Texas Workforce Commission

Member of the Texas Workforce Network

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Received
NOV 28 2005
Regulatory Enforcement Division

March 15, 2005

CERTIFIED MAIL

Will Boroski
d/b/a The Actor's Place
1115 4th Avenue
Carrollton, Texas 75006

Dear Mr. Boroski:

Re: *Texas Workforce Commission v. Will Boroski, d/b/a The Actor's Place*
Docket No. 001-CD-0205

Enclosed is a copy of the decision and order issued by the hearing officer appointed by the Texas Workforce Commission pursuant to section 132.303 of the Texas Education Code, granting the Commission's request for a cease and desist order.

Section 807.281 of the Texas Workforce Commission rules (40 T.A.C. §807.281) provides:

(a) Within 10 days after the hearing is held, the hearing officer shall issue a written decision granting or denying the request for the issuance of a cease and desist order that includes findings of fact and conclusions of law. The hearing decision shall be mailed by Certified Mail, Return Receipt Requested, and is presumed received 5 days from the date it is mailed. The hearing officer's decision is final unless an appeal is filed under subsection (b).

(b) A party that is not satisfied with the decision of the hearing officer may file a written appeal of the decision to the Commission for a final review no later than the 15th day after receipt of the hearing decision. The written appeal shall contain the party's arguments as to why the decision of the hearing officer should be reversed. A party may request oral argument on the written appeal before the Commission. If oral argument is approved, each party or its hearing representative may present argument in support of its position.

(c) Upon receipt of the written appeal of the hearing officer's decision, the Commission shall consider the appeal and issue a decision within 30 days. If oral argument is requested by a party and approved, the Commission shall schedule and hold oral argument within 20 days of receipt of the written appeal. The Commission shall consider the appeal on the basis of the record made before the hearing officer. The decision of the Commission shall be mailed by Certified Mail, Return Receipt Requested, and is presumed received 5 days from the date it is mailed.

Section 807.282 of the Texas Workforce Commission rules (40 T.A.C. §807.281) provides:

(a) If the request for the issuance of a cease and desist order is granted, the Executive Director shall issue a cease and desist order against the person that is found operating a career school or college without a certificate of approval in violation of §132.151 of the Act.

(b) The cease and desist order shall be delivered by Certified Mail, Return Receipt Requested, and is presumed received five days from the date it is mailed.

(c) From the date of receipt of the issuance of the cease and desist order, the person must completely cease and desist operating the career school or college.

(d) The cease and desist order shall remain in effect until the person comes into complete compliance with the Act, or unless otherwise provided by the order of the Commission.

If you wish to appeal this decision pursuant to section 807.281(b), your written appeal should be sent to:

Don Ballard, General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778
FAX: (512) 463-1426

If I may be of any procedural assistance, please do not hesitate to call.

Sincerely,

Douglas Carnes
Director-Special Hearings Department
Telephone (512) 479-8826 ext. 204
Fax (512) 472-9578

mc: John Moore, Regulatory Enforcement
Don Ballard, Office of General Counsel
Career Schools
File

DOCKET NO. 001-CD-0205

TEXAS WORKFORCE COMMISSION	§	BEFORE THE
	§	
	§	TEXAS WORKFORCE
	§	
v.	§	COMMISSION
	§	
WILL BOROSKI	§	
d/b/a THE ACTOR'S PLACE	§	
	§	STATE OF TEXAS

DECISION

The Texas Workforce Commission set a hearing to determine whether to issue a cease and desist order against Will Boroski, doing business as The Actor's Place, pursuant to Subchapter J of the Texas Career Schools and Colleges Act (Tex. Educ. Code §§ 132.301-306). A hearing was held on March 4, 2005, before Douglas N. Carnes, the administrative hearing officer designated to conduct the hearing and render a decision. The Career Schools and Veterans' Education section of the Texas Workforce Commission ("Career Schools") was represented by Tina Coronado, attorney with the Commission's Regulatory Enforcement Division. Appearing as witnesses for Career Schools were Mark Kerssemakers, Texas Workforce Commission Integrated Service Area Manager--Dallas, and Michael DeLong, Program Administrator of Career Schools. Although provided with notice of the hearing at the school's last known business address, Mr. Boroski did not appear for the hearing.

FINDINGS OF FACT

1. The operation of a business in Texas that falls within the general definition of a "career school or college," as defined by the Texas Career Schools and Colleges Act ("the Act"), is generally subject to the Act and the rules promulgated by the Texas Workforce Commission ("Commission") pursuant to the Act.

Career schools must obtain a certificate of approval from the Commission and the certificate must be renewed annually, subject to a provision that certain small schools may renew every three years. Tex. Educ. Code §132.056. Exemptions may be granted by the Commission only upon application by the school owner. Tex. Educ. Code §132.002.

2. "Career school or college" means any business enterprise that maintains a place of business within this state or solicits business within this state, that is not specifically exempted by the Act, and that offers or maintains courses of instruction or makes such courses of instruction available through classroom instruction or by distance education to a person for the purpose of training or preparing the person in an occupation or for avocational or personal improvement. Tex. Educ. Code §132.001(1).

3. Upon a showing that a person is operating a career school or college without a certificate of approval or exemption issued by the Commission, and that the person has not responded to more than one written notice from the Commission regarding the person's noncompliance with the Act, the Commission may issue an order requiring the person to immediately cease and desist from operation of a career school or college in violation of the Act. Tex. Educ. Code §132.301, 303.

4. Mr. Boroski maintains a website at www.actorsplace.com. The site describes the business as:

> "Helping careers for Beginners & Advanced Actors. The Actors Place is a members' organization created to benefit and promote the actor and acting professional. Founded in 1998 by Los Angeles Actor, Director & Producer - Will Boroski, The Actors Place has become one of the most formidable and successful acting organization with thousands of members in Texas and nationwide."

The website describes the business' studios as 72,000 square feet, located at 6301 N. O'Conner Road, Building 1, Irving, Texas. The website offers workshops and classes at a 20% discount to members. Membership is $99 per year. The classes are described as "for the Beginner to the professional" and as being led by well-known instructors and acting coaches. The website also offers job placement services

related to the acting industry, including assistance with resumes, use of computers, and job postings. According to the website, Mr. Boroski is the "CEO and Founder", and Teresa Griffith is the Executive Director of The Actor's Place.

5. The Actor's Place was formerly a Texas non-profit corporation originally filed in 1998, but its corporate privileges were revoked in 2001 for failure to pay franchise taxes. Mr. Boroski was listed as the corporation's registered agent for service of process.

6. The Actor's Place first came to the attention of the Career Schools section of the Commission in early 2003. Steve Rye, an employee of Career Schools, sent a notice letter to the business on April 24, 2003. He received an e-mail from Mr. Boroski asking for an application packet. Mr. Rye mailed him the application information, but Mr. Boroski never contacted the Commission further and did not respond to follow-up letters sent in May and June of 2003.

7. In early 2004, the Commission received a tip from a licensed school that Mr. Boroski was still operating The Actor's Place. On March 19, 2004, Mr. Boroski circulated an e-mail advertisement for a class entitled "The Ultimate Actor Workshop." The workshop was described as a 5-hour workshop at the Actor's Place studios, to include subjects such as the audition process, career guidance for Texas actors, film terms and actor speak, on-camera techniques, and how to make it in Hollywood. The class was to be taught by Mr. Boroski. The fee for Texas actors was $99. Mr. Boroski also advertised for a workshop in improvisation.

8. On February 28, 2005, Mr. Kerssemakers visited the studio at 6301 N. O'Conner Road, Building 1, Irving, Texas. The receptionist in the building confirmed that the business still had an office in that location and that classes still met at that location. Calls to the business' telephone number result in a voice mail message indicating that the business' hours are from 12 p.m. to 6 p.m.

9. On April 13, 2004, Mr. Kerssemakers mailed a letter to Mr. Boroski at his business location, informing him that the Commission had received information indicating that he was operating a career school without a license. The letter informed Mr. Boroski of the legal requirements for operating a career school or college in Texas, and gave him fifteen days to either cease operations and provide an affidavit to that effect; submit a letter seeking an exemption under the Act; or submit a letter indicating his intent to seek a certificate of approval. This letter was sent to Mr. Boroski by regular first-class mail and by certified mail. The certified letter was returned unclaimed to the Commission; the first-class letter was not returned and is presumed to have been delivered. Mr. Boroski did not respond to this letter.

10. On May 4, 2004, Mr. Kerssemakers mailed a second letter to Mr. Boroski at his business location, warning him that non-response could lead to civil penalties and injunctive relief. The letter gave Mr. Jones ten days to respond. This letter was sent to Mr. Boroski by regular first-class mail and by certified mail. The certified letter was signed for and delivered on May 5, 2004; the first-class letter was not returned and is also presumed to have been delivered. Mr. Boroski did not respond to this letter either.

11. In addition, Mr. Kerssemakers has made several attempts to contact Mr. Boroski by leaving telephone messages. He received no response from Mr. Boroski, or from anyone representing The Actor's Place.

12. Neither Mr. Boroski nor The Actor's Place has ever been issued a certificate of approval by the Commission, and there is no record of any application for a certificate of approval from Mr. Boroski or The Actor's Place.

CONCLUSIONS OF LAW

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, I make the following Conclusions of Law:

Section 132.001(1) of the Texas Career Schools and Colleges Act defines "career school or college" as any business enterprise operated for a profit or on a nonprofit basis that maintains a place of business within this state, or solicits business within this state, that is not specifically exempted by this chapter, and

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study are available through classroom instruction or by distance education, or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement. Tex. Educ. Code §132.001(1).

Section 132.151 of the Texas Career Schools and Colleges Act provides, in part, that a person may not operate a career school or college without a certificate of approval issued by the commission. Tex. Educ. Code §132.151(1).

Section 132.301(a) of the Texas Career Schools and Colleges Act provides that the commission may set a hearing on whether to issue a cease and desist order against a person under Section 132.303 if: (1) the commission has reason to believe that the person is operating a career school or college without a certificate issued by the commission in violation of Section 132.151; and (2) the person has not responded to more than one written notice from the commission regarding the person's noncompliance with Section 132.151. Tex. Educ. Code §132.301(a).

Section 132.303 of the Texas Career Schools and Colleges Act provides that after a hearing held under this subchapter, the commission may issue against the person charged with operating a career school or college without a certificate issued by the commission an order that requires that the person immediately cease and desist from violating this chapter. Tex. Educ. Code §132.303.

The evidence presented in this case establishes that Mr. Boroski has been operating, and continues to operate, a career school or college within the definition of section 132.001(1) of the Act. Furthermore, Mr. Boroski has been operating his school without a certificate of approval in violation of section 132.151(1) of the Act.

The workshops and training offered by Mr. Boroski are intended to prepare individuals for careers in acting. The workshops, for which Mr. Boroski charges a fee, provide instruction on the basics of acting in front of cameras, advice on how to succeed in Hollywood, and career guidance. This purpose, as well as the advertising on the business' website and by e-mail, indicates that the workshops are primarily aimed at individuals residing in Texas who intend to become professional actors. Further, Mr. Boroski has maintained, and continues to maintain, a place of business within Texas, and he solicits business within Texas both through advertising on the Actor's Place website and through his e-mails to prospective students. Finally, The Actor's Place has not been granted an exemption from the Act by the Commission. Therefore, Mr. Boroski's business meets all of the requirements of section 132.001(1) to be a career school or college under the Act and therefore requires a certificate of approval to operate.

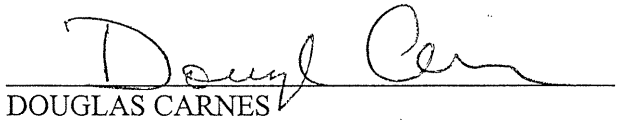
The evidence establishes that The Actor's Place has been in operation since 1998, and continues to operate at its business location. Because Mr. Boroski has never applied for or been issued a certificate of approval by the Commission, he has therefore been operating and continues to operate his career school without a certificate of approval issued by the Commission in violation of section 132.151(1) of the Act.

Accordingly, because Mr. Boroski is operating a career school without a certificate of approval, the Commission's request for the issuance of an order requiring Mr. Boroski to immediately cease and desist the operation of a career school in violation of the Act will be granted.

ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Commission's request be GRANTED, and that the Commission shall issue an order requiring that Will Boroski IMMEDIATELY CEASE AND DESIST from violating the Texas Career Schools and Colleges Act.

SIGNED AND ISSUED this 9th day of March, 2005.



DOUGLAS CARNES
ADMINISTRATIVE HEARING OFFICER