

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

In the Matter of the Citation Against:

NEW CALIFORNIA CONSERVATORY OF MUSIC,

SAMIYOUL SAMUEL LEE

7342 Orangethorpe Ave. Ste C-101

Buena Park, CA 90621-3329

Citation No.: 1819186

Case No. 1003894

OAH Case No.: 2020020037

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 NOV 22 2020, 2020.

It is so ORDERED October 16, 2020.



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

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PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 22, 2020, from Los Angeles, California.

Leslie A. Walden, Deputy Attorney General, represented complainant, Christina Villanueva, Discipline Manager for the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs.

New California Conservatory of Music (respondent) was represented by its owner Samyoul Samuel Lee (Mr. Lee).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 22, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 3, 2019, complainant, acting in her official capacity, issued Citation Number 1819186 (Citation) to respondent. The Citation charged respondent with violating Education Code section 94886 for operating as a private postsecondary educational institution (PPE institution) without Bureau approval. The Citation imposed an administrative fine of \$5,000 for the violation. The Citation also contained an Order of Abatement, ordering respondent to cease to operate as a PPE institution unless it qualified for an exemption under Education Code section 94874. The Citation ordered respondent to pay the administrative fine and submit evidence of compliance with the Order of Abatement by June 2, 2019. The Citation notified respondent of its appeal rights.

2. Respondent is a California corporation formed in 2002. Mr. Lee is the Chief Executive Officer. Hye Kyung Lee is the Secretary.

3. On May 28, 2019, respondent, through its corporate officer Hye Kyung Lee, submitted a Notice of Appeal to the Bureau, which requested an informal conference and an administrative hearing to contest the Citation. A letter dated May 28, 2019, signed by Hye Kyung Lee, was also submitted with the Notice of Appeal.

4. On June 5, 2019, Deputy Bureau Chief Leeza Rifredi held an informal telephone conference with respondent's corporate officer Hye Kyung Lee regarding

the Citation. Following the informal telephone conference, the Bureau decided to affirm the Citation on the grounds that "[n]o new substantive facts were presented at the conference." (Exh. 1, p. 26.) On June 17, 2019, the Bureau notified respondent, in writing, of its decision to affirm the Citation and to extend the deadline for respondent to pay the \$5,000 administrative fine and submit evidence of compliance with the Order of Abatement, to July 17, 2019.

5. On July 24, 2019, respondent, through Mr. Lee, requested an administrative hearing to contest the Citation. This hearing ensued.

Respondent's Business

6. Respondent is registered with the California Secretary of State as an active domestic, non-profit corporation. Mr. Lee formed the corporation in 2002. According to Articles of Incorporation filed with the California Secretary of State on August 27, 2002, and signed by Mr. Lee, respondent's corporate name was "New California Conservatory Association," and the specific purpose of the corporation was "to operate music & art educational institutes." (Exh. 4, p. 63.) On June 27, 2005, the Articles of Incorporation were amended to change respondent's corporate name to "New California Conservatory of Music." (*Id.*, p. 65.)

7. In September 2002, respondent opened a music school for children (kindergarten through twelfth grade) that offered private music lessons; group instruction in piano, violin, drum, voice, and guitar; music technology classes; a computer lab; orchestra; and an early childhood music program. The school also offered beginning music lessons for adults. Respondent operated the school under the name New California Conservatory. The tuition for private music lessons ranged from

\$120 to \$180 per month. (Exh. 3, p. 55; Exh. A, pp. 16-17.) The tuition for other classes and programs ranged from \$40 to \$99. (*Ibid.*)

8. In September 2006, after receiving Bureau approval, respondent began offering a degree program for students to earn a "Master of Church Music." According to respondent's website, a bachelor's degree in music or its equivalent was required for admission into the program. (Exh. 3, p. 57.) The website described the program as follows: "The Master of Church Music is designed to prepare the students for comprehensive local church music ministry by providing graduate level training above and beyond undergraduate training equivalent to a music major." (Exh. 3, p. 47.)

9. Respondent operated the master's degree program for 10 years, from 2006 to 2016. Pursuant to Education Code sections 94889 and 94891, the Bureau's approval to operate a PPE institution is valid for a period of five years, and can be renewed for additional five-year periods. According to Mr. Lee, the master's degree program "closed immediately" when the Bureau did not renew respondent's approval to operate the program. (Exh. D.)

Bureau's Investigation

10. Lucy Castillo-Riley is an Associate Government Program Specialist in the Bureau's Licensing Unit. She has been employed by the Bureau for six years.

11. Ms. Castillo-Riley was assigned to conduct an investigation of an internal complaint the Bureau received on October 16, 2018, that respondent was offering educational programs to the public and operating as a PPE institution without Bureau approval. Ms. Castillo-Riley prepared a written report which summarized the findings of the investigation. (Exh. 2.) Ms. Castillo-Riley testified at the hearing regarding the investigation.

12. During the investigation, Ms. Castillo-Riley conducted on-line research of respondent and found that respondent maintained an active website. Ms. Castillo-Riley printed information from the website on January 16, 17, and 29, 2019. (Exh. 3.) As of those dates, respondent's website advertised the music school for children and the Master of Church Music degree program.

13. Ms. Castillo-Riley found that respondent's website in January 2019 listed the courses offered in the master's degree program. The courses were categorized as "Core Courses," "General Courses," "Applied Music" courses, and "Pre-M.C.M. Curriculum" courses. The units for each course was also listed. The Core Courses totaled 17 units, the General Courses totaled 24 units, the Applied Music courses totaled 5 to 10 units, and the Pre-M.C.M. Curriculum courses totaled 18 units, for a grand total of 64 to 69 units. The tuition costs consisted of a \$90 application fee, a \$50 registration fee, estimated text book costs of \$60 to \$120, and a tuition rate of \$200 per unit.

14. Based on the information on respondent's website, Ms. Castillo-Riley determined the tuition for the Master of Church Music degree was approximately \$12,800 to \$13,800. Ms. Castillo-Riley's calculation was based on the grand total of 64 to 69 units for all of the courses listed on the website. Respondent's website, however, stated that a Master of Church Music degree "requires completion of 36 units of graduate courses, 12 units from the Core Courses, 16 units from the General Courses, and 8 units from Applied Music Studies." (Exh. 3, p. 57.) The tuition cost for completing 36 units, at \$200 per unit, was \$7,200.

15. (A) Pursuant to Education Code section 94874, certain institutions are exempt from the Bureau's laws and regulations. Ms. Castillo-Riley reviewed the Bureau's In-house database to determine if respondent was an exempt institution. Ms.

Castillo-Riley found that respondent previously filed a Verification of Exempt Status Application (Exempt Status Application) seeking an exemption under Education Code section 94874, subdivision (e), which allows an exemption for institutions "owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation." The Bureau's records showed that respondent's Exempt Status Application was denied on October 16, 2018.

(B) Additionally, the Bureau concluded that respondent did not qualify for an exemption under Education Code section 94874, subdivision (f), which allows an exemption for "[a]n institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500) or less when no part of the total charges is paid from state or federal student financial aid programs." The tuition charged by respondent exceeded the \$2,500 limit for an exemption under section 94874, subdivision (f).

16. Based on the findings of the investigation, Ms. Castillo-Riley concluded that respondent was currently offering educational programs to the public and operating as a PPE institution without Bureau approval or a valid exemption. Respondent advertised a master's degree program as of January 17, 2019, even though its Exempt Status Application had been denied three months earlier on October 16, 2018. Ms. Castillo-Riley explained that an institution offering a master's degree must apply for full approval from the Bureau and successfully complete an accreditation process. Respondent was not accredited at the time of the violation alleged in the Citation. The Bureau's disciplinary unit determined the amount of the administrative fine imposed in the Citation.

Respondent's Evidence

17. Mr. Lee testified at the hearing. Respondent continues to operate the music school for children and adult beginner students, which Mr. Lee referred to as the preparatory school. Mr. Lee, in his testimony and documents, referred to the Master of Church Music degree program as the graduate school.

18. Mr. Lee testified the graduate school closed in 2013 because it had no students. In his written statement dated June 19, 2020, Mr. Lee indicated the graduate school had zero students for its last three years of operation, from September 2013 to September 2016. (Exh. D.) However, in the Student Tuition Recovery Forms he signed and submitted to the Bureau, Mr. Lee reported the graduate school had one or two students enrolled for some of the quarterly reporting periods between 2013 to 2016. (See Exh. B.) Mr. Lee thought it would "look better" if the graduate school reported having one or two students, rather than zero students. By signing the Student Tuition Recovery Forms, Mr. Lee declared under penalty of perjury that the information he reported was "true and correct." (*Ibid.*)

19. Mr. Lee contends the information on respondent's website in January 2019 showed information for the 2015-2016 academic year. He claimed the website was "prepared" in 2011 and the information was not changed except to update the school schedule only. Mr. Lee contends that during the graduate school's 10 years of operation, "no students called us for more information after seeing the website information." (Exh. D.) Respondent also advertised its graduate program in local Korean-community newspapers at the start of each semester, which Mr. Lee claimed was the only advertisement that "had been effective for recruiting students." (*Ibid.*)

20. When the Bureau did not renew respondent's approval for the graduate school in 2016, Mr. Lee contends that, after September 2016, respondent never updated the website information regarding the master's degree program, and never advertised the program by newspaper or any other means. Mr. Lee contends respondent had no staff working for the graduate school after September 2016. Consequently, respondent "forgot to remove the graduate school" pages from the website. (Exh. D.) Mr. Lee presented a printout of respondent's website as of June 19, 2020. (Exh. A.) The current website does not include information regarding the Master of Church Music degree or any other graduate degree program.

21. Mr. Lee feels the Citation is unfair because the Bureau did not warn respondent of the violation before issuing the Citation. The Bureau did not give respondent an opportunity to correct the violation. Mr. Lee contends the Citation was the first time respondent became aware of a problem with the graduate program still being shown on respondent's website. Mr. Lee feels the Bureau staff he spoke with regarding the Citation confused respondent's current operation of the preparatory school with the graduate school, which he contends ceased operating in 2013. Mr. Lee contends the website showing the graduate program in 2019 was the result of a "simple mistake."

22. Mr. Lee feels respondent should have been given a warning about the Citation. Mr. Lee recounted that, during the application process to obtain Bureau approval for the graduate school, he received warning letters and phone calls when there were any problems, and Bureau staff provided him with guidance. Ms. Castillo-Riley, in her testimony, explained that the application process for obtaining Bureau approval to operate a PPE institution is different than the process for issuing citations for violations of the law. Bureau staff may provide assistance and guidance to an

applicant in completing an application. However, there is no law or regulation that requires the Bureau to give a warning before issuing a citation.

23. According to Mr. Lee, respondent has no plans to operate a graduate degree program. Respondent has no funds to apply for another approval from the Bureau for a graduate degree program. According to Mr. Lee, the graduate school was not profitable, and the preparatory school has always been the primary source of revenue for respondent's business.

LEGAL CONCLUSIONS

1. This matter is governed by the California Private Postsecondary Education Act of 2009 (Act), set forth at Education Code section 94800 et seq., and the implementing regulations set forth at California Code of Regulations, title 5, section 75010 et seq. The Bureau is the state agency responsible for regulating PPE institutions in accordance with the Act. "In exercising its powers, and performing its duties, the protection of the public shall be the bureau's highest priority." (Ed. Code, § 94875.)

2. The Bureau is authorized to issue a citation to a person (defined as a natural person or business organization) for committing any acts or omissions that are in violation of the Act or the Regulations. (Ed. Code, §§ 94936; 94855; Bus. & Prof. Code, §§ 125.9, 149; Cal. Code Regs., tit. 5, § 75020.) A citation may contain an order of abatement and impose administrative fines. (*Ibid.*)

~~3. Education Code section 94886 provides, in pertinent part:~~

Except as exempted in Article 4 (commencing with Section 94874, . . . 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.

4. Education Code section 94874 lists the types of institutions that are exempt from the Act, including subdivision (e), which exempts: "An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation pursuant to Part 4 . . . of Division 2 of Title 1 of the Corporations Code, that meets all of the [requirements specified in section 94874, subdivision (e)(1) through (e)(5).]"

5. Cause exists to affirm the Citation, pursuant to Education Code section 94944, Business and Professions Code sections 125.9 and 149, and California Code of Regulations, title 5, section 75020, in that respondent operated as a PPE institution without Bureau approval, in violation of Education Code section 94886, based on Factual Findings 6-16 and Legal Conclusions 6-9.

6. The Master of Church Music degree program offered by respondent was "postsecondary education," which is defined in Education Code section 94857 as "a formal institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education, including programs whose purpose is academic, vocational, or continuing professional education."

7. Respondent offered the Master of Church Music degree program to the public by advertising the program on its website and in the local Korean-community newspaper. (See Ed. Code, § 94868.) Respondent received Bureau approval to operate as a PPE institution for a five-year period starting in 2006. The approval was renewed

for a second five-year period. The Bureau declined to renew the approval in 2016. On October 16, 2018, the Bureau denied respondent's application for exempt status under Education Code section 94874. In January 2019, respondent continued to offer the Master of Church Music degree program to the public by advertising the program on its website, without having proper approval from the Bureau nor an exemption. By doing so, respondent violated Education Code section 94886.

8. (A) Education Code section 94944 provides: "Notwithstanding any other provision of law, the bureau shall cite any person, and that person shall be subject to a fine not to exceed one hundred thousand dollars (\$100,000), for operating an institution without proper approval to operate issued by the bureau pursuant to this chapter." Education Code section 94936, subdivision (b)(1), provides that a citation may include "[a]n order of abatement that may require an institution to demonstrate how future compliance with this chapter or regulations adopted pursuant to this chapter will be accomplished." Business and Professions Code section 149, subdivision (a)(1), provides that an order of abatement may include an order to cease unlawful advertising.

(B) Here, the Citation imposed a \$5,000 administrative fine and included an Order of Abatement requiring respondent to cease operating as a PPE institution unless it qualified for an exemption under Education Code section 94874. The administrative fine and Order of Abatement are reasonable, based on the record of this case.

9. Respondent's evidence and contentions did not establish mitigation or excuse for the violation of Education Code section 94886 alleged in the Citation. The violation was not mitigated or excused by respondent's contention that the graduate school was not profitable; that the website reviewed by the Bureau's investigator in

January 2019 contained information from the 2015-2016 academic year; or that the website was not as effective as the Korean-community newspaper for recruiting students for the master's degree program. Respondent's contention that the master's degree program ceased operating in 2013 due to a lack of students was contradicted by the quarterly reports submitted to the Bureau indicating respondent had one or two students for some of the quarterly reporting periods from 2013 to 2016. The contention that respondent "forgot" about the website when the Bureau did not renew the approval for the graduate school in 2016 was not convincing, and raises concerns about respondent's fitness to operate in a manner consistent with public protection.

10. Respondent shall pay the \$5,000 administrative fine within 30 days of the effective date of this Decision. (Ed. Code, § 94936, subd. (c)(5).)

ORDER

1. Citation Number 1819186 is affirmed.
2. Respondent shall pay the administrative fine of \$5,000, and shall provide evidence of compliance with the Order of Abatement contained in Citation Number 1819186, within 30 days of the effective date of this Decision and Order.

DATE: July 21, 2020

DocuSigned by:

Erlinda Shrenger

ERLINDA C. SHRENGER

Administrative Law Judge

Office of Administrative Hearings