

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

In the Matter of the Citation Against:

BEAUTY ELEMENTS BY CINDY VU

13341 Garden Grove, Suite D

Garden Grove, CA 92843

Citation No: 2223026

BPPE Case No.: BPPE22-257

OAH Case No.: 2024010901

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 October 9, 2024.

It is so ORDERED September 4, 2024.

"Original Signature on File"

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

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BEAUTY ELEMENTS BY CINDY VU, Respondent

Citation No. 2223026

OAH No. 2024010901

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on July 25, 2024, by videoconference.

Deputy Attorney General Dionne Mochon represented the Bureau for Private Postsecondary Education.

Attorney Erik Bauman represented respondent Beauty Elements by Cindy Vu and its owner Cindy Vu, who was present throughout the hearing.

The record was closed, and the matter was submitted for decision on July 25, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Bureau of Private Postsecondary Education (bureau) is the agency responsible for approving and regulating private postsecondary educational institutions.

2. Respondent Beauty Elements by Cindy Vu has not been approved as a private postsecondary educational institution.

3. On May 5, 2023, the bureau issued Citation No. 2223026 to respondent for operating without approval. The citation included prior disciplinary history; a citation issued in 2021. The citation assessed an administrative fine of \$100,000 and contained an order of abatement directing respondent to cease operating as a private postsecondary educational institution. Respondent filed a notice of appeal with a request for an informal conference.

4. On July 3, 2023, the informal conference was held.

5. On July 18, 2023, the bureau issued an affirmed citation order along with a form to withdraw the request for an administrative hearing. Respondent did not withdraw the request for hearing, and this hearing ensued.

2021 Citation

6. In 2021, on a date not specified at hearing, the bureau issued Citation No. 2021227 to respondent for operating without approval. The citation assessed an administrative fine of \$25,000 and an order of abatement for respondent to cease all instructional services and advertising in any form until it had been approved to

operate by the bureau. After an informal conference held on June 24, 2021, the bureau issued Modified Citation No. 2021227, reducing the administrative fine of \$25,000 to \$5,000. Respondent paid the \$5,000 fine on August 30, 2021.

7. The facts underlying the 2021 citation were that the bureau received a complaint on March 4, 2020, that respondent was operating without bureau approval. An investigator, Brandon Lovette, was assigned to investigate the complaint. The investigator reviewed respondent's website and found that the website stated respondent had been operating since 2018 and that it was offering a "Masterclass" for \$4,200. The investigator then emailed respondent requesting a list of courses dates and pricing. Respondent replied with several dates for a three-technique course priced at \$4,200 and a microblading course priced at \$2,500 plus tax.

Current Citation

8. On April 14, 2022, the bureau received a complaint against respondent. The complaint stated that respondent was "charging more than \$2500 [*sic*] per person." Included with the complaint was a screenshot of a webpage for respondent. The webpage stated that a "semi-private microshading & ombre" course was available for a total price of \$2,700.

9. On April 18, 2022, Investigator Lovette was assigned to investigate the complaint. Investigator Lovette is currently employed as a special investigator with the Department of Public Health. He had been employed with the bureau as a complaint investigator for approximately four years, ending in August 2022. While employed with the bureau, Investigator Lovette conducted approximately 100 investigations into allegations of operating without approval.

10. On April 19, 2022, Investigator Lovette conducted an internet search for respondent. He reviewed the website and noted that the phone number and address had not changed since he last investigated respondent. The microshading and ombre course was listed on the website but without pricing information.

11. Investigator Lovette then searched for respondent's Instagram account. The Instagram page contained video of students receiving certificates of completion, students receiving instruction, and the exterior of the building. Investigator Lovette then searched for the Instagram page of respondent's owner, Cindy Vu. Respondent's Instagram page is linked to Vu's profile. Vu's page lists her as a brow expert, artist, and educator. Vu's page contained a link to a checkout screen for a three-day microshading and ombre course for the dates of April 26-28, 2022, with a total price of \$2,700.

12. On April 28, 2022, Investigator Lovette reviewed respondent's website. It now contained training dates for the three-day microshading course in June, July, and August. The total price for the course was listed as \$2,800.

13. Investigator Lovette did not contact respondent during this investigation because he had recently investigated respondent for the same conduct.

Respondent's Evidence

14. Cindy Vu testified on behalf of respondent. Her testimony is summarized as follows. She has been in the cosmetics field for nine years. She specializes in eyebrows and permanent makeup. She has been offering courses for six years. She never charged a student more than \$2,500. She did not make the website for respondent, nor did she check the pricing listed on the website, even after receiving the prior citation. She was going through some personal issues and outsourced the

creation and maintenance of the website. She never had a student sign up for a course through her website.

The gross income from the business last year was \$100,000. The net income was \$40,000. She cannot afford to pay the \$100,000 fine, as it would put her out of business and cause her to "go bankrupt." She requested that the fine be reduced to \$5,000 or less.

15. Respondent provided receipts to establish that no student was charged more than \$2,500 for the course.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving, by a preponderance of the evidence, all facts necessary to support the citation. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.) The factual findings above reflect this standard.

2. California Code of Regulations, title 5, section 75020, authorizes the bureau to issue citations and administrative fines for violations of the statutes and regulations governing private, postsecondary institutions.

3. Education Code section 94886, states no person shall open, conduct, or do business as a postsecondary educational institution without approval of the bureau.

4. Education Code section 94944 establishes the maximum fine for operating an institution without approval to operate as \$100,000.

5. Education Code section 94817.5, states "approval to operate" means an institution has received authorization from the bureau to offer to the public and to provide postsecondary educational programs.

6. Education Code section 94868 defines "offer to the public" as advertising, publicizing, soliciting, or recruiting.

7. Education Code section 94874 provides for exemptions to the approval requirement. Specifically, if an institution does not award degrees and provides educational programs for total charges of \$2,500 or less when the charges are not paid with any state or federal student financial aid funds.

Discussion

8. Respondent admitted that the website and Instagram pages associated with the owner and respondent list pricing for courses in excess of \$2,500 but blamed that on the individual who created the website. Respondent offered to the public courses for more than \$2,500 less than eight months after paying the fine on a prior citation for the exact same conduct.

9. Respondent argues that it is compliant with the statutes and regulations because no student of any of the offered courses was ever charged more than \$2,500. However, respondent overlooks the statute that includes advertising as an offer to the public. Respondent offered courses in excess of \$2,500 which requires that an institution receive approval to operate from the bureau. Respondent did this after having been cited previously for the exact same thing. Respondent operated without the required approval of the bureau.

10. Having established that discipline is appropriate the issue becomes what level of discipline is appropriate. Protection of the public is the bureau's highest priority. (Ed. Code, § 94875.) The goal of administrative hearings is not to punish the licensee but to protect the public.

11. Complainant asks for the maximum fine allowable for this violation. Complainant cites the fact that respondent was cited and paid the fine for the same conduct less than one year prior to the current citation as evidence that this is a pattern of behavior by respondent. The 2021 citation initially assessed a \$25,000 administrative fine. That fine was reduced to \$5,000 after an informal conference.

12. Respondent requests that the fine be \$5,000 or less. The evidence established that no student paid more than \$2,500 for the classes. However, respondent essentially took no responsibility for the fact that the website and social media pages offered these classes for an amount that requires approval of the bureau. As such, it is appropriate to reduce the assessed fine.

13. Given that the evidence did not establish that any student actually paid more than \$2,500, the maximum fine is excessive. The appropriate administrative fine for this repeated violation of Education Code section 94886 is \$25,000. The order of abatement for respondent to cease operating as a private postsecondary education institution unless it qualifies for an exemption or until it has obtained approval from the bureau is appropriate.

ORDER

1. The appeal by respondent Beauty Elements by Cindy Vu of Citation No. 2223026 for a violation of Education Code section 94886 is denied. However, the administrative fine is reduced to \$25,000.

2. The order of abatement contained in Citation No. 2223026 is affirmed.

DATE: August 22, 2024



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings