

**FILED**

**JUN 17 2019**

**DEPT. OF REAL ESTATE**

By *AO Selous*

1 LISSETE GARCIA, Counsel (SBN 211552)  
Department of Real Estate  
2 320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105  
3 Telephone: (213) 576-6982  
Direct: (213) 576-6914  
4 Fax: (213) 576-6917  
*Attorney for Complainant*

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

10 \* \* \*

11 In the Matter of the Accusation against	)	DRE No. H-05069 SD
12 SOS MANAGEMENT AND PROPERTY SERVICES, INC.,	)	<u>ACCUSATION</u>
13 MICHAEL ALAN KOOTCHICK, individually and	)	
14 as designated officer for SOS Management and	)	
15 Property Services, Inc., and	)	
16 ROBERT SOLOWEY SHAPIRO, as licensed	)	
16 officer for SOS Management and Property Services,	)	
17 Inc.,	)	
17 Respondents.	)	

18  
19 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the  
20 Department of Real Estate ("Department") of the State of California, for cause of Accusation  
21 against SOS MANAGEMENT AND PROPERTY SERVICES, INC., MICHAEL ALAN  
22 KOOTCHICK, individually and as designated officer for SOS Management and Property  
23 Services, Inc., and ROBERT SOLOWEY SHAPIRO, as licensed officer for SOS Management  
24 and Property Services, Inc., (collectively "Respondents"), alleges as follows:

1 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a Supervising  
2 Special Investigator, makes this Accusation against Respondents.

3  
4 2. All references to the "Code" are to the California Business and Professions Code, all  
5 references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references to  
6 "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6,  
7 California Code of Regulations.

8 3. Respondents are presently licensed and/or have license rights under the Real Estate  
9 Law (Part 1 of Division 4 of the Code).

10 Licensees

11 4. From on or about September 17, 2001, through the present, Respondent SOS  
12 MANAGEMENT AND PROPERTY SERVICES, INC. ("SOS") has been licensed by the  
13 Department as a real estate corporation, License ID 01317589.

14 5. SOS is licensed to do business as Scuba & Associates.

15 6. From on or about February 20, 2002 through the present, Respondent MICHAEL  
16 ALAN KOOTCHICK ("KOOTCHICK") has been licensed by the Department as a real estate  
17 broker, License ID 01226610. KOOTCHICK was previously licensed as a real estate  
18 salesperson from approximately September 4, 1997 through February 19, 2002.

19 7. From on or about April 23, 2008 through the present, Respondent ROBERT  
20 SOLOWEY SHAPIRO ("SHAPIRO") has been licensed by the Department as an officer for  
21 SOS, License ID 01270516.

22 8. SHAPIRO was previously licensed by the Department as a real estate salesperson  
23 from approximately November 30, 1999 through October 4, 2001.

24

1 9. At all times relevant herein, SOS acted as a corporate real estate broker by and  
2 through KOOTCHICK, as the designated broker responsible, pursuant to Code section 10159.2  
3 for supervising the activities requiring a real estate license conducted on behalf SOS by its  
4 officers, salespersons, agents, and employees.

5 Business Activities

6 10. At all times relevant herein, in the State of California, SOS acted as a corporate real  
7 estate broker and conducted licensed activities within the meaning of Code section 10131(b).  
8 Respondents, doing business as SOS, solicited or offered to negotiate the sale, purchase or  
9 exchange of leases on real property or on a business opportunity;

10 Audit SD170034

11 11. On August 30, 2018, the Department completed an audit examination of the books  
12 and records of Respondent SOS's property management activities which require a real estate  
13 license pursuant to Code section 10131(b).

14 12. The audit examination covered a period of time from April 1, 2016 through  
15 January 31, 2018.

16 13. The audit examination revealed violations of the Code and the Regulations as set  
17 forth in the following paragraphs, and more fully discussed in Audit Report SD170034 and the  
18 exhibits and work papers attached to said audit report.

19 14. An entrance interview was held on March 23, 2018 with Respondent SHAPIRO.

20 15. SHAPIRO wholly owns Devkor Properties, Inc. (Licensed 01253570).

21 16. Devkor Properties, Inc. owns or controls fifty-one percent (51%) of SOS stock.

22 17. According to Respondent SHAPIRO and the audit work papers examined, during the  
23 audit period, SOS managed approximately 250 one-to-four family residential properties with 320  
24 units and 47 apartment complexes including commercial units (mixed-use properties with

1 approximately 80 residential units). SOS received a management fee of four to ten percent (4% -  
2 10%) of monthly collected rents.

3 18. According to Respondents, SOS maintained the following bank accounts for its  
4 property management activities during the audit period:

5 A. Trust Account #1 (TA1)

6 Bank: First Republic Bank

7 Account Name: SOS Management and Property Services, Inc. DBA Scuba  
& Associates Trust Account

8 Account #: xxxxx0970

9 Signer(s): Respondents KOOTCHICK and SHAPIRO

10 # of signatures required: One (1)

11 Description: TA1 was used as a depository for rents and security  
deposits collected from tenants and laundry income of multiple beneficiaries.  
Disbursements from TA1 were payments for expenses related to the properties  
managed, owner remittances, and to SOS for management fees earned.  
According to Respondents, TA1 was opened on July 25, 2011 to replace TA3,  
TA4, and TA5 after a change of software.

12 B. Trust Account #2 (TA2)

13 Account Name: SOS Management and Property Services, Inc. PRR II Trust  
Account

14 Account #: xxxxx7310

15 Signer(s): Respondents KOOTCHICK and SHAPIRO

16 # of signatures required: One (1)

17 Description: TA2 was used as a depository for rents and security  
deposits collected from tenants of properties owned by one owner  
(Pathfinder). Disbursements from TA2 were payments for expenses related to  
the properties managed, owner remittances, and to SOS for management fees  
earned. In addition to TA1 and TA2, SOS maintained three inactive trust  
accounts, which are noted below:

18 C. Trust Account #3 (TA3)

19 Account Name: SOS Management and Property Services, Inc. DBA Scuba  
& Associates Management Trust Account No. 2

20 Account #: xxxxx0712

21 Description: TA3 was used as a depository for rents and security  
deposits collected from tenants and laundry income of multiple beneficiaries.  
Disbursements from TA3 were payments for expenses related to the properties  
managed, owner remittances, and to SOS for management fees earned. TA3  
has been inactive since at least 2014; however, there were nine (9) outstanding  
checks dated 12/23/2010 or earlier. TA3 was replaced by TA1.

1 D. Trust Account #4 (TA4)

2 Account Name: SOS Management and Property Services, Inc. Trust I Account  
3 Account #: xxxxx0753

4 Description: TA4 was used as a depository for rents and security deposits  
5 collected from tenants and laundry income of multiple beneficiaries.

6 Disbursements from TA4 were payments for expenses related to the properties  
7 managed, owner remittances, and to SOS for management fees earned. TA4 has  
8 been inactive since at least 2014; however, there were 42 outstanding checks  
9 dated 12/23/2010 or earlier. TA4 was replaced by TA1.

10 E. Trust Account #5 (TA5)

11 Account Name: SOS Management and Property Services, Inc. Trust II Account  
12 Account #: xxxxx0761

13 Description: TA5 was used as a depository for rents and security deposits  
14 collected from tenants and laundry income of multiple beneficiaries.

15 Disbursements from TA5 were payments for expenses related to the properties  
16 managed, owner remittances, and to SOS for management fees earned. TA5 has  
17 been inactive since at least 2014; however, there were three (3) outstanding  
18 checks dated 12/23/2010 or earlier. TA5 was replaced by TA1.

19 Violations

20 19. In the course of its property management activities during the audit examination  
21 period of April 1, 2016 through January 31, 2018, Respondents acted in violation of the Code  
22 and the Regulations as follows:

23 Issue One(a). Code section 10145(a) and Regulation 2832.1. Trust fund handling for multiple  
24 beneficiaries

20 20. Bank reconciliations were prepared for TA1, TA2, TA3, TA4, and TA5, as of  
21 January 31, 2018. The adjusted bank balances were compared to the total balance of separate  
22 beneficiary records (accountability) for each account.

23 21. As of January 31, 2018, TA1 had a shortage of <\$15,554.46>. The causes of the  
24 shortage were negative property balances (<\$100.25>), negative ledger balances (<\$15,371.71>),  
and a cash receipt not deposited (<\$82.50>).

22 22. As of January 31, 2018, there was no shortage in TA2.

1           23. As of January 31, 2018, TA3 had a shortage of <\$4,432.63>. TA3 did not contain  
2 enough funds to cover the total outstanding checks written from TA3. The cause of the shortage  
3 was unidentified. SOS made a deposit of \$4,432.63 into TA3 on or about May 31, 2018, to  
4 cover the shortage.

5           24. As of January 31, 2018, there was no shortage in TA4.

6           25. As of January 31, 2018, TA5 had a shortage of <\$904.75>. TA5 did not contain  
7 enough funds to cover the total outstanding checks written from TA5. The cause of the shortage  
8 was unidentified. SOS made a deposit of \$904.75 into TA5 on or about May 31, 2018, to cover  
9 the shortage.

10           26. Respondent SOS failed to provide any evidence that the owners of the trust funds in  
11 TA1-TA5 had given their written consent to allow SOS to reduce the balance of the funds in  
12 TA1, TA3, and TA5 to an amount less than the existing aggregate trust fund liabilities, in  
13 violation of Code section 10145 and Regulation 2832.1.

14 Issue Two. Code section 10176, subdivision (g). Management of Lusti Properties – Undisclosed  
15 Compensation/Secret Profit

16           27. During the audit period, SOS managed several properties for R. Lusti (“Lusti”)  
17 including the following: 4385 Alabama St. (“Alabama”), 4658-4664 ½ Hamilton St.  
18 (“Hamilton”), and 2334 Brant St. (“Brant”), among others.

19           28. The property management agreements for the Alabama and Hamilton properties  
20 indicated that any late fees collected by SOS would be distributed equally between SOS and the  
21 property owner (50% to SOS and 50% to Lusti). An examination of sample late fees revealed  
22 that SOS kept all (100% percent) of the late fees collected for the Alabama and Hamilton  
23 properties.  
24

1 29. The property management agreement for the Brant property indicated that any late  
2 fees collected by SOS would be paid entirely to Lusti, the property owner. An examination of  
3 sample late fees revealed that late fees collected by SOS were not reflected on the owner  
4 statement for the Brant property and the fees were kept by SOS.

5 30. Examples of the undisclosed compensation/secret profit noted in Paragraphs 28 and  
6 29, above, include the following, without limitation:

7 Late Fee Earned	Date Paid	Check No.	Amount Paid	Amount Over-Disbursed	Property
8 \$37.50	9/22/16	40616	<\$75.00>	<\$37.50>	Hamilton
\$37.50	8/16/16	39998	<\$75.00>	<\$37.50>	Alabama
9 \$0	9/13/16	40497	<\$75.00>	<\$75.00>	Brant

10 31. SOS kept undisclosed compensation in the form of unearned late fees which should  
11 have been paid to Lusti, the property owner, in violation of Code section 10176, subdivision (g).

12 Issue Three. Code section 10145 and Regulation 2831. Trust fund records to be maintained

13 32. Respondent SOS failed to maintain accurate or complete records of trust funds  
14 received and disbursed (control records) for TA1, TA2, TA3, TA4, and TA5, in violation of  
15 Code section 10145 and Regulation 2381.

16 33. An examination of the control record for TA1 showed that transactions were  
17 recorded incorrectly on the control record. Examples include, without limitation, the following:

18 a. Check No. 47021 was incorrectly noted in the records as Check No. 47020 on  
19 January 31, 2018 for the 502-510 Sortfisher property.

20 b. An electronic disbursement noted on January 31, 2018 for \$1,401.75 for the 1251-  
21 1259 Hornblend property was not posted until February 6, 2018.

22 34. SOS failed to identify what property owned \$10.00 of unidentified/unaccounted for  
23 funds in TA2.

1           35. SOS failed to maintain or provide control records for TA3, TA4, and TA5 for the  
2 audit examination.

3 Issue Four. Code section 10145, subdivision (g) and Regulation 2831.1. Separate records for  
4 each beneficiary or transaction

5           36. Respondent failed to maintain accurate separate records for each beneficiary or  
6 transaction (separate records) for TA1, in violation of Code section 10145(g) and Regulation  
7 2831.1.

8           37. The separate records examined indicated that transactions were incorrectly recorded,  
9 including, but not limited to, the following:

10                   a. Check No. 47021 was incorrectly noted in the records as Check No. 47020  
11 on January 31, 2018 for the 502-510 Sortfisher property.

12                   b. An electronic ACH payment was processed on or about January 26,  
13 2018, which was reflected as January 31, 2018 on the bank statement.

14           38. Moreover, during the audit period, SOS failed to maintain a separate record of the  
15 receipt and disposition of all trust funds deposited into TA3, TA4, and TA5, as required.

16           39. There was also no separate record maintained for unidentified/unaccounted for funds  
17 of at least \$3,090.95 in TA4.

18 Issue Five. Code section 10145 and Regulation 2831.2. Trust account reconciliation

19           40. During the audit period, SOS failed to perform and maintain a monthly and timely  
20 reconciliation comparing the balance of all separate beneficiary or transaction records (separate  
21 records) to the balance of all trust funds received and disbursed (control record) for TA1, TA2,  
22 TA3, TA4, and TA 5, as required, in violation of Code section 10145 and Regulation 2831.2.

23           41. Additionally, SOS did not reconcile the unidentified/unaccounted for funds of  
24 \$3,090.95 in TA4 as of January 31, 2018.



1 Issue Six. Code sections 10159.2, 10177, subdivision (h), and Regulation 2725. Responsibility  
2 of Corporate Officer in Charge/Broker supervision.

3 42. Respondents KOOTCHICK and SHAPIRO failed to adequately supervise the  
4 activities of SOS's salespersons, employees, or agents and failed to establish policies, rules,  
5 procedures, and systems to review, oversee, inspect, and manage transactions requiring a real  
6 estate license and the handling of trust funds to ensure compliance with the Real Estate Law, in  
7 violation of Code section 10177(h) and Regulation 2725.

8 43. The conduct of Respondent SOS as described above in Paragraphs through 41,  
9 violated the Code and the Regulations as set forth below:

10	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
11	20-26	Code section 10145 and Regulations 2832.1
12	27-31	Code section 10176, subdivision (g)
13	32-35	Code section 10145 and Regulations 2831
14	36-39	Code section 10145 and Regulation 2831.1
15	40-41	Code section 10145 and Regulation 2831.2

16 44. The foregoing violations, as described above in Paragraphs 20 through 41, constitute  
17 cause for the suspension or revocation of the real estate licenses and license rights of Respondent  
18 SOS under the provisions of Code sections 10176, subdivision (g) and 10177, subdivisions (d)  
19 and/or (g).

20 Respondents KOOTCHICK and SHAPIRO – Officer - Broker Supervision

21 45. The conduct, acts and/or omissions of Respondents KOOTCHICK and SHAPIRO, as  
22 described above in Paragraph 42, constitutes a failure to exercise the supervision and control  
23 over the activities of SOS to ensure compliance with the Real Estate Law and Regulations, as is  
24 required by Code section 10159.2 and Regulation 2725. Said conduct, acts, or omissions

1 constitute cause to suspend or revoke the real estate licenses and license rights of Respondents  
2 KOOTCHICK and SHAPIRO pursuant to Code section 10177, subdivisions (h), (d) and/or (g).

3 Audit Costs

4 46. Code section 10148(b) provides, in pertinent part, that the Commissioner shall  
5 charge a real estate broker for the cost of any audit, if the Commissioner has found in a final  
6 decision following a disciplinary hearing that the broker has violated Code section 10145 or a  
7 regulation or rule of the Commissioner interpreting said section.

8 Investigation/Enforcement Costs

9 47. Code section 10106 provides, in pertinent part, that in any order issued in resolution  
10 of a disciplinary proceeding before the Department of Real Estate, the Commissioner may  
11 request the administrative law judge to direct a licensee found to have committed a violation of  
12 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of  
13 the case.

14 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
15 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
16 against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of  
17 Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and  
18 enforcement as permitted by law, and for such other and further relief as may be proper under  
19 other provisions of law.

20 Dated at San Diego, California this 10 day of June, 2019.

21  
22   
23 VERONICA KILPATRICK  
24 Supervising Special Investigator

24 ///

1 cc: SOS Management and Property Services, Inc.  
2 Michael Alan Kootchick  
3 Robert Solowey Shapiro  
4 Veronica Kilpatrick  
5 Sacto  
6 Audits/Jennifer Barromeo  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24