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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2005 AUG 10 PM 3:51

R. HIGA

CLERK

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of)
Consumer Protection)
)
Plaintiff,)

CIVIL NO. 05-1-1356-07 SSM
(Other Civil Action)

vs.)

PRELIMINARY INJUNCTION

PLEASE NOTE CHANGES

PACIFIC EDUCATIONAL SERVICES)
COMPANY, a Nevada corporation dba)
Hawaii College of Pharmacy; DENISE)
A. CRISWELL aka Deedee Criswell)
aka DeDe Criswell aka Denise)
Criswell Nakajima and DAVID)
CHAMPION MONROE fka David)
Yacas,)

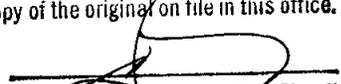
HEARING *August*
Date: ~~November 10~~, 2005
Time: 10:30 a.m.
Judge: Sabrina S. McKenna

Defendants.)
)
)
)

PRELIMINARY INJUNCTION

Plaintiff having filed a Motion for a Preliminary Injunction on August 1, 2005; the matter having come on for hearing before the Honorable Sabrina S. McKenna on August 10, 2005 at 10:30 o'clock a.m.; Plaintiff having been represented by Jeffrey E. Brunton and Michael J. S. Moriyama; Defendants having

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

been represented by Kelvin A. Kaneshiro and Thomas Brown; the court having reviewed the materials in support of and in opposition to the motion and having heard oral arguments of counsel; and good cause appearing therefore:

THE COURT HEREBY FINDS:

1. The court has jurisdiction over the subject matter of this case; there is good cause to believe it will have jurisdiction over all the parties hereto; and venue in this circuit is proper.

2. The Defendants own and operate the Hawaii College of Pharmacy.

3. The Hawaii College of Pharmacy is an unaccredited degree granting institution as that phrase is defined in Hawaii Rev. Stat. Chapter 466E and is, therefore, subject to the requirements therein.

4. The Hawaii College of Pharmacy is a for-profit business enterprise engaged in trade or commerce and is subject to Hawaii's laws relating to unfair and deceptive acts or practices.

5. The Plaintiff has shown a likelihood of proving that:

(a) Defendant PES failed to properly disclose in some of its catalogs, promotional material and/or contracts for instruction that it is and was unaccredited as required by Hawaii Rev. Stat. §446E-2(a);

(b) Defendant PES claimed in some of its catalogs, promotional material and/or contracts for instruction that it had applied for future accreditation in violation of Hawaii Rev. Stat. §446E-5(f);

(c) Defendant PES failed to maintain a statutory agent as required by Hawaii Rev. Stat. §446E-4(a);

(d) Defendant PES failed to produce documents and information upon request by the Plaintiff in violation of Hawaii Rev. Stat. §446E-2(c);

(e) Defendant PES illegally accepted tuition and other payments from or on behalf of students in violation of Hawaii Rev. Stat. §446E-5(e);

(f) Defendant PES falsely claimed in some of its catalogs, promotional material and/or contracts for instruction that it had applied for "pre-candidacy" with the American Council on Pharmaceutical Education ("ACPE") and that a site visit would occur in the Spring of 2004;

(g) Defendant PES falsely represented, stated and otherwise implied that "candidate accreditation" status was automatic or a mere formality and that it had submitted an application with the ACPE for "candidate" status which would be considered at the June 2004 ACPE Board meeting;

(h) Defendant PES falsely represented, stated and otherwise implied that the Hawaii College of Pharmacy was affiliated with the accredited University of Southern Nevada and that the president of the accredited University of Southern Nevada was a member of its Board of Trustees;

(i) Defendant PES falsely informed prospective students that the inaugural class for the Hawaii College of Pharmacy would consist of 120-130 students;

(j) Defendant PES falsely represented, stated and otherwise implied that they had secured a developer to build a permanent campus which would be completed by early 2005;

(k) Defendant PES unilaterally altered the terms of progression through the school; increasing the time which some of the students would take to complete their studies from three to four years or even longer;

(l) Defendant PES, in an attempt to discredit three students and to deter others from exercising their rights to redress with a government agency, caused a notice of expulsion to be delivered to the ACPE, the Plaintiff and the Hawaii and California Boards of Pharmacy and obtained a temporary restraining order *ex parte* which was subsequently withdrawn with prejudice; and

(m) Defendants Criswell and Monroe were officers and directors of PES that actively or passively participated in the illegal activity and/or formulated, directed, supervised, participated in, benefited from, facilitated, controlled, knew and approved of, and committed or caused the commission of the various acts and practices described in the Complaint.

6. There is good cause to believe that the defendants have engaged in acts or practices that violate Hawaii Rev. Stat. § 5446E-2(a), 446E-5(f), 446E-4(a), 446E-2(c), 446E-5(e), 480-2(a) and 481A-3 and that the Plaintiff is therefore likely to prevail on the merits of this action.

7. As a part of the permanent remedy in this case, Plaintiff has sought restitution for consumers and other relief.

8. The Hawaii College of Pharmacy has enrolled at least 240 students who paid \$28,000.00 tuition each. Students' tuition monies were initially deposited into an account at the Bank of Hawaii.

9. Defendant Monroe has subsequently transferred much of those tuition monies to accounts in other states, including Nevada. In addition he has paid himself a salary of \$500,000.00 per year and purchased luxury homes and automobiles outside of the jurisdiction of the State of Hawaii. Defendant Criswell ^{also} has ~~also purchased homes in Nevada and Hawaii and transferred real property to her~~ husband, Akahito Ken Nakajima.

10. Weighing the equities and considering the Plaintiff's likelihood of ultimate success, a preliminary injunction with an asset freeze and other equitable relief is in the public interest.

11. As an agency of the State of Hawaii, Plaintiff need not post a security for the issuance of a preliminary injunction in accordance with Hawaii R. Civ. P. 65(c).

12. This order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. "Defendants" means Pacific Educational Services Company, a Nevada corporation dba Hawaii College of Pharmacy; Denise A. Criswell aka Deedee Criswell aka DeDe Criswell aka Denise Criswell Nakajima and David Champion Monroe fka David Yacas.

2. "Related Parties" means Pacific Blue Foundation, Inc., a Kentucky nonprofit corporation; Criswell & Monroe, LLC, a Kentucky limited liability company; Kentucky Aina Nui, 1 LLC; a Kentucky limited liability company; Kentucky Aina Nui, 2 LLC; a Kentucky limited liability company; Pacific Blue Venture Corporation, a Nevada corporation; Pacific Blue Educational Services, a Nevada corporation; Pacific Blue LLC, a Nevada corporation; Pacific Blue Holdings, inc., a Nevada corporation and Mid Pacific Educational Services, a Nevada corporation.

3. "Document(s)" or "records" means:

A. The original or a true copy of any written, types, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, emails or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or disks, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

B. Any information stored on any desktop personal computer and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by

a third-party, such as in a disaster recovery center' and computers and related offline storage used by Defendants or Related Parties, which may include persons who are not employees of the company or who do not work on company premises.

4. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, funds, monies, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order. Assets does not include any child support payments being received by Defendant Denise A. Criswell or the assets transferred to Akihito Ken Nakajima pursuant to the Decree of Divorce in Case No. D336957 in the District Court of Clark County, Nevada entered on May 24, 2005.

5. "Financial institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including but not limited to any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company or precious metal dealer.

ORDER

PROHIBITED BUSINESS ACTIVITIES

I. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, Related Parties, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants or Related Parties who receive actual notice of this Order by personal service or

otherwise, and each of them, are hereby restrained and enjoined from violating Hawaii Rev. Stat. §§446E-2(a), 446E-5(f), 446E-4(a), 446E-2(c), 446E-5(e), 480-2(a) and 481A-3 in any manner.

ASSET FREEZE

II. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED

that Defendants, Related Parties, and their officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under the control of any of them, including any financial institution, and all other persons or entities acting in concert or participation with any of them who are served with a copy of this Order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly:

A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States which are: (1) in the actual or constructive possession of any Defendant or Related Party; (2) owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belong to, any Defendant or Related Party; or (3) in the actual or constructive possession of, or owned or controlled by, or subject to access by, or belong to, any corporation, partnership, trust or other entity directly or indirectly under the control of any Defendant or Related Party.

B. Opening or causing to be opened any safe deposit boxes

titled in the name of any Defendant or Related Party, or subject to access by any Defendant or Related Party.

C. Incurring charges on any credit card issued in the name, singly or jointly, of any Defendant or Related Party.

D. Transferring any funds or other assets subject to this Order for attorneys' fees, public relations fees or other living expenses, except by prior approval of the court.

E. The funds, property and assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order, including without limitation those acquired by loan or gift.

RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

III. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any financial institution, or any other person or entity served with a copy of this Order shall:

A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds, documents, property, or other assets held by or under such entity's or person's control: (1) on behalf of, or for the benefit of, any Defendant or Related Party; (2) in any account maintained in the name of, or subject to withdrawal by, any Defendant or Related Party and (3) that are subject to access or use by, or under the signatory power of, any Defendant or Related Party.

B. Deny access to any safe deposit boxes that are either titled in the name, individually or jointly, of any Defendant or Related Party or subject to access by any Defendant or Related Party.

RECORD KEEPING PROVISIONS

IV. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants, Related Parties and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents or records.

SERVICE OF THIS ORDER

V. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that copies of this Order may be served by facsimile transmission, email transmission, personal or overnight delivery, or U.S. mail, by agents and employees of the Plaintiff or any state or federal law enforcement agency or by private process server on (1) Defendants and Related Parties, (2) any financial institution, entity or person that holds, controls, or maintains custody of any account or assets of any Defendant or Related Party or who has held, controlled or maintained custody of any account or asset of any Defendant or Related Party or (3) any other person or entity that may be subject to any provision of this Order.

RETENTION OF JURISDICTION

VI. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this

Court shall retain jurisdiction of this matter for all purposes.

DATED: Honolulu, Hawaii, AUG 10 2005 , 2005.

SABRINA S. MCKENNA



HON. SABRINA S. MCKENNA
JUDGE OF THE ABOVE-ENTITLED COURT

Civil No. 05-1-1356-07 SSM; State of Hawaii v. Pacific Educational Services Company, et al. PROPOSED PRELIMINARY INJUNCTION