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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.)	
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In the Matter of the Order to)	<u>NO. H-29315 LA</u>
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.)	
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In the Matter of the Pre-Licensing)	NO. H-29312 LA
Offerings of)	L-2002020257
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	
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In the Matter of the Continuing)	NO. H-29313 LA
Education Offerings of)	L-2002020258
CALIFORNIA ACADEMY OF REAL ESTATE,)	
Sponsor.)	
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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20 completely withdrawn.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 The Order as amended, shall read as follows:

2 ORDERS

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

5 All licenses and licensing rights of Respondent
6 DAVID EDMUND CALHOUN, individually and doing business as
7 California Academy of Real Estate, under the Real Estate
8 Law are suspended for a period of ninety (90) days from the
9 effective date of this Decision;

10 1. Provided, however, that the initial sixty (60)
11 days of said suspension (or a portion thereof) shall be stayed
12 upon the following conditions, including the condition that
13 Respondent CALHOUN pays a monetary penalty pursuant to Section
14 10175.2 of the Business and Professions Code at the rate of
15 \$50.00 for each day of the suspension for a total monetary
16 penalty of \$3,000.00.

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

22 (b) No further cause for disciplinary action
23 against the real estate license of Respondent occurs within two
24 (2) years from the effective date of the Decision in this
25 matter.

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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.

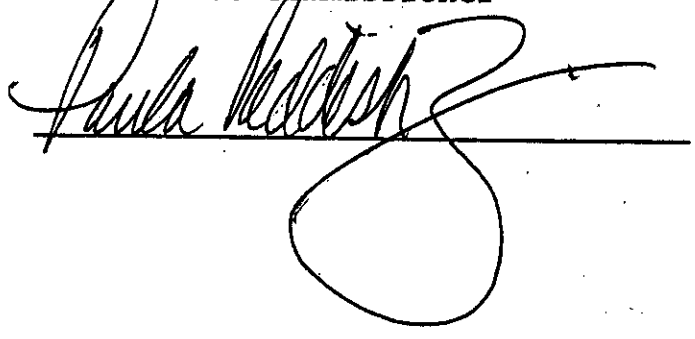
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In all other respects, the Decision of February 11, 2003, remains unchanged.

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 ZINNEMANN
Real Estate Commissioner



SACD.
1/14/02

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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

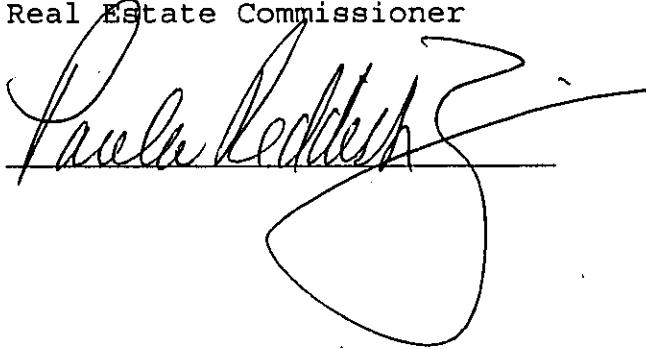
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Written argument of Complainant to be considered by me must be submitted within fifteen (15) days after receipt of the argument of Respondents at the Los Angeles Office of the Department of Real Estate unless an extension of the time is granted for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

DATED: November 6, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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.

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.

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."

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 fraudently 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:

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.

Not adopted

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:

Not adopted
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

1 Department of Real Estate
2 320 W. 4th St. # 350
3 Los Angeles, California 90013

4 (213) 576-6982

FILED
DEC - 7 2001
DEPARTMENT OF REAL ESTATE

5 *Frederick*

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 TO:) No. H-29315 LA
12)
13 DAVID EDMUND CALHOUN, doing) ORDER TO DESIST
14 business as California Academy) AND REFRAIN
15 of Real Estate and IRWIN)
16 "PINKY" GOLDSTEIN, doing)
17 business as Mmaaxx and Company.)
18)

19 The Real Estate Commissioner ("Commissioner") of the
20 State of California Department of Real Estate ("Department")
21 has caused an investigation to be made of your activities
22 administering real estate continuing education course offerings
23 subject to the provisions of Section 10170.4, et seq. of the
24 Business and Professions Code ("Code") and Section 3000, et
25 seq. of Title 10, Chapter 6, California Code of Regulations
26 ("Regulations"), and the Real Estate Principles course
27 offerings subject to the provisions of Code Sections 10153.2,
10153.3 and 10153.5 and Regulation 3000, et seq. Based upon

1 the findings of that investigation, as set forth below, the
2 Commissioner has determined, and is of the opinion that you
3 have, in the course of presenting continuing education courses
4 and real estate principals courses, approved by the Department
5 violated Regulations 3000(a)(2)(B), 3005(c), 3006(e) and
6 3007.9(b).
7

8 I

9 Prior Department Action

10 On October 18, 1996, the Department issued an Order
11 to Desist and Refrain No. H-26826 LA to DAVID EDMUND CALHOUN,
12 doing business and California Academy of Real Estate
13 ("CALHOUN") and Ava June Milbourne. Said parties were found
14 to have violated Regulations 3007.3(a)(7) and 3007.3(a)(13)
15

16 II

17 (a) On or about November 26, 1986, you, CALHOUN,
18 submitted an application to teach the Real Estate Principles
19 course.
20

21 (b) In the 1990's, you, CALHOUN, submitted
22 applications to teach continuing education courses.

23 ///

24 ///

25 ///

26 ///

27

	<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		

VI

12 The Real Estate Principles Course is required to be
13 taken and passed by real estate license applicants pursuant to
14 Code Sections 10153.2, 10153.3, 10153.4 and 10153.
15

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

20 ///
21 ///
22 ///
23 ///
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26 ///
27

VII

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."
23

24 ///

25 ///

26 ///

27

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 You, CALHOUN, were aware of said representations and
12 assurances and compliance requirements.
13

14 VIII

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 Company/GOLDSTEIN for the amount of \$289, dated July 18, 2001

1 and forms (RE 209 A and RE 205). Macmac was not given any
2 course materials, textbooks, and/or assignment to complete, nor
3 was she given a final examination in order to receive the
4 certificate of completion for continuing education courses.

5
6 IX

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

23 ///

24 ///

25 ///

26 ///

27

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. CALHOUN
14 accepted the answer sheets from Dagnino and proceeded to
15 correct the answer sheets without an answer key to reconcile.
16 CALHOUN 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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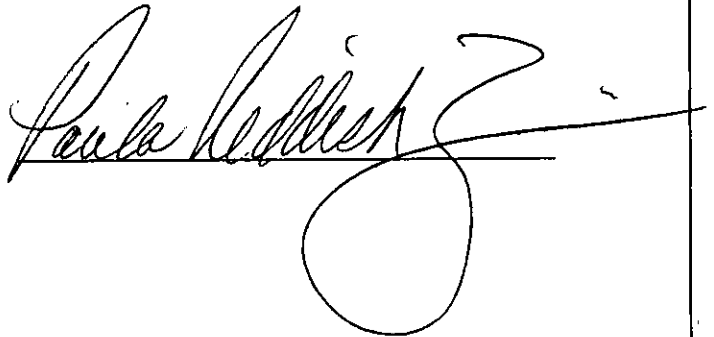
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1 NOW, THEREFORE YOU DAVID EDMUND CALHOUN, AND YOU,
2 IRWIN "PINKY" GOLDSTEIN, ARE ORDERED TO DESIST AND REFRAIN from
3 presenting, instructing and/or administering the Real Estate
4 Principles course and real estate continuing education course
5 offerings approved by the Department unless and until you
6 comply with the provisions of Regulations 3000(a)(2)(B),
7 3005(c), 3006(e) and 3007.3(b) and the representations and
8 assurances constituting the basis for approval of said
9 offerings.
10

11 DATED: December 5, 2001.

12 PAULA REDDISH ZINNEMANN
13 Real Estate Commissioner

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20
21 cc: David E. Calhoun
22 California Academy of Real Estate
23 18871 Napa Street
24 Northridge, CA 91324

25 Irwin "Pinky" Goldstein
26 Mmaaxx and Company
27 420 S. Beverly Drive, # 210
Beverly Hills, CA 90210