

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

In the Matter of the Citation Against:

ST. ANDREW MISSIONARY
BAPTIST CHURCH PRIVATE
SCHOOL THEOLOGICAL
UNIVERSITY PARENT
CORPORATION PRAYER CLINIC,
ROBERT LACY, CEO/PRESIDENT
and OWNER
2624 West Street
Oakland, CA 94612

Citation No. 1213001

OAH No. 2012120304

Respondent.

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on March 20, 2013, in Oakland, California.

Deputy Attorney General Diann Sokoloff represented Complainant Laura Metune, Bureau Chief, Bureau for Private Postsecondary and Vocational Education (Bureau), Department of Consumer Affairs.

Kelly Masson, Attorney at Law, represented Respondent St. Andrew Missionary Baptist Church Private School Theological University Parent Corporation Prayer Clinic, Robert Lacy, CEO/President and Owner.

The record was left open until April 4, 2013, to permit the parties to submit legal authorities. Complainant's submission was timely received and marked for identification as Complainant's Exhibit 5. Respondent made no submission.

FACTUAL FINDINGS

1. Under the Private Postsecondary Education Act of 2009, (Act) (Ed. Code, § 94800 et seq.), the Bureau is responsible for approving and regulating private

postsecondary educational institutions.¹ The legislative intent in enacting the Act was, among other things, “to set minimum educational standards” and to provide a regulatory structure to provide an appropriate “level of oversight.” (Ed. Code, § 94801.)

The Act defines “Private postsecondary educational institution” as “a private entity with a physical presence in the state that offers postsecondary education to the public for an institutional charge.” (Ed. Code, § 94858.)²

Citation

2. On July 19, 2012, Complainant issued Citation No. 1213001 to St. Andrew Missionary Baptist Church Private School Theological University Parent Corporation Prayer Clinic, Robert Lacy, CEO/President and Owner (Respondent). The Citation states Respondent violated Education Code section 94886, which provides “. . . a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate under this chapter.”

3. Pursuant to section 94944 and Title 5, California Code of Regulations, section 75020, subdivision (b), Complainant assessed an administrative fine of \$50,000. The Citation also contained an order of abatement which required Respondent to:

...cease operating as a private postsecondary educational institution and submit evidence of compliance to the Bureau within thirty (30) days of the date of [the] order. This means [Respondent] must stop enrolling students, and cease all instructional services, advertising (including Web sites), programs, and /or operations.

4. Respondent filed a timely request for a hearing to contest the Citation.

Basis for the Citation

5. On March 7, 2011, Respondent submitted to the Bureau an Application for Verification of Exempt Status (Application). The Application requested an exemption from the Bureau’s oversight and from compliance with section 94886. Included with the Application was a course catalogue that described in detail the admission requirements, course descriptions and graduation requirements for various graduate degrees in theology and related religious studies. By letter dated May 18, 2012, the Bureau denied the

¹ All references are to the Education Code unless otherwise indicated.

² The Citation alleges Respondent violated section 94858, which is the definition of a Postsecondary institution. It is not possible to violate a mere definition.

requested exemption under section 94874, subdivision (e), because Respondent did not meet the requirements of section 94874, subdivision (e)(A) and (B)(5). These provisions require the course of study described in the Application to be limited to “. . . the principles of that religious organization.” Respondent offered not only degrees based on its “religious principles,” but degrees in other disciplines as well.

6. In response to the Bureau’s Application denial, a member of Respondent’s board sent the following response:

After receiving your letter on May 18, 2012, conversing with Licensing Analyst Jeff Mackey and your certified response the Board of Directors have decided that you are not clear on our intent. So that there will be no further misunderstanding on our communication please resend all information regarding our concern. St. Andrew M.B.C. will be removing your concern from our file and we request any concern you have of ST. Andrew M.B.C. from your file [sic], including any correspondence from Mr. Mackey.

7. On May 17, 2012, a reporter with *California Watch* informed the Bureau that Respondent had placed signage in front of its building at 2624 West Street, Oakland, California, that could be misleading. Upon receiving this information, Victoria Gaines, a Bureau investigator, made a site visit to Respondent’s campus. There she took photographs of a red banner and a poster which contained the following messages:

(a) Banner. The banner made reference to both Kindergarten through 12th grade classes and to “University Offerings: Undergraduate and Graduate Degrees, etc.” The banner used the term “Theological & Academic University,” which was preceded by an asterisk. The asterisk apparently made reference to a further notation on the banner that read “BPPE (Candidate) Article (4) Section (94874).”

(b) Poster. At the top of the poster were the words “Enroll Today!!” The poster depicted grade school students along with a description of the school program, including “after school reading,” “leadership classes all grades” and “reliable transportation to and from school.” The poster also included the phrase: “Register now for the Fall 2010 Semester at the St. Andrew Theological & Academic University (SATU).”

8. In addition to the banner and poster, more information about Respondent was available on the Internet. On its website, Respondent posted what purported to be a list of courses provided by St. Andrew Theological & Academic University, which included offerings such as “Art, Business Administration, Political Science, Psychology, History, English, and Computer Science.” Respondent purported to offer undergraduate and graduate degrees in these and other areas of study.

9. The same website provided a link to "Tuition/Fees/Scholarships," but no evidence was offered about the information that would be provided if a user were to open the link, or if in fact, the link was operational.

10. On June 4, 2012, prior to issuing the July 19, 2012 Citation, the Bureau sent Respondent a letter containing the following order:

The St. Andrew Theological & Academic University has not been issued Approval to Operate by the Bureau. Therefore, the Bureau hereby orders that you cease operating as a private postsecondary educational institution and submit evidence of compliance to the Bureau within 30 days of the date of this order. This means you must stop enrolling students, and cease all instructional services, advertising, (including Websites), programs, and operations. Operation without Bureau approval will subject you to a \$50,000.00 fine under section 94886 of the Act.

11. On June 12, 2012, and June 27, 2012, the Bureau's investigator performed site visits to determine if Respondent had complied with the Bureau's abatement order. She determined the letters "BPPE" were no longer visible on the banner, but the remainder of the information was otherwise unchanged. The poster was still displayed, and the website still contained a list of graduate and undergraduate courses.

12. Gaines did not observe on either of her visits the presence of postsecondary students, or evidence that any postsecondary student had registered for classes. She did not identify any student transcripts, a fee schedule, or instructors.

Respondent's Evidence

13. The St. Andrew Missionary Baptist Church was founded in 1975, and it operates a school for children in grades kindergarten through high school. In 2003, a decision was made to expand the church mission by establishing the St. Andrew Theological and Academic University, Adult Educational Vocational Training and Job Placement Program.

14. Only Respondent's grade school and high school are operational. Lacy credibly testified that one purpose of the information contained on the banner and the poster, was to provide information about the kindergarten through 12th grade school programs. It was not clear what the purpose was of the information about the Theological and Academic University, since neither materials nor instructors existed.

15. Respondent testified that the courses listed on the Internet were only "proposed and intended to increase awareness" of the institution. This explanation made no sense, because on its face the message said or implied the Respondent was operational, ready to accept students, and was a degree granting institution. Maintenance of Respondent's website

was managed by a volunteer, who was requested to take the list of majors off of the website when Respondent was ordered to do so by the Bureau. This was ultimately accomplished at a later date.

16. Respondent does not have an institutional charge for postsecondary course instruction, although it accepts donations in return for its course offerings.

LEGAL CONCLUSIONS

1. Respondent is charged with violations of the following two sections of the Code:

Section 94858. Private Postsecondary Educational Institution. "Private postsecondary educational institution" means a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge.

Section 94886. Approval to Operate Required. Except as exempted in Article 4 (commencing with Section 94874) or in compliance with the transition provisions in Article 2 (commencing with Section 94802), a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate under this chapter.

2. The preliminary question is if Respondent meets the definition of a private postsecondary educational institution. Respondent has a "presence in the state," but to be regulated as a postsecondary educational institution, it must also offer postsecondary education to the public for an "institutional charge." (Ed. Code § 94858.) The words "tuition/fees/and scholarships" did appear on Respondent's website, although no evidence of the amount of these charges or when or if they were ever collected was introduced. Lacy testified that there are no institutional charges; however, he also stated that "donations" are accepted. Whether the fees are called donations or tuition, they constitute an "institutional charge" under section 94858.

3. Respondent represented to the public on its Internet site that it provided a broad array of majors and offered both undergraduate and graduate degrees. Respondent submitted a course catalogue to the Bureau when seeking an exemption from Education Code section 94866, and its banner and poster invited both grade school and postsecondary students to enroll. Respondent is a postsecondary educational institution subject to regulation under section 94866.

4. It is undisputed that Respondent has not received approval from the Bureau to operate as a private postsecondary institution and that the Bureau denied Respondent's application for an exemption from this requirement. Respondent asserted no approval from

the Bureau was required, because there was no evidence that any post-secondary students had ever been enrolled. This is an important mitigating fact with respect to determining the appropriate remedy; however, it is not dispositive of whether Respondent was required to obtain the Bureau's approval under section 94886, before it could represent that it was offering postsecondary education.

5. A postsecondary educational institution must either qualify for an exemption or receive approval to operate before it can offer to accept students. Respondent had been denied an exemption and had not obtained approval to operate, but all of its public communications represented that it was accepting students seeking bachelors and advanced degrees. Respondent's failure to enroll students did not by itself preclude the Bureau from regulating its activities. Accordingly, Respondent was operating a postsecondary educational institution, in violation of section 94886.

6. California Education Code section 94944 authorizes the Bureau to assess administrative fines of up to \$50,000 for operating a postsecondary institution without the Bureau's approval. On the one hand, Respondent could have avoided a fine by complying with the order of abatement contained in the Bureau's letter of June 4, 2012. On the other hand, the Bureau levied the maximum fine possible, even though there was no evidence that a single postsecondary student was ever enrolled or misled by Respondent's conduct. On balance, a maximum fine is excessive and it is reduced to \$10,000.

7. Title 5, California Code of Regulations, section 75020, authorizes the Bureau to issue orders of abatement. The order of abatement contained in the Citation is appropriate.

ORDER

Citation No. 1213001 issued to Respondent St. Andrew Missionary Baptist Church Private School Theological University Parent Corporation Prayer Clinic, Robert Lacy, CEO and Owner, is affirmed, except that the fine is reduced from \$50,000 to \$10,000.

DATED: April 9, 2013



KIRK E. MILLER

Administrative Law Judge
Office of Administrative Hearings