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

In the Matter of	**Docket No. 16-23-SP**
THE SALON AND SPA INSTITUTE (TX)	Federal Student Aid Proceeding
	PRCN: 2013-306-28258
Respondent	

Appearances: Anthony P. Troiani, Esq for The Salon and Spa Institute

Angela L. Sierra, Esq. Office for the General Counsel, U.S. Department of Education, Washington, DC, for Federal Student Aid

Before: Robert G. Layton, Administrative Judge

DECISION

The Salon and Spa Institute (SSI) is a vocational for-profit school located in Brownsville, Texas. Anthony P. Troiani, Esq., counsel for SSI, filed a written Request for Review in the above-styled proceeding. SSI challenges the findings presented in the Final Program Review Determination (FPRD), dated March 22, 2016, issued by the U.S. Department of Education, Federal Student Aid (FSA) office. The determination imposes a liability on SSI to pay $174,721.51 (later adjusted downward to $169,038.98) for violations of Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV) and its implementing regulations for the 2010-11 and 2011-12 award years. In the appeal process, FSA agreed the liability amount should be reduced to $169,038.98. Also during this appeal process, FSA discharged the loans of additional students.

SSI's review request was filed pursuant to 34 C.F.R. § 668.113(a). The appeal procedures are set forth in 34 C.F.R. Part 668, Subpart H. This liability is for Finding 1 of the FPRD. It arose when the owner and director of SSI falsified application information for students in order for the students to be falsely made eligible for Title IV funds at SSI. The falsified information was for the Ability to Benefit (ATB) tests. For students lacking a high school diploma or GED certificate, passing the ATB test is an alternative way to qualify for Title IV funds.

The facts in this appeal are uncontested. In order to receive more Title IV funds, SSI's director and owner Aurora Lozano (Lozano) falsified records for 15 students admitted under

SSI's ATB program. The liability resulting was reduced since SSI produced a GED for one of the students, with the revised total liability of $169,038.98, based on the school fraudulently disbursing Title IV funds to students who had not met the program qualification by demonstrating an ability to benefit from SSI's programs.

During the 2010-2011 and 2011-2012 award years at issue, an institution was allowed to administer Title IV funds to students without high school diplomas who demonstrated the ability to benefit (ATB) from Title IV by passing an independently administered test. 20 U.S.C. § 1091(d)(1), 34 C.F.R. § 668.32(c)(2). SSI administered Title IV funds to 14 students who lacked diplomas and who did not pass the ATB exam. In doing so, SSI received Title IV funds fraudulently via the falsified ATB information.

Although SSI does not dispute the facts of the falsification, SSI asserts it is not responsible to return the funds paid for ineligible students based on a number of arguments. SSI asserts that it is not responsible for the following reasons: because corrective measures including self-reporting should relieve it of the obligation to repay the funds; because Lozano committed the fraud, SSI should not also be held responsible; because some of the students completed their program and are licensed by the State of Texas, they have benefitted from the Title IV funds; because some of the students repaid their debts, FSA may not recover funds for those students, and because of the time between the violations and the FPRD.

This action by FSA is not punitive. The action at issue is whether or not SSI, acting as a fiduciary while distributing federal funds, falsified qualifications and improperly disbursed federal dollars. FSA has noted that SSI did self-report the actions of its director and owner promptly. However, the monetary refund amounts assessed as liability against SSI are not penalties of any sort. This is an action imposing liability for SSI to return Title IV Funds to FSA which SSI was entrusted to hold as a fiduciary of FSA. The function of the program review is not to punish institutions for wrongful acts. The function is to safeguard the federal dollars which are disbursed through the program on behalf of FSA by institutions such as SSI, and, where appropriate, require the institutions to repay wrongfully obtained funds.

As a fiduciary, SSI is subject to the highest standard of care and diligence in administering the Title IV program. 34 C.F.R. §§ 668.82(a)-(b). An eligible school owes the Department the highest standard of care and diligence to ensure the funds are efficiently administered and properly spent. SSI did not maintain the highest standard of care and diligence in disbursing Title IV funds.

Concerning the corrective measures and the argument that it was not SSI who committed the fraud, SSI is responsible as a fiduciary to return spent funds that were unauthorized, and especially so when the funds were spent because of intentionally falsified test results. *See In the Matter of the University of Birmingham, The Shakespeare Institute,* Dkt. No. 99-83-SP, U.S. Dep't of Educ. (March 30, 2001). While not ascribed in this proceeding with any bad intent, SSI is in the best position to oversee those within the school who administer FSA funds, and in exchange for the benefit of enhanced funding sources for SSI, the school assumes the responsibility for proper administration of the federal Title IV program. That is particularly true when, as in the present case, the fraudulent actions were not those of an unknown rogue

employee, but were the conduct of the owner and campus director of SSI.

SSI also asserts a number of reasons why it believes it was inappropriate for FSA to discharge the borrowers' obligation to repay Direct Loans in this matter. FSA discharged the obligations to prevent a double recovery to the Department from SSI and the students, and are expressly authorized by 34 C.F.R. § 685.215(a)(1)(i). Nowhere in 34 C.F.R. § 685.215 is there due process/notification requirement or a borrowers loan discharge application imposed prior to such discharge due to a false certification by the school. In fact, 34 C.F.R. § 685.215(c)(7) says that the Secretary may discharge a loan without an application from the borrower if the Secretary determines the borrower qualifies for a discharge. While no formal further proceedings were specifically mandated prior to such discharge, this proceeding nonetheless allowed SSI further briefing opportunities to be heard and to make its assertions.

SSI further argues that since students completed the program and were also licensed by the State of Texas, it is therefore not liable for the unauthorized spending of Title IV funds. This argument ignores established decisions on the subject. A student's graduation from a program of instruction does not relieve an institution of liability for the improper receipt of Title IV funds on behalf of an ineligible student. *In the Matter of Fortis College,* Dkt. No. 12-55-SP, U.S. Dep't of Educ. , (March 17, 2015)(Decision of the Secretary) at 7 ("Even where ineligible students graduated from programs, the Department has held the institution that made the ineligible disbursement is liable to the Department."), (citing *In re Hope Career Institute*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008)), *In re Avalon Beauty College*, Dkt. No. 04-24-SP, U.S. Dep't of Educ. (Dec. 29, 2004).

This decision is also mindful of another recent decision involving fraud; namely, the recent Secretary's administrative decision, *Galiano Career Academy*, Dkt. No. 11-71-SP, U.S Dep't of Educ. (Nov. 28, 2017). *Galiano* is distinguishable from the present case. In *Galiano,* the school faced liability from criminal fraud involving the manipulation of student records. FSA there asserted that the fraud was so widespread and systemic that it made assessing any error rate impossible, and required 100 % liability. The Secretary there disagreed, and determined the fraud was limited. Because it was non-systematic evidence of fraud, there was no justification for imposing liability for return of all Title IV funds. Unlike in *Galiano,* the present case does not involve any error rate to be calculated. Here, the exact amount of the ineligible disbursements due to ineligible students is known, and there is no question of error rates, estimations of liability, or how much money is due to be returned.

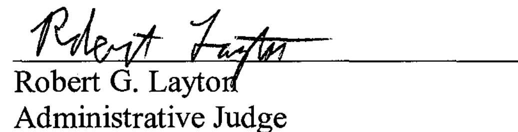
Concerning SSI's argument about the length of time for the FPRD and administrative review, the Supreme Court noted in *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 547 (1985), that "[t]he Due Process Clause requires provision of a hearing 'at a meaningful time.'" *E.g., Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). However, reviewing courts give broad latitude to administrative bodies on the timeframe required to fully adjudicate an administrative claim. SSI asserts that the time for the review constituted a delay that amounts to a denial of administrative procedural due process. SSI theory is that as a result, it has been denied access to witnesses and information. Since the falsifications are not in dispute, and since SSI acquiesced to some of the additional time in the process, SSI's argument is unconvincing. Because SSI has not shown any prejudice from the passage of time in issuing the FPRD, or that the delay was

unreasonable, it is not entitled to relief on the argument. *See In Re Denver Academy of Court Reporting*, Dkt. No. 05-26-SP, U.S. Dep't of Educ. (Sept. 27, 2005) (citing *In re OIC Vocational Institute*, Dkt. No. 98-12-SP, U.S. Dep't of Educ. (Sept. 23, 1998)).

Finally, SSI argues that the students whose test results were falsified by Lozano somehow have colluded with Lozano, and therefore should not be eligible for loan discharge. The evidence in Exhibits R-16 through R-19 fails to establish collusion by the students, and as FSA points out, "the Department is not required, nor would it be a productive use of agency resources, to conduct an investigation of the students who were the victims of SSI's fraud." *FSA Reply Brief, at 6.*

ORDER

On the basis of the above, I order that the Salon and Spa Institute pay to the U.S. Department of Education the adjusted sum of $169,038.98 as demanded in the Final Program Review Determination.



Robert G. Layton
Administrative Judge

Dated: January 18, 2018

SERVICE

A copy of the attached document was sent by U.S. Mail, certified, return receipt to:

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