

FILED
MAY 21 2003
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	<u>NO. H-29306 LA</u>
DAVID EDMUND CALHOUN,)	L-2001120401
individually and doing)	
business as California)	
Academy of Real Estate,)	
Respondent.)	
<hr/> In the Matter of the Order to)	NO. H-29315 LA
Desist and Refrain to)	L-2002020254
DAVID EDMUND CALHOUN, doing)	
business as California Academy)	
of Real Estate and IRWIN)	
"PINKY" GOLDSTEIN, doing)	
business as Mmaaxx and Company.)	
<hr/> In the Matter of the Pre-Licensing)	NO. H-29312 LA
Offerings of)	L-2002020257
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	
<hr/> In the Matter of the Continuing)	NO. H-29313 LA
Education Offerings of)	L-2002020258
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	

DECISION AFTER RECONSIDERATION

1
2 On February 11, 2003, a Decision After Rejection
3 ("Decision") was rendered herein by the Real Estate
4 Commissioner.

5 In regard to the Accusation, DRE #H-29306 LA/
6 OAH #L-2001120401, the Decision suspended the real estate broker
7 license and license rights of Respondent DAVID EDMUND CALHOUN,
8 individually and doing business as California Academy of Real
9 Estate ("CALHOUN"), for a period of ninety (90) days. Thirty
10 (30) days of said suspension was stayed for two (2) years on
11 certain terms and conditions.

12 In regard to the Pre-Licensing Withdrawal, DRE
13 #H-29312 LA/OAH #L-2002020257, the Decision withdrew approval of
14 CALIFORNIA ACADEMY OF REAL ESTATE's ("CARE") pre-licensing
15 course number 838-86. Said withdrawal was stayed for a period
16 of three (3) years on certain terms and conditions, including an
17 actual withdrawal period of thirty (30) days.

18 In addition, the approval given to CARE to license or
19 distribute the pre-licensing course through others was
20 completely withdrawn.

21 In regard to the Continuing Education Withdrawals, DRE
22 #H-29313 LA/OAH #L-2002020258, the Decision withdrew approvals
23 given to CARE to offer continuing education course numbers 2613-
24 1030 (Agency), 2613-1031 (Ethics), 2613-1032 (Fair Housing),
25 2613-1033 (Trust Funds), 2613-1035 (Consumer Protection), 2613-
26 1037 (Consumer Service) and 2613-1038 (Survey). Withdrawals of
27 said approvals were stayed for a period of three (3) years on

1 certain terms and conditions, including an actual withdrawal of
2 each approval for a period of thirty (30) days.

3 In addition, approval given to CARE to license or
4 distribute the continuing education courses through others was
5 completely withdrawn.

6 Said Decision was to become effective on March 5, 2003
7 and was stayed by separate Order to April 4, 2003.

8 On February 26, 2003, Respondent petitioned for
9 reconsideration of said Decision. I have considered the
10 petition of Respondent and have concluded that good cause has
11 been presented for reconsideration of the Decision of
12 February 11, 2003 for the limited purpose of determining whether
13 the disciplinary action therein imposed should be reduced.

14 I have reconsidered said Decision and it is hereby
15 ordered that the disciplinary action therein imposed is reduced
16 by modifying the Order of said Decision as follows:

17 A. The Order is amended to allow CALHOUN to pay a
18 monetary penalty of \$3,000.00 in lieu of the sixty (60) day
19 suspension of his license and license rights.

20 B. The Order is amended to allow CARE to pay a
21 monetary penalty of \$3,000.00 in lieu of a thirty (30) day
22 withdrawal of the pre-licensing course.

23 C. The Order is amended to allow CARE to pay a
24 monetary penalty of \$4,000.00 total, for all seven courses, in
25 lieu of a thirty (30) day withdrawal of the continuing education
26 course approvals.

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1 (c) If Respondent fails to pay the monetary
2 penalty in accordance with the terms and conditions of the
3 Decision, the Commissioner may, without a hearing, order the
4 immediate execution of all or any part of the stayed suspension
5 in which event the Respondent shall not be entitled to any
6 repayment or credit, prorated or otherwise, for money paid to
7 the Department under the terms of this Decision.

8 (d) If Respondent pays the monetary penalty and
9 if no further cause for disciplinary action against the real
10 estate license of Respondent occurs within two (2) years from
11 the effective date of this Decision, the stay hereby granted
12 shall become permanent.

13 2. The remaining thirty (30) days of said suspension
14 shall be stayed for two (2) years upon the following terms and
15 conditions:

16 (a) Respondent shall obey all laws, rules and
17 regulations governing the rights, duties and responsibilities of
18 a real estate licensee in the State of California.

19 (b) No final subsequent determination be made,
20 after hearing or upon stipulation, that cause for disciplinary
21 action against respondent CALHOUN occurred within two (2) years
22 of the effective date of this Decision. Should such
23 determination be made, the Commissioner may, in her discretion,
24 vacate and set aside the stay and re-impose all or a portion of
25 the stayed suspension. Should no such determination be made,
26 the stay imposed herein shall become permanent.

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1 B. With regard to the Pre-Licensing Withdrawal case,
2 DRE Case #H-29312 LA/OAH Case #L-2002020257, IT IS ORDERED THAT:

3 1. Approval of CARE's pre-licensing course, entitled
4 Real Estate Principles, and given DRE approval number 838-86, is
5 WITHDRAWN pursuant to Regulation 3003, provided, however, that
6 said withdrawal is stayed for a period of three (3) years on the
7 following terms and conditions, including an actual withdrawal
8 period of thirty (30) days from the effective date of this
9 Decision;

10 Provided, further, that said thirty (30) day period
11 of actual withdrawal of approval (or a portion thereof) shall
12 be stayed upon condition that CARE pays a monetary penalty at
13 the rate of \$100.00 for each day of the suspension for a total
14 monetary penalty of \$3,000.00.

15 (a) Said payment shall be in the form of a
16 cashier's check or certified check made payable to the Recovery
17 Account of the Real Estate Fund. Said check must be delivered
18 to the Department prior to the effective date of the Decision in
19 this matter.

20 (b) No further cause for disciplinary action
21 against CARE's pre-licensing course approval occurs within two
22 (2) years from the effective date of the Decision in this
23 matter.

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1 (c) If CARE fails to pay the monetary penalty in
2 accordance with the terms and conditions of the Decision, the
3 Commissioner may, without a hearing, order the immediate
4 execution of all or any part of said thirty (30) day period of
5 actual withdrawal approval in which event CARE shall not be
6 entitled to any repayment nor credit, prorated or otherwise, for
7 money paid to the Department under the terms of this Decision.

8 (d) If CARE pays the monetary penalty and if no
9 further cause for disciplinary action against the real estate
10 license of Respondent occurs within three (3) years from the
11 effective date of this Decision, the stay hereby granted shall
12 become permanent.

13 2. The approval given to CARE to license or
14 distribute this course through others is withdrawn, and as such
15 CARE and only CARE may offer a pre-license course pursuant to
16 the approval number 838-86.

17 3. CARE shall obey all laws, rules and regulations of
18 the Commissioner pertaining to the offering and giving this
19 course to the public including carrying out and fulfilling all
20 assurances and representations given to the Commissioner in its
21 application for approval of this course, and any amendments
22 thereto.

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1 4. No final subsequent determination be made after
2 hearing, that cause exists for withdrawal of approval of course
3 838-86 occurs within three (3) years from the effective date
4 of this Decision. Should such a determination be made, the
5 Commissioner may, in her discretion, vacate and set aside the
6 stay and re-impose all or a portion of the stayed suspension.
7 Should no such determination be made within three (3) years from
8 the effective date of this Decision, the stay shall become
9 permanent.

10 C. With regard to the Continuing Education Withdrawal
11 case, DRE Case #H-29313 LA/OAH Case #L-2002020258, IT IS ORDERED
12 THAT:

13 1. CARE's continuing education course approvals,
14 entitled and given DRE approval numbers "AGENCY" 2613-1030,
15 "ETHICS" 2613-1031, "FAIR HOUSING" 2613-1032, "TRUST FUNDS"
16 2613-1033, "CONSUMER PROTECTION" 2613-1035, "CONSUMER SERVICE"
17 2613-1037, and "SURVEY" 2613-1038, are WITHDRAWN pursuant to
18 Regulation 3010, provided, however, said withdrawals are stayed
19 for a period of three (3) years on the following terms and
20 conditions, including an actual period of withdrawal for thirty
21 (30) days from the effective date of this Decision for each of
22 said course approvals.

23 Provided, further, that said thirty (30) day period
24 of actual withdrawal of approval of all of said courses shall
25 be stayed upon condition that CARE pays a monetary penalty at
26 the rate of \$133.33 for each day of the suspension for a total
27 monetary penalty of \$4,000.00 total for all courses.

1 (a) Payment shall be in the form of a cashier's
2 check or certified check made payable to the Recovery Account
3 of the Real Estate Fund. Said check must be delivered to the
4 Department prior to the effective date of the Decision in this
5 matter.

6 (b) No further cause for disciplinary action
7 separately or jointly against the approval given to CARE to
8 offer the continuing education courses listed above occurs
9 within three (3) years from the effective date of the Decision
10 in this matter.

11 (c) If CARE fails to pay the monetary penalty in
12 accordance with the terms and conditions of this Order, the
13 Commissioner may, without a hearing, order the immediate
14 execution of all or any part of the stayed suspension in which
15 event CARE shall not be entitled to any repayment or credit,
16 prorated or otherwise, for money paid to the Department under
17 the terms of this Decision.

18 (d) If CARE pays the monetary penalty and if no
19 further cause for disciplinary action, separately or jointly,
20 against the approvals occurs within three (3) years from the
21 effective date of this Decision, the stay hereby granted shall
22 become permanent.

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1 2. Approval given to CARE to license or distribute
2 continuing education courses entitled and given DRE approval
3 numbers "AGENCY" 2613-1030, "ETHICS" 2613-1031, "FAIR HOUSING"
4 2613-1032, "TRUST FUNDS" 2613-1033, "CONSUMER PROTECTION" 2613-
5 1035, "CONSUMER SERVICE" 2613-1037, and "SURVEY" 2613-1038,
6 through others is withdrawn, and as such CARE and only CARE is
7 approved and authorized to offer each of the above continuing
8 education courses.

9 3. CARE shall obey all laws, rules and regulations of
10 the Commissioner pertaining to the offering of and providing of
11 each of the aforementioned continuing education courses to the
12 public including carrying out and fulfilling all assurances and
13 representations given to the Commissioner in its applications
14 for approval of each of the continuing education courses.

15 4. That no final subsequent determination be made,
16 after hearing, that cause exists, separately or jointly, for
17 withdrawal of approval of course 2613-1030 (Agency), 2613-1031
18 (Ethics), 2613-1032 (Fair Housing), 2613-1033 (Trust Funds),
19 2613-1035 (Consumer Protection), 2613-1037 (Consumer Service)
20 and 2613-1038 (Survey) within three (3) years from the effective
21 date of this Decision. Should such a determination be made, the
22 Commissioner may, in her discretion, vacate and set aside the
23 stay provided and re-impose all or a portion of the stayed
24 suspension. Should no such determination be made within three
25 (3) years from the effective date of this Decision, the stay
26 shall become permanent.
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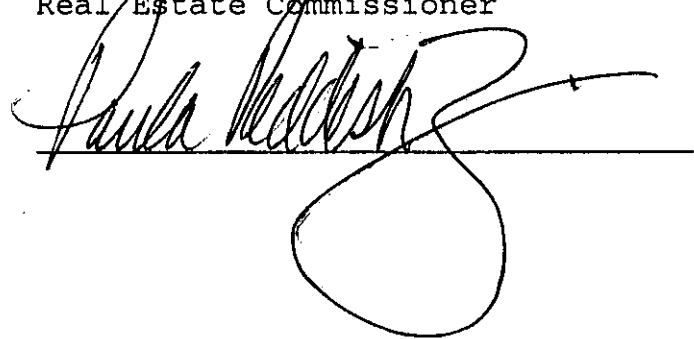
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In all other respects, the Decision of February 11, 2003, remains unchanged.

As hereby modified and amended, the Decision of February 11, 2003, shall become effective at 12 o'clock noon on June 10, 2003.

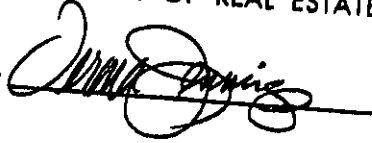
IT IS SO ORDERED May 15, 2003.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner



A large, stylized handwritten signature in black ink, appearing to read 'Paula Reddish', is written over a horizontal line. The signature is highly cursive and includes a large loop at the bottom.

FILED
APR - 7 2003
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-29306 LA
DAVID EDMUND CALHOUN,)	L-2001120401
individually and doing)	
business as California)	
Academy of Real Estate,)	
Respondent.)	
In the Matter of the Order to)	NO. H-29315 LA
Desist and Refrain to)	L-2002020254
DAVID EDMUND CALHOUN, doing)	
business as California Academy)	
of Real Estate and IRWIN)	
"PINKY" GOLDSTEIN, doing)	
business as Mmaaxx and Company.)	
In the Matter of the Pre-Licensing)	NO. H-29312 LA
Offerings of)	L-2002020257
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	
In the Matter of the Continuing)	NO. H-29313 LA
Education Offerings of)	L-2002020258
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	

ORDER GRANTING RECONSIDERATION

1
2 On February 11, 2003, a Decision After Rejection
3 ("Decision") was rendered herein by the Real Estate
4 Commissioner. The Decision was to become effective on March 5,
5 2003 and was stayed by separate Orders to April 14, 2003.

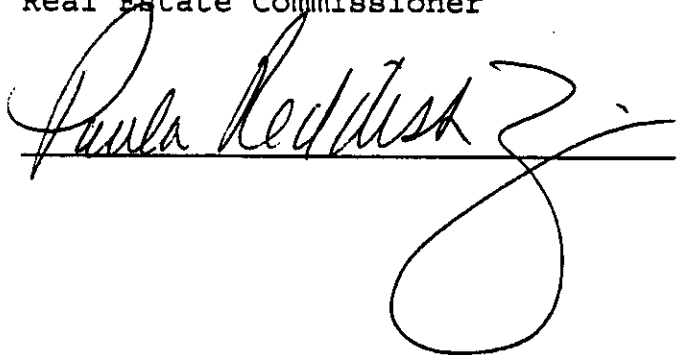
6 On February 26, 2003, Respondent petitioned for
7 reconsideration of said Decision.

8 I find that there is good cause to reconsider the
9 Decision of February 11, 2003. Reconsideration is granted for
10 the limited purpose of determining whether the disciplinary
11 action imposed against Respondents by said Decision should be
12 reduced.

13 Respondent shall have until April 14, 2003, in which
14 to file written argument in further support of its petition for
15 reconsideration. Counsel for the Department of Real Estate
16 shall submit any written reply to said argument within ten
17 (10) days thereafter.

18 IT IS SO ORDERED April 3, 2003.

19 PAULA REDDISH ZINNEMANN
20 Real Estate Commissioner

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FILED
APR 2 2003
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of) NO. H-29306 LA
)
DAVID EDMUND CALHOUN,) L-2001120401
)
individually and doing)
)
business as California)
)
Academy of Real Estate,)
)
Respondent.)

In the Matter of the Order to) NO. H-29315 LA
Desist and Refrain to)
) L-2002020254
)
DAVID EDMUND CALHOUN, doing)
)
business as California Academy)
)
of Real Estate and IRWIN)
)
"PINKY" GOLDSTEIN, doing)
)
business as Mmaaxx and Company.)

In the Matter of the Pre-Licensing) NO. H-29312 LA
Offerings of)
) L-2002020257
)
CALIFORNIA ACADEMY OF REAL ESTATE,)
)
Sponsor.)

In the Matter of the Continuing) NO. H-29313 LA
Education Offerings of)
) L-2002020258
)
CALIFORNIA ACADEMY OF REAL ESTATE,)
)
Sponsor.)

ORDER STAYING EFFECTIVE DATE

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On February 11, 2003, a Decision After Rejection was rendered in the above-entitled matter to become effective March 5, 2003. On February 27, 2003, the effective date of said Order was stayed until April 4, 2003.

IT IS HEREBY ORDERED that the effective date of the Decision After Rejection of February 11, 2003 is stayed for an additional period of ten (10) days.

The Decision After Rejection of February 11, 2003, shall become effective at 12 o'clock noon on April 14, 2003

DATED: April 2, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

By: 
DOLORES RAMOS
Regional Manager

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DEPARTMENT OF REAL ESTATE

By Orlando J. Davis

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)

DAVID EDMUND CALHOUN,)
individually and doing business)
as California Academy of Real)
Estate,)

Respondent.)

Case No. H-29306 LA
L-2001120401

In the Matter of the Order to)
Desist and Refrain to:)

DAVID EDMUND CALHOUN, doing)
business as California Academy)
of Real Estate and IRWIN "PINKY")
GOLDSTEIN, doing business as)
Mmaaxx and Company.)

Case No. H-29315 LA
L-2002020254

In the Matter of the Pre-Licensing)
Offerings of:)

CALIFORNIA ACADEMY OF REAL)
ESTATE,)

Sponsor.)

Case No. H-29312 LA
L-2002020257

In the Matter of the Continuing)
Education Offerings of:)

CALIFORNIA ACADEMY OF REAL)
ESTATE,)

Sponsor.)

Case No. H-29313 LA
L-2002020258

ORDER STAYING EFFECTIVE DATE

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FILED
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DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. <u>H-29306 LA</u>
DAVID EDMUND CALHOUN,)	L-2001120401
individually and doing)	
business as California)	
Academy of Real Estate,)	
Respondent.)	

In the Matter of the Order to)	NO. H-29315 LA
Desist and Refrain to)	L-2002020254
DAVID EDMUND CALHOUN, doing)	
business as California Academy)	
of Real Estate and IRWIN)	
"PINKY" GOLDSTEIN, doing)	
business as Mmaaxx and Company.)	

In the Matter of the Pre-Licensing)	NO. H-29312 LA
Offerings of)	L-2002020257
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	

In the Matter of the Continuing)	NO. H-29313 LA
Education Offerings of)	L-2002020258
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	

DECISION AFTER REJECTION

1 This matter came on for hearing before Eric Sawyer,
2 Administrative Law Judge, Office of Administrative Hearings,
3 State of California, at Los Angeles, California, on July 22
4 through 25, 2002.

5 Darlene Averetta, Assistant Chief Counsel, California
6 Department of Real Estate ("DRE"), represented the complainant in
7 the first above-captioned case (H-29306 LA) and the DRE
8 Commissioner in the other three.

9 Lloyd M. Segal, Esq., of Segal & Sablowsky, represented
10 respondent DAVID EDMUND CALHOUN ("Calhoun" or "respondent") who
11 also appeared each hearing day on his own behalf and as owner of
12 sponsor California Academy of Real Estate ("CARE" or "sponsor").

13 For purposes of judicial economy, and pursuant to the
14 request and agreement of the parties, the four cases above-
15 captioned were heard together and all exhibits were marked for
16 identification and described on the record according to one
17 master exhibit list. No motion was made and no order was granted
18 consolidating these cases.
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20 Oral and documentary evidence was received and argument
21 made.

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1 The record was left open for submission of further
2 closing argument and the parties timely filed the following
3 briefs marked for identification as indicated: complainant's
4 closing brief, exhibit "C- 19"; respondent's brief replying
5 thereto, exhibit "R-68"; complainant's request for further
6 briefing on the entrapment issue and order granting the same,
7 exhibit "C-20"; complainant's brief on entrapment, exhibit
8 "C-21"; respondent's brief replying thereto, exhibit "R-69";
9 complainant's request for further briefing on the entrapment
10 issue, exhibit "C-22"; and complainant's brief submitted upon
11 granting of the request, exhibit "C-23."

12 Respondent elected not to submit a brief replying
13 to complainant's last, so the record was closed and the matter
14 stood submitted on September 20, 2002.

15 On October 20, 2002, the Administrative Law Judge
16 submitted a Proposed Decision which I declined to adopt as my
17 Decision herein.

18 Pursuant to Section 11517(c)(2)(E) of the Government
19 Code of the State of California, Respondent was served with
20 notice of my determination not to adopt the Proposed Decision of
21 the Administrative Law Judge along with a copy of said Proposed
22 Decision. Respondent was notified that pursuant to Business and
23 Professions Code Section 10086, Order to Desist and Refrain No.
24 H-29315 LA was deemed rescinded as to CALHOUN only. Respondent
25 was also notified that the case would be decided by me upon the
26 record, the transcript of proceedings held on July 22 through 25,
27

1 2002, and upon any written argument offered by Respondents and
2 Complainant.

3 On December 9, 2002, Argument was submitted by
4 Respondent. On December 30, 2002, Argument was submitted on
5 behalf of Complainant.

6 I have given careful consideration to the record in
7 this case including the transcript of proceedings of
8 July 22 through 25, 2002. I have also considered the argument
9 submitted by Respondent and the argument submitted on behalf
10 of Complainant.

11 The following shall constitute the Decision of the Real
12 Estate Commissioner in this proceeding as to case numbers H-29306
13 LA, H-29312 LA and H-29313 LA:

14 FACTUAL FINDINGS

15 The Pleadings & Parties

16 1. The Second Amended Accusation is the operative
17 pleading in DRE Case # H-29306 LA/OAH Case # L-2001120401
18 ("Accusation case"). It amended the initial Accusation filed on
19 November 29, 2001, and the subsequently filed First Amended
20 Accusation. Complainant, Maria Suarez, a Deputy Real Estate
21 Commissioner of the State of California ("complainant") made each
22 accusation in her official capacity as such.

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1 2. The Order to Desist and Refrain ("D&R Order")
2 was the operative pleading in DRE Case #H-29315 LA/OAH Case
3 # L-2002020254 ("D&R Order case"). Paula Reddish Zinnemann,
4 the Real Estate Commissioner ("Commissioner") of the State of
5 California Department of Real Estate ("DRE") issued the D&R
6 Order, which prohibited Calhoun from "presenting, instructing
7 and/or administering the Real Estate Principles course and real
8 estate continuing education course offerings approved by the
9 Department unless and until [he complied] with the provisions of
10 Regulations 3000(a)(2)(B), 3005(c), 3006(e) and 3007.3(b) and the
11 representations and assurances constituting the basis for
12 approval of said offerings."

13 This case proceeded only as to Calhoun and not Irwin
14 "Pinky" Goldstein, who participated only as a subpoenaed witness
15 and did not request a hearing on the D & R Order.

16 3. The Notice of Withdrawal of Pre-Licensing Course
17 Offering Approval for Real Estate Principles Course Offering
18 # 838-86, is the operative pleading in DRE Case # H-29312 LA/OAH
19 Case # L-2002020257 ("Pre-Licensing Withdrawal case"). By issuing
20 and serving this Notice, the Commissioner notified CARE she
21 intended to withdraw DRE approval of this course.

22 4. The Notice of Withdrawal of Continuing Education
23 Offering Approvals for courses in "AGENCY" 2613-1030, "ETHICS"
24 2613-1031, "FAIR HOUSING" 2613-1032, "TRUST FUNDS" 2613-1033,
25 "CONSUMER PROTECTION" 2613-1035, "CONSUMER SERVICE" 2613-1037,
26
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1 and "SURVEY" 2613-1038, is the operative pleading in DRE Case
2 # H-29313 LA/OAH Case # L-2002020258 ("Continuing Education
3 Withdrawal case"). By issuing and serving this Notice, the
4 Commissioner notified CARE she intended to withdraw approval of
5 these courses.

6 5. The four operative pleadings each relied on the
7 same core facts. In essence, it was alleged three different DRE
8 investigators, acting as "decoys," were able to obtain course
9 completion certificates for real estate courses without properly
10 completing coursework and/or final examinations. Two of these
11 certificates were obtained from a company Calhoun allowed to
12 offer CARE courses, and the third was obtained directly from
13 Calhoun and CARE. In sum, the four pleadings request discipline
14 against Calhoun's DRE licenses, and order that Calhoun desist
15 from engaging in such practices in the future, and to withdraw
16 DRE approval of CARE offering the pre-licensing and continuing
17 education courses.

18
19 6. Calhoun timely filed a Notice of Defense in the
20 Accusation case and timely requested a hearing in the D&R Order
21 case. CARE timely filed a request for hearing in the Pre-
22 Licensing and Continuing Education Withdrawal cases. The
23 hearings ensued together as described above.

24 Calhoun and CARE admit the three certificates were
25 improperly obtained. However, they contend they did not authorize
26 or condone the manner in which the two certificates were issued
27

1 by a "distributor" to whom they "licensed" course materials and
2 should not be responsible. Calhoun and CARE also contend the
3 manner in which they issued the third certificate was not done in
4 a way to condone cheating and did not otherwise frustrate the
5 spirit of the regulations regarding course examinations.
6 Finally, they argue the certificates were issued only as the
7 result of entrapment by the DRE investigators and thus cannot be
8 actionable.

9 7. Respondent Calhoun has been licensed by the DRE
10 for over 37 years. He was first licensed by the DRE, as a real
11 estate salesperson, in 1965, and later obtained his real estate
12 broker's license in 1975.

13 At all times relevant, Calhoun was, and still is,
14 licensed by the DRE as a real estate broker, individually, and
15 doing business as California Academy of Real Estate, Exceptional
16 Properties & Investments Company, and David Calhoun & Associates;
17 and as an officer of licensed real estate corporations Anton &
18 Lee, Inc., and Anton Hospitality Brokers, Inc.

19 Other than as described in Factual Finding No. 9 below,
20 respondent has no disciplinary history with the DRE.

21 The DRE Master file for CARE's continuing education
22 courses contains complaints against some of Calhoun's ideas. The
23 complaints were submitted by another in the course sponsoring
24 business.

25
26 ///

1 It was not established that a lawsuit had ever been
2 filed against Calhoun regarding his licensed activities.

3 8. CARE is the sponsor of the "Real Estate Principles"
4 course (the subject of the Pre-Licensing Withdrawal case) and the
5 continuing education courses (the subject of the Continuing
6 Education Withdrawal case) identified in Factual Finding 18
7 below. CARE's primary business is providing courses to real
8 estate licensees and applicants for real estate licenses.

9 Calhoun at all times was the authorized administrator of CARE and
10 controlled CARE's operations.

11 Calhoun has, in one form or another, solely owned and
12 controlled CARE since its inception. CARE has always been a
13 fictitious business name. Calhoun, doing business as CARE,
14 initially owned it. In 1998, Calhoun formed Dolphin Financial,
15 Inc. ("Dolphin Financial"), of which Calhoun owns all shares. In
16 turn, Dolphin Financial was registered as an entity doing
17 business as CARE. Calhoun made this change upon advice of his
18 accountant that it would be better for him to operate CARE as a
19 corporation. Since Calhoun solely owns and controls Dolphin
20 Financial, this change in business name registry is one of form
21 over substance.
22

23 As such any act of CARE or its employees and agents is
24 also deemed to be an act of Calhoun. The Findings below set forth
25 in more detail the extent to which Calhoun controlled and
26 directed the acts of CARE.
27

1 9. On October 18, 1996, the DRE issued Order to
2 Desist and Refrain No. H-26826 LA to Calhoun, doing business as
3 CARE, and Ava June Milbourne. These parties were found by the DRE
4 Commissioner to have violated Title 10, Chapter 6, California
5 Code of Regulations ("10 CCR" or "Regulation"), sections
6 3007.3(a)(7) and 3007.3(a)(13) (subsequently deleted). Neither
7 requested a hearing, so the Order became final.

8 According to that Order, Calhoun licensed Ms. Milbourne
9 to market courses sponsored by CARE. A DRE investigator acting as
10 a decoy obtained an improperly issued continuing education course
11 completion certificate by having Milbourne mail her the final
12 examination directly instead of to an independent administrator;
13 no textbooks or instructional materials were sent either. The
14 Order established Calhoun and Milbourne by these acts violated
15 Regulations 3007.3 (a)(7) and 3007.3(a)(13).

16 At the administrative hearing, Calhoun testified that
17 after he found out about the violation by Ms. Milbourne he
18 "basically scolded her" and he continued to work with her and was
19 still working with her as of the date of the hearing.
20

21 10. Calhoun and CARE authorized (or "licensed") one
22 Irwin "Pinky" Goldstein ("Goldstein") to sell and administer the
23 DRE-approved CARE pre-licensing and continuing education courses.
24 Goldstein did business as "Mmaaxx and Company," located at 420 S.
25 Beverly Drive, Suite 210, Beverly Hills, California. The
26 relationship between Calhoun and Goldstein began in 1990, and
27

1 continued until February of 2002, when Calhoun terminated it as
2 described more fully below in Factual Finding 39.

3 Neither Goldstein nor Mmaaxx and Company has a license
4 with the DRE.

5 Goldstein was the agent of CARE and Calhoun with
6 respect to each "licensed" course Goldstein offered. As part of
7 that agency Calhoun made Goldstein aware of all of DRE's statutes
8 and regulations with respect to each "licensed" course.

9 Moreover, Calhoun was aware of and made Goldstein aware that the
10 Department occasionally sends decoys seeking to obtain
11 certificates. As found in Paragraph 9, above, Calhoun was aware
12 that if "licensing" courses he had been approved to offer failed
13 to comply with DRE's regulations and statutes, it could result in
14 action against the approval of the affected course.

15 Nevertheless, Calhoun was willing to accept this risk for a
16 twelve-year period, by offering courses over which he had little
17 or no control through Goldstein and Milbourne, among others.

18
19 DRE-Approved Real Estate Courses Offered by CARE

20 11. The Real Estate Principles course that is the
21 subject of the Pre-Licensing Withdrawal case is also known as a
22 "pre-licensing offering." This is because a condition precedent
23 to taking an examination to become either a licensed real estate
24 salesperson (Business & Professions Code ["B&P Code"] section
25 10153.3) or a licensed real estate broker (B&P Code section
26 10153.2) is the successful completion of a Real Estate Principles
27

1 course at a DRE approved institution.

2 12. In order to qualify for renewal of a real estate
3 license previously obtained, a licensee must prove to the DRE
4 successful completion of continuing education courses, or the
5 equivalent, during the preceding four-year period of licensure
6 (B&P Code section 10170.5). These courses are therefore also
7 known as "continuing education offerings," and are the subject of
8 the Continuing Education Withdrawal case.

9 13. On November 26, 1986, Calhoun, on behalf of CARE,
10 submitted an application to teach the Real Estate Principles
11 course. In addition to the application, Calhoun also submitted
12 course textbooks and instructional outlines, which the DRE
13 reviewed.

14 The DRE, pursuant to B&P Code sections 10153, 10153.3,
15 10153.5, and Regulations 3000 through 3004, issued to CARE,
16 pursuant to its applications, approval to offer the Real Estate
17 Principles course.

18 14. In the 1990's, 2000 and 2001, Calhoun, on behalf
19 of CARE, submitted applications to teach continuing education
20 courses.

21 The DRE, pursuant to B&P Code sections 10170 through
22 10170.6, and Regulations 3005 through 3012.2, issued to CARE,
23 pursuant to its applications, approval to offer continuing
24 education courses.

25
26 ///

27

1 15. Before approving these courses, the DRE determined
2 they met the prescribed regulatory and statutory standards, and
3 the consequent approval of these courses by the DRE was
4 conditioned upon representations and assurances given in CARE's
5 applications signed by Calhoun that in administering the courses
6 there would be compliance with the following:

7 a. PRE-LICENSING OFFERING:

8 (1) CARE and Calhoun represented this course
9 consisted of 15 reading assignments, 15 quizzes, a choice of one
10 enrichment exercise, and two separate final examinations.

11 (2) A term and condition of the certificate of
12 course approval issued by the DRE (# 838-86) states, in part, "3.
13 That the course will not be changed in any material manner from
14 curriculum and standards reflected in the application and request
15 for approval."

16 (3) Regulation 3000(a)(1) provides, "...A
17 correspondence course shall consist of not less than 15 separate
18 lesson assignments."

19 (4) Regulation 3000(a)(2)(B) provides, "A
20 correspondence course must provide for a final examination
21 administered and supervised by a person designated by the school
22 for that purpose. The school shall send the final examination
23 materials to the person so designated and the completed final
24 examination shall be returned to the school by the person so
25 designated."
26
27

1 (5) Regulation 3000(a)(7) provides, "The school
2 shall have an appropriate method of assessing student knowledge
3 of the subject, such as, but not limited to, multiple choice,
4 essay or oral examinations."

5 b. CONTINUING_EDUCATION_OFFERINGS:

6 (1) CARE and Calhoun represented that these
7 courses consisted of reading assignments, quiz assignments and/or
8 a supervised final examination. The final examination was to be
9 a "supervised open" final examination and the student could
10 suggest to the sponsor the person or entity to administer the
11 final examination.

12 (2) A term and condition of the certificate of
13 course approvals issued by the DRE for the courses listed states
14 in part... "Any proposed change in content or method of
15 presentation of this offering must be approved by the Department
16 of Real Estate prior to use."

17 (3) Regulation 3005(c), provides "'Final
18 examination' means the test by which the sponsor, after
19 completion of a correspondence offering, determines whether a
20 participant has successfully completed the offering according to
21 standards previously approved by the Department."

22 (4) Regulation 3006(e) provides "A correspondence
23 course shall consist of adequate study materials to assure that
24 the course cannot be completed in less time than the number of
25 hours for which it is approved."
26
27

1 (5) Regulation 3007.3(a) provides that sponsors
2 shall establish and participants shall observe specified final
3 examination rules. Regulation 3007.3(a)(1) provides "[t]he final
4 examination shall provide for the testing, examination or
5 evaluation of participants. The sponsor shall take steps to
6 protect the integrity of the examination and to prevent cheating
7 in an examination." Regulation 3007.3(b) provides "A violation of
8 a final examination rule by the sponsor or the sponsor's
9 representative administering the examination shall constitute
10 grounds for denial or withdrawal of approval of the offering."

11 16. Calhoun, for himself and on behalf of CARE, was
12 aware of these prior representations, assurances and compliance
13 requirements at all times relevant.

14 17. The DRE approved CARE to offer the above as
15 "correspondence courses," meaning students take the courses
16 through the mail in lieu of attending live classes and
17 examinations.

18 18. The courses were given the following DRE approval
19 numbers:

<u>Course Category</u>	<u>Department Approval Number</u>
Real Estate Principles	838-86
Real Estate Agency	2613-1030
Ethics	2613-1031
Fair Housing	2613-1032
Trust Funds	2613-1033
Consumer Protection	2613-1035
Consumer Service	2613-1037
Survey	2613-1038

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1 19. In addition, all approved sponsors for pre-
2 licensing courses are advised and required by the DRE to maintain
3 current registration/approval with the California Department of
4 Education, Bureau of Private Postsecondary and Vocational
5 Education ("PPVE Bureau"). This is required regardless of
6 whether the sponsor is a private school offering the courses to
7 students in a live classroom setting or correspondence courses
8 such as CARE. In accordance with this requirement, Calhoun
9 registered CARE with the PPVE Bureau, and later advised it of the
10 change in CARE's ownership structure described above.

11 20. In addition to administering these courses,
12 Calhoun and CARE also "license" these courses for "distribution"
13 to several other persons or businesses who "re-sell" or "market"
14 the courses. This includes a monetary benefit to CARE/Calhoun
15 from this "licensing" arrangement.
16

17 At the administrative hearing Calhoun testified that
18 "licensing" courses to others for distribution has been a
19 substantial percentage of CARE's business over the years to the
20 present.

21 As of the hearing, CARE "licenses" its courses to 13
22 different "distributors" throughout California.

23 This "licensing" began in late 1991, after Calhoun
24 contacted the DRE about his plan to do so. The DRE approved the
25 licensing of courses through schools, provided the course
26 certificates issued to successful students contained the name,
27

1 address, and telephone number of CARE. (Also see Finding 10
2 above.)

3 Goldstein and Mmaaxx and Company were "licensed" by
4 CARE to provide CARE courses. Neither Goldstein nor Mmaaxx and
5 Company obtained approvals by the DRE to administer these courses
6 on their own.

7 Thus, CARE's "licensing" arrangement has allowed people
8 and businesses, who have not gone through DRE's review and
9 oversight, to offer courses to prospective and actual DRE
10 licensees, where they would not be allowed to do so on their own.

11 21. The DRE has promulgated no regulation prohibiting
12 sponsors from distributing approved courses through other
13 entities, such as CARE's "licensing" arrangement. The DRE,
14 however, does caution approved sponsors that misconduct by the
15 non-approved persons or businesses could result in action against
16 the approved sponsor.

17
18 22. Calhoun has not reasonably supervised the people
19 or businesses to whom he has "licensed" CARE's courses, as
20 follows:

21 A. At the administrative hearing Calhoun testified as
22 follows:

23 At the beginning of his relationship
24 with each licensee, he instructs them to
25 obey all DRE statutes and regulations and
26 warns them that the DRE may occasionally
27 send decoys looking to improperly obtain
certificates.

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1 In addition, Calhoun testified that
2 he randomly reconciles monthly invoices
3 and statements received from his licensees
4 to satisfy himself that students are receiving
5 their course materials and there exists a paper
6 trail indicating the students took and passed
7 required examinations. For example, Calhoun
8 has all distributors (with the exception noted
9 below) send him examinations so he can grade
10 them and issue completion certificates to
11 successful students.

12 Although Calhoun believes that this gives him some
13 control over the process, he still fully relied on his
14 distributors to protect the integrity of the testing process and
15 send him properly completed examinations.

16 B. Calhoun further testified as follows:

17 Calhoun and CARE initially used the process
18 described above in Factual Finding 22.A. with
19 Goldstein. At first Calhoun would manually reconcile
20 documents Goldstein sent him and grade all exams
21 received from Goldstein. Calhoun would then issue the
22 certificates for those who passed the exams and have
23 Goldstein give them to the students. When Goldstein
24 later computerized his records, Calhoun would receive
25 a disk containing the computerized information, which
26 would allow him to reconcile those records with manual
27 records he previously received from Goldstein.

In an effort to speed up the process, however,
Calhoun in 2000 allowed Goldstein to grade the
examinations and issue the certificates on CARE
letterhead. According to Calhoun's testimony,
Goldstein was the only distributor allowed to
process courses in this manner.

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1 Although this did not violate a regulation, it removed
2 a large measure of control from Calhoun and more easily allowed
3 Goldstein and his employee Maria Cazun, to engage in their
4 scurrilous behavior (described in more detail below) of selling
5 falsified certificates without requiring students to study course
6 materials or take and pass examinations. It was this change in
7 procedure more than any other deficiency that allowed the
8 violations relative to the Macmac and Wilcox decoy operations
9 described more fully below.

10 C. Calhoun further testified that:

11 Calhoun and CARE allowed distributors to
12 recycle used course books to new clients. This
13 removed a prior one-to-one relationship between
14 course materials and new students that more easily
15 allowed Calhoun to monitor whether students were
16 provided course materials, the failure of which
17 might have indicated a deficiency worthy of
18 investigation.

19 This change in process meant Calhoun had to more
20 heavily rely on the word of his distributors; in the case of
21 Goldstein (who was also allowed to recycle used books), this
22 meant nothing.

23 D. Calhoun further testified that:

24 Calhoun does not otherwise audit the
25 records he receives from his licensees on
26 a more detailed basis or more thoroughly
27 scrutinize their conduct.

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1 The vulnerability of this process is that Calhoun is
2 completely reliant upon the word of his licensees that they will
3 faithfully follow the law and that the paperwork they send him is
4 accurate. Calhoun and CARE assumed the risk of compliance by
5 distributors and knew that each was at the mercy of unscrupulous
6 distributors who may take shortcuts or otherwise violate the law.
7 (See Finding 10, above.)

8 This faulty process allowed Ms. Milbourne to abuse
9 CARE's license as described above and for Goldstein/Cazun to do
10 the same as described below.

11 DRE Investigators' Decoy Activity:

12 Real Estate Principles Course - Successful completion
13 of a Real Estate Principles course at an accredited institution
14 is a condition precedent to taking an examination to become a
15 real estate salesperson (Code Section 10153.3) and it is one of
16 among several optional courses that is a condition precedent to
17 taking an examination to become a real estate broker (Code
18 Section 10153.2).

19
20 The Real Estate Principles Course is required to be
21 taken and passed by real estate license applicants pursuant to
22 Code Sections 10153, 10153.3 and 10153.4.

23 Continuing Education Courses - In order to qualify for
24 renewal of a real estate license, a licensee must prove
25 successful completion of continuing education courses, or the
26 equivalent, such as that identified in Paragraph No. 18 above,
27

1 during the preceding four-year period (Code Section 10170.5).

2 Real estate licensees, who successfully complete the
3 course categories noted above, may use credits from such courses
4 toward the licensees' continuing education requirements as set
5 forth in Code Section 10170.5.

6 Decoy Operations Generally

7 23. One way the DRE assures its approved pre-licensing
8 and continuing education courses are administered and completed
9 in compliance with governing statutory and regulatory
10 requirements is to assign personnel to act as decoys.

11 The investigators pose as current or prospective
12 licensees in need of obtaining certificates evidencing successful
13 completion of real estate courses. The DRE investigators usually
14 ask course sponsors to allow them to by-pass required steps or
15 purposely complete the course improperly (e.g., cheating on final
16 examinations) to determine if they will be issued certificates
17 under circumstances where they are not entitled to them.
18

19 A Decoy Operation Initiated Against Goldstein Leads to CARE

20 24. The DRE received information not established with
21 specificity that caused it to suspect Goldstein was selling
22 falsified educational certificates and therefore initiated an
23 investigation of Mmaaxx and Company and Goldstein. For reasons
24 not established, the DRE also decided to investigate
25 "CaliforniaLicense.com," another licensee of Calhoun. Neither
26 Calhoun nor CARE was the initial targets of this investigation.
27

Macmac Decoy Operation

1
2 25. On July 18, 2001, DRE Deputy Commissioner
3 Kathleene Macmac ("Macmac") went to Goldstein's office with the
4 intent to determine if she could purchase a falsified continuing
5 education certificate.

6 She met with Goldstein's employee, Ms. Maria Cazun
7 ("Cazun"), and posed as a licensee in need of continuing
8 education courses to maintain her license. She inquired of the
9 necessary steps to do so. Macmac told Cazun she was "in a bind"
10 due to an expired salesperson license and was hoping Cazun could
11 help her. Cazun immediately agreed to sell her a certificate
12 without giving her course materials, requiring her to study
13 course materials, or requiring her to take and pass an
14 appropriate examination. It was not established that Macmac did
15 anything to obtain a certificate improperly other than simply ask
16 Cazun to do so.

17 To complete the transaction, Macmac gave Cazun a copy
18 of a fictitious expired real estate salesperson license
19 information printout from the DRE's official website and paid
20 \$289.00 for the required courses. Cazun then gave Macmac a
21 Continuing Education Course Verification Form (RE 251) from CARE,
22 with Macmac's name, the course titles and course hours completed
23 on July 18, 2001, totaling 51 course hours. Macmac was given a
24 receipt from Mmaaxx and Company/Goldstein for \$289.00, dated
25 July 18, 2001, and forms (RE 209A and RE 205).
26
27

1 26. The certificate was issued improperly because
2 Macmac was not given any course materials, textbooks, and/or
3 assignments to complete, and was not given a final examination,
4 which are all required.

5 27. Macmac told Cazun she had a friend who also needed
6 to obtain a certificate without taking classes. Cazun gave Macmac
7 a business card so the friend could be referred to Goldstein's
8 office.

9 Wilcox Decoy Operation

10 28. On July 23, 2001, DRE Deputy Commissioner Amanda
11 Wilcox ("Wilcox") went to Goldstein's office and also met with
12 Cazun. She identified herself as Macmac's friend who also needed
13 a certificate.

14 Wilcox's intent was to determine if she could purchase
15 a falsified certificate from Goldstein's office. Wilcox only
16 asked Cazun if she could "purchase" a Real Estate Principles
17 certificate without completing the requisite course work or
18 examination. Cazun immediately agreed. Wilcox exerted no pressure
19 on Cazun whatsoever.
20

21 Wilcox presented a cashier check in the amount of
22 \$189.00, payable to Goldstein. Wilcox was then issued a Real
23 Estate Principles Course certificate from CARE, which indicated
24 course completion on July 23, 2001. Wilcox was given a receipt
25 from Mmaaxx and Company for the amount of \$189.00, dated July 23,
26 2001, and a Salesperson Examination Form (RE 400A).
27

1 29. The certificate was issued improperly because
2 Wilcox was not given any course materials, textbooks and/or
3 assignments to complete, nor was she given a final examination,
4 which is all required in order to receive the certificate of
5 completion for the Real Estate Principles Course.

6 30. In both the Macmac and Wilcox transactions, it was
7 clearly established that Cazun intentionally and fraudulently
8 sold falsified certificates knowing recipients had neither
9 studied the subject matter materials, understood the subject
10 matter, nor were examined on their understanding of the same.

11 Goldstein did little or nothing to prevent the improper
12 issuance of certificates for CARE's courses, as demonstrated by:
13 his failure to properly train Cazun; his failure to properly
14 supervise Cazun; his failure to put any system in place to
15 prevent improper certificate issuance or discover the same after
16 the fact; and his failure to reprimand, discipline, or fire Cazun
17 once he knew she had, on at least two occasions, sold falsified
18 certificates.
19

20 Neither Goldstein nor Cazun's testimony to the contrary
21 at hearing was credible. Their testimony was self-serving and not
22 believable. Neither exhibited an air of candor or honesty while
23 testifying. Neither made appropriate eye contact during salient
24 points of their testimony.

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Dagnino Decoy Operation

1
2 31. On August 14, 2001, DRE Deputy Commissioner Ray
3 Gino Dagnino ("Dagnino") went to CARE's office with the intent of
4 determining whether he could obtain directly from CARE a
5 continuing education certificate without actually taking the
6 course or examination.

7 Dagnino met with CARE office assistant "Galit" and
8 posed as a licensee in a hurry to get a continuing education
9 certificate. Dagnino repeatedly asked Galit if there was any way
10 he "could get around the requirements?" Each time Galit ignored
11 his entreaty and told him he could only obtain a certificate in
12 the proper manner. Calhoun was present and overheard Dagnino's
13 entreaties to Galit and her refusals.

14 Calhoun testified that he was proud of Galit's
15 responses because she performed as he trained her when he
16 initially hired her. This training included his warning to Galit
17 that DRE investigators acting as decoys, or actual licensees or
18 prospective licensees, may someday ask her to issue falsified
19 certificates.
20

21 Dagnino purchased from Galit a correspondence course
22 for \$49.00, containing 51 hours of continuing education
23 requirements. Dagnino was given three (3) books and some
24 miscellaneous papers. The books were entitled "Combined Survey
25 Course", "The Real Estate Investment Guide To Financial Freedom"
26 and "A Consumer Guide To Mortgage Lending." The miscellaneous
27

1 papers included a letter on CARE letterhead signed by Calhoun, a
2 mini-quiz on mortgage lending, a mini-quiz on real estate
3 investments, a student final exam instruction sheet, and a
4 general information sheet on the combined service course.

5 32. Additional materials were then mailed to the
6 address Dagnino indicated for his test administrator, which was
7 actually an address to which Dagnino had access. Dagnino
8 thereafter received the envelope mailed by CARE directed to his
9 designated test administrator, which contained instructions for
10 the test administrator, three examination sheets and three
11 examination answer sheets. The examination sheets stated on the
12 bottom that they must be returned to CARE unmarked to receive
13 credit for the course, and that the designated test administrator
14 only could return the materials to CARE.

15 33. Dagnino did not complete any of the course
16 assignments himself and had several other DRE employees complete
17 different parts of the final examinations.

18 34. On August 21, 2001, Dagnino returned to CARE's
19 office with his final examination answer sheets in hand and
20 personally gave them to Calhoun. Calhoun accepted the answer
21 sheets from Dagnino and proceeded to correct the answer sheets in
22 Dagnino's presence without an answer key to reconcile them.

23 At the hearing, Calhoun demonstrated that he can
24 correctly answer all CARE examinations without referring to an
25 answer key because each examination has the same answer pattern
26
27

1 for each block of 25 questions. If an examination has 50
2 questions, the answer pattern for the first 25 questions and the
3 last 25 questions are the same. Calhoun was able to sufficiently
4 demonstrate his memorization of this answer pattern while
5 testifying at hearing by actually grading an examination, without
6 error, without referring to an answer key.

7 35. Calhoun informed Dagnino he passed the
8 examinations with a grade of 80%, and promptly threw all answer
9 sheets into a trash can. Dagnino received a continuing education
10 certificate with his name, real estate salesperson license
11 identification number and completion date of August 19, 2001.

12 36. Calhoun and CARE did not, with regard to Dagnino's
13 examination, take steps to prevent cheating or protect the
14 integrity of the process.

15 The CARE examination instructions specifically stated
16 only the designated test administrator could return the
17 examination materials. Calhoun immediately recognized Dagnino
18 violated this rule when he brought his examination materials to
19 CARE instead of them being returned by the properly authorized
20 test administrator. There is nothing in the regulations, or
21 common sense, that would have prevented Calhoun under these
22 circumstances from refusing to grade the answer sheets and/or
23 requiring Dagnino to re-complete the examination process
24 properly. A reasonable person in Calhoun's position would have
25 realized there existed a great possibility of corruption of this
26
27

1 examination by virtue of these events, especially in light of the
2 fact that Calhoun had earlier overheard Dagnino asking Galit to
3 sell him a falsified certificate. In sum, Calhoun was on notice
4 that Dagnino may have potentially cheated on the examination but
5 Calhoun still issued a certificate.

6 37. It was not established Calhoun or CARE
7 intentionally issued a certificate to Dagnino knowing he had
8 cheated or otherwise had not satisfactorily completed the course
9 and examination. Calhoun testified that he issued a certificate
10 to Dagnino under the above questionable circumstances as a result
11 of an ill-advised and erroneous belief that he was only helping
12 his customer, Dagnino, who was in a rush to get a certificate but
13 otherwise properly completed the requisite steps.

14 Reactions to the Decoy Operation Findings

15 38. After completion of the above-described decoy
16 contacts, DRE Managing Deputy Commissioner Phillip Ihde, along
17 with Wilcox and Macmac, made an unannounced visit to Calhoun at
18 CARE's office on September 13, 2001. The DRE employees did not
19 disclose the results of their decoy investigation but informed
20 Calhoun the purpose of the visit was to obtain information
21 regarding his business practices relative to CARE.
22

23 Among many other things discussed, Calhoun was asked
24 how he maintained the integrity of the examination process for
25 the CARE courses. Calhoun essentially responded he could not
26 totally prevent cheating, and he criticized the DRE for lowering
27

1 passing examination scores from 70 percent to 60 percent. Calhoun
2 was also critical of DRE for allowing open book test taking. At
3 the hearing, Calhoun also criticized the regulations concerning
4 examinations, by detailing the many ways in which students can
5 cheat and his inability to prevent the same.

6 Calhoun's thoughts on the testing process and his
7 response that day to DRE personnel not only underscores his
8 slightly cavalier attitude about the prevention of cheating and
9 his apparent fatalistic belief that those who are determined to
10 obtain certificates without properly completing courses will
11 ultimately be able to do so, but also an unwillingness to accept
12 responsibility and accountability for the failure of his own
13 distributors and others to follow the rules.

14 Although the Administrative Law Judge found Calhoun's
15 testimony to be credible, Calhoun's blaming DRE regulations for
16 enabling cheating and violation of other aspects of DRE
17 regulation of pre-license and continuing education offerings, is
18 an indication that he has not and does not accept responsibility
19 and accountability for the standards and practices that apply to
20 his own approved courses. It is also an indication that he was
21 aware of the possibility that persons taking courses offered by
22 his distributors could, and the distributors themselves could
23 engage in cheating.

24
25 ///

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27

1 39. Calhoun and CARE were served with process of the
2 instant four cases in late 2001. Calhoun testified that this was
3 the first notice of the results of the decoy operations and he
4 decided as a result to remedy his licensing relationship with
5 Goldstein and his other licensees, as follows:

6 A. Calhoun quickly met with Goldstein to discuss the
7 Macmac and Wilcox transactions. Calhoun was horrified to learn
8 Goldstein did not intend to fire Cazun even though she clearly
9 violated DRE regulations. Calhoun was not satisfied with
10 Goldstein's response and decided more affirmative action was
11 necessary.

12 B. In December of 2001, Calhoun sent a letter to
13 Goldstein requiring all examinations be sent to CARE for grading
14 and certificate issuance.

15 C. In January of 2002, Calhoun, by letter, advised
16 all CARE distributors of the following CARE course policy
17 changes: New books should be issued to all CARE course students
18 instead of recycling used books, and all examinations should be
19 sent to CARE so it could grade them and issue course completion
20 certificates. The letter also reminded distributors to follow
21 these prior policies: Final exams can never be mailed directly to
22 a student and can never be hand-carried by that student to or
23 from the selected test administrator; all student registration
24 forms must be clearly completed to insure accurate review by
25 CARE; and no shortcuts were to be taken on the minimal times that
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1 must elapse before a course was completed.

2 D. Sometime after sending his letter to Goldstein in
3 December of 2001, Calhoun decided to completely terminate his
4 relationship with Goldstein. However, Calhoun decided to delay
5 this move until his attorney could obtain exculpatory
6 declarations from Goldstein and Cazun regarding the Macmac and
7 Wilcox transactions. Once Calhoun's attorney finally obtained
8 those declarations, Calhoun notified Goldstein by letter in
9 February of 2002 that CARE was revoking its license to Goldstein
10 to sell CARE's courses.

11 E. Calhoun instructed another licensee by the name of
12 Gerald Frankel, who was a relative of Goldstein, to not allow
13 Goldstein to have any contact with CARE course materials that
14 Mr. Frankel "resold." Calhoun later confirmed Frankel executed
15 this instruction.

16 Calhoun's Relevant Background Information

17 The Administrative Law Judge characterized Calhoun and
18 his background as follows in Findings "40" through "48":

19 40. Respondent is from a family long involved
20 in the real estate industry. While growing up,
21 respondent idolized an uncle who had a very successful
22 real estate business. As respondent states in the
23 biographical section of his published course books,
24 he spent much of his boyhood studying the real estate
25 industry. Although respondent got an early start in
26 real estate, he was somewhat sheltered by virtue of
27 his family connections in the business.

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1 41. Respondent has had a long career as a real
2 estate broker and salesperson. However, he moved
3 throughout various offices throughout Southern
4 California, never anchoring in any one office for any
5 length of time. A reasonable inference drawn from his
6 career is that either he was only marginally successful
7 as a licensee or did not care for it.

8 42. What respondent loves most about real estate
9 is teaching it. Respondent received a teaching
10 credential and began teaching children in 1975.
11 Respondent next taught real estate at various real
12 estate companies and various junior colleges.

13 In 1986, respondent began teaching real estate
14 through his business at CARE. The business he built at
15 CARE has far surpassed anything he has accomplished as
16 a real estate licensee. Respondent enjoys student-
17 teacher interaction. He also takes great pride in the
18 written real estate materials he publishes and the fact
19 he teaches real estate concepts. Over the years,
20 respondent has become increasingly focused on both
21 teaching and satisfying the needs of his clients,
22 typically those in the real estate business under time
23 pressure who need to obtain certificates as quickly as
24 possible.

25 43. Some of respondent's ideals are a bit quirky
26 and have raised objection from others in the business.
27 For example, in one of respondent's published real
estate books, he questions the ethics of "open houses"
as a way of selling homes, contending they are meant
more for the salesperson than for the homeowner and
therefore are of questionable value. This triggered a
written complaint from a broker questioning the DRE
approval of such materials. Respondent has also
questioned other aspects of the real estate profession
that most, if not all, would not. For example,
respondent believes any "dual agency" is necessarily a
conflict of interest regardless of the specific facts.
In another example, respondent left his last job
requiring use of his broker's license at a mortgage
lending company because he believed the lenders refused
too many transactions to the detriment of prospective
borrowers. This discussion is illustrative of the fact
that respondent holds the laws governing real estate
close at heart, almost to an extreme degree. This
indicates a profile of somebody who would not
fraudulently violate the law for profit, unlike

Goldstein and Cazun.

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44. However, this combination of attributes contributed to the problems demonstrated by this case. Respondent's somewhat sheltered background in the real estate business led to a somewhat naive way of conducting business. His love of teaching exacerbated his naivete. Respondent's somewhat fatalistic belief about not being able to totally prevent cheating in examinations further eroded his attention. This was a recipe made for the disaster presented by unscrupulous figures such as Goldstein and Cazun. Respondent simply found it impossible to believe that business associates would knowingly violate the law for their own profit. Calhoun's sincere shock and extreme anger with Goldstein, once Calhoun learned of the Macmac and Wilcox transactions, also supports this conclusion. Respondent assumed Dagnino made an honest mistake in his hurry to get a certificate but had otherwise properly completed the course and test materials. Thus, it was not established respondent acted with fraud or dishonesty in issuing Dagnino's certificate or allowing Goldstein to issue the Macmac and Wilcox certificates.

45. Respondent was emotionally devastated by the filing of these cases. He is a very anxious man who has an extremely high personal opinion of his own ethics. This personal opinion was shattered by the DRE's allegations and cut to the core of his professional life. The anxiety generated by this litigation has caused respondent emotional and physical problems, such as reduced appetite, decreased sleep, and curtailed social life. Respondent was visibly nervous at the hearing and on more than one occasion had to stop and catch his breath before continuing his testimony.

It is clear these cases have made a gigantic impression upon Calhoun--an imprint on his psyche so deep that it is extremely doubtful he will ever allow the conduct described above to reoccur. This last point was convincingly supported by the character testimony of Los Angeles Superior Court Judge Michael Luros, a subpoenaed witness. Judge Luros has been on the bench for over 20 years and has known Calhoun for the last 10 to 15 years. Judge Luros has evaluated the credibility of hundreds of witnesses and knows Calhoun well enough to opine that this litigation has made such an imprint on Calhoun. Judge Luros also believes Calhoun to be an honorable man who would not act fraudulently with regard to real estate courses and

1 simply made a
2 terrible mistake trusting Goldstein and issuing a
3 certificate to Dagnino.

4 46. Calhoun now much less trusts his
5 student/clients and business associates. So as to
6 make sure he will never again run afoul of the DRE
7 regulations or face this type of litigation, Calhoun
8 has credibly vowed to strictly and scrupulously follow
9 the regulations and make all efforts necessary to
10 prevent students from obtaining certificates improperly
11 from CARE sponsored courses. This is in addition to the
12 reforms he has since instituted with his distributors
13 described above. The dread and fear this litigation
14 instilled in Calhoun certainly stripped away the thin
15 veneer of nonchalance he previously had about his
16 ability to prevent cheating on course examinations.

17 47. Respondent at the hearing gave an appearance
18 of an honest person who was upset and embarrassed by
19 the allegations in these cases. He answered questions
20 on cross-examination and from the bench directly and
21 made good eye contact. He was extremely respectful of
22 the DRE and these proceedings.

23 48. Calhoun feels teaching real estate is his
24 life's mission and would be professionally and
25 personally devastated if completely prohibited from
26 doing so.

27 49. I disagree with the Judge's characterization that
this indicates a profile of somebody who would not fraudulently
violate the law for profit, unlike Goldstein and Cazun. It
cannot be shown that someone would not fraudulently violate the
law for profit given any set of circumstances.

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1 Despite Respondent's contention that he is scrupulously
2 motivated to adhere to the Department's regulations and to do his
3 best to protect the public, the history of complaints, Orders to
4 Desist and Refrain and Department disciplinary and adverse
5 actions (including the current actions) evidence that Respondent
6 has fallen far short of his goals.

7 Judge Sawyer found that it was "extremely doubtful"
8 that Respondent will allow the conduct described in the subject
9 actions to reoccur and that Respondent "credibly vowed" to make
10 all efforts necessary to prevent students from improperly
11 obtaining CARE certificates. However, Judge Sawyer did not and
12 could not find that in the future Respondent would be able to
13 ensure compliance.

14 The fact remains that there is no way to completely
15 ensure Respondent's compliance with the Real Estate Law and the
16 Commissioner's implementing Regulations, without further limiting
17 or restricting all course approvals and also disciplining
18 Respondent's real estate license and license rights.

19 LEGAL CONCLUSIONS

20 Burdens and Standards of Proof

21 1. The burden and standard of proof in the Accusation
22 case is on the complainant to establish clear and convincing
23 evidence to a reasonable certainty. *Ettinger v. Board of Medical*
24 *Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.

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1 2. In the three other matters, the burden and
2 standard of proof is on the Commissioner to establish those cases
3 by a preponderance of the evidence. *Gardner v. Comm. on Prof*
4 *Comp.* (1985) 164 Cal.App.3d 1035, 1039-1040.

5 The Entrapment Defense Was Not Established

6 3. An entrapment defense can be raised in an
7 administrative proceeding where a license may be suspended or
8 revoked. *Patty v. Board of Medical Examiners* (1973) 9 Cal.3d 356,
9 367.

10 4. Entrapment constitutes "... the conduct of the law
11 enforcement agent [that] was likely to induce a normally law-
12 abiding person to commit the offense[.]" *People v. Barraza* (1979)
13 23 Cal.3d 675, 689-690. Differing from the federal standard which
14 requires a showing the defendant was not predisposed to commit
15 the offense (see, e.g., *United States v. Russell* (1973) 411 U.S.
16 423 [36 L.Ed.2d 366, 93 S.Ct. 1637]), and unlike the earlier
17 California schizophrenic approach (see *Barraza*, 23 Cal.3d at 688)
18 the current California test focuses on the state agent's conduct
19 examined in light of the circumstances surrounding the situation
20 in question. (*Id.*, at 690.) The suspect's predisposition to
21 commit the offense and his subjective intent are irrelevant.
22 (*Id.*, at pp. 690-691.)

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1 5. Undercover operations and decoys are permissible
2 provided the state agents do not resort to pressure or
3 overbearing conduct "such as badgering, cajoling, importuning, or
4 other affirmative acts" (*Barraza*, 23 Cal.3d at 690) to induce the
5 criminal act. If the police generate only ordinary criminal
6 intent, however, the agent's conduct does not constitute
7 entrapment. (*Id.*) An individual is presumed to resist the
8 temptation to commit a crime presented by the simple opportunity
9 to act unlawfully. (*Id.*) Appeals to friendship or sympathy, or
10 representations or enticements making the act unusually
11 attractive, are impermissible. (*Id.*) But *Barraza* does not prevent
12 state agents from lying. "The police remain free to take
13 reasonable, though restrained, steps to gain the confidence of
14 suspects. A contrary rule would ... tend to limit convictions to
15 only the most gullible offenders." *Barraza*, *supra*, 23 Cal.3d at
16 690, fn. 4.

18 6. Respondent cites to *Patty* in support of his
19 argument that entrapment occurred in this case. The *Patty* court
20 found entrapment was established because Dr. *Patty* was naive
21 about illegal drug prescriptions (9 Cal.3d at 369), was severely
22 ill (*Id.*, at 360), and noted the state agents were attractive
23 young women luring a susceptible elderly physician. (*Id.*) Here,
24 there is no indication any of these dynamics were at play.
25 Moreover, Calhoun overheard Dagnino's entreaties of his assistant
26 Galit for a falsified certificate and had pre-existing knowledge
27

1 the DRE used decoys to do so. Unlike Dr. Patty, Calhoun was not a
2 naive neophyte in this regard. (Compare, *Patty, supra*, 9 Cal.3d
3 at 369.) The conduct of the DRE investigators here was not likely
4 to induce a normally law-abiding person to commit the offenses.
5 There was no pressure or the type of conduct constituting
6 entrapment exerted in this case. The three investigators simply
7 asked for certificates without performing required acts. Cazun
8 quickly agreed, and then suggested Macmac refer Wilcox for the
9 same service.

10 Galit rebuked Dagnino's initial attempts. Later,
11 Calhoun accepted examination materials from Dagnino in violation
12 of CARE examination rules. Calhoun was not requested to do so.
13 Dagnino said nothing to him about this at all.

14 Thus, the entrapment defense was not established.
15 Factual Findings 23-37.

16 Responsibility for the Misconduct of Goldstein and Cazun

17
18 7. Calhoun and CARE correctly argue responsibility
19 for the egregious misconduct of Goldstein and Cazun is a primary
20 issue.

21 However, they erroneously argue neither is subject to
22 discipline, under any circumstances, for the Macmac and Wilcox
23 transactions, because others committed the misconduct.

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1 Specifically, Calhoun and CARE argue that as principals
2 they can never be liable for the fraud of their agents, citing to
3 California Civil Code section 2306, which provides, in relevant
4 part, "an agent can never have authority ... to an act which is
5 ... a fraud upon the principal." They also cite to B&P Code
6 section 10179, which provides, in relevant part, that no licensed
7 real estate broker shall be subject to discipline for the acts of
8 an employee absent "guilty knowledge" of a violation. Neither
9 citation stands for the proposition asserted.

10 The violations with which Calhoun is charged are not
11 only based on the acts of Calhoun but also on the failure and
12 omission of his agents to comply with the Department's
13 regulations. While it is argued by Calhoun that the acts of
14 Goldstein and Cazun defrauded him, the evidence did not establish
15 that their acts were done with the intent to defraud Calhoun or
16 CARE. Moreover, this was not the issue before the Department and
17 the Commissioner in this matter. The Department and the
18 Commissioner have only alleged that Calhoun and CARE have
19 violated specific regulations and not that said acts defrauded
20 Calhoun.
21

22 While Civil Code section 2306 prevents a finding
23 that Calhoun or CARE acted with fraud in this litigation based
24 purely on the conduct of Goldstein or Cazun, it does not immunize
25 them from their own misconduct, or Calhoun and CARE for the non-
26 fraudulent misconduct of Goldstein or Cazun. B&P Code section
27

1 10179 clearly has no application because this litigation does not
2 involve discipline against Calhoun as a broker for the acts of a
3 licensed salesperson or others employed by him.

4 Calhoun and CARE are responsible for the acts of their
5 agents Goldstein and Cazun for their failure to comply with DRE
6 regulations. If you accept a theory of non-responsibility, then
7 Calhoun and CARE or other course sponsors could never be held
8 accountable for knowingly authorizing others to act on their
9 behalf when their conduct violates the laws or regulations
10 regulating the subject matter of the conduct. The law does not
11 immunize the principal when the agents are acting within the
12 scope of their agency and the acts of the agents have not been
13 proven to be fraudulent. As noted, it was not the conduct of
14 Goldstein and Cazun as to Calhoun and CARE that is the basis for
15 the actions filed in this matter but simply the fact that said
16 conduct did not comply with the law. The evidence did not prove
17 a fraud as to Calhoun or CARE only a violation of the statutes
18 and regulations listed herein.
19

20 For this reason, the argument of the nature of
21 Goldstein and Cazun's conduct as fraudulent as to Calhoun and
22 CARE has no application.

23 8. Furthermore, Calhoun's and CARE's argument, can
24 have no logical application to the Pre-Licensing and Continuing
25 Education Withdrawal cases. To do so would completely frustrate
26 an obvious regulatory purpose.
27

1 As a matter of statutory construction, CARE must be
2 responsible for any misconduct resulting in it issuing false
3 certificates. The Real Estate Law is a framework worded in
4 general terms, not subject to narrow or unduly technical
5 principles, but to be broadly interpreted, so that the purpose of
6 the legislation is accomplished to carry out the principles of
7 government. See, e.g., *Amador Valley Joint Union High School*
8 *District v. State Board of Equalization* (1978) 22 Cal.3d 208. A
9 construction cannot be given to the Real Estate Law that would
10 "completely undermine and circumvent the purposes of the
11 legislation and render it impotent against the very ills and
12 unethical practices it was intended to remedy." *Tushner v.*
13 *Savage* (1963) 219 Cal. App. 2d 71, 80. The DRE's interpretation
14 of the Real Estate Law, on the other hand, is entitled to great
15 weight, unless clearly erroneous. *Amvest Mortgage Corp. v. Antt*
16 *(1997) 58 Cal.App.4th 1239, 1245.*

18 B&P Code section 10050 makes clear the DRE
19 Commissioner's primary responsibility is to enforce the Real
20 Estate Law in a manner that "achieves the maximum protection for
21 the purchasers of real property and those persons dealing with
22 real estate licensees." An obvious goal of the Real Estate Law
23 and associated regulations relating to approval of pre-licensing
24 and continuing education courses is to insure prospective and
25 current real estate licensees know the laws and ethical contours
26 of the real estate business. Prevention of cheating in the real
27

1 estate pre-licensing and continuing education process is
2 paramount to making sure licensees the public contacts are
3 knowledgeable and ethical.

4 In addition, there is clear intent evidenced in the
5 relevant regulations for an approved sponsor to be *absolutely*
6 responsible for the misconduct of its agents. Regulation 3003,
7 pertaining to pre-licensing courses, allows withdrawal of
8 approval where the "course of study" is no longer equivalent as
9 initially offered and where the sponsor engages in misconduct.
10 Regulation 3010, regarding continuing education courses, is
11 similarly structured. This means focus is equally on the course
12 and the sponsor. Thus, where one who administers sponsored
13 materials does something that negatively impacts the quality of
14 the course, approval for the course may be withdrawn. Moreover,
15 Regulation 3007.3(b), pertaining to continuing education courses,
16 provides that violation of a final examination rule "by the
17 sponsor or the sponsor's representative administering the
18 examination (emphasis added)" shall constitute grounds for denial
19 or withdrawal of approval of the offering.

21 9. Applying Calhoun and CARE's argument to the
22 Withdrawal cases would stand the Real Estate Law on its head and
23 completely subvert the Commissioner's powers to make sure
24 approved real estate courses are properly conducted, and could
25 essentially allow continuing violations of applicable
26 regulations.
27

1 The course completion certificates issued to Macmac and
2 Wilcox were in the name of CARE. This is because the DRE approved
3 CARE to offer the real estate courses, not Goldstein. CARE
4 received this approval upon the express condition that
5 certificates would only be issued when the rules are followed and
6 the integrity of the examination process protected. The DRE
7 cautions approved sponsors they are still responsible when they
8 "license" their materials to "distributors" in such a way. This
9 is necessary because the DRE has no other jurisdiction or
10 recourse over "distributors," other than issuing a D&R Order to
11 the offending party individually, which does nothing to the
12 approved sponsor.

13 Calhoun and CARE allowed Goldstein to grade
14 examinations and issue certificates on CARE's letterhead, without
15 CARE being involved in the process. When Calhoun and CARE
16 delegated those tasks to Goldstein, they did so at their own risk
17 and became responsible for Goldstein's misconduct. The DRE would
18 not have allowed CARE to "license" courses to others unless this
19 was so. Moreover, Calhoun and CARE did not properly insure
20 Goldstein was following the Real Estate Law and associated
21 regulations.
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1 Calhoun and CARE's argument taken to its logical
2 extreme would establish a system where sponsors could knowingly
3 allow "distributors" to issue falsified certificates with
4 impunity; once one distributor is caught, the approved sponsor
5 could simply "distribute" the course to another under the same
6 circumstances, ad infinitum. This would obviously pervert the
7 system and frustrate the Commissioner's ability to regulate its
8 approved sponsors. The DRE's construction of this regulatory
9 scheme, where the sponsor is responsible for misconduct of its
10 distributors, is not clearly erroneous as applied in this case.

11 In light of these circumstances, it would be an absurd
12 result to completely insulate CARE from responsibility for the
13 misconduct of its distributors with regard to the Withdrawal
14 cases. Factual Findings 10, 20-22.

15 10. In any event, this argument has no application to
16 the Dagnino transaction because Calhoun and CARE directly
17 participated, without Goldstein or Cazun's involvement. Factual
18 Findings 31-37.

19
20 The D&R Order

21 Pursuant to Business and Professions Code Section
22 10086, Order to Desist and Refrain No. H-29315 LA was deemed
23 rescinded as to CALHOUN only.

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In Aggravation

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2 As discussed in Finding No. 9, a D & R Order was issued
3 to Calhoun doing business as CARE in 1996 for violations of DRE
4 regulations by a distributor.

5 Cause Exists for Withdrawal of the Pre-Licensing Course Approval

6 11. Regulation 3000(a)(1) requires a pre-licensing
7 course, offered as a correspondence course, to consist of
8 "...not less than 15 separate lesson assignments." CARE and
9 Calhoun violated Regulation 3000(a)(1) when Wilcox obtained a
10 certificate without studying any course materials and/or
11 demonstrating her understanding of the materials by passing an
12 appropriate final examination. In sum, she was "sold" a
13 certificate without bona-fide completion of courses or
14 examinations, and was issued a falsified certificate from CARE.

15 This activity was the result of misconduct by CARE's
16 and Calhoun's authorized distributor, Goldstein. CARE and
17 Calhoun are responsible for that misconduct as decided in Legal
18 Conclusions 7-9 above. Moreover, Goldstein's misconduct was
19 facilitated by CARE's and Calhoun's lack of reasonable diligence
20 overseeing his activity and allowing him (Goldstein) to issue
21 certificates in CARE's name without proper safeguards in place to
22 prevent this fraudulent conduct from occurring. As such, the pre-
23 licensing course operated by CARE, and "licensed" by CARE to
24 "distributors", such as Goldstein, no longer was equivalent in
25 quality to courses offered by colleges and universities. Factual
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1 Findings 3, 5-24, 28-30.

2 12. It was not established the pre-licensing course
3 offered directly by CARE, and not by one of its distributors,
4 issued certificates to those who did not study course materials.

5 Factual Findings 3, 5-24, 28-30.

6 13. Regulation 3000(a)(2)(B) requires a pre-licensing
7 course, offered as a correspondence course, to provide "... a
8 final examination administered and supervised by a person
9 designated..." and for "... the completed final examination [to
10 be] returned to the school by the person so designated." Calhoun
11 assured the DRE that CARE pre-licensing courses would so comply.

12 CARE and Calhoun violated this regulation relative to
13 the Wilcox transaction. CARE, through Calhoun, did not implement
14 reasonable procedures for preventing an authorized distributor,
15 Goldstein, from improperly issuing the completion certificate in
16 CARE's name. By allowing Goldstein to conduct the examinations
17 and issue the certificates without reasonable oversight, CARE and
18 Calhoun facilitated Goldstein's conduct. The end result was that
19 a certificate containing false information was issued on CARE
20 letterhead with CARE's DRE approval number. Therefore, this
21 course offered by CARE, through its distributor in this fashion,
22 was not equivalent in quality to courses offered by colleges or
23 universities. Factual Findings 3, 5-24, 28-30.

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1 14. The Commissioner established cause exists pursuant
2 to Regulation 3003 to withdraw approval of the pre-licensing
3 course offering, sponsored by CARE and "licensed" by CARE to its
4 "distributors." Regulations were violated by CARE's distributor
5 and facilitated by its own failure to reasonably supervise them.
6 The courses no longer meet the statutory and regulatory standards
7 for approval as operated by CARE when it first obtained DRE
8 approval to be a sponsor or as it assured the DRE it would handle
9 "distribution" of its courses to "distributors." Factual Findings
10 3, 5-24, 28-30.

11 Cause Exists for Withdrawal of the Continuing Education Course

12 Approvals

13 15. Regulation 3005(c) defines "final examination" for
14 purposes of continuing education courses to mean a test by which
15 the sponsor "after completion of a correspondence offering,
16 determines whether a participant has successfully completed the
17 offering according to standards previously approved by the
18 Department."
19

20 CARE violated Regulation 3005(c) regarding final
21 examinations for continuing education courses. CARE, through
22 Calhoun, assured the DRE that CARE would not issue certificates
23 for continuing education courses unless and until the student
24 demonstrated completion of the course materials by taking and
25 passing an appropriate final examination. Based on these
26 assurances, the DRE approved CARE's continuing education courses.
27

1 These assurances were violated by CARE when Macmac
2 received continuing education certification without taking final
3 examinations, and when Dagnino was allowed to personally return
4 his examination sheets to Calhoun instead of his designated test
5 administrator. CARE, through Calhoun, issued the certificate to
6 Dagnino even though it had notice Dagnino may not have properly
7 reviewed course materials and/or properly complete the
8 examination. Factual Findings 4, 5-27, 31-37.

9 16. Regulation 3006(e) requires that in order to
10 approve a sponsor's continuing education course offerings, the
11 DRE must determine "[a] correspondence course shall consist of
12 adequate study materials to assure that the course cannot be
13 completed in less time than the number of hours for which it is
14 approved."

15 CARE provided the DRE with adequate course study
16 materials to accomplish this purpose and, therefore, CARE's
17 continuing education courses were appropriately approved by the
18 DRE.
19

20 CARE did not violate Regulation 3006(e). CARE's
21 continuing education courses contained appropriate study
22 materials. It was not the failure of CARE to provide adequate
23 course materials for its courses that caused the violations
24 relative to Macmac and Dagnino. Macmac was not given the
25 materials by Cazun, Dagnino was given the materials but he did
26 not study them. Neither of which is regulated by Regulation
27

3006(e). Factual Findings 4, 5-27, 3 1-37.

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2 17. Regulation 3007.3(a) requires sponsors of
3 continuing education courses to (1) provide for a final
4 examination and take steps to protect the integrity of the
5 examination and prevent cheating, and (2) not allow an
6 examination until completion by the student of the instructional
7 portion of the course. CARE violated this regulation on two
8 occasions. CARE allowed issuance of a falsified certificate to
9 Macmac without her taking a final examination. Since she was
10 issued a certificate the same day she "purchased" her course
11 materials, this also meant the spirit of Regulation 3007.3(a)(2)
12 was violated. CARE did not protect the integrity of the
13 examination process and take all steps to prevent cheating when
14 Calhoun issued a certificate to Dagnino under circumstances where
15 he knew Dagnino may not have properly completed the examination.
16 Factual Findings 4, 5-27, 3 1-37.

17
18 18. As decided above, CARE violated Regulation
19 3007.3(b) regarding continuing education course final examination
20 rules being violated "by the sponsor or the sponsor's
21 representative administering the examination." Calhoun, himself,
22 violated the final examination rules by accepting examination
23 materials from Dagnino instead of his designated test
24 administrator. Calhoun knew this was a violation of CARE's
25 examination rules. Moreover, CARE is expressly subject to this
26 regulation regarding the Macmac transaction because its
27

1 "representatives," Goldstein and Cazun, violated examination
2 rules by issuing a certificate to Macmac without requiring her to
3 take and pass an examination. Factual Findings 4, 5-27, 31-37.

4 19. The DRE Commissioner therefore established cause
5 exists pursuant to Regulations 3007.3(b) and 3010 to withdraw
6 approval of the continuing education course offerings, sponsored
7 by CARE and distributed to its distributors. This is due to
8 violations of Regulations 3005(c) and 3007.3(a) and (b), which,
9 according to Regulations 3007.3(b) and 3010, are grounds for such
10 withdrawal. Moreover, the manner in which CARE operated the
11 "licensing" of CARE courses to "distributors," such as Goldstein,
12 was in a manner materially different than how CARE assured the
13 DRE the courses would be offered and its "distributions" would be
14 conducted, which is also grounds for withdrawal of approval.
15 Factual Findings 4, 5-27, 3 1-37.

16 Cause Exists for Discipline in the Accusation Case
17

18 20. The Accusation contends, amongst other things,
19 that Regulation 3002(b) was violated, though none of the other
20 three cases contain any such allegation. Regulation 3002(b)
21 requires the sponsor of a pre-licensing course to submit any
22 material change to an approved course to the DRE for approval
23 prior to use. Wilcox received a certificate without receiving
24 course materials, without reviewing those materials and without
25 passing an examination. This was contrary to assurances of how
26 the course would be offered, made by Calhoun to the DRE in the
27

1 course of receiving DRE approval. However, Regulation 3002
2 appears aimed at preventing material changes in course materials
3 or policies that could change the course as previously approved
4 by the DRE. It does not appear aimed at direct misconduct, i.e.
5 failure to use approved materials or failure to follow approved
6 procedures, which is better and more specifically regulated by
7 other regulations. In the case at bar, there was not a change of
8 course materials or policy by CARE or Calhoun, but rather
9 misconduct by a CARE distributor. Thus, it was not established
10 Calhoun violated Regulation 3002(b) in this case. Factual
11 Findings 1, 5-24, 28-30.

12 21. The Accusation also contends Regulation 3005(d)
13 was violated, though none of the other three cases contain such
14 an allegation either. Regulation 3005(d) defines "material
15 change" for purposes of continuing education courses, but unlike
16 Regulation 3002(b), Regulation 3005(d) does not require a sponsor
17 of a continuing education course to submit any material change to
18 an approved course to the DRE for approval prior to use. While
19 such a requirement might be found elsewhere in the regulations,
20 no such regulation was contained in any of the four operative
21 pleadings.
22

23 Even if it were, there is no violation of the
24 regulation due solely to misconduct of a distributor, for the
25 reasons explained above with regard to Regulation 3002(b).

26 ///
27

1 22. The Accusation first premises discipline against
2 Calhoun's licenses under B&P Code section 10170.4, subdivisions
3 (b) and (e). Neither support discipline in this case.

4 B&P Code section 10170.4 empowers the Commissioner to
5 adopt regulations pertaining to the manner in which continuing
6 education courses are offered. Subdivision (b) prescribes there
7 must be "[a] basis and method of qualifying educational programs,
8 the successful completion of which, will satisfy the requirements
9 of this article." Subdivision (e) requires these courses include
10 "[a]n appropriate form of testing, examination or evaluation by
11 the sponsor of each approved correspondence or homestudy
12 educational program, or equivalent, of the student."

13 B&P Code section 10170.4 is part of Article 2.5 of the
14 Real Estate Law, which solely pertains to "Continuing Education"
15 of real estate licensees. Yet, nowhere in either Article 2.5
16 generally, or B&P Code section 10170.4 specifically, is there
17 indication that violation thereof would support discipline
18 against a licensee also acting as a "sponsor" providing DRE-
19 approved continuing education courses. B&P Code section 10170.4
20 simply outlines the contents of continuing education courses.
21 This conclusion is bolstered by the existence elsewhere in the
22 regulations allowing the DRE to withdraw approval of continuing
23 education courses, as discussed above.
24

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1 Thus, it was not established Calhoun violated B&P Code
2 section 10170.4, subdivisions (b) and (e), and, therefore, no
3 grounds for discipline exist therein.

4 23. The Accusation also requests discipline against
5 Calhoun based on B&P Code section 10177(d). This section is
6 contained in Article 3 of the Real Estate Law, entitled
7 "Disciplinary Action." It is clear each section of this article
8 states grounds for discipline for violation thereof.

9 B&P Code section 10177(d) specifically provides grounds
10 for discipline if a licensee:

11 Willfully disregarded or violated the Real Estate
12 Law (Part 1 (commencing with Section 10000)) or Chapter
13 1 (commencing with Section 11000) of
14 Part 2 or the rules and regulations of the commissioner
15 for the administration and enforcement of the Real
16 Estate Law and Chapter 1 (commencing
17 with Section 11000) of Part 2.

18 "Willfully" as used in B&P Code section 10177(d) does
19 not require intent to violate the law, only intent to engage in
20 the act or conduct prohibited by the pertinent statute. *Milner v.*
21 *Fox* (1980) 102 Cal.App.3d 567, 574.

22 As decided above, Calhoun directly violated Regulation
23 3007.3(a)(1) (requiring sponsors to protect the integrity of the
24 examination process and prevent cheating) with regard to Dagnino.
25 CARE rules required return of examination materials by the
26 designated test administrator. As the sole and controlling force
27 behind CARE, Calhoun knew this rule applied to these
examinations. Calhoun not only intentionally engaged in the act,
but he instantly knew Dagnino violated this instruction when

1 Dagnino personally returned all the examination documents to
2 Calhoun. Calhoun was previously on notice that Dagnino might
3 cheat on the examination when he overheard Dagnino's conversation
4 with Galit. Under these circumstances, Calhoun should not have
5 proceeded with Dagnino's examination, and certainly should not
6 have issued him a certificate.

7 While it cannot be found that Calhoun knowingly allowed
8 Dagnino to cheat and thereafter issued him a certificate, it
9 cannot be found that he took steps to protect the integrity of
10 the process or prevent cheating either. Thus, Calhoun violated
11 Regulation 3007.3(a)(1), a regulation administering and enforcing
12 the Real Estate Law. Thus, it was established by so doing that
13 Calhoun is subject to discipline pursuant to B&P Code section
14 10177(d). Factual Findings 1, 5-24, 31-37.

15 24. The final request for discipline is pursuant to
16 B&P Code Section 10177(j) which allows discipline for conduct
17 "which constitutes fraud or dishonest dealing." It was not
18 established Calhoun acted with fraud or dishonesty relative to
19 the Dagnino transaction. Calhoun was not involved in the Macmac
20 and Wilcox transactions. Though his oversight of Goldstein rose
21 to the level of neglect in a way that facilitated Goldstein and
22 Cazun's misconduct, it was simply not established he knowingly or
23 intentionally did so with designs of fraud or dishonesty.
24 Therefore, it was not established Calhoun violated B&P Code
25 section 10177(j). Factual Findings 1, 5-48.

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Disposition of All Four Cases

25. D&R Order case

Goldstein and Cazun did not request a hearing on the D&R Order pursuant to B&P Code 10086 and, therefore, the D&R Order is in effect as to Goldstein and Cazun.

Calhoun did request a hearing on the D&R Order. Pursuant to B&P Code 10086(c), the D&R Order was rescinded as to Calhoun only.

26. Pre-Licensing Withdrawal case

It was established CARE and Calhoun have not properly supervised the distributors to whom they license CARE courses. This case presents the second and third documented instances of distributor misconduct. CARE and Calhoun specifically exempted Goldstein from their otherwise lax oversight procedures that essentially facilitated Goldstein and Cazun's misconduct; and prevented Calhoun's ability to discover the same, after the fact, and report it to the DRE. Although it was not established CARE or Calhoun violated regulations when they offered pre-licensing courses themselves, it was established that Calhoun and CARE were aware of possible violations and the consequences of such violations. Thus, it would be appropriate to withdraw or otherwise restrict and limit the DRE's approval of CARE's courses and CARE's "licensing" its pre-licensing courses to distributors; or to put it another way, to restrict the DRE's prior approval of pre-licensing courses to CARE and to further restrict and limit

1 CARE's ability to allow any other person or business to offer
2 CARE pre-licensing courses. This would adequately protect the
3 public from future problems such as those presented in this case.
4 Factual Findings 3, 5-37.

5 Contrary to the Administrative Law Judge's findings,
6 because of the lax oversight by CARE and Calhoun over Goldstein's
7 offering of pre-licensed courses and course certificates it was
8 established the public would be jeopardized by CARE and Calhoun
9 continuing to offer pre-licensing courses without some
10 limitations or restrictions. Even though Calhoun did not
11 directly violate regulations pertaining to pre-licensing courses
12 in this case, he allowed his and CARE's agents to engage in
13 violations without proper oversight thereby frustrating the
14 purpose of the pre-license course requirement. Thus, there is
15 actionable conduct sufficient to withdraw or restrict approval
16 for CARE offering these courses.

17
18 I do not give much weight to the fact that CARE and
19 Calhoun did not act fraudulently in this case. The damage caused
20 by allowing violations of the Commissioner's regulations to take
21 place is of great concern to the purpose and integrity of
22 approved pre-license and continuing education courses. Nor do I
23 give much weight to Calhoun's demonstrated remorse for CARE's
24 acts and omissions or that of CARE'S distributors, evidenced in
25 this case by immediately changing offending CARE policies that
26 made them most vulnerable to the conduct of Goldstein and Cazun.
27

1 Such a demonstration of remorse is to be expected when a
2 respondent's very livelihood is on the line.

3 Calhoun testified that he instructs his employees and
4 distributors to follow the laws, as demonstrated by Galit's
5 refusing Dagnino's entreaties. But he also knew and was aware of
6 the risk that the rules would not be followed, and he did not
7 follow these rules. Moreover, I cannot agree that the impact of
8 this litigation has been such on Calhoun that it is unlikely he,
9 himself, would in the future violate the regulations pertaining
10 to these courses or allow his employees to do so. In fact, the
11 evidence is to the contrary. After issuing an order to Calhoun
12 for his violation of final examination requirements by his agent,
13 the evidence in this case established that he thereafter engaged
14 in the very conduct he said he was so remorseful about. Factual
15 Findings 38-48.

16
17 27. Continuing Education Withdrawal case

18 As in the pre-licensing withdrawal case, approval
19 should be limited or restricted from CARE's offering or
20 distributing its courses to others, for the same reasons. Factual
21 Findings 4-37.

22 In addition, Calhoun personally violated a regulation
23 in the Dagnino transaction, although in isolation it was not such
24 a violation that should require complete withdrawal of CARE's
25 approval to offer continuing education courses when coupled with
26 the prior Desist and Refrain Order issued to Calhoun it must be
27

1 looked at in a different light. The Dagnino case presented the
2 first instance of Calhoun or CARE's known direct violation of
3 regulations pertaining to real estate courses. Though Calhoun
4 acted negligently by accepting Dagnino's examination under the
5 circumstances, he did not act fraudulently as did Goldstein and
6 Cazun. But he wasn't charged with fraud and that is an important
7 fact since his conduct must be measured as a knowing failure to
8 comply with the rules, particularly in light of the prior Desist
9 and Refrain Order. He testified that he simply made a very bad
10 choice under the misguided intent of helping a client who was in
11 a hurry to get a continuing education certificate. But his
12 actions were more than a bad choice. He knowingly brought down
13 his conduct to a level which he claims he knew was possible in
14 others. Calhoun further testified that this litigation has made
15 a strong impression on him. Certainly the cost of defending this
16 action and its potential impact on his future livelihood in
17 sponsoring DRE approved courses also had a significant effect on
18 this impression. Factual Findings 3 8-48.

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28. Accusation case

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2 As decided above, Goldstein and Cazun's misconduct
3 should not be attributed to Calhoun for purposes of the
4 Accusation case. However, Calhoun did personally and willfully
5 violate a regulation regarding continuing education courses in
6 the Dagnino transaction. Even though the offending acts are not
7 ones of which a DRE license is required, they still trigger
8 discipline because B&P Code section 10177(d) does not require
9 such linkage. Calhoun's violation did not involve fraud, but it
10 was still serious. Public protection requires real estate
11 licensees know the law and ethics of their profession and
12 demonstrate the same by properly completing continuing education
13 courses. *Handleland vs. Department of Real Estate* (1976) 58
14 Cal.App.3rd 513.

15
16 As a DRE licensee and the owner of a DRE-approved real
17 estate course sponsor, Calhoun knew this.

18 Thus, Calhoun's license should be appropriately
19 disciplined to allow him to reflect on his misconduct, study and
20 review all laws relating to DRE approved real estate courses, and
21 revise CARE's operation to accommodate the fact that he and CARE
22 will no longer be allowed to distribute real estate courses to
23 others.

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1 Although the actionable conduct was not related to
2 activity for which a license was required, disciplining Calhoun's
3 license is necessary to ensure public protection and would serve
4 the above-listed purposes. Additional incentive for Calhoun to
5 not repeat his misconduct is provided by the specter of the DRE
6 withdrawing complete approval of CARE courses in the future,
7 given more misconduct by Calhoun or CARE. Based on the current
8 record that exists relative to CARE courses, that could very well
9 be the result of future similar findings. Factual Findings 38-48.

10 ORDERS

11 A. With regard to the Accusation case, DRE Case
12 # H-29306 LA/OAH Case # L-2001120401, IT IS ORDERED THAT:

13 All licenses and licensing rights of Respondent
14 DAVID EDMUND CALHOUN, individually and doing business as
15 California Academy of Real Estate, under the Real Estate Law are
16 suspended for a period of ninety (90) days from the effective
17 date of this Decision;

18 1. Provided, however, that thirty (30) days of said
19 suspension shall be stayed for two (2) years upon the following
20 terms and conditions:

21 (a) Respondent shall obey all laws, rules and
22 regulations governing the rights, duties and responsibilities of
23 a real estate licensee in the State of California.

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1 (b) That no final subsequent determination be made,
2 after hearing or upon stipulation, that cause for disciplinary
3 action occurred within two (2) years of the effective date of
4 this Decision. Should such determination be made, the
5 Commissioner may, in her discretion, vacate and set aside the
6 stay order and reimpose all or a portion of the stayed
7 suspension. Should no such determination be made, the stay
8 imposed herein shall become permanent.

9 B. With regard to the Pre-Licensing Withdrawal case,
10 DRE Case # H-29312 LA/OAH Case # L-2002020257, IT IS ORDERED
11 THAT:

12 1. Approval of CARE's pre-licensing course, entitled
13 Real Estate Principles, and given DRE approval number 838-86, is
14 WITHDRAWN pursuant to Regulation 3003, provided, however, that
15 said withdrawal is stayed for a period of three years on the
16 following terms and conditions, including an actual withdrawal
17 period of thirty (30) days from the effective date of this
18 Decision.

19 2. CARE's approval to license or distribute this
20 course through other persons is withdrawn. In other words CARE
21 and only CARE may offer a pre-license course pursuant to the
22 approval number 838-86.

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1 3. CARE shall obey all laws, rules and regulations of
2 the Commissioner pertaining to the offering and giving this
3 course to the public including carrying out and fulfilling all
4 assurances and representations given to the Commissioner in its
5 application, and any amendments thereto for approval to offer a
6 pre-license course in real estate principles.

7 4. That no final subsequent determination be made
8 after hearing, that course exist for withdrawal of approval of
9 course 838-86 occurs within three years from the effective date
10 of this Decision. Should such a determination be made, the
11 Commissioner may, in her discretion, vacate and set aside the
12 stay order. Should no such determination be made within three
13 years from the effective date of this Decision, the stay shall
14 become permanent.

15 C. With regard to the Continuing Education Withdrawal
16 case, DRE Case # H-29313 LA/OAH Case # L-2002020258, IT IS
17 ORDERED THAT:
18

19 1. Approval of CARE's continuing education courses,
20 entitled and given DRE approval numbers "AGENCY" 2613-1030,
21 "ETHICS" 2613-1031, "FAIR HOUSING" 2613-1032, "TRUST FUNDS" 2613-
22 1033, "CONSUMER PROTECTION" 2613-1035, "CONSUMER SERVICE" 2613-
23 1037, and "SURVEY" 2613-1038, is WITHDRAWN pursuant to Regulation
24 3010, provided, however, that said withdrawal is stayed for a
25 period of three years on the following terms and conditions,
26 including an actual period of withdrawal for thirty (30) days
27

1 from the effective date of this Decision.

2 2. CARE's approval to license or distribute continuing
3 education courses entitled and given DRE approval numbers
4 "AGENCY" 2613-1030, "ETHICS" 2613-1031, "FAIR HOUSING" 2613-1032,
5 "TRUST FUNDS" 2613-1033, "CONSUMER PROTECTION" 2613-1035,
6 "CONSUMER SERVICES" 2613-1037, AND "SURVEY" 2613-1038, is
7 withdrawn, and as such CARE and only CARE is approved and
8 authorized to offer the above continuing education courses.

9 3. CARE shall obey all laws, rules and regulations of
10 the Commissioner pertaining to the offering of and providing of
11 each of the aforementioned continuing education courses to the
12 public including carrying out and fulfilling all assurances and
13 representations given to the Commissioner in its applications for
14 approval of each of the continuing education courses.

15 4. That no final subsequent determination be made,
16 after hearing, that cause exists for withdrawal of approval of
17 course 2613-1030 (Agency), 2613-1033 (Ethics), 2613-1032 (Fair
18 Housing), 2613-1033 (Trust Funds), 2613-1035 (Consumer
19 Protection), 2613-1037 (Consumer Services) and 2613-1038
20 (Survey), within three years from the effective date of this
21 Decision. Should such a determination be made, the Commissioner
22 may, in her discretion, vacate and set aside the stay order.
23 Should no such determination be made within three years from the
24 effective date of this Decision, the stay shall become permanent.
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1 This Decision shall become effective at 12 o'clock noon
2 on March 5, 2003.

3 IT IS SO ORDERED February 11, 2003.

4 PAULA REDDISH ZINNEMANN
5 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
DAVID EDMUND CALHOUN,)
)
individually and doing)
)
business as California)
)
Academy of Real Estate,)
)
)
Respondent.)

Case No. H-29306 LA
OAH No. L-2001120401

In the Matter of the Order to Desist)
and Refrain to:)
)
DAVID EDMUND CALHOUN, doing)
)
business as California Academy of)
)
Real Estate and IRWIN "PINKY")
)
GOLDSTEIN, doing business as)
)
Mmaaxx and Company.)

Case No. H-29315 LA
OAH No. L-2002020254

In the Matter of the Pre-Licensing)
Offerings of:)
)
CALIFORNIA ACADEMY OF REAL ESTATE,)
)
)
Sponsor.)

Case No. H-29312 LA
OAH No. L-2002020257

In the Matter of the Continuing)
Education Offerings of:)
)
CALIFORNIA ACADEMY OF REAL ESTATE,)
)
)
Sponsor.)

Case No. H-29313 LA
OAH No. L-2002020258

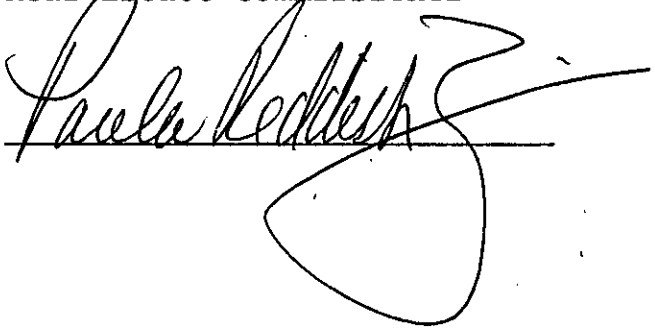
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Written argument of Complainant to be considered by me must be submitted within fifteen (15) days after receipt of the argument of Respondents at the Los Angeles Office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: November 6, 2002.

PAULA REDDISH ZINNE MANN
Real Estate Commissioner

A handwritten signature in cursive script, reading "Paula Reddish Zinnemann", is written over a horizontal line. The signature is large and stylized, with a prominent loop at the end.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

DAVID EDMUND CALHOUN,
individually and doing business as California
Academy of Real Estate,

Respondent.

Case No. H-29306 LA
OAH No. L2001120401

In the Matter of the Order to Desist and
Refrain to:

DAVID EDMUND CALHOUN, doing
business as California Academy of Real
Estate, and IRWIN "PINKY" GOLDSTEIN,
doing business as Mmaaxx and Company.

Case No. H-29315 LA
OAH No. L2002020254

In the Matter of the Pre-Licensing
Offerings of:

CALIFORNIA ACADEMY OF
REAL ESTATE,

Sponsor.

Case No. H-29312 LA
OAH No. L2002020257

In the Matter of the Continuing Education
Offerings of:

CALIFORNIA ACADEMY OF
REAL ESTATE,

Sponsor.

Case No. H-29313 LA
OAH No. L2002020258

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter from July 22-25, 2002, at Los Angeles, California.

Darlene Averetta, Assistant Chief Counsel, Department of Real Estate ("DRE"), represented the complainant in the first above-captioned case and the DRE Commissioner in the other three.

Lloyd M. Segal, Esq., of Segal & Sablowsky, represented respondent David Edmund Calhoun ("Calhoun" or "respondent") who also appeared each hearing day on his own behalf and as owner of sponsor California Academy of Real Estate ("CARE" or "sponsor").

For purposes of judicial economy, and pursuant to request and agreement of the parties, the four cases above-captioned were heard together and all exhibits were marked for identification and described on the record according to one master exhibit list. No motion was made and no order was granted consolidating these cases.

Oral and documentary evidence was received and argument made.

The record was left open for submission of further closing argument and the parties timely filed the following briefs marked for identification as indicated: complainant's closing brief, exhibit "C-19"; respondent's brief replying thereto, exhibit "R-68"; complainant's request for further briefing on the entrapment issue and order granting the same, exhibit "C-20"; complainant's brief on entrapment, exhibit "C-21"; respondent's brief replying thereto, exhibit "R-69"; complainant's request for further briefing on the entrapment issue, exhibit "C-22"; and complainant's brief submitted upon granting of the request, exhibit "C-23."

Respondent elected not to submit a brief replying to complainant's last, so the record was closed and the matter submitted on September 20, 2002.

The below orders sustaining in part the Desist & Refrain Order, withdrawing approval of CARE distributing its courses to others, and suspending Calhoun for thirty (30) days while requiring him to pass the Professional Responsibility Examination, are all based on the following Factual Findings and Legal Conclusions:

FACTUAL FINDINGS

The Pleadings & Parties

1. The Second Amended Accusation is the operative pleading in DRE Case # H-29306 LA/OAH Case # L2001120401 ("Accusation case"). It amended the initial Accusation filed on November 29, 2001, and the subsequently filed First Amended Accusation. Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California ("complainant") made each accusation in her official capacity as such.

2. The Order to Desist and Refrain ("D&R Order") is the operative pleading in DRE Case # H-29315 LA/OAH Case # L2002020254 ("D&R Order case"). Paula Reddish Zinnemann, the Real Estate Commissioner ("Commissioner") of the State of California Department of Real Estate ("DRE") issued the D&R Order, which prohibits Calhoun from "presenting, instructing and/or administering the Real Estate Principles course and real estate continuing education course offerings approved by the Department unless and until you comply with the provisions of Regulations 3000(a)(2)(B), 3005(c), 3006(e) and 3007.3(b) and the representations and assurances constituting the basis for approval of said offerings."

This case proceeded only as to Calhoun and not Irwin "Pinky" Goldstein, who participated only as a subpoenaed witness.

3. The Notice of Withdrawal of Pre-Licensing Course Offering Approval for Real Estate Principles Course Offering # 838-86, is the operative pleading in DRE Case # H-29312 LA/OAH Case # L2002020257 ("Pre-Licensing Withdrawal case"). By issuing and serving this Notice, the Commissioner notified CARE she intended to withdraw DRE approval of this course.

4. The Notice of Withdrawal of Continuing Education Offering Approvals for courses in "AGENCY" 2613-1030, "ETHICS" 2613-1031, "FAIR HOUSING" 2613-1032, "TRUST FUNDS" 2613-1033, "CONSUMER PROTECTION" 2613-1035, "CONSUMER SERVICE" 2613-1037, and "SURVEY" 2613-1038, is the operative pleading in DRE Case # H-29313 LA/OAH Case # L2002020258 ("Continuing Education Withdrawal case"). By issuing and serving this Notice, the Commissioner notified CARE she intended to withdraw approval of these courses.

5. The four operative pleadings each rely on the same core facts. In essence, it is alleged three different DRE investigators, acting as "decoys," were able to obtain course completion certificates for real estate courses without properly completing coursework and/or final examinations. Two of these certificates were obtained from a company Calhoun allowed to offer CARE courses, and the third was obtained directly from Calhoun and CARE. In sum, the four pleadings request discipline against Calhoun's DRE licenses, an order that Calhoun desist from engaging in future such practices, and to withdraw DRE approval of CARE offering the pre-licensing and continuing education courses.

6. Calhoun timely filed a Notice of Defense in the Accusation case and timely requested a hearing in the D&R Order case. CARE timely filed a request for hearing in the Pre-Licensing and Continuing Education Withdrawal cases. The hearings ensued together as described above.

Calhoun and CARE admit the three certificates were improperly obtained. However, they contend they did not authorize or condone the manner in which the two certificates were issued by a "distributor" to whom they "licensed" course materials and should not be responsible. Calhoun and CARE also contend the manner in which they issued the third certificate was not done in a way to condone cheating and did not otherwise frustrate the spirit of the regulations regarding course examinations. Finally, they argue the certificates were issued only as the result of entrapment by the DRE investigators and thus cannot be actionable.

7. Respondent Calhoun has been licensed by the DRE for over 37 years. He was first licensed by the DRE, as a real estate salesperson, in 1965, and later obtained his real estate broker's license in 1975.

At all times relevant, Calhoun was, and still is, licensed by the DRE as a real estate broker, individually, and doing business as California Academy of Real Estate, Exceptional Properties & Investments Company, and David Calhoun & Associates; and as an officer of licensed real estate corporations Anton & Lee, Inc., and Anton Hospitality Brokers, Inc.

Other than as described in Factual Finding No. 9 below, respondent has no disciplinary history with the DRE. It was not established that a complaint has ever been made against either license. No lawsuit has ever been filed against Calhoun regarding his licensed activities.

8. California Academy of Real Estate ("CARE") is the sponsor of the "Real Estate Principles" course (the subject of the Pre-Licensing Withdrawal case) and the continuing education courses (the subject of the Continuing Education Withdrawal case) identified in Factual Finding 18 below. CARE's primary business is providing courses to real estate licensees and applicants for real estate licenses. Calhoun at all times was the authorized administrator of CARE and controlled CARE's operations.

Calhoun has, in one form or another, solely owned and controlled CARE since its inception. CARE has always been a fictitious business name. Calhoun, doing business as CARE, initially owned it. In 1998, Calhoun formed Dolphin Financial, Inc. ("Dolphin Financial"), of which Calhoun owns all shares. In turn, Dolphin Financial was registered as an entity doing business as CARE. Calhoun made this change upon advice of his accountant that it would be better for him to operate CARE as a corporation. Since Calhoun solely owns and controls Dolphin Financial, this change in business name registry is one of form over substance.

9. On October 18, 1996, the DRE issued Order to Desist and Refrain No. H-26826 LA to Calhoun, doing business as CARE, and Ava June Milbourne. These parties were found by the DRE Commissioner to have violated Title 10, California Code of Regulations ("10 CCR" or "Regulation"), sections 3007.3(a)(7) and 3007.3(a)(13) (subsequently deleted). Neither requested a hearing, so the Order became final.

The DRE, pursuant to B&P Code sections 10170 through 10170.6, and Regulations 3005 through 3012.2, issued to CARE, pursuant to its applications, approval to offer continuing education courses.

15. Before approving these courses, the DRE determined they met the prescribed regulatory and statutory standards, and the consequent approval of these courses by the DRE was conditioned upon representations and assurances given in CARE's applications signed by Calhoun that in administering the courses there would be compliance with the following:

A. PRE-LICENSING OFFERING:

1. CARE and Calhoun represented this course consisted of 15 reading assignments, 15 quizzes, a choice of one enrichment exercise, and two separate final examinations.

2. A term and condition of the certificate of course approval issued by the DRE (# 838-86) states, in part, "3. That the course will not be changed in any material manner from curriculum and standards reflected in the application and request for approval."

3. Regulation 3000(a)(1) provides, "...[a] correspondence course shall consist of not less than 15 separate lesson assignments."

4. Regulation 3000(a)(2)(B) provides, "[a] correspondence course must provide for a final examination administered and supervised by a person designated by the school for that purpose. The school shall send the final examination materials to the person so designated and the completed final examination shall be returned to the school by the person so designated."

5. Regulation 3000(a)(7) provides, "[t]he school shall have an appropriate method of assessing student knowledge of the subject, such as, but not limited to, multiple choice, essay or oral examinations."

B. CONTINUING EDUCATION OFFERINGS:

1. CARE and Calhoun represented that these courses consisted of reading assignments, quiz assignments and/or a supervised final examination. The final examination was to be a "supervised open" final examination and the student could suggest to the sponsor the person or entity to administer the final examination.

2. A term and condition of the certificate of course approvals issued by the DRE for the courses listed states in part... "[a]ny proposed change in content or method of presentation of this offering must be approved by the Department of Real Estate prior to use."

According to that Order, Calhoun licensed Ms. Milbourne to market courses sponsored by CARE. A DRE investigator acting as a decoy improperly obtained a continuing education course completion certificate by having Milbourne mail her the final examination directly instead of to an independent administrator; no textbooks or instructional materials were sent either. The Order established Calhoun and Milbourne by these acts violated Regulations 3007.3 (a)(7) and 3007.3(a)(13).

After the Order became final, Calhoun discussed the matter with Ms. Milbourne and decided to continue allowing her to "market" CARE sponsored materials, provided she follow in the future all DRE regulations and never mail tests directly to students.

10. Calhoun and CARE authorized (or "licensed") one Irwin "Pinky" Goldstein ("Goldstein") to sell and administer the DRE-approved CARE pre-licensing and continuing education courses. Goldstein did business as "Mmaaxx and Company," located at 420 S. Beverly Drive, Suite 210, Beverly Hills, California. The relationship between Calhoun and Goldstein began in 1990, and continued until February of 2002, when Calhoun terminated it as described more fully below in Factual Finding 39.

Neither Goldstein nor Mmaaxx and Company has a license with the DRE.

DRE-Approved Real Estate Courses Offered by CARE

11. The Real Estate Principles course that is the subject of the Pre-Licensing Withdrawal case is also known as a "pre-licensing offering." This is because a condition precedent to taking an examination to become either a licensed real estate salesperson (Business & Professions Code ["B&P Code"] section 10153.3) or a licensed real estate broker (B&P Code section 10153.2) is the successful completion of a Real Estate Principles course at a DRE approved institution.

12. In order to qualify for renewal of a real estate license previously obtained, a licensee must prove to the DRE successful completion of continuing education courses, or the equivalent, during the preceding four-year period of licensure (B&P Code section 10170.5). These courses are therefore also known as "continuing education offerings," and are the subject of the Continuing Education Withdrawal case.

13. On November 26, 1986, Calhoun, on behalf of CARE, submitted an application to teach the Real Estate Principles course. In addition to the application, Calhoun also submitted course textbooks and instructional outlines, which the DRE reviewed.

The DRE, pursuant to B&P Code sections 10153, 10153.3, 10153.5, and Regulations 3000 through 3004, issued to CARE, pursuant to its applications, approval to offer the Real Estate Principles course.

14. In the 1990's, 2000 and 2001, Calhoun, on behalf of CARE, submitted applications to teach continuing education courses.

3. Regulation 3005(c), provides "'[f]inal examination' means the test by which the sponsor, after completion of a correspondence offering, determines whether a participant has successfully completed the offering according to standards previously approved by the Department."

4. Regulation 3006(e), provides "[a] correspondence course shall consist of adequate study materials to assure that the course cannot be completed in less time than the number of hours for which it is approved."

5. Regulation 3007.3(a) provides that sponsors shall establish and participants shall observe specified final examination rules. Regulation 3007.3(a)(1) provides "[t]he final examination shall provide for the testing, examination or evaluation of participants. The sponsor shall take steps to protect the integrity of the examination and to prevent cheating in an examination." Regulation 3007.3(b) provides, "[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."

16. Calhoun, for himself and on behalf of CARE, was aware of these prior representations, assurances and compliance requirements at all times relevant.

17. The DRE approved CARE to offer the above as "correspondence courses," meaning students take the courses through the mail in lieu of attending live classes and examinations.

18. The courses were given the following DRE approval numbers:

<u>Course Category</u>	<u>Department Approval Number</u>
Real Estate Principles	838-86
Real Estate Agency	2613-1030
Ethics	2613-1031
Fair Housing	2613-1032
Trust Funds	2613-1033
Consumer Protection	2613-1035
Consumer Service	2613-1037
Survey	2613-1038

19. In addition, all approved sponsors for pre-licensing courses are advised and required by the DRE to maintain current registration/approval with the California Department of Education, Bureau of Private Postsecondary and Vocational Education ("PPVE Bureau"). This is so regardless of whether the sponsor is a private school offering the courses to students in a live classroom setting or correspondence courses such as CARE. In accordance with this requirement, Calhoun registered CARE with the PPVE Bureau, and later advised it of the change in CARE's ownership structure described above.

20. In addition to administering these courses, Calhoun and CARE also "license" these courses for "distribution" to several other persons or businesses who "re-sell" or "market" the courses. This has been a substantial percentage of CARE's business over the years to the present. As of the hearing, CARE "licenses" its courses to 13 different "distributors" throughout California.

This "licensing" began in late 1991, after Calhoun contacted the DRE about his plan to do so. The DRE approved, provided the course certificates issued to successful students contain the name, address, and telephone number of CARE.

Goldstein and Mmaaxx & Company were "licensed" by CARE to provide CARE courses. Neither Goldstein nor Mmaaxx & Company obtained approvals by the DRE to administer these courses on their own.

Thus, CARE's "licensing" arrangement has allowed people and businesses, who have not gone through DRE's review and oversight, to offer courses to prospective and actual DRE licensees, where they would not be allowed to do so on their own.

21. The DRE has promulgated no regulation prohibiting sponsors from distributing approved courses through other entities, such as CARE's "licensing" arrangement. The DRE, however, does caution approved sponsors that misconduct by the non-approved persons or businesses could result in action against the approved sponsor.

22. Calhoun has not reasonably supervised the people or businesses to whom he has "licensed" CARE's courses, as follows:

A. Calhoun at the beginning of his relationship with each licensee instructs them to obey all DRE statutes and regulations and warns them that the DRE may occasionally send decoys looking to improperly obtain certificates. In addition, Calhoun randomly reconciles monthly invoices and statements received from his licensees to satisfy himself that students are receiving their course materials and there exists a paper trail indicating the students took and passed required examinations. For example, Calhoun has all distributors (with the exception noted below) send him examinations so he can grade them and issue completion certificates to successful students. Although this gives Calhoun some control over the process, he still fully relies on his distributors to protect the integrity of the testing process and send him properly completed examinations.

B. Calhoun and CARE initially used the process described above in Factual Finding 22.A. with Goldstein. At first Calhoun would manually reconcile documents Goldstein sent him and grade all exams received from by Goldstein. Calhoun would then issue the certificates for those who passed the exams and have Goldstein give them to the students. When Goldstein later computerized his records, Calhoun would receive a disk containing the computerized information, which would allow him to reconcile those records with manual records he previously received from Goldstein.

In an effort to speed up the process, however, Calhoun in 2000 allowed Goldstein to grade the examinations and issue the certificates on CARE letterhead. Although this did not violate a regulation, it removed a large measure of control from Calhoun and more easily allowed Goldstein and his employee Maria Cazun to engage in their scurrilous behavior (described in more detail below) of selling falsified certificates without requiring students to study course materials or take and pass examinations. It was this change in procedure more than any other deficiency that allowed the violations relative to the Macmac and Wilcox decoy operations described more fully below.

Goldstein was the only distributor allowed to process courses in this manner and it is more than ironic that Goldstein was the one distributor caught by DRE decoys improperly selling falsified certificates.

C. Calhoun and CARE allowed distributors to recycle used course books to new clients. This removed a prior one-to-one relationship between course materials and new students that more easily allowed Calhoun to monitor whether students were provided course materials, the failure of which might have indicated a deficiency worthy of investigation. This change in process meant Calhoun had to more heavily rely on the word of his distributors; in the case of Goldstein (who was also allowed to recycle used books) this meant nothing.

D. Calhoun does not otherwise audit the records he receives from his licensees on a more detailed basis or more thoroughly scrutinize their conduct. The vulnerability of this process is that Calhoun is completely reliant upon the word of his licensees that they will faithfully follow the law and that the paperwork they send him is accurate. Calhoun is at the mercy of unscrupulous licensees who plan to take shortcuts or otherwise violate the laws. This faulty process allowed Ms. Milbourne to abuse CARE's license as described above and for Goldstein/Cazun to do the same as described below.

DRE Investigators' Decoy Activity:

Decoy Operations Generally

23. One way the DRE assures its approved pre-licensing and continuing education courses are administered and completed in compliance with governing statutory and regulatory requirements is to assign personnel to act as decoys.

The investigators pose as current or prospective licensees in need of obtaining certificates evidencing successful completion of real estate courses. The DRE investigators usually ask course sponsors to allow them to by-pass required steps or purposely complete the course improperly (e.g. cheating on final examinations) to determine if they will be issued certificates under circumstances where they are not entitled to them.

A Decoy Operation Initiated Against Goldstein Leads to CARE

24. The DRE received information not established with specificity that caused it to suspect Goldstein was selling falsified educational certificates and therefore initiated an investigation of Mmaaxx & Company and Goldstein. For reasons not established, the DRE also decided to investigate "CaliforniaLicense.com," another licensee of Calhoun. Neither Calhoun nor CARE were the initial targets of this investigation.

Macmac Decoy Operation

25. On July 18, 2001, DRE Deputy Commissioner Kathleene Macmac ("Macmac") went to Goldstein's office with the intent to determine if she could purchase a falsified continuing education certificate.

She met with Goldstein's employee, Ms. Maria Cazun ("Cazun"), and posed as a licensee in need of continuing education courses to maintain her license. She inquired of the necessary steps to do so. Macmac told Cazun she was "in a bind" due to an expired salesperson license and was hoping Cazun could help her. Cazun immediately agreed to sell her a certificate without giving her course materials, requiring her to study course materials, or requiring her to take and pass an appropriate examination. It was not established that Macmac did anything to obtain a certificate improperly other than simply ask Cazun to do so.

To complete the transaction, Macmac gave Cazun a copy of a fictitious expired real estate salesperson license information printout from the DRE's official website and paid \$ 289.00 for the required courses. Cazun then gave Macmac a Continuing Education Course Verification Form (RE 251) from CARE, with Macmac's name, the course titles and course hours completed on July 18, 2001, totaling 51 course hours. Macmac was given a receipt from Mmaaxx & Company/Goldstein for \$ 289.00, dated July 18, 2001, and forms (RE 209A and RE 205).

26. The certificate was issued improperly because Macmac was not given any course materials, textbooks, and/or assignments to complete, and was not given a final examination, which are all required.

27. Macmac told Cazun she had a friend who also needed to obtain a certificate without taking classes. Cazun gave Macmac a business card so the friend could be referred to Goldstein's office.

Wilcox Decoy Operation

28. On July 23, 2001, DRE Deputy Commissioner Amanda Wilcox ("Wilcox") went to Goldstein's office and also met with Cazun. She identified herself as Macmac's friend who also needed a certificate.

Wilcox's intent was to determine if she could purchase a falsified certificate from Goldstein's office. Wilcox only asked Cazun if she could "purchase" a Real Estate Principles certificate without completing the requisite course work or examination. Cazun immediately agreed. Wilcox exerted no pressure on Cazun whatsoever.

Wilcox presented a cashier check in the amount of \$ 189.00, payable to Goldstein. Wilcox was then issued a Real Estate Principles Course certificate from CARE, which indicated course completion on July 23, 2001. Wilcox was given a receipt from Mmaaxx & Company for the amount of \$ 189.00, dated July 23, 2001, and a Salesperson Examination Form (RE 400A).

29. The certificate was issued improperly because Wilcox was not given any course materials, textbooks and/or assignments to complete, nor was she given a final examination, which is all required in order to receive the certificate of completion for the Real Estate Principles Course.

30. In both the Macmac and Wilcox transactions, it was clearly established Cazun intentionally and fraudulently sold falsified certificates knowing recipients had neither studied the subject matter materials, understood the subject matter, or were examined on their understanding of the same.

Goldstein did little or nothing to prevent the improper issuance of certificates for CARE's courses, as demonstrated by: his failure to properly train Cazun; his failure to properly supervise Cazun; his failure to put any system in place to prevent improper certificate issuance or discover the same after the fact; and his failure to reprimand, discipline, or fire Cazun once he knew she had, on at least two occasions, sold falsified certificates.

Neither Goldstein nor Cazun's testimony to the contrary at hearing was credited. Their testimony was self-serving and not believable. Neither exhibited an air of candor or honesty while testifying. Neither made appropriate eye contact during salient points of their testimony.

Dagnino Decoy Operation

31. On August 14, 2001, DRE Deputy Commissioner Ray Gino Dagnino ("Dagnino") went to CARE's office with the intent of determining whether he could obtain directly from CARE a continuing education certificate without actually taking the course or examination.

Dagnino met with CARE office assistant "Galit" and posed as a licensee in a hurry to get a continuing education certificate. Dagnino repeatedly asked Galit if there was any way he "could get around the requirements?" Each time Galit ignored his entreaty and told him he could only obtain a certificate in the proper manner. Calhoun was present and overheard Dagnino's entreaties to Galit and her refusals.

Calhoun was proud of Galit's responses because she performed as he trained her when he initially hired her. This training included his warning to Galit that DRE investigators acting as decoys, or actual licensees or prospective licensees, may someday ask her to issue falsified certificates.

Dagnino purchased from Galit a correspondence course for \$ 49.00, containing 51 hours of continuing education requirements. Dagnino was given three (3) books and some miscellaneous papers. The books were entitled "Combined Survey Course", "The Real Estate Investment Guide To Financial Freedom" and "A Consumer Guide To Mortgage Lending." The miscellaneous papers included a letter on CARE letterhead signed by Calhoun, a mini-quiz on mortgage lending, a mini-quiz on real estate investments, a student final exam instruction sheet, and a general information sheet on the combined service course.

32. Additional materials were then mailed to the address Dagnino indicated for his test administrator, which was actually an address to which Dagnino had access. Dagnino thereafter received the envelope mailed by CARE directed to his designated test administrator, which contained instructions for the test administrator, three examination sheets and three examination answer sheets. The examination sheets stated on the bottom that they must be returned to CARE unmarked to receive credit for the course, and that the designated test administrator only could return the materials to CARE.

33. Dagnino did not complete any of the course assignments himself and had several other DRE employees complete different parts of the final examinations.

34. On August 21, 2001, Dagnino returned to CARE's office with his final examination answer sheets in hand and personally gave them to Calhoun. Calhoun accepted the answer sheets from Dagnino and proceeded to correct the answer sheets in Dagnino's presence without an answer key to reconcile them.

It was established Calhoun can answer correctly all CARE examinations without referring to an answer key. This is because each examination has the same answer pattern for each block of 25 questions. If an examination has 50 questions, the answer pattern for the first 25 questions and the last 25 questions are the same. Calhoun was able to sufficiently demonstrate his memorization of this answer pattern while testifying at hearing by actually grading an examination, without error, without referring to an answer key.

35. Calhoun informed Dagnino he passed the examinations with a grade of 80%, and promptly threw all answer sheets into a trashcan. Dagnino received a continuing education certificate with his name, real estate salesperson license identification number and completion date of August 19, 2001.

36. Calhoun and CARE did not, with regard to Dagnino's examination, take steps to prevent cheating or protect the integrity of the process.

The CARE examination instructions specifically stated only the designated test administrator could return the examinations materials. Calhoun immediately recognized Dagnino violated this rule when he brought his examination materials to CARE instead of them being returned by the properly authorized test administrator. There is nothing in the regulations, or common sense, that would have prevented Calhoun under these circumstances from refusing to grade the answer sheets and/or requiring Dagnino to re-complete the examination process properly. A reasonable person in Calhoun's position would have realized there existed a great possibility of corruption of this examination by virtue of these events, especially in light of the fact that Calhoun had earlier overheard Dagnino asking Galit to sell him a falsified certificate. In sum, Calhoun was on notice that Dagnino may have potentially cheated on the examination but Calhoun still issued a certificate.

37. It was not established Calhoun or CARE intentionally issued a certificate to Dagnino knowing he had cheated or otherwise had not satisfactorily completed the course and examination. Calhoun issued a certificate to Dagnino under the above questionable circumstances as a result of an ill-advised and erroneous belief that he was only helping his customer, Dagnino, who was in a rush to get a certificate but otherwise properly completed the requisite steps.

Reactions to the Decoy Operation Findings

38. After completion of the above-described decoy contacts, DRE Managing Deputy Commissioner Phillip Ihde, along with Wilcox and Macmac, made an unannounced visit to Calhoun at CARE's office on September 13, 2001. The DRE employees did not disclose the results of their decoy investigation but informed Calhoun the purpose of the visit was to obtain information regarding his business practices relative to CARE.

Among many other things discussed, Calhoun was asked how he maintained the integrity of the examination process for the CARE courses. Calhoun essentially responded he could not totally prevent cheating, and he criticized the DRE for lowering passing examination scores from 70 percent to 60 percent. Calhoun was also critical of DRE for allowing open book test taking. At the hearing, Calhoun also criticized the regulations concerning examinations, by detailing the many ways in which students can cheat and his inability to prevent the same.

Calhoun's thoughts on the testing process and his response that day to DRE personnel underscores his slightly cavalier attitude about the prevention of cheating and his apparent fatalistic belief that those who are determined to obtain certificates without properly completing courses will ultimately be able to do so.

39. Calhoun and CARE were served with process of the instant four cases in late 2001. This was their first notice of the results of the decoy operations. Calhoun decided as a result to remedy his licensing relationship with Goldstein and his other licensees, as follows:

A. Calhoun quickly met with Goldstein to discuss the Macmac and Wilcox transactions. Calhoun was horrified to learn Goldstein did not intend to fire Cazun even though she clearly violated DRE regulations. Calhoun was not satisfied with Goldstein's response and decided more affirmative action was necessary.

B. In December of 2001, Calhoun sent a letter to Goldstein requiring all examinations be sent to CARE for grading and certificate issuance.

C. In January of 2002, Calhoun, by letter, advised all CARE distributors of the following CARE course policy changes: new books should be issued to all CARE course students instead of recycling used books; and all examinations should be sent to CARE so it could grade them and issue course completion certificates. The letter also reminded distributors to follow these prior policies: final exams can never be mailed directly to a student and can never be hand-carried by that student to or from the selected test administrator; all student registration forms must be clearly completed to insure accurate review by CARE; and no shortcuts were to be taken on the minimal times that must elapse before a course was completed.

D. Sometime after sending his letter to Goldstein in December of 2001, Calhoun decided to completely terminate his relationship with Goldstein. However, Calhoun decided to delay this move until his attorney could obtain exculpatory declarations from Goldstein and Cazun regarding the Macmac and Wilcox transactions. Once Calhoun's attorney finally obtained those declarations, Calhoun notified Goldstein by letter in February of 2002 that CARE was revoking its license to Goldstein to sell CARE's courses.

E. Calhoun instructed another licensee by the name of Gerald Frankel, who was a relative of Goldstein, to not allow Goldstein to have any contact with CARE course materials that Mr. Frankel "resold." Calhoun later confirmed Frankel executed this instruction.

Calhoun's Relevant Background Information

40. Respondent is from a family long involved in the real estate industry. While growing up, respondent idolized an uncle who had a very successful real estate business. As respondent states in the biographical section of his published course books, he spent much of his boyhood studying the real estate industry. Although respondent got an early start in real estate, he was somewhat sheltered by virtue of his family connections in the business.

41. Respondent has had a long career as a real estate broker and salesperson. However, he moved throughout various offices throughout Southern California, never anchoring in any one office for any length of time. A reasonable inference drawn from his career is that either he was only marginally successful as a licensee or did not care for it.

42. What respondent loves most about real estate is teaching it. Respondent received a teaching credential and began teaching children in 1975. Respondent next taught real estate at various real estate companies and various junior colleges.

In 1986, respondent began teaching real estate through his business at CARE. The business he built at CARE has far surpassed anything he has accomplished as a real estate licensee. Respondent enjoys student-teacher interaction. He also takes great pride in the written real estate materials he publishes and the fact he teaches real estate concepts. Over the years respondent has become increasingly focused on both teaching and satisfying the needs of his clients, typically those in the real estate business under time pressure who need to obtain certificates as quickly as possible.

43. Some of respondent's ideals are a bit quirky and have raised objection from others in the business. For example, in one of respondent's published real estate books, he questions the ethics of "open houses" as a way of selling homes, contending they are meant more for the salesperson than for the homeowner and therefore are of questionable value. This triggered a written complaint from a broker questioning the DRE approval of such materials. Respondent has also questioned other aspects of the real estate profession that most, if not all, would not. For example, respondent believes *any* "dual agency" is necessarily a conflict of interest regardless of the specific facts. In another example, respondent left his last job requiring use of his broker's license at a mortgage lending company because he believed the lenders refused too many transactions to the detriment of prospective borrowers. This discussion is illustrative of the fact that respondent holds the laws governing real estate close at heart, almost to an extreme degree. This indicates a profile of somebody who would not fraudulently violate the law for profit, unlike Goldstein and Cazun.

44. However, this combination of attributes contributed to the problems demonstrated by this case. Respondent's somewhat sheltered background in the real estate business led to a somewhat naive way of conducting business. His love of teaching exacerbated his naivete. Respondent's somewhat fatalistic belief about not being able to totally prevent cheating in examinations further eroded his attention. This was a recipe made for the disaster presented by unscrupulous figures such as Goldstein and Cazun. Respondent simply found it impossible to believe that business associates would knowingly violate the law for their own profit. Calhoun's sincere shock and extreme anger with Goldstein, once Calhoun learned of the Macmac and Wilcox transactions, also supports this conclusion. Respondent assumed Dagnino made an honest mistake in his hurry to get a certificate but had otherwise properly completed the course and test materials. Thus, it was not established respondent acted with fraud or dishonesty in issuing Dagnino's certificate or allowing Goldstein to issue the Macmac and Wilcox certificates.

45. Respondent was emotionally devastated by the filing of these cases. He is a very anxious man who has an extremely high personal opinion of his own ethics. This personal opinion was shattered by the DRE's allegations and cut to the core of his professional life. The anxiety generated by this litigation has caused respondent emotional and physical problems, such as: reduced appetite; decreased sleep; and curtailed social life. Respondent was visibly nervous at the hearing and on more than one occasion had to stop and catch his breath before continuing his testimony.

It is clear these cases have made a gigantic impression upon Calhoun-- an imprint on his psyche so deep that it is extremely doubtful he will ever allow the conduct described above to reoccur. This last point was convincingly supported by the character testimony of Los Angeles Superior Court Judge Michael Luros, a subpoenaed witness. Judge Luros has been on the bench for over 20 years and has known Calhoun well for the last 10 to 15 years. Judge Luros has evaluated the credibility of hundreds of witnesses and knows Calhoun well enough to opine that this litigation has made such an imprint on Calhoun. Judge Luros also believes Calhoun to be an honorable man who would not act fraudulently with regard to real estate courses and simply made a terrible mistake trusting Goldstein and issuing a certificate to Dagnino.

46. Calhoun now much less trusts his student/clients and business associates. So as to make sure he will never again run afoul of the DRE regulations or face this type of litigation, Calhoun has credibly vowed to strictly and scrupulously follow the regulations and make all efforts necessary to prevent students from obtaining certificates improperly from CARE sponsored courses. This is in addition to the reforms he has since instituted with his distributors described above. The dread and fear this litigation instilled in Calhoun certainly stripped away the thin veneer of nonchalance he previously had about his ability to prevent cheating on course examinations.

47. Respondent at the hearing gave an appearance of an honest person who was upset and embarrassed by the allegations in these cases. He answered questions on cross-examination and from the bench directly and made good eye contact. He was extremely respectful of the DRE and these proceedings.

48. Calhoun feels teaching real estate is his life's mission and would be professionally and personally devastated if completely prohibited from doing so.

LEGAL CONCLUSIONS

Burdens & Standards of Proof

1. The burden and standard of proof in the Accusation case is on the complainant, to establish clear and convincing evidence to a reasonable certainty. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.

2. In the three other matters, the burden and standard of proof is on the Commissioner, to establish those cases by a preponderance of the evidence. *Gardner v. Comm. on Prof. Comp.* (1985) 164 Cal.App.3d 1035, 1039-1040.

The Entrapment Defense Was Not Established

3. An entrapment defense can be raised in an administrative proceeding where a license may be suspended or revoked. *Patty v. Board of Medical Examiners* (1973) 9 Cal.3d 356, 367.

4. Entrapment constitutes "... the conduct of the law enforcement agent [that] was likely to induce a normally law-abiding person to commit the offense[.]" *People v. Barraza* (1979) 23 Cal.3d 675, 689-690. Differing from the federal standard which requires a showing the defendant was not predisposed to commit the offense (see, e.g., *United States v. Russell* (1973) 411 U.S. 423 [36 L.Ed.2d 366, 93 S.Ct. 1637]), and unlike the earlier California schizophrenic approach (see *Barraza*, 23 Cal.3d at 688) the current California test focuses on the state agent's conduct examined in light of the circumstances surrounding the situation in question. (*Id.*, at 690.) The suspect's predisposition to commit the offense and his subjective intent are irrelevant. (*Id.*, at pp. 690-691.)

5. Undercover operations and decoys are permissible provided the state agents do not resort to pressure or overbearing conduct "such as badgering, cajoling, importuning, or other affirmative acts" (*Barraza*, 23 Cal.3d at 690) to induce the criminal act. If the police generate only ordinary criminal intent, however, the agent's conduct does not constitute entrapment. (*Id.*) An individual is presumed to resist the temptation to commit a crime presented by the simple opportunity to act unlawfully. (*Id.*) Appeals to friendship or sympathy, or representations or enticements making the act unusually attractive, are impermissible. (*Id.*) But *Barraza* does not prevent state agents from lying. "The police remain free to take reasonable, though restrained, steps to gain the confidence of suspects. A contrary rule would . . . tend to limit convictions to only the most gullible offenders." *Barraza*, *supra*, 23 Cal.3d at 690, fn. 4.

6. Respondent cites to *Patty* in support of his argument that entrapment occurred in this case. The *Patty* court found entrapment was established because Dr. Patty was naive about illegal drug prescriptions (9 Cal.3d at 369), was severely ill (*Id.*, at 360), and noted the state agents were attractive young women luring a susceptible elderly physician. (*Id.*) Here, there is no indication any of these dynamics were at play. Moreover, Calhoun overheard Dagnino's entreaties of his assistant Galit for a falsified certificate and had pre-existing knowledge the DRE used decoys to do so. Unlike Dr. Patty, Calhoun was not a naive neophyte in this regard. (Compare, *Patty*, *supra*, 9 Cal.3d at 369) The conduct of the DRE investigators here was not likely to induce a normally law-abiding person to commit the offenses. There was no pressure or the type of conduct constituting entrapment exerted in this case. The three investigators simply asked for certificates without performing required acts. Cazun quickly agreed, and then suggested Macmac refer Wilcox for the same service. Galit rebuked Dagnino's initial attempts. Later, Calhoun accepted examination materials from Dagnino in violation of CARE examination rules. Calhoun was not requested to do so. Dagnino said nothing to him about this at all.

Thus, the entrapment defense was not established. Factual Findings 23-37.

Limited Responsibility for the Misconduct of Goldstein & Cazun

7. Calhoun and CARE correctly argue responsibility for the egregious misconduct of Goldstein and Cazun is a primary issue.

However, they erroneously argue neither is subject to discipline, under any circumstances, for the Macmac and Wilcox transactions, because others committed the misconduct.

Specifically, Calhoun and CARE argue that as principals they can never be liable for the fraud of their agents, citing to California Civil Code section 2306, which provides, in relevant part, "an agent can never have authority, ... to an act which is ... a fraud upon the principal." They also cite to B&P Code section 10179, which provides, in relevant part, that no licensed real estate broker shall be subject to discipline for the acts of an employee absent "guilty knowledge" of a violation. Neither citation stands for the proposition asserted.

While Civil Code section 2306 prevents a finding that Calhoun or CARE acted with fraud in this litigation based purely on the conduct of Goldstein or Cazun, it does not immunize them from their own misconduct. B&P Code section 10179 clearly has no application because this litigation does not involve discipline against Calhoun as a broker for the acts of a licensed salesperson or others employed by him. In sum, Calhoun is not personally responsible for the misconduct of Goldstein and Cazun, in the absence of his own. Thus, this argument has limited application to the Accusation and D&R Order cases alone.

8. Calhoun and CARE's argument, however, can have no logical application to the Pre-Licensing and Continuing Education Withdrawal cases. To do so would completely frustrate an obvious regulatory purpose.

As a matter of statutory construction, CARE must be responsible for *any* misconduct resulting in it issuing false certificates. The Real Estate Law is a framework worded in general terms, not subject to narrow or unduly technical principles, but to be broadly interpreted, so that the purpose of the legislation is accomplished to carry out the principles of government. *See, e.g., Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208. A construction cannot be given to the Real Estate Law that would "completely undermine and circumvent the purposes of the legislation and render it impotent against the very ills and unethical practices it was intended to remedy. *Tushner v. Savage* (1963) 219 Cal. App. 2d 71, 80. The DRE's interpretation of the Real Estate Law, on the other hand, is entitled to great weight, unless clearly erroneous. *Amvest Mortgage Corp. v. Antt* (1997) 58 Cal.App.4th 1239, 1245.

B&P Code section 10050 makes clear the DRE Commissioner's primary responsibility is to enforce the Real Estate Law in a manner that "achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees." An obvious goal of the Real Estate Law and associated regulations relating to approval of pre-licensing and continuing education courses is to insure prospective and current real estate licensees know the laws and ethical contours of the real estate business. Prevention of cheating in the real estate pre-licensing and continuing education process is paramount to making sure licensees the public contacts are knowledgeable and ethical.

In addition, there is clear intent evidenced in the relevant regulations for an approved sponsor to be *absolutely* responsible for the misconduct of its agents. Regulation 3003, pertaining to pre-licensing courses, allows withdrawal of approval where the "course of study" is no longer equivalent as initially offered and where the sponsor engages in misconduct. Regulation 3010, regarding continuing education courses, is similarly structured. This means focus is equally on the course and the sponsor. Thus, where one who administers sponsored materials does something that negatively impacts the quality of the course, approval for the *course* may be withdrawn. Moreover, Regulation 3007.3(b), pertaining to continuing education courses, provides that violation of a final examination rule "by the sponsor *or the sponsor's representative administering the examination* (emphasis added)" shall constitute grounds for denial or withdrawal of approval of the offering.

9. Applying Calhoun and CARE's argument to the Withdrawal cases would stand the Real Estate Law on its head and completely subvert the Commissioner's powers to make sure approved real estate courses are properly conducted, and could essentially allow continuing violations of applicable regulations.

The course completion certificates issued to Macmac and Wilcox were in the name of CARE. This is because the DRE approved CARE to offer the real estate courses, not Goldstein. CARE received this approval upon the express condition that certificates would only be issued when the rules are followed and the integrity of the examination process protected. The DRE cautions approved sponsors they are still responsible when they "license" their materials to "distributors" in such a way. This is necessary because the DRE has no other jurisdiction or recourse over "distributors," other than issuing a D&R Order to the offending party individually, which does nothing to the approved sponsor.

Calhoun and CARE allowed Goldstein to grade examinations and issue certificates on CARE's letterhead, without CARE being involved in the process. When Calhoun and CARE delegated those tasks to Goldstein, they did so at their own risk and became responsible for Goldstein's misconduct. The DRE would not have allowed CARE to "license" courses to others unless this was so. Moreover, Calhoun and CARE did not properly insure Goldstein was following the Real Estate Law and associated regulations.

Calhoun and CARE's argument taken to its logical extreme would establish a system where sponsors could knowingly allow "distributors" to issue falsified certificates with impunity; once one distributor is caught, the approved sponsor could simply "distribute" the course to another under the same circumstances, ad infinitum. This would obviously pervert the system and frustrate the Commissioner's ability to regulate its approved sponsors. The DRE's construction of this regulatory scheme, where the sponsor is responsible for misconduct of its distributors, is not clearly erroneous as applied in this case.

In light of these circumstances, it would be an absurd result to completely insulate CARE from responsibility for the misconduct of its distributors with regard to the Withdrawal cases. Factual Findings 10, 20-22.

10. In any event, this argument has no application to the Dagnino transaction because Calhoun and CARE directly participated, without Goldstein or Cazun's involvement. Factual Findings 31-37.

The D&R Order is Sustained in Part

11. According to B&P Code section 10086, when "the commissioner determines through an investigation that a person has engaged or is engaging in an activity which is a violation of a provision [of the Real Estate Law], the commissioner may direct the person to desist and refrain from such activity by issuance of an order." Although "person" is defined in B&P Code section 10006 to include a "corporation, company and firm," the instant D&R Order was issued against Calhoun but not CARE.

12. Regulation 3000(a)(2)(B) allows the Commissioner to determine pre-licensing courses are equivalent in quality to real estate courses offered by accredited colleges and universities, when they, amongst other things, provide for "... [a] final examination administered and supervised by a person designated..." and the "... the completed final examination [is] returned to the school by the person so designated." Calhoun assured the DRE that CARE pre-licensing courses would so comply. The courses offered by CARE, and not its distributor, did comply. While the clear spirit of this regulation was violated with regard to Wilcox because she did not complete a final examination, Calhoun was not the "person" who violated the regulation. There does not appear to be the same regulatory purpose for holding Calhoun personally responsible for violations committed by others, under a D&R Order pursuant to B&P Code section 10086, as in the Withdrawal cases. Such an order would more appropriately be issued against the true violators, Goldstein, Cazun, and perhaps CARE. In this case, CARE is responsible for Goldstein and Cazun's misconduct in the two Withdrawal cases. Thus, it was not established Calhoun violated Regulation 3000(a)(2)(B) and that aspect of the D&R Order is not sustained. Factual Findings 2, 5-24, 28-30.

13. Regulation 3005(c) defines "final examination" for purposes of continuing education courses to mean a test by which the sponsor "after completion of a correspondence offering, determines whether a participant has successfully completed the offering according to standards previously approved by" the DRE.

CARE, through Calhoun, assured the DRE that CARE would not issue certificates for continuing education courses unless and until the student demonstrated completion of the course materials by taking and passing an appropriate final examination. Based on these assurances, the DRE approved CARE's continuing education courses.

These assurances were violated when Macmac received continuing education certification without taking final examinations. Calhoun did not violate the regulation, however, Goldstein and Cazun did, and perhaps CARE.

The regulation was violated by Calhoun, on the other hand, when he allowed Dagnino to personally return his examination materials instead of his designated test administrator, in violation of CARE's examination rules. Calhoun personally issued the certificate to Dagnino when he had notice Dagnino previously tried to buy a falsified certificate. Calhoun did not protect the integrity of the examination process and violated the spirit of this regulation. Thus the manner in which one continuing education course certified by CARE, through Calhoun, was contrary to the requirement for an appropriate final examination within the meaning of Regulation 3005(c). Cause was established to sustain this part of the D&R Order against Calhoun. Factual Findings 2, 5-27, 31-37.

The fact this regulation provides a definition for other regulations does not prevent it from supporting an order that Calhoun not in the future engage in activity violating its meaning. The DRE's construction of the same is not clearly erroneous and it does further the purpose of the regulatory scheme involved. Also, CARE, through Calhoun, agreed CARE continuing education courses would include examinations that fit within this definition. To order Calhoun no longer violate this regulation does not offend due process under these circumstances.

14. Regulation 3006(e) requires that in order to approve a sponsor's continuing education course offerings, the DRE must determine "[a] correspondence course shall consist of adequate study materials to assure that the course cannot be completed in less time than the number of hours for which it is approved." Calhoun provided the DRE with adequate course study materials to accomplish this purpose and therefore CARE's continuing education courses were appropriately approved by the DRE. It was not the failure of CARE to prepare and provide adequate materials for CARE courses that was the problem with regard to Macmac and Dagnino. CARE provided Dagnino with the required materials; CARE provided Goldstein with the same relative to Macmac. It was Dagnino's failure to study the materials and Goldstein/Cazun's failure to give materials to Macmac that caused the problems. Regulation 3006(e) does not regulate that activity. Therefore, it was not established Calhoun violated this regulation. Factual Findings 2, 5-27, 31-37.

15. Regulation 3007.3(b) provides that 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 continuing education offering. Calhoun himself violated the final examination rules for CARE courses by accepting examination materials from Dagnino instead of his designated test administrator. Calhoun knew this was a violation of the rules at the time he did so. For the reasons discussed above, Calhoun did not violate this regulation with regard to Macmac. Factual Findings 2, 5-27, 31-37.

16. The DRE Commissioner established cause existed to sustain her Order to Calhoun that he, in the course of presenting DRE approved pre-licensing and continuing education courses, violated Regulations 3005(c) and 3007.3(b). Factual Findings 2, 5 through 48.

Cause Exists for Limited Withdrawal of the Pre-Licensing Course Approval

17. Regulation 3000(a)(1) requires a pre-licensing course, offered as a correspondence course, to consist of "...not less than 15 separate lesson assignments." CARE violated Regulation 3000(a)(1) when Wilcox obtained a certificate without studying any course materials and/or demonstrating her understanding of the materials by passing an appropriate final examination. In sum, she was "sold" a certificate without bona-fide completion of courses or examinations, and was issued a falsified certificate from CARE.

This activity was the result of misconduct by CARE's authorized distributor Goldstein. CARE is responsible for that misconduct as decided in Legal Conclusions 7-9 above. Moreover, Goldstein's misconduct was facilitated by CARE's lack of reasonable diligence overseeing his activity and allowing Goldstein to issue certificates in CARE's name without proper safeguards in place to prevent this fraudulent conduct from occurring. As such, the pre-licensing course operated by CARE, and "licensed" by CARE to "distributors" such as Goldstein, no longer was equivalent in quality to courses offered by colleges and universities. Factual Findings 3, 5-24, 28-30.

18. It was not established the pre-licensing course offered directly by CARE, and not by one of its distributors, issued certificates to those who did not study course materials. Factual Findings 3, 5-24, 28-30.

19. Regulation 3000(a)(2)(B) requires a pre-licensing course, offered as a correspondence course, to provide "... [a] final examination administered and supervised by a person designated..." and for the "... the completed final examination [to be] returned to the school by the person so designated." As decided above, CARE violated this regulation relative to the Wilcox transaction. CARE, through Calhoun, did not implement reasonable procedures for preventing an authorized distributor, Goldstein, from improperly issuing the completion certificate in CARE's name. By allowing Goldstein to conduct the examinations and issue the certificates without reasonable oversight, CARE facilitated Goldstein's conduct. The end result was that a falsified certificate was issued on CARE letterhead with CARE's DRE-approval number. Therefore, this course offered by CARE, through its distributor in this fashion, was not equivalent in quality to courses offered by colleges or universities. Factual Findings 3, 5-24, 28-30.

20. It was not established the pre-licensing course offered directly by CARE, and not by one of its distributors, violated regulations regarding final examinations for these courses. Factual Findings 3, 5-24, 28-30.

21. It was not established the pre-licensing course offered directly by CARE, and not by one of its distributors, violated applicable regulations or is otherwise not equivalent in quality to courses offered by colleges or universities. Factual Findings 3, 5-24, 28-30.

22. The Commissioner established cause exists pursuant to Regulation 3003 to withdraw approval of the pre-licensing course offering, sponsored by CARE and "licensed" by CARE to its "distributors." Regulations were violated by CARE's distributor and facilitated by its own failure to reasonably supervise them. The courses no longer meet the statutory and regulatory standards for approval, as operated by CARE when it first obtained DRE approval to be a sponsor or as it assured the DRE it would handle "distribution" of its courses to "distributors." Factual Findings 3, 5-24, 28-30.

Cause Exists for Limited Withdrawal of the Continuing Education Course Approvals

23. CARE violated Regulation 3005(c) regarding final examinations for continuing education courses. CARE, through Calhoun, assured the DRE that CARE would not issue certificates for continuing education courses unless and until the student demonstrated completion of the course materials by taking and passing an appropriate final examination. These assurances were violated by CARE when Macmac received continuing education certification without taking final examinations, and when Dagnino was allowed to personally return his examination sheets to Calhoun instead of his designated test administrator. CARE, through Calhoun, issued the certificate to Dagnino even though it had notice Dagnino may not have properly reviewed course materials and/or properly complete the examination. Factual Findings 4, 5-27, 31-37.

24. As decided above, CARE did not violate Regulation 3006(e) regarding continuing education courses containing "adequate study materials to assure that the course cannot be completed in less time than the number of hours for which it is approved." CARE's continuing education courses contained appropriate study materials. It was not the failure of CARE to provide adequate course materials for its courses that caused the violations relative to Macmac and Dagnino. Macmac was not given the materials by Cazun; Dagnino was given the materials but he did not study them. Neither of which is regulated by Regulation 3006(e). Factual Findings 4, 5-27, 31-37.

25. Regulation 3007.3(a) requires sponsors of continuing education courses to (1) provide for a final examination and take steps to protect the integrity of the examination and prevent cheating, and (2) not allow an examination until completion by the student of the instructional portion of the course. CARE violated this regulation on two occasions. CARE allowed issuance of a falsified certificate to Macmac without her taking a final examination. Since she was issued a certificate the same day she "purchased" her course materials, this also meant the spirit of Regulation 3007.3(a)(2) was violated. CARE did not protect the integrity of the examination process and take all steps to prevent cheating when Calhoun issued a certificate to Dagnino under circumstances where he knew Dagnino may not have properly completed the examination. Factual Findings 4, 5-27, 31-37.

26. As decided above, CARE violated Regulation 3007.3(b) regarding continuing education course final examination rules being violated "by the sponsor or the sponsor's representative administering the examination." Calhoun himself violated the final examination rules by accepting examination materials from Dagnino instead of his designated test administrator. Calhoun knew this was a violation of CARE's examination rules. Moreover, CARE is expressly subject to this regulation regarding the Macmac transaction because its "representatives," Goldstein and Cazun, violated examination rules by fraudulently issuing a certificate to Macmac without requiring her to take and pass an examination. Factual Findings 4, 5-27, 31-37.

27. The DRE Commissioner therefore established cause exists pursuant to Regulations 3007.3(b) and 3010 to withdraw approval of the continuing education course offerings, sponsored by CARE and distributed to its distributors. This is due to violations of Regulations 3005(c) and 3007.3(a)&(b), which according to Regulations 3007.3(b) and 3010, are grounds for such withdrawal. Moreover, the manner in which CARE operated the "licensing" of CARE courses to "distributors," such as Goldstein, was in a manner materially different than how CARE assured the DRE the courses would be offered and its "distributions" would be conducted, which is also grounds for withdrawal of approval. Factual Findings 4, 5-27, 31-37.

Cause Exists for Discipline in the Accusation Case

28. The Accusation contends, amongst other things, that Regulation 3002(b) was violated, though none of the other three cases contain any such allegation. Regulation 3002(b) requires the sponsor of a pre-licensing course to submit any material change to an approved course to the DRE for approval prior to use. Wilcox received a certificate without receiving course materials, without reviewing those materials and without passing an examination. This was contrary to assurances of how the course would be offered, made by Calhoun to the DRE in the course of receiving DRE approval. However, Regulation 3002 appears aimed at preventing material changes in course materials or policies that could change the course as previously approved by the DRE. It does not appear aimed at direct misconduct, i.e. failure to use approved materials or failure to follow approved procedures, which is better and more specifically regulated by other regulations. In the case at bar, there was not a change of course materials or policy by CARE or Calhoun, but rather misconduct by a CARE distributor. Thus, it was not established Calhoun violated Regulation 3002(b) in this case. Factual Findings 1, 5-24, 28-30.

29. The Accusation also contends Regulation 3005(d) was violated, though none of the other three cases contain such an allegation either. Regulation 3005(d) defines "material change" for purposes of continuing education courses, but unlike Regulation 3002(b), Regulation 3005(d) does not require a sponsor of a continuing education course to submit any material change to an approved course to the DRE for approval prior to use. While such a requirement might be found elsewhere in the regulations, no such regulation was contained in any of the four operative pleadings.

Even if it were, there is no violation of the regulation due solely to misconduct of a distributor, for the reasons explained above with regard to Regulation 3002(b).

30. The Accusation first premises discipline against Calhoun's licenses under B&P Code section 10170.4, subdivisions (b) and (e). Neither support discipline in this case.

B&P Code section 10170.4 empowers the Commissioner to adopt regulations pertaining to the manner in which continuing education courses are offered. Subdivision (b) prescribes there must be "[a] basis and method of qualifying educational programs, the successful completion of which, will satisfy the requirements of this article." Subdivision (e) requires these courses include "[a]n appropriate form of testing, examination or evaluation by the sponsor of each approved correspondence or homestudy educational program, or equivalent, of the student."

B&P Code section 10170.4 is part of Article 2.5 of the Real Estate Law, which solely pertains to "Continuing Education" of real estate licensees. Yet, nowhere in either Article 2.5 generally, or B&P Code section 10170.4 specifically, is there indication that violation thereof would support discipline against a licensee also acting as a "sponsor" providing DRE-approved continuing education courses. B&P Code section 10170.4 simply outlines the contents of continuing education courses. This conclusion is bolstered by the existence elsewhere in the regulations allowing the DRE to withdraw approval of continuing education courses, as discussed above.

Thus, it was not established Calhoun violated B&P Code section 10170.4, subdivisions (b) and (e), and therefore no grounds for discipline exist therein.

31. The Accusation also requests discipline against Calhoun based on B&P Code section 10177(d). This section is contained in Article 3 of the Real Estate Law, entitled "Disciplinary Action." It is clear each section of this Article state grounds for discipline for violation thereof.

B&P Code section 10177(d) specifically provides grounds for discipline if a licensee:

Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

"Willfully" as used in B&P Code section 10177(d) does not require intent to violate the law, only intent to engage in the act or conduct prohibited by the pertinent statute. *Milner v. Fox* (1980) 102 Cal.App.3d 567, 574.

As decided above, Calhoun directly violated Regulation 3007.3(a)(1) (requiring sponsors to protect the integrity of the examination process and prevent cheating) with regard to Dagnino. CARE rules required return of examination materials by the designated test administrator. As the sole and controlling force behind CARE, Calhoun knew this rule applied to these examinations. Calhoun not only intentionally engaged in the act, but he instantly knew Dagnino violated this instruction when Dagnino personally returned all the examination documents to Calhoun. Calhoun was previously on notice that Dagnino might cheat on the examination when he overheard Dagnino's conversation with Galit. Under these circumstances, Calhoun should not have proceeded with Dagnino's examination, and certainly should not have issued him a certificate.

While it cannot be found that Calhoun knowingly allowed Dagnino to cheat and fraudulently issued him a certificate, it cannot be found that he took steps to protect the integrity of the process or prevent cheating either. Thus, in this sense, Calhoun violated Regulation 3007.3(a)(1), a regulation administering and enforcing the Real Estate Law. Thus, it was established by so doing that Calhoun violated B&P Code section 10177(d). Factual Findings 1, 5-24, 31-37.

32. However, it was not established Calhoun violated B&P Code section 10177(d) with regard to Goldstein and Cazun's misconduct relative to Macmac and Wilcox. There was no evidence Calhoun knew of Goldstein or Cazun's misconduct and/or disregarded it. To the contrary, Calhoun was very angry when he discovered what they had done after the fact. While Calhoun was neglectful in his supervision of his "distributor" Goldstein, which in part facilitated Goldstein's misconduct, it was not established this failure in oversight was intentional or designed to allow that misconduct. With this ingredient missing, it was simply not established, to the standard of proof necessary for the Accusation case, that Calhoun willfully caused violation of the Real Estate Law or associated regulations, and therefore it was not established he violated section 10177(d) by virtue of Goldstein and Cazun's acts. Factual Findings 1, 5-30, 38-39, 44.

33. The final request for discipline is pursuant to B&P Code Section 10177(j), which allows discipline for conduct "which constitutes fraud or dishonesty." It was not established Calhoun acted with fraud or dishonesty relative to the Dagnino transaction. Calhoun was not involved in the Macmac and Wilcox transactions. Though his oversight of Goldstein rose to the level of neglect in a way that facilitated Goldstein and Cazun's misconduct, it was simply not established he knowingly or intentionally did so with designs of fraud or dishonesty. In addition, Civil Code section 2306 would have application here, where complainant contends a finding of fraud by Calhoun be made solely on the acts of his agents Goldstein and Cazun. Therefore, it was not established Calhoun violated B&P Code section 10177(j). Factual Findings 1, 5-48.

Disposition of All Four Cases

34. D&R Order case

It was established that Calhoun personally violated two regulations in the Dagnino transaction. In the interests of protecting the public, it is appropriate to sustain the Order prohibiting Calhoun from engaging in similar conduct in the future. However, the Order was not sustained as to the misconduct of Goldstein and Cazun, and therefore the Order is not sustained as to regulations violated by them but not Calhoun. Factual Findings 2, 5-37.

35. Pre-Licensing Withdrawal case

It was established CARE and Calhoun have not properly supervised the distributors to whom they license CARE courses. This case presents the second and third documented instances of distributor misconduct. CARE and Calhoun specifically exempted Goldstein from their otherwise lax oversight procedures that essentially facilitated Goldstein and Cazun's misconduct; and prevented Calhoun's ability to discover the same, after the fact, and report it to the DRE. However, it was not established CARE or Calhoun violated regulations when they offered pre-licensing courses themselves. Thus, it would be appropriate to withdraw the DRE's approval of CARE "licensing" its pre-licensing courses to distributors; or put another way, to restrict the DRE's prior approval for offering pre-licensing courses only to CARE and that such approval is withdrawn as to CARE allowing any other person or business to offer CARE pre-licensing courses. This would adequately protect the public from future problems such as those presented in this case. Factual Findings 3, 5-37.

It was not established the public would be jeopardized by CARE and Calhoun continuing to offer pre-licensing courses themselves. Calhoun did not directly violate regulations pertaining to pre-licensing courses in this case, nor has he in the past. Thus, there is no actionable conduct sufficient to completely withdraw approval for CARE offering these courses.

In addition, CARE and Calhoun did not act fraudulently in this case. CARE and Calhoun demonstrated remorse for their acts and omissions evidenced in this case by immediately changing offending CARE policies that made them most vulnerable to unscrupulous figures such as Goldstein and Cazun. Calhoun instructs his employees and distributors to follow the laws, as demonstrated by Galit's refusing Dagnino's entreaties. The impact of this litigation has been such on Calhoun that it is unlikely he himself would violate the regulations pertaining to these courses himself or allow his employees to do so. Factual Findings 38-48.

36. Continuing Education Withdrawal case

As in the pre-licensing withdrawal case, approval should be withdrawn from CARE distributing its courses to others, for the same reasons. Factual Findings 4-37.

In addition, Calhoun personally violated a regulation in the Dagnino transaction, but it was not such a violation that should require complete withdrawal of CARE's approval to offer continuing education courses. The Dagnino case presented the first instance of Calhoun or CARE's direct violation of regulations pertaining to real estate courses. Though Calhoun acted negligently in accepted Dagnino's examination under the circumstances, he did not act fraudulently as did Goldstein and Cazun. He simply made a very bad choice under the misguided intent of helping a client who was in a hurry to get a continuing education certificate. This litigation has made such an impression on Calhoun that it is unlikely he will again violate the regulations or allows an employee to do so. Factual Findings 38-48.

37. Accusation case

As decided above, Goldstein and Cazun's misconduct should not be attributed to Calhoun for purposes of the Accusation case. However, Calhoun did personally and willfully violate a regulation regarding continuing education courses in the Dagnino transaction. Even though the offending acts are not ones of which a DRE license is required, they still trigger discipline because B&P Code section 10177(d) does not require such linkage. Calhoun's violation did not involve fraud, but it was still serious. Public protection requires real estate licensees know the law and ethics of their profession and demonstrate the same by properly completing continuing education courses. As a DRE licensee, and owner of a DRE approved real estate course sponsor, Calhoun knew this.

Thus, Calhoun should be suspended for thirty (30) days, a period of time that will: allow him to reflect on his misconduct; study and review all laws relating to DRE approved real estate courses; and revise CARE's operation to accommodate the fact that he and CARE will no longer be allowed to distribute real estate courses to others. Moreover, Calhoun should demonstrate his mastery of the ethics involved in this case by taking and passing the DRE Professional Responsibility Examination. Placing Calhoun on probation with regard to his licenses is not necessary for public protection and would serve no purpose. The actionable conduct was not related to activity of which a license was required. Incentive for Calhoun to not repeat his misconduct is provided by the specter of the DRE withdrawing complete approval of CARE courses in the future, given more misconduct by Calhoun or CARE. Based on the current record that exists relative to CARE courses, that could very well be the result of future similar findings. Factual Findings 38-48.

ORDERS

With regard to the **Accusation case**, DRE Case # H-29306 LA/OAH Case # L2001120401, IT IS ORDERED THAT:

- not adopted*
1. All licenses and licensing rights of Respondent DAVID EDMUND CALHOUN under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision.

2. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

With regard to the **D&R Order** case, DRE Case # H-29315 LA/OAH Case # L2002020254, IT IS ORDERED THAT:

3. DAVID EDMUND CALHOUN IS TO DESIST AND REFRAIN from presenting, instructing and/or administering the Real Estate Principles course and real estate continuing education course offerings approved by the DRE unless and until you comply with the provisions of Regulations 3005(c) and 3007.3(b) and the representations and assurances constituting the basis for approval of said offerings.

With regard to the **Pre-Licensing Withdrawal** case, DRE Case # H-29312 LA/OAH Case # L2002020257, IT IS ORDERED THAT:

4. Approval of CARE's pre-licensing course, entitled Real Estate Principles, and given DRE approval number 838-86, as it is distributed to other persons and businesses other than CARE, is WITHDRAWN pursuant to Regulation 3003. CARE no longer has approval to distribute this course to other persons or businesses, and the DRE approval is otherwise withdrawn as to this course except for CARE offering the course itself.

With regard to the **Continuing Education Withdrawal** case, DRE Case # H-29313 LA/OAH Case # L2002020258, IT IS ORDERED THAT:

5. Approval of CARE's continuing education courses, entitled and given DRE approval numbers, "AGENCY" 2613-1030, "ETHICS" 2613-1031, "FAIR HOUSING" 2613-1032, "TRUST FUNDS" 2613-1033, "CONSUMER PROTECTION" 2613-1035, "CONSUMER SERVICE" 2613-1037, and "SURVEY" 2613-1038, as distributed by CARE to other persons or businesses other than CARE, is WITHDRAWN pursuant to Regulation 3010. CARE no longer has approval to distribute these courses to other persons or businesses, and the DRE approval is otherwise withdrawn as to these courses except for CARE offering the courses itself.

DATED: October 20, 2002



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

SACD. P. 104

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FILED
JUL - 1 2002
DEPARTMENT OF REAL ESTATE
By: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	NO. H-29306 LA
)	L-2001120401
DAVID EDMUND CALHOUN,)	
individually and doing)	<u>SECOND AMENDED</u>
business as California)	<u>ACCUSATION</u>
Academy of Real Estate,)	
)	
Respondent.)	
)	

This First Amended Accusation amends the Accusation filed on November 29, 2001 in this matter.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against DAVID EDMUND CALHOUN, individually and doing business as California Academy of Real Estate, alleges as follows:

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1. 1.

2 The Complainant, Maria Suarez, a Deputy Real Estate
3 Commissioner of the State of California, makes this Accusation
4 in her official capacity.
5

2.

6
7 DAVID EDMUND CALHOUN ("Respondent") is presently
8 licensed and/or has license rights under the Real Estate Law,
9 Part 1, Division 4 of the California Business and Professions
10 Code ("Code"). At all times material herein, Respondent was
11 and still is licensed by the Department of Real Estate of the
12 State of California ("Department") as a real estate broker,
13 individually, doing business as California Academy of Real
14 Estate, Exceptional Properties & Investments Company, and David
15 Calhoun & Associates, and as officer of licensed real estate
16 corporations, Anton & Lee, Inc., and Anton Hospitality Brokers,
17 Inc.
18

3.

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21 Prior Department Action

22 On October 18, 1996, the Department issued an Order
23 to Desist and Refrain No. H-26826 LA to DAVID EDMUND CALHOUN,
24 doing business as California Academy of Real Estate and Ava
25 June Milbourne. Said parties were found to have violated
26 Regulations 3007.3(a)(7) and 3007.3(a)(13).
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4.

California Academy of Real Estate ("CARE") is the sponsor of the Real Estate Principles course and continuing education course offerings identified below. Respondent was, at all times material herein, CARE's owner and controlled its operations. The primary business conducted by CARE was the providing of courses to real estate licensees and applicants for real estate licenses.

5.

On or about November 26, 1986, Respondent, on behalf of CARE, submitted an application to teach the Real Estate Principles course.

The Department, pursuant to Code Sections 10153, 10153.3, 10153.5 and Regulations 3000 through 3004, issued to CARE, pursuant to its applications, approval to offer the Real Estate Principles Course.

In the 1990's, 2000 and 2001, Respondent, on behalf of CARE, submitted applications to teach continuing education courses.

The Department, pursuant to Code Sections 10170 through 10170.6 and Regulations 3005 through 3012.2, issued to CARE, pursuant to its applications, approval to offer continuing education courses.

CARE was at all times material herein authorized to offer courses required to be taken and passed, including a final examination. Said courses included the following correspondence courses:

<u>Course Category</u>	<u>Department Approval Number</u>
Real Estate Principles	838-86
Real Estate Agency	2613-1030
Ethics	2613-1031
Fair Housing	2613-1032
Trust Funds	2613-1033
Consumer Protection	2613-1035
Consumer Service	2613-1037
Survey	2613-1038

Respondent was the authorized administrator of CARE. Respondent authorized one Irwin "Pinky" Goldstein ("Goldstein") to sell and administer Department-approved Real Estate Principles and continuing education courses issued by CARE.

///

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///

PRE-LICENSING REQUIREMENT: Successful completion of a Real Estate Principles course at an accredited institution is a condition precedent to taking an examination to become a real estate salesperson (Code Section 10153.3) and it is one of among several optional courses that is a condition precedent to taking an examination to become a real estate broker (Code Section 10153.2).

The Real Estate Principles Course is required to be taken and passed by real estate license applicants pursuant to Code Sections 10153, 10153.3 and 10153.4.

CONTINUING EDUCATION REQUIREMENT: 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 No. 6 above, during the preceding four-year period (Code Section 10170.5).

Real estate licensees, who successfully complete the course categories noted above, may use credits from such courses toward the licensees' continuing education requirements as set forth in Code Section 10170.5.

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1
2 The determination that the offering met the
3 prescribed regulatory and statutory standards, and the
4 consequent approval of said offering by the Department, was
5 conditioned upon representations and assurances given to the
6 Department in CARE's applications, that in administering the
7 offering there would be compliance with the following:

8
9 PRE-LICENSING COURSE: Conditions to the approval of
10 a Real Estate Principles course offering to be taught as a
11 correspondence course include the following criteria set forth
12 by the Regulations and other assurances, which CARE and CALHOUN
13 represented and assured the Department would be complied with:
14

15 (a) In their application to the Department for
16 approval of the Real Estate Principles Course, CARE and
17 CALHOUN represented that the course consisted of 15 reading
18 assignments, 15 quizzes, choice of one enrichment exercise,
19 and two separate final examinations.
20

21 (b) A term and condition of the certificate of
22 course approval (# 838-86) states, in part, "3. That the
23 course will not be changed in any material manner from
24 curriculum and standards reflected in the application and
25 request for approval."
26

27 ///

1 (c) Regulation 3000(a)(1) provides, "...A
2 correspondence course shall consist of not less than 15
3 separate lesson assignments."

4 (d) Regulation 3000(a)(2)(B) provides, "A
5 correspondence course must provide for a final examination
6 administered and supervised by a person designated by the
7 school for that purpose. The school shall send the final
8 examination materials to the person so designated and the
9 completed final examination shall be returned to the school
10 by the person so designated."
11

12 (e) Regulation 3000(a)(7) provides, "The school
13 shall have an appropriate method of assessing student knowledge
14 of the subject, such as, but not limited to, multiple choice,
15 essay or oral examinations."
16

17 CONTINUING EDUCATION COURSES: Conditions to the
18 approval of the continuing education course offerings, set
19 forth in paragraph 6, above, to be taught as a correspondence
20 course include the following criteria set forth by the Code
21 and Regulations and other assurances, which CARE and CALHOUN
22 represented and assured the Department would be complied with.
23 Said approval was predicated upon the sponsor's compliance with
24 Regulations 3005 through 3012.2 and Code Sections 10170 through
25 10170.6, including the following Regulations and
26 representations and assurances:
27

1 (a) In their application to the Department for
2 approval of the continuing education courses, CARE and CALHOUN
3 represented that the courses consisted of reading assignments,
4 quiz assignments and/or a supervised final examination.
5

6 The final examination was to be a "supervised open"
7 final examination and the student could suggest to the sponsor
8 the person or entity to administer the final examination.

9 (b) A term and condition of the certificate of
10 course approvals for the courses listed in Paragraph 6, above,
11 states in part... "Any proposed change in content or method of
12 presentation of this offering must be approved by the
13 Department of Real Estate prior to use."
14

15 (c) Regulation 3005(c), provides "'Final
16 examination' means the test by which the sponsor, after
17 completion of a correspondence offering, determines whether a
18 participant has successfully completed the offering according
19 to standards previously approved by the Department."
20

21 (d) Regulation 3006(e), provides "A correspondence
22 course shall consist of adequate study materials to assure that
23 the course cannot be completed in less time than the number of
24 hours for which it is approved."

25 (e) Regulation 3007.3(a) provides that sponsors
26 shall establish and participants shall observe specified final
27 examination rules.

1 Regulation 3007.3(a)(1) provides "The final
2 examination shall provide for the testing, examination or
3 evaluation of participants. The sponsor shall take steps to
4 protect the integrity of the examination and to prevent
5 cheating in an examination."
6

7 Regulation 3007.3(b) provides, "A violation of a
8 final examination rule by the sponsor or the sponsor's
9 representative administering the examination shall constitute
10 grounds for denial or withdrawal of approval of the offering."
11

12 Respondent was aware of said representations,
13 assurances and compliance requirements.

14 10.

15 On or about July 18, 2001, Deputy Real Estate
16 Commissioner Kathleene Macmac ("Macmac") went to Goldstein's
17 office located at 420 S. Beverly Drive, Suite 210, Beverly
18 Hills, California 90210, and met with Maria Cazun ("Cazun").
19 Macmac had previously inquired about assistance in obtaining
20 what was necessary in getting a license renewed. Macmac gave
21 Cazun a copy of a fictitious expired real estate salesperson
22 license information printout from the Department's website and
23 a cashiers check in the amount of \$289, payable to Goldstein.
24 Cazun then gave Macmac a Continuing Education Course
25 Verification Form (RE 251) with Macmac's name, the course
26
27

1 titles and course hours completed on July 18, 2001, totaling 51
2 course hours. Macmac was given a receipt from Mmaaxx and
3 Company/Goldstein for the amount of \$289, dated July 18, 2001
4 and forms (RE 209 A and RE 205). Macmac was not given any
5 course materials, textbooks, and/or assignment to complete
6 nor was she given a final examination in order to receive the
7 certificate of completion for continuing education courses.

9 11.

10 On or about July 23, 2001, Deputy Real Estate
11 Commissioner Amanda Wilcox ("Wilcox") went to Goldstein's
12 office located at 420 S. Beverly Drive, Suite 210, Beverly
13 Hills, California 90210, and met with Cazun. Wilcox presented
14 a cashiers check in the amount of \$189, payable to Goldstein.
15 Wilcox was then issued a Real Estate Principles Course
16 certificate from CARE, which indicated course completion on
17 July 23, 2001. Wilcox was given a receipt from Mmaaxx and
18 Company for the amount of \$189 dated July 23, 2001 and a
19 Salesperson Examination Form (RE 400A). Wilcox was not given
20 any course materials, textbooks and/or assignments to complete,
21 nor was she given a final examination in order to receive the
22 certificate of completion for the Real Estate Principles
23 Course.

24 ///

25 ///

1
2 On or about August 14, 2001, Deputy Real Estate
3 Commissioner Gino Dagnino ("Dagnino") went to CARE and
4 purchased a correspondence course for \$49 for 51 hours of
5 continuing education requirements.
6

7 Dagnino was given three (3) books and miscellaneous
8 papers. The books included a "Combined Survey Course", "The
9 Real Estate Investment Guide To Financial Freedom" and "A
10 Consumer Guide To Mortgage Lending." The miscellaneous papers
11 included a letter from CARE signed by Respondent, a mini-quiz
12 on mortgage lending, a mini-quiz on real estate investments, a
13 student final exam instruction sheet, and a general information
14 sheet on combined service course.
15

16 Additional materials were mailed to Dagnino. Dagnino
17 received an envelope from CARE, which contained instructions
18 for the test administrator, three examination sheets and three
19 examination answer sheets. The examination sheets stated on
20 the bottom that they must be returned to CARE unmarked to
21 receive credit for the course.
22

23 Dagnino did not complete any of the course
24 assignments and he had several other Deputy Real Estate
25 Commissioners and other employees of the Department assist
26 him in completing different parts of the final examinations.
27

///

1 On or about August 22, 2001, Dagnino returned to
2 CARE with his final examination answer sheets. Dagnino did not
3 return the examination sheets to Respondent.

4 Respondent accepted the answer sheets from Dagnino
5 and proceeded to correct the answer sheets without an answer
6 key to reconcile. Respondent then informed Dagnino that he had
7 passed the examination with a grade of 80%. Dagnino received a
8 continuing education in real estate certificate with his name,
9 real estate salesperson license identification number and
10 completion date of August 19, 2001.
11

12 13.

13 The conduct, acts and/or omissions of Respondent and
14 his authorized representatives, described herein above,
15 constitute failure to comply with conditions to the approval of
16 the courses identified herein above, are in violation of Code
17 Sections 10170.4(b) and (e) and Regulations 3000(a)(1),
18 3000(a)(2)(B), 3002(b), 3005(c) and (d), 3006(e) and 3007.3,
19 and constitute cause for the suspension or revocation of
20 Respondent's license and license rights pursuant to Code
21 Section 10177(d) and/or 10177(j).
22

23 ///

24 ///

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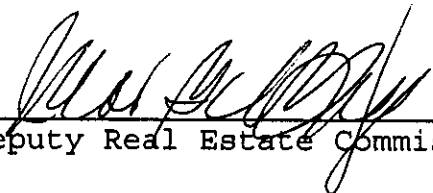
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 DAVID EDMUND CALHOUN, individually and doing business as
6 California Academy of Real Estate, under the Real Estate Law
7 (Part 1 of Division 4 of the Business and Professions Code)
8 and for such other and further relief as may be proper under
9 other applicable provisions of law.
10

11 Dated at Los Angeles, California

12 this 1st day of July, 2002.
13

14
15 
16 Deputy Real Estate Commissioner
17
18
19
20
21
22

23
24 cc: David Edmund Calhoun
25 Lloyd M. Segal, Esq.
26 Maria Suarez
27 Sacto. Education
 OAH
 PI
 Sacto. Flag

*5/20/02
File*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN - 4 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
DAVID EDMUND CALHOUN,)
individually and doing business)
as California Academy of Real)
Estate,)
)
Respondent.)

Case No. H-29306 LA
OAH No. L-2001120401

[Signature]

In the Matter of the Order to Desist)
and Refrain to:)
)
DAVID EDMUND CALHOUN, doing)
business as California Academy of)
Real Estate and IRWIN "PINKY")
GOLDSTEIN, doing business as)
Mmaaxx and Company.)

Case No. H-29315 LA
OAH No. L-2002020254

In the Matter of the Pre-Licensing)
Offerings of:)
)
CALIFORNIA ACADEMY OF REAL)
ESTATE,)
)
Sponsor.)

Case No. H-29312 LA
OAH No. L-2002020257

In the Matter of the Continuing)
Education Offerings of:)
)
CALIFORNIA ACADEMY OF REAL)
ESTATE,)
)
Sponsor.)

Case No. H-29313 LA
OAH No. L-2002020258

NOTICE OF COMBINED AND CONTINUED HEARING

To The Above-Named Parties:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on July 22, 23, 24, 25, and 26, 2002, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation and Orders

Notice of Combined and
Continued Hearing
Page 2

served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten (10) days may deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: June 4, 2002.

DEPARTMENT OF REAL ESTATE

By: 
DARLENE AVERETTA, Counsel

cc: David Edmund Calhoun
California Academy of Real Estate
Frank M. Buda, Esq.
Irwin "Pinky" Goldstein
David L. Shain, Esq.
Sacramento Flag
Sacramento Education
OAH

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FILED
FEB - 7 2002
DEPARTMENT OF REAL ESTATE

By: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-29306 LA
DAVID EDMUND CALHOUN,)	L-2001120401
individually and doing)	
business as California)	
Academy of Real Estate,)	
Respondent.)	

NOTICE OF PREHEARING AND
MANDATORY SETTLEMENT CONFERENCE

TO: DAVID EDMUND CALHOUN, RESPONDENT
and FRANK M. BUDA, ATTORNEY OF RECORD.

On January 30, 2002, Presiding Administrative Law Judge
Janis S. Rovner, Office of Administrative Hearings, issued the
following Order:

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YOU ARE HEREBY NOTIFIED that a prehearing and mandatory settlement conference shall be held on **March 11, 2002, at 1:30 p.m.**, before an Administrative Law Judge at the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California.

Dated: February 7, 2002.



DARLENE AVERETTA
Counsel for Complainant

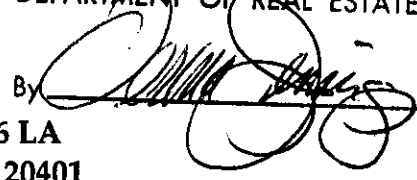
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB - 7 2002
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
DAVID EDMUND CALHOUN,)
)
Respondent.)

Case No. H-29306 LA
OAH No. L-2001120401

By: 

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on May 6, 7, 8, 9 and 10, 2002, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

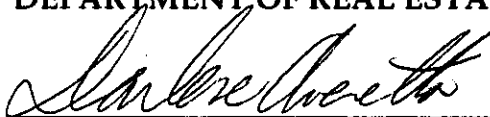
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

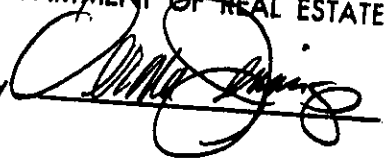
The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: February 7, 2002.

cc: David E. Calhoun
Frank M. Buda, Esq.
Sacto. Flag
Sacto. Education
OAH

DEPARTMENT OF REAL ESTATE
By: 
DARLENE AVERETTA, Counsel

FILED
JUN - 4 2002
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID EDMUND CALHOUN,)
individually and doing)
business as California)
Academy of Real Estate,)
Respondent.)

Case No. H-29306 LA
OAH No. L-2001120401

In the Matter of the Order to Desist)
and Refrain to:)
DAVID EDMUND CALHOUN, doing)
business as California Academy of)
Real Estate and IRWIN "PINKY")
GOLDSTEIN, doing business as)
Mmaaxx and Company.)

Case No. H-29315 LA
OAH No. L-2002020254

In the Matter of the Pre-Licensing)
Offerings of:)
CALIFORNIA ACADEMY OF REAL ESTATE,)
Sponsor.)

Case No. H-29312 LA
OAH No. L-2002020257

In the Matter of the Continuing)
Education Offerings of:)
CALIFORNIA ACADEMY OF REAL ESTATE,)
Sponsor.)

Case No. H-29313 LA
OAH No. L-2002020258

1 NOTICE OF COMBINED PREHEARING CONFERENCE
2 AND MANDATORY SETTLEMENT CONFERENCE

3 TO: DAVID EDMUND CALHOUN, Respondent, and his Attorney of
4 Record, FRANK M. BUDA; and IRWIN "PINKY" GOLDSTEIN and
his Attorney of Record, DAVID L. SHAIN.

5 On May 20, 2002, Presiding Administrative Law Judge
6 Janis S. Rovner, Office of Administrative Hearings, issued the
7 following Order:

8 YOU ARE HEREBY NOTIFIED that a prehearing conference
9 and mandatory settlement conference shall be held on **June 17,**
10 **2002, at 1:30 p.m.**, before an Administrative Law Judge at the
11 Office of Administrative Hearings, 320 West Fourth Street, 6th
12 Floor, Suite 630, Los Angeles, California.

13 Dated: June 4, 2002.

14 

15 DARLENE AVERETTA
16 Counsel for Complainant

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23 cc: David Edmund Calhoun
24 California Academy of Real Estate
25 Frank M. Buda, Esq.
26 Irwin "Pinky" Goldstein
27 David L. Shain, Esq.
Sacramento Flag
Sacramento Education
OAH

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN - 4 2002
DEPARTMENT OF REAL ESTATE

*5/27/02
File*

In the Matter of the Accusation of)
)
DAVID EDMUND CALHOUN,)
individually and doing business)
as California Academy of Real)
Estate,)
)
Respondent.)

Case No. H-29306 LA)
OAH No. L-2001120401)
[Signature]

In the Matter of the Order to Desist)
and Refrain to:)
)
DAVID EDMUND CALHOUN, doing)
business as California Academy of)
Real Estate and IRWIN "PINKY")
GOLDSTEIN, doing business as)
Mmaaxx and Company.)

Case No. H-29315 LA)
OAH No. L-2002020254)

In the Matter of the Pre-Licensing)
Offerings of:)
)
CALIFORNIA ACADEMY OF REAL)
ESTATE,)
)
Sponsor.)

Case No. H-29312 LA)
OAH No. L-2002020257)

In the Matter of the Continuing)
Education Offerings of:)
)
CALIFORNIA ACADEMY OF REAL)
ESTATE,)
)
Sponsor.)

Case No. H-29313 LA)
OAH No. L-2002020258)

NOTICE OF COMBINED AND CONTINUED HEARING

To The Above-Named Parties:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on July 22, 23, 24, 25, and 26, 2002, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation and Orders

served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten (10) days may deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: June 4, 2002.

DEPARTMENT OF REAL ESTATE

By: 
DARLENE AVERETTA, Counsel

cc: David Edmund Calhoun
California Academy of Real Estate
Frank M. Buda, Esq.
Irwin "Pinky" Goldstein
David L. Shain, Esq.
Sacramento Flag
Sacramento Education
OAH

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FILED
JUN - 4 2002
DEPARTMENT OF REAL ESTATE
By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID EDMUND CALHOUN,)
individually and doing)
business as California)
Academy of Real Estate,)
Respondent.)

Case No. H-29306 LA
OAH No. L-2001120401

In the Matter of the Order to Desist)
and Refrain to:)
DAVID EDMUND CALHOUN, doing)
business as California Academy of)
Real Estate and IRWIN "PINKY")
GOLDSTEIN, doing business as)
Mmaaxx and Company.)

Case No. H-29315 LA
OAH No. L-2002020254

In the Matter of the Pre-Licensing)
Offerings of:)
CALIFORNIA ACADEMY OF REAL ESTATE,)
Sponsor.)

Case No. H-29312 LA
OAH No. L-2002020257

In the Matter of the Continuing)
Education Offerings of:)
CALIFORNIA ACADEMY OF REAL ESTATE,)
Sponsor.)

Case No. H-29313 LA
OAH No. L-2002020258

1 NOTICE OF COMBINED PREHEARING CONFERENCE
2 AND MANDATORY SETTLEMENT CONFERENCE

3 TO: DAVID EDMUND CALHOUN, Respondent, and his Attorney of
4 Record, FRANK M. BUDA; and IRWIN "PINKY" GOLDSTEIN and
his Attorney of Record, DAVID L. SHAIN.

5 On May 20, 2002, Presiding Administrative Law Judge
6 Janis S. Rovner, Office of Administrative Hearings, issued the
7 following Order:

8 YOU ARE HEREBY NOTIFIED that a prehearing conference
9 and mandatory settlement conference shall be held on **June 17,**
10 **2002, at 1:30 p.m.,** before an Administrative Law Judge at the
11 Office of Administrative Hearings, 320 West Fourth Street, 6th
12 Floor, Suite 630, Los Angeles, California.

13 Dated: June 4, 2002.

14 

15 DARLENE AVERETTA
16 Counsel for Complainant

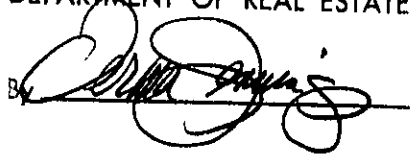
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24 California Academy of Real Estate
Frank M. Buda, Esq.
25 Irwin "Pinky" Goldstein
David L. Shain, Esq.
26 Sacramento Flag
Sacramento Education
27 OAH

5/20/02
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DARLENE AVERETTA, Counsel
SBN 159969
Department of Real Estate
320 W. 4th St., # 350
Los Angeles, CA 90013-1105

(213) 576-6904

FILED
MAR 18 2002
DEPARTMENT OF REAL ESTATE


BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	NO. H-29306 LA
)	L-2001120401
DAVID EDMUND CALHOUN,)	
individually and doing)	<u>FIRST AMENDED</u>
business as California)	<u>ACCUSATION</u>
Academy of Real Estate,)	
)	
Respondent.)	
)	

This First Amended Accusation amends the Accusation filed on November 29, 2001 in this matter.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against DAVID EDMUND CALHOUN, individually and doing business as California Academy of Real Estate, alleges as follows:

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1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

DAVID EDMUND CALHOUN ("Respondent") is presently licensed and/or has license rights under the Real Estate Law, Part 1, Division 4 of the California Business and Professions Code ("Code"). At all times material herein, Respondent was and still is licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker, individually, doing business as California Academy of Real Estate, Exceptional Properties & Investments Company, and David Calhoun & Associates, and as officer of licensed real estate corporations, Anton & Lee, Inc., and Anton Hospitality Brokers, Inc.

3.

Prior Department Action

On October 18, 1996, the Department issued an Order to Desist and Refrain No. H-26826 LA to DAVID EDMUND CALHOUN, doing business as California Academy of Real Estate and Ava June Milbourne. Said parties were found to have violated Regulations 3007.3(a)(7) and 3007.3(a)(13).

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4.

California Academy of Real Estate ("CARE") is the sponsor of the Real Estate Principles course and continuing education course offerings identified below. Respondent was at all times material herein, CARE's owner and controlled it's operations. The primary business conducted by CARE was the providing of courses to real estate licensees and applicants for real estate licenses.

5.

On or about November 26, 1986, Respondent on behalf of CARE, submitted an application to teach the Real Estate Principles course.

The Department, pursuant to Code Sections 10153, 10153.3, 10153.5 and Regulations 3000 through 3004, issued to the CARE, pursuant to its applications, approval to offer the Real Estate Principles Course.

In the 1990's, 2000 and 2001, Respondent on behalf of CARE, submitted applications to teach continuing education courses.

The Department, pursuant to Code Sections 10170 through 10170.6 and Regulations 3005 through 3012.2, issued to the CARE, pursuant to its applications, approval to offer continuing education courses.

6.

CARE was at all times material herein authorized to offer courses required to be taken and passed, including a final examination. Said courses included the following correspondence courses:

<u>Course Category</u>	<u>Department Approval Number</u>
Real Estate Principles	838-86
Real Estate Agency	2613-1030
Ethics	2613-1031
Fair Housing	2613-1032
Trust Funds	2613-1033
Consumer Protection	2613-1035
Consumer Service	2613-1037
Survey	2613-1038

7.

Respondent was the authorized administrator of CARE. Respondent authorized one Irwin "Pinky" Goldstein ("Goldstein") to sell and administer Department approved Real Estate Principles and continuing education courses issued by CARE.

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PRE-LICENSING REQUIREMENT: Successful completion of a Real Estate Principles course at an accredited institution is a condition precedent to taking an examination to become a real estate salesperson (Code Section 10153.3) and it is one of among several optional courses that is a condition precedent to taking an examination to become a real estate broker (Code Section 10153.2).

The Real Estate Principles Course is required to be taken and passed by real estate license applicants pursuant to Code Sections 10153, 10153.3 and 10153.4.

CONTINUING EDUCATION REQUIREMENT: 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 number 6 above, during the preceding four-year period (Code Section 10170.5).

Real estate licensees, who successfully complete the course categories noted above, may use credits from such courses toward the licensees' continuing education requirements as set forth in Code Section 10170.5.

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2 The determination that the offering met the
3 prescribed regulatory and statutory standards, and the
4 consequent approval of said offering by the Department, was
5 conditioned upon representations and assurances given to the
6 Department in CARE's applications, that in administering the
7 offering there would be compliance with the following:
8

9 PRE-LICENSING COURSE: Conditions to the approval of
10 a Real Estate Principles course offering to be taught as a
11 correspondence course include the following criteria set forth
12 by the Regulations and other assurances, which CARE and Calhoun
13 represented and assured the Department would be complied with:
14

15 (a) In their application to the Department for
16 approval of the Real Estate Principles course, CARE and
17 Calhoun represented that the course consisted of 15 reading
18 assignments, 15 quizzes, choice of one enrichment exercise,
19 and two separate final examinations.
20

21 (b) A term and condition of the certificate of
22 course approval (# 838-86) states, in part, "3. That the
23 course will not be changed in any material manner from
24 curriculum and standards reflected in the application and
25 request for approval."
26
27

1 (c) Regulation 3000(a)(1) provides, "...A
2 correspondence course shall consist of not less than 15
3 separate lesson assignments."

4 (d) Regulation 3000(a)(2)(B) provides, "A
5 correspondence course must provide for a final examination
6 administered and supervised by a person designated by the
7 school for that purpose. The school shall send the final
8 examination materials to the person so designated and the
9 completed final examination shall be returned to the school
10 by the person so designated."
11

12 (e) Regulation 3000(a)(7) provides, "The school
13 shall have an appropriate method of assessing student knowledge
14 of the subject such as, but not limited to, multiple choice,
15 essay or oral examinations."
16

17 CONTINUING EDUCATION COURSES: Conditions to the
18 approval of the continuing education course offerings, set
19 forth in paragraph 6, above, to be taught as a correspondence
20 course include the following criteria set forth by the Code and
21 Regulations and other assurances, which CARE and Calhoun
22 represented and assured the Department would be complied with.
23 Said approval was predicated upon the sponsor's compliance with
24 Regulations 3005 through 3012.2 and Code Sections 10170 through
25 10170.6, including, the following Regulations and
26 representations and assurances:
27

1 (a) In their application to the Department for
2 approval of the continuing education courses, CARE and Calhoun
3 represented that the courses consisted of reading assignments,
4 quiz assignments and/or a supervised final examination. The
5 final examination was to be a "closed book" final examination
6 and the student could not designate in any way the person or
7 entity to administer the final examination.
8

9 (b) A term and condition of the certificate of
10 course approvals for the courses listed in Paragraph 6, above,
11 states in part... "Any proposed change in content or method of
12 presentation of this offering must be approved by the
13 Department of Real Estate prior to use."
14

15 (c) Regulation 3005(c), provides "Final examination"
16 means the test by which the sponsor, after completion of a
17 correspondence offering, determines whether a participant has
18 successfully completed the offering according to standards
19 previously approved by the Department."
20

21 (d) Regulation 3006(e), provides "A correspondence
22 course shall consist of adequate study materials to assure that
23 the course cannot be completed in less time than the number of
24 hours for which it is approved."
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26 (d) Regulation 3007.3(a) provides that sponsors
27 shall establish and participants shall observe specified final
examination rules.

1 Regulation 3007.3(a)(1) provides "The final
2 examination shall provide for the testing, examination or
3 evaluation of participants. The sponsor shall take steps to
4 protect the integrity of the examination and to prevent
5 cheating in an examination..."

7 Regulation 3007.3(b) provides, "A violation of a
8 final examination rule by the sponsor or the sponsor's
9 representative administering the examination shall constitute
10 grounds for denial or withdrawal of approval of the offering."

12 Respondent was aware of said representations and
13 assurances and compliance requirements.

14 10.

15 On or about July 18, 2001, Deputy Real Estate
16 Commissioner Kathleene Macmac ("Macmac") went to Goldstein's
17 office located at 420 S. Beverly Drive, Suite 210, Beverly
18 Hills, California 90210, and met with Maria Cazun ("Cazun").
19 Macmac had previously inquired about assistance in obtaining
20 what was necessary in getting a license renewed. Macmac gave
21 Cazun a copy of a fictitious expired real estate salesperson
22 license information printout from the Department's website and
23 a cashiers check in the amount of \$289, payable to Goldstein.
24 Cazun then gave Macmac a Continuing Education Course
25 Verification Form (RE 251) with Macmac's name, the course
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1 titles and course hours completed on July 18, 2001, totaling 51
2 course hours. Macmac was given a receipt from Mmaaxx and
3 Company/Goldstein for the amount of \$289, dated July 18, 2001
4 and forms (RE 209 A and RE 205). Macmac was not given any
5 course materials, textbooks, and/or assignment to complete, nor
6 was she given a final examination in order to receive the
7 certificate of completion for continuing education courses.
8

9 11.

10 On or about July 23, 2001, Deputy Real Estate
11 Commissioner Amanda Wilcox ("Wilcox") went to Goldstein's
12 office located at 420 S. Beverly Drive, Suite 210, Beverly
13 Hills, California 90210, and met with Cazun. Wilcox presented
14 a cashiers check in the amount of \$289, payable to Goldstein.
15 Wilcox was then issued a Real Estate Principles Course
16 certificate from CARE, which indicated course completion on
17 July 23, 2001. Wilcox was given a receipt from Mmaaxx and
18 Company for the amount of \$289 dated July 23, 2001 and a
19 Salesperson Examination Form (RE 400A). Wilcox was not given
20 any course materials, textbooks, and/or assignment to complete,
21 nor was she given a final examination in order to receive the
22 certificate of completion for the Real Estate Principles
23 Course.
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2 On or about August 14, 2001, Deputy Real Estate
3 Commissioner Gino Dagnino ("Dagnino") went to CARE and
4 purchased a correspondence course for \$49 for 51 hours of
5 continuing education requirements.
6

7 Dagnino was given three (3) books and miscellaneous
8 papers. The books included a "combined survey course", "the
9 real estate investment guide to financial freedom" and "a
10 consumer guide to mortgage lending". The miscellaneous papers
11 included a letter from CARE signed by Respondent, a mini-quiz
12 on mortgage lending, a mini-quiz on real estate investments, a
13 student final exam instruction sheet, and a general information
14 sheet on combined service course. Dagnino also received an
15 envelope from CARE, which contained, instructions for the test
16 administrator, three examination sheets and three examination
17 answer sheets. The examination sheets stated on the bottom
18 that they must be returned to CARE unmarked to receive credit
19 for the course.
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22 Dagnino did not complete any of the course
23 assignments and he had several other Deputy Real Estate
24 Commissioners and other employees of the Department assist
25 him in completing different parts of the final examinations.
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1 On or about August 22, 2001, Dagnino returned to
2 CARE with his final examination answer sheets. Dagnino did not
3 return the examination sheets to Respondent.

4 Respondent accepted the answer sheets from Dagnino
5 and proceeded to correct the answer sheets without an answer
6 key to reconcile. Respondent then informed Dagnino that he had
7 passed the examination with a grade of 80%. Dagnino received a
8 continuing education in real estate certificate with his name,
9 real estate salesperson license identification number and
10 completion date of August 19, 2001.
11

12 13.

13
14 The conduct, acts and/or omissions of Respondent and
15 his authorized representation, described herein above,
16 constitutes failure to comply with conditions to the approval
17 of the courses identified herein above, are in violation of
18 Code Sections 10170.4(b) and (e) and Regulations 3000(a)(2)(B),
19 3005(c), 3006(e) and 3007.3, and constitutes cause for the
20 suspension or revocation of Respondent's license and license
21 rights pursuant to Code Sections 10176(a), 10177(d) and/or
22 10177(j).
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of DAVID
5 EDMUND CALHOUN, individually and doing business as California
6 Academy of Real Estate, under the Real Estate Law (Part 1 of
7 Division 4 of the Business and Professions Code) of Respondent
8 and for such other and further relief as may be proper under
9 applicable provisions of law.
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11 Dated at Los Angeles, California

12 this 18th day of March, 2002.

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15 Deputy Real Estate Commissioner
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25 cc: David Edmund Calhoun
26 Frank M. Buda, Esq.
27 Sacto. Flag
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ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
320 W. 4th St., # 350
Los Angeles, CA 90013

(213) 576-6911

FILED
NOV 29 2001
DEPARTMENT OF REAL ESTATE
By *K. Kueberholz*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H- 29306 LA
)	
DAVID EDMUND CALHOUN,)	<u>A C C U S A T I O N</u>
individually and doing)	
business as California)	
Academy of Real Estate.)	
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The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of
accusation DAVID EDMUND CALHOUN, individually and doing
business as California Academy of Real Estate, alleges as
follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
in her official capacity.

2.

1
2 DAVID EDMUND CALHOUN ("Respondent"), is presently
3 licensed and/or has license rights under the Real Estate Law,
4 Part 1, Division 4 of the California Business and Professions
5 Code ("Code"). At all times material herein, Respondent was
6 and still is licensed by the Department of Real Estate of the
7 State of California ("Department") as a real estate broker,
8 individually, doing business as California Academy of Real
9 Estate, Exceptional Properties & Investments Company and David
10 Calhoun & Associates and as officer of licensed real estate
11 corporations, Anton & Lee, Inc. and Anton Hospitality Brokers,
12 Inc.
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3.

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16 Prior Department Action

17 On October 18, 1996, the Department issued an Order
18 to Desist and Refrain No. H-26826 LA to DAVID EDMUND CALHOUN,
19 doing business and California Academy of Real Estate and Ava
20 June Milbourne. Said parties were found to have violated
21 Regulations 3007.3(a)(7) and 3007.3(a)(13).
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4.

California Academy of Real Estate ("CARE") is the sponsor of the Real Estate Principles course and continuing education course offerings identified below. Respondent was at all times material herein, CARE's owner and controlled it's operations. The primary business conducted by CARE was the providing of courses to real estate licensees and applicants for real estate licenses.

5.

On or about November 26, 1986, Respondent on behalf of CARE, submitted an application to teach the Real Estate Principles course.

In the 1990's, Respondent on behalf of CARE, submitted applications to teach continuing education courses.

The Department, pursuant to Code Sections 10153.5 and 10170.4(b) and Regulations 3002, 3006 and 3007 issued to the CARE, pursuant to its applications, approval to offer the Real Estate Principles Course and continuing education courses.

6.

CARE was at all times material herein authorized to offer courses required to be taken and passed, including a final examination. Said courses included the following correspondence courses:

	<u>Course Category</u>	<u>Department Approval Number</u>
1		
2	Real Estate Principles	838-86
3	Real Estate Agency	2613-1030
4	Ethics	2613-1031
5	Fair Housing	2613-1032
6	Trust Funds	2613-1033
7	Consumer Protection	2613-1035
8	Consumer Service	2613-1037
9	Survey	2613-1038
10		

7.

Respondent was the authorized instructor and administrator of CARE. Respondent authorized one Irwin "Pinky" Goldstein ("Goldstein") to sell and administer Department approved Real Estate Principles and continuing education courses issued by CARE.

8.

The Real Estate Principles Course is required to be taken and passed by real estate license applicants pursuant to Code Sections 10153.2, 10153.3, 10153.4 and 10153.

Real estate licensees, who attend and successfully complete the course categories noted above, may use credits from such courses toward the licensees' continuing education requirements as set forth in Code Section 10170.5.

1
2 The determination that the offering met the
3 prescribed regulatory and statutory standards, and the
4 consequent approval of said offering by the Department, was
5 conditioned upon representations and assurances given to the
6 Department in CARE's applications, that in administering the
7 offering there would be compliance with the following
8 regulations:
9

10 (a) Regulation 3000(a)(2)(B) provides, "A
11 correspondence course must provide for a final examination
12 administered and supervised by a person designated by the
13 school for that purpose. The school shall send the final
14 examination materials to the person so designated and the
15 completed final examination shall be returned to the school
16 by the person so designated."
17

18 (b) Regulation 3005(c), provides "Final
19 examination" means the test by which the sponsor, after
20 completion of a correspondence offering, determines whether a
21 participant has successfully completed the offering according
22 to standards previously approved by the Department."
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1 (c) Regulation 3006(e), provides "A correspondence
2 course shall consist of adequate study materials to assure that
3 the course cannot be completed in less time than the number of
4 hours for which it is approved."
5

6 (d) Regulation 3007.3(b) provides, "A violation of
7 a final examination rule by the sponsor or the sponsor's
8 representative administering the examination shall constitute
9 grounds for denial or withdrawal of approval of the offering."
10

11 Respondent was aware of said representations and
12 assurances and compliance requirements.
13

14 10.

15 On or about July 18, 2001, Deputy Real Estate
16 Commissioner Kathleene Macmac ("Macmac") went to GOLDSTEIN's
17 office located at 420 S. Beverly Drive, Beverly Hills,
18 California 90210 and met with Maria Cazun ("Cazun"). Macmac
19 had previously inquired about assistance in obtaining what was
20 necessary in getting a license renewed. Macmac gave Cazun a
21 copy of a fictitious expired real estate salesperson license
22 and a cashiers check in the amount of \$289, payable to
23 GOLDSTEIN. Cazun then gave Macmac a Continuing Education
24 Course Verification (RE 251) with Macmac's name, the course
25 titles and course hours completed on July 18, 2001, totaling 51
26 course hours. Macmac was given a receipt from Mmaaxx and
27

1 Company/GOLDSTEIN for the amount of \$289, dated July 18, 2001
2 and forms (RE 209 A and RE 205). Macmac was not given any
3 course materials, textbooks, and/or assignment to complete, nor
4 was she given a final examination in order to receive the
5 certificate of completion for continuing education courses.
6

7 11.

8 On or about July 23, 2001, Deputy Real Estate
9 Commissioner Amanda Wilcox ("Wilcox"), went to GOLDSTEIN's
10 office located at 420 S. Beverly Drive, Beverly Hills,
11 California 90210 and met with Cazun. Wilcox presented a
12 cashiers check in the amount of \$189, payable to GOLDSTEIN.
13 Wilcox was then issued a Real Estate Principles Course
14 certificate from CARE, which indicated course completion on
15 July 23, 2001. Wilcox was given a receipt from Mmaaxx and
16 Company for the amount of \$189 dated July 23, 2001 and a
17 Salesperson Examination Form (RE 400A). Wilcox was not given
18 any course materials, textbooks, and/or assignment to complete,
19 nor was she given a final examination in order to receive the
20 certificate of completion for the Real Estate Principles
21 Course.
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1
2 On or about August 14, 2001, Deputy Real Estate
3 Commissioner Gino Dagnino ("Dagnino") went to CARE and
4 purchased a correspondence course for \$49 for 51 hours of
5 continuing education requirements. He did not complete any of
6 the course assignments and he had several other Deputy Real
7 Estate Commissioners assist him in completing different parts
8 of the final examination.
9

10 On or about August 22, 2001, Dagnino returned to CARE
11 with his final examination answer sheets. Dagnino was not
12 asked if the course material and assignments were reviewed or
13 completed prior to taking the final examination. Respondent
14 accepted the answer sheets from Dagnino and proceeded to
15 correct the answer sheets without an answer key to reconcile.
16 Respondent then informed Dagnino that he had passed the
17 examination with a grade of 80%. Dagnino received a continuing
18 education in real estate certificate with his name, real estate
19 salesperson license identification number and completion date
20 of August 19, 2001.
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1
2 The conduct, acts and/or omissions of Respondent and
3 his authorized representation, described herein above,
4 constitutes failure to comply with conditions to the approval
5 of the courses identified herein above, are in violation of
6 Regulations 3000(a)(2)(B), 3005(c), 3006(e) and 3007.3(b), and
7 constitutes cause for the suspension or revocation of
8 Respondent's license and license rights pursuant to Code
9 Sections 10176(a), 10177(d) and/or 10177(j).

10
11 WHEREFORE, Complainant prays that a hearing be
12 conducted on the allegations of this Accusation and that upon
13 proof thereof, a decision be rendered imposing disciplinary
14 action against all licenses and/or license rights of DAVID
15 EDMUND CALHOUN, under the Real Estate Law and for such other
16 and further relief as may be proper under applicable provisions
17 of law.
18

19 Dated at Los Angeles, California
20 this 29th day of November , 2001.
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23 
24 Deputy Real Estate Commissioner

25
26 cc: David Edmund Calhoun
27 Sacto. FLAG
Sacto. Education
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