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

In the Matter of **360 BEAUTY ACADEMY,**	**Docket No, 12-09-SP** Federal Student Aid Proceeding
Respondent	PRCN: 201040627335

Appearances: V. Wayne Isaacks, Esq., Isaacks & Associates, Houston, Texas, for 360 Beauty Academy.

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

360 Beauty Academy (Academy) was a proprietary institution of higher education that operated at a campus in Houston, Texas, offering training in cosmetology.[1] It was accredited by the National Accrediting Commission of Cosmetology Arts and Sciences and participated in the Federal Pell Grant and Direct Loan Programs authorized by 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.* Within the U. S. Department of Education (ED) the office having jurisdiction over and oversight of these programs is the office of Federal Student Aid (FSA).

From September 28, 2010, through December 8, 2010, a team of program review specialists from FSA's Dallas School Participation Team conducted an off-site program review at Academy. A program review report was issued on January 27, 2011, wherein several areas of regulatory non-compliance were noted. Subsequently, on December 21, 2011, FSA issued a Final Program Review Determination (FPRD) sustaining five adverse findings in the program review and demanding the return of $171,419.00 to ED. On January 24, 2012, Academy's owner appealed the findings of the FPRD. During the course of this proceeding, FSA accepted as dispositive some additional documentation provided by Academy, including the submission of

[1] 360 Beauty Academy closed on March 9, 2011.

full-file reviews that were required by the findings in the FPRD and, as a result, reduced its demand to $41,818.25.[2]

It is well established that in Subpart H -- audit and program review -- proceedings, the respondent has the burden of proving by the preponderance of the evidence, that the Title IV funds it received were lawfully disbursed. 34 C.F.R. § 668.116(d). If it fails to establish the correctness of its expenditure of federal education funds, it must return all such funds to ED. As a corollary to the above, once the respondent is given adequate notice of the demand by FSA in its FPRD, the established burdens of proof are implemented.

In the first finding of the FPRD, FSA asserts that Academy erred when it failed to verify certain required financial information submitted by four students whose applications for federal aid were selected for verification. *See,* 34 C.F.R. § 668.54(a)(2)(i). Academy concedes liability for two students, and offers no evidence in defense of its action as to a third student, in effect conceding liability. It defends its action vis-à-vis the claim regarding the fourth student by asserting that it did not possess a copy of the student's tax return because the student was not required to file a tax return for that year. That student's file was reviewed during the course of the program review and it contained a Verification Worksheet signed by the student indicating that she would be submitting a copy of her tax return, yet there was no such return located in the file. Before me, Academy offered a different Verification Worksheet allegedly signed by the student but bearing the same date as the one in the file, however, this time indicating that she would not be filing a tax return. FSA, not unexpectedly, points out the unlikelihood that both Verification Worksheets can be correct and alludes to the likelihood of the manufactured nature of the newly presented one.

The information provided by Academy is clearly not persuasive and does not satisfy its burden of proof and persuasion. I, also, question the efficacy of the second Verification Worksheet especially since it is not bolstered in any other way. The verification process is mandated for selected students to resolve inconsistencies in student-provided information so as to assure that federal student aid funds are appropriately disbursed. Here, at a bare minimum, the inconsistent information required resolution and that clearly was not done. Consequently, I affirm the first finding in total, and FSA's demand for the return of $7,218.90, for the four students at issue.

In the second finding of the FPRD, it was determined that Academy failed to properly calculate the tuition refunds due to three students that had withdrawn from school, as required by 34 C.F.R. § 668.22. Such refunds are required by 34 C.F.R. § 668.22(j) to be made within 45 days of a student's last day of attendance. During the course of the briefing process, FSA withdrew its claim relative to one student leaving only two students in issue. In one case, a student's last day of attendance was determined to be May 12, 2010 -- the student went on a leave of absence on that date and did not return to classes. However, Academy claims that the

[2] The FPRD required the Respondent to perform a full- file review of all potential errors uncovered upon review of the selected samples. The Respondent did not comply prior to the issuance of the FPRD and the FPRD ordered the return of all Title IV aid disbursed to students covered by that directive.

correct date of last attendance was really June 25, 2010, and argues that its calculation of refund for the student was correct. Other than providing an Exit Counseling Form, Academy provided no evidence that the student attended classes after May 12, 2010. I find that Academy failed to meet its burden of proof as to this claim. In the case of the second student, FSA alleged that Academy improperly disbursed $3,266.00 to the student's account after the last day of attendance of August 31, 2010. I find that this claim is not satisfactorily rebutted by Academy.

As part of the second finding, the program review report required Academy to perform a full-file review of all remaining students who withdrew from school to verify the refund calculations as to each of such students. Academy did not accomplish that review and, as a consequence, the FPRD demanded the return of all federal aid disbursed to those students. As a part of its defense before me, Academy submitted the results of a full-file review which FSA has accepted as dispositive of the majority of its claim relative to improper refunds. However, in addition to the two students enumerated above, the full-file review revealed that in the case of a third student, a $3,526.34 refund was due. Further, ED records indicate that no refund was paid and Academy offered nothing to establish that the refund was actually paid. In summary, I affirm FSA's demand in the second finding as follows: $1,739.38 for the first student; $3,266.00 for the second student and $3,526.34 for the third.

In finding three, the FPRD determined that Academy failed to resolve inconsistent information in student files as required by 34 C.F.R. § 668.16(f). The FPRD found violations in the case of three students; however, only two of those instances remain in issue. In the first, the student received two Plus Loans after receiving two Direct Loan disbursements. This situation is inconsistent because before a Direct Loan could be disbursed the Academy needed to determine that the student was ineligible for a Plus Loan. Apparently in recognition of its error, Academy returned the Plus Loan disbursements and the only claim FSA makes is for the $71.18 interest it paid as a result. As to the second student, it was established that the last date of attendance was August 12, 2009, yet ED's financial systems showed that the student received two subsequent disbursements, i.e. $1,742.00 on August 25, 2009, and $2,895.00 on January 12, 2010. Clearly, my review reveals that Academy has failed to establish that the disbursements were correct and, therefore, I sustain the finding as to these two students.

Finally, a full-file review of all students who received Title IV aid to determine potentially inconsistent information was submitted by Academy during the appellate process. Although FSA accepted the submission without further review, it notes that one student was not included in the review and demands that the Academy return $3,567.00 in Pell Grant funds and $7,000.00 in Direct Loan funds disbursed to that student. I note that this student was not specified in the FPRD and FSA's brief does not allege any inconsistent information in the student's files, yet it asks for the return of all Title IV aid on the mere supposition that there could be an erroneous payment. Without any notice of inconsistent information present, either in the FPRD or in the evidentiary matter submitted to me, I cannot sustain a finding of liability as to that student.

In finding twelve of the FPRD, the FPRD, FSA alleges that Academy improperly disbursed Title IV aid to a student after it had received notice that the student had previously defaulted on a Title IV loan, in violation of 34 C.F.R. § 668.32(g)(1). ED records reveal that

included in the improperly disbursed aid are two Pell Grant and two Direct Loan disbursements, totaling $10,300.90, and that this amount is still outstanding. Although Academy infers that its servicer was responsible for the erroneous disbursements, this does not in any way, constitute a defense in this action and I affirm FSA's demand for the return of $10,300.90 for this finding.

In finding eighteen of the FPRD, FSA seeks recovery for the Direct Loan discharge it granted to a student enrolled in Academy when it closed. Under 34 C.F.R. § 685.214, Direct Loan discharges are authorized for students in attendance when a school closes. When a student's loan is discharged, his refund entitlement from the school is deemed to be assigned to ED. 34 C.F.R. § 685.214(e). One student received such a discharge for $9,500.00 in direct loans after applying to ED for, and establishing his entitlement to, such discharge. In its appeal presentation, Academy fails to offer any evidence that the discharge was, somehow, improper or there is any other recognizable to defense to this claim. Therefore, I affirm FSA's demand for the return of $9,500.00 for this finding.

FINDINGS

To recapitulate my findings in this proceeding: Finding One is AFFIRMED in the amount of $7,218.90; Finding Two is AFFIRMED in the amount of $8,531.72; Finding Three is affirmed in the amount of $4,708.18; Finding Twelve is AFFIRMED in the amount of $10,300.90; and Finding Eighteen is AFFIRMED in the amount of $9,500.00.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that 360 Beauty Academy pay to the United States Department of Education the sum of $40,258.70, in the manner as required by law.

Ernest C. Canellos
Chief Judge

Dated: August 23, 2012

SERVICE

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

V. Wayne Isaacks, Esq.
Isaacks & Associates, Ltd., LLP
12777 Jones Road, Suite 100
Houston, TX 77070
Fax: (281) 807-6173

Russell B. Wolff, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W., Room 6C155
Washington, D.C. 20202-2110
Fax: (202) 401-5391