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

In the Matter of

GALIANO CAREER ACADEMY,

Respondent.

Docket No. 11-71-SP

Federal Student Aid Proceeding

Appearances: Ronald L. Holt, Esq., and Julie J. Gibson, Esq., Dunn & Davison, Kansas City, Missouri, for Galiano Career Academy.

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

Before: Judge Ernest C. Canellos

DECISION UPON REMAND

On July 10, 2015, the Secretary issued a Decision in this matter that affirmed the initial decision, in part, and set aside the decision, in part. As pertaining to the set aside portion of his Decision, the Secretary included a Remand to conduct further proceedings to allow Federal Student Aid to make a new liability calculation consistent with his discussion contained therein relative to that finding. Since the previously assigned hearing official, Judge Richard F. O'Hair, retired from federal service and is unavailable, on July 15, 2015, I was appointed to act instead.

Upon my appointment, I issued a Further Order Governing Proceedings wherein I ordered Federal Student Aid (FSA) and Galiano Career Academy (GCA) to comply with the Secretary's directive by filing their respective briefs setting forth their positions relative to the amount at issue in the disputed finding. In his decision, Judge O'Hair found that "GCA's history as a fiduciary of Title IV funds evidences significant lapses of professionalism, and provides no basis for having any confidence that the Title IV program at GCA was properly administered." As a consequence, Judge O'Hair ordered GCA to return $3,635,550, all the Title IV funds it disbursed during the 2007-2008 and 2008-2009 award years.[1]

[1] These funds included $1,137,921 ordered returned by the Secretary's decision and $49,060 for a finding not appealed to the Secretary. Removing these amounts to avoid duplicate payment leaves a total of $2,448,569 before me.

In his Decision, the Secretary held that, on the facts before him, "FSA could have calculated liability based on an error rate from the sample in the initial program review or could have derived a new error rate projection based on the data provided by the auditor." This conclusion was based on the Secretary's determination that "FSA made no assertion that the independent auditors . . . were incompetent, fraudulent, or otherwise failed to create an accurate data set using the files provided to them." Finally, the Secretary held that, "[e]ven though FSA found the auditor's attestation unreliable, FSA could have calculated liability based on the error rate from the sample in the initial program review or could have derived a new error rate projection based on the data provided by the auditor."

Although the Secretary remanded the case to allow FSA to make a new calculation of liability in conformance with his decision, FSA argues in its brief that the liabilities approved in the initial decision should be sustained. FSA argued in its brief that the Respondent cannot sustain its burden of proof that their questioned expenditures were proper when the accounting it provided was fraudulently manipulated. FSA asserts that because it has no other meaningful alternative basis to calculate respondent's liabilities, it is the only liability calculation it can rationally present. FSA's position is best capsulated in its argument that "The Department is not alleging – and probably has never alleged … that the Respondent operated without *any* students … and that *all* the money it received was stolen . . . Rather, the question is whether Respondent, having provided the Department with some sort of accounting, has satisfied its duties as a fiduciary to provide a complete and accurate accounting upon which the Department can rely."

Since the salient facts relative to the issue before me are absolutely crucial, it is important that I recount them up-front. The overarching and most significant fact that I must consider is that Respondent's President and School Director, Michael Galiano, was convicted, pursuant to his plea of guilty, by the United States District Court, Middle District of Florida, Orlando Division, of Theft of Government Property, Obstruction of a Federal Audit, and Aggravated Identity Theft. Each of these violations directly involved Mr. Galiano's Title IV responsibilities at the Respondent. Upon his conviction, he was sentenced to six years confinement. As an attachment to its brief, FSA submitted copies of the Waiver of Indictment, Information, and Judgment in that criminal proceeding. I accept the offer of proof and append it to the record of this proceeding.[2] Suffice it is to say, these violations fall clearly under the ambit of criminal fraud. Of import, the information filed by the U.S. Attorney, to which Mr. Galiano pleaded guilty, charges that Mr. Galiano did knowingly and willfully embezzle, steal and convert FFEL and Pell Grant funds to his own use. Further, with intent to deceive and defraud the United States he obstructed federal auditors during an announced program review at Respondent. Finally, Mr. Galiano utilized another person's social security number in furtherance of his scheme.

[2] I note that it is quite clear that neither Judge O'Hair nor the Secretary considered Mr. Galiano's convictions when issuing their respective Decisions. First, Judge O'Hair's decision is dated on December 6, 2012, and predates the District Courts Judgment that is dated on February 26, 2014. Further, even though the Secretary's Decision is dated on July 10, 2015, I have searched the record of this proceeding and can find no previous mention of the conviction prior to it being offered as an attachment to FSA's brief.

In the face of the facts I have enumerated above, I must now consider the finding that is currently before me. Although given an opportunity to recalculate the recovery for that finding, FSA asserts it cannot, under the facts, do so. Respondent argues that the Secretary directed that be done and, in the absence of FSA's recalculation, offers its version of a recalculation. The Respondent claims that the loss is alternatively either $424,501, if it is based on the error rate projection from the auditor's attestation, or $545,406, if based on the error rate projection from the student sample. Based on the above, I am then forced to decide on the parties' competing versions of the appropriate finding. As an added factor, I note that even though Respondent's position relative to the amount of recovery was included in their scheduled brief and it was properly certified as being served on FSA's counsel, FSA's counsel has neither submitted a responsive brief nor requested an opportunity to do so. I must, therefore, accept Respondent's assertions as to the quantification of the proper amount of recovery as being, otherwise, factually unrebutted.

Consistent with the above recital, I make the following observations and findings:

> The governing regulations provide that in any Title IV audit and program review procedure, the Respondent has the burdens of proof of both production and persuasion. The Respondent must show that the questioned expenditures were proper and that it complied with Title IV program requirements. 34 C.F.R. § 668.116.
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> In any dealings under Title IV, the Respondent acts as a fiduciary -- that status also implicates the requirement to account. 34 C.F.R. § 668.14
>
> FSA has established that Mr. Galiano, as the owner and the one responsible for the operations at the Respondent committed fraud in actions relating to Title IV responsibilities. My review of the record reveals that Mr. Galiano admitted before Judge O'Hair that he changed entries in student ledgers and I agree with FSA argument that such actions clearly constituted fraud. Further, on February 2, 2014, Mr. Galiano was convicted of the felony offenses cited above by the U.S. Federal District Court for the Middle District of Florida, confirming such accusation.
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> It cannot be overstated -- fraudulent activity is the antithesis of the acts expected of a fiduciary. Finally, any such fraud, directly related to Title IV accountability makes any attempt to identify the loss occasioned with some degree of specificity impossible without further substantial investigative financial auditing. Stated another way, there is no practical way to assure FSA that any particular fact is true and not tainted by the fraudulent activities carried out at the Respondent.
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> Based on that determination, FSA, as the cognizant federal agency responsible for safeguarding Title IV funds, cannot assure compliance with Title IV under these circumstances. Whatever system that is employed to determine the estimated loss occasioned by the Respondent must rely on the data maintained by the Respondent – that recordkeeping has been shown to be less than reliable. Based upon my review of the record and the conclusions of both Judge O'Hair and the Secretary, I find that the

> submissions of the auditor in this proceeding fall far short of being, under the circumstances, an adequate audit for purposes of supporting an alternate to the return of all the Title IV funds disbursed during the 2007-08 and 2008-09 award years

In conclusion, I find that the Respondent has failed to meet its burden of establishing that anything less than the return of all the Title IV funds disbursed in the 2007-08 and 2008-09 award years is appropriate, under the circumstances. Given the above determinations, I find that the amount of Tile IV funds that the Respondent must return to the U.S. Department of Education for the finding before me is $2,448,569.

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Ernest C. Canellos
Chief Judge

Dated: December 1, 2015

SERVICE

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

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