

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

In the Matter of the Statement of Issues
Against:

**THE BROTHERS & SISTERS
BARBERCOSMO ACADEMY**

Applicant for Renewal of Approval to
Operate an Accredited Institution,

Respondent.

Bureau Case No. 1002666

OAH No. 2017110825

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517, subdivision (c)(2)(B) and (c)(2)(C), the Order is revised to read:

The application of respondent The Brothers & Sisters BarberCosmo Academy to operate as an accredited institution is denied. The denial is, however, STAYED for a period of 30 days after the effective date of this decision, to allow respondent to comply with Education Code sections 94926 through 94927.5, and California Code of Regulations, title 5, section 76240, as directed by the bureau.

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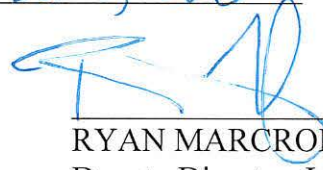
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Upon denial, The Brothers & Sisters BarberCosmo Academy shall cease operating as a private postsecondary institution in California, and may not resume operating unless or until it is approved to do so by the Bureau for Private Postsecondary Education.

NOV 17 2018

This Decision shall become effective on _____.

IT IS SO ORDERED October 8, 2018.



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on July 2, 2018, in Oakland, California.

Carter Ott, Deputy Attorney General, represented complainant Dr. Michael Marion, Jr., Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs.

Remigius Chibueze, Attorney at Law, represented The Brothers & Sisters BarberCosmo Academy, and officer Carol Rose Munene, who was present.

The record was closed and the matter submitted for decision on July 2, 2018.

FACTUAL FINDINGS

Introduction

1. Dr. Michael Marion, Jr. (complainant) brought the Fourth Amended Statement of Issues solely in his official capacity as the Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs (Bureau).

2. The Brothers & Sisters BarberCosmo Academy (respondent) is located in Oakland, California. It is a corporation. Carol Rose Munene is an officer of the corporation; she runs the day-to-day operations of the school.

3. The Bureau approves applications for schools to operate as non-accredited institutions and to operate as accredited institutions. In order to be approved by the Bureau to operate as an accredited institution, the applicant must submit a certified letter documenting current accreditation from the appropriate accrediting body. The term of an approval to operate as a non-accredited institution is five years; the term for an accredited institution mirrors the term of the school's accreditation.

The process for obtaining approval by accreditation from the Bureau is a streamlined process because the United States Department of Education has already approved the school. In order to be eligible for accreditation by an accrediting body, the school must have been in existence for three years, have solid procedures in place, acceptable graduation and placement rates, be financially solvent and must have a license to operate in the state where it is located. An application for accreditation with an accrediting body takes an extended period of time to process.

The Bureau's application for approval by accreditation is three pages long and requires an application fee of \$750. Obtaining approval from the Bureau to operate a non-accredited institution is more complex because the Bureau must independently verify that the school has the capacity to satisfy the minimum operating standards. (Educ. Code, § 94887.) The verification involves inspections by the Bureau as well as a review of the school's catalog, enrollment agreements and website. The application fee is 14 pages long and the Bureau charges an application fee of \$3,500.

4. This proceeding concerns respondent's appeal of the Bureau's denial of its application for approval to operate as an accredited institution.

Respondent's Approval History and New Approval Applications

5. On July 12, 2011, respondent's application for non-accredited approval was granted by the Bureau. On July 14, 2011, the Bureau approved the following programs offered by respondent: 1) Barbering; 2) Cosmetology Cross-Over Course; 3) Instructor Training Course; 4) Re-enrollment Course; and 5) Refresher Course. On August 7, 2015, the following courses were approved by the Bureau: 1) Barber-Cosmetology Cross-Over; 2) Cosmetology; 3) Cosmetology Instructor; 4) Electrolysis; 5) Esthetics; and 6) Manicurist.

6. Respondent's non-accredited approval expired on July 11, 2016. The Bureau allows a school to continue operating during a six-month grace period following expiration of an approval to operate. (Cal. Code Regs., tit. 5, § 71475, subd. (jj).)

7. On July 12, 2016, respondent submitted a renewal application to the Bureau to operate as an accredited institution (Application No. 29409). Respondent was not an accredited institution and had not been approved as an accredited institution; respondent should have submitted a renewal application to operate as a non-accredited institution. Respondent submitted an application fee in the amount of \$500 with the application.

On July 15, 2016, the Bureau sent a letter to respondent indicating that the wrong application and fee had been submitted. On August 10, 2016, respondent submitted a check for \$250. On August 11, 2016, a Bureau representative left a message for Munene advising her that respondent needed to submit the correct application before the application would be processed.

8. On September 28, 2016, Munene contacted the Bureau stating that respondent had applied for accreditation from the National Accrediting Commission of Career Arts & Sciences (NACCAS). Munene reported that the school anticipated receiving accreditation.

9. On November 10, 2016, Munene called Wayne Brenner, Staff Services Manager I at the Bureau. Brenner oversees applications for approvals to operate. During their conversation, Munene agreed to submit a renewal application for a non-accredited institution, since the school was operating with an expired approval. Brenner documented that several delivery dates had previously been promised with no renewal application having been received.

10. On November 18, 2016, the Bureau received a renewal application for a non-accredited school from respondent; however, the application fee of \$3,500 was not submitted with the application. The Bureau does not process applications if the fee is not submitted. The application and a no fee letter were sent back to respondent.

11. On November 23, 2016, Munene sent an email message to Brenner, advising him that pursuant to their conversation, she would be withdrawing the erroneous renewal application to operate as an accredited institution. On November 30, 2016, Application No. 29409 was identified as withdrawn in the Bureau's files.

12. On December 20, 2016, NACCAS notified respondent that its application for initial accreditation was granted for a period of two years, pending resolution of two stipulations. Compliance with the stipulations was required within 45 days. First, Munene was directed to attend a December 2016 workshop. Second, Munene was required to provide proof of four hours of continuing education in teaching methodology.

13. On December 20, 2016, Brenner received a call from Munene. She stated that she was still trying to raise money for the fee to renew the application of approval to operate a non-accredited institution. She also indicated that she had recently spoken with a representative at NACCAS, and anticipated that she would receive an accreditation letter shortly.

14. In December 2016, the Bureau notified NACCAS that respondent's license to operate in California had expired in July 2016, but it was still within a six-month grace period during which it could request reinstatement of that license. NACCAS requested that the Bureau keep it updated on respondent's licensure status.

15. The NACCAS Rules of Practice and Procedure, section 1.2, subdivision (c)(2), require that an institution be currently licensed by the state in which it is based in order to be eligible for accreditation. (See also, 34 C.F.R. § 602.28.) NACCAS withheld accreditation pending notification that respondent had renewed its California approval to operate.

16. On December 23, 2016, the Bureau received an application for approval to operate an accredited institution from respondent (Application No. 29844) and the \$750 application fee. The application did not contain a certified copy of its current verification of accreditation.

17. On January 9, 2017, Munene completed the two stipulations required by NACCAS.

18. On January 11, 2017, the six-month grace period following the expiration of respondent's approval to operate ended without the approval being renewed.

19. On January 23, 2017, Audria Arceo, a Bureau analyst, wrote to Munene regarding the application to operate an accredited institution (No. 29844). Arceo instructed respondent to submit a letter from NACCAS establishing current accreditation. Arceo further advised Munene that in order for the application to be granted respondent needed to submit evidence of the school's business entity registration with the Secretary of State, approval to operate from the Board of Barbering and Cosmetology, the 2011 and 2015 annual fees, and the 2015 annual report. Arceo requested a response by February 24, 2017; no response was received.

20. On March 2, 2017, Arceo again wrote to Munene concerning the application to operate an accredited institution (No. 29844). Arceo reiterated the Bureau was unable to grant approval because it had not received a letter from NACCAS. Arceo also identified various deficiencies with the catalog and enrollment agreement. No response to this letter was received by the Bureau.

21. On March 7, 2017, Brenner sent a deficiency letter to respondent, stating that Application No. 29844 was incomplete. In order for the application to be approved, respondent needed to submit a letter from NACCAS documenting current accreditation, with the following information: a) a list of all approved locations; b) the level and percentages of ownership; c) the term of accreditation; and d) the approved programs by name, type and hours. The Bureau also requested payment of the annual fee for 2011 and 2015 and for respondent to correct various deficiencies. Brenner advised respondent that a response was required by April 7, 2017. No response was received by the Bureau by April 7, 2017.

22. The Bureau denied respondent's application for approval to operate as an accredited institution (No. 29844) on April 12, 2017.

23. On May 10, 2017, respondent submitted an appeal and requested an administrative hearing. Respondent asserted that the deficiencies identified in the March 7,

2017 letter were in error. Munene provided a copy of the NACCAS letter dated December 20, 2016, stating that respondent's accreditation was approved pending two stipulations. The December 20, 2016 letter from NACCAS was not certified and was not a final approval; it is insufficient for the Bureau's purposes.

24. On May 11, 2017, the Bureau notified respondent that pending a decision following this hearing, it was permitted to continue operating as a non-accredited institution. Respondent continued operating. The Bureau's website was updated to show approval to operate as a non-accredited institution.

25. On October 20, 2017, NACCAS sent a letter to respondent inquiring about its loss of licensure. On November 6, 2017, Munene replied, indicating that respondent lost its license because NACCAS refused to grant accreditation. On December 4, 2017, NACCAS denied accreditation to respondent.

26. Complainant filed the instant statement of issues, identifying numerous deficiencies and five causes for denial. The Bureau permits an applicant to cure deficiencies pending the hearing. Respondent has cured all deficiencies save two: whether respondent's application is subject to denial because: 1) it failed to submit a certified copy of verification of accreditation from NACCAS; and, 2) it failed to pay the required annual fee for 2017.

Respondent contends that: 1) the Bureau interfered with its ability to receive accreditation from NACCAS, and 2) it has paid the 2017 annual fee.

Respondent's Evidence regarding Efforts to become Accredited

27. Munene reports that based on Brenner's recommendation, respondent applied to NACCAS to become accredited. Munene denies having received the letters from Arceo dated January 23 and March 2, 2017. Munene reports that Brenner's letter dated March 7, 2017, arrived with the denial letter dated April 12, 2017.

28. After receiving the December 20, 2016 letter from NACCAS granting accreditation pending completion of two contingencies, Munene attended the required workshop and the continuing education. However, after submitting the evidence of completion of the two contingencies, the application for accreditation was denied because respondent was no longer an approved school in California.

Munene learned that Brenner had advised a NACCAS representative that respondent had failed to renew its approval for non-accredited status and that the approval had expired. Munene faults the Bureau for notifying NACCAS; she believes that if it had not done so, accreditation would have been granted and the application for approval by accreditation would have been granted by the Bureau.

29. Munene also heard that the Bureau had notified the Department of Rehabilitation that respondent was no longer approved, which cut off tuition funding from

the Department of Rehabilitation for disabled individuals to attend classes. As a result of the loss of funding, some students were unable to complete their programs.

30. Munene concedes that respondent did not pay the \$3,500 application fee owed when she filed an application to renew approval to operate as a non-accredited institution. Munene asserts, however, that Christina Villanueva, who works in the discipline unit at the Bureau, waived the fee. Although Villanueva sent an email message to Munene on May 11, 2017, stating that the school was permitted to operate pending the hearing, the message does not state that the \$3,500 application fee was waived. Moreover, Villanueva was not involved in this matter until Munene appealed the denial of the application.

Respondent's Evidence regarding the 2017 Annual Fee

31. Approved schools must pay an annual fee to the Bureau. In the past, the fee was based upon a percentage of gross income. As of January 1, 2017, approved schools must pay a minimum annual fee of \$2,500. A 35 percent penalty is owed if the fee is over 90 days late. The 2017 fees were due on July 1, 2017. In February 2018, respondent submitted a payment in the amount of \$38.70, contending that this is what is owed based on a percentage of gross income. Respondent did not pay the minimum fee of \$2,500.

LEGAL CONCLUSIONS

1. Respondent has the burden of proving by a preponderance of the evidence that its application should be granted. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224; *Hora v. City & County of San Francisco* (1965) 233 Cal.App.2d 375; Evid. Code, §§ 115, 500.)

2. An applicant may apply to the Bureau for approval to operate as an accredited institution. (Educ. Code, § 94890.) Pursuant to section 94890, the Bureau has adopted regulations governing the process and procedures whereby an institution that is accredited may apply for and obtain an approval by means of that accreditation.

Pursuant to California Code of Regulations, title 5, section 71390, an applicant seeking approval to operate by means of its accreditation must complete and submit an application and a \$750 fee to the Bureau. The application must include a certified copy of its current verification of accreditation granted by its accrediting agency. (Cal. Code Regs., tit. 5, § 71390, subd. (b).)

The evidence established that NACCAS denied respondent's accreditation because its approval to operate in California, and the six-month grace period for reinstatement, had expired. (Factual Findings 14, 15, 18 and 25.) Because respondent did not supply the Bureau with a certified copy of current verification of accreditation, the Bureau properly denied respondent's application for approval by accreditation. (Factual Findings 16, 19 through 22.)

The claim that the Bureau prevented respondent from receiving accreditation is not supported by the evidence. Had respondent renewed its approval to operate as a non-accredited institution by submitting the appropriate application and fee, its licensure status would have been current when it applied for accreditation, satisfying an essential eligibility requirement.

3. Effective January 1, 2017, an institution that is approved to operate by the Bureau is required to pay an annual fee; the minimum annual fee is \$2,500. (Educ. Code, § 94930.5, Cal. Code Regs., tit. 5, § 74006.)

The evidence established that respondent has not paid the minimum annual fee of \$2,500 to the Bureau for 2017. (Factual Findings 26 and 31.) Because respondent failed to pay the minimum 2017 annual fee, the Bureau was entitled to deny its application for approval to operate as an accredited institution.

ORDER

The appeal filed by the Brothers & Sisters BarberCosmo Academy is denied.

DATED: July 18, 2018

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings