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FILED

FEB 02 2023

DEPT. OF REAL ESTATE

By 

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-05694 SD
13 ONYX PROPERTY MANAGEMENT,) ACCUSATION
14 MICHAEL ALAN KOOTCHICK, individually)
15 and as designated officer of Onyx Property)
16 Management, and ROBERT SOLOWEY)
17 SHAPIRO, as licensed officer for Onyx Property)
18 Management,)
19 Respondents.)

20 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
21 State of California, for cause of Accusation against ONYX PROPERTY MANAGEMENT,
22 MICHAEL ALAN KOOTCHICK, and ROBERT SOLOWEY SHAPIRO (collectively
23 “Respondents”) alleges as follows:

24 1.

25 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
26 State of California, makes this Accusation in her official capacity.

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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.

LICENSE HISTORY

3.

(ONYX PROPERTY MANAGEMENT)

(a) Respondent ONYX PROPERTY MANAGEMENT ("OPM") is presently 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 real estate corporation ("REC"), Department of Real Estate ("Department") license ID 01317589.

(b) The Department originally issued OPM's corporate license on or about September 7, 2001. OPM's license is scheduled to expire on May 11, 2025, unless renewed.

(b) From approximately September 17, 2001 to November 20, 2020, OPM operated under the corporate name "S O S Management And Property Services, Inc."

(c) According to the Department's records to date, IRI employs one (1) broker associate and three (3) salespersons.

(d) According to the Department's records to date, OPM's office is located at 6815 Flanders Drive, Ste 240, San Diego, CA 92121.

(e) According to the Department's records to date, IRI maintains an authorized fictitious business name "Scuba & Associates".

4.

(MICHAEL ALAN KOOTCHICK)

(a) Respondent MICHAEL ALAN KOOTCHICK ("KOOTCHICK") is presently 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 real estate broker ("REB"), Department license ID 01226610.

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1 (b) The Department originally issued KOOTCHICK's REB license on or about
2 February 20, 2002.

3 (c) KOOTCHICK'S license is scheduled to expire on April 18, 2026, unless
4 renewed.

5 (d) According to the Department's records, KOOTCHICK was and is currently
6 the designated officer of OPM.

7 5.

8 (ROBERT SOLOWEY SHAPIRO)

9 (a) Respondent ROBERT SOLOWEY SHAPIRO ("SHAPIRO") is presently
10 licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
11 California Business and Professions Code, as the designated officer of OPM, Department
12 license ID 01270516.

13 (b) The Department originally issued SHAPIRO's real estate salesperson
14 ("RES") license on or about November 30, 1999. SHAPIRO's RES license expired on October
15 4, 2001.

16 (c) SHAPIRO became the designated officer of Devkor Properties Inc, on or
17 about October 15, 2001.

18 (d) According to the Department's records, SHAPIRO is currently the licensed
19 officer of OPM. SHAPIRO became the licensed officer of OPM on May 12, 2017.

20 (PRIOR DISCIPLINE)

21 6.

22 On or about December 20, 2019, Respondents and the Department entered into a
23 stipulation and agreement ("stipulation and agreement") for an accusation the Department filed
24 against Respondents on or about June 17, 2019 (Case No. H-05069 SD). Respondents' licenses
25 were disciplined, among other things, with a 15-day stayed suspension and payment of the
26 Department's investigative, enforcement, audit and follow-up audit costs. The accusation
27 alleged that Respondents violated the following real estate laws, pursuant to an audit

1 examination completed on or about August 30, 2018 (Audit Examination SD170034 (property
2 management activity)): Code Sections 10145 and 10177 (subsections (d), (g), and (h)), and
3 Regulations 2831, 2831.1, 2831.2, and 2832.1.

4 LICENSED ACTIVITIES

5 7.

6 At all times relevant herein Respondents were engaged in the business of, acted
7 in the capacity of, advertised or assumed to act as a real estate corporation, within the meaning
8 of Section 10131 (b) of the Code. Respondents' activities included the leasing or renting of real
9 property and the collection of rents and security deposits for real property on behalf of others
10 for compensation or in expectation of compensation.

11 (AUDIT SD210020)

12 8.

13 On or about August 12, 2022, the Department completed an audit examination
14 of the books and records of Respondents pertaining to the property management activities
15 described in Paragraph 7 above. The audit examination covered the period of time from March
16 6, 2020 to November 12, 2021 ("audit period"). The primary purpose of the examination was to
17 determine whether Respondents conducted real estate activities complied with the terms of the
18 stipulation and agreements in Case Nos. H-05069 SD as well as Real Estate Law. The audit
19 examination revealed violations of the Code and the Regulations as set forth in the following
20 paragraphs, and more fully discussed in Audit No. SD210020, and the exhibits and work papers
21 attached to said audit report.

22 9.

23 At all times mentioned herein, and in connection with the property management
24 activities described in Paragraph 7, above, Respondents accepted or received funds, including
25 funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions
26 handled by Respondents and thereafter made deposits and/or disbursements of such funds.
27 According to the documents provided, Respondents maintained one (1) trust account for

1 handling of the receipts and disbursements of funds during the audit period in connection with
2 the property management activities. The bank accounts are as follows:

3 Trust Account 1 ("TA 1")

4 Bank: First Republic Bank

5 Account Name: Onyx Property Management

6 Account Number: xxxxxxxx0970

7 Signatories: Robert Shapiro, Michael A Kootchick

8 Signatures Required: One

9 Purpose: TA 1 was maintained to handle trust funds in the property management
10 activities for multiple beneficiaries.

11 Violations of the Real Estate Law

12 10.

13 The audit examination revealed violations of the Code and the Regulations, as
14 set forth in the following paragraphs, and more fully discussed in Audit Report No. SD210020,
15 and the exhibits and work papers attached to the audit report:

16 (a) **Trust Fund Handling For Multiple Beneficiaries (Code section 10145**
17 **and Regulations sections 2832.1)**. Based on an examination of TA 1's records, there was a
18 minimum unidentified shortage of \$1,778.17 as of November 12, 2021 in violation of Code
19 section 10145 and Regulations sections 2832.1. There is no evidence that Respondents were
20 given written consent from the owners of the trust funds to allow Respondents to reduce the
21 balance of the funds in TA 1 to an amount less than the aggregate trust fund liabilities to all
22 owners of the trust funds.

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1 (b) Trust Fund Handling/Trust Fund Records to be Maintained (Code
2 section 10145 and Regulations sections 2831). Based on an examination of TA 1's records,
3 Respondents failed to maintain complete and accurate columnar record for all trust funds
4 received and disbursed (control record) TA 1, which was used for Respondent's property
5 management activities during the audit period in violation of Code section 10145 and
6 Regulations sections 2831.

7 (c) Trust Fund Handling/Separate Records for Each Beneficiary (Code
8 section 10145 and Regulations sections 2831.1). Based on an examination of TA 1's records,
9 Respondents failed to maintain complete and accurate separate records for each beneficiary or
10 transaction of all trust fund receipts and disbursements for TA 1 in connection with
11 Respondents' property management activities during the audit period in violation of Code
12 section 10145 and Regulations section 2831.1. The separate records had incorrect ending
13 balances.

14 (d) Trust Fund Handling/Trust Account Reconciliation (Code section 10145
15 and Regulations section 2831.2). Based on an examination of TA 1 records, Respondents did
16 not maintain or provide an accurate monthly reconciliation for TA 1 during the audit period
17 Code section 10145 and Regulations section 2831.2.

18 (e) Responsibility of Corporate Office in Charge/Broker Supervision (Code
19 sections 10159.2 and 10177(h) and Regulations section 2725). Based on the violations in
20 Paragraphs 10 (a)-(d) above, Respondents KOOTCHICK and SHAPIRO failed to exercise
21 adequate supervision and control over OPM's property management activities in violation of
22 Code section 10159.2. Respondent KOOTCHICK and SHAPIRO failed to provide established
23 policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions
24 requiring a real estate license and the handling of trust funds in violation of Regulations section
25 2725.

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1 Additional Violations of the Real Estate Law

2 11.

3 The overall conduct of Respondents violates the Real Estate Law and constitutes
4 cause for the suspension or revocation of their real estate license and license rights under the
5 provisions of **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for willful
6 disregard of the Real Estate Law.

7 12.

8 Each of the foregoing violations in Paragraphs 10 (a)-(e) above constitute cause
9 for the suspension or revocation of the real estate license and/or license rights of Respondents
10 under the provisions of Code sections 10177(d), 10177(g), and 10177(h) (as to KOOTCHICK
11 and SHAPIRO).

12 COSTS

13 (AUDIT COSTS)

14 13.

15 Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate
16 Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner
17 has found in a final decision, following a disciplinary hearing, that the broker has violated
18 Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code
19 section.

20 (INVESTIGATION AND ENFORCEMENT COSTS)

21 14.

22 Section 10106 of the Code, provides, in pertinent part, that in any order issued in
23 resolution of a disciplinary proceeding before the Department, the Commissioner may request
24 the administrative law judge to direct a licensee found to have committed a violation of this part
25 to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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ACCUSATION

