

BEFORE THE BUREAU OF REAL ESTATE

FILED

STATE OF CALIFORNIA

JUL 06 2015

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BUREAU OF REAL ESTATE

By 

In the Matter of the First Amended Accusation of

APARTMENT HUNTERS, INC., and
STEVEN K. SHAYAN, as a designated officer
for Apartment Hunters, Inc.,

(Respondents)

Case No. H-39404 LA
OAH No. 2014050485

In the Matter of the Accusation of

APARTMENT HUNTERS, INC.,
a Prepaid Rental Listing Services (PRLS)
corporation,

(Respondent)

Case No. H-36458 LA
OAH No. 2014060980

DECISION

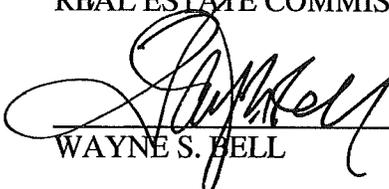
The Proposed Decision dated May 27, 2015, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on JUL 27 2015.

IT IS SO ORDERED

7/1/2015

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation (Order
Suspending Restricted License) Against:

APARTMENT HUNTERS, INC.,
a Prepaid Rental Listing Service (PRLS)
corporation,

Respondent.

Case No. H-36458 LA

OAH No. 2014060980

In the Matter of the First Amended Accusation
Against:

APARTMENT HUNTERS, INC., and
STEVEN K. SHAYAN, as designated officer
for Apartment Hunters, Inc.,

Respondents.

Case No. H-39404 LA

OAH No. 2014050485

PROPOSED DECISION

These consolidated matters were heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on February 25, 2015, in Los Angeles.¹

Lissete Garcia, Real Estate Counsel, represented Complainants.

Jilbert Tahmazian, Esq., represented Respondents Apartment Hunters, Inc. and Steven K. Shayan.

The record was held open after the hearing concluded so the parties could submit closing argument briefs, which were timely received and marked for identification as described in orders the ALJ issued describing the events that transpired while the record remained open. The record was closed and the matter submitted on April 30, 2015.

¹ These two matters were consolidated for hearing on February 13, 2015, by order of Presiding Administrative Law Judge Susan Formaker, without objection.

FACTUAL FINDINGS

Parties and Jurisdiction in Case No. H-39404 LA

1. Complainant Maria Suarez brought the Accusation in Bureau of Real Estate (Bureau) case number H-39404 LA (OAH No. 2014050485) in her official capacity as a Deputy Real Estate Commissioner. Respondents timely submitted a request for a hearing to contest the allegations of the Accusation.

2. While the record remained open after the hearing concluded, Complainant was given leave to file a First Amended Accusation and Respondents were allowed to file an opposition to any such amended pleading. (See ALJ's order, Ex. 13.) On April 17, 2015, Complainant filed the First Amended Accusation. On April 27, 2015, Respondents filed an opposition to the First Amended Accusation. The record was thereafter closed. (See ALJ's order, Ex. 14.) Respondents filed another opposition to the First Amended Accusation and requested another day of hearing to respond. The ALJ denied Respondents' request and the record remained closed.² (See ALJ order, Ex. 15.)

3. In 2007, Respondent Apartment Hunters, Inc. (AHI) was issued a prepaid rental listing service (or PRLS) license, as a corporation. As a result of the prior disciplinary action described in more detail below, Respondent AHI was issued, upon its application, a restricted PRLS license pursuant to, and subject to, the provisions of Business and Professions Code section 10156.7. However, Respondent AHI's license expired on March 12, 2014, and was not subsequently renewed.³

4. Respondent Steven K. Shayan (Respondent Shayan) is the president of and designated officer for Respondent AHI. Respondent Shayan has never been licensed by the Bureau in any capacity.

Parties and Jurisdiction in Case No. H-36458 LA

5. Respondent AHI's PRLS license was restricted as a result of discipline issued after an accusation filed against it in Bureau case number H-36458 LA. The order restricting AHI's PRLS license in that matter became effective on February 23, 2012, and included a condition whereby the restricted license could be suspended prior to a hearing by order of the Real Estate Commissioner (Commissioner). As a result of the above-described Accusation filed in Bureau case number H-39404 LA, the Commissioner issued an Order Suspending Restricted Real Estate License (Suspension Order) against Respondent AHI, also bearing Bureau case number H-36458 LA (OAH No. 2014050485), on May 8, 2014.

² The events that transpired after the hearing, and the documents filed by the parties during that time, are described in more detail in exhibits 13-15.

³ The Bureau retains jurisdiction to seek disciplinary action against this expired license pursuant to Business and Professions Code section 10103.

6. Respondent AHI requested a stay of the Suspension Order. The Bureau denied that request. Respondent AHI thereafter timely requested a hearing to contest the Suspension Order. Respondent AHI's restricted PRLS license has been suspended since May 8, 2014.

Prior Discipline

7. Respondent AHI supplied prospective tenants with listings of residential real properties for rent pursuant to an arrangement under which the prospective tenants were required to pay a fee in advance of, or contemporaneously with, supplying listings.

8. On February 11, 2010, the Bureau filed the aforementioned accusation against Respondent AHI in Bureau case number H-36458 LA. The matter was heard by an administrative law judge on October 20, 2010, and a Proposed Decision was issued on December 29, 2010, in which it was recommended that Respondent AHI's license be suspended for six months. The Proposed Decision was not adopted.

9. On September 30, 2011, a Decision After Rejection in said case became effective. In that Decision, the Acting Commissioner concluded that Respondent AHI's license should be revoked because it had violated the following provisions of the Business and Professions Code:

a. sections 10167.2, 10167.3 and 10167.12, by engaging in the business of a prepaid rental listing service under two fictitious business names without having a valid license to operate under those names;

b. sections 10167.9 and 10167.12, by using PRLS contracts not previously approved by the Commissioner;

c. section 10167.12, by continuing to operate as a PRLS business under two unlicensed fictitious business names after the Department had issued a Desist and Refrain Order demanding that it stop doing so;

d. sections 10167.11 and 10167.12, by not confirming the availability of property for tenancy during the four-day period immediately preceding the dissemination of the listing information; and

e. sections 10167.10 and 10167.12, by failing to timely provide refunds of fees paid by prospective tenants for PRLS rental lists that did not meet contracted specifications.

10. On February 3, 2012, the Acting Commissioner issued a Decision After Reconsideration, in which she maintained the same findings and conclusions made in the Decision After Rejection. However, the Acting Commissioner set aside the revocation and granted Respondent AHI a restricted PRLS license, which included a condition that it may be suspended prior to a hearing by order of the Commissioner on satisfactory evidence that

Respondent AHI violated provisions of the Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attaching to the restricted license.

11. According to the terms of the restricted license, Respondent AHI was not eligible to apply for the issuance of an unrestricted license or for removal of any of the terms or conditions of said restricted license until two years had elapsed from the effective date. It was not established that Respondent AHI had submitted such a request at any time.

Respondents' Use of Information from Hometeam Property Management

12. On June 7, 2013, the Bureau received a complaint from Mr. Yo Wakita, a leasing manager and co-owner of Hometeam Property Management (Hometeam). Hometeam is a licensed real estate corporation that performs property management services for property owners in Southern California, particularly the San Diego area. Hometeam lists available rental properties on the Multiple Listing Service (MLS), on Hometeam's own website, and on various syndicated real estate marketing websites, such as Craigslist, Trulia, and Zillow.

13. Mr. Wakita submitted his complaint to the Bureau after he discovered that Respondents had, without Hometeam's authorization, used copyrighted pictures and information about four separate rental properties listed on Hometeam's website; and, without written or oral permission, posted said pictures and information about the properties on different websites including, but not limited to, Trulia and Zillow. Specifically, Respondents took photographs of the four properties displayed on Hometeam's website, eliminated the "Hometeam" watermark inserted on the photographs by cropping and shrinking the borders of the photographs, and placed an "ApartmentHunterZ" watermark on the photographs. The photographs and information from Hometeam's website concerning the four properties, as well as AHI's website address, were placed on promotions for the properties found on the other websites.

14. Hometeam had an exclusive listing with the landlords of the four properties in question, which were located in Chula Vista as follows: one on Thompson Avenue; one of Reisling Terrance; and two on Stanislaus Drive. Respondents listed an incorrect rental amount for one of the properties, although the rest of the information was generally the same as that on Hometeam's website for the four properties.

15. A person viewing Respondents' advertisements for the four properties on the Trulia and Zillow websites would initially believe Respondents were authorized to solicit prospective tenants for those properties on behalf of the property owners, managers, or any authorized agent. However, as established by the testimony of AHI employee Kevin Shayan, the brother of Steven Shayan, somebody viewing these four listings on either another website or AHI's would receive access to the property address and landlord contact information only when they paid a fee to AHI. Once that was done, the prospective tenant would be referred only to Hometeam, not AHI. Respondents only receive compensation on such listings by customers who pay Respondents a subscription fee. Respondents do not participate in renting out the properties and receive no compensation when the properties are leased.

16. A. Mr. Wakita was convincing in his testimony that at no time did Hometeam provide consent to Respondents to list the four properties in question on any website. Mr. Wakita never gave any such verbal consent. He checked his company's e-mail system and could find no e-mails from Respondents during the relevant time. His testimony was corroborated by a screenshot of his company's received e-mail file during the relevant time that shows nothing received from Respondents.

B. Mr. Wakita was also convincing in his testimony that his only partner, his brother, did not have access to the e-mail system at the time and that his brother did not give any consent to Respondents.

17. Respondents' evidence supporting their contention that they had obtained consent from Hometeam to list the four properties was not convincing. Kevin Shayan testified that AHI would have sent Hometeam an e-mail in May 2013 advising that it could promote the properties in question and that AHI would have done so only if someone from Hometeam clicked on a consent link on that e-mail. However, Mr. Shayan testified that Respondents could not produce that e-mail because such messages had been purged from its system three or four months after being sent. Since the Accusation in Bureau case number H-39404 LA was filed and served well after that time, Mr. Shayan testified there was no reason for Respondents to save the e-mail in question. However, Mr. Shayan's testimony was undercut by several e-mails he presented during the hearing between he and Trulia which were generated from March through June 2013, well before the time he testified AHI's e-mails had been purged. No explanation was presented why those e-mails would be available, but not an e-mail sent to Hometeam in May 2013. The only tangible evidence presented by Respondents concerning an e-mail received from Hometeam was a copy of an Excel spreadsheet in which such an e-mail was described, along with a "Unique ID" number for said e-mail. However, that document does not purport to be a screenshot of information contained in an e-mail system, but rather information inputted into the spreadsheet by another person. The document is not convincing.

18. At no time did Respondents contact and obtain consent from the landlords owning the four properties in question to promote them on the other websites. Kevin Shayan conceded in his testimony that no such efforts were taken. Instead, he testified that the way in which consent would have been obtained from Hometeam should be deemed as consent from the actual landlords as well. For that reason, it was established that Respondents did not confirm the availability of the four properties for tenancy during a four-day period immediately preceding their dissemination of the listing information.

19. Respondents contend but failed to establish that either Trulia or Zillow served as a constructive or authorized agent on behalf of Hometeam or the four property owners. It is true that Mr. Wakita admitted on cross-examination that he has used Trulia to upload property listings, and that he has not read Trulia's terms and conditions of doing so. However, Mr. Wakita did not testify that he uploaded the four properties in question onto Trulia, nor did he testify that he agreed to allow Trulia to be an authorized agent for purposes of the four properties in question. In fact, after seeing Respondents' promotions of the four

properties in question, Mr. Wakita complained to both Trulia and Zillow. Both websites removed Respondents' promotions of the four properties in question. Those events indicate that Mr. Wakita had not authorized Respondents or Trulia to list the four properties in question. In any event, Respondents agree that they never contacted any of the property owners, and they presented no documentation showing that Trulia or Zillow were appointed to act as an authorized agent with regard to the four properties in question.

20. Mr. Wakita conceded that all of the four properties were rented out by Hometeam. No evidence indicates that Respondents had interfered with Hometeam's efforts in that regard. Mr. Wakita expressed concern that Respondents' promotions duplicating what Hometeam had placed on its website would cause confusion in the market that could interfere with Hometeam's business. Based on the evidence presented in this case, that concern at this time is speculative.

Respondents' Vacant Office

21. Bureau Special Investigator David Huang was assigned to investigate Mr. Wakita's complaint. While doing so, Special Investigator Huang tried to contact Respondents. He could not reach them by telephone, so he decided to visit their office.

22. On August 12, 2013, Special Investigator Huang went to the address listed by Respondents with the Bureau as their main office and mailing address: 201 N. Robertson Blvd., Suite 202, in Beverly Hills. Special Investigator Huang discovered that the office suite there previously used by Respondents had been vacant for some time.

23. According to Kevin Shayan, Respondents moved from their designated address to an office in Orange County about three years ago. However, Respondents failed to notify the Commissioner of a new main office or mailing address. Kevin Shayan testified that Respondents had mailed such a notification to the Bureau, but he failed to corroborate that testimony, such as by presenting a copy of a notification kept in a business file. The Bureau's official license history record shows no such notification was received. Kevin Shayan also testified that Respondents submitted new PRLS contracts to the Commissioner for approval which contained the new address in Orange County. However, his testimony was self-serving, uncorroborated and for those reasons not persuasive.

24. Mr. Shayan conceded in his testimony that AHI is a virtual office, in that AHI employees work mainly from their homes over the internet. Some of the AHI employees are located overseas in Lithuania and Russia. The new office address in Orange County is simply a place to receive mail and service of process. There are no desks or offices or employees there. Thus, if Respondents' PRLS consumers tried to visit the office to complain or seek other information, there would be no AHI employee there to help them.

25. Respondents' essentially conduct all of their business over the internet and telephone lines. Kevin Shayan testified that if a consumer complains and asks for a refund, they receive it, "no questions asked." Thus, he testified there is no need for an employee to

be located at Respondents' physical address. He also testified that personnel at the office in Orange County can accept service of process or official Bureau requests, if need be.

Unlicensed Activity

26. Other than unsuccessfully requesting a stay, Respondents have ignored the Suspension Order. Kevin Shayan was clear in his testimony that Respondents have continued to engage in PRLS activity after receiving the Suspension Order on or about May 8, 2014, and have continued doing so to the present time. Respondent Shayan was not licensed in any capacity by the Bureau during this period.

27. Respondents contend, but did not establish, that the Bureau knew at all times relevant that they were continuing to engage in PRLS activities after the restricted license was suspended and/or expired. If anything, the record created in this case tends to indicate the Bureau was not aware of such activity until Kevin Shayan testified as described above during the hearing.

28. Kevin Shayan testified that Respondents continued to engage in PRLS activity after AHI's restricted license was suspended because they had not yet had an opportunity to challenge the Suspension Order, presumably referring to the hearing. Respondents thereafter contended in their opposition to the First Amended Accusation that they continued to engage in PRLS activity after the Suspension Order was issued because they "would be cut off at the knees if they stopped their fifteen year business and left with no livelihood." (Ex. G, at p. 5.) They also intimated that their continued engagement in licensed activity after the restricted license was suspended and/or expired was justified because the Bureau has engaged in "relentless and ruthless efforts to shut Respondent's business down." (*Id.*)

29. Respondents did not address the fact that AHI's restricted license expired on March 12, 2014. They did not explain why the restricted license was not subsequently renewed.

Costs

30. The Bureau incurred reasonable costs in the investigation and prosecution of this matter in the amount of \$2,859.90.

31. The Bureau submitted a copy of the documents evidencing its costs to Respondents before the hearing. Respondents' counsel sent to the Bureau legal objections to said costs before the hearing. Respondents' objections have been considered and are overruled. Those objections did not include that the pleadings involved in this case do not contain a prayer for costs.

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LEGAL CONCLUSIONS

Cause for Discipline Generally

1. Pursuant to Business and Professions Code section 10167.12,⁴ subdivision (a)(1), the Commissioner has authority to discipline a PRLS licensee for violating Article 2.3 of the Real Estate Law, which pertains to PRLS activity. Pursuant to section 10177, subdivision (k), the Commissioner has authority to discipline any licensee under the Real Estate Law for violating the terms of an order granting a restricted license. Pursuant to section 10177, subdivision (d), the Commissioner also has authority to discipline any licensee for willfully disregarding or violating the Real Estate Law or the regulations promulgated to enforce it.

Cause for Discipline for False, Misleading or Deceptive Advertisements

2. Section 10167.11, which pertains to PRLS activity, states in relevant part:

“[I]t shall be a violation of this article for any licensee or any employee or agent of a licensee to do the following:

[¶] . . . [¶]

(b) Refer a property to a prospective tenant knowing or having reason to know that:

(1) The property does not exist or is unavailable for tenancy.

(2) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.

(3) The licensee has not confirmed the availability of the property for tenancy during the four-day period immediately preceding dissemination of the listing information.

(4) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.”

3. A. In this case, it was established that Respondents violated section 10167.11, subdivision (b)(2), by promoting and advertising the four properties in question in a false, misleading or deceptive way. By taking information about the four properties from Hometeam’s website, changing it, and placing it on AHI’s website, Respondents misled the viewing public into believing that Respondents were authorized to solicit prospective tenants for those properties. It was only after a prospective tenant paid a subscription fee to Respondents that they would learn otherwise. In addition, Respondents violated section

⁴All further statutory references are to the Business and Professions Code.

10167.11, subdivision (b)(4), in that they had not obtained written or oral permission to list the four properties in question on their website by the owner, manager or other authorized agent of the properties.

B. Respondents' argument that they directly obtained authorization from Hometeam to use the information was not credible. So too was their argument that somehow Trulia became a "constructive authorized agent" of either Hometeam or the property owners simply because Hometeam had used Trulia in the past to upload information about other properties and Respondents used Trulia to upload information about the four properties in question. That argument is further undercut by the fact that Respondents did not verify at any time the availability of Hometeam's properties for rent, which they would have been required to do four days before they placed information about the four properties on the Trulia and Zillow websites, pursuant to section 10167.11, subdivision (b)(3).

4. Cause exists for discipline of Respondents' real estate license and/or license rights pursuant to sections 10167.12, subdivision (a)(1), and 10177, subdivision (k), in that it was established that Respondents violated section 10167.11, subdivision (b), which is contained in Article 2.3 of the Real Estate Law. By violating the Real Estate Law, Respondents violated a term and condition of AHI's restricted PRLS license. (Factual Findings 1-20.)

Cause for Discipline for Office Abandonment

5. A. Pursuant to section 10167.5, which is part of Article 2.3 that specifically applies to PRLS licensees, "a license issued for a particular location shall automatically expire 60 days after the time the business conducted at such location ceases for any reason to be under the charge of and managed by the designated agent of record with the department, unless within such 60-day period the licensee submits written notice of the new designated agent to the department." Section 10167, subdivision (c), defines "location" as "the place, other than main or branch office of a real estate broker, where a prepaid rental listing service business is conducted."

B. Section 10162 provides, "Every licensed real estate broker shall have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business. This office shall be the place where his license is displayed and where personal consultations with clients are held. *No real estate license authorizes the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.*" (Emphasis added.) Section 10162 is part of Article 2 of Chapter 3 of the Real Estate Law.

C. California Code of Regulations, title 10, section (Regulation) 2715 states that whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, the broker must notify the Commissioner thereof no later than the next business day following the change.

D. Regulation 2710, subdivision (c), provides that notices of changes in license information or status are to be submitted to the Bureau on prescribed forms not later than five days after the effective date of the change unless otherwise provided in the applicable statute or regulation. Regulations 2710 and 2715 are part of Article 3 of Chapter 6 of the California Code of Regulations that pertain to the Real Estate Law.

6. It was established that Respondents violated sections 10167.5 and 10162, as well as Regulations 2710 and 2715, when they vacated their designated address of record with the Bureau and failed to notify the Commissioner in writing of that change over the course of three years. (Factual Findings 1-25.)

7. Respondents contend but failed to establish that they had in fact submitted written notification of their change of address to the Commissioner.

8. A. Respondents' argument that section 10162 and Regulation 2715 only apply to a licensed real estate broker or salesperson, but not to PRLS licensees, was not persuasive. The statutes and regulations contained Article 2 of Chapter 3 of the Real Estate Law generally apply to those engaged in PRLS activities, either those who have a PRLS license or licensed real estate brokers engaged in PRLS activity.

B. Respondents cite to section 10167.16, which provides that a person or corporation who has a PRLS license but is not engaged in acts for which a real estate license is required under Article 1 (brokers, salespersons, etc.) shall be subject to the provisions of Chapters 1 and 2, and sections 10450, 10452, 10453 and 10454. Since Respondents only have a PRLS license, but not a license issued under Article 1, they argue they are not subject to any of the provisions of Chapter 3, which includes section 10162. Respondents also argue that because Regulation 2715 only refers to brokers, it only applies to brokers.

C. While at face value Respondents' argument has some traction, a deeper review indicates that Respondents' interpretation of section 10167.16 is wrong and that the statute was not intended to exclude application of the provisions of Chapter 3 to PRLS licensees. First, section 10167.16 does not specifically exclude the provisions of Chapter 3 from application to PRLS licensees. Next, the argument that section 10162 does not apply to PRLS licensees (as opposed to real estate brokers engaged in PRLS activity) would lead to the absurd result that a PRLS licensee would not be required to provide the Commissioner with written notice of a change to their address of record. Moreover, Respondent AHI was issued a restricted PRLS license pursuant to section 10156.7 and able to obtain such a license as a corporate entity pursuant to section 10158. While those provisions are contained in Chapter 3, there are no such provisions in Chapters 1 or 2 allowing for a restricted license or for a corporate licensee. It is hard to conclude that the general provisions of Chapter 3 do not apply to Respondents when the very license they applied for and received was issued under Chapter 3. Ironically, Article 2.3, which contains the provisions specifically applying to PRLS activity, is contained within Chapter 3. Finally, the last sentence of section 10162 provides that "[n]o real estate license authorizes the licensee to do business except from the

location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.” That excerpt demonstrates an intention for that statute to apply to all licensees.

D. In any event, Respondents do not argue that section 10167.5 or Regulation 2710 do not apply to them. Thus, even assuming *arguendo* that Regulation 2715 does not apply to Respondents, they apparently agree that Regulation 2710 does. Regulation 2710 requires prompt written notification of a change in license status or information. As section 10167.5 specifically references both the identity of the designated agent of record and the location where the PRLS activity managed by that agent is to occur, a change in the designated address of record by the designated agent (here Respondent Shayan) can reasonably be construed as the sort of change of information contemplated by Regulation 2710. Thus, section 10167.5 and Regulation 2710 required Respondents to advise the Commissioner in writing promptly after they changed their physical office location from Los Angeles to Orange County.

9. Respondents’ above-described violation of the Real Estate Law constitutes cause for discipline of their real estate license and/or license rights pursuant to sections 10167.12, subdivision (a)(1), and 10177, subdivision (k). (Factual Findings 1-25.)

Cause for Unlicensed Activity

10. Section 10167.2 prohibits any person from engaging in the business of prepaid rental listing service unless licensed in that capacity or licensed as a real estate broker. Section 10130 makes it unlawful for any person to act as a real estate broker or real estate salesperson without first obtaining the requisite license. A reasonable interpretation of the interplay between sections 10130 and 10167.2 is that a person or corporate entity may only be engaged in PRLS activity if a PRLS license pursuant to Article 2.3 of Chapter 3 of the Real Estate Law is first obtained or, if not, a real estate broker’s license is first obtained pursuant to Article 1 of Chapter 3.

11. It was established that Respondents’ refused to abide by the Suspension Order issued on May 8, 2014, and that they willfully continued to engage in the business of prepaid rental listing service while Respondent AHI’s restricted PRLS license was suspended, had expired, and Respondent Shayan was not licensed in any capacity. That unlicensed activity violated sections 10167.2 and 10130, because at the relevant times Respondents did not have a valid PRLS license or real estate broker’s license.

12. The violation of sections 10167.2 and 10130 were willful and deliberate violations of the Real Estate Law and the terms and conditions of Respondent AHI’s restricted PRLS license and thereby constitute cause for discipline of Respondents’ real estate license or licensing rights under sections 10167.12, subdivision (a)(1), and 10177, subdivisions (d) and (k). (Factual Findings 1-29.)

13. Respondents do not dispute that they engaged in unlicensed activity. They only provided excuses for doing so. However, none of their excuses are valid justification for breaking the law. As the holder of a restricted license pursuant to section 10156.7, subdivision (b), Respondents were subject to an immediate suspension before a hearing could be convened. After unsuccessfully seeking a stay of the Suspension Order from the Commissioner, Respondents could have sought relief in Superior Court or requested an expedited hearing date of this matter. They did neither. Instead, they decided to willfully violate a legal order from the Commissioner. Moreover, Respondents allowed their restricted license to expire and failed to renew it. They have not explained how they could legally operate with an expired license. Whether or not the Bureau knew that Respondents continued to operate after the Suspension Order was issued is beside the point. In any event, it was not established that the Bureau knew Respondents were violating the Suspension Order before the hearing commenced.

Disposition

14. First Amended Accusation. Since cause for discipline has been established in this case, a determination must be made on the level of discipline warranted. Respondents received their PRLS license in 2007. Just a few years later, they were subject to serious discipline for violating the Real Estate Law, which resulted in a restricted PRLS license being issued in 2012. Slightly over one year later, Respondents engaged in the deceptive advertising of the properties listed by Hometeam. Unbeknownst to the Bureau, Respondents had abandoned their designated office of record even before they received their restricted PRLS license and failed to advise the Commissioner of their new location. Respondents essentially ignored the Commissioner's Suspension Order, allowed their restricted PRLS license to expire, and thereafter engaged in unlicensed activity. Respondents have been unapologetic for any of this misconduct. Instead, Respondents present a picture of a licensee with little regard for the Commissioner and no desire to comply with the rules and regulations established by the Commissioner. Respondents have presented no evidence indicating such misconduct will not occur again soon. Under these circumstances, an order revoking the restricted PRLS license is warranted for the protection of the public. (Factual Findings 1-29; Legal Conclusions 1-13.)

15. Suspension Order. The Suspension Order was premised only on the allegations concerning Respondents' use of the information taken from the Hometeam website. Since cause for discipline based on those allegations was established, there is cause to sustain the Suspension Order. Since Respondents' restricted PRLS license will be revoked, no further action on the Suspension Order is necessary. (Factual Findings 1-20; Legal Conclusions 1-4.)

Costs

16. A. Section 10106 authorizes the Commissioner to request an order in resolution of any disciplinary proceeding directing a licensee found to have committed a violation of the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the case. In an action against a licensed corporate entity, a costs order can be

against the corporation. (*Id.*) Here, it was established that Respondents violated the Real Estate Law, and that the Bureau incurred reasonable costs in the investigation and prosecution of this matter in the amount of \$2,859.90. (Factual Finding 30.)

B. Curiously, the Accusation, First Amended Accusation and Suspension Order do not contain a prayer for costs. Nonetheless, prior to the hearing, the Bureau submitted copies of documentation evidencing its costs to Respondents. With notice that the Bureau would be seeking such costs at the hearing, Respondents objected to the costs on grounds other than the absence of a prayer for such relief in the operative pleadings. Respondents' substantive objections to the costs have been overruled. It can be construed from these events that the Bureau has made a request for costs, that Respondents were provided with notice of said request as well as the amount of the costs sought, and that they did not object on procedural grounds. Under these unusual circumstances, an order for costs is warranted. (Factual Findings 30-31.)

C. While a costs order can be made against Respondent AHI, as a licensed corporate entity, section 10106 does not appear to support a cost order against a non-licensed designated officer such as Respondent Shayan. The Bureau has not provided any authority supporting the same. Therefore, Respondent Shayan will not be subject to a costs order.

ORDERS

The Order Suspending Restricted Real Estate License issued on May 8, 2014, to Respondent Apartment Hunters, Inc. is sustained.

All licenses and licensing rights of Respondents Apartment Hunters, Inc. and Steven K. Shayan under the Real Estate Law are revoked.

Respondent Apartment Hunters, Inc. shall pay costs of the investigation and prosecution of this matter in the amount of \$2,859.90 to the Bureau of Real Estate within 30 days of the effective date of this decision.

DATED: May 27, 2015



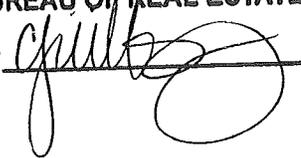
ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

FILED

APR 17 2015

BUREAU OF REAL ESTATE

By



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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CALBRE No. H-39404 LA
)	OAH No. 2014050485
APARTMENT HUNTERS, INC. and)	
STEVEN K. SHAYAN, as designated)	<u>FIRST AMENDED ACCUSATION</u>
officer for Apartment Hunters, Inc.,)	
)	
Respondents.)	

15 This First Amended Accusation amends the Accusation filed on April 11, 2014. The
16 Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for
17 cause of Accusation against APARTMENT HUNTERS, INC. and STEVEN K. SHAYAN, as
18 designated officer for Apartment Hunters, Inc. (collectively "Respondents"), is informed and
19 alleges as follows:

20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of
22 California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

3.

On May 11, 2007, APARTMENT HUNTERS, INC. ("AHI") was licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) as a PRLS corporation, License ID PRA02044. AHI's license expired on March 12, 2014. The Bureau (formerly Department) of Real Estate ("Bureau") retains jurisdiction pursuant to Code Section 10103.

4.

STEVEN K. SHAYAN ("SHAYAN") is the designated officer for AHI. SHAYAN is the President of AHI. SHAYAN has never been licensed by the Bureau as either a real estate broker or real estate salesperson.

5.

Whenever reference is made in an allegation of this Accusation to "Respondents" such references shall include the parties identified above in Paragraphs 3 and 4 and also includes the managers, employees, agents, and/or real estate licensees employed by or associated with said parties, who at all times herein mentioned were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority, agency, or employment.

6.

Respondent AHI is a licensed PRLS pursuant to Code Section 10167, wherein Respondent AHI supplied prospective tenants with listings of residential real properties for rent pursuant to an arrangement under which the prospective tenants were required to pay a fee in

1 advance of, or contemporaneously with, the supplying of the listings.

2 Prior Discipline

3 7.

4 On February 11, 2010, the Bureau filed an Accusation against Respondent in Case No.
5 H-36458 LA. On February 23, 2012, a Decision after Reconsideration in said case became
6 effective and thereby granted Respondent a restricted PRLS license under certain limitations,
7 conditions, and restrictions including that the restricted license issued to Respondent may be
8 suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to
9 the Commissioner that Respondent has violated provisions of the California Real Estate Law, the
10 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to
11 the restricted license.

12 Causes of Accusation

13 False, Misleading, or Deceptive Advertisements or Representations

14 8.

15 Business and Professions Code section 10167.11 states:

16 “[I]t shall be a violation of this article for any licensee or any employee or agent
17 of a licensee to do the following:

18 (b) Refer a property to a prospective tenant knowing or having reason to
19 know that:

20 (1) The property does not exist or is unavailable for tenancy.

21 (2) The property has been described or advertised by or on behalf
22 of the licensee in a false, misleading, or deceptive manner.

23 (3) The licensee has not confirmed the availability of the property
24 for tenancy during the four-day period immediately preceding
dissemination of the listing information.

1 (4) The licensee has not obtained written or oral permission to list
2 the property from the property owner, manager, or other
3 authorized agent.”

4 9.

5 On June 7, 2013, the Bureau received a complaint from Yo W., a leasing manager for
6 Hometeam Property Management (“HPM”). HPM is a licensed real estate corporation who
7 performs property management services for property owners in Southern California. HPM lists
8 available rental properties on the Multiple Listing Service (“MLS”) and on HPM’s own website.
9 Yo W. discovered that Respondents had (without authorization) used copyrighted pictures and
10 information about four separate rental properties listed on HPM’s website and (without written
11 or oral permission) posted said pictures and information about the properties on different
12 websites including, but not limited to, www.trulia.com. Respondents inserted information about
13 AHI’s website, www.apartmenthunterz.com, on the advertisements, thereby making a
14 misrepresentation on the advertisements that Respondents were authorized to solicit prospective
15 tenants for those properties on behalf of the property owners, managers, or any authorized agent.

16 10.

17 The four properties listed by Respondents without authorization are located at: 1660
18 Thompson Ave., Chula Vista, CA; 524 Reisling Terrance, Chula Vista, CA; 1448 Stanislaus Dr.,
19 Chula Vista, CA; and 1437 Stanislaus Dr., Chula Vista, CA. Some of the properties had already
20 been leased at the time that Respondents advertised them. Respondents also listed an incorrect
21 and higher rental amount for the 1437 Stanislaus Drive property on their unauthorized
22 advertisement for the property.

23 11.

24 The conduct, acts, and/or omissions of Respondents as described above in Paragraphs 9
and 10 above, are in violation of Code Section 10167.11, subdivision (b), and constitute cause

1 for the suspension or revocation of Respondents' real estate licenses and/or license rights
2 pursuant to Code Sections 10167.12(a)(1) and 10177(k).

3 Office Abandonment

4 12.

5 Pursuant to Code section 10167.5 "a license issued for a particular location shall
6 automatically expire 60 days after the time the business conducted at such location ceases for
7 any reason to be under the charge of and managed by the designated agent of record with the
8 department, unless within such 60-day period the licensee submits written notice of the new
9 designated agent to the department."

10 13.

11 Code section 10162 states:

12 "Every licensed real estate broker shall have and maintain a definite place of
13 business in the State of California which shall serve as his office for the
14 transaction of business. This office shall be the place where his license is
displayed and where personal consultations with clients are held.

15 No real estate license authorizes the licensee to do business except from the
16 location stipulated in the real estate license as issued or as altered pursuant to
Section 10161.8."

17 14.

18 Regulation 2715 states that whenever there is a change in the location or address of the
19 principal place of business or of a branch office of a broker, the broker must notify the
20 Commissioner thereof no later than the next business day following the change. Regulation
21 2710(c) provides that notices of changes in license information or status are to be submitted to
22 the Bureau on forms prescribed by the Bureau not later than five days after the effective date of
the change unless otherwise provided in the applicable statute or regulation.

1 15,

2 On August 12, 2013, a special investigator for the Bureau visited the address listed as the
3 main office and mailing address for Respondent: 201 N. Robertson Blvd., Suite 202, Beverly
4 Hills, CA 90211. The special investigator discovered that the office suite had been vacated by
5 Respondents. The building manager for the location notified the special investigator that
6 Respondents had vacated the office suite approximately in January of 2013, without leaving any
7 forwarding address. Respondents failed to notify the Commissioner of any new main office or
8 mailing address.

9 16.

10 The conduct, acts, and/or omissions of Respondents as described above in Paragraph 15
11 are in violation of Code Sections 10167.5 and 10162 and Regulations 2715 and 2710(c), which
12 constitute cause for the suspension or revocation of Respondents' real estate licenses and/or
13 license rights under the provisions of Code Sections 10167.12(a)(1) and 10177(k).

14 Unlicensed Activity

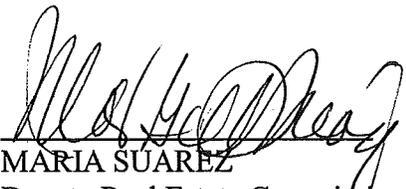
15 17.

16 The Bureau suspended AHI's PRLS license effective on May 6, 2014. Respondents
17 continued to offer and engage in the business of a prepaid rental listing service after receiving
18 notice of the Bureau's order which suspended AHI's restricted PRLS license in Case No.
19 H-36458 LA. Kevin Shayan and Steven K. Shayan were not licensed in any capacity by the
20 Bureau during said period. Respondents' refusal to cease engaging in PRLS activities after the
21 suspension of AHI's restricted PRLS license is a violation of Business and Professions Code
22 Sections 10167.2 and 10130, and constitutes cause for the suspension or revocation of
23 Respondents' real estate licenses and/or license rights under the provisions of Code Sections
24 10167.12(a)(1), 10177(d), and 10177(k).

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and/or license rights of Respondents APARTMENT HUNTERS, INC. and
4 STEVEN K. SHAYAN, as designated officer for Apartment Hunters, Inc., under the Real Estate
5 Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further
6 relief as may be proper under other applicable provisions of law.

7 Dated at Los Angeles, California

8 this 16th day of April, 2015.

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11 
12 MARIA SUAREZ
13 Deputy Real Estate Commissioner
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19 cc: Apartment Hunters, Inc. and Steven K. Shayan c/o Jilbert Tahmazian, Esq.
20 Maria Suarez
21 OAH-ALJ Eric Sawyer
22 Sacto.
23
24

1 LISSETE GARCIA, Counsel (SBN 211552)
2 Bureau of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6914

FILED

APR 11 2014

BUREAU OF REAL ESTATE

By John Garcia

7
8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-39404 LA
12)
13 APARTMENT HUNTERS, INC. and) ACCUSATION
14 STEVEN K. SHAYAN, as designated)
officer for Apartment Hunters, Inc.,)
Respondents.)

15 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of
16 California, for cause of Accusation against APARTMENT HUNTERS, INC. and STEVEN K.
17 SHAYAN, as designated officer for Apartment Hunters, Inc. (collectively "Respondents"), is
18 informed and alleges as follows:

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24 pursuant to Code Sections 10167.12(a)(1) and 10177(k).

1 Office Abandonment

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1 forwarding address. Respondents failed to notify the Commissioner of any new main office or
2 mailing address.

3 16.

4 The conduct, acts, and/or omissions of Respondents as described above in Paragraph 15
5 are in violation of Code Sections 10167.5 and 10162, and Regulation 2715, and constitute cause
6 for the suspension or revocation of Respondents' real estate licenses and/or license rights under
7 the provisions of Code Sections 10167.12(a)(1) and 10177(k).

8 17.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
10 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
11 against all licenses and/or license rights of Respondents APARTMENT HUNTERS, INC. and
12 STEVEN K. SHAYAN, as designated officer for Apartment Hunters, Inc., under the Real Estate
13 Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further
14 relief as may be proper under other applicable provisions of law.

15 Dated at Los Angeles, California

16 this 9th day of April, 2014.

17
18 
19 MARIA SUAREZ
20 Deputy Real Estate Commissioner

21 cc: Apartment Hunters, Inc.
22 Steven K. Shayan
23 Maria Suarez
24 Sacto.