

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

In the Matter of the Statement of Issues
Against:

DOABA TRUCKING SCHOOL,
RASHPAL SINGH DHINDSA, OWNER,

Renewal of Approvals to Operate and Offer
Education Programs for Non-Accredited
Institutions Applicant

School Code 3303611

Respondent.

Case No. 1001520

OAH No. 2016090771

PROPOSED DECISION

The hearing in the above captioned matter took place on March 28, 2017, in Los Angeles, California before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Complainant Joanne Wenzel was represented by Gillian E. Friedman, Deputy Attorney General.

Rashpal Singh Dhindsa, the owner of Respondent Doaba Trucking School appeared. He was assisted by Jackie Patel and Sumitra Patel.

During the hearing, Complainant moved to amend the Statement of Issues, to add a new paragraph 21, which motion was granted. Given the length of the paragraph, it was reduced to writing, and is received as exhibit 8, and deemed incorporated into the Statement of Issues.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. Based on the record, the ALJ makes the following factual findings, legal conclusions, and orders.

SUMMARY

Respondent Doaba Trucking School (Respondent or the Institution) has operated for many years. In August 2011, it submitted a written application to renew its approval to operate. The Bureau for Private Postsecondary Education (Bureau) found deficiencies in the application, and communicated those findings to Respondent. Efforts were made by Respondent to remedy the application's deficiencies, but it could not or would not do so. Therefore, the Bureau denied the application on February 15, 2016, and it issued an amended Notice of Denial on March 22, 2016. Respondent requested a hearing in the matter and this proceeding ensued.

At the hearing, Bureau personnel testified that shortly before the hearing two of the deficiencies had been remedied, but that the third deficiency remained outstanding. That was the failure to submit proper financial documentation. Respondent submitted another financial statement on the eve of the hearing, but the Bureau's personnel provided evidence that it did not meet the regulatory requirements. An amendment was made to the Statement of Issues to clearly set out the basis of the deficiency in the financial documentation.

As set forth below, the Bureau's findings are supported by the evidence. The record establishes that Respondent has had many opportunities, over a period of years, to submit proper documentation to support its application, and it has failed to do so. The application should be denied.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant Joanne Wenzel brought the Statement of Issues in her official capacity as Chief of the Bureau, which is part of the Department of Consumer Affairs.

2. On August 22, 2011, the Bureau received an application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions (Application) from Rashpal Singh Dhindsa (Dhindsa), the owner of Respondent. The Application sought authorization for the Respondent to continue to operate a truck driving school. Dhindsa executed the Application under penalty of perjury, verifying that statements in the Application, and in any attachments, were true and correct.

3. Dhindsa was identified in the Application as the only owner of Respondent.

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4. Respondent was first approved to provide instruction on January 25, 2000, and that the approval expired on January 25, 2011.¹ Respondent had been approved to provide two programs, one called "Accelerated Truck Driving Program" and the other called "Professional Truck Driving Program." (Ex. 3.)

5. On March 22, 2016, the Bureau issued its Amended Notice of Denial of Application for Renewal of Approval to Operate (Amended Denial Notice) to Dhindsa and Respondent.² The Amended Denial Notice informed Respondent that it could no longer operate, but also gave notice that Respondent could appeal the denial of the Application, and that if it did so, it could continue to operate during the appeal process. Thereafter, Dhindsa wrote to the Bureau, and requested a hearing. He represented that he understood the violations, and that his company was in the process of "fixing all those violations." (Ex. 2, 4th page.)

6. This proceeding ensued, all jurisdictional requirements having been satisfied.

Deficiencies in the Application

7. On October 4, 2012, the Bureau sent a deficiency letter to Respondent which stated that there were four deficiencies. One had to do with the identity of an Agent for Service of Process. The second pertained to the enrollment agreement. The third pertained to "Financial Resources and Statements," and the fourth referred to the school's catalog. (Ex. 4, p. 1.)

8. (A) After the initial deficiency letter, there was a series of communications between the Bureau and Respondent where Respondent attempted to cure the deficiencies. Those communications continued until the day before the hearing, when Respondent submitted what purported to be "Audited Financial Statements." (Ex. 7.)

(B) In June 2013, Respondent remedied the deficiency pertaining to an Agent for Service of Process, as the Bureau no longer asserted such a deficiency after that time. (Ex. 4, p. 2.)

(C) However, deficiencies continued regarding the school catalog, enrollment agreement, and those pertaining to financial resources and statements.

¹ It appears that the Application was submitted approximately eight months after the approval expired. Such a late application was not alleged as grounds to deny the application.

² The earlier Notice of Denial, allegedly issued in February 2016, was not offered in evidence. It is inferred that such a document exists, by nature of the issuance of an amended notice.

Thus, for example, the Bureau sent a deficiency letter to Respondent on September 9, 2013, regarding the enrollment agreement, catalog, and financial resources and statements. That was followed up with an email from the Bureau regarding those matters, which was sent to Respondent on October 15, 2013. (Ex. 4, p. 2.) Respondent sent an enrollment agreement and catalog to the Bureau on November 12, 2015. On December 1, 2015, Respondent sent a Profit and Loss Statement for the year ending December 1, 2015 to the Bureau. Those items did not cure the deficiencies, and the Denial Notice and Amended Denial Notice followed.

9. After the request for hearing, and before the hearing took place, Respondent submitted enrollment form and catalog documents to the Bureau, as part of a "mitigation packet." As of the hearing, the Bureau deemed those documents adequate. Thus, at the time of the hearing, deficiencies in the catalog and enrollment form were no longer an issue, and were no longer asserted as grounds for denial of the Application. However, that was not the case regarding financial resources and statements.

Financial Statements and the Requirements for Them

10. Applicable regulations³ require that an institution such as Respondent must submit, with an application for renewal, current financial statements which meet certain requirements. Institutions with an annual gross income of more than \$500,000 must submit audited financial statements, and those with gross income below \$500,000 must submit renewed financial statements. (CCR, §71475, subd. (c).) A stiff penalty is asserted for failure to meet this requirement, as CCR section 71475, subdivision (kk) provides that an incomplete application filed under section 71475 will render an institution ineligible for renewal.

11. The financial statements must demonstrate that the institution has sufficient assets and financial resources to pay timely refunds and to pay all operating expenses for 30 days, and the institution must have a current ratio of assets to liabilities of 1.25 to 1.

12. (A) Respondent forwarded a financial statement to the Bureau that covered the period of January through December 2013. That statement was not received by the Bureau until June 2015. (Ex. 5, p. 1.) It does not satisfy the Bureau's regulatory requirements as it is not denominated as either a reviewed or audited statement. Of greater importance is the fact that it does not, on its face, purport to be a financial statement for Respondent. Rather, it is entitled "Dhindsa Group of Companies, Inc. Profit & Loss January through December 2013." (Ex. 5, p. 2.) That firm is not the entity that has held the Approval at issue in this case. The corporation referenced in the Profit and Loss Statement is controlled by Dhindsa and his two

³ The applicable regulations are found in California Code of Regulations (CCR), title 5, and hereafter all citations to the CCR shall be to title 5 thereof.

siblings. Respondent is a sole proprietorship, owned by Dhindsa, a matter confirmed by testimony at the hearing.

(B) Bureau staff analyzed the 2013 Profit and Loss statement as if the trucking school was a “dba” for the Dhindsa Group of Companies, Inc. However, although the corporation had assets of nearly 1.4 million dollars, it did not have enough cash on hand to meet the 30 day operating expense test, nor the requirement to be able to make refunds. (Ex. 5, p. 1.)

13. (A) On March 22, 2017, an unaudited cash flow statement for the years 2014 through 2016 was issued for “Doaba Trucking School, Inc.” It was received as exhibit 6. It was issued on the letterhead of Latiff Chapar, MBA, CPA, FCA. It shows net income in 2014 of just over \$19,000, a loss of \$3,320 in 2015, and net income in 2016 of \$6,440. (Ex. 6, p. 2.)

(B) The cover letter that accompanied the March 2017 cash flow statement describes it as a compilation based on management representations. The accountant states “I have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. (Ex. 6, p. 2.) Thus, exhibit 6 does not meet the regulatory requirements.

(C) Little credibility is assigned by the ALJ to the work of an accountant who issues financial documents for a corporation when the entity in question is a sole proprietorship.

14. (A) On March 27, 2017, Respondent submitted a document titled “Audited Financial Statements Doaba Trucking School.” (Ex. 7, p.1.) The statements cover the years 2015 and 2016, through December 31 of each year.

(B) The financial statements were, according to the documents, issued by “Small Business Consultants, Certified Public Accountants, Pasadena, CA.” (Ex. 7, pp. 1, 2.) No individual accountant is identified, and no person signed the statements. During the hearing, Sumitra Patel asserted that Latiff Chapar, whose name is found on exhibit 6, is the accountant behind Small Business Consultants.

(C) Like the cash flow documents issued earlier in March 2017, the audited statements purport to be issued to “the shareholders of DOABA Trucking School Inc.” (Ex. 7, p. 2.) The various statements that make up pages 3 through 5 all refer to DOABA Trucking School, Inc. at the top. The Notes to Financial Statements, found beginning at page 6 refer to Doaba as being a corporation, including a paragraph that describes the company and its business.

(D) The cover letter states that the audit was in accordance with the standards of the Public Company Accounting Oversight Board. Generally Accepted Accounting Principles are referenced in the notes.

(E) Page 3 of the financial statements show cash of \$4,124 at the end of 2016, and \$8,409 at the end of 2015. Sumitra Patel asserted that what is listed as a \$20,000 fixed asset is a truck, and that it should be considered a liquid asset as it could be sold if necessary. At bottom, the total assets at the end of 2016 were described as \$3,120. This does not appear sufficient to operate for 30 days.

15. Ms. Rule, a Bureau licensing analyst, testified credibly that she advised Jackie—inferentially Jackie Patel in attendance at the hearing—that Respondent should send a copy of the regulation pertaining to the financial issues and reports to an accountant, which would inform that person what was needed. If that ever happened, it does not appear that the accountant understood what was needed.

Other Matters

16. Jeff Mackey, a manager in the Bureau, testified credibly. He noted that the March 27, 2017 audited statements are not complete, because an audited statement must speak to internal control, and that was not done. He pointed out that the financial statements must be generated by an independent accountant, and that exhibit 7, by failing to identify the accounts who did the work, prevents the Bureau from determining if the accountants are independent or not. He also noted that the meager resources shown in the statements establishes that the school does not have an adequate ratio of assets to liabilities, or the ability to operate for 30 days, or to assure refunds to students.

17. Mr. Mackey acknowledged that in some cases, some other person or entity can provide the financial resources necessary to see to it that adequate financial resources are available to protect students, and to provide the ability for the particular educational institution to operate. No such arrangements have been sought or made by Dhindsa and his family, and at the time of the hearing the Bureau representatives did not wish to pursue such arrangements.

18. Sumitra Patel's demeanor, when she testified indicated, at times, a lack of respect for the Bureau's position and obligations, and a lack of recognition as to how Respondent was out of compliance. She stated at one point that the many months had passed from the time of the first deficiency notice until the Denial Notice because she and others had not been brought into the picture. Yet, since she seemed to have involved herself, the situation had not been cleared up, and Dhindsa's statement in his request for a hearing, one year before the hearing to the effect that he understood the deficiencies and was in the process of "fixing" them, had not panned out. After Ms. Patel gave her opinion that Respondent's truck constituted a liquid asset, she admitted she is a bookkeeper and not an accountant. A qualified accountant has long been needed to understand the financial requirements of the law, and to report on Respondent's condition. Ms. Patel also asserted, in a somewhat dismissive tone, that the Bureau should just look to the Dhindsa Group of Companies, Inc.

19. Dhindsa did not testify.

20. Respondent has operated since January 2011 without a renewed Approval to Operate. In that time Respondent has turned over wholly inadequate financial statements. To the extent the latest statements actually speak to Respondent's financial situation, the statements show that the Respondent's financial resources are inadequate. This poses a threat to students who would advance money for courses.

LEGAL CONCLUSIONS

1. An educational institution such as Respondent may not operate in California unless it is exempt from Bureau approval, or is in compliance with transition requirements, or has received Bureau approval. (Ed. Code, § 94886; see also §§ 9487, 94802.) There is no evidence that Respondent is exempt from Bureau approval, or that it is in transition. Therefore, it must receive Bureau approval to operate.

2. Cause was not established to deny approval of Respondent's Application pursuant to Education Code section 94887, and CCR, section 71800, subdivision (e)(2) and (11), because Respondent rectified the deficiency pertaining to student enrollment agreements, based on Factual Finding 9.

3. Cause was not established to deny approval of Respondent's Application pursuant to Education Code sections 94887 and 94920, subdivisions (b), (d), and (e), for failure to provide a compliant Student Enrollment Agreement, because that deficiency had been rectified, based on Factual Finding 9.

4. Cause was established to deny approval of Respondent's Application pursuant to Education Code section 94487, in conjunction with CCR sections 74115, subdivision (b)(1), (2), and (5), and 71745, subdivisions (a)(4), (5), (6), and (e), and (kk), because Respondent has failed to provide financial statements that comply with the aforementioned statutes and regulations. This Conclusion is based on Factual Findings 10-16, and 20.

5. There are no mitigating facts in this matter, and several aggravating facts. Respondent's Approval to Operate expired in January 2011, and it did not submit the Application for approximately eight months. Repeated communications from the Bureau to Respondent have not elicited critically important financial disclosures. Instead, financial statements for other entities, or a corporation that has no apparent right to a renewal of approval to operate, have been submitted, as late as the afternoon before the hearing. Six years and more have passed since Respondent's approval to operate expired, and it cannot be revived by the submission of unreliable financial disclosures.

6. The testimony of the Bureau's representatives, and a review of applicable statutes and regulations, show that minimal financial stability must be required of educational institutions such as Respondent, so that students, who often go into debt to obtain professional or occupational education, are protected. Those purposes coincide with the general purpose of proceedings of this type, which is to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) A review of the financial statements that have been doled out by Respondent during the last several years indicate that Respondent can not meet the statutory requirements of continued operation, and that its limited financial resources pose a danger to students. Therefore, the Bureau's denial of Respondent's Application must be upheld.

ORDER

1. The Application of Rashpal Singh Dhindsa, Owner, Doaba Trucking School, for a Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions, is hereby denied.

2. Respondent shall close, and in so doing, comply with the provisions of Education Code sections 94926 through 94927.5, and CCR section 76240.

3. Respondent and its employees and Dhindsa are again notified that a person found operating an institution without proper approval by the Bureau is subject to a fine not to exceed \$50,000 pursuant to Education Code section 94944.

April 24, 2017

DocuSigned by:
Joseph D. Montoya
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Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE DIRECTOR
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
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ORDER OF DECISION

DECISION

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.

The Decision shall become effective SEP - 2 2017.

DATED: August 2, 2017



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs