



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

**TIFFANY'S COLLEGE
OF HAIR DESIGN,**

Respondent

Docket No. 93-26-ST
Student Financial Assistance
Proceeding

DECISION OF THE SECRETARY

This matter comes before the Secretary on appeal by Tiffany's College of Hair Design (Tiffany's), of the "Decision" issued by Administrative Law Judge (ALJ) Paul S. Cross on June 21, 1993. In his Decision, the ALJ found that the stipulation agreement voluntarily entered into by both parties, with advice and assistance of counsel, is fully enforceable. In making this determination, the ALJ found no evidence "that the enforcement of the stipulated settlement would work a manifest injustice on the respondent or Ms. Martin," Decision (Dec.) at 3, and that "[the] agreement to the settlement terms was knowing and voluntary." *Id.* at 4. I agree, and for the reasons outlined below, I affirm the ALJ's decision.

DISCUSSION

On May 11, 1993, this matter was set for hearing in Joplin, Missouri. The respondent was represented by Jay Cook, Esq., and Roger Hilfiger, Esq., from the firm Sandlin, Cook & Hilfiger. The Office of Student Financial Assistance Programs (SFAP) was represented by the Department's Office of the General Counsel and a representative of the Compliance and Enforcement Division. Numerous potential witnesses were also present on behalf of the Department.

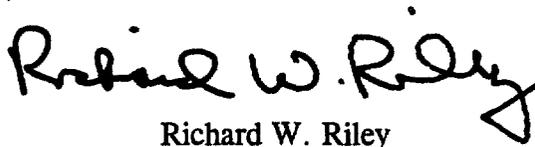
Prior to the hearing, counsel jointly requested time to pursue settlement. After over two hours of negotiation, counsel jointly reported to the court that a settlement had been reached, and stipulated its terms on the record and in open court. The ALJ accepted the settlement, closed the record, and instructed counsel to submit a motion requesting formal dismissal of the action. When such motion was not forthcoming, counsel for SFAP requested a telephone conference to address the status of the case. Apparently, Osa May Martin, owner of the respondent institution, had retained new counsel and would not sign the formal settlement agreement reflecting the stipulated settlement terms. New counsel for the respondent filed his notice of appearance on June 16, 1993.

On June 17, 1993, the ALJ convened a telephone conference. Both former and new counsel participated on behalf of the respondent and Ms. Martin. New counsel argued that the settlement terms were inequitable, objecting specifically to provisions requiring Ms. Martin's voluntary exclusion from Department programs for 10 years and termination of respondent's participation in Departmental Title IV programs. Counsel for SFAP argued that the stipulation should be enforced because it was voluntarily entered into by Ms. Martin with the advice and counsel of her lawyers.

There can be no question that respondent knowingly, voluntarily, and with advice of counsel, entered into the stipulated agreement. Such agreements may not be set aside at will. U.S. v. Montgomery, 620 F.2d 753, cert. denied, 449 U.S. 882 (1980). Only where enforcement of such stipulations would work a manifest injustice, Sinicropi v. Milone, 915 F.2d 66 (2d Cir. 1990), or would violate public policy, have courts refused to enforce them. There is no evidence as to either exception in this case. Indeed, counsel not only failed to offer such evidence, but actually conceded that neither the respondent nor Ms. Martin challenged the competency of the legal representation they received at the time the settlement terms were reached. Moreover, after careful review of the transcript, as well as respondent's evidence, time sheets, financial statements, and auditor's reports, it is not at all clear that a different outcome would have resulted had the case proceeded to hearing. Thus, new counsel's own lack of evidence aside, there is simply no proof of either manifest injustice or a violation of public policy.

Accordingly, the decision of Administrative Law Judge Paul S. Cross is affirmed.

So ordered this 5th day of April, 1994.


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