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MAY 07 2014

BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of Continuing Education Offerings of, THE CAREER COMPASS, Sponsor.	No. H-04486 SD OAH No. 2013041178
In the Matter of Course Instruction by, WELLINGTON PENDELL, Instructor.	No. H-04487 SD OAH No. 2013041178

DECISION

The Proposed Decision dated April 2, 2014, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on MAY 28 2014.

IT IS SO ORDERED MAY 06 2014.

Real Estate Commissioner

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Continuing Education Offerings of: THE CAREER COMPASS, Sponsor.	Case No. H-04486 SD OAH No. 2013041178
In the Matter of Course Instruction by: WELLINGTON PENDELL, Instructor.	Case No. H-04487 SD

PROPOSED DECISION

On February 24, 2014, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard these matters.

Cheryl Keily, Real Estate Counsel, represented complainant.

Robert P. Ottilie, Attorney at Law, represented respondents The Career Compass and Wellington Pendell.

The matter was submitted on March 24, 2014.

FACTUAL FINDINGS

1. Wayne S. Bell, Real Estate Commissioner of the State of California filed Notice of Withdrawal of Continuing Education Offering Approvals No. H-04486 SD against respondent The Career Compass and Notice of Withdrawal of Qualification of Instructor No. H-04487 SD against respondent Wellington Pendell, in his official capacity.

After the hearing, the parties filed closing briefs and respondents submitted additional evidence. Respondents submitted a Notice of Lodgment of Exhibits containing 100 attachments, which was marked as Respondents' Exhibit F and admitted as hearsay. Respondents also filed a Trial Brief marked Respondents' Exhibit G and a Reply to the Closing Argument by the Bureau of Real Estate, which was marked Respondents' Exhibit H. The Bureau filed a Closing Argument, which was marked Exhibit 10.

2. The Bureau of Real Estate (hereafter "Bureau") issued Continuing Education Sponsor ID #.4872 to respondent The Career Compass to offer the following courses: Course No. 4872-1009, entitled Building Superior Client Relationships, effective March 21, 2012, and expiring March 20, 2014; Course No. 4872-1007, entitled Real Estate Pricing & Offers, effective November 9, 2011, and expiring November 8, 2013; Course No. 4872-1006, entitled Real Estate Marketing 101, effective June 12, 2011, and expiring June 6, 2013; Course No. 4872-1005, entitled Planning & Tracking Your Business, effective May 31, 2011, and expiring May 30, 2013; and Course No. 4872-1004, entitled Quadrupling Your Business, effective May 23, 2011, and expiring May 22, 2013.

3. On March 1, 2012, Larry Clark, a real estate licensee, attended a live presentation by Mr. Pendell held at the offices of Evergreen Realty and Associates in Upland, California. Mr. Pendell presented the course on behalf of The Career Compass. According to the flyer advertising the presentation that Mr. Clark had received, attendees would earn three continuing education credits. The course was called Short Sale & Real Estate Success Symposium.

On April 22, 2012, Mr. Clark sent an e-mail to The Career Compass and notified it that he had not gotten the three credit certificate. The same day, Mr. Clark received a C.E. Course Completion Certificate from The Career Compass showing he was entitled to three hours of continuing education credit. The certificate indicated that he had attended a Planning & Tracking Correspondence Course on March 19, 2012, the course was given at a location in Temecula, he had completed the correspondence course and he had passed the final exam with a score of 70 percent. The next day, Mr. Clark e-mailed the certificate to Shane McLatchey, a Bureau employee in the Education and Research Section.

Mr. Clark did not take a final examination after the course was completed.

4. On March 1, 2012, Jacqueline Lovest, a real estate licensee, attended the same course as did Mr. Clark at the Evergreen Realty office in Upland. In May 2012, she requested a course certification from The Career Compass. Shortly thereafter, Ms. Lovest received a C.E. Course Completion Certificate from the Career Compass showing she was entitled to three hours of continuing education credit. The certificate indicated that she had attended a Planning & Tracking Correspondence Course on March 1, 2012, the course was given at a location in Temecula, she had completed the correspondence course and she had passed the final exam with a score of 70 percent.

Ms. Lovest did not take a final examination after the course was completed.

On April 26, 2013, The Career Compass sent an e-mail to Ms. Lovest and informed her that the course she had requested a certification for did not have Bureau certification and only one other agent had requested or received their certificates. The e-mail advised her that the certificate she received was not authorized by The Career Compass and had no Bureau certification. The Career Compass asked Ms. Lovest to destroy the certificate.

5. On April 20, 2012, Citally Morinico, Mary Prout, and Bruce Campbell, all real estate licensees, attended a live, continuing education course sponsored by the Arcadia Association of Realtors in Arcadia, California. Mr. Pendell presented the class on behalf of the Career Compass. A flyer distributed before the class described the course as "Planning and Tracking Your Business." The flyer indicated that the course earned three continuing education credits.

Shortly thereafter, Mr. Morinico, Ms. Prout, and Mr. Campbell, received C.E. Course Completion Certificates from The Career Compass showing they were entitled to three hours of continuing education credit. The certificates indicated that they had attended a Planning & Tracking Correspondence Course on April 20, 2012, the course was given at a location in Temecula, they had completed the correspondence course and they had passed the final exam with a score of 70 percent.

None of the attendees took a final examination after the course was completed.

6. Mr. Pendell attended SDSU from 1986 to 1991 and majored in finance. In 1991, he started working as an intern at Proctor and Gamble in Long Beach and then worked for Bacardi Imports from 1993 to 1999 as a district manager in San Diego and later in Michigan. He returned to San Diego and worked as a vehicle salesperson selling BMWs in 2002. He worked for Tony Robbins as a coach and salesperson and then worked for DHL shipping until 2005 as an area manager and salesperson. He worked for Banner Mattress as a district manager managing 12 stores until January 2007. Mr. Pendell is not a real estate licensee.

Mr. Pendell began working for Richard Robbins in 2007. Mr. Robbins operated a real estate training company. Mr. Pendell was a speaker promoting the company and training others in real estate. In November 2007, Mr. Pendell started The Career Compass with two others and incorporated the company. Its mission was to bring new marketing training to the real estate industry. Mr. Pendell served as a motivational speaker. Between 2007 and 2010, The Career Compass taught success techniques through its success seminars. The business succeeded and it began to offer two-day seminars, which always sold out.

In 2010, Mr. Pendell obtained approval from the Bureau to offer continuing education courses for credit. The two and a half day seminars offered 45 hours of continuing education credit for real estate licensees. The portions of the seminars relating to real estate were taught by affiliate groups for credit, while The Career Compass taught success principles. The Career Compass conducted eight to ten seminars a years and typically had 200 to 300

attendees. The Career Compass charged $195 usually for two and a half days of training, and gave examinations at the conclusion of the seminar in order for attendees to obtain credit. According to Mr. Pendell, he has provided services to more than 12,000 attendees at the seminars and success training courses.

Mr. Pendell also provided training in shorter seminars, usually lasting one to three hours and often during lunch. He called them "lunch and learn" seminars. These lunch seminars were free and focused on success training, but also could offer one credit of continuing education. They were usually given in a brokerage office. Mr. Pendell's intent was to obtain potential clients for the two and a half day seminars. If a course offered credit and an attendee wanted the credit, Mr. Pendell had the attendee take an examination. In Mr. Pendell's experience, real estate licensees rarely wanted continuing education credit for the short office courses and he, therefore, did not give examinations.

Mr. Pendell testified that he gave the attendees a feedback sheet with a rating system, and his seminars received a high level of satisfaction in the surveys.

7. Mr. Pendell testified he first dealt with Randy Alford at the Bureau and in 2012 began talking to Mr. McLatchey. Mr. Pendell admitted his relationship with Mr. McLatchey was not a good one, and at one time, Mr. McLatchey withdrew approval of a course that Mr. Alford had previously approved.

Mr. Pendell was aware that all credits required final examinations and a passing rate of 70 percent was required. In his opinion, the examinations were fairly easy and designed to make sure an attendee actually attended the course and listened. He was aware that there were sign-ins to keep track of who attended. He testified that when he taught a class live, written materials were not provided in advance, but were provided in advance if the course was a correspondence course.

Mr. Pendell testified that as a result of the mistakes shown by this case, The Career Compass does not offer continuing education credit for lunch or office courses or the three-hour weekend courses. Mr. Pendell testified The Career Compass terminated all standalone accredited courses.

8. Mr. Pendell testified he taught the free lunch and learn course March 1, 2012, in Upland. He testified the seminar was scheduled through Terri Barrett, the office manager of Evergreen Realty and Associates and was for a three-hour course. Before he gave the course, Ms. Barrett asked Mr. Pendell to shorten the course to between 60 and 90 minutes. They decided they would do that but not offer any credit. Mr. Pendell taught a different course than the one advertised on the original flyer and Ms. Barrett created a new flyer. At the end of the course, which was attended by 20 to 25 people, Mr. Pendell did not give an examination. Mr. Pendell recalled that nearly every attendee signed up for a full, paid seminar for 45 hours of continuing education credit.

It is The Career Compass's policy that it will not refund the fee for the success seminar after 72 hours from the time of the sign-up.

Mr. Pendell met Mr. Clark at the Upland course, at which time Mr. Clark signed up for the success seminar and paid $189.00 by check. Mr. Pendell did not tell any of the attendees at this seminar that they would receive credit for the course, and there was no sign-in sheet or examination. Mr. Pendell believed neither was required because the seminar did not offer any continuing education credit. At the conclusion of the seminar, no one asked to take an examination.

Mr. Pendell testified that well after the 72-hour refund window passed, Mr. Clark called him and asked for a refund. Mr. Pendell testified he refused to give Mr. Clark a refund. Mr. Pendell recalled Mr. Clark calling about four times asking for a refund and Mr. Pendell refused each time. Mr. Pendell testified that Mr. Clark never asked him for a certificate for course credit.

Early on Sunday morning, April 22, 2012, Mr. Clark e-mailed The Career Compass and asked for the certificate for the course. The e-mail was from an agent named Neal Clark but the certificate issued had the name Larry Clark on it. Before The Career Compass sent out this certificate, it had not sent out any other certificates for the March 1, 2012, course. Mr. Pendell had not seen the e-mails prior to The Career Compass' staff sending out the certificate. Mr. Clark had not sent any e-mails to Mr. Pendell asking for a certificate.

Mr. Pendell testified that there were no documents to support the issuance of this certificate and that it was an error.

Mr. Pendell did not recall meeting Ms. Lovest at the Upland seminar and he had no communication with her after the seminar.

9. Mr. Pendell taught the April 20, 2012, three-hour approved course in Arcadia. He testified that the course was set up, sponsored, administered, and advertised, by Stephanie LaPort of Old Republic Home Warranty. Mr. Pendell testified that Ms. LaPort did the sign-in, checked identification and collected business cards from the attendees. She also sent out all the information to the attendees. About 15 to 20 people attended the course and stayed for the entire course.

Mr. Pendell testified that at the conclusion of the course, he told the attendees that if they wanted credit for the course, they had to take a final examination and have it graded before they could receive a certificate. Mr. Pendell had a final examination with him and was prepared to administer it. According to Mr. Pendell, no one wanted to take the examination and everyone left, so he did not administer the examination. In his experience, this was common. As a result, The Career Compass did not send out any certificates after the course was completed.

Mr. Pendell testified that about ten to 14 days after he taught the course in Arcadia, he received a series of telephone calls from Ms. Martenas of the Arcadia Board asking about the certificates for the attendees. She said some of the agents who attended were asking about the certificates. Mr. Pendell told her that no tests were given and he could not give her any certificates. Ms. Martenas said a large percentage of the members of the Board were of Asian heritage and probably were confused because of language problems and might not understand what was required in order to obtain a certificate. Ms. Martenas said she expected The Career Compass to send out the certificates. Mr. Pendell reiterated that The Career Compass could not send out certificates because no examination had been given. Ms. Martenas said she was not happy with Mr. Pendell's refusal to issue certificates and pointed out that the agents had attended the course for the entire time. Ms. Martenas had a list of attendees and that list confirmed the list Ms. LaPort had compiled. Mr. Pendell was satisfied that the two lists accurately identified who attended the seminar.

Mr. Pendell decided that the attendees had satisfied the course requirements and had substantially complied with the requirements for issuance of certificates. He believed the intent of the continuing education requirements was to educate real estate licensees, not give them tests, and the intent was satisfied in this matter. Mr. Pendell decided to issue the certificates, knowing the examination had not been given, and accepted full responsibility for the decision. Mr. Pendell recognized he made a mistake. He testified that The Career Compass changed its practices and no longer did these lunch and learn seminars for continuing education credit and therefore this mistake would not happen again.

10. Shelly Harkins, Manager, Education and Research Section of the Bureau, sent a Corrective Action Letter to The Career Compass on November 17, 2011. The letter described an audit that the Bureau performed of the continuing education courses on November 20 and 21, 2010. The audit found The Career Compass had violated six of the Commissioner's regulations containing the rules relating to continuing education courses. Mr. Pendell submitted a response to the audit by letter dated December 2, 2011.

11. Respondents submitted a Lodgment of Exhibits that contained 100 attachments. For the most part, they are letters praising the work done by Mr. Pendell and The Career Compass.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10170.4 provides in part:

> The commissioner shall adopt regulations pursuant to Section 10080, to prescribe all of the following:
>
> (a) A definition of basic requirements for continuing education of 45 clock hours of attendance at approved educational courses, seminars,

workshops, or conferences, or their equivalent, achieved during a four-year period preceding license renewal application.

(b) A basis and method of qualifying educational programs, the successful completion of which, will satisfy the requirements of this article.

(c) A procedure for evaluation of petitions based on a claim of equivalency with the requirements of subdivision (a), and a reasonable standard by which an activity would be judged equivalent, including, but not limited to, instruction in real estate subjects, publication of professional articles or books, or development of real estate educational programs, law or research.

(d) A system of control and reporting qualifying attendance.

(e) An appropriate form of testing, examination or evaluation by the sponsor of each approved correspondence or homestudy educational program, or equivalent, of the student.

2. California Code of Regulations, title 10, section 3006 provides in part:

In acting on an application for approval of a continuing education offering, the Commissioner shall apply, but shall not be limited to the application of the following criteria in determining that the appropriate hours of continuing education credit will be given to licensees who have successfully completed the course within the time period specified by Section 10170.5 of the Business and Professions Code:

(a) The offering shall have at least one successive clock hour of instruction which is based on 50 minute increments of actual instruction.

(b) For other than a correspondence course offering, participants shall be physically present for at least 90% of the offering time exclusive of the time allocated to the administering of a final examination.

(c) For all continuing education offerings, a sponsor shall provide each participant at least a written course outline that is a narrative outline consisting of not less than three (3) pages per credit-hour. Each page shall contain an average of 200 words.

(d) A continuing education offering shall have an appropriate form of final examination as set forth in Section 3007.3.

(e) Instructors, conference leaders, lecturers, and others who present a continuing education offering shall meet at least one of the following qualifications:

(1) A bachelor's degree in a related field to that in which the person is to teach, from a school listed as an institution of higher learning by the U.S. Department of Education, or from a comparable school of a foreign country.

(2) A valid teaching credential or certificate issued by the Board of Governors of the California Community Colleges or by a comparable California teacher-credentialing agency authorizing the holder to teach in the field of knowledge covered in the offering.

(3) Three years full-time experience in the applicable field.

(4) Any combination of at least three years of full-time experience and college level education in the applicable field.

(5) The Commissioner may approve instructors who in his or her judgment meet the criteria for approval or who otherwise evidence their teaching qualifications by education or experience or a combination of the two.

(f) An instructor shall not be qualified if the instructor:

(1) Does not satisfy the criteria in subdivision (e);

(2) Has engaged in any violation of Article 25 (commencing with Section 3005) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of a continuing education offering....

3. California Code of Regulations, title 10, section 3007 provides in part

¶...

(j) A Sample Course Completion Certificate containing at least:

(1) The name and license number of participant;

(2) A statement regarding meeting attendance and/or examination criteria;

(3) The name of the offering as approved by the Department;

(4) The number of credit hours;

(5) The date of registration if a correspondence course;

(6) The date of successful completion;

(7) The category of the offering;

(8) The eight-digit DRE approval number;

(9) The name, address and telephone number of the sponsor; and

(10) The printed name, signature and telephone number of the individual verifying the participant's completion of the course....

4. California Code of Regulations, title 10, section 3007.3 provides in part:

A final examination is required for all continuing education courses. Sponsors shall establish the following final examination rules for approved offerings that are to be observed by all offering participants:

(a) The final examination shall provide the means by which a sponsor determines whether a participant has successfully completed the offering. The sponsor shall take steps to protect the integrity of the examination by controlling access to the exam by the participant and to prevent cheating in an examination.

(b) The examination shall not be taken by participants until completion of the instructional portion of the offering to which the examination applies.

¶...

(n) A violation of a final examination rule by the sponsor or the sponsor's representative administering the examination shall constitute grounds for denial or withdrawal of approval of the offering.

(o) To pass the examination, a participant must achieve a percentage score of 70 percent or more....

5. California Code of Regulations, title 10, section 3010 provides in part:

(a) If the Commissioner determines that a previously-approved continuing education offering no longer meets the prescribed statutory and regulatory standards for approval, or if the Commissioner determines that an instructor or lecturer for the course is no longer qualified, or that the course sponsor has engaged in activity violating

the provisions of Article 25 (commencing with section 3005) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of a continuing education offering, or the course differs materially from that which was previously approved, the Commissioner shall give written notice of withdrawal of approval setting forth the reasons for the determination. If the Commissioner determines, following an application for course approval, that the course will not meet the prescribed statutory and regulatory standards for approval or if the Commissioner determines that the instructor for the course is unqualified, the Commissioner shall give written notice of denial of approval setting forth the reasons for the determination. Withdrawal or denial of approval will be effective 30 days after the notice of withdrawal or denial is received by the sponsor unless the sponsor earlier files a written request for hearing on the withdrawal or denial action. If the request for hearing is received by the Commissioner before 30 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal or denial of approval shall not be effective unless and until ordered by the Commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced within 30 days after receipt of the request for hearing unless continued to a later date by order of the Commissioner or by agreement of the parties. In a hearing on an order of withdrawal issued by the Commissioner, the burden of proving that the course does not meet the prescribed statutory and regulatory standards for approval shall be on the Commissioner....

6. Cause to withdraw the course offerings of respondent The Career Compass pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, sections 3006, subdivision (d), and 3007.3, subdivision (n), violation of the rule relating to final examinations, was established by reason of Findings 3, 4 and 5.

7. Cause to withdraw the course offerings of respondent The Career Compass pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, section 3006, subdivision (b), in that The Career Compass did not ensure that participants were physically present for at least 90 percent of the offering time exclusive of the time allocated to the administering of a final examination, was established by reason of Findings 3, 4 and 8. According to Mr. Pendell, the course he taught on March 1, 2012, was not a course for which continuing education credit could be earned, and he did not comply with any of the rules relating to courses taught for credit. However, The Career Compass issued two course completion certificates to persons who represented they attended the course.

A violation of section 3006, subdivision (b), was not established for the course taught by Mr. Pendell on April 20, 2012.

8. Cause to withdraw the course offerings of respondent The Career Compass pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, sections 3007, subdivision (j), in that the course certificates issued by The Career Compass contained incorrect information, was established by reason of Findings 3, 4 and 5.

9. Cause to withdraw the qualification of instructor of respondent Wellington Pendell pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, sections 3006, subdivision (f)(2), and 3010 for violation of the Regulations, was established by reason of Findings 5 and 8.

10. The Bureau had issued Continuing Education Sponsor numbers to the Career Compass to offer seven continuing education courses. The approvals of all seven courses have expired. (Finding 2.) Respondents argue the issues relating to the approval of The Career Compass courses are moot.

While this decision will have no effect upon the ability of The Career Compass to offer these courses in the future because the approvals have expired, the issues relating to the conduct of The Career Compass must be decided in order to determine whether Mr. Pendell's instructor qualification should be withdrawn. Furthermore, to the extent that The Career Compass may in the future seek approval to provide continuing education courses, a record of its activities while it had a prior approval may be relevant to any future decision. Thus, a decision should be made. As found in Legal Conclusions 4, 5 and 6, The Career Compass violated several rules regulating providers of continuing education courses, and its approval of those courses must be withdrawn.

11. The case against Mr. Pendell rests on the issuance by The Career Compass of certificates of completion to attendees of two courses. Insofar as Mr. Pendell is concerned, the two courses must be treated differently.

The evidence established that Mr. Pendell did not teach the March 1, 2012, course as a continuing education course. Nevertheless, The Career Compass issued two certificates of completion indicating the attendees were entitled to three hours of continuing education credit. The Career Compass issued the certificates in error and violated several regulations in doing so. They should not have been issued. It was not established that Mr. Pendell had anything to do with the issuance of those certificates.

It is well established that the licensed owner of a business such as real estate broker is responsible for the acts of the employees of the business. Since the issues involved in this matter revolve around a government issued approval similar to an occupational license, the relevant considerations should be the same. An employee of The Career Compass issued the

two certificates and as a result, The Career Compass is responsible for the errors. Mr. Pendell, as one of the owners of The Career Compass, is likewise responsible for the errors.

The Bureau is seeking to withdraw Mr. Pendell's approval to serve as an instructor or lecturer of previously-approved continuing education courses. California Code of Regulations, title 10, section 3010, subdivision (a), allows the Commissioner to withdraw the approval if the instructor is no longer qualified. Section 3006, subdivision (f)(2), provides that an instructor is not qualified if he or she has engaged in any violation of the regulations. The regulations require the instructor commit a violation of the regulations in order to become unqualified. In this case, the Bureau is seeking a determination that Mr. Pendell is not qualified because he is responsible for the violations, but he is only responsible in a vicarious manner. He did not commit the violations, authorize them as the owner of The Career Compass, or even know about the violations until he received the Notice of Withdrawal. Because Mr. Pendell did not personally commit the violations of the regulations that led to the erroneous issuance of the two March 1, 2010, certificates, his approval as an instructor cannot be withdrawn for this reason. Clearly, only the approval of The Career Compass as the course sponsor may be withdrawn because of the erroneous issuance of the two certificates.

12. The circumstances surrounding the April 20, 2012, course that Mr. Pendell taught are considerably different. Mr. Pendell made the decision to issue the certificates to the attendees of the course, notwithstanding the fact that he knew the course was one for continuing education credit, an attendee was required to take and pass a final examination, and he did not administer a final examination.

Mr. Pendell argues he substantially complied with the requirements regulating the issuance of certificates of completion and, therefore, he should not be penalized because the certificates of completion were later issued. This argument is not persuasive. Section 3007.3 clearly requires a final examination for all continuing education courses and states that the final examination is the means by which a sponsor determines whether an attendee completed the course. Mr. Pendell did not comply with this regulation. His subjective belief that he complied with the intent of the regulations relating to continuing education does not relieve him of his obligation to comply with this regulation or excuse his failure to comply with this regulation.

Mr. Pendell's testimony showed that he originally did not intend to issue certificates of completion to the attendees of the April 20, 2012, course, but after several conversations with Ms. Martenas, decided to issue them. It is apparent that Mr. Pendell felt he was under pressure to issue them. The pressure he felt was a business one. He knew or suspected that if he did not issue the certificates, he could lose potential business from the Arcadia Association of Realtors and its members. As Mr. Pendell testified, he used the free lunch and learn courses to attract business to his paid two and a half day seminars. On the other hand, he knew that he was violating the regulations by issuing the certificates without a final examination.

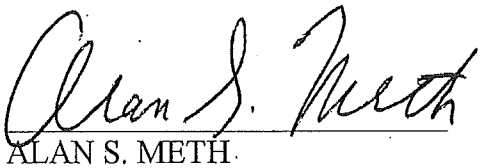
Mr. Pendell has to live with the consequences of his decision. He cannot have it both ways. He managed to avoid incurring the displeasure of the Arcadia Association of Realtors and its members and possible loss of future business by issuing the certifications, but he cannot avoid the consequences of violating the regulations governing instructors of continuing education courses by illegally issuing them. The only consequence provided for in the regulations is withdrawal of Mr. Pendell's qualification as an instructor. There is no provision for a suspension of an approval, probation or some other intermediate penalty. Mr. Pendell's knowing and intentional violation of the regulations requires a penalty be imposed and that penalty is withdrawal of Mr. Pendell's qualification as an instructor.

ORDER

1. The approval of respondent The Career Compass to provide continuing course offerings is withdrawn.

2. The approval of respondent Wellington Pendell to serve as an instructor of continuing education course offerings is withdrawn.

DATED: April 2, 2014



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

pdg

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FILED

APR 17 2013

DEPARTMENT OF REAL ESTATE

BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Continuing Education Offerings of THE CAREER COMPASS, Sponsor.	H- 04486 SD

NOTICE OF WITHDRAWAL OF CONTINUING EDUCATION OFFERING APPROVALS

TO: THE CAREER COMPASS
Wellington Pendell
3525 Del Mar Heights Road, Suite A160
San Diego, Ca 92130

RE:

1.	BUILDING SUPERIOR CLIENT RELATIONSHIP	4872-1009
2.	REAL ESTATE PRICING & OFFERS	4872-1007
3.	REAL ESTATE MARKETING 101	4872-1006
4.	PLANNING & TRACKING YOUR BUSINESS	4872-1005
5.	QUADRUPLING YOUR BUSINESS	4872-1004

NOTICE IS HEREBY GIVEN pursuant to the provisions of Section 3010 of Title 10, Chapter 6, California Code of

Regulations ("Regulations") that the Real Estate Commissioner ("Commissioner") has caused an investigation to be made into the presentation of the continuing education course offerings identified in Paragraph 2, below, sponsored by THE CAREER COMPASS ("COMPASS") and previously approved by the Department of Real Estate of the State of California ("Department"), that on the basis of that investigation, the Commissioner has determined that said courses no longer meet the statutory and regulatory standards for approval for continuing education course offerings, and that approval of said courses should be and hereby is withdrawn for the reasons set forth below:

1. COMPASS is the sponsor of the continuing education course offering identified in Paragraph 2, below. COMPASS is owned and controlled by Wellington Pendell ("Pendell").

2. The Department issued to COMPASS approval for the following continuing education course offerings pursuant to Business and Professions Code ("Code") Section 10170.4 and Sections 3006 and 3007 of the Regulations:

Course No. Issued By DRE	Date Approved	Course Title
4872-1009	3/21/12	Building Superior Client Relationships
4872-1007	11/9/11	Real Estate Pricing & Offers

4872-1006	6/12/11	Real Estate Marketing
4872-1005	5/31/11	Planning & Tracking Your Business
4872-1004	5/23/11	Quadrupling Your Business

Except for Course No. 4872-1006 titled "Real Estate Marketing 101," these courses were applied for and approved to be taught as correspondence courses. The course titled "Real Estate Marketing 101" was applied for and approved to be taught as a seminar.

3. In order to qualify for renewal of a real estate license, a licensee must prove successful completion of continuing education courses, or the equivalent, such as that identified in Paragraph 2, above, during the preceding four-year period (Code Section 10170.5).

4. Approval of the courses identified in Paragraph 2, above, was predicated upon COMPASS and Pendell's compliance with Code Sections 10170 through 10170.6, and Sections 3005 through 3012.2 of the Regulations.

5. Section 3006 of the Regulations sets forth the criteria for approval of course offerings by the Department, including but not limited to the requirement that course participants be physically present at least 90% of the offering time (Section 3006(b)) and that the course provide for an appropriate form of final examination as specified in Section 3007.3 (Section 3006(d)).

6. Section 3007.2 provides that material changes in course offerings require submission by the sponsor to the Department for consideration and approval prior to use.

7. Section 3007.3 of the Regulations provides that a final examination is required for all continuing education classes, and that sponsors shall establish final examination rules for approved offerings, including but not limited to the following:

a. Section 3007.3(a) provides that the final examination shall provide the means by which a sponsor determines whether a participant has successfully completed the offering.

b. Section 3007.3(b) provides that the final examination shall not be taken by participants until completion of the instructional portion of the offering to which the examination applies.

8. The violation of a final examination rule by the sponsor or the sponsor's representative administering the examination shall constitute grounds for denial or withdrawal of approval of the course offering pursuant to the provisions of Section 3007.3(n) of the Regulations.

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LICENSEE PARTICIPANTS LARRY C. AND JACQUELINE L.

Larry C.

9. On or about March 1, 2012, Larry C., a licensed real estate salesperson, attended an informational presentation by COMPASS and Pendell at 450 N. Mountain Avenue, Upland, California which advertised that three (3) continuing education credits would be earned by attendees. The presentation was not advertised as, and did not constitute, the coursework for any of the Department authorized continuing education courses described in Paragraph 2, above. No final examination was administered at the informational presentation. At the conclusion of the presentation Larry C. gave COMPASS and Pendell a check in the amount of $189 for the value of indefinite admittance at any future "45-hour seminars" held by COMPASS.

Subsequently, Larry C. made numerous unsuccessful phone calls to COMPASS seeking a refund of the $189 he paid to COMPASS. Finally, on or about April 22, 2012, Larry C. requested and received from COMPASS and Pendell a course completion certificate. The certificate sent to Larry C. purported to have been issued for Larry C.'s completion of an authorized correspondence course on March 19, 2012, entitled "Planning & Tracking Your Business."

The foregoing conduct by COMPASS and Pendell resulted in the following violations:

a. The certificate falsely reflected that the certificate pertained to a correspondence course when, in fact, the event attended by Larry C. was an unapproved live presentation which constitutes a material change in a course offering in violation of Section 3007.2 of the Regulations.

b. COMPASS and Pendell failed to utilize a sign in and out system to ensure that attendants were physically present during the course in violation of Section 3006(b) of the Regulations.

c. COMPASS and Pendell issued Larry C. a completion certificate without requiring that Larry C. take, complete and successfully pass the Department authorized final examination associated with the course described in the completion certificate in violation of Sections 3006(d) and 3007.3 of the Regulations.

Jacqueline L.

10. On or about March 1, 2012, licensee participant Jacqueline L. attended the same informational presentation by COMPASS and Pendell as is described in Paragraph 9, above. Jacqueline L., too, requested a course completion certificate from COMPASS and Pendell though she did not take a final examination. On or about May 7, 2012, Jacquelyn L. received a

course completion certificate from COMPASS and Pendell which purported to have been issued for Jacqueline L.'s completion of an authorized correspondence course on March 1, 2012, entitled "Planning & Tracking Your Business." The conduct of COMPASS and Pendell constituted the following violations:

a. The certificate falsely reflected that the certificate pertained to a correspondence course when, in fact, the event attended by Jacqueline L. was an unapproved live presentation, which constitutes a material change in a course offering in violation of Section 3007.2 of the Regulations.

b. COMPASS and Pendell failed to utilize a sign in and out system to ensure that attendants were physically present during the course in violation of Section 3006(b) of the Regulations.

c. COMPASS and Pendell issued a completion certificate without requiring that Jacqueline L. take, complete and successfully pass the Department authorized final examination associated with the course described in the completion certificate in violation of Sections 3006(d) and 3007.3 of the Regulations.

11. The conduct described in Paragraphs 9 and 10, above, constitutes a failure by COMPASS and Pendell to comply with the conditions for the approval of the courses identified in Paragraph 2, above, including Sections 3006(b), 3006(d),

3007.2, and 3007.3 of the Regulations. The conduct of COMPASS and Pendell is grounds for the withdrawal of approval of all the continuing education course offerings identified in Paragraph 2, above, pursuant to the provisions of Sections 3006, 3007.3 and 3010 of the Regulations.

COMPLAINT REGARDING MULTIPLE PARTICIPANTS

12. On or about May 21, 2012, the Department received a complaint from Stephanie M. concerning the manner in which continuing education courses presented by COMPASS and Pendell are conducted. Stephanie M. is a licensed real estate broker. Stephanie M.'s complaint is as follows:

a. The instructor (Pendell) did not require that participants in COMPASS' authorized courses sign in or sign out of class in violation of Section 3006(b) of the Regulations); and

b. Pendell failed to administer final examinations to the participants in COMPASS' authorized courses in violation of Sections 3006(d) and 3007.3 of the Regulations.

INVESTIGATION BY THE DEPARTMENT

13. Upon further investigation by the Department the following additional violations were discovered to have been made by COMPASS and Pendell:

a. At least four attending participants of COMPASS' authorized courses received continuing education course

completion certificates without being required to take, complete and successfully pass the Department authorized final examination associated with the course described in the completion certificate in violation of Sections 3006(d) and 3007.3 of the Regulations; and

b. In some instances, portions of the course completion certificates issued by COMPASS and Pendell were incorrect in the following manner: (1) the certificates failed to include the complete and exact course title; (2) the certificates falsely reflected that the certificate pertained to a correspondence course when, in fact, the course was presented as an unapproved live presentation; and (3) the course certificates failed to include the actual date the final examination was purportedly given to the participant. All of the foregoing is in violation of Section 3007(j) of the Regulations.

14. The conduct of COMPASS and Pendell, as described in Paragraphs 12 and 13, above, constitutes the failure by COMPASS and Pendell to perform in accordance with their representations and assurances that they would comply with the conditions to the approval of courses identified in Paragraph 2, above, and is additionally, a violation of the provisions of Sections 3006, 3007 and 3007.3 of the Regulations. The foregoing is grounds for the withdrawal of approval of all the

continuing education course offerings identified in Paragraph 2, above, under the provisions of Sections 3007.3(n) and 3010(a) of the Regulations.

13. Based on the entirety of the conduct described in Paragraphs 9, 10, 12 and 13, above, the Commissioner has determined that the course sponsor has engaged in activity violating the provisions of Article 25 (commencing with Section 3005) of the Regulations, and, therefore, that approval of all the courses described in Paragraph 2, above, should be and hereby is withdrawn pursuant to the provisions of Section 3010(a) of the Regulations.

14. Pursuant to the provisions of Section 3010(a) of the Regulations, the withdrawal of approval of all the course offerings identified in Paragraph 2, above, will be effective thirty (30) days after the notice of withdrawal is received by the sponsor unless the sponsor earlier files a written request for hearing on the withdrawal action. If the request for hearing is received by the Commissioner before 30 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal of approval shall not be effective unless and until ordered by the Commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced

within 30 days after receipt of the request for hearing unless continued to a later day by order of the Commissioner, or by agreement of the parties as provided in Section 3010(a) of the Regulations.

DATED 4/9/2013

REAL ESTATE COMMISSIONER

Wayne S. Bell

cc: THE CAREER COMPASS
WELLINGTON PENDELL
3525 Del Mar Heights Road, Ste. A160
San Diego, Ca 92130
Shelly Wilson
Sacto, FLAG
Sacto, Education

flag

FILED

MAY 07 2014

BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of Continuing Education Offerings of, THE CAREER COMPASS, Sponsor.	No. H-04486 SD OAH No. 2013041178
In the Matter of Course Instruction by, WELLINGTON PENDELL, Instructor.	No. H-04487 SD OAH No. 2013041178

DECISION

The Proposed Decision dated April 2, 2014, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on MAY 28 2014.

IT IS SO ORDERED MAY 06 2014.

Real Estate Commissioner

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Continuing Education Offerings of: THE CAREER COMPASS, Sponsor.	Case No. H-04486 SD OAH No. 2013041178
In the Matter of Course Instruction by: WELLINGTON PENDELL, Instructor.	Case No. H-04487 SD

PROPOSED DECISION

On February 24, 2014, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard these matters.

Cheryl Keily, Real Estate Counsel, represented complainant.

Robert P. Ottilie, Attorney at Law, represented respondents The Career Compass and Wellington Pendell.

The matter was submitted on March 24, 2014.

FACTUAL FINDINGS

1. Wayne S. Bell, Real Estate Commissioner of the State of California filed Notice of Withdrawal of Continuing Education Offering Approvals No. H-04486 SD against respondent The Career Compass and Notice of Withdrawal of Qualification of Instructor No. H-04487 SD against respondent Wellington Pendell, in his official capacity.

After the hearing, the parties filed closing briefs and respondents submitted additional evidence. Respondents submitted a Notice of Lodgment of Exhibits containing 100 attachments, which was marked as Respondents' Exhibit F and admitted as hearsay. Respondents also filed a Trial Brief marked Respondents' Exhibit G and a Reply to the Closing Argument by the Bureau of Real Estate, which was marked Respondents' Exhibit H. The Bureau filed a Closing Argument, which was marked Exhibit 10.

2. The Bureau of Real Estate (hereafter "Bureau") issued Continuing Education Sponsor ID #.4872 to respondent The Career Compass to offer the following courses: Course No. 4872-1009, entitled Building Superior Client Relationships, effective March 21, 2012, and expiring March 20, 2014; Course No. 4872-1007, entitled Real Estate Pricing & Offers, effective November 9, 2011, and expiring November 8, 2013; Course No. 4872-1006, entitled Real Estate Marketing 101, effective June 12, 2011, and expiring June 6, 2013; Course No. 4872-1005, entitled Planning & Tracking Your Business, effective May 31, 2011, and expiring May 30, 2013; and Course No. 4872-1004, entitled Quadrupling Your Business, effective May 23, 2011, and expiring May 22, 2013.

3. On March 1, 2012, Larry Clark, a real estate licensee, attended a live presentation by Mr. Pendell held at the offices of Evergreen Realty and Associates in Upland, California. Mr. Pendell presented the course on behalf of The Career Compass. According to the flyer advertising the presentation that Mr. Clark had received, attendees would earn three continuing education credits. The course was called Short Sale & Real Estate Success Symposium.

On April 22, 2012, Mr. Clark sent an e-mail to The Career Compass and notified it that he had not gotten the three credit certificate. The same day, Mr. Clark received a C.E. Course Completion Certificate from The Career Compass showing he was entitled to three hours of continuing education credit. The certificate indicated that he had attended a Planning & Tracking Correspondence Course on March 19, 2012, the course was given at a location in Temecula, he had completed the correspondence course and he had passed the final exam with a score of 70 percent. The next day, Mr. Clark e-mailed the certificate to Shane McLatchey, a Bureau employee in the Education and Research Section.

Mr. Clark did not take a final examination after the course was completed.

4. On March 1, 2012, Jacqueline Lovest, a real estate licensee, attended the same course as did Mr. Clark at the Evergreen Realty office in Upland. In May 2012, she requested a course certification from The Career Compass. Shortly thereafter, Ms. Lovest received a C.E. Course Completion Certificate from the Career Compass showing she was entitled to three hours of continuing education credit. The certificate indicated that she had attended a Planning & Tracking Correspondence Course on March 1, 2012, the course was given at a location in Temecula, she had completed the correspondence course and she had passed the final exam with a score of 70 percent.

Ms. Lovest did not take a final examination after the course was completed.

On April 26, 2013, The Career Compass sent an e-mail to Ms. Lovest and informed her that the course she had requested a certification for did not have Bureau certification and only one other agent had requested or received their certificates. The e-mail advised her that the certificate she received was not authorized by The Career Compass and had no Bureau certification. The Career Compass asked Ms. Lovest to destroy the certificate.

5. On April 20, 2012, Citally Morinico, Mary Prout, and Bruce Campbell, all real estate licensees, attended a live, continuing education course sponsored by the Arcadia Association of Realtors in Arcadia, California. Mr. Pendell presented the class on behalf of the Career Compass. A flyer distributed before the class described the course as "Planning and Tracking Your Business." The flyer indicated that the course earned three continuing education credits.

Shortly thereafter, Mr. Morinico, Ms. Prout, and Mr. Campbell, received C.E. Course Completion Certificates from The Career Compass showing they were entitled to three hours of continuing education credit. The certificates indicated that they had attended a Planning & Tracking Correspondence Course on April 20, 2012, the course was given at a location in Temecula, they had completed the correspondence course and they had passed the final exam with a score of 70 percent.

None of the attendees took a final examination after the course was completed.

6. Mr. Pendell attended SDSU from 1986 to 1991 and majored in finance. In 1991, he started working as an intern at Proctor and Gamble in Long Beach and then worked for Bacardi Imports from 1993 to 1999 as a district manager in San Diego and later in Michigan. He returned to San Diego and worked as a vehicle salesperson selling BMWs in 2002. He worked for Tony Robbins as a coach and salesperson and then worked for DHL shipping until 2005 as an area manager and salesperson. He worked for Banner Mattress as a district manager managing 12 stores until January 2007. Mr. Pendell is not a real estate licensee.

Mr. Pendell began working for Richard Robbins in 2007. Mr. Robbins operated a real estate training company. Mr. Pendell was a speaker promoting the company and training others in real estate. In November 2007, Mr. Pendell started The Career Compass with two others and incorporated the company. Its mission was to bring new marketing training to the real estate industry. Mr. Pendell served as a motivational speaker. Between 2007 and 2010, The Career Compass taught success techniques through its success seminars. The business succeeded and it began to offer two-day seminars, which always sold out.

In 2010, Mr. Pendell obtained approval from the Bureau to offer continuing education courses for credit. The two and a half day seminars offered 45 hours of continuing education credit for real estate licensees. The portions of the seminars relating to real estate were taught by affiliate groups for credit, while The Career Compass taught success principles. The Career Compass conducted eight to ten seminars a years and typically had 200 to 300

attendees. The Career Compass charged $195 usually for two and a half days of training, and gave examinations at the conclusion of the seminar in order for attendees to obtain credit. According to Mr. Pendell, he has provided services to more than 12,000 attendees at the seminars and success training courses.

Mr. Pendell also provided training in shorter seminars, usually lasting one to three hours and often during lunch. He called them "lunch and learn" seminars. These lunch seminars were free and focused on success training, but also could offer one credit of continuing education. They were usually given in a brokerage office. Mr. Pendell's intent was to obtain potential clients for the two and a half day seminars. If a course offered credit and an attendee wanted the credit, Mr. Pendell had the attendee take an examination. In Mr. Pendell's experience, real estate licensees rarely wanted continuing education credit for the short office courses and he, therefore, did not give examinations.

Mr. Pendell testified that he gave the attendees a feedback sheet with a rating system, and his seminars received a high level of satisfaction in the surveys.

7. Mr. Pendell testified he first dealt with Randy Alford at the Bureau and in 2012 began talking to Mr. McLatchey. Mr. Pendell admitted his relationship with Mr. McLatchey was not a good one, and at one time, Mr. McLatchey withdrew approval of a course that Mr. Alford had previously approved.

Mr. Pendell was aware that all credits required final examinations and a passing rate of 70 percent was required. In his opinion, the examinations were fairly easy and designed to make sure an attendee actually attended the course and listened. He was aware that there were sign-ins to keep track of who attended. He testified that when he taught a class live, written materials were not provided in advance, but were provided in advance if the course was a correspondence course.

Mr. Pendell testified that as a result of the mistakes shown by this case, The Career Compass does not offer continuing education credit for lunch or office courses or the three-hour weekend courses. Mr. Pendell testified The Career Compass terminated all standalone accredited courses.

8. Mr. Pendell testified he taught the free lunch and learn course March 1, 2012, in Upland. He testified the seminar was scheduled through Terri Barrett, the office manager of Evergreen Realty and Associates and was for a three-hour course. Before he gave the course, Ms. Barrett asked Mr. Pendell to shorten the course to between 60 and 90 minutes. They decided they would do that but not offer any credit. Mr. Pendell taught a different course than the one advertised on the original flyer and Ms. Barrett created a new flyer. At the end of the course, which was attended by 20 to 25 people, Mr. Pendell did not give an examination. Mr. Pendell recalled that nearly every attendee signed up for a full, paid seminar for 45 hours of continuing education credit.

It is The Career Compass's policy that it will not refund the fee for the success seminar after 72 hours from the time of the sign-up.

Mr. Pendell met Mr. Clark at the Upland course, at which time Mr. Clark signed up for the success seminar and paid $189.00 by check. Mr. Pendell did not tell any of the attendees at this seminar that they would receive credit for the course, and there was no sign-in sheet or examination. Mr. Pendell believed neither was required because the seminar did not offer any continuing education credit. At the conclusion of the seminar, no one asked to take an examination.

Mr. Pendell testified that well after the 72-hour refund window passed, Mr. Clark called him and asked for a refund. Mr. Pendell testified he refused to give Mr. Clark a refund. Mr. Pendell recalled Mr. Clark calling about four times asking for a refund and Mr. Pendell refused each time. Mr. Pendell testified that Mr. Clark never asked him for a certificate for course credit.

Early on Sunday morning, April 22, 2012, Mr. Clark e-mailed The Career Compass and asked for the certificate for the course. The e-mail was from an agent named Neal Clark but the certificate issued had the name Larry Clark on it. Before The Career Compass sent out this certificate, it had not sent out any other certificates for the March 1, 2012, course. Mr. Pendell had not seen the e-mails prior to The Career Compass' staff sending out the certificate. Mr. Clark had not sent any e-mails to Mr. Pendell asking for a certificate.

Mr. Pendell testified that there were no documents to support the issuance of this certificate and that it was an error.

Mr. Pendell did not recall meeting Ms. Lovest at the Upland seminar and he had no communication with her after the seminar.

9. Mr. Pendell taught the April 20, 2012, three-hour approved course in Arcadia. He testified that the course was set up, sponsored, administered, and advertised, by Stephanie LaPort of Old Republic Home Warranty. Mr. Pendell testified that Ms. LaPort did the sign-in, checked identification and collected business cards from the attendees. She also sent out all the information to the attendees. About 15 to 20 people attended the course and stayed for the entire course.

Mr. Pendell testified that at the conclusion of the course, he told the attendees that if they wanted credit for the course, they had to take a final examination and have it graded before they could receive a certificate. Mr. Pendell had a final examination with him and was prepared to administer it. According to Mr. Pendell, no one wanted to take the examination and everyone left, so he did not administer the examination. In his experience, this was common. As a result, The Career Compass did not send out any certificates after the course was completed.

Mr. Pendell testified that about ten to 14 days after he taught the course in Arcadia, he received a series of telephone calls from Ms. Martenas of the Arcadia Board asking about the certificates for the attendees. She said some of the agents who attended were asking about the certificates. Mr. Pendell told her that no tests were given and he could not give her any certificates. Ms. Martenas said a large percentage of the members of the Board were of Asian heritage and probably were confused because of language problems and might not understand what was required in order to obtain a certificate. Ms. Martenas said she expected The Career Compass to send out the certificates. Mr. Pendell reiterated that The Career Compass could not send out certificates because no examination had been given. Ms. Martenas said she was not happy with Mr. Pendell's refusal to issue certificates and pointed out that the agents had attended the course for the entire time. Ms. Martenas had a list of attendees and that list confirmed the list Ms. LaPort had compiled. Mr. Pendell was satisfied that the two lists accurately identified who attended the seminar.

Mr. Pendell decided that the attendees had satisfied the course requirements and had substantially complied with the requirements for issuance of certificates. He believed the intent of the continuing education requirements was to educate real estate licensees, not give them tests, and the intent was satisfied in this matter. Mr. Pendell decided to issue the certificates, knowing the examination had not been given, and accepted full responsibility for the decision. Mr. Pendell recognized he made a mistake. He testified that The Career Compass changed its practices and no longer did these lunch and learn seminars for continuing education credit and therefore this mistake would not happen again.

10. Shelly Harkins, Manager, Education and Research Section of the Bureau, sent a Corrective Action Letter to The Career Compass on November 17, 2011. The letter described an audit that the Bureau performed of the continuing education courses on November 20 and 21, 2010. The audit found The Career Compass had violated six of the Commissioner's regulations containing the rules relating to continuing education courses. Mr. Pendell submitted a response to the audit by letter dated December 2, 2011.

11. Respondents submitted a Lodgment of Exhibits that contained 100 attachments. For the most part, they are letters praising the work done by Mr. Pendell and The Career Compass.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10170.4 provides in part:

> The commissioner shall adopt regulations pursuant to Section 10080, to prescribe all of the following:
>
> (a) A definition of basic requirements for continuing education of 45 clock hours of attendance at approved educational courses, seminars,

workshops, or conferences, or their equivalent, achieved during a four-year period preceding license renewal application.

(b) A basis and method of qualifying educational programs, the successful completion of which, will satisfy the requirements of this article.

(c) A procedure for evaluation of petitions based on a claim of equivalency with the requirements of subdivision (a), and a reasonable standard by which an activity would be judged equivalent, including, but not limited to, instruction in real estate subjects, publication of professional articles or books, or development of real estate educational programs, law or research.

(d) A system of control and reporting qualifying attendance.

(e) An appropriate form of testing, examination or evaluation by the sponsor of each approved correspondence or homestudy educational program, or equivalent, of the student.

2. California Code of Regulations, title 10, section 3006 provides in part:

In acting on an application for approval of a continuing education offering, the Commissioner shall apply, but shall not be limited to the application of the following criteria in determining that the appropriate hours of continuing education credit will be given to licensees who have successfully completed the course within the time period specified by Section 10170.5 of the Business and Professions Code:

(a) The offering shall have at least one successive clock hour of instruction which is based on 50 minute increments of actual instruction.

(b) For other than a correspondence course offering, participants shall be physically present for at least 90% of the offering time exclusive of the time allocated to the administering of a final examination.

(c) For all continuing education offerings, a sponsor shall provide each participant at least a written course outline that is a narrative outline consisting of not less than three (3) pages per credit-hour. Each page shall contain an average of 200 words.

(d) A continuing education offering shall have an appropriate form of final examination as set forth in Section 3007.3.

(e) Instructors, conference leaders, lecturers, and others who present a continuing education offering shall meet at least one of the following qualifications:

(1) A bachelor's degree in a related field to that in which the person is to teach, from a school listed as an institution of higher learning by the U.S. Department of Education, or from a comparable school of a foreign country.

(2) A valid teaching credential or certificate issued by the Board of Governors of the California Community Colleges or by a comparable California teacher-credentialing agency authorizing the holder to teach in the field of knowledge covered in the offering.

(3) Three years full-time experience in the applicable field.

(4) Any combination of at least three years of full-time experience and college level education in the applicable field.

(5) The Commissioner may approve instructors who in his or her judgment meet the criteria for approval or who otherwise evidence their teaching qualifications by education or experience or a combination of the two.

(f) An instructor shall not be qualified if the instructor:

(1) Does not satisfy the criteria in subdivision (e);

(2) Has engaged in any violation of Article 25 (commencing with Section 3005) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of a continuing education offering....

3. California Code of Regulations, title 10, section 3007 provides in part

¶...

(j) A Sample Course Completion Certificate containing at least:

(1) The name and license number of participant;

(2) A statement regarding meeting attendance and/or examination criteria;

(3) The name of the offering as approved by the Department;

(4) The number of credit hours;

(5) The date of registration if a correspondence course;

(6) The date of successful completion;

(7) The category of the offering;

(8) The eight-digit DRE approval number;

(9) The name, address and telephone number of the sponsor; and

(10) The printed name, signature and telephone number of the individual verifying the participant's completion of the course....

4. California Code of Regulations, title 10, section 3007.3 provides in part:

A final examination is required for all continuing education courses. Sponsors shall establish the following final examination rules for approved offerings that are to be observed by all offering participants:

(a) The final examination shall provide the means by which a sponsor determines whether a participant has successfully completed the offering. The sponsor shall take steps to protect the integrity of the examination by controlling access to the exam by the participant and to prevent cheating in an examination.

(b) The examination shall not be taken by participants until completion of the instructional portion of the offering to which the examination applies.

¶...

(n) A violation of a final examination rule by the sponsor or the sponsor's representative administering the examination shall constitute grounds for denial or withdrawal of approval of the offering.

(o) To pass the examination, a participant must achieve a percentage score of 70 percent or more....

5. California Code of Regulations, title 10, section 3010 provides in part:

(a) If the Commissioner determines that a previously-approved continuing education offering no longer meets the prescribed statutory and regulatory standards for approval, or if the Commissioner determines that an instructor or lecturer for the course is no longer qualified, or that the course sponsor has engaged in activity violating

the provisions of Article 25 (commencing with section 3005) of these regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of a continuing education offering, or the course differs materially from that which was previously approved, the Commissioner shall give written notice of withdrawal of approval setting forth the reasons for the determination. If the Commissioner determines, following an application for course approval, that the course will not meet the prescribed statutory and regulatory standards for approval or if the Commissioner determines that the instructor for the course is unqualified, the Commissioner shall give written notice of denial of approval setting forth the reasons for the determination. Withdrawal or denial of approval will be effective 30 days after the notice of withdrawal or denial is received by the sponsor unless the sponsor earlier files a written request for hearing on the withdrawal or denial action. If the request for hearing is received by the Commissioner before 30 days after the date of receipt of notice of withdrawal by the sponsor, the withdrawal or denial of approval shall not be effective unless and until ordered by the Commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced within 30 days after receipt of the request for hearing unless continued to a later date by order of the Commissioner or by agreement of the parties. In a hearing on an order of withdrawal issued by the Commissioner, the burden of proving that the course does not meet the prescribed statutory and regulatory standards for approval shall be on the Commissioner....

6. Cause to withdraw the course offerings of respondent The Career Compass pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, sections 3006, subdivision (d), and 3007.3, subdivision (n), violation of the rule relating to final examinations, was established by reason of Findings 3, 4 and 5.

7. Cause to withdraw the course offerings of respondent The Career Compass pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, section 3006, subdivision (b), in that The Career Compass did not ensure that participants were physically present for at least 90 percent of the offering time exclusive of the time allocated to the administering of a final examination, was established by reason of Findings 3, 4 and 8. According to Mr. Pendell, the course he taught on March 1, 2012, was not a course for which continuing education credit could be earned, and he did not comply with any of the rules relating to courses taught for credit. However, The Career Compass issued two course completion certificates to persons who represented they attended the course.

A violation of section 3006, subdivision (b), was not established for the course taught by Mr. Pendell on April 20, 2012.

8. Cause to withdraw the course offerings of respondent The Career Compass pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, sections 3007, subdivision (j), in that the course certificates issued by The Career Compass contained incorrect information, was established by reason of Findings 3, 4 and 5.

9. Cause to withdraw the qualification of instructor of respondent Wellington Pendell pursuant to Business and Professions Code section 10170.4 and California Code of Regulations, title 10, sections 3006, subdivision (f)(2), and 3010 for violation of the Regulations, was established by reason of Findings 5 and 8.

10. The Bureau had issued Continuing Education Sponsor numbers to the Career Compass to offer seven continuing education courses. The approvals of all seven courses have expired. (Finding 2.) Respondents argue the issues relating to the approval of The Career Compass courses are moot.

While this decision will have no effect upon the ability of The Career Compass to offer these courses in the future because the approvals have expired, the issues relating to the conduct of The Career Compass must be decided in order to determine whether Mr. Pendell's instructor qualification should be withdrawn. Furthermore, to the extent that The Career Compass may in the future seek approval to provide continuing education courses, a record of its activities while it had a prior approval may be relevant to any future decision. Thus, a decision should be made. As found in Legal Conclusions 4, 5 and 6, The Career Compass violated several rules regulating providers of continuing education courses, and its approval of those courses must be withdrawn.

11. The case against Mr. Pendell rests on the issuance by The Career Compass of certificates of completion to attendees of two courses. Insofar as Mr. Pendell is concerned, the two courses must be treated differently.

The evidence established that Mr. Pendell did not teach the March 1, 2012, course as a continuing education course. Nevertheless, The Career Compass issued two certificates of completion indicating the attendees were entitled to three hours of continuing education credit. The Career Compass issued the certificates in error and violated several regulations in doing so. They should not have been issued. It was not established that Mr. Pendell had anything to do with the issuance of those certificates.

It is well established that the licensed owner of a business such as real estate broker is responsible for the acts of the employees of the business. Since the issues involved in this matter revolve around a government issued approval similar to an occupational license, the relevant considerations should be the same. An employee of The Career Compass issued the

two certificates and as a result, The Career Compass is responsible for the errors. Mr. Pendell, as one of the owners of The Career Compass, is likewise responsible for the errors.

The Bureau is seeking to withdraw Mr. Pendell's approval to serve as an instructor or lecturer of previously-approved continuing education courses. California Code of Regulations, title 10, section 3010, subdivision (a), allows the Commissioner to withdraw the approval if the instructor is no longer qualified. Section 3006, subdivision (f)(2), provides that an instructor is not qualified if he or she has engaged in any violation of the regulations. The regulations require the instructor commit a violation of the regulations in order to become unqualified. In this case, the Bureau is seeking a determination that Mr. Pendell is not qualified because he is responsible for the violations, but he is only responsible in a vicarious manner. He did not commit the violations, authorize them as the owner of The Career Compass, or even know about the violations until he received the Notice of Withdrawal. Because Mr. Pendell did not personally commit the violations of the regulations that led to the erroneous issuance of the two March 1, 2010, certificates, his approval as an instructor cannot be withdrawn for this reason. Clearly, only the approval of The Career Compass as the course sponsor may be withdrawn because of the erroneous issuance of the two certificates.

12. The circumstances surrounding the April 20, 2012, course that Mr. Pendell taught are considerably different. Mr. Pendell made the decision to issue the certificates to the attendees of the course, notwithstanding the fact that he knew the course was one for continuing education credit, an attendee was required to take and pass a final examination, and he did not administer a final examination.

Mr. Pendell argues he substantially complied with the requirements regulating the issuance of certificates of completion and, therefore, he should not be penalized because the certificates of completion were later issued. This argument is not persuasive. Section 3007.3 clearly requires a final examination for all continuing education courses and states that the final examination is the means by which a sponsor determines whether an attendee completed the course. Mr. Pendell did not comply with this regulation. His subjective belief that he complied with the intent of the regulations relating to continuing education does not relieve him of his obligation to comply with this regulation or excuse his failure to comply with this regulation.

Mr. Pendell's testimony showed that he originally did not intend to issue certificates of completion to the attendees of the April 20, 2012, course, but after several conversations with Ms. Martenas, decided to issue them. It is apparent that Mr. Pendell felt he was under pressure to issue them. The pressure he felt was a business one. He knew or suspected that if he did not issue the certificates, he could lose potential business from the Arcadia Association of Realtors and its members. As Mr. Pendell testified, he used the free lunch and learn courses to attract business to his paid two and a half day seminars. On the other hand, he knew that he was violating the regulations by issuing the certificates without a final examination.

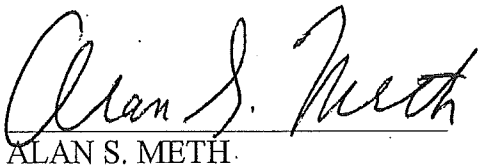
Mr. Pendell has to live with the consequences of his decision. He cannot have it both ways. He managed to avoid incurring the displeasure of the Arcadia Association of Realtors and its members and possible loss of future business by issuing the certifications, but he cannot avoid the consequences of violating the regulations governing instructors of continuing education courses by illegally issuing them. The only consequence provided for in the regulations is withdrawal of Mr. Pendell's qualification as an instructor. There is no provision for a suspension of an approval, probation or some other intermediate penalty. Mr. Pendell's knowing and intentional violation of the regulations requires a penalty be imposed and that penalty is withdrawal of Mr. Pendell's qualification as an instructor.

ORDER

1. The approval of respondent The Career Compass to provide continuing course offerings is withdrawn.

2. The approval of respondent Wellington Pendell to serve as an instructor of continuing education course offerings is withdrawn.

DATED: April 2, 2014



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

Department of Real Estate
320 W. 4th St., # 350
Los Angeles, CA 90013

(213) 576-6982

FILED

APR 17 2013

DEPARTMENT OF REAL ESTATE

BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of Course Instruction by WELLINGTON PENDELL, Instructor.	H- 04487 SD

NOTICE OF WITHDRAWAL OF QUALIFICATION OF INSTRUCTOR

TO: WELLINGTON PENDELL
The Career Compass
3525 Del Mar Heights Road, Ste. A160
San Diego, Ca 92130

RE: Course Instructor, WELLINGTON PENDELL

NOTICE IS HEREBY GIVEN pursuant to the provisions of Section 3010 of Title 10, Chapter 6, California Code of Regulations ("Regulations") that the Real Estate Commissioner ("Commissioner") has caused an investigation to be made into WELLINGTON PENDELL ("PENDELL"), an instructor of courses sponsored by The Career Compass ("Compass") and previously qualified as an instructor by the Department of Real Estate of

the State of California ("Department"). On the basis of that investigation, the Commissioner has determined that PENDELL is no longer qualified to provide instruction in course offerings, and that qualification of PENDELL should be and hereby is withdrawn for the reasons set forth below:

1. Compass is a sponsor of approved continuing education and equivalent course of study course offerings. Compass is owned and controlled by PENDELL. PENDELL was previously qualified as an instructor for Compass.

2. Qualification of PENDELL was predicated on the compliance of PENDELL, with Business and Professions Code ("Code") Section 10170.4 and Sections 3000 through 3013 of the Regulations, including but not limited to Section 3006(f)(2) of Article 25 of the Regulations (commencing with Section 3005) which provides that an instructor shall not be qualified if the instructor has engaged in any violation of Article 25 (commencing with Section 3005) of the Regulations or has engaged in conduct which would have warranted the denial of an application for approval or withdrawal of approval of a continuing education course.

3. PENDELL engaged in conduct which violated Code Sections 10170.4(d) and (e) and Sections 3006(b), 3006(d), 3007(j), 3007.2 and 3007.3 of the Regulations as follows:

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LICENSEE PARTICIPANTS LARRY C. AND JACQUELINE L.

Larry C.

4. On or about March 1, 2012, Larry C., a licensed real estate salesperson, attended an informational presentation by Compass and PENDELL at 450 N. Mountain Avenue, Upland, California which advertised that three (3) continuing education credits would be earned by attendees. The presentation was not advertised as, and did not constitute, the coursework for any of the Department authorized continuing education courses of Compass. No final examination was administered at the informational presentation. At the conclusion of the presentation Larry C. gave PENDELL a check in the amount of $189 for the value of indefinite admittance at any future "45-hour seminars" held by Compass.

Subsequently, Larry C. made numerous unsuccessful phone calls to PENDELL seeking a refund of the $189 he paid to Compass. Finally, on or about April 22, 2012, Larry C. requested and received from PENDELL a course completion certificate. The certificate sent to Larry C. purported to have been issued for Larry C.'s completion of an authorized correspondence course on March 19, 2012, entitled "Planning & Tracking Your Business."

The foregoing conduct by PENDELL resulted in the following violations:

a. The certificate issued by PENDELL falsely reflected that the certificate pertained to a correspondence course when, in fact, the event attended by Larry C. was an unapproved live presentation which constitutes a material change in a course offering in violation of Section 3007.2 of the Regulations.

b. PENDELL failed to utilize a sign in and out system to ensure that attendants were physically present during the course in violation of Section 3006(b) of the Regulations.

c. PENDELL issued Larry C. a completion certificate without requiring that Larry C. take, complete and successfully pass the Department authorized final examination associated with the course described in the completion certificate in violation of Sections 3006(d) and 3007.3 of the Regulations.

Jacqueline L.

5. On or about March 1, 2012, licensee participant Jacqueline L. attended the same informational presentation by Compass and PENDELL as is described in Paragraph 4, above. Jacqueline L., too, requested a course completion certificate from PENDELL though she did not take a final examination. On or about May 7, 2012, Jacquelyn L. received a course completion certificate from PENDELL which purported to have been issued for Jacqueline L.'s completion of an authorized correspondence course on March 1, 2012, entitled "Planning & Tracking Your

Business." The conduct of PENDELL constituted the following violations:

a. The certificate falsely reflected that the certificate pertained to a correspondence course when, in fact, the event attended by Jacqueline L. was an unapproved live presentation, which constitutes a material change in a course offering in violation of Section 3007.2 of the Regulations.

b. PENDELL failed to utilize a sign in and out system to ensure that attendants were physically present during the course in violation of Section 3006(b) of the Regulations.

c. PENDELL issued a completion certificate without requiring that Jacqueline L. take, complete and successfully pass the Department authorized final examination associated with the course described in the completion certificate in violation of Sections 3006(d) and 3007.3 of the Regulations.

COMPLAINT REGARDING MULTIPLE PARTICIPANTS

6. On or about May 21, 2012, the Department received a complaint from Stephanie M. concerning the manner in which continuing education courses presented by PENDELL on behalf of Compass are conducted. Stephanie M. is a licensed real estate broker. Stephanie M.'s complaint is as follows:

a. PENDELL did not require that participants in the authorized courses sign in or sign out of class in violation of Section 3006(b) of the Regulations); and

b. PENDELL failed to administer final examinations to the participants in the authorized courses in violation of Sections 3006(d) and 3007.3 of the Regulations.

INVESTIGATION BY THE DEPARTMENT

7. Upon further investigation by the Department the following additional violations were discovered to have been made by PENDELL:

a. At least four attending participants of Compass' authorized courses received continuing education course completion certificates from PENDELL without being required to take, complete and successfully pass the Department authorized final examination associated with the course described in the completion certificate in violation of Sections 3006(d) and 3007.3 of the Regulations; and

b. In some instances, portions of the course completion certificates issued by PENDELL were incorrect in the following manner: (1) the certificates failed to include the complete and exact course title; (2) the certificates falsely reflected that the certificate pertained to a correspondence course when, in fact, the course was presented as an unapproved live presentation; and (3) the course certificates failed to include the actual date the final examination was purportedly given to the participant. All of the foregoing is in violation of Section 3007(j) of the Regulations.

8. The conduct of PENDELL, as described in Paragraphs 4, 5, 6 and 7, above, constitutes the failure by PENDELL to perform in accordance the provisions of Sections 3006(b), 3006(d), 3007(j), 3007.2 and 3007.3 of the Regulations. The foregoing is grounds for the withdrawal of qualification of PENDELL as an instructor of course offerings under the provisions of Sections 3006(f)(2) and 3010(a) of the Regulations.

9. Based on the foregoing, the Commissioner has determined that PENDELL is no longer qualified as an instructor, and therefore, qualification of PENDELL is hereby withdrawn pursuant to the provisions of Sections 3006(f)(2) and 3010(a) of the Regulations.

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10. Pursuant to the provisions of Section 3010(a) of the Regulations, the withdrawal of the qualification of PENDELL as an instructor will be effective thirty (30) days after the notice of withdrawal is received by PENDELL unless PENDELL earlier files a written request for hearing on the withdrawal action. If the request for hearing is received by the Commissioner before 30 days after the date of receipt of notice of withdrawal by PENDELL, the withdrawal of qualification shall not be effective unless and until ordered by the Commissioner pursuant to findings and conclusions reached after hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be commenced within 30 days after receipt of the request for hearing unless continued to a later day by order of the Commissioner or by agreement of the parties.

DATED: 4/9/2013

REAL ESTATE COMMISSIONER

Wayne S. Bell

cc: WELLINGTON PENDELL
The Career Compass
3525 Del Mar Heights Road, Ste. A160
San Diego, Ca 92130
Shelly Wilson
Sacto, FLAG
Sacto, Education