

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

In the Matter of the Citation Against:

**SOUTHWESTERN VOCATIONAL COLLEGE, JAMES MARTINEZ, OWNER**

15776 Main Street, Suite 23

Hesperia, CA 92340

Citation No.: 1819123

OAH Case No.: 2020050690

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 APR 07 2021, 2021.

It is so ORDERED February 25, 2021.



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

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FOR THE BUREAU FOR PRIVATE POSTSECONDARY  
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OWNER, Respondent.**

**Citation No. 1819123**

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**PROPOSED DECISION**

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 8, 2020.

Stephanie J. Lee, Deputy Attorney General, represented complainant Christina Villanueva, Discipline Manager, Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, State of California.

Respondent Southwestern Vocational College (SVC) was represented by James Martinez, its Chief Executive Officer.

The parties presented oral and documentary evidence, and the record was closed on October 8, 2020. On November 6, 2020, the administrative law judge

reopened the record for oral argument. The oral argument took place on November 20, 2020, after which the administrative law judge reclosed the record and deemed the matter submitted for decision.

## **SUMMARY**

Complainant cited SVC for operating a private postsecondary educational institution without approval to operate from the Bureau or a valid exemption. The citation, as modified after an informal conference, includes an order of abatement and a \$25,000 administrative fine. SVC appeals and argues the citation should be dismissed because SVC is exempt from having to obtain approval to operate from the Bureau. The Bureau sent SVC a verification of exempt status in January 2012 but cancelled the verification in November 2018.

A preponderance of the evidence established cause for the citation. The Bureau cancelled its verification of SVC's exempt status on November 7, 2018, but SVC continued to operate until December 2018. SVC's continued operation after the cancellation warrants an administrative fine and order of abatement, but the fine amount should be reduced. Considering the facts and circumstances of the violation, an administrative fine of \$10,000 is reasonable.

## **FACTUAL FINDINGS**

### **Background**

1. SVC is a nonprofit corporation that was incorporated in 2009 as "Community Protective Services Department of Public Safety" (CPS). In January 2011,

CPS applied to the Bureau for verification that it was exempt from the requirement to obtain Bureau approval to operate as a private postsecondary educational institution. The Bureau's approval to operate as a private postsecondary educational institution is required "[e]xcept as exempted in Article 4 (commencing with Section 94874) or in compliance with the transition provisions in Article 2 (commencing with Section 94802)" of the Education Code. (Ed. Code, § 94886.)<sup>1</sup>

2. CPS stated in the application that it would offer security guard training to students leading to licensure with the Department of Consumer Affairs, Bureau of Security and Investigative Services. CPS also stated it was a nonprofit mutual benefit corporation that met the requirements for exemption in section 94874, subdivision (h). The application included a course catalog and other documentation of CPS's educational program. While the application was pending, CPS also notified the Bureau that it had changed its name to SVC.

3. On January 27, 2012, the Bureau approved the application and issued a "Verification of Exemption" to SVC. The verification stated that SVC's application "demonstrates that [it] has met the qualifications for exemption . . . pursuant to section 94874(h) . . ." (Exhibit D.) The verification also stated the exemption would continue until the institution no longer qualified as a tax-exempt corporation, provided training other than workforce development or rehabilitation services, was no longer accredited, or any other factor rendered the institution ineligible for exemption under section 94874, subdivision (h).

4. SVC operated as a private postsecondary educational institution with a Verification of Exemption from the Bureau until 2018. In March 2018, the Bureau

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<sup>1</sup> Undesignated statutory references are to the Education Code.

received a complaint from a lieutenant in the Riverside Police Department that SVC was operating without Bureau approval. The Bureau assigned Wayne Brenner, a Supervising Special Investigator, to investigate whether SVC was operating in a manner that required Bureau approval.

5. On April 9, 2018, while the Bureau's investigation was ongoing, the Inland Counties Emergency Medical Agency (ICEMA) approved SVC as an Emergency Medical Technician (EMT) Training Program and Emergency Medical Services (EMS) Continuing Education (CE) provider in accordance with California Code of Regulations, title 22, division 9, chapter 11. ICEMA is a government agency serving San Bernardino, Inyo, and Mono counties. The approval specified that "[a]ll EMT Training Program and CE provider requirements required by State regulations must be met and maintained." (Exhibit 5.) Based on the approval, SVC began to offer EMT Training Program and EMS Continuing Education to students.

6. Brenner gathered records, contacted other government agencies, and spoke to Martinez to assess whether SVC was operating in a manner that required Bureau approval. On October 6, 2018, Martinez wrote a letter to Brenner stating that SVC continued to meet the standards for exemption. Martinez stated that "SVC is a provider of education and training through the . . . Employment Development Department and is an authorized provider through the State of California's Eligible Training Provider List. [¶] Additionally our school is part of the [S]tate of California's Workforce Innovation and Opportunities Act, WIOA, in conjunction with America's Job Centers of California or AJCC. It is in this program that we are able to serve our youth, the general community and our American Veterans. . . . [¶] Finally, in regards to the [S]tate of California's Emergency Medical Technician training program, SVC completed a full background investigation with [ICEMA] . . . and the [S]tate of California's Medical

Management Agency, when applying to be a provider of this type of education program." (Exhibit 6.)

7. Brenner disagreed with Martinez and recommended that Martinez be cited for operating a private postsecondary educational institution without approval or a valid exemption. On November 7, 2018, the Bureau mailed a letter to Martinez stating that SVC's Verification of Exemption was cancelled effective immediately. The Bureau stated it was cancelling the verification because the evidence indicated: (1) SVC is not organized specifically to provide workforce development or rehabilitation services; (2) SVC is not accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation (DOR); (3) SVC advertises to the public that it accepts California Veterans funding; and (4) SVC advertises to the public training courses in Emergency Medical Technology/Technician (EMT Paramedic), which require Bureau approval to operate under California Code of Regulations, title 22, section 100065, subdivision (b).

8. On November 26, 2018, Martinez emailed the Bureau confirming receipt of the notice of the cancellation of SVC's Verification of Exemption. But two days later, Martinez emailed the San Bernardino County Workforce and Career Development Division and stated that SVC had conducted classes in November 2018. Martinez's email also stated that the courses would end on December 11, 2018.

9. On November 30, 2018, Tom Lynch, the EMS Director for ICEMA, sent a notice to Martinez and SVC of non-compliance with the criteria required for EMT training program approval. The notice stated that SVC was ineligible to be an approved EMT training program under California Code of Regulations, title 2, section 100065, because SVC did not have approval to operate from the Bureau. Lynch

informed SVC it had 15 days to provide evidence of correction or SVC's prior approval would be revoked and the state EMS Agency would be notified.

10. SVC closed in December 2018 and no longer operates as a private postsecondary educational institution.

## **Procedural History**

11. On February 21, 2019, complainant issued a citation to "James Martinez, Owner of Southwestern Vocational College," for operating an unapproved institution. While the citation references Martinez personally, complainant's counsel stated at the hearing that the citation is against SVC alone. The citation included an administrative fine of \$100,000 and an order of abatement directing SVC to cease to operate as a private postsecondary educational institution until it obtained an approval to operate from the Bureau.

12. Martinez timely appealed on behalf of SVC, and Bureau representatives conducted an informal conference with Martinez on March 27, 2019. On June 5, 2019, complainant issued a modified citation that reduced the administrative fine to \$25,000. The order of abatement was also modified to direct SVC to cease to operate unless it qualified for an exemption or obtained an approval to operate from the Bureau:

The Bureau orders the Institution cease to operate as a private postsecondary educational Institution, unless the Institution qualifies for an exemption under [Education Code] section 94874. The Institution must discontinue recruiting or enrolling students and cease all instructional services and advertising in any form or type of media . . . until such time as an approval to operate is obtained from

the Bureau. The Institution must disconnect all telephone service numbers . . . that are associated with the Institution until such time as an approval to operate is obtained from the Bureau. To comply with the Order of Abatement the Institution must submit a school closure plan to the Bureau pursuant to . . . Education Code section 94926. The Institution must provide a roster of each student currently enrolled at the Institution. The roster must include the names of the students, their contact information (including phone number, email address, and physical address), the programs in which they are enrolled, the amount paid for the programs.

(Exhibit 1.)

13. SVC appeals the modified citation, arguing that neither the administrative fine nor order of abatement is warranted.

## **Hearing**

14. At the hearing, complainant called Brennan to testify regarding his investigation and findings. Brennan explained that SVC's claimed exemption requires it to be "qualified under Section 501(c)(3) of the United States Internal Revenue Code," "organized specifically to provide workforce development or rehabilitation services," and "accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation." (§ 94874, subd. (h).) SVC qualified under section 501(c)(3) of the Internal Revenue Code, but it did not meet the other criteria.



15. Martinez testified on behalf of SVC that the corporation met the criteria for exemption. If it did not, then the Bureau would not have issued the Verification of Exemption to SVC in 2012. SVC was on the Employment Development Department's Eligible Training Program List, and SVC was approved to provide training by the San Bernardino County Workforce Investment Board and the ICEMA. SVC was also a DOR vendor, although it had not enrolled a DOR client for some time.

16. According to Martinez, the security and EMT training programs at SVC were "workforce development or rehabilitation services," and SVC's various government approvals satisfied the accreditation requirement. SVC was not accredited by Commission on Accreditation of Rehabilitation Facilities (CARF) – which is recognized by DOR as an accrediting organization – but Martinez claimed that accreditation was not required.

17. Martinez also testified that SVC averaged about 120 students per year for about 10 years. It offered EMT training to only 12 students from August 2018 through late November 2018 before closing completely in December 2018. SVC did not collect payment from any of the EMT students due to the dispute with the Bureau and ICEMA.

## **LEGAL CONCLUSIONS**

### **Legal Standards**

1. The Bureau regulates private postsecondary institutions under the California Private Postsecondary Education Act of 2009 (Act). (§ 94800 et seq.) A "private postsecondary educational institution" is "a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge." (§ 94858.) "Postsecondary education" is "a formal institutional

educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education . . . , including programs whose purpose is academic, vocational, or continuing professional education." (§ 94857.)

2. "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." (§ 94886.) "Approval to operate' . . . means the authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs, as well as the written document issued to an institution signifying its approval to operate." (§ 94817.) One type of exempt institution is "A nonprofit public benefit corporation that satisfies all of the following criteria: [¶] (1) Is qualified under Section 501(c)(3) of the United States Internal Revenue Code. [¶] (2) Is organized specifically to provide workforce development or rehabilitation services. [¶] (3) Is accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation." However, "[b]eginning January 1, 2016, an institution that is approved to participate in veterans' financial aid programs pursuant to Section 21.4253 of Title 38 of the Code of Federal Regulations that is not an independent institution of higher education, as defined in subdivision (b) of Section 66010, shall not be exempt from this chapter." (§ 94874.2.)

3. Under DOR regulations, "'Accredited' means a facility has approval by the Commission on Accreditation for Rehabilitation Facilities (CARF) to provide disabled individuals with restorative and adjustive or employment services." (Cal. Code Regs., tit. 9, § 7330, subd. (b)(1).) Furthermore, "[t]he Department shall with the exception of facilities providing services primarily to the blind, deaf and/or independent living

centers, require that public and private non-profit rehabilitation facilities offering work oriented programs and services be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) in the primary program emphasis of the services to be purchased." (Cal. Code Regs., tit. 9, § 7331.)

4. The Bureau has the authority to issue a citation to an institution for a violation of the Act or regulations adopted under the Act. The citation may include an order of abatement, an administrative fine, and/or an order to compensate students for harm. (§ 94936, subd. (b).) For most violations, the administrative fine may not exceed \$5,000, and the Bureau shall base its assessment on "(A) The nature and seriousness of the violation. [¶] (B) The persistence of the violation. [¶] (C) The good faith of the institution. [¶] (D) The history of previous violations. [¶] (E) The purposes of this chapter. [¶] (F) The potential harm to students." (§ 94936, subd. (b)(2).)

5. For a citation involving operating without Bureau approval to operate, the upward range of the administrative fine is higher. "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." (§ 94944.) "In addition, the citation may contain an order of abatement pursuant to section 149 of the Business and Professions Code that requires the unapproved person to cease any unlawful advertising and to notify the telephone company furnishing services to the cited person: (1) to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and (2) that subsequent calls to that number shall not be referred by the telephone company to any new number obtained by that person." (Cal. Code Regs., tit. 5, § 75020, subd. (b).)

6. Complainant has the burden of proving cause for the citation. (See Evid. Code, § 500.) This burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115; *Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.)

## **Analysis**

### **CAUSE FOR CITATION**

7. Complainant proved that SVC was not exempt and operated without proper approval to operate after November 7, 2018, the date the Bureau cancelled SVC's Verification of Exemption. SVC was not accredited by CARF, which is the only accrediting organization recognized by DOR. (Cal. Code Regs., tit. 9, §§ 7330, 7331.) Thus, the requirement for exemption in section 94874, subdivision (h)(3), that a nonprofit mutual benefit corporation must be "accredited by an accrediting organization for workforce development or rehabilitation services recognized by [DOR]" refers to CARF. Martinez admitted at the hearing that SVC never received CARF accreditation (Factual Finding 16), and his testimony that other government agencies approved SVC's operations is irrelevant to the issue of accreditation.

8. This appears to mean the Bureau issued the Verification of Exemption to SVC in 2012 despite SVC lacking the proper accreditation. But irrespective of that action, section 94874 requires that all three conditions of the exemption be met. Therefore, the Bureau correctly cancelled SVC's Verification of Exemption on November 7, 2018, and SVC willfully operated without a valid approval to operate from the Bureau after that date.

9. Complainant also asserts that SVC was not exempt because it was not "organized specifically for workforce development or rehabilitation services" and provided services to veterans that required Bureau approval to operate. But SVC's lack

of accreditation is dispositive, and these issues therefore do not need to be addressed. Complainant also argues that SVC was in violation of section 94944 even before November 7, 2018, when the Bureau cancelled the Verification of Exemption. But the verification had not expired, and the modified citation refers to SVC's operation after the cancellation, not before.

### **ADMINISTRATIVE FINE AND ORDER OF ABATEMENT**

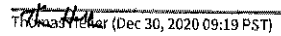
10. Complainant did not explain or present evidence on the calculation of the administrative fine, and the statutory factors for consideration in section 94936 do not expressly apply to fines under section 94944. But with no explanation or evidence regarding the calculation, consideration of the factors in section 94936 is reasonable. Here, the nature of SVC's violation was operation without Bureau approval or a valid exemption, which is serious. SVC committed the violation between November 7, 2018 and mid-December 2018, which is not particularly persistent. Martinez subjectively believed the Bureau's cancellation of SVC's Verification of Exemption was incorrect, but SVC continued to operate despite the cancellation. SVC was not shown to have a prior disciplinary history with the Bureau, which is a mitigating factor. The paramount purpose of the Bureau is public protection (§ 94875), and SVC's action had the potential to harm students who believed SVC was authorized to provide the programs it offered.

11. Considering these factors, the \$25,000 administrative fine should be reduced to better reflect the facts and circumstances underlying the citation. An administrative fine of \$10,000 is appropriate in light of the nature of the violation, its limited duration, and the other factors enumerated in section 94936. The order of abatement in the modified citation is in accord with California Code of Regulations, title 5, section 75020, subdivision (b), and will be affirmed.

## ORDER

The amount of the administrative fine in the modified citation issued to respondent SVC is reduced to \$10,000. With that reduction, the modified citation is affirmed. Payment of the administrative fine is due from SVC within 30 days of the effective date of this order.

DATE: Dec 30, 2020

  
THOMAS HELLER (Dec 30, 2020 09:19 PST)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings