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

11 **In the Matter of the Accusation Against:**

Case No. 996999

12 **AMERICAN SPORTS UNIVERSITY**
13 **Harry Hwang, 50% Owner**
14 **Jane Hwang, 50% Owner**
15 **399 North D. Street**
16 **San Bernardino, CA 92401**

ACCUSATION

17 **Institution Code 14960906**

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Joanne Wenzel (Complainant) brings this Accusation solely in her official capacity as
21 the Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs.

22 2. On or about, May 23, 2007, the former Bureau for Private Postsecondary and
23 Vocational Education¹ issued Full Approval to Operate Institution Code Number 14960906 to
24 American Sports University, Harry Hwang 50% Owner, Jane Hwang 50% Owner. Said Full
25 Approval to Operate expired on June 30, 2014.

26 ¹ The former BPPVE sunsetted on July 1, 2007. On October 11, 2009, the Bureau for
27 Private Postsecondary Education Act of 2009 ("Act") (AB 48) was signed into law. The Act,
28 became operative on January 1, 2010, and established the Bureau for Private Postsecondary
Education ("Bureau").

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(1) Obtaining an approval to operate by fraud.

(2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

(b) The bureau shall adopt regulations, within one year of the enactment of this chapter, governing probation and suspension of an approval to operate.

7. Title 5, California Code of Regulations, section 75100, subdivision (a) states that "[t]he Bureau may suspend, revoke or place on probation with terms and conditions an approval to operate."

STATUTORY PROVISIONS

8. Section 490, subdivision (a), of Business and Professions Code states:

In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 94893 of the Education Code 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.

10. Section 94894 of the Education Code states:

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

(a) A change in educational objectives, including an addition of a new diploma or a degree educational program unrelated to the approved educational programs offered by the institution.

(b) A change in ownership.

(c) A change in control.

(d) A change in business organization form.

...

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REGULATORY PROVISIONS

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2 11. California Code of Regulations, title 5, section 71130, states:

3 (a)(1) The institution shall identify the name, address, email address, and
4 telephone number of each person, as defined in section 94855 of the Code, who owns
5 or controls 25% or more of the stock or an interest in the institution and, to the extent
6 applicable, each general partner, officer, corporate director, member of the board of
7 directors and any other person who exercises substantial control over the institution's
management or policies. For the purpose of this paragraph, a person exercises
"substantial control over the institution's management or policies" if the person has
the authority to cause the institution to expend money or incur debt in the amount of
five thousand dollars (\$5,000) or more in any year.

8 ...

9 (c) The institution shall provide a statement from any person identified in
10 subdivision (a) of this section who -

11 ...

12 (5) Was convicted of any misdemeanor or felony as provided in Section
480(a)(1) of the Business and Professions Code;

13 (d) The institution shall furnish an explanation of any legal action
14 pending against the institution or ownership or any of the institution's owners,
15 officers, corporate directors, administrators, or instructors by any federal, state, or
16 local law enforcement agency involving alleged acts of fraud, dishonesty, financial
mismanagement, unpaid liabilities to any governmental agency or claims for
pecuniary loss suffered by any student.

17 12. California Code of Regulations, title 5, section 71735, subdivision (b), states:

18 An institution's facilities, including heating and cooling, ventilation,
19 lighting, classrooms, laboratories, and campus environs, shall be well-maintained.
20 The institution shall maintain all valid permits required by any public agencies
relating to the health and safety of the institution's facilities and equipment on file,
and such permits shall be available to the Bureau upon request.

21 13. California Code of Regulations, title 5, section 71745 states:

22 (a) The institution shall document that it has at all times sufficient assets
23 and financial resources to do all of the following:

24 ...

25 (4) Pay timely refunds as required by Article 13 of the Act.

26 (5) Pay all operating expenses due within 30 days.

27 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00
28 or greater at the end of the most recent fiscal year when using generally accepted
accounting principles, or for an institution participating in Title IV of the federal
Higher Education Act of 1965, meet the composite score requirements of the U.S.

1 Department of Education. For the purposes of this section, current assets does not
2 include: intangible assets, including goodwill, going concern value, organization
3 expense, startup costs, long-term prepayment of deferred charges, and non-returnable
4 deposits, or state or federal grant or loan funds that are not the property of the
5 institution but are held for future disbursement for the benefit of students. Unearned
6 tuition shall be accounted for in accordance with general accepted accounting
7 principles.

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14. California Code of Regulations, title 5, section 71650 states

(a) An institution seeking to change its educational objectives shall complete the "Change in Educational Objectives" form (OBJ 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. For an institution approved under section 94885 of the Code it shall be signed and dated by the signatory(ies) required by section 71380, and for an institution approved under section 94890 of the Code it shall be signed and dated by the signatory(ies) required by section 71390, 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) For an application to add a degree program:

(1) "Unrelated to the approved educational programs" as used in section 94894(a) of the Code includes the addition of a degree program where no degree at that level was previously approved, whether or not the proposed program would offer a degree in the same subject area as a previously approved non-degree program or lower level degree; and a program leading to licensure whether or not the proposed program is in the same subject area as a previously approved program that did not lead to licensure.

(2) The owner of an institution approved pursuant to section 94886 of the Code seeking to add a degree-granting program must complete an accreditation plan under section 71105, or provide proof of accreditation with the scope of that accreditation covering the institution and at least one degree program.

(3) If an application is granted pursuant to this subdivision, the Bureau shall issue a provisional approval of no more than two degree programs for which approval is sought. Such approval of the program shall run in conjunction with any existing approval to operate the institution.

(c) The application shall establish that the institution, including any branch, can meet the minimum operating standards contained in Chapter 3, and shall include:

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

3 (2) The reasons for changing the educational objectives, and how the
4 proposed change helps to further the institution's mission and objectives;

5 (3) When the institution proposes to change the educational objectives;

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

8 (5) A description of the facility and equipment, as required by section
9 71260, required for the change;

10 (6) For addition of a new program, all information required by sections
11 71210 and 71220;

12 (7) If the application is for a change to an existing program, a description
13 of the differences between any programs approved and the proposed programs,
14 including differences in admissions standards, degree requirements, curricula, and
15 standards for student achievement;

16 (8) A statement that the institution has contracted with duly qualified
17 faculty that meet the requirements of section 71720;

18 (9) A description of library and other learning resources, as required by
19 Section 71270, required for the proposed change;

20 (10) The name, address, email address, and telephone and fax numbers of
21 the institution's contact person for the purpose of this application; and

22 (11) Any additional information required by the Bureau pursuant to
23 section 71340.

24 (d) An institution that has been granted an approval to operate by means
25 of accreditation shall notify the Bureau of the substantive change within 30 days of
26 that change on the Change in Educational Objectives form, by providing the
27 information required by (c)(1) and (c)(10), and shall attach certification from the
28 institution's accreditation agency demonstrating that the substantive change was made
in accordance with the institution's accreditation standards, and complies with the Act
and this Division.

COSTS

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 or 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.

1 19. Respondent filed two applications for Change of Educational Objective. Application
2 No. 22723, filed on August 2, 2010, noted the following change: “will now offer 4 degree
3 concentrations for the B.S. degree in sports instead of a Master degree in Business Admin. Sports
4 Management as well as a Doctorate in Sports Management.” The application was signed by
5 Harry Hwang (51% owner), Jane Hwang (49% owner), and by Charles Lin (Member of the Board
6 of Directors), under penalty of perjury, on July 31, 2010. Application No. 22724, also filed on
7 August 2, 2010, requested the addition of a school of theology. The application was signed by
8 Harry Hwang (51% owner), Jane Hwang (49% owner), and by Charles Lin (Member of the Board
9 of Directors), under penalty of perjury, on July 31, 2010. The Bureau did not receive an
10 application for Change of Educational Objective to add any other programs.

11 **Lawsuits, Liabilities and Failure to Pay Operating Expenses**

12 20. On April 14, 2010 an amended default judgment was entered against American
13 Sports University in the amount of \$265,028.01 in the case entitled *Hong Kyun Park v. American*
14 *Sports University*, San Bernardino Superior Court Case No. CIVDS 903403. The circumstances
15 are the on March 16, 2009, a former student HKP⁴ sued Respondent and Harry Hwang for breach
16 of contract and fraud. HKP alleged that he withdrew from Respondent to enroll in another school
17 reasonably believing he would be refunded for an entire second semester within 30 days of his
18 last day of class as stated in Respondent’s refund policy and as promised by Respondent’s
19 Financial Director. HKP sought a total loss of tuition in the amount of \$12,491.96 and punitive
20 damages in the amount of \$250,000.00 for Negligent Misrepresentation of Material Fact and
21 Promise Without Intent to Perform.

22 21. On November 20, 2009, an order was issued by the Labor Commissioner of the State
23 of California requiring payment of wages, plus interest and waiting time penalties, against
24 Respondent and in favor of BSH, a former employee. Final judgment was entered based on the
25 Labor Commissioner’s order totaling \$13,989.47 in the case entitled *BSH v. American Sports*
26 *University*, San Bernardino Superior Court Case No. CIVDS916819.

27 ⁴ Initials are being used to protect the individual’s identity. Individuals will be identified
28 during the course of discovery.

1 22. Respondent also failed to pay the staff wages of EB, a former employee. On
2 December 9, 2009, an order was issued against Respondent by the Labor Commissioner of the
3 State of California requiring payment of wages, plus interest and waiting time penalties, in favor
4 of EB, a former employee. The order stated that Respondent acknowledged the wages were due
5 but Respondent did not have the finances to pay the wages. Judgment was entered based on the
6 Labor Commissioner's order totaling \$10,060.53 in the case entitled *EB v. American Sports*
7 *University*, San Bernardino Superior Court Case No. CIVDS917505.

8 23. Respondent also failed to pay the staff wages of JC, a former employee. On August
9 23, 2011, an order was issued against Respondent⁵ by the Labor Commissioner of the State of
10 California requiring payment of 8 months of wages, plus interest and waiting time penalties, in
11 favor of JC. Final judgment was entered based on the Labor Commissioner's order totaling
12 \$33,539.48 in the case entitled *JC v. Pacific Property Investment & Management, Inc. dba*
13 *American Sports University*, San Bernardino Superior Court Case No. 1112595. Respondent's
14 owners did not notify the Bureau of this lawsuit and judgment.

15 24. A judgment was entered against Respondent, and its owners, for a fraudulent
16 transfer. On November 17, 2011, a First Amended Judgment was issued in the case entitled
17 *Interstate Properties v. Harry Hwang, et al*, San Bernardino Superior Court, Case No.
18 CIVDS106355 ordering that: On the breach of lease cause of action, Hyung Hwang, aka Harry
19 Hwang, pay to plaintiff, the sum of \$537,358.40, and as to the cause of action for fraudulent
20 transfer, Hyung Hwang, aka Harry Hwang, Jung Hee Shin, aka Jung Hee Hwang (Harry Hwang's
21 wife), Pacific Property Investment and Management, Inc. and Respondent American Sports
22 University, jointly and severally, pay to Plaintiff the sum of \$537,358.40. The court clarified that
23 Harry Hwang's total obligation was \$537,358.40⁶. Plaintiff alleged that Harry Hwang failed to
24 make lease payments after May 14, 2009 on a property located in Huntington Park. Plaintiffs
25 also alleged that Harry Hwang collected rents from sub-tenants at this location and gave the

26 ⁵ The order was against Pacific Property Investment & Management, Inc. which was
27 doing business as American Sports University.

28 ⁶ Harry Hwang and Casey Jaesum Hwang filed for bankruptcy in March of 2013 in the
United States Bankruptcy Court, Central District, Case No. 1:13 bk-12109.

1 money to Pacific Property Investment and Management, Inc., Jung Hee Shin, aka Jung Hee
2 Hwang, and Respondent American Sports University to avoid monetary obligations.

3 25. On August 29, 2013, a complaint was filed in the case entitled *Henry Aguila v.*
4 *American Sports University, Harry Hwang and Pacific Property Investment*, San Bernardino
5 Superior Case No. CIVDS1310429. On September 22, 2014, a second amended complaint was
6 filed alleging that American Sports University and Harry Hwang breached a lease agreement they
7 had with a third party to lease out the school's property located at 399 North D. Street, San
8 Bernardino, CA 92401 for events. The case is still pending.

9 **Renewal Application**

10 26. On or about July 30, 2014, the Bureau received Respondent's Application for
11 Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited
12 Institutions, Application No. 27573. The application was signed by owners Harry Hwang (50%
13 owner) and Jane Hwang (50% owner), under penalty of perjury, on June 26, 2014. Mr. Hwang
14 was listed as President and Ms. Hwang was listed as Chief Financial Officer. The application
15 also contained the following information:

16 (a) Question 4.2 requested a statement from any of the owners that have been convicted of
17 any misdemeanors or felonies. No statements were provided. Respondent failed to disclose Mr.
18 Hwang's felony convictions;

19 (b) Question 4.2 requested a statement from any of the owners that has stipulated to a
20 judgment or administrative order or consent degree. No statements were provided by the
21 Owners;

22 (c) Question 4.3 requested an explanation of "any legal action pending against the
23 institution or ownership or any of the institution's owners, officers, corporate directors,
24 administrators or instructors by any federal state, or local law enforcement agency involving
25 alleged acts of fraud, dishonesty, financial management, unpaid liabilities to any governmental
26 agency or claims for pecuniary loss suffered by any student." No statements were provided by
27 the Owners;

1 (d) The application indicated that the institution “has and can maintain the financial
2 resources required pursuant to [Code of Regulations, title 5, section 71745];”

3 (e) The application also indicated that there were no substantial changes to the school,
4 including to organization and management, to instruction and degrees offered, to educational
5 programs, to facilities and equipment and to the libraries and other learning resources.

6 **Site Visit**

7 27. On August 19, 2014, Bureau investigators conducted an unannounced site visit to
8 Respondent’s campus. The President, Donald L. Singer, Ph.D., was not present at the time of the
9 visit. The school is housed in a two-story building, which has a separate theatre that is rented out
10 for events and a sports center that is rented out for classes and sporting events. The visit revealed
11 that the school has not been properly maintained. There is visible damage to the school’s
12 buildings including water damage to the ceilings, walls and wooden floors. Plaster and paint are
13 peeling from walls. Panels are missing from the ceiling. The floors were warped and uneven,
14 and the dorms smelled of mold. Mr. Hwang confirmed that the dormitory area had been flooded.
15 The Bureau investigators also confirmed that the school had no library/or resources on the
16 premises.

17 28. Mr. Hwang also stated that he was the president of Respondent and oversaw
18 everything. He denied having any legal issues, past or present.

19 **Complaint**

20 29. On December 16, 2014, the Bureau received a complaint alleging that Respondent
21 was advertising and offering the American Council on Exercise (ACE) program and that the
22 American Cambridge Academy is advertising Respondent’s facilities as its own. An
23 Enforcement Inspection Analyst’s investigation reveals that Respondent was advertising and
24 offering an unapproved an ACE program. Further, a review of Respondent’s website revealed
25 that American Cambridge Academy is advertising ASU’s facilities as its own. The Bureau,
26 however, did not receive an application for Change of Educational Objective to add any other
27 programs, including an ACE Program.

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FIRST CAUSE FOR DISCIPLINE

(Substantive Change Without Authorization)

30. Respondent is subject to disciplinary action under sections 94893 and 94894, subdivision (a) of the Code, and California Code of Regulations, title 5, section 71650, in that it made the substantive change of adding an ACE program without Bureau authorization, and it advertised and offered an unapproved ACE program without Bureau authorization. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 18-19, and 29 inclusive, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Failure To Disclose Conviction)

31. Respondent is subject to discipline under sections 94932 and 71130, subdivision (c)(5), and Business and Professions Code 490, subdivision (a), in that it failed to provide a statement that Harry Hwang was convicted in 2002 of bribery in any of the applications it submitted to the Bureau. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 17-18, 26 and 28 inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Failure To Disclose Student's Claim for Pecuniary Loss And Fraud)

32. Respondent is subject to discipline under sections 94932 and 71130, subdivision (d), in that it failed to advise the Bureau of a student's claim for pecuniary loss and fraud and the April 14, 2010 amended default judgment entered in the amount of \$265,028.01 in the case entitled *Hong Kyun Park v. American Sports University*, San Bernardino Superior Court Case No. CIVDS 903403. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 20 inclusive, as though set forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Pay Timely Refunds)**

3 33. Respondent is subject to discipline under sections 94932 and 94937, subdivision
4 (a)(2), and CCR, title 5, section 71745, subdivisions (a)(4), in that the institution failed to pay a
5 timely refund to a student and made misrepresentations to the student. Complainant refers to and
6 by this reference incorporates the allegations set forth above in paragraph 20 inclusive, as though
7 set forth fully.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Violated Facilities and Equipment Requirements)**

10 34. Respondent is subject to discipline under sections 94932 and CCR, title 5, section
11 71735, subdivision (b) in that the school has not been properly maintained and, on August 19,
12 2014, there was visible damage to the school's buildings including water damage to the ceilings,
13 walls and wooden floors. Plaster and paint are peeling from walls. Panels were missing from
14 ceiling. The floors were warped and uneven, and the dorms smelled of mold. Complainant refers
15 to and by this reference incorporates the allegations set forth above in paragraph 27 inclusive, as
16 though set forth fully.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Failure to Have Sufficient Assets and Financial Resources to Pay Operating Expenses)**

19 35. Respondent is subject to discipline under sections 94932 and CCR, title 5, section
20 71745, subdivisions (a)(5) and (a)(6), in that the institution failed to document that it has
21 sufficient assets and financial resources to pay all operating expenses, including as follows:

22 a. Respondent failed to have sufficient financial resources to pay all of its operating
23 expenses because it failed to pay wages to employees, BSH, EB and JC. Further, Respondent
24 failed to disclose the lawsuits filed by the employees and its inability to pay the wages, including
25 in its July 30, 2014 application. Complainant refers to and by this reference incorporates the
26 allegations set forth above in paragraphs 21 though 23 and 26 inclusive, as though set forth fully;

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1 b. Respondent is facing several liabilities which indicate that the institution cannot
2 document sufficient assets and financial resources to pay all operating expenses, including the
3 following: April 14, 2010 amended default judgment entered against American Sports University
4 in the amount of \$265,028.01 in the case entitled *Hong Kyun Park v. American Sports University*,
5 San Bernardino Superior Court Case No. CIVDS 903403; and November 17, 2011 judgment
6 entered against Respondent, and its owners in the case entitled *Interstate Properties v. Harry*
7 *Hwang, et al*, San Bernardino Superior Court, Case No. CIVDS106355 in the sum of
8 \$537,358.40. Complainant refers to and by this reference incorporates the allegations set forth
9 above in paragraphs 20 through 25 and 26 inclusive, as though set forth fully.

10 **PRAYER**

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

- 14 1. Revoking or suspending Institution Code Number 14960906 issued to American
15 Sports University, Harry Hwang 50% Owner, Jane Hwang 50% Owner;
- 16 2. Ordering Harry Hwang and Jane Hwang, Owners of American Sports University, to
17 pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and
18 enforcement of this case pursuant to Education Code section 94937, subdivision (c), and Business
19 and Professions Code section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 8/21/15



23 JOANNE WENZEL
24 Chief
25 Bureau for Private Postsecondary Education
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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