee to the student's rights, to pursue recovery against the closed school for the amounts forgiven. ED has promulgated 34 C.F.R § 682.402 (d) as its implementing regulatory authority regarding closed school loan discharges.

In order to determine the amount of HBC's liability for the discharged loans, FSA performed a program review focused on HBC's student records and the applications for discharge from HBC's former students. Based on the information garnered during the review, on January 13, 2010, a Final Program Review Determination (FPRD) was issued by FSA's, School Participation Team—San Francisco/Seattle, demanding the return of \$238,501.00 for 80 loans disbursed to 28 students. By letter dated February 26, 2010, HBC's counsel filed a written Request for Review challenging the finding of the FPRD.

HBC's main defense to FSA's demand is that the closure of the school was a result of the Secretary of Education's wrongful action. Specifically, ED refused to approve the acquisition of a controlling interest in HBC by a new owner, resulting in the loss of HBC's Title IV eligibility. HBC and its new owner filed an action before the United States District Court for the District of Hawaii, seeking a temporary restraining order (TRO) and a reversal of SFA's action. The District Court denied the TRO and issued a summary judgment in favor of ED. The plaintiffs appealed the adverse ruling of the District Court to the 9<sup>th</sup> Circuit Court of Appeals, which affirmed the District Court's decision. Finally, the plaintiffs petitioned the 9<sup>th</sup> Circuit for an en banc reconsideration of its decision which petition was, likewise, denied. The Circuit Court's decision forecloses HBC's assertion regarding this issue.

HBC's appeal also claimed that it was denied due process because FSA issued a FPRD without first issuing a program review report. HBC cites no authoritative support for such a claim and, I have previously held that, although it is common practice to do so, there is no such requirement. My previous holding was bottomed on the fact that a respondent is given an adequate opportunity to present evidence in defense before this tribunal. *See, In the Matter of New Concept Beauty Academy*, Docket No. 96-164-SP, U.S. Dep't of Educ. (April 29, 1998).

Additionally, HBC asserted that liability should be barred under the equitable theory of laches. Laches has been accepted as an affirmative defense in Subpart H proceedings in the past; however, to be meritorious, this defense requires the proponent to prove that an unreasonable delay by ED resulted in prejudice to the respondent. *See, In the Matter of Community College System of New Hampshire*, Docket No. 09-35-SA, U.S. Dep't of Educ. (June 21, 2010). *See also, In the Matter of American Business College*, Docket No. 03-100-SP, U.S. Dep't of Educ. (Decision upon Remand, August 10, 2010). Here, I find that neither of the required factors, unreasonable delay or prejudice has been established by HBC.

Finally, HBC alleges, without any evidentiary support, that some of the loan discharges may have been erroneously granted. Since it provides no evidence of that fact and, further, FSA's demand clearly specifies the names of the students and the amounts of their loans forgiven, I

reject that claim out-of-hand. I reach the same conclusion as to HBC's unsupported claim that laches bars FSA's recovery.

In a Subpart H -- audit and program review -- proceeding, the Respondent has the burden of proving, by a preponderance of the evidence, that Title IV funds it received were lawfully disbursed and earned. If it fails to establish the correctness of its expenditure of federal education funds, the Respondent must return the funds to ED. 34 C.F.R. § 668.116(d). The record is abundantly clear -- HBC has presented absolutely no evidentiary matter sufficient to comply with its burden of proof in this case. Therefore, consistent with the record before me, I find that HBC owes \$238,501.00, in Title IV liability.

**ORDER**

On the basis of the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that Hawaii Business College pay to the United States Department of Education the sum of \$238,501.00, in the manner as required by law.

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Ernest C. Canellos  
Chief Judge

Dated: August 16, 2010

SERVICE

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

Ronald L. Holt, Esq.  
Dunn & Davison, LLC  
Suite 2900, Town Pavilion  
1100 Walnut Street  
Kansas City, MO 64106  
Fax: (816) 292-7601

Russell B. Wolff, Esq.  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, S.W., Room 6E120  
Washington, D.C. 20202-2110  
Fax: 202-401-9533