

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA

In the Matter of the Citation Against:

BEAT LAB ACADEMY. YEHUDA BEN-ATAR

2501 Colorado Blvd. Ste. B

Los Angeles, CA 90041

Citation No.: 1819103

Case No. 1001507

OAH Case No.: 2019071099

Respondent.

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on MAY 06 2021, 2021.

It is so ORDERED March 30, 2021.



RYAN MARCROFT
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION
DEPARTMENT OF CONSUMER AFFAIRS

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF PRIVATE POSTSECONDARY
EDUCATION
STATE OF CALIFORNIA**

In the Matter of the Citation against:

BEAT LAB ACADEMY, YEHUDA BEN-ATAR, Respondent

Agency Case No. 1001507

OAH No. 2019071099

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter by videoconference on October 20-21, 2020, at Los Angeles, California.

Helene E. Rouse, Deputy Attorney General, appeared and represented complainant Christina Villanueva, Discipline Manager of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, State of California.

Yehuda Ben-Atar (Owner), the owner and chief executive officer of respondent Beat Lab Academy, appeared and represented respondent.

Oral and documentary evidence was received. The administrative law judge closed the record and took the matter under submission on October 21, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 31, 2019, while acting in her official capacity, complainant issued respondent a Citation: Assessment of Fine and Order of Abatement (Citation) for operating a private postsecondary educational institution without the Bureau's approval in violation of Education Code section 94886. Complainant assessed a fine in the sum of \$100,000 and ordered respondent to cease operating as a private postsecondary educational institution until an approval is obtained from the Bureau.

2. On February 13, 2019, respondent filed a timely appeal of the Citation, requesting an informal conference and an administrative hearing.

3. On March 8, 2019, after holding an informal telephone conference with the Owner, complainant affirmed the Citation including the assessed fine and order of abatement. Accordingly, complainant filed a request with the Office of Administrative Hearings to set the matter for this administrative hearing.

Bureau Investigation - 2016

4. Respondent incorporated in California on September 8, 2014 and began operating as a music school in 2015.

5. On May 3, 2016, Eva Castro, a Bureau Investigator, began investigating respondent's operations. The investigation was initiated by an internal "tip referral" from the Bureau's licensing unit on March 11, 2016.

6. Investigator Castro accessed respondent's website and observed representations of a "Beat Lab Certification Program." A print-out of respondent's website dated March 10, 2016, described the education program as follows: "Learn Music Production from the leading instructors in the industry. Engage in a unique musical experience to become a professional music producer." (Ex. 6, p. 020.) The four-month program consisted of three courses described as: "Level 1 Foundations of Music Production," "Level 2 artist progression," and "Level 3 becoming a super producer." (Ex. 6, pp. 020-021.) The website provided further details on the benefits of the program to students, and the equipment and software students would need to enroll in the program. The advertised cost of the program was \$4,295. (Ex. 6, p. 022.)

7. On May 9, 2016, Investigator Castro interviewed the Owner by telephone. The Owner informed Investigator Castro that nine students were enrolled in the certificate program. Investigator Castro explained that "an institution offering an educational program for a total cost [of] \$2,500 or more would require [Bureau] approval prior to operating." (Ex. 6, p. 008.) The Owner claimed to have no knowledge of the Bureau or the law requiring its approval. Investigator Castro instructed the Owner of three options to comply with the law: cease operating as a private postsecondary institution; permanently reduce tuition for the total program to a sum less than \$2,500; or submit an application for Bureau approval to operate and pay the application fee.

8. Investigator Castro followed up by email and requested the following documents: An example of the completion certificate, enrollments agreements for the nine students, invoices for tuition, and "proof of removal of the website advertisement." (Ex. 6, p. 008.) The Owner provided documents requested by Investigator Castro, including: a certificate issued to a student on April 21, 2016 to

certify that the student had "successfully completed all the requirements of the Beat Lab Certification program" (Ex. 6, p. 048.); copies of Beat Lab Certification Enrollment Agreements between respondent and its students in May 2016; copies of Beat Lab Invoices dated in January through April 2016, reflecting payments either in the amount of \$4,295 or in a lesser amounts as part of a "payment plan" towards the three levels of courses; and a screenshot of the website where [respondent] advertised the program tuition was removed." (Ex. 6, p. 008.)

9. On June 3, 2016, Investigator Castro observed that respondent had removed the advertised tuition cost for the program, consistent with the Owner's representations that the price would be removed from all advertising. Respondent implemented a rule and policy allowing students to "enroll in any of the Certification Program Course Levels 1-4 independently of each other, and in any order" and to pay for each course independently. (Ex. F, part IV; Ex. G, p. 9.) Because each course was less than \$2,500, the Owner believed these changes cured any violation of the Education Code and that respondent was exempt from the requirement to obtain Bureau approval.

10. After receiving the documents from the Owner, Investigator Castro took no action in 2016 to refer the matter for disciplinary or regulatory action against respondent.

Follow-Up Investigations – 2018 to the present

11. On May 18, 2018, almost two years later, Investigator Castro revisited respondent's website and observed advertisements for a series of courses, including a "6-month Beat Lab Certification program for \$6,595." (Ex. 6, p. 009.) A print-out of respondent's website on May 22, 2018, shows that the program was expanded to

include a course in "Producer Skills" as the fourth level of the program. Respondent's website described the program as offering students "all the tools needed to become a professional music producer. (Ex. 6, p. 091.) Tuition was advertised in two methods of payment: "pay-per-level" at the rate of \$1,695 or "pay-in-full" at the rate of \$6,595. (Ex. 6, p. 097.) In 2018, respondent also advertised a 12-week program in Modern Sound Design at a cost of \$1,050, an eight-week program in Piano Skills for Producer at a cost of \$850, and a 12-week disc jockey (DJ) program at a cost of \$1,250.

12. Respondent has a presence on Yelp. From 2015 through 2018, dozens of Yelp reviews were posted by students who completed the program. The reviews were uniformly positive and promoted respondent's operations. (Ex. 6, pp. 114-121.) No evidence was presented to show that respondent posted any details on Yelp about its programming and costs, or any content other than the nature of its business, its business location, hours of operation, and contact information.

13. Respondent has a Twitter personalized timeline where it describes its business as a "music production school in Eagle Rock, CA [that] offers a unique, dynamic classroom environment where students learn to produce music interacting with each other." (Ex. 6, p. 123.) A print-out of its Twitter feed on May 24, 2018 does not describe any details about its educational programming or charges.

14. In 2018, Investigator Castro did not interview the Owner or examine any documents other than respondent's website and postings made online at Yelp and Twitter during her supplemental investigation.

15. In her Investigation Report dated June 18, 2018, Investigator Castro recommended the case be referred for citation based on her observations in 2016 and 2018.

16. On January 7, 2020, Abby Boxwell, a Bureau Investigator, issued a Supplemental Investigation Report in anticipation of the hearing on the Citation. The Supplemental Investigation Report explained that Investigator Castro was no longer employed by the Bureau and that the Bureau assigned Investigator Boxwell to testify at hearing.

17. After she was assigned, Investigator Boxwell examined respondent's website on August 6, 2019, and on January 6, 2020; she observed on each occasion that respondent was offering its Beat Lab Certification Program for a total tuition exceeding \$7,180. She noted that each of the four levels, "if taken individually, are priced (\$1,795) below the exemption threshold of \$2,500.00. But for a student wishing to attain the certification offered by [respondent], all four levels must be completed. The tuition for the entire program (all Four levels) totals \$7,180.00." (Ex. 7, pp. 001-002.) Investigator Boxwell testified that she reviewed the enrollment agreements and invoices produced by the Owner in 2016 in determining her opinion that respondent continues to violate Education Code section 94886 and does not qualify for the exemption because respondent continues to offer the Beat Lab Certification Program which exceeds \$2,500 in value.

18. Respondent has not applied for Approval to Operate. The application fee for an approval to operate is \$5,000 pursuant to Education Code section 94930.5. The Owner testified that respondent had not filed for Approval to Operate because the organization could not afford the application fee and he believed he had cured the violations described by Investigator Castro. The Owner acknowledged that respondent continued to offer a discount for advance payment of all courses in the Certification Program, either by payment in full or under various installment plans, and to issue certificates to students who complete the Certification Program. However, the Owner

believed that allowing students the option to take courses independently was sufficient to qualify for the exemption since each course level was less than \$2,500.

Other Considerations

19. Respondent has adopted the following mission statement: "Education through practical studies of music career routes with a focus on community driven networking and collaboration." (Ex. G.)

20. No student has filed a complaint with the Bureau. Student Edwin Gould III has taken all courses offered by respondent and received a certificate upon completion. He paid for each level separately and was not directed to pay for the entire certification program as a bundle. Written testimonials support respondent's direct evidence that it offers music education courses that are satisfying and beneficial to students, both personally and professionally, and that the level and quality of the courses are commensurate with the amounts charged.

21. Respondent has adopted policies towards children who enroll in any of its courses to ensure that payments are made by an adult and to protect their privacy. (Ex. F.) None of the academic requirements adopted in respondent's rule and policies requires a high school diploma or equivalent or that a student be beyond the age of secondary education.

22. For the tax year 2018, respondent filed a U.S. Corporate Income Tax Return (Form 1120) and reported \$30,544 in total assets, total income of \$471,459 and taxable income of \$5,796. For the tax year 2019, respondent filed a U.S. Corporate Income Tax Return (Form 1120) and reported total income of \$544,229 and taxable income of \$13,363.

23. Respondent did not hire an attorney for representation in the formation of its business. Respondent did not retain legal counsel until after the Citation was issued. On April 21, 2020, attorney James Victor Kosnett filed a notice of withdrawal as respondent attorney of record in this administrative action.

24. The Owner divorced in 2019 and has joint custody of two children.

LEGAL CONCLUSIONS

Governing Law

1. Private Postsecondary Education institutions are governed by the California Private Postsecondary Education Act of 2009 (Act). (Ed. Code, § 94800 et seq.) Generally, the Act prohibits the operation of a private postsecondary educational institution in California without obtaining an approval to operate under the Act. (Ed. Code, § 94886.)

2. An institution is exempt from obtaining the Bureau's approval to operate if it does not award degrees and solely provides educational programs for total charges of \$2,500 or less when no part of the total charges is paid from state or federal student financial aid programs. (Ed. Code, § 94874, subd. (f).)

3. Notwithstanding any other provision of law, the Bureau must cite any person for operating an institution without proper approval to operate issued by the Bureau pursuant to the Act. (Ed. Code, § 94944.) The Bureau Chief, or his or her designee, or the Director's designee, is authorized to issue citations containing orders of abatement and administrative fines not to exceed \$100,000 against persons who are

without proper approval to operate a private, postsecondary institution. (Cal. Code Regs., tit. 5, § 75020, subd. (b).)

Definitions

4. Unless the context requires otherwise, the definitions set forth in the Act govern its construction. (Ed. Code, § 94810.) The Act defines the following terms applicable to this case.

5. A "private postsecondary educational institution" is a private entity with a physical presence in the state of California that offers postsecondary education to the public for an institutional charge.

6. "Postsecondary education" means a formal institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education, including programs whose purpose is academic, vocational, or continuing professional education. (Ed. Code, § 94857.)

7. "Approval to operate" or "approval" means the authorization pursuant to the Act to offer to the public and to provide postsecondary educational programs, as well as the written document issued to an institution signifying its approval to operate. (Ed. Code, § 94817.)

8. "Approved to operate" or "approved" means that an institution has received authorization pursuant to the Act to offer to the public and to provide postsecondary educational programs. (Ed. Code, § 94817.5.)

9. "To offer to the public" means to advertise, publicize, solicit, or recruit. (Ed. Code, § 94868.)

10. "To operate" means to establish, keep, or maintain any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided. (Ed. Code, § 94869.)

11. "Educational program" means a planned sequence composed of a single course or module, or set of related courses or modules, that provides education, training, skills, or experience, or a combination of these. (Ed. Code, § 94837.)

12. "Degree" means a recognized educational credential awarded by an institution that signifies satisfactory completion of the requirements of a postsecondary educational program at the associate's level or above. (Ed. Code, § 94830.)

Discussion

13. Respondent is a private postsecondary educational institution because it is a private entity with a physical presence in Eagle Rock, California, that offers music education to the public for an institutional charge. The Beat Lab Certification Program is an educational program governed by the Act because it is a planned sequence composed of a set of four to six levels of related courses or modules that provide education, training, skills, or experience, or a combination of these. Although the cost of each level is less than \$2,500, respondent's educational program exceeds the exemption threshold by combining these levels into a planned sequence and charging in excess of \$2,500 for the sequence of levels.

14. The certificate issued upon completion of the certification program is not a degree because the award is not a recognized educational credential that signifies satisfactory completion of the requirements of a postsecondary educational program at the associate's level or above.

15. The curriculum of the Beat Lab Certification Program is designed without specific regard to whether students have completed or terminated their secondary education or are beyond the compulsory age of secondary education because it allows children to enroll in its courses so long as an adult makes the payment. Nonetheless, by marketing the Beat Lab Certification Program as a course of study to become a professional music producer, this particular program is primarily designed for adults seeking professional grade training. The publicized purpose of the Beat Lab Certification Program is vocational in nature, although the student's objective may be avocational or recreational.

16. It is noted that respondent offers education programs that qualify for the exemption, including a 12-week program in Modern Sound Design at a cost of \$1,050, an eight-week program in Piano Skills for Producer at a cost of \$850, and a 12-week disc jockey (DJ) program at a cost of \$1,250. However, because respondent has continuously offered the Beat lab Certification Program at a total cost exceeding \$2,500, cause exists to issue the citation under Education Code section 94944 because respondent operated as a private postsecondary educational institution without proper approval to operate in violation of Education Code section 94886.

Level of Discipline

17. The task in disciplinary cases is preventative, protective, and remedial, not punitive. (*In re Kelley* (1990) 52 Cal.3d 487, 496.) Ordering respondent to abate his continuing violation of the law serves the preventative and protective purpose of discipline.

18. After being informed of three options to comply with the Act, respondent chose not to use any operating funds either to obtain Bureau approval of

its operations or seek legal advice about compliance. Instead, respondent relied on the Owner's lay interpretation of the options that were given to continue operating without Bureau approval. Opting to form its business without legal advice may explain the Owner's initial ignorance of the law without excusing respondent's failure to comply with the Act. (*Hale v. Morgan* (1978) 22 Cal.3d 388.) Once put on notice of the law in 2016, however, respondent's failure to comply is not as much the result of ignorance as it is of carelessness and negligence, willful choices unembraced by the defense of excusable neglect. (*Doyle v. Rice Ranch Oil Co.* (1938) 28 Cal.App.2d 18.)

19. However, imposing the maximum fine allowed by law is unduly punitive under the facts and circumstances of this case. The Owner credibly testified that he had a bona fide belief that he had cured the violation by allowing students to pay for each level independently of each other. Investigator Castro's failure to impose a penalty for two years after receiving documents from the Owner supports his belief that he had cured the violation and is not convincing evidence of deliberate disobedience. No student has filed a consumer complaint against respondent and the uniformly positive reviews and testimonials from students indicate that the maximum fine is not warranted or necessary to protect the public or carry out the objectives of the Act.

20. The law and regulations authorize the imposition of a fine in any amount "not to exceed \$100,000." (Ed. Code, § 94944; Cal. Code Regs., tit. 5, § 75020, subd. (b), see Legal Conclusion 3.) Considering all facts and circumstances of this case, including the nature and severity of the violation and respondent's claims of financial and personal hardship, an administrative fine in the sum of \$10,000 is deemed fair and reasonable.

ORDER

Respondent's appeal is denied and the Citation is affirmed, except as ordered by this Decision. Respondent Beat Lab Academy shall pay a fine in the sum of \$10,000, pursuant to a payment plan approved by the Bureau, and cease operating as a private postsecondary educational institution until an approval is obtained from the Bureau.

DATE: 11/16/2020

Matthew Goldsby
Matthew Goldsby (Nov 16, 2020 16723 PST)
MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings