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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:
**DAL SMITH
MARGARET PATT-SMITH
DBA NATIONAL CULINARY
& BAKERY SCHOOL
8400 Center Drive
La Mesa, CA 91942**

Applicants for Renewal of Approval to
Operate an Institution Non-Accredited

Institution Code 3711241

Respondents.

Case No. 1003353
OAH No. 2018120543
DEFAULT DECISION AND ORDER
[Gov. Code, § 11520]

FINDINGS OF FACT

1. On April 29, 2019, Complainant Dr. Michael Marion, Jr., in his official capacity as the Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs, filed First Amended Statement of Issues No. 1003353 against Dal Smith and Margaret Patt-Smith, doing business as National Culinary & Bakery School (Respondents) before the Bureau for Private Postsecondary Education, Department of Consumer Affairs.
2. On or about November 3, 2012, Respondents filed an application for renewal of approval to operate an institution non-accredited with the Bureau for Private Postsecondary Education (Bureau) to obtain an approval to operate an institution non-accredited.

1 3. On February 16, 2018, the Bureau issued a letter denying Respondents'
2 Application for Renewal of Approval to Operate an Institution Non-Accredited. On March 5,
3 2018, Respondents appealed the Bureau's denial of their application and requested a hearing.

4 4. On September 5, 2018, an employee of the Department of Justice, served by
5 Certified and First Class Mail a copy of Statement of Issues No. 1003353, Statement to
6 Respondent, Respondent/Applicant's Notice of Designation of Counsel, Respondent/Applicant's
7 Notice of Withdrawal of Request for Hearing, Request for Discovery, Government Code sections
8 11507.5, 11507.6, and 11507.7 to Respondent's address on the application form, which was and
9 is 8400 Center Drive, La Mesa, CA 91942.

10 5. Service of the Statement of Issues was effective as a matter of law under the
11 provisions of Government Code section 11505, subdivision (c).

12 6. A Notice of Hearing was served by mail at Respondents' address on the
13 application and it informed them that an administrative hearing in this matter was scheduled for
14 May 7-8, 2019.

15 7. On April 29, 2019, an employee of the Department of Justice, served by Certified
16 and First Class Mail a copy of First Amended Statement of Issues No. 1003353 and
17 Supplemental Statement to Respondents to Respondents' address on the application form, which
18 was and is 8400 Center Drive, La Mesa, CA 91942. A copy of the First Amended Statement of
19 Issues is attached as exhibit A, and is incorporated herein by reference.

20 8. Service of the First Amended Statement of Issues was effective as a matter of law
21 under the provisions of Government Code section 11505, subdivision (c).

22 9. The matter was called for hearing at the date, time and location set forth in the
23 Notice of Hearing. The assigned Administrative Law Judge found that the service of the Notice
24 of Hearing on Respondents was proper. There was no appearance by or on behalf of
25 Respondents. A default was declared and on motion of counsel for Complainant, the matter was
26 remanded to the Bureau under Government Code section 11520.

27 10. Business and Professions Code section 118 states, in pertinent part:

28 (a) The withdrawal of an application for a license after it has been filed

1 with a board in the department shall not, unless the board has consented in writing
2 to such withdrawal, deprive the board of its authority to institute or continue a
3 proceeding against the applicant for the denial of the license upon any ground
4 provided by law or to enter an order denying the license upon any such ground.

5 11. Government Code section 11506(c) states, in pertinent part:

6 (c) The respondent shall be entitled to a hearing on the merits if the
7 respondent files a notice of defense . . . and the notice shall be deemed a specific
8 denial of all parts of the accusation . . . not expressly admitted. Failure to file a
9 notice of defense . . . shall constitute a waiver of respondent's right to a hearing,
10 but the agency in its discretion may nevertheless grant a hearing.

11 12. California Government Code section 11520(a) states, in pertinent part:

12 (a) If the respondent either fails to file a notice of defense . . . or to appear
13 at the hearing, the agency may take action based upon the respondent's express
14 admissions or upon other evidence and affidavits may be used as evidence
15 without any notice to respondent

16 13. Pursuant to its authority under Government Code section 11520, the Bureau finds
17 Respondents are in default. The Bureau will take action without further hearing based upon the
18 allegation set forth in the First Amended Statement of Issues and Respondents' failure to
19 establish entitlement to issuance of a license.

20 DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondents Dal Smith and Margaret
22 Patt-Smith, doing business as National Bakery & Culinary School have subjected their
23 application for Renewal of Approval to Operate an Institution Non-Accredited to denial.

24 2. Service of the Statement of Issues and First Amended Statement of Issues No.
25 1003353 and related documents was proper and in accordance with the law.

26 3. The agency has jurisdiction to adjudicate this case by default.

27 4. The Director of Consumer Affairs is authorized to deny Respondents' application
28 for renewal of licensure based upon the following violations alleged in the First Amended
Statement of Issues:

a. Respondents' application for Renewal of Approval to Operate an Institution
Non-Accredited is subject to denial because it fails to demonstrate that Respondents have the

1 capacity to satisfy minimum operating standards. ((Educ. Code §§ 94887 and 94943.5; and title 5
2 Cal. Code Regs., § 71475, subd. (c)(7); and 71475, subd. (h)). In particular:

3 i. Respondents failed to submit with their application an updated Section 4.1
4 of Form Application 94891 (rev. 2/10) which would have provided the current ownership
5 structure of Respondents. (title 5 Cal. Code Regs., § 71475, subd. (c)(7)).

6 ii. Respondents failed to submit with their application an updated Section 5
7 of Form Application 94891 (rev. 2/10) which would have identified the new agent for service of
8 process and his physical address. (Educ. Code § 94943.5 and title 5 Cal. Code Regs., § 71475,
9 subd. (h)).

10 b. Respondents' application for Renewal of Approval to Operate an Institution
11 Non-Accredited is subject to denial because Respondents failed to submit an enrollment
12 agreement that complies with minimum requirements. (Cal. Educ. Code §§ 94909, subd. (a)(15),
13 94911, subsd. (d), (e)(1), (e)(2), (e)(3), (f), (g)(1), (g)(2), (h), (j)(1), (j)(2), (i)(1), (i)(2) and (k)
14 and 94916; and title 5 Cal. Code Regs., § 71800, subd. (e)(11)). In particular:

15 i. Respondents' enrollment agreement fails to state the correct amount for
16 the Student Tuition Recovery Fund. (title 5 Cal. Code Regs., § 71800, subd. (e)(11)).

17 ii. Respondents' enrollment agreement fails to include the following
18 disclosures: (1) a clear and conspicuous caption, "STUDENT'S RIGHT TO CANCEL," under
19 which it is explained that the student has the right to cancel and obtain a refund of charges paid
20 through attendance at the first class session, or the seventh day after enrollment, whichever is
21 later; (2) a statement that, if a student has received federal student financial aid funds, the student
22 is entitled to a refund of moneys not paid from federal student financial aid program funds; and
23 (3) a description of the procedures that a student is required to follow to cancel the enrollment
24 agreement or withdraw from the institution and obtain a refund. (Cal. Educ. Code § 94911,
25 subsd. (e)(1), (2) and (3)).

26 iii. Respondents' enrollment agreement fails to include a statement specifying
27 that, if a student obtains a loan to pay for an educational program, the student will have the
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1 responsibility to repay the full amount of the loan plus interest, less the amount of any refund.
2 (Cal. Educ. Code § 94911, subd. (f)).

3 iv. Respondents' enrollment agreement fails to include a statement specifying
4 that, if a student defaults on a federal or state loan, both the following may occur:

5 (1) The federal or state government or a loan guarantee agency may take
6 action against the student, including applying any income tax refund to which the person is
7 entitled to reduce the balance owed on the loan.

8 (2) A student may not be eligible for any other federal student financial
9 aid at another institution or other government financial assistance until the loan is repaid. (Cal.
10 Educ. Code § 94911, subds. (g)(1) and (2)).

11 v. Respondents' enrollment agreement fails to include the transferability
12 disclosure that is required to be included in the school catalog (i.e., "NOTICE CONCERNING
13 TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR
14 INSTITUTION.* The transferability of credits you earn at (insert name of institution) is at the
15 complete discretion of an institution to which you may seek to transfer. Acceptance of the (insert
16 degree, diploma, or certificate) you earn in (insert name of educational program) is also at the
17 complete discretion of the institution to which you may seek to transfer. If the (insert credits or
18 degree, diploma, or certificate) that you earn at this institution are not accepted at the institution
19 to which you seek to transfer, you may be required to repeat some or all of your coursework at
20 that institution. For this reason, you should make certain that your attendance at this institution
21 will meet your educational goals. This may include contacting an institution to which you may
22 seek to transfer after attending (insert name of institution) to determine if your (insert credits or
23 degree, diploma or certificate) will transfer.") (Cal. Educ. Code §§ 94911, subd. (h) and 94909,
24 subd. (a)(15)).

25 vi. Respondents' enrollment agreement fails to include the required
26 statements directing a student to the Bureau for unanswered questions and for filing a complaint
27 with the Bureau (i.e., "Any questions a student may have regarding this enrollment agreement
28 that have not been satisfactorily answered by the institution may be directed to the Bureau for

1 Private Postsecondary Education at [2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
2 P.O. Box 980818, West Sacramento, CA 95798-0818, www.bppe.ca.gov, (888) 370-7589 or
3 (916) 263-1897 or by fax (916) 263-1897].* A student or any member of the public may file a
4 complaint about this institution with the Bureau for Private Postsecondary Education by calling
5 (888) 370-7589 toll-free or by completing a complaint form, which can be obtained on the
6 bureau's internet web site www.bppe.ca.gov." (Cal. Educ. Code § 94911, subs. (j)(1) and (2)).

7 vii. Respondents' enrollment agreement fails to include the following required
8 statements, with a line for the student to initial: "(1) Prior to signing this enrollment agreement,
9 you must be given a catalog or brochure and a School Performance Fact Sheet, which you are
10 encouraged to review prior to signing this agreement. These documents contain important
11 policies and performance data for this institution. This institution is required to have you sign
12 and date the information included in the School Performance Fact Sheet relating to completion
13 rates, placement rates, license examination passage rates, and salaries or wages, and the most
14 recent three- year cohort default rate, if applicable, prior to signing this agreement." (2)
15 Immediately following the statement required by paragraph (1), a line for the student to initial,
16 including the following statement: "I certify that I have received the catalog, School Performance
17 Fact Sheet, and information regarding completion rates, placement rates, license examination
18 passage rates, and salary or wage information, and the most recent three-year cohort default rate,
19 if applicable, included in the School Performance Fact sheet, and have signed, initialed, and
20 dated the information provided in the School Performance Fact Sheet." (Cal. Educ. Code §
21 94911, subd. (i)(1) and, (i)(2)).

22 viii. Respondents' enrollment agreement fails to include a clear and
23 conspicuous statement that the enrollment agreement is legally binding when signed by the
24 student and accepted by the institution. (Cal. Educ. Code § 94911, subd. (d)).

25 ix. Respondents' enrollment agreement fails to include the following specific
26 required statement above the space for the student's signature: "I understand that this is a legally
27 binding contract. My signature below certifies that I have read, understood, and agreed to my
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1 rights and responsibilities, and that the institution's cancellation and refund policies have been
2 clearly explained to me." (Cal. Educ. Code § 94911, subd. (k)).

3 x. Respondents' enrollment agreement fails to include that an institution
4 extending credit or lending money to an individual for institutional and non institutional charges
5 for an educational program shall cause any note, instrument, or other evidence of indebtedness
6 taken in connection with that extension of credit or loan to be conspicuously marked on its face
7 in at least 12-point type with the following notice: "NOTICE." "YOU MAY ASSERT
8 AGAINST THE HOLDER OF THE PROMISSORY NOTE YOU SIGNED IN ORDER TO
9 FINANCE THE COST OF THE EDUCATIONAL PROGRAM ALL OF THE CLAIMS AND
10 DEFENSES THAT YOU COULD ASSERT AGAINST THIS INSTITUTION, UP TO THE
11 AMOUNT YOU HAVE ALREADY PAID UNDER THE PROMISSORY NOTE." (Cal. Educ.
12 Code § 94916).

13 c. Respondents' application for Renewal of Approval to Operate an Institution
14 Non-Accredited is subject to denial because Respondents failed to submit a list of the titles and
15 required educational program lengths for all current educational programs offered by
16 Respondents and may be offering unapproved programs (Educ. Code § 94887; and title 5 Cal.
17 Code Regs., § 71475, subds. (r), (t)(4) and (t)(6)).

18 d. Respondents' application for Renewal of Approval to Operate an Institution
19 Non-Accredited is subject to denial because Respondents failed to submit (a) a description of
20 each educational program, (b) the equipment to be used during each educational program, (c) the
21 number and qualifications of the faculty needed to teach each educational program, (d) a
22 projection and the basis for the projection of the number of students that Respondents plans to
23 enroll in each educational program during each of the three years following the date the
24 application was submitted, (e) a description of the learning skills, and other competencies to be
25 acquired by students who complete each educational program; and (f) if licensure is a goal of the
26 educational program, a copy of the approval from the appropriate licensing agency (or a copy of
27 the intent to approve conditional solely upon institutional approval from the Bureau). (Educ.
28 Code § 94887; and title 5 Cal. Code Regs., § 71475, subds. (u)(1-6) and 71710, subds. (a)-(f)).

1 e. Respondents' application for Renewal of Approval to Operate an Institution
2 Non-Accredited is subject to denial because Respondents did not submit current and compliant
3 financial statements. (Educ. Code § 94887; and title 5 Cal. Code Regs., §§ 71475, subd. (e),
4 71745, subds. (a)(1-6) and 74115, subds. (a), (b)(1-5) and (d)).

5 f. Respondents' application for Renewal of Approval to Operate an Institution
6 Non-Accredited is subject to denial because Respondents' website failed to satisfy the minimum
7 operating standards. (Educ. Code §§ 94887 and 94913, subds. (a)(2), (a)(4) and (a)(5) and title 5
8 Cal. Code Regs., § 74117). In particular:

9 i. Respondents' website fails to post the School Performance Fact Sheet for
10 each approved educational program offered and an electronic link to the information on
11 Respondents' website. (Educ. Code § 94913, subd. (a)(2); title 5 Cal. Code Regs., § 74117.)

12 ii. Respondents' website fails to clearly and conspicuously, include a link to
13 the Bureau's internet website. (Educ. Code § 94913, subd. (a)(4); title 5 Cal. Code Regs., §
14 74117.)

15 iii. Respondents' website fails to post its most recent Annual Report and
16 contain an electronic link to the information on Respondents' website. (Educ. Code § 94913,
17 subd. (a)(5); title 5 Cal. Code Regs., § 74117.)

18 **ORDER**

19 IT IS SO ORDERED that the application for Renewal of Approval to Operate an
20 Institution Non-Accredited of Respondents Dal Smith and Margaret Patt-Smith, doing business
21 as National Culinary & Bakery School is hereby denied.

22 Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a
23 written motion requesting that the Decision be vacated and stating the grounds relied on within
24 seven (7) days after service of the Decision on Respondents. The agency in its discretion may
25 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

26 This Decision shall become effective on AUG 9 2019

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It is so ORDERED

July 5, 2019

FOR THE DIRECTOR OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY
EDUCATION

DOJ docket number: SD2018700383
82180718.DOCX

Attachments:

Exhibit A: First Amended Statement of Issues No. 1003353 and service package

Exhibit B: Office of Administrative Hearings Findings and Declaration of Default; Order of Remand