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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **ADVANCED VOCATIONAL INSTITUTE;** **RASHAD M. SAID, 50% Owner** **1925 S. Winchester Blvd., Suite 205** **Campbell, CA 95008** **JOANNE WINTERBERG, 50% Owner** **1925 S. Winchester Blvd., Suite 205** **Campbell, CA 95008** **Institution Code No. 65686922** Respondents.	Case No. 1004060 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

1. Dr. Michael Marion, Jr. (Complainant) brings this Statement of Issues solely in his official capacity as the Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs.

2. On or about July 27, 2016, the Bureau for Private Postsecondary Education received an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions for Advanced Vocational Institute, from Rashad M. Said and Joanne

Winterberg (Respondents). On or about July 24, 2016, Rashad M. Said certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on November 5, 2018.

JURISDICTION

3. This Statement of Issues is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau for Private Postsecondary Education under the authority of the following laws.

4. The former Bureau for Private Postsecondary and Vocational Education sunsetted on July 1, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009 (SB 48 and hereinafter, "the Act") was signed into law. The Act, which became operative on January 1, 2010, established the Bureau for Private Postsecondary Education (hereinafter "Bureau").

5. Education Code Section 94886 states:

> Except as exempted in Article 4 (commencing with section 94874) or in compliance with the transition provisions in Article 2 (commencing with Section 94802), a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate under this chapter.

6. Education Code Section 94887 states:

> An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards. The bureau shall deny an application for an approval to operate if the application does not satisfy those standards.

7. Education Code Section 94891 states:

> (a) The bureau shall adopt by regulation the process and procedures whereby an institution may obtain a renewal of an approval to operate.
>
> (b) To be granted a renewal of an approval to operate, the institution shall demonstrate its continued capacity to meet the minimum operating standards.
>
> (c) (1) An institution that is denied renewal of an approval to operate may file an appeal in accordance with the procedures established by the bureau pursuant to Section 94888.
>
> (2) An institution that has filed an appeal of a denial of a renewal application may

continue to operate during the appeal process, but must disclose in a written statement, approved by the bureau, to all current and prospective students, that the institution's application for renewal of approval to operate was denied by the bureau because the bureau determined the application did not satisfy the requirements to operate in California, that the institution is appealing the bureau's decision, and that the loss of the appeal may result in the institution's closure.

(3) If the bureau determines that the continued operation of the institution during the appeal process poses a significant risk of harm to students, the bureau shall make an emergency decision pursuant to its authority provided in Section 94938.

8. California Code of Regulations (hereinafter "CCR"), title 5, section 71400.5 states:

(a) The inclusion of false or misleading information, or the intentional or negligent omission of pertinent information on any application may result in the denial of the application or a delay in processing, and may be grounds for action pursuant to Article 18 of the Act.

(b) In addition to denying an application pursuant to section 94887 of the Code, the Bureau may deny any application based on any act that constitutes grounds for the denial of a license under Section 480 of the Business and Professions Code, incorporated herein by reference.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

STATUTORY AND REGULATORY PROVISIONS

9. Education Code section 94909 states, in pertinent part:

(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

. . .

(7) Information regarding the faculty and their qualifications.

10. CCR, title 5, section 71140 states, in pertinent part:

(a) The institution shall include in its Form Application 94886 an organization chart that shows the governance and administrative structure of the institution and the relationship between faculty and administrative positions.

. . .

(c) The institution shall identify the chief executive officer, chief operating officer, and chief academic officer and describe their education, experience, and qualifications to perform their duties and responsibilities.

11. CCR, title 5, section 71210 states, in pertinent part:

(c) In addition, the institution shall list the following for each educational program offered:

. . .

(2) If applicable, information regarding the ability-to-benefit examination as required by section 94904 of the Code;

. . .

12. CCR, title 5, section 71700 states:

The Bureau may request that an institution document compliance with the standards set forth in the Act and this Division to obtain and maintain an approval to operate.

13. CCR, title 5, section 71710 states, in pertinent part:

In order to meet its mission and objectives, the educational program defined in section 94837 of the Code shall be comprised of a curriculum that includes:

. . .

(c) course or module materials that are designed or organized by duly qualified faculty. For each course or module, each student shall be provided with a syllabus or course outline that contains:

. . .

(2) a statement of educational objectives;

. . .

(e) specific learning outcomes tied to the sequence of the presentation of the material to measure the students' learning of the material; . . .

14. CCR, title 5, section 71715 states, in pertinent part:

. . .

(b) The institution shall document that the instruction offered leads to the achievement of the learning objectives of each course.

. . .

(d) Distance education as defined in section 94834 of the Code, does not require the physical presence of students and faculty at the same location but provides for interaction between students and faculty by such means as telecommunication, correspondence, electronic and computer augmented educational services, postal service, and facsimile transmission. In addition to the other requirements of this chapter and the Act, an institution offering distance education shall:

. . .

(2) assess each student, prior to admission, in order to determine whether each student has the skills and competencies to succeed in a distance education environment;

. . .

(4) provide for meaningful interaction with faculty who are qualified to teach using distance education methods;

. . .

(6) timely complete student evaluations of learning outcomes by duly qualified faculty, which are appropriate for use with the distance education methods used, and evaluated by duly qualified faculty.

15. CCR, title 5, section 71720 states, in pertinent part:

(b) Instructors in an Educational Program Not Leading to a Degree.

(1) An institution shall employ instructors who possess the academic, experiential and professional qualifications to teach, including a minimum of three years of experience, education and training in current practices of the subject area they are teaching. If an instructor does not possess the required three years of experience, education and training in the subject area they are teaching, the institution shall document the qualifications the instructor possesses that are equivalent to the minimum qualifications.

(2) Each instructor shall maintain their knowledge by completing continuing education courses in his or her subject area, classroom management or other courses related to teaching.

(3) The institution shall not employ or continue to employ an instructor who was adjudicated in a judicial or administrative proceeding as having violated any provision of the Act or this chapter, or as having committed any act that would constitute grounds for the denial of a license under Section 480 of the Business and Professions Code.

16. CCR, title 5, section 71730 states, in pertinent part:

(a) Each institution shall have a chief executive officer, a chief operating officer and chief academic officer. One person may serve more than one function.

(b) The duties, responsibilities, and performance evaluation criteria for each administrator shall be set forth in a personnel manual or other writing maintained by the institution.

. . .

(f) The institution shall employ administrative personnel who have the expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs.

. . .

17. CCR, title 5, section 71770 states, in pertinent part:

(a) The institution shall establish specific written standards for student admissions for each educational program. These standards shall be related to the particular educational program. An institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the program. In addition to any specific standards for an educational program, the admissions standards must specify as applicable that:

(1) Each student admitted to an undergraduate degree program, or a diploma program, shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the relevant examination as required by section 94904 of the Code.

. . .

18. CCR, title 5, section 71800 states:

In addition to the requirements of section 94911 of the Code, an institution shall provide to each student an enrollment agreement that contains at the least the following information:

(a) The name and address of the institution and the addresses where instruction will be provided.

(b) Period covered by the enrollment agreement.

(c) Program start date and scheduled completion date.

(d) Date by which the student must exercise his or her right to cancel or withdraw, and the refund policy, including any alternative method of calculation if approved by the Bureau pursuant to section 94921 of the Code.

(e) Itemization of all institutional charges and fees including, as applicable:

(1) tuition;

(2) registration fee (non-refundable);

(3) equipment;

(4) lab supplies or kits;

(5) Textbooks, or other learning media;

(6) uniforms or other special protective clothing;

(7) in-resident housing;

(8) tutoring;

(9) assessment fees for transfer of credits;

(10) fees to transfer credits;

(11) Student Tuition Recovery Fund fee (non-refundable);

(12) any other institutional charge or fee.

(f) Charges paid to an entity other than an institution that is specifically required for participation in the educational program.

FACTUAL BACKGROUND

19. On July 27, 2016, the Bureau received an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions from Rashad Said, 50%-Owner, and Joanne Winterberg, 50%-Owner, of Advanced Vocational Institute (Respondents).

20. On September 14, 2016, the Bureau sent Respondents a letter advising of deficiencies in the application, and requested responses to Application Section 16: Financial Resources and Statements and the Student Tuition Recovery Fund (STRF) assessments for the 4th Quarter of 2015 and the 2nd Quarter of 2016.

21. On September 21 and 22, 2016, the Bureau received responses from the Respondents to the September 14, 2016, deficiency letter, which consisted of a check for a late fee, 4th Quarter 2015 STRF assessments and 2nd Quarter 2016 STRF assessments, and an email pertaining to the request for financial statements. On December 19, 2016, the Bureau received an additional response from Respondent that included financial statements.

22. On September 22, 2017, the Bureau sent a letter to Respondents outlining deficiencies in

- Application Section 4: Owner(s)
- Application Section 5: Agent for Service of Process Within California
- Application Section 8: Institution Representative
- Application Section 10: Exemplars of Student Agreement
- Application Section 12: Advertising and Other Public Statements
- Application Section 13: Instructions and Degrees Offered
- Application Section 14: Description of Educational Program
- Application Section 17: Faculty

- Application Section 21: Catalog
- Application Section 22: Graduation or Completion Documents
- Application Section 24: Self-Monitoring Procedures

23. On October 23, 2017, the Bureau received a response from Respondents that included a cover letter, a copy of the Bureau's deficiency letter, page 4 of Form Application 94891 (rev. 7/10), Enrollment Agreement, Advertising and Other Public Statements, Instruction and Degrees Offered, Description of Educational Program, Faculty, Catalog, Graduation or Completion Documents, and Self-Monitoring Procedures.

24. On April 4, 2018, the Bureau sent a letter to Respondents outlining deficiencies in

- Application Section 4: Owner(s)
- Application Section 5: Agent for Service of Process Within California
- Application Section 10: Exemplars of Student Agreement
- Application Section 13: Instructions and Degrees Offered
- Application Section 17: Faculty
- Application Section 21: Catalog

25. On May 5, 2018, the Bureau received a response from Respondents that included a cover letter, a copy of the Bureau's deficiency letter, page 2 of Form Application 94891 (rev. 7/10), page 3 of Form Application 94891 (rev. 7/10), an Organizational Chart, Curriculum Vitae for Rashad Said and Joanne Winterberg, Enrollment Agreement, Instruction and Degrees Offered, Description of Educational Program, Faculty, and Catalog.

26. On November 5, 2018, the Bureau sent Respondents a Notice of Denial of the Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions because Respondents failed to demonstrate the continued capacity to satisfy the minimum operating standards. Respondents failed to support their application with adequate documentation of a proper Organizational Chart, Exemplars of Student Agreements, Instruction and Degrees Offered, Description of Educational Program, Faculty, and Catalog.

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FIRST CAUSE FOR DENIAL

(Failure to Provide Compliant Organizational Chart)

27. Respondents' application is subject to denial under CCR, title 5, sections 71140, subdivision (c), and 71730, subdivision (a), because Respondents' institution has neither a Chief Academic Officer nor a Chief Operational Officer, as required by these regulations. Moreover, Respondents' application is subject to denial under CCR, title 5, sections 71140, subdivision (a), and 71730, subdivisions (a), (b), and (f) in that the organizational chart lists only two employees, both of whom are owners. Three positions are vacant: Administrative Assistant, LMS Administrator, and Bookkeeper. Only one individual is identified as a faculty member. Respondents do not have the administrative personnel to ensure the achievement of the institution's mission and objectives and the operation of the educational programs.

SECOND CAUSE FOR DENIAL

(Failure to Provide Compliant Exemplars of Student Agreements)

28. Respondents' application is subject to denial under CCR, title 5, section 71800 in that the Enrollment Agreement fails to include a Program Start Date and Scheduled Completion Date.

THIRD CAUSE FOR DENIAL

(Insufficient Description of Instruction and Degrees Offered)

29. Respondents' application is subject to denial under CCR, title 5, sections 71210, subdivision (c)(2), and 71770, subdivision (a)(1), in that Respondents failed to provide a sufficiently detailed description of the instruction and degrees offered. The application response to Section 13, question 1, states that an "ability to benefit" test is not applicable. But the catalog refers to the Accuplacer ATB Certification Test as the ATB test used by Respondents. Thus the admissions procedures in the catalog are inconsistent with the response provided in the application for renewal.

FOURTH CAUSE FOR DENIAL

(Lack of Required Description of Educational Program)

30. Respondents' application is subject to denial under CCR, title 5, sections 71710, subdivisions (c)(2), and (e), and 71715, subdivision (b), in that Respondents only provided course

objectives, but did not tie the objectives to the presentation of material, and failed to provide learning objectives. Course objectives must identify what the instructor of the course plans to teach/cover. Learning objectives are tied directly to the course objectives, and outline what students can do/perform upon completion of the course. The above regulations require that the institution provide course objectives as well as learning objectives tied directly to the sequence of presentation of the material. Without this information, the Bureau is unable to determine if the instruction offered leads to the learning objectives for each course.

FIFTH CAUSE FOR DENIAL

(Failure to Meet Minimum Operating Standards—Distance Learning)

31. Respondents' application is subject to denial under CCR, title 5, section 71715, subdivisions (d)(2) and (4), in that Respondents have not provided a syllabi, in a distance education modality, that meets regulatory requirements. Respondents have not been approved to offer programs via distance education. There is not a preadmission assessment to assess a student to determine if he/she has the skills and competencies to succeed in a distance education environment. Likewise, the syllabi do not indicate how a faculty member will provide for meaningful interaction and does not include clear standards for satisfactory academic progress.

SIXTH CAUSE FOR DENIAL

(Failure to Meet Minimum Operating Standards—Faculty)

32. Respondents' application is subject to denial under CCR, title 5, sections 71715, subdivision (d)(6), and 71720, subdivision (b), in that Respondents have not provided sufficient documentation that it has contracted with duly qualified faculty members to deliver instruction and ensure that students will meet the educational objectives of the program. The Bureau requested that Respondents provide the curriculum vitae of all faculty members, teaching contracts (between Respondents and the faculty members), and any licenses, certifications, or credentials to assist the Bureau in determining if the faculty are duly qualified. Respondents failed to provide this information, and instead provide a link routed to Skillsoft's website with faculty information.

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SEVENTH CAUSE FOR DENIAL

(Lack of Required Content in School Catalog)

33. Respondents' application is subject to denial under Education Code section 94909, subdivision (a)(7), in that the catalog does not contain information regarding the faculty and their qualifications.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Denying the application of Rashad M. Said and Joanne Westerberg for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions for Advanced Vocational Institute, a non-accredited institution; and,

2. Taking such other and further action as deemed necessary and proper.

DATED: 6/20/19

DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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