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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 Accusation Against: **COMPUTER INSTITUTE OF TECHNOLOGY; RENE AGUERO, OWNER** 6444 Bellingham Avenue, Suite 201, 202 North Hollywood, CA 91605 **Institution Code No. 1936371** Respondent.	Case No. 1004198 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about February 6, 1998, the Bureau issued Approval to Operate Number 1936371 to Computer Institute of Technology, Rene Aguero (Respondent). The Approval to

Operate was in full force and effect at all times relevant to the charges brought herein and an application for Renewal of Approval to Operate a Non-Accredited Institution is currently pending.

JURISDICTION

3. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau, under the authority of the following laws. All section references are to the Education Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS[1]

4. Section 94937, subdivision (a)(1) of the Code states:

"(a) As a consequence of an investigation, which may incorporate any materials obtained or produced in connection with a compliance inspection, and upon a finding that an institution has committed a violation, the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for:

(1) Obtaining an approval to operate by fraud.

..."

5. Section 94877 of the Code states:

"(a) The bureau shall adopt and shall enforce regulations to implement this chapter pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The bureau shall develop and implement an enforcement program, pursuant to Article 18 (commencing with Section 94932) to implement this chapter. The enforcement program shall include a plan for investigating complaints filed with the bureau. The bureau shall contract with the office of the Attorney General, or other appropriate state agency, to establish a process for the bureau's staff to be trained to investigate complaints, including, but not limited to, the information, evidence, and materials needed to process complaints.

[1] On October 11, 2009, the California Private Postsecondary Education Act of 2009 was signed into law. (Educ. Code §§ 94800, et seq.) The Act was recently amended, effective January 1, 2019.

(c) The bureau shall institute training to ensure that its staff are equipped to review and verify the accuracy of the data contained in consumer disclosures, including, but not limited to, the School Performance Fact Sheet.

(d) The bureau shall establish a program to proactively identify unlicensed institutions, identify material or repeated violations of this chapter and regulations implementing this chapter, and take all appropriate legal action."

6. Section 94932 states:

"The bureau shall determine an institution's compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution's sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing an investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article."

7. Section 94897 of the Education Code states in relevant part:

"An institution shall not do any of the following:

...

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

...

(3) Any other record or document required by this chapter or by the bureau."

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8. Section 94930.5 states in relevant part:

"Subject to Section 94930 , an institution shall remit to the bureau for deposit in the Private Postsecondary Education Administration Fund the following fees, in accordance with the following schedule:

...

(d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c), inclusive, each institution that is approved to operate pursuant to this chapter shall remit both of the following:

(A) An annual fee for each campus designated by the institution as a main campus location in California, in an amount equal to 0.45 percent of the campus' total gross revenue derived from students in California, but not to be less than two thousand five hundred dollars ($2,500) and not to exceed sixty thousand dollars ($60,000).

(B) An annual campus fee for each branch of the institution in an amount equal to 0.45 percent of the branch's total gross revenue derived from students in California, but not to be less than two thousand five hundred dollars ($2,500) and not to exceed sixty thousand dollars ($60,000)."

9. Section 94934 states, in part:

"(a) As part of the compliance program, an institution shall submit an annual report to the bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year, or another date designated by the bureau, and it shall include the following information for educational programs offered in the reporting period:

(1) The total number of students enrolled by level of degree or for a diploma.

(2) The number of degrees, by level, and diplomas awarded.

(3) The degree levels and diplomas offered.

(4) The Student Performance Fact Sheet, as required pursuant to Section 94910 .

(5) The school catalog, as required pursuant to Section 94909 .

(6) The total charges for each educational program by period of attendance.

(7) A statement indicating whether the institution is, or is not, current in remitting Student Tuition Recovery Fund assessments.

(8) A statement indicating whether an accrediting agency has taken any final disciplinary action against the institution.

(9) Additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter.

..."

10. Section 94893 states:

"If an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau. Except as provided in subdivision (a) of Section 94896 , if the institution makes the substantive change without prior bureau authorization, the institution's approval to operate may be suspended or revoked."

11. Section 94894 states, in relevant part:

"The following changes to an approval to operate are considered substantive changes and require prior authorization:

...

(b) A change in ownership.

(c) A change in control.

(d) A change in business organization form.

..."

REGULATORY PROVISIONS

12. California Code of Regulations, title 5, section 74006 states:

"(a) An institution's annual fee is due within 30 days of the date on which the institution originally receives its approval to operate and each year thereafter on the anniversary of the date of the original approval.

(b) An institution shall pay its annual fee in addition to any other applicable fees.

(c) The annual institutional fee is based on the institution's annual revenue. For purposes of this article, annual revenue is annual gross revenue."

13. California Code of Regulations, title 5, section 71640, subdivisions (a)-(d) states:

"(a) An institution seeking to change the business organization form, control, or ownership as defined in sections 94821, 94822, or 94823, respectively shall complete the "Change of Business Organization/Control/Ownership" form (OWN rev. 2/10) to obtain prior authorization. The form shall be submitted to the Bureau along with the appropriate fee as provided in Section 94930.5(c) of the Code. An application under this section shall be signed by all signatories to the initial application, or the last approved application under this section, as well as the persons required to sign an application pursuant to section 71380 for institutions approved under section 94885 of the code and section 71390 for institutions approved under section 94890 of the code. Each signature shall be dated, and each fact stated therein and each attachment thereto shall be declared to be true under penalty of perjury, in the following form:

'I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

_____ _____

(Date) (Signature)'

(b) An application for a change in ownership or control shall identify the name, title, address, e-mail address and telephone number of each new person required to be listed pursuant to section 71130 in an application, as well as the persons previously listed pursuant to section 71130 that will no longer have ownership or control. For each proposed person listed, the application shall include the information required pursuant to section 71130(b), (c), and (d).

(c) An application for a change in the form of business organization of the institution shall identify the approved organization as well as the proposed organization. If the proposed organization is incorporated, the application shall also identify the state within which the proposed organization is incorporated and the date of incorporation, along with copies of the articles of incorporation and bylaws. To the extent that a change in the form of business organization represents a change in ownership or control, the application shall include the information required by subdivision (b) of this section.

(d) In addition to the above required information, each application under this section shall include:

(1) The name, address, telephone number, fax number, and school code of the institution;

(2) The reason for the proposed change;

(3) The impact of the change on the financial resources of the institution, including the institution's ability to comply with section 71745;

(4) A description of the planned administrative relationship between the persons previously approved and the proposed owners or persons in control, including the nature and extent of the supervision by the chief academic officer, chief operating officer, chief executive officer, and administrators; and

(5) Any additional information required by the Bureau pursuant to section 71340 of this Chapter; and

(6) The name, address, email address, telephone number and fax number of the contact person for this application.

..."

14. California Code of Regulations, title 5, section 74110 states:

"(a) The annual report required by Section 94934 of the Code shall include the information required by sections 94929.5 and 94934 for all educational programs offered in the prior calendar year, and all of the following for the prior calendar year:

(1) Information regarding institutional branch campuses, including addresses and programs offered at each campus, if applicable;

(2) Information regarding satellite locations, including addresses and with which campus(es) the satellite location is affiliated, if applicable;

(3) Name of institutional accreditors for each branch and satellite campus, and for each such campus at which any programs have programmatic accreditation, the names of the programmatic accreditor for each such program, and effective dates for each programmatic accreditation, if applicable;

(4) Information regarding participation in state and federal student loan and grant programs, including the total amount of funding received from each source for those students enrolled in an approved California school regardless of their state of residency;

(5) Information regarding participation in other public funding programs, including the amount of funding received from each public funding source; for purposes of this section, public funding is any financial aid paid on behalf of students or directly to an institution from any public source, such as the Workforce Investment Act, any veterans' financial aid programs pursuant to Section 21.4253 of Title 38 of the Code of Federal Regulations or any other financial aid program that is intended to help students pay education-related expenses, including tuition, fees, room and board, and supplies for education; and

(6) The total percentage of institutional income that comes from any public funding sources."

COST RECOVERY

15. Section 125.3 of the Business and Professions Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

16. Section 94937 of the Code provides, in pertinent part, that the Bureau may seek reimbursement costs of investigation and enforcement pursuant to section 125.3 of the Business and Professions Code but that an institution shall not be required to pay the cost of investigation to more than one agency.

FACTUAL BACKGROUND

Main Campus, Institution Code #1936371

17. On or about August 4, 2010, the Bureau received Respondent's Application for Renewal of Approval to Operate a Non-Accredited Institution. On or about April 4, 2012, the Bureau approved Respondent's Approval to Operate an Institution at 11631 Victory Blvd, Ste

205, North Hollywood, CA 91606. Respondent's owner, Rene Aguero (Aguero), reported that Respondent was an individually owned; sole proprietorship and he had 100% ownership of Respondent. Aguero reported that his Federal Identification Number was XX-XXXX336.

18. On or about February 2, 2013, Respondent notified the Bureau of their change of location to 6444 Bellingham Ave, Ste 201 and 202, North Hollywood, CA 91605.

Bell Branch, School Code #72482287

19. On or about August 4, 2010, the Bureau received Respondent's Application for Addition of a Separate Branch. On or about April 18, 2012, the Bureau approved Respondent's Application to operate an additional branch at 132 N. Chicago St, Los Angeles, CA 90033. Aguero reported that he was the sole owner of Respondent. On or about August 27, 2012, the Bureau approved a change of location for this branch to 4126 E. Gage Ave, Bell, GA 90201.

Tujunga Branch, School Code #78788747

20. On or about October 24, 2011, the Bureau received an Application for Addition of a Separate Branch from Respondent. On or about April 18, 2012, the Bureau approved Respondent's application to operate at 13601 Whittier Blvd, Whittier, CA 90605. Again, Aguero reported that he was the sole owner of Respondent. On or about March 23, 2013, the Bureau approved a change of location for this branch to 6501 Foothill Blvd, Ste 204, Tujunga, CA 91042.

21. On or about November 6, 2017, the Bureau received notification from Respondent to close their Tujunga location.

Renewal to Operate

22. On or about April 10, 2017, the Bureau received Respondent's Renewal for Approval to Operate and Offer Educational Programs for Non-Accredited Institution Application. Aguero reported that Respondent was individually owned; sole proprietorship and he had 100% ownership of Respondent.

23. On or about June 28, 2018, the Bureau received a revised Renewal for Approval to Operate an Institution Application form. Aguero reported that Respondent was a Limited Liability Corporation as of October 2017. Aguero reported that his Federal Identification Number was still XX-XXXX336, and he was 100% owner. No other new information was reported by Aguero.

24. To date, Respondent has failed to file its Annual Report for the year 2017.

FIRST CAUSE FOR DISCIPLINE

(Fee Schedule)

25. Respondent is subject to disciplinary action under Code sections 94930.5, subdivision (d)(1)(A)(B) and 94897, subdivision (j)(3) in conjunction with Title 5 of the California Code of Regulations, sections 74000 and 74006, and Code section in that Respondent underreported gross revenue for the fiscal years 2014, 2015, 2016, and 2017, and thereby failed to remit the proper licensing fees to the Bureau. The circumstances are as follows:

26. On or about April 2, 2015, Respondent reported that for fiscal year 2014 its annual gross revenue was $213,300. Based on the formula for remittance of annual fees, Respondent paid the Bureau $3,600. However, Respondent's financial statements for fiscal year 2014 report a gross revenue from student fees of $693,000. Based on the formula for remittance of annual fees, Respondent should have paid approximately $7,200 to the Bureau.

27. On or about February 18, 2016, Respondent reported that for fiscal year 2015 its annual gross revenue was $530,600. Based on the formula for remittance of annual fees, Respondent paid the Bureau $5,975. However, Respondent's financial statements for fiscal year 2015 report a gross revenue from student fees of $718,300. Based on the formula for remittance of annual fees, Respondent should have paid approximately $7,390 to the Bureau.

28. On or about June 26, 2017, Respondent reported that for fiscal year 2016 its annual gross revenue was $632,000. Based on the formula for remittance of annual fees, Respondent paid the Bureau $2,500. However, Respondent's financial statements for fiscal year 2016 report a gross revenue of $674,000. In addition, five insurance carriers reported that for fiscal year 2016 they paid Respondent $1,376,827 in Supplemental Job Displacement Benefits. Based on the formula for remittance of annual fees, Respondent should have paid approximately $6,200 to the Bureau.

29. On or about February 28, 2018, Respondent reported that for fiscal year 2017 their annual gross revenue was $630,000. Based on the formula for remittance of annual fees, Respondent paid the Bureau $2,835. However, five insurance carriers reported that for fiscal year

2017 they paid Respondent $2,101,676 in Supplemental Job Displacement Benefits. Based on the formula for remittance of annual fees, Respondent should have paid approximately $9,458 to the Bureau.

30. Complaint refers to, and by this reference incorporates paragraphs 17 through 24 as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Substantive Changes to Approval to Operate)

31. Respondent is subject to disciplinary action under Code sections 94893 and 94894, subdivisions (b), (c) and (d), in conjunction with Title 5 of the California Code of Regulations, section 71640, subdivisions (a)-(d), in that Respondent failed to submit an Application for Change in Ownership, Control or Business Authorization Form to seek approval for substantive changes. The circumstances are as follows:

32. Respondent failed to notify the Bureau that the Bell branch was operating as a limited liability corporation and was requesting and receiving payments under a unique tax identification number.

33. Respondent failed to notify the Bureau that the Tujunga branch was operating as a limited liability corporation and was requesting and receiving payments under a unique tax identification number. Complaint refers to, and by this reference incorporates paragraphs 17 through 24 as though set forth in full.

THIRD CAUSE FOR DISCIPLINE

(Annual Report Violations)

34. Respondent is subject to disciplinary action under Code section 94897, subdivision (j)(3) in conjunction with Title 5 of the California Code of Regulations, section 74110, subdivisions (a)(5), in that Respondent failed to accurately report the Workforce Innovation Opportunity Act (WIOA) funds received in their 2015 and 2016 Annual Reports to the Bureau. The circumstances are as follows:

35. Respondent's Annual Report for 2015 stated that Respondent received $84,000 in WIOA funds. However, the Employment Development Department which distributes the funds on behalf of the federal government, reported paying Respondent $361,000.

36. Respondent's Annual Report for 2016 stated that Respondent received $120,000 in WIOA funds. However, the Employment Development Department which distributes the funds on behalf of the federal government, reported paying Respondent $320,708. Complaint refers to, and by this reference incorporates paragraphs 17 through 24 as though set forth in full.

FOURTH CAUSE FOR DISCIPLINE

(Failure to File Annual Report)

37. Respondent is subject to disciplinary action under Code section 94934, subdivision (a)(1) –(a)(9) and Title 5 of the California Code of Regulations, section 74110, subdivision (a)(5), in that Respondent failed to submit an Annual Report for 2017 as required. Complaint refers to, and by this reference incorporates paragraphs 17 through 24 as though set forth in full.

FIFTH CAUSE FOR DISCIPLINE

(Obtaining Approval to Operate by Fraud)

38. Respondent is subject to disciplinary action under Code section 94937, subdivision (a)(1) in that Respondent submitted false and misleading documents to the Bureau in order to obtain approval to operate the Bell and Tujunga locations. Complaint refers to, and by this reference incorporates paragraphs 17 through 36 as though set forth in full.

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. Revoking Approval to Operate Institution Code Number 1936371, issued to Computer Institute of Technology, Rene Aguero;

2. Ordering Rene Aguero to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 8/21/19

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

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