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DOJ Settles Student Recruitment False Claims Act Case

The Department of Justice recently announced the settlement of a False Claims Act (“FCA”) case filed against North Greenville University (“NGU”) by the president of a company that recruited students to the school. The case, United States ex rel. Shoe v. North Greenville University, No. 6:16-cv-01570 (D.S.C.), alleged that NGU had violated the Higher Education Act’s (“HEA”) incentive compensation ban by paying the recruiter half the tuition it received for each recruited student that attended the school. The case highlights a few aspects of False Claims Act practice, including the fact that the relator – the individual who initiates the case alleging fraud – can be a participant in the alleged conduct, who in this case stands to recover $375,000.

NGU is private university located just outside Greenville, South Carolina. Its student population grew from 300 in 1991, to over 2,300 in 2015. In January 2014, NGU’s President and other senior staff along with Maurice Shoe, who had worked for an educational consulting company, formed Joined, Inc. to recruit students for NGU’s online and satellite programs, as well as for other schools. NGU loaned Joined $2.5 million in exchange for a 33 percent stake in the company. NGU also controlled Joined’s Board of Directors by appointing three members who controlled the majority of votes. Joined was required to “take reasonable efforts to market, enroll and retain both non-campus graduates and undergraduate students in applicable online courses.” For its services, Joined was to receive 50 percent of the gross tuition revenue actually received by NGU for each of the students Joined recruited. For the years 2014 and 2015, NGU paid Joined a total of $1.1 million, and, at the time the complaint was filed, was alleged to have owed the recruiter another $850,000.

By 2015, Joined was in dire financial straits, with significant marketing costs and loan payments that outstripped its revenue from NGU. In August 2015, NGU terminated its agreement with Joined. Shoe, who served as the President, Board Member and minority owner of Joined, alleged that he subsequently learned that the arrangement between NGU

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and Joined violated the HEA and filed a False Claims Act complaint against NGU. The government subsequently intervened and negotiated a settlement with NGU.

The theory behind NGU's purported liability reflects a recurring approach. *See, e.g., our previous article, When is a College's Silence a Lie? False Claims and Financial Aid*. To receive Title IV funding from the federal government, NGU was required to enter a program participation agreement, in which it agreed to comply with all HEA requirements. That included the incentive compensation ban, found at 20 U.S.C. § 1094(a)(20), which prohibits institutions that accept Title IV funding from providing "any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities." Paying Joined a portion of the tuition received from each recruited student amounts to a payment based directly on its success in securing enrollments. By violating the ban, NGU was alleged to have violated its PPA and the regulatory scheme, leaving NGU ineligible to receive Title IV funds. This theory renders each request NGU submitted to draw Title IV funds a false claim, each of which could be subject to a penalty ranging from $5,000, to $11,000.

The potential liability under this theory is vast. With each draw on Title IV funds treated as a false claim the potential liability in penalties alone escalates quickly. In addition, the government takes the position that all Title IV funds paid during the period that the school is in violation are improper, regardless of whether the payments were directly related to the unlawful conduct. Thus, in the NGU case, even if a student was not recruited by Joined, the government funds used for that student's tuition could be included in the damages total as long as the student was enrolled and the payments made during the period that NGU was violating the incentive compensation ban. With 2,300 students, 95 percent of which received Title IV funds, NGU's potential liability certainly exceeded the $2.5 million settlement, particularly if the total of government funds paid during the 1.5 year violation period was trebled as called for under the FCA.

The FCA's relator provision creates an interesting result in this case as well. The FCA permits private citizens to file claims on behalf of the United States. If the claim is successful, the recovery goes to the government, though the individual who filed the claim – referred to as the relator – can receive from 15 percent to 25 percent of that amount. 31 U.S.C. § 3730(d)(1). The exact percentage for any given case is usually determined by an agreement between the government and the relator, though the court can determine the amount if no agreement can be reached.

In the NGU case the relator was intimately involved in the conduct that violated the incentive compensation ban. He presumably helped negotiate the payment structure, stood to benefit from Joined's success as a minority investor, and served as the company's President as well as a board member. Although Shoe alleged that he did not learn that the compensation program was illegal until after NGU terminated its deal with Joined, he played an integral role in arranging and carrying out the scheme. Regardless, he was awarded $375,000 – 15 percent of the total settlement – as an award for initiating the claim. This reflects a policy of encouraging those who know about potentially fraudulent conduct to come forward, and often those with the best knowledge often are those in the middle of the scheme. While NGU may have had the upper hand when it terminated its deal with NGU, the shoe was certainly on the other foot when all was said and done.

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