

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAR 08 2023

DEPT. OF REAL ESTATE

By 

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In the Matter of the Accusation of:)
PEYMAN REALTY AND INVESTMENTS)
INC. and SHOLEH PEYMAN, individually)
and as designated officer of Peyman Realty and)
Investments, Inc.,)
Respondents.)

DRE No. H-42018 LA

OAH No. 2022020049

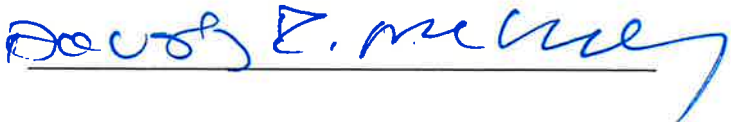
DECISION

With no Decision issued prior to February 1, 2023, pursuant to Government Code section 11517(c)(2), the Proposed Decision dated July 21, 2022 of the Administrative Law Judge of the Office of Administrative Hearings, is deemed adopted by operation of law as the Decision of the Real Estate Commissioner in the above-entitled matter, effective February 2, 2023.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

IT IS SO ORDERED 3.2.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

**PEYMAN REALTY AND INVESTMENTS, INC. AND SHOLEH
PEYMAN, individually and as designated officer of Peyman
Realty and Investments, Inc.,**

Respondents.

Agency Case No. H-42018LA

OAH No. 2022020049

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 27, 2022 by videoconference.

Kevin H. Sun, Counsel, Department of Real Estate (Department) represented the Complainant.

Respondent Sholeh Peyman (Respondent Sholeh Peyman) represented herself and Respondent Peyman Realty and Investments, Inc. (Respondent PRI) (collectively Respondents).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 27, 2022.

FACTUAL FINDINGS

1. Veronica Kilpatrick, Supervising Special Investigator of the State of California, filed and served the Accusation in her official capacity. Respondents filed a timely Notice of Defense. All jurisdictional requirements have been met.

2. On June 6, 2012, the Department issued corporate real estate broker license number 01916115 to Respondent PRI with Respondent Sholeh Peyman, president, as the designated officer. The license was in full force and effect at all relevant times and will expire on June 5, 2024, unless renewed

3. On January 4, 2002, the Department issued a salesperson license to Respondent Sholeh Peyman. Subsequently, on November 2, 2004, the Department issued individual broker's license number 01325593 to Respondent Sholeh Peyman. The license was in full force and effect at all times relevant to the charges brought herein and will expire on November 1, 2024.

4. Respondent Sholeh Peyman was the designated officer for Sholeh Peyman's Realty Team Inc., (Team Inc.) corporate broker license number 01525737, from January 30, 2007 to January 29, 2011. Team Inc. is not a named as a respondent.

6. Respondents engaged in the business of, acted in the capacity of, and advertised as a real estate corporation withing the meaning of Business and Professions Code (Code) section 10131, subdivisions (a) and (b). Respondents' activities included the leasing and renting of real property, the collection of rents and

security deposits for real property on behalf of others for compensation or with the expectation of compensation. Respondents' activities also included purchase and sale of real property on behalf of others for compensation or in expectation of compensation. Respondents employed two licensed salespersons.

7. Respondents accepted and received funds including trust funds (trust funds) from and on behalf of actual and prospective tenants and property owners. The trust funds were related to transactions handled by Respondents. Respondents made deposits and disbursements from the trust funds. After a consumer complaint, the Department initiated an audit of Respondents' trust funds as part of its investigation.

Audit

8. On November 25, 2020, Chambers Tse (Tse), a Department Auditor III, completed an audit examination of the books and records of Respondent PRI pertaining to its real estate property management activities. The audit examination covered the period of January 1, 2018 through July 31, 2020 (audit period). Tse has seven years of experience as an auditor with the Department and three years of experience in private sector accounting. Tse holds a bachelor's degree in Business with a concentration in Accounting. Tse provided credible and knowledgeable testimony about the audit findings.

9. To conduct an audit, Tse conducts a general background search of the licensee, contact's the licensee, asks about the licensee's activities, sets up an entrance interview with the broker of record or designated officer, and requests specific documents pertinent to the audit period. This audit was conducted during the Covid-19 pandemic at the Department's Los Angeles District office by Tse rather than at the licensee's place of business. Respondent Sholeh Peyman requested, and was granted,

additional time to locate certain documents. Tse conducted an exit interview with Respondent Sholeh Peyman and she received a copy of the audit report.

10. The audit was limited to examination of Respondents' property management activities to determine whether Respondents conducted those activities in accordance with the Real Estate Law.

11. According to the Audit report No. LA200039 prepared by Tse on November 25, 2020 (audit report), Respondents committed violations of the Real Estate Law. Tse documented the following in his report:

- Respondents maintained one bank account for the receipts and disbursements of funds related to property management within the audit period. The Account was with Wells Fargo bank and the last four digits of the account number were 9609 (Account 1).
- Respondents received \$380,201.65 during a twelve month period.
- Account 1 had a minimum shortage of \$2,403.84 during the audit period.
- Account 1 had an unidentified shortage of \$1792.84 for the audit period.
- There was no evidence that Respondents obtained written consent from the owners of the trust funds to allow Respondents to reduce the balance of the funds in Account 1 to an amount less than the aggregate trust fund liabilities of Respondent PRI to all owners of the trusts funds.
- Respondents did not maintain complete and accurate columnar records for all trust funds received and disbursed for Account 1.

- The records of Account 1 maintained by Respondents had inaccurate daily balances of trust funds and missing entries.
- Respondents did not maintain complete and accurate separate records for each beneficiary or transaction of all trust fund receipts and disbursements for Account 1 in connection with Respondent PRI's property management activities during the audit period.
- Respondents did not perform and maintain a complete and accurate monthly reconciliation of the balance of all separate beneficiary and/or transaction records to the balance of the records of all trust funds received and disbursed for Account 1.
- Account 1 was not set up in the name of Respondent PRI or a fictitious business name as trustee and was nevertheless used to collect trust funds in connection with Respondents' property management activities.
- Respondents used the fictitious business name "Sholeh's Property Management" in connection with their property management activities. This fictitious business name was not licensed by the Department during the audit period.
- Trust funds and Respondents' operational and personal funds were commingled in Account 1.
- Respondent Sholeh Peyman did not exercise adequate supervision and control over Respondent PRI's property management activities and failed to provide established policies, rules, procedures and systems to review, oversee, inspect, and manage transaction involving trust funds.

Costs

12. Complainant presented evidence of investigation costs totaling \$1,734.90 consisting of .55 hours of Program Technician time at \$40 per hour; 20.70 hours of special investigator time at \$79 per hour and .80 hours of Supervising Special Investigator time at \$77 per hour. These costs were excessive given that the evidence presented at hearing was primarily obtained by and prepared by the auditor rather than an investigator and there was no evidence of substantial investigative activities undertaken pertinent to the charges made in this case. Accordingly, the investigative costs are reduced to \$500.

13. Complainant presented evidence of enforcement costs totaling \$2304 consisting of 24 hours of attorney charges at \$96 per hour. Given the nature, complexity and preparation of this case, the charges are deemed reasonable.

14. Complainant presented evidence of audit costs totaling \$4876. The costs consisted of 81 hours of auditor time at \$58 per hour and 2 hours of supervising auditor time at \$89 per hour. Given the nature, complexity and testimony of Auditor Tse, the charges are deemed reasonable.

Respondent's Evidence

15. Respondent Sholeh Peyman testified on behalf of Respondents. According to Respondent Sholeh Peyman, she did not know she could not pay operating expenses directly from the trust funds in Account 1. After Auditor Tse told her that she was not permitted to make the payments directly from the trust funds, she immediately ceased the practice. Respondent Sholeh Peyman explained that she often had to advance funds for repairs or utilities on properties when the receipts were

not sufficient to cover those necessary expenses. She did not contradict Tse's audit and conclusions and admitted and expressed remorse for her poor management. Respondent Sholeh Peyman registered the fictitious business name "Sholeh's Property Management" with the Department subsequent to the audit. Respondent Sholeh Peyman claimed to have accounted for and remedied all shortages in the trust funds, but did not present any documentary evidence to support the claim.

16. Respondent Sholeh Peyman testified that she made approximately \$30,000 last year and is also supporting her daughter in college. She requested relief from payment of the costs of prosecution, investigation and audit based upon financial hardship.

LEGAL CONCLUSIONS

1. Respondents are subject to discipline pursuant to Business and Professions Code (Code) section 10145 and California Code of Regulations, title 10, (Regulation) section 2832.1 based upon factual findings 1-16, because there was a minimum trust fund shortage of \$2,403.84 during the audit period and there was no evidence that Respondents were given written consent from the owners of the trust funds to allow Respondents to reduce the balance of the funds in Account 1 to an amount less than the aggregate trust fund liabilities of PRI to all owners of trust funds.

2. Respondents are subject to discipline pursuant to Code section 10145 and Regulation 2831 based upon factual findings 1-16, because Respondents failed to maintain complete and accurate columnar records for all trust funds received and disbursed for Account 1, which was used for property management activities during

the audit period. The record maintained by Respondents had inaccurate daily balances of trust fund and missing entries.

3. Respondents are subject to discipline pursuant to Code section 10145 and Regulation 2831.1 based upon factual findings 1-16, because Respondents failed to prepare complete and accurate separate records for each beneficiary or transaction of all trust fund receipts and disbursements for Account 1 in connection with Respondent PRI's property management activities during the audit period. The records maintained by Respondents had inaccurate daily balances of trust funds and missing dates of deposits and disbursements.

4. Respondents are subject to discipline pursuant to Code section 10145 and Regulation section 2831.2 based upon factual findings 1-16, because during the audit period, Respondents did not perform and maintain a complete and accurate monthly reconciliation of the balance of all separate beneficiary and/or transaction records to the balance of the records of all trust funds received and disbursed for Account 1.

5. Respondents are subject to discipline pursuant to Code section 10145 and Regulation 2832 based upon factual findings 1-16, because Account 1 was not set up in the name of Respondent PRI or a fictitious name as trustee although Account 1 was used to collect trust funds in connection with Respondents' property management activity.

6. Respondents are subject to discipline pursuant to Code section 10159.5 and Regulation section 2731 based upon factual findings 1-16, because during the audit period, Respondents used the unlicensed fictitious business names "Sholeh's Property Management" in connection with their property management activities

without first authorization from the Department. This fictitious business name does not show up in the Department's records as a licensed fictitious business name.

7. Respondents are subject to discipline pursuant to Code section 10145 and 10176, subdivision (e) and Regulation 2832 based upon factual findings 1-16, because Respondents deposited and disbursed trust funds into and from Account 1. Additionally, Respondent PRI commingled its own funds with trust funds in Account 1 and made deposits and disbursements related to Respondents' general/operating/personal expenses.

8. Respondent Sholeh Peyman is subject to discipline pursuant to Code section 10159.2 and Regulation section 2725 based upon factual findings 1-16, because Respondent Sholeh Peyman failed to exercise adequate supervision and control over Respondent PRI's property management activities and failed to provide established policies, rules, procedures, and systems to review, oversee, inspect and manage transactions requiring a real estate license and the handling of trust funds.

9. Respondents are subject to discipline pursuant to Code section 10177, subdivision (d), for willful disregard of the Real Estate Law, subdivision (g), negligence, and subdivision (h), failure to supervise, by reason of factual findings 1-16 and legal conclusions 1-8.

10. The Complainant in a disciplinary proceeding before the Department or Commissioner, may request that the administrative law judge direct the respondents in a disciplinary proceeding found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. (Code section 10106).

11. In evaluating a request for costs, the administrative law judge must consider whether Complainant's investigation was "disproportionately large" compared to the violation, and whether the licensee: (1) committed some misconduct but "used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;" (2) had a "subjective good faith belief in the merits of his or her position;" (3) raised a "colorable challenge" to the proposed discipline; and (4) "will be financially able to make later payments." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].)

12. Based on the foregoing, the administrative law judge determined that the reasonable costs of prosecution and investigation were \$2804 consisting of \$500 in reduced investigative costs and \$2304 in attorney's fees. Respondent made good faith use of the hearing process. There was evidence the payment of costs would be a financial hardship for Respondent, even after the reduction referenced above. Accordingly, as a condition of the issuance of a restricted license to Respondent Sholeh Peyman, Respondents Sholeh Peyman and PRI shall pay the Complainant's investigative and prosecution costs in the amount of \$2000 on a payment plan approved by the Department.

13. Code section 10148, subdivision (b) provides that the Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner has found in a final decision, following a disciplinary hearing, that the broker has violated Code section 10145 or a Regulation or rule of the Commissioner interpreting the Code. Here, Respondents committed such violations. Respondents Sholeh Peyman and PRI shall pay the full costs of the audit in the amount of \$4876 in addition to the reduced

investigative and prosecution costs of \$2000 (total \$6876) on a payment plan approved by the Department.

Disposition

14. Respondents disregarded the fundamental legal requirements related to real estate trust accounts including the name in which the account was held, the required record keeping and reconciliations, and commingled funds. The audit also revealed an unidentified shortage in the trust funds during the audit period. These are serious violations of the duties and responsibilities associated with Respondents' licenses. Respondent Sholeh Peyman has been licensed as a real estate broker for nearly 18 years and held a real estate sales license for two years prior. Respondent Sholeh Peyman should therefore have a better understanding of her responsibilities as a real estate broker and a designated officer. Respondent Sholeh Peyman has expressed regret and remorse for her poor management and represented that she has remedied the issues raised in the audit. While these are steps in the right direction, her failure to oversee, properly supervise and conduct the activities of Respondent PRI is disturbing. All factors in mitigation and rehabilitation have been considered, and under the circumstances of this case, public protection will be best achieved by the revocation of Respondents' licenses with the revocation of Respondent Sholeh Peyman's individual broker's license stayed for 180 days with an option for her to obtain a restricted individual real estate broker license for two years and an order that the Respondents pay the full costs of the audit and the reasonable costs of the investigation and prosecution of this matter.

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ORDER

All licenses and licensing rights of Respondents Sholeh Peyman and Peyman Realty and Investments, Inc. under the Real Estate Law are revoked; provided, however, the revocation of Respondent Sholeh Peyman's real estate broker license is stayed for 180 days and a restricted real estate broker license shall be issued to Respondent Sholeh Peyman pursuant to Section 10156.5 of the Business and Professions Code if Respondent Sholeh Peyman makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent Sholeh Peyman may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent Sholeh Peyman's conviction or plea of nolo contendere to a crime which is substantially related to her fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent Sholeh Peyman may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent Sholeh Peyman has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent Sholeh Peyman shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions,

limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent Sholeh Peyman shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent Sholeh Peyman has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent Sholeh Peyman fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent Sholeh Peyman presents such evidence. The Commissioner shall afford Respondent Sholeh Peyman the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent Sholeh Peyman 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 Sholeh Peyman fails to satisfy this condition, the Commissioner may order suspension of respondent's license until Respondent Sholeh Peyman passes the examination.

6. Respondent Sholeh Peyman shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by this Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent Sholeh Peyman's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

7. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondents and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

8. The restricted license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of the conviction of Respondent Sholeh Peyman (including a plea of nolo contendere) of a crime which is substantially related to Respondent Sholeh Peyman's fitness or capacity as a real estate licensee; or the receipt of evidence that Respondent Sholeh Peyman has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

9. With the application for license, or with the application for transfer to a new employing broker, Respondent Sholeh Peyman shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

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10. Pursuant to Section 10148 of the Business and Professions Code, Respondents Sholeh Peyman and Peyman Realty and Investments, Inc. shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondents have corrected the trust fund violation(s) found in factual finding 11 above. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to Respondent Sholeh Peyman pending a hearing held in accordance with Section 11500 of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

11. Trust Fund Violation Course Requirement: Respondent Sholeh Peyman shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent Sholeh Peyman has

successfully completed the trust fund account and handling continuing education course within 120 days of the effective date of the Decision in this matter.

12. Respondent Sholeh Peyman shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent Sholeh Peyman's arrest, the crime for which Respondent Sholeh Peyman was arrested and the name and address of the arresting law enforcement agency. Respondent Sholeh Peyman's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

13. Respondents Sholeh Peyman and Peyman Realty and Investments, Inc. shall pay the full costs of the audit in the amount of \$4876 in addition to the reduced investigative and prosecution costs of \$2000 (total \$6876) on a payment plan and schedule approved by the Department.

DATE: 07/21/2022

Glynda Gomez

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings