

FLAG

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JUL 06 2015

BUREAU OF REAL ESTATE
By *[Signature]*

| | | |
|---|---|-----------------------|
| In the Matter of the Desist and Refrain Order Involving: |) | CalBRE No. H-04684 SD |
| |) | OAH No. 2015020481 |
| THE CAREER COMPASS; WELLINGTON PENDELL; TINA L. PARKER; and WAYNE RAPP, individually and doing business as GOLD COAST SCHOOLS, |) | |
| |) | |
| Respondents. |) | |

DECISION

The Proposed Decision dated June 26, 2015, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Page 3, Paragraph 7 reads: "...Career Compass has provide false or misleading statements..." shall read "... Career Compass has provided false or misleading statements..."

Page 7, Paragraph 11 reads: "Mr. Parker stated that his business model..." shall read "Mr. Pendell stated that his business model..."

Page 12, Paragraph 7 reads: "Respondents argue that the bureau does have jurisdiction over the respondents..." shall read "Respondents argue that the bureau does not have jurisdiction over the respondents..."

This Decision shall become effective at 12 o'clock noon on JUL 27 2015

IT IS SO ORDERED July 2, 2015

REAL ESTATE COMMISSIONER
[Signature]

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order
Involving:

THE CAREER COMPASS; WELLINGTON
D. PENDELL; TINA L. PARKER; and
WAYNE RAPP, individually and doing
business as GOLD COAST SCHOOLS,

Respondents.

Case No. H-04684-SD

OAH No. 2015020481

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 28, 2015, in San Diego, California.

Cheryl D. Keily, Counsel, represented, complainant, Jeffrey Mason, Chief Deputy Commissioner, Bureau of Real Estate, Department of Consumer Affairs, State of California.

J.P. Miller, Jr., Attorney at Law, represented respondents: The Career Compass Inc.; Wellington D. Pendell; and Tina L. Parker. Respondent, Wellington D. Pendell, was present throughout the proceedings. Respondent, Tina L. Parker, was not present. Respondents Wayne Rapp and Gold Coast Schools were not present or represented at the proceedings.

The record was held open for closing arguments and rebuttals, which were received from both parties. The matter was submitted on May 29, 2015.

SEALING ORDER

Exhibits 6-11, G, H, and I contain confidential information. It is impractical to delete all of the confidential information from these exhibits. To protect privacy and prevent the inappropriate disclosure of confidential personal information, Exhibits 6-11, G, H, and I are sealed. This sealing order governs the release of documents to the public. A reviewing court, the parties to this matter, their attorneys, or a government agency decision maker or

designee under Government Code section 11517 may review the documents that are subject to this sealing order, provided that the documents containing confidential information remain protected from release to the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 31, 2014, Jeffrey Mason, Chief Deputy Real Estate Commissioner, signed an Order to Desist and Refrain (the order) against The Career Compass, Inc. (Career Compass); Wellington D. Pendell; Tina L. Parker; Wayne Rapp; and Gold Coast Schools (Gold Coast). The order alleged that respondents knowingly advertised, printed, displayed, published, disseminated, or caused or permitted to be advertised, printed, displayed, published, distributed, advertisements or promotional material with regard to continuing education course offerings purporting to fulfil the requirements for the renewal of a California real estate license and that such materials contained false and/or misleading statements or representations. The order directed respondents “to immediately desist and refrain from disseminating any advertising or promotional material for a continuing education offering fulfilling, or purporting to fulfill the requirements for renewal of a California real estate license . . . that contain false and /or misleading statements or representations in violation of Section 3007.6 of the Regulations.” Additionally, the order directed respondents to desist and refrain from stating or implying that they are approved by the bureau to act as a sponsor of an educational offering without having complied with the continuing education approval criteria.

Career Compass, Mr. Pendell, and Ms. Parker, through counsel, requested a hearing. Wayne Rapp and Gold Coast did not respond to the order.¹

License Histories

2. On May 6, 2014, following an administrative hearing, the bureau withdrew approval of Career Compass to provide continuing education course offerings. The bureau also withdrew approval of Mr. Pendell to serve as a course instructor for continuing education courses. The decision became effective May 28, 2014. At no time after May 28, 2014, was Career Compass approved by the bureau to offer continuing education courses.

3. Gold Coast, Bureau Sponsor I.D. No. 3831, has been approved by the bureau to act as a sponsor of six continuing education correspondence course offerings.

¹ Respondents Wayne Rapp and Gold Coast Schools failed to file a request for a hearing within 30 days of service of desist and refrain order. Because they waived the right to appeal, they are bound by the bureau’s order and are not parties to these proceedings.

The Bureau's Investigation

4. Jason Parson is a Supervising Special Investigator employed by the bureau. He registered² for a seminar offered by Career Compass entitled "Real Estate Success Training." The seminar was held at the San Diego Convention Center from August 22, 2014, through August 24, 2014. Mr. Parson attended the seminar in its entirety. During the seminar, Mr. Parson tested for 33 hours of continuing education provided by Gold Coast.

5. Mr. Parson testified there was a review of the continuing education course material offered by Gold Coast on the last day of the seminar. Mr. Parson stated that the reviewer provided the answers to the questions before administering the examination. Mr. Parson stated that some of the test questions contained questions about Career Compass's seminar and were not bureau-approved test questions for the specific continuing education course. At the conclusion of the seminar, Gold Coast awarded Mr. Parson a certificate of completion verifying that he completed six courses and passed the final exam with a score of 70 percent or better. The certificate listed Wayne Rapp as the Administrator. Tina Parker, who is listed in corporate filings as the director and chief executive officer, of Career Compass, signed the certificate.

6. Mr. Parson downloaded and made printouts from Career Compass's website. He obtained one of Career Compass's promotional brochures. The bureau contends that the promotional material Mr. Parson obtained is false and misleading. The promotional material is at the heart of the bureau's order.

The Career Compass Brochure

7. The bureau contends that Career Compass's promotional material and advertising contains false or misleading statements. As examples, the order cites a number of statements in a Career Compass brochure that was received into evidence. This color brochure is tri-fold with six pages measuring 8.5 inches by 11 inches. The front page has Career Compass's name in large typeface above a graphic, under which, in the same size font, states "Lifetime License Renewal." The following statements are contained in the brochure and relate to the bureau's accusation that Career Compass has provide false or misleading statements about its ability to provide continuing education:

- a. The Career Compass Real Estate Success Training & License Renewal
- b. The Best Training & Lifetime License Renewal
- c. Full BRE License Renewal with only one attendance

² Mr. Parson obtained a fictitious real estate broker license number from the bureau in order to register for the continuing education courses offered at the seminar.

- d. Free Lifetime BRE License Renewals
- e. THE CAREER COMPASS is the most unique seminar in Real Estate. THE CAREER COMPASS has amazing training that is unlike any seminar in the industry today. In addition to this training, we offer the opportunity to test for 45 credit hours – full license renewal with just ONE attendance!*
- f. AT THE CAREER COMPASS SUCCESS SEMINAR:
- Learn how to quit chasing leads and get leads to chase you!
 - Renew your real estate license with our independent courses!*
 - Come back ANYTIME...FOR FREE, FOR LIFE!
- g. IT'S A LIFETIME OF:
AWARD-WINNING TRAINING
AND
LICENSE RENEWALS!!*
- h. After you attend COMPASS just once...you get to come back, get the great training at 5-Star resorts, the networking with 300+ Realtors...AND 45 Continuing Education Credits...FOR FREE...FOR THE REST OF YOUR CAREER!*
- i. LIFETIME License Renewal FOR FREE...FOR LIFE!
- j. (855) C.E RENEW ~ THECAREERCOMPASS.COM
- k. All of our seminars are in a 2.5 day format. This is to accommodate any attendees who wish to take advantage of the seminar as a testing opportunity for Cal BRE credit hours that are offered by the non-Compass affiliates we partner with to offer you a package of great training and CalBRE credit hours. This format addresses the requirement of the Cal BRE where an agent can only test for 15 credit hours per 24 hour period. The COMPASS seminar and attendance therein is not connected to, nor is there any association to the affiliates who offer the opportunity to test for CalBRE credit hours. For the correspondence courses, seminar attendance is not mandatory. Testing can be done at any time that qualifies under the correspondence format.

The brochure includes the following fine print on the bottom left corner of the first inside page:

1. *The courses provided in addition to THE CAREER COMPASS success training are independent CalBRE approved courses and providers may or may not be part of THE CAREER COMPASS Inc. The opportunity to test for 45 continuing education credits may be made up of a combination of live, correspondence and online courses. Some courses may be eligible to test at the seminar and others may not. All courses not eligible for testing at the seminar are subject to the online or correspondence rules of the CalBRE regarding course and testing delivery. Seminar re-attendance is guaranteed while THE CAREER COMPASS, Inc., is operating in California.

The Career Compass Website

8. Mr. Parsons downloaded and printed pages from the Career Compass website as of September 11, 2014.³ The website contains the following statements:

- a. RENEW YOUR LICENSE FOR FREE...FOR LIFE**
COMPASS LIFETIME LICENSE RENEWAL TICKET
- b. *A registrant to THE CAREER COMPASS will have the opportunity to earn 45 continuing education hours through a combination of live and correspondence courses. Attendance at our live seminar is NOT required to obtain all continuing education hours.
- c. **FREE RE-ATTENDANCE POLICY: You are eligible to attend THE CAREER COMPASS SUCCESS SEMINAR for the remainder of your career at no cost. This policy will remain intact unless THE CAREER COMPASS is dissolved, sold or is no longer operating in the U.S.

//

//

³ The website address is listed as <http://thecareercompass.com>. This is the same address listed in the Career Compass brochure.

Seminar Enrollment Confirmation Emails

9. Mr. Parsons received a confirmation email on August 20, 2014, after he enrolled in the Career Compass seminar. The email contained instructions and information about the seminar and included a link to the “pre-study material.” Under the link contained the following note:

NOTE: YOU DO NOT NEED TO PRINT THEM OUT, (unless you want to) it is like 230 pages...and yes, I counted them...Testing is OPEN BOOK...Although there will be some review of the material at seminar – you may print and bring with you.

DO save them on your computer and REVIEW them prior to the seminar (and from time to time)...It is all stuff that we are supposed to know as a license[d] Real Estate Agent / Broker – but often forget. . . .

A confirmation email Career Compass sent on August 16, 2014, included a link for a seminar update. This link included the following link:

[CLICK HERE & DOWNLAD ALL 4 OF THE PRE-STUDY MATERIALS](#)

These PDF downloads will allow you to do any pre-studying you would like prior to the seminar. However we will be doing comprehensive reviews of all materials. It is NOT necessary to print or bring these pre-study materials with you to the seminar. They are simply for your reference.

Testimony of Wellington Pendell

10. Wellington Pendell testified on behalf of Career Compass. Mr. Pendell is the sole owner of Career Compass, a California corporation.⁴ Mr. Pendell testified that Ms. Parker, his wife, is no longer associated with Career Compass. Mr. Pendell testified about his business model. Career Compass is a motivational and business building seminar that offers business-building techniques. Career Compass sells attendance at its seminars and does not sell continuing education. He explained that Career Compass does not provide direct continuing education. Instead, Career Compass associates with bureau-approved continuing education sponsors that provide continuing education as a benefit to Career Compass members. Mr. Pendell described these as “affiliates.” There is no requirement that

⁴ Mr. Pendell is listed as the Chief Financial Officer in Career Compass’s Statement of Information filed with the Secretary of State. Tina Parker is listed as Chief Executive Officer and sole director.

a person who attends a Career Compass seminar take the continuing education. In fact, the Career Compass seminars are often attended by individuals who are not in real estate.

11. Mr. Parker stated that his business model is similar to that of the California Association of Realtors (CAR). Mr. Pendell testified that CAR is a membership club; Career Compass is also a club with a one-time membership fee. Mr. Pendell said that CAR offers a participant the ability to purchase continuing education that is actually offered through the CE Shop, a bureau-sponsored continuing education provider. He stated that Career Compass's model is exactly the same as CAR's and alleged that he is unfairly being singled-out by the bureau. He claimed that the commissioner has given a PowerPoint presentation to a CAR convention disparaging the Career Compass.

12. Mr. Pendell stated that the disclaimer on the second page of the brochure, reprinted in Factual Finding #7k, makes it clear that the continuing education is a referral and benefit of membership of Career Compass. Members do not have to pay for continuing education coursework; it is a free benefit of membership and is optional for seminar attendees. Mr. Pendell underscored that all statements in the brochure relating to continuing education, testing, or license renewal contained an asterisk relating back to the disclaimer.

13. There are no live continuing education courses offered at Career Compass seminars. All of the courses are static-print correspondence courses. Mr. Pendell testified about several changes Career Compass has made to their marketing material and seminars since the bureau issued its order. Career Compass no longer administers or proctors the testing for the continuing education.

14. Mr. Pendell associates with several different providers of bureau-approved continuing education. For this he pays a flat-fee. He testified that he is unaware of any person who took continuing education through a Career Compass affiliate who has not received approval from the bureau for the continuing education.

15. Mr. Pendell explained the lifetime renewal component permits a member to return to a Career Compass seminar so long as Career Compass is in business. As long as Career Company has an affiliate offering continuing education at the seminar, the member can return and take the continuing education for free for life.

Career Compass Success Seminar Registration Form

16. Respondents argue that the paper registration form for the Career Compass seminar contains a disclosure about its lifetime policy. In fine print at the bottom of the form it states:

Any changes by the DRE of continuing education requirements or other license renewal changes dos NOT constitute a breach of the contract and any refunds are at the sole discretion of THE CAREER COMPASS. *Signee also acknowledges and

understands that courses for DRE continuing education credit/hours may or may NOT be owned by THE CAREER COMPASS Inc. These courses may be independent licensed courses through affiliates or other partners. It is also understood and agreed that the lifetime policy applies to "attendance" only and does not constitute a guarantee of continuing education hours being provided by THE CAREER COMPASS.

The New Brochure

17. Mr. Pendell introduced a new four-page color brochure demonstrating several changes. He testified that this brochure was created as a result of being "targeted" by the bureau. Most notably, the statement, "Lifetime License Renewal" that was featured prominently on the front-page of the old brochure has been replaced with "Lifetime Success Training." The new brochure contains modifications of many statements in the old brochure, including the following:

a. THE CAREER COMPASS
Lifetime Real Estate Success Seminar

b. Lifetime Membership to:
Award-Winning Training
Real Estate's Best Marketing & Lead Generation Training,
Guaranteed!
Combined with
CalBRE LICENSE RENEWAL*
THROUGH REFERRAL TO APPROVED CalBRE LICENSE
RENEWAL COMPANIES*
THESE are NON-COMPASS INDEPENDENT CONTINUING
EDUCATION PROVIDERS
*LEGAL DISCLAIMER: The term "License Renewal" above
does not in any way suggest, imply, solicit or guarantee CalBRE
continuing education being provided or purchased by THE
CAREER COMPASS INC. CalBRE continuing education is
only and exclusively provided by referral to a certified CalBRE
continuing education provider in good standing with CalBRE.
This referral-only status of all CalBRE continuing education
courses is only a Compass Success Seminar-related benefit of a
Compass Membership.

c. GUARANTEED!
FULL BRE LICENSE RENEWAL*
Through referral to independent, certified, * approved license
renewal companies...Included!!!

e. REFERRAL TO FULL LICENSE RENEWAL COURSES!

f. LIFETIME License Renewal FOR FREE...FOR LIFE!

The brochure contains a new disclosure on the back page, in the same type-font as the rest of the material on that page:

g. * **IMPORTANT LEGAL DISCLOSURES FOR OUR GOVERNMENTAL FRIENDS

The CAREER COMPASS Inc., (further known as "COMPASS") a legal corporation within the State of California operates by REFERRING our clients, attendees and students to a fully accredited California Bureau of Real Estate (further known as CalBRE) license renewal/continuing education company. COMPASS operates and makes this referral completely and entirely within the rules and regulations of CalBRE. Attendees and students are, at no point, provided CalBRE continuing education credit hours by COMPASS. CalBRE continuing education credit hours are provided only through and by REFERRAL from COMPASS to a fully accredited continuing education provider within the State of California. Seminar content and teaching contained within the seminar have no connection, stipulation or requirements in reference to this referral and attendance at the CAREER COMPASS Success Seminar is not required to qualify for the referral to these certified continuing education providers. COMPASS is operating fully within all laws, rules and regulations of the CalBRE. All questions should be directed to the COMPASS Legal Department.

Testimony of Shelly Wilson

18. Respondents called bureau Supervising Special Investigator II Shelly Wilson as a witness. As supervising special investigator, Ms. Wilson manages the educational and research section, the exam centers throughout the state, the exam application process, and original licensing of continuing education providers. Respondents' counsel questioned Ms. Wilson about the bureau's motivation in targeting Career Compass for investigation, and in particular, an email Ms. Wilson sent to complaint's counsel.⁵ Ms. Wilson testified that she

⁵ This email was offered into evidence by respondent. Complainant objected to its admission, claiming that it was inadvertently disclosed to respondent through discovery, and contained privileged attorney-client communication. At the conclusion of the hearing, both parties were asked to brief whether the email was subject to exclusion under Evidence Code

believed respondents were providing false and misleading information about their ability to provide continuing education. Ms. Wilson did not know if any licensee was denied continuing education credit by the bureau after having taken a continuing education course associated with Career Compass.

19. Ms. Wilson testified that the bureau has received complaints from licensees who are confused as to why Career Compass is offering continuing education when they are not a bureau-approved sponsor. In particular, the material offered by Career Compass does not contain the name and bureau number for the course provider offering the continuing education.

LEGAL CONCLUSIONS

Purpose of Department of Real Estate Actions

1. “Protection of the public shall be the highest priority for the Bureau of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (Bus. & Prof. Code, § 10050.1.)

2. “The Legislature has determined that it is in the public interest of consumer protection and consumer service that all real estate licensees licensed under the provisions of this part comply with continuing education requirements adopted by the commissioner pursuant to this article as a prerequisite to the renewal of real estate licenses.” (Bus. & Prof. Code, § 10170.)

Burden and Standard of Proof

3. The bureau has the burden of proof to support the issuance of the desist and refrain order. The default standard of proof in civil cases is the preponderance of the evidence, unless otherwise indicated by constitutional, statutory, or decisional laws. (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 365.)

section 954. Complainant failed to meaningfully establish that the communication was privileged, and if privileged, that the privilege was not waived by disclosure to respondent. However, it is determined that the contents of the email have no tendency in reason to prove or disprove any disputed fact that is of consequence of this action. (Evid. Code, § 210.). The fact that Ms. Wilson emailed her counsel about what she believed to be violations of the law has no bearing on the factual or legal determinations in this matter. As the email lacks relevance, it is inadmissible and excluded. (Evid. Code, § 350; Gov. Code, § 11513, subd. (c).)

Authority to Issue a Desist and Refrain Order

4. Business and Professions Code section 10086 provides in part:

(a) If the commissioner determines . . . a person has engaged or is engaging in an activity which is a violation of a provision of this part . . . or which is a violation of a regulation of the commissioner adopted for the purpose of implementing any provision of this part . . . the commissioner may direct the person to desist and refrain from such activity by issuance of an order specifying the nature of the activity and the factual and legal basis for his or her determination. The respondent to whom the order is directed shall immediately, upon receipt of the order, cease the activity described in the order.

Statutory and Regulatory Authority

5. Pursuant to Business and Professions Code section 10170.4, the commissioner must adopt regulations relating to the continuing educational requirements for bureau licensees. In exercising this authority, "the commissioner shall establish standards which will assure reasonable currency of knowledge as a basis for a level of real estate practice which will provide a high level of consumer protection and of competence in achieving the objectives of members of the public who engage the services of licensees." (Bus. and Prof. Code, § 10170.4, subd. (f).)

6. California Code of Regulations, title 10, section 3007.6, provides:

(a) All advertising and promotional material for a continuing education offering shall:

(1) Not include false or misleading statements or representations.

(2) Classify the offering in accordance with Section 10170.5(a) of the Code.

(3) Contain only the four-digit identification number assigned by the Bureau immediately following the words "CalBRE Sponsor No." The full eight (8) digit course approval number shall not be included in any advertisement.

//

Jurisdiction of the Bureau over Respondents

7. Respondents argue that the bureau does have jurisdiction over respondents because they are not bureau licensees subject to the bureau's regulatory authority. However, the bureau has the statutory authority to issue a desist and refrain order to any person it determines to have engaged, or is engaging, in violations of real estate laws or regulations. (Bus. & Prof. Code, § 10086, subd. (a).) By the express terms of the statute, the bureau has jurisdiction to exercise its authority over all persons, not just licensees. Thus, respondents may be properly enjoined by the bureau's order if the bureau establishes that respondents have, or are, engaging in violations of real estate laws or regulations.

Did Respondent's Provide False or Misleading Statements or False or Misleading Representations Concerning Continuing Education?

8. The legislature has determined that the public interest and consumer protection require that all real estate licensees comply with continuing education requirements adopted by the bureau as a prerequisite to the renewal of real estate licenses. (Bus. & Prof. Code, § 10170.) The legislature has granted the bureau authority to promulgate regulations relating to continuing education requirements. (Bus. & Prof. Code, § 10170.4.) The bureau has a substantial interest in ensuring that the public and licensees are not misled by false or misleading statements relating to continuing education. The bureau has promulgated regulations that prohibit false or misleading information in advertisements or promotional materials relating to continuing education offerings. Thus, the sole issue is whether there is a factual basis for concluding that respondents provided false or misleading information in their advertisements or promotional material, in violation of California Code of Regulations, title 10, section 3007.6, that justifies the issuance of the desist and restrain order.

9. There is no case law interpreting what constitutes false or misleading statements or representations of advertising or promotional material for continuing education proscribed in California Code of Regulations, title 10, section 3007.6. However, Business and Professions Code section 17500 outlaws, and provides for criminal penalties, for false advertising in general.⁶ *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347 notes that judicial interpretations of language in different code sections covering the same problem – in this case, false and misleading statements to the public – constitute persuasive authority. Thus, interpretations of Business and Professions Code section 17500 are persuasive when interpreting California Code of Regulations, title 10, section 3007.6.

⁶ Business and Professions Code section 17500 provides, in pertinent part: "It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly...to make or disseminate or cause to be made or disseminated before the public in this state...any advertising device...or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading ..."

Business and Professions Code section 17500 has been broadly construed to proscribe not only advertising which is false, but also advertising which, although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public. (*Leoni v. State Bar* (1985) 39 Cal.3d 609, 626, 217; *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 951.) This is determined by considering a reasonable consumer who is neither the most vigilant and suspicious of advertising claims nor the most unwary and unsophisticated, but instead is the ordinary consumer within the target population. (*Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 509–510.) “‘Likely to deceive’ implies more than a mere possibility that the advertisement might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner. Rather, the phrase indicates that the ad is such that it is probable that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled.” (*Id.* at p. 508.)

The Career Compass Brochure Contains False Statements

10. The color brochure submitted by the bureau, discussed in Factual Finding #7, contains several statements that are factually false. In not less than 11 places, most prominently on the front page, the brochure references “Lifetime License Renewal,” “Full BRE License Renewal,” and “Free lifetime BRE License Renewal.” Career Compass cannot promise license renewals. Only the bureau possesses the authority to renew a real estate license. Nor is a real estate license a vested right that Career Compass can promise to renew for life. “‘No person can acquire a vested right to continue, when once licensed, in a business, trade or occupation which is subject to legislative control under the police powers.’ [citation omitted.]” (*Kenneally v. Medical Board* (1994) 27 Cal.App.4th 489, 497.) Moreover, there are other requirements incumbent upon a licensee to renew a license beyond completing the continuing education requirement. (Bus. & Prof. Code, §§ 10153.7 and 10156.2.) The Career Compass’s statements concerning lifetime license renewals, and free license renewals, are factually not true. Based on these false statements in promotional material relating to continuing education, cause exists to affirm the order.

11. In this case, bureau licensees, and not the general public, are the target audience of Career Compass’s promotional materials. Thus, the determination of whether the material is misleading must be judged by whether an ordinary real estate licensee might be misled by the material. A reasonable real estate licensee would not construe these statements to mean that Career Compass is providing actual license renewals, as licensees by definition have received their licenses from the bureau and would be aware that only the bureau can renew a license. However, an ordinary real estate licensee would construe “license renewal” to mean “continuing education.” With the numerous references to “license renewal,” “45 credit hours – full license renewal with just ONE attendance!*” “45 Continuing Education Credits...FOR FREE...FOR THE REST OF YOUR CAREER!*” an ordinary real estate licensee would reasonably believe that Career Compass is not only a provider of continuing education, but that the licensee’s one-time payment of \$195 will pay for the licensee’s continuing education in perpetuity. In fact, this is the main selling-point highlighted in the brochure, as evidenced by “Lifetime License Renew” prominently

displayed on the cover. Respondents claim that the numerous asterisks appended to these statements, leading to the fine print, save the promotional material from being false or misleading.

12. The inclusion of fine print, which when read would make the advertising true, does not mean that the material is not misleading or deceptive. To the contrary, advertising which, although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public, falls squarely within the ambit of the false advertising statute. (*Kasky v. Nike, Inc.*, *supra*, 27 Cal.4th 939, 951.) In this case, even if a real estate licensee were to read the fine print, he or she would be informed that the "CalBRE approved courses and providers may or may not be part of THE CAREER COMPASS Inc." The inclusion of the word "may" implies a possibility that Career Compass is a provider of bureau-approved courses. This representation is factually false, as Career Compass is *not* a bureau-approved sponsor of continuing education. Thus, the statement that Career Compass *may* be a provider of continuing education courses is false.

13. Another section in the brochure describes the seminar format. This section explicitly states that the seminar format accommodates "attendees who wish to take advantage of the seminar as a testing opportunity for CalBRE credit hours that are offered by the non-Compass affiliates we partner with to offer you a package of great training and CalBRE credit hours." Other than the small-print, this statement is the only reference in the brochure that would signal to a reader that the continuing education is offered by an entity other than Career Compass. Judging the brochure as a whole, with the numerous references to license renewals, complainant established that the promotional material offered by Career Compass would more likely than not have the tendency to deceive or confuse a real estate licensee. Likewise, the information displayed on Career Compass's website in September 2014 would lead a visitor to believe that Career Compass is a provider of continuing education. Even Career Compass's telephone number is listed as "(855) C.E. RENEW." Career Compass's ability to offer continuing education credits as part of its services is only as good as its ability to find bureau-approved continuing education partners. As respondents admit in the fine-print of the new brochure, "continuing education referrals from THE CAREER COMPASS are only in effect while THE CAREER COMPASS has referral agreements with certified continuing education in the State of California. If no agreements exist, all references to the referral and for continuing education is null and void."

14. Mr. Pendell claimed that he is being unfairly targeted by the bureau and claims that his business model is the same as CAR's, which also allows its member to obtain continuing education from an independent vendor. To be sure, complainant has provided no law or regulation prohibiting respondent from "bundling" seminars with continuing education provided by an independent bureau-approved vendor. The sole issue is whether respondents' marketing material contains false or misleading statements. Based on the marketing material previously discussed, the conclusion must be in the affirmative.

Gold Coast's Administration of Continuing Education Courses

15. As previously noted, the issue in this matter is whether respondents provided false or misleading statements regarding continuing education course offerings purporting to fulfill the requirements for the renewal of California real estate licenses. Although the order contained allegations of regulatory violations by Gold Coast in administering its continuing education courses and examinations, these matters are beyond the scope of the order against Career Compass. For example, Mr. Parson's testimony that he received the answers prior to taking the examination, and that there were test questions that were not bureau-approved, relate solely to Gold Coast and its administration of continuing education courses. To the extent that these allegations serve as a factual basis for the bureau's order, these findings are vacated without prejudice to the bureau seeking other remedies.

16. Complainant alleged that respondents falsely represented that reading the coursework materials for the continuing education courses was optional to the licensee's ability to earn qualifying continuing education hours/credit. Complainant cited the examples noted in Factual Finding #9. However, the examples cited by complainant clearly state that *printing* the material is optional. Contrary to complainant's assertion, the instructions clearly state that the attendee should review the material prior to the seminar and download it to his or her computer. To the extent that these allegations serve as a factual basis for the bureau's order, these findings are vacated.

Career Compass's New Brochure

17. Respondents have taken steps to clarify their marketing material to reflect their separation from the continuing education providers. Most notable is the change in the cover of "Lifetime License Renewal" to "Lifetime Success Training." The new brochure contains additional disclosures with larger print. Notwithstanding the continued references to "license renewals," the new brochure is sufficiently clear about Career Compass's role in referring members to outside continuing education providers, that it would be difficult to conclude that the promotional material is false and misleading. However, the new brochure did not serve as a factual basis for the bureau's order, and thus has not been considered in determining whether cause exists to affirm the order. Based on the conclusion that respondents did provide false and misleading promotional material, respondents are properly enjoined from further disseminating advertising or other promotional materials purporting to fulfill the requirements for the renewal of a California real estate license that contain false or misleading statements or representations.

Cause Exists Affirm the Desist and Refrain Order

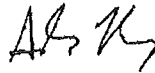
18. Cause exists to affirm the Order to Desist and Refrain Order previously issued based upon the factual findings and legal conclusions set forth herein.

DESIST AND REFRAIN ORDER

Based on the factual findings and legal conclusions set forth herein, and good cause appearing, the Desist and Refrain Order entered in this matter is affirmed.

DATED: June 26, 2015.

DocuSigned by:



19DED247706C4FB...

ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings