

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

In the Matter of the Accusation Against:

AUSTIN UNIVERSITY,

Approval to Operate Institution Code No. 92601579

Respondent.

Agency Case No. BPPE21-395

OAH No. 2022050513

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.

This Decision shall become effective on December 8, 2022

IT IS SO ORDERED November 7, 2022.

By: "Original Signature on File"

RYAN MARCROFT
Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 20, 2022, by videoconference.

Deputy Attorney General Carter Ott represented complainant Deborah Cochrane, Chief of the Bureau for Private Postsecondary Education.

Respondent Austin University appeared through its president, Ashraf Al Moustafa.

The matter was submitted for decision on October 20, 2022.

FACTUAL FINDINGS

1. The Bureau for Private Postsecondary Education (Bureau) has approved respondent Austin University, Institution Code 92601579, to operate a non-accredited private postsecondary education institution offering a Master in Business Administration degree. The Bureau issued temporary approval to respondent on June 26, 2007, and full approval on May 23, 2011. Approval to Operate Non-Accredited Institution No. 92601579 will expire November 15, 2022, unless renewed.

2. Respondent is a California corporation.

3. Acting in her official capacity as Chief of the Bureau for Private Postsecondary Education, complainant Deborah Cochrane served an accusation to respondent on April 11, 2022, at respondent's address of record with the Bureau. On October 6, 2022, complainant served an additional copy of this accusation, directed specifically to the person respondent had identified to the California Secretary of State as respondent's corporate agent for service of process. The address respondent gave the Secretary of State for this agent is the same address complainant used to serve the accusation in April 2022.

4. On April 24, 2022, Ashraf Al Moustafa returned a Notice of Defense to the Bureau on respondent's behalf. In July 2022, Al Moustafa sent a letter to the Bureau notifying the Bureau that respondent's address had changed.

5. Complainant served notice of this hearing in May 2022. The hearing was briefly continued, and complainant served notice of the continued hearing on October 6, 2022, to all addresses respondent and Al Moustafa had given the Bureau and the Secretary of State for respondent.

6. The accusation asks the Director of the Department of Consumer Affairs to revoke respondent's approval to operate, because of respondent's failure to comply with two citations the Bureau has issued to respondent since November 2020.

Citation No. 2021154

7. On November 18, 2020, Bureau Discipline Manager Christina Villanueva issued Citation No. 2021154 to respondent. Villanueva issued this citation because respondent had failed to pay its annual fees to the Bureau for 2019 and 2020.

a. The annual fee for 2019 was due on June 1, 2019, and the minimum annual fee was \$2,500. The Bureau invoiced respondent for the fee on May 1, 2019, and sent reminders on July 15, 2019, and September 16, 2019. As of November 18, 2020, respondent had paid no fee.

b. The annual fee for 2020 was due on June 1, 2020, and the minimum annual fee was \$2,500. The Bureau invoiced respondent for the fee on May 1, 2020, and sent reminders on July 15, 2020, and September 15, 2020. As of November 18, 2020, respondent had paid no fee.

8. Citation No. 2021154 did not assess any fine. It ordered respondent to submit annual fees for 2019 and 2020, along with late payment penalties in accordance with Education Code section 94931.

9. Respondent requested an informal conference regarding Citation No. 2021154. After that conference, Villanueva modified Citation No. 2021154 to require a late payment penalty only for 2019. This modification reflected disruption to respondent's business during 2020 because of the COVID-19 pandemic.

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10. As modified, Citation No. 2021154 demanded payment by March 27, 2021. Bureau staff members sent further payment demands to respondent on April 9, 2021, May 27, 2021, and June 17, 2021, each of which warned respondent that failure to pay could result in further disciplinary action and could cause the Bureau to refuse to renew respondent's approval to operate. As of the hearing date, however, respondent had made no payment.

Citation No. 2122038

11. On September 18, 2021, Villanueva issued Citation No. 2122038 to respondent. Villanueva issued this citation because a Bureau staff member had attempted to visit respondent's office in May 2021 for an inspection, but found the office space vacant, with no indication on the building's signage that respondent had any office in the building.

12. Citation No. 2122038 assessed a \$5,000 fine. It also ordered respondent to establish a physical presence at a business location, to identify that location (with proof) to the Bureau, and to submit a written policy explaining how respondent would continue for the future to comply with Bureau regulations requiring respondent to be open during its normal business hours for Bureau inspection.

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13. Respondent did not request an informal conference regarding Citation No. 2122038, and did not appeal. Respondent also did not pay the citation or comply with the order to establish a physical presence and provide a written explanation to the Bureau of its plans to make its space and records available for inspection.¹

Additional Evidence

14. In November 2021, Al Moustafa corresponded briefly with a Bureau staff member on respondent's behalf, requesting consideration of a payment plan for Citation No. 2021154 and Citation No. 2122038. The staff member advised Al Moustafa that respondent should attend promptly to the non-monetary orders in Citation No. 2122038, while the staff member discussed a payment plan with others at the Bureau. Aside from this email correspondence, respondent has never submitted any other response to either citation.

15. Al Moustafa identified himself as respondent's president. He testified that the entire office building in which respondent formerly maintained its office had "shut down" in April 2020 because of the COVID-19 pandemic, preventing respondent not only from using the space but also from receiving mail. This testimony is not credible. Al Moustafa also testified, again not credibly, that respondent charges its students only \$4,500 for degrees, and that respondent's instructional staff members are all unpaid volunteers. Al Moustafa's evasive and occasionally dishonest testimony gave no information about how respondent has conducted its business since 2019 or will

¹ The letter described in Finding 4 arrived more than a year after the attempted inspection, and included no information about respondent's operations other than the new address.

conduct its business in the future. It did not even establish that respondent actually continues or intends to continue offering instruction as a private postsecondary educational institution.

Costs

16. Through September 21, 2022, the Bureau had incurred \$9,965 in costs for legal services provided to complainant by the Department of Justice in this matter. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(2). These costs are necessary and reasonable for the tasks described in the declaration.

LEGAL CONCLUSIONS

1. The Bureau may revoke an institution's approval to operate if the institution has committed "repeated violations" of the law governing private postsecondary educational institutions, and if those violations "have resulted, or may result, in harm to students." (Ed. Code, § 94937, subd. (a)(2).) Complainant has the burden in this matter of proving such violations.

2. The matters stated in Findings 7 through 13 describe repeated violations of the law governing private postsecondary educational institutions. Moreover, the violations stated in Findings 11 through 13 are violations that could have resulted in harm to students, if respondent had any students. These matters are cause for the Bureau to discipline respondent.

3. The Bureau has authority to issue probationary approvals to operate. (Ed. Code, §§ 94933, 94937.) The matters stated in Findings 7, 10, and 13 through 15 demonstrate, however, that the Bureau cannot reasonably expect respondent to abide by any probation conditions. Respondent's complete disregard of its obligations to the Bureau and the public warrants revocation of its approval to operate.

4. A private postsecondary education institution found to have committed a violation of the statutes and regulations governing such institutions may be required to pay the Bureau the reasonable costs of its investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3; Ed. Code, § 94937, subd. (c).) As set forth in Finding 16, the total reasonable costs in this matter were \$9,965.

5. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards, to ensure that the board does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id* at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid*) Last, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid*)

6. All of these matters have been considered, but justify no reduction in respondent's obligation to reimburse the Bureau in this matter.

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ORDER

1. Approval to Operate Non-Accredited Institution No. 92601579, issued to Austin University, is revoked.
2. Respondent Austin University shall pay the Bureau \$9,965 to reimburse the Bureau for its reasonable enforcement costs.

DATE: **11/01/2022**

“Original Signature on file”

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings