

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

In the Matter of the Citation Against:

BRENTWOOD UNIVERSITY

15615 Alton Parkway #450

Irvine, CA 92618

Citation No.: 1920271

Case No. 1005799

OAH Case No.: 2021040506

Respondent.

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

AUG 29 2021

This Decision shall become effective on _____

It is so ORDERED July 19, 2021.



RYAN MARCROFT
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Citation Against:

**APPEAR MEDIA, INC., d.b.a. BRENTWOOD UNIVERSITY,
Respondent**

Agency No. 1005799

OAH No. 2021040506

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 5, 2021, by video and teleconference. By Stipulation and Order dated April 16, 2021, this matter was consolidated for a single hearing with OAH Case No. 2021010014, regarding Citation No. 1920195. Separate decisions will be issued.

Amie F. Flynn, Deputy Attorney General, appeared on behalf of complainant Dr. Michael Marion, Jr., Chief, Bureau for Private Postsecondary Education (bureau), Department of Consumer Affairs, State of California.

Dr. Marc Pakbaz, Chief Executive Officer, represented Appear Media Inc., d.b.a. Brentwood University, respondent.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 5, 2021.

SUMMARY

Respondent failed to timely file its 2018 Annual Report as required by law. Complainant issued a citation to respondent and initially assessed a \$5,000 penalty with an Order of Abatement that required respondent to file its Annual Report through the bureau's website and a hard copy of its 2018 Financial Statements by mail. After an informal conference, complainant reduced the penalty to \$500 based on new information presented and issued a modified citation in this amount with an Order of Abatement. Respondent does not dispute that it failed to timely file the annual report but asks that the penalty be vacated because of the technical difficulties it encountered trying to file the report electronically. After giving due consideration to the evidence of record and the factors under Education Code section 94936, subdivision (b), the citation and penalty are affirmed. The Order of Abatement is modified to give respondent 90 days to file the 2018 Annual Report electronically and the 2018 financial statements by mail.

FACTUAL FINDINGS

Jurisdiction and Citation

1. On August 11, 2016, the bureau approved respondent for degree programs in Doctor of Business Administration and Master of Business Administration, and certificate programs in Business Administration, Entrepreneurship and Project Management. Per the certificate of licensure received into evidence, the degree

programs are identified as suspended. The full approval expiration date for these programs is August 11, 2021. The certificate of licensure admitted as evidence indicates the respondent has no citation or disciplinary history.

2. On April 1, 2020, Christina Villanueva, acting in her official capacity as the bureau's Discipline Manager, issued Citation number 1920271 (Citation) to respondent.

The Citation asserts that respondent failed to timely file an Annual Report by the date the bureau set for registered institutions to file their annual reports and, as a result, violated Education Code section 94934, subdivision (a), and California Code of Regulations title 5, section 74110, subdivision (c). Per these authorities respondent was required to file an Annual Report electronically by December 1st for all education programs it offered in the prior calendar year. For 2018, respondent was required to file its Annual Report by December 1, 2019. Before this due date, the bureau advised respondent in writing, first in a noticed dated June 24, 2019, and then on August 1, 2019, of the requirement to file the 2018 Annual Report by December 1, 2019, through the bureau's online portal. Despite these advisements, respondent failed to timely file the 2018 Annual Report. Originally, for this violation, the bureau assessed an administrative fine of \$5,000 and issued an Order of Abatement ordering respondent to submit its 2018 Annual Report within 30 days through the bureau's online submission portal and separately file a hard copy of its 2018 financial statements by mail.

3. On May 12, 2020, respondent timely filed a Request for an informal conference and a request to schedule an administrative hearing. On October 12, 2020, an informal conference was held telephonically. The bureau's enforcement chief, Beth Scott, modified the citation and reduced the amount of the fine to \$500 on November 3, 2020. In her decision to modify the citation, Ms. Scott found that respondent

presented "new information" that warranted the reduction. Ms. Scott did not modify the Order of Abatement.

4. On November 10, 2020, Ms. Villanueva signed a modified citation which was served upon respondent with the reduced \$500 penalty and an Order of Abatement that required respondent to submit by mail the institution's 2018 Financial Statements within 30 days from the date of the bureau's decision. The effective date of the modified citation was November 10, 2020, and the due dates for the order of abatement and payment of fine were set for December 10, 2020.

Dr. Pakbaz's Testimony

5. Dr. Pakbaz testified that Brentwood University is a small institution with about 30 students and a small budget of about \$30,000. All the students attend through remote learning. In 2017 the institution offered one doctorate program and one master's degree program in business administration and had five students. Respondent also offered three diploma or certificate programs in entrepreneurship, project management, and business administration.

6. Dr. Pakbaz does not dispute that he failed to file the annual report timely. He explained that he did not file the report because he was unable to access the bureau's online portal and upload information because, as he later learned, because respondent's servers are outside the country. The record does not indicate when, or whether, respondent filed the 2018 Annual Report, but the record indicates respondent had not filed the 2018 Annual Report as of March 4, 2020. It is noted that regarding Citation No. 1920195, which concerned respondent's failure to file the 2017 Annual Report timely, respondent was able to access the bureau's online portal on

February 28, 2020, but was not able to access the website to submit the *2018* Annual Report before March 4, 2020.

7. Dr. Pakbaz stated that as a small institution the \$500 penalty is not insignificant and asked that the penalty be vacated due to the technical difficulties respondent institution encountered.

LEGAL CONCLUSIONS

1. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009 (Act) was signed into law; the Act became operative on January 1, 2010, establishing the Bureau for Private Postsecondary Education. The bureau is responsible for regulating private postsecondary educational institutions. Protection of the public is its highest priority. (Ed. Code § 94875.)

2. A "private postsecondary educational institution" is "a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge." (Ed. Code, § 94858.) "Postsecondary education" is "a formal institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education . . . , including programs whose purpose is academic, vocational, or continuing professional education." (Ed. Code, § 94857.) "To offer to the public" means "to advertise, publicize, solicit, or recruit." (Ed. Code, § 94868.) "To operate means "to establish, keep, or maintain any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided." (Ed. Code, § 94869.)

3. The bureau may issue a citation for violations of the Act. (Ed. Code, § 94936, subd. (a).) The citation may include an order of abatement, and an

administrative fine not to exceed \$5,000 for each violation. The fine shall be based on the nature and seriousness of the violation, the persistence of the violation, the good faith of the institution, the history of previous violations, the potential harm to students, and the purposes of the Act. (Ed. Code, § 94936, subd. (b).)

4. All private postsecondary educational institutions must submit an annual report under penalty of perjury to the bureau by a date the bureau designates. (Ed. Code, § 94934.) In this report the institution must provide detailed information to give prospective and current students, and the public, information regarding the institution so they can make informed decisions regarding attending the institution. This information includes the number of students enrolled, the programs offered, the number of degrees and diplomas awarded, the degree levels and diplomas offered, a copy of the institution's catalog, the School Performance Fact Sheet,¹ the total charges for each educational program by program attendance, and other information. (Ed. Code, § 94934, subd. (a)(1) to (9).) California Code of Regulations, title 5, section 74110, identifies additional information institutions must provide in the annual report. (Cal. Code Regs, title 5, § 74110, subd. (a)(1) - (6).) Institutions are required to file their annual reports electronically. (Cal. Code Regs, title 5, § 74110, subd. (d).)

5. Under California Code of Regulations, title 5, section 74110, the institution must file its annual report by December 1st. (Cal. Code Regs, title 5, § 74110, subd. (c).) In addition, under this rule the institution is required to submit

¹ Education Code section 94910 requires institutions to complete and file and make available information relating to program completion rates, placement rates, licensee examination passage rates, and salary and wage information.

annual financial statements for the prior calendar year. (Cal. Code Regs, title 5, §74110, subd. (b).)

6. Cause exists to affirm Citation number 1920271 issued to respondent for violating Education Code section 94934. Respondent failed to timely file an annual report for 2018 by the December 1, 2019, deadline the bureau set.

7. Consistent with the factors under Education Code section 94936, the \$500 penalty the bureau set for this violation is affirmed for these reasons: Respondent's failure to timely file the 2018 Annual Report deprived prospective students, current students, and the public of important information about the institution and, in this sense, students and prospective students have been potentially harmed. Respondent, however, it does not appear, undertook a serious effort to discover why respondent was unable to upload required information to the bureau's online portal until well after the citation was issued. Respondent offered no explanation why since respondent was able to access the bureau's website portal to submit the 2017 Annual Report on February 28, 2020, respondent did not upload the required information for the 2018 Annual Report by March 4, 2020. Thus, vacating the \$500 penalty as respondent seeks is not an appropriate disposition.

8. With respect to the Order of Abatement, the record does not indicate whether respondent has filed the 2018 Annual Report and 2018 Financial Statements. To give respondent the opportunity to submit this information to the bureau, the Order of Abatement is modified to require respondent to submit the 2018 financial statements within 90 days of the effective date of this decision.

ORDER

Citation number 1920271 issued to respondent Appear Media, Inc., d.b.a. Brentwood University, is affirmed; respondent is required pay the \$500 penalty in full within 60 days following the effective date of this decision.

The Order of Abatement is affirmed but modified to require respondent to submit the 2018 Annual Report via the bureau's online portal and 2018 financial statements by mail within 90 days of the effective date of this decision unless the bureau agrees to extend this time.

DATE: May 10, 2021

Abraham M. Levy

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings