



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

In the Matter of

VELMA B'S BEAUTY ACADEMY,

Respondent.

Docket No. 13-09-SA

Federal Student Aid Proceeding

ACN: 06-2008-82003

Appearances: Ms. Velma Brooks, Dallas, TX, for Velma B's Beauty Academy.

Denise Morelli, 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

Velma B's Beauty Academy (Velma B's) was a proprietary institution of higher education located in Dallas, Texas. It had participated in the federal student financial assistance 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.* The Office of Federal Student Aid (FSA) is the cognizant agency within the U.S. Department of Education (ED) that administers and has oversight over these programs.

On November 18, 2008, Velma B's closed and ceased participation in the Title IV programs. One of the consequences of closing and ceasing to participate in the Title IV programs is that an institution must file a timely close-out audit. 34 C.F.R § 668.26(b) (2) (ii). On February 15, 2013, FSA issued an Amended Final Audit Determination (FAD) wherein it determined that Velma B's failed to provide the required close-out audit and, as a consequence, was ordered to repay \$64,227.66, to ED. On March 21, 2013, Respondent's President filed a Request for Review in the above-captioned proceeding challenging the findings of that FAD. On May 1, 2013, I issued an Order Governing Proceedings (OGP) wherein I ordered Velma B's to file its submission by May 1, 2013. I subsequently extended the date for such filing to July 7,

2013. Since no submission was tendered by that date, on September 11, 2013, I issued an Order to Show Cause why I should not enter a default judgment in favor of FSA.

On September 30, 2013, I received Velma B's submission followed by FSA's response on October 29, 2013. Velma B's submission inexplicably was captioned with Docket Number 06-48-SA and not with the correct citation of the present proceeding and it addressed issues not germane to those before me now. I had previously presided over a Title IV hearing involving Velma B's under that docket number and issued a decision on the matters contained therein on August 26, 2008. My review reveals that the issues currently before me are completely separate from those involved in the preceding case.

In this proceeding, the Respondent has the burden of proving that its expenditures of Title IV funds were correct. *See* 34 C.F.R. § 668.116(d). In that context, 34 C.F.R. § 668.26 provides: that upon ceasing to provide educational instruction, a school which participated in federal student assistance programs must engage an auditor to carry out an independent audit; a letter of engagement for such audit must be provided to the Secretary within 45 days; and the requisite audit report must be submitted within 45 days of the engagement letter. I find that Velma B's has failed to satisfy any of these requirements. My review of Velma B's presentation reveals it does not contain the required close out audit and clearly has not complied with its obligation to establish the correctness of its expenditures of Title IV funds so as to satisfy its evidentiary burden.

FSA's position, as enunciated in its brief, is quite straightforward. A close-out audit is required -- failing to submit such an audit equates to the inability to account for federal funds for the period since the last periodic audit. As a consequence, FSA demands that the Respondent return all the Title IV funds it received since the last audit period, ending on June 30, 2008, through its date of closing on November 18, 2008. FSA's demand includes funds for: Pell Grants -- \$55,727.66; and FSEOG -- \$8,500.00 for a total demand for the return of \$64,227.66.

As I have previously commented in similar situations, it is fair to surmise that not all of the federal funds drawn down by Velma B's were erroneously spent -- it is possible, if not probable, that some of those funds were properly expended. Yet, the great weight of authority supports the demand for the return of all funds drawn down since the last audit period. This anomalous situation results from the fact that the Respondent is a fiduciary as to federal funds in its possession, and as a fiduciary, it has the legal duty to account. *See generally, In re Samverly College of Barber/Hairstyling*, Docket No. 96-144-SP, U.D. Dep't of Educ. (June 21, 2000). In this regard, Velma B's has failed to account either by filing the mandated close-out audit or by submitting some alternative and acceptable proof of the correctness of the expenditures.

Most important, FSA as the responsible federal agency is left with no other acceptable alternative than to consider all the questioned funds to be improperly accounted for and demand its return. By signing its Program Participation Agreement with FSA, Velma B's acknowledged its responsibility to act as a fiduciary, to comply with all Title IV program requirements and to account for the federal funds entrusted to it. Merely stating that a close-out audit will be submitted falls far short of satisfying that responsibility.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ordered that Velma B's Beauty Academy repay to the United States Department of Education the sum of \$64,227.66, as demanded in the FAD.

Ernest C. Canellos
Chief Judge

Dated: December 4, 2013

SERVICE

A copy of the attached document was sent by Certified U.S. Mail, Return Receipt Requested, to the following:

Ms. Velma Brooks, President
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