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SEP 05 2013

BUREAU OF REAL ESTATE

By *L. Frost*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

SONOMA PROPERTIES, INC.,
HENRY KISER MAYO,
JENNIFER ANN POWELL and
HENRY BRIAN MAYO,

Respondents.

BRE No. H-11375 SF

OAH No. 2009050108

DECISION AFTER REJECTION

This matter came on for hearing before Steven C. Owyang, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on January 22, 2013.

Annette E. Ferrante, Counsel, represented the Complainant. Attorney Frank M. Buda, represented Respondents Sonoma Properties, Inc., Henry Kiser Mayo, Jennifer Ann Powell, and Henry Brian Mayo.

Evidence was received, the record was closed, and the matter was submitted.

On February 28, 2013, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondents were notified that the case would be decided by the Real Estate Commissioner upon the record, the transcript of proceedings held on January 22, 2013, and upon written argument offered by Respondent and Complainant.

1 Written argument was submitted by Respondents. Written argument has been submitted
2 on behalf of Complainant.

3 I have given careful consideration to the record in this case, including the transcript of
4 proceedings of January 22, 2013, and written argument offered by Complainant.

5 The following shall constitute the Decision of the Real Estate Commissioner in these
6 proceedings.

7 FINDINGS OF FACT

8 1. Complainant E.J. Haberer II, Deputy Real Estate Commissioner, Bureau of
9 Real Estate, issued the accusation in his official capacity.

10 2. On June 7, 1973, the Bureau licensed Respondent Sonoma Properties, Inc. (SPI)
11 under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, (Code)
12 as a corporate real estate broker.

13 3. Respondent Henry Kiser Mayo (Henry Mayo) is licensed under the Real
14 Estate Law as a real estate broker. He has been licensed since April 3, 1972, a period of
15 more than 40 years.

16 4. Respondent Jennifer Ann Powell is licensed under the Real Estate Law as a
17 real estate salesperson. She has been licensed since August 18, 2005. Her license has not
18 previously been subjected to discipline.

19 5. Respondent Henry Brian Mayo (Brian Mayo) is licensed under the Real Estate
20 Law as a real estate salesperson. He has been licensed since April 14, 1995. His license has
21 not previously been subjected to discipline.

22 6. Henry Mayo has been the designated officer of SPI since November 5, 2009.
23 Pursuant to Business and Professions Code (Code) Section 10159.2, Henry Mayo as the
24 designated officer of SPI is responsible for the supervision of the activities of SPI's officers,
25 agents, real estate licensees and employees, including real estate salespersons Brian Mayo and
26 Jennifer Ann Powell.

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1 7. SPI engaged in the business of, acted in the capacity of, advertised, or assumed to
2 act as a real estate broker in the State of California, within the meaning of Business and
3 Professions Code Section 10131, subdivision (b), including the leasing or renting or offer to
4 lease or rent, or placing for rent, or solicitation of listings of places for rent, or solicitation of
5 prospective tenants, or negotiation of the sale purchase or exchanges of lease on real property, or
6 on a business opportunity, or collection of rents from real property, or improvements thereon, or
7 from business opportunities.

8 8. Beginning on February 11, 2011, the Bureau of Real Estate conducted an audit
9 of SPI's real estate activities for the period July 1, 2010, through January 31, 2011 (audit
10 period). This was a routine audit, not prompted by a consumer complaint. Robert Leonard,
11 General Auditor III, Bureau of Real Estate, was assigned to the audit, which was conducted
12 intermittently from February 11 through August 1, 2011. Leonard examined Respondents' real
13 estate licenses, bank statements, accounting records, bank signature card documents, and
14 property management files.

15 Auditor Leonard issued an audit report dated August 2, 2011. Michael J. Rivera,
16 Audit Team Supervisor, and Thomas Cameron, Supervising Auditor, signed off on the audit
17 report.

18 9. The ALJ found that Respondents cooperated with the Bureau's audit, including
19 meeting with and providing documents to Bureau staff. During and after the audit,
20 Respondents sought to correct violations and to ensure compliance with the Real Estate Law
21 going forward.

22 The ALJ found that Respondents' efforts to correct violations and ensure ongoing
23 compliance with legal requirements included seeking the advice of their attorney and engaging
24 the services of Keith Loughran of Real Estate Compliance Solutions. Loughran is a licensed
25 real estate broker and serves as a compliance consultant and expert witness in real estate audits,
26 administrative actions, and civil matters. Before becoming the proprietor of Real Estate

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1 Compliance Solutions in 1997, Loughran was employed from 1985 to 1997 by the Bureau of
2 Real Estate, including as Senior Investigative Auditor and Acting Supervisor.

3 Loughran reviewed the Bureau's accusation in this matter, the Bureau's August 2, 2011
4 audit report, the Bureau's discovery documents and audit file, and SPI's books and records. He
5 also interviewed Henry Mayo, Jennifer Ann Powell, and Brian Mayo. Loughran subsequently
6 authored a January 9, 2013, report and attachments responding to the accusation. Loughran's
7 report documented Respondents' efforts to correct the violations alleged in the accusation.
8 Loughran appeared as a witness for Respondents at the hearing in this matter.

9 10. Within the audit period, SPI received funds in trust (trust funds) from or on
10 behalf of owners, tenants, and others in connection with the rental or lease of residential
11 property, for or in expectation of compensation, and thereafter from time to time made
12 disbursements of such trust funds.

13 11. SPI deposited trust funds into and made disbursements from three bank
14 accounts that it maintained for the handling of trust funds:

15 (a) Trust Account #1: an account entitled "Sonoma Properties Inc., Trust
16 Account" at Sonoma Valley Bank, 202 West Napa Street, Sonoma. The last four digits of
17 the account number were 7976 and the signatories were Henry Mayo, Brian Mayo, and
18 Jennifer Ann Powell;

19 (b) Bank Account #1: an account at Sonoma Valley Bank, 202 West Napa
20 Street, Sonoma, entitled on its signature card as "Valley of the Moon Realty Partners DBA
21 Frank Howard Allen Property Management" and on its bank statements as "Valley of the Moon
22 Realty Partners DBA Frank Howard Allen Property Mgmt Attn: Brian Mayo/Sec Dep Trust
23 Account." The last four digits of the account number were 7330 and the signatories were Henry
24 Mayo, Brian Mayo, and Jennifer Ann Powell; and,

25 (c) Bank Account #2: an account entitled "Valley of the Moon Realty Partners
26 DBA Frank Howard Allen Property Management" at Sonoma Valley Bank, 202 West Napa
27 Street, Sonoma. The last four digits of the account number were 4008 and the signatories were

1 Henry Mayo, Brian Mayo, and Jennifer Ann Powell. This was a predecessor account to Trust
2 Account #1. It was closed on December 10, 2010, and funds of \$19,113.19 were transferred to
3 Trust Account #1.

4 12. SPI committed violations of the Business and Professions Code and the
5 California Code of Regulations (Regulations) during the audit period. Respondents took
6 steps to correct the violations during and after the Bureau's audit.

7 (a) SPI failed to properly designate Bank Account #1 and Bank Account #2 as
8 trust accounts in the name of SPI, in violation of Business and Professions Code Section 10145
9 and California Code of Regulations, Title 10, Section 2832.

10 SPI closed Bank Account #2 on December 10, 2010, prior to the Bureau's audit.
11 SPI closed Bank Account #1 on May 15, 2011, prior to the completion of the Bureau's audit
12 report.

13 Since June 2011, SPI has used two trust accounts to hold trust funds. These are
14 Trust Account #1 and an account at Westamerica Bank entitled "Security Deposit Trust
15 Account," which will be referred to as Trust Account #2. Trust Account #2 replaced Bank
16 Account #1. Both Trust Account #1 and Trust Account #2 are designated as SPI trust accounts.

17 (b) SPI caused the balance of funds in Trust Account #1 to be reduced to an
18 amount which, as of January 31, 2011, was \$8,199.83 less than the aggregate liability of Trust
19 Account #1 to all owners of such funds, without the prior written consent of each and every
20 owner of such funds, in violation of Code Section 10145 and Regulation Section 2832.1.

21 Auditor Leonard originally calculated the shortage as \$17,290.30, but
22 acknowledged at hearing that the shortage was \$8,199.83, as calculated by Respondents.

23 Prior to the August 1, 2011 issuance of the Bureau's audit report, SPI corrected
24 the shortage by deposits into Trust Account #1, including rental receipts, owner advances and
25 security deposit transfers. The deposits are documented in the attachments to Loughran's
26 January 9, 2013, report.

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1 (c) SPI caused the balance of funds in Bank Account #1 to be reduced to an
2 amount which, as of January 31, 2011, was approximately \$92,122.23 less than the aggregate
3 liability of the account to all owners of such funds, without the prior written consent of each
4 and every owner of the funds, in violation of Code Section 10145 and Regulation Section
5 2832.1.

6 The shortage in Bank Account #1 was caused by SPI's withdrawals to purchase
7 a certificate of deposit and the withdrawal of interest of \$7,122.23 by Jennifer Ann Powell and
8 Brian Mayo.

9 After January 31, 2011, SPI corrected the shortage in Bank Account #1 by
10 depositing \$92,122.23 (and additional accrued interest) into Trust Account #2, the replacement
11 account for Bank Account #1, which was closed on May 15, 2011.

12 (d) SPI deposited trust funds of multiple beneficiaries into an interest bearing
13 account, Bank Account #1, that was not in the name of the broker as trustee, and failed to keep
14 such funds separate and apart from funds belonging to any other person from whom SPI held
15 funds in trusts, as required by Code Section 10145, subdivision (d).

16 SPI sought to correct the above violation by closing Bank Account #1 on May
17 15, 2011. The two bank accounts used by SPI since June 2011 are non-interest bearing trust
18 accounts in the name of SPI.

19 (e) SPI failed to maintain complete and accurate records of all trust funds
20 received and disbursed (control record) for Trust Account #1, in violation of Code Section
21 10145 and Regulation Section 2831.

22 The Bureau's audit report cited Regulation Section 2831 because the control
23 record for Trust Account #1 did not have a column listing the account balance after posting
24 transactions each day. At the time of the audit, SPI used a version of the Tenant File software
25 that did not generate a report that contained such a column.

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1 SPI has since updated its version of Tenant File and now generates a report
2 titled "Check Register" that contains a running balance column that is updated after posting
3 each transaction.

4 (f) SPI failed to maintain separate records for each beneficiary or property
5 of trust funds accepted or received for Bank Account #1, in violation of Code Section 10145,
6 subdivision (g) and Regulation Section 2831.1.

7 SPI used Bank Account #1 as a depository for security deposits. Bank Account
8 #1 was closed on May 15, 2011. Trust Account #2 replaced Bank Account #1 and has
9 separate records for each beneficiary, in compliance with Code Section 10145, subdivision (g)
10 and Regulation Section 2831.1.

11 (g) SPI failed to perform and maintain reconciliations of the total of separate
12 beneficiary records with a control record on at least a monthly basis for Trust Account #1 and
13 Bank Account #1, in violation of Code Section 10145 and Regulation Section 2831.2.

14 SPI corrected the above violation by closing Bank Account #1 and replacing it
15 with Trust Account #2. SPI now maintains monthly reconciliations for Trust Account #1 and
16 Trust Account #2, in compliance with Code Section 10145 and Regulation Section 2831.2.

17 (h) SPI conducted real estate activities using the fictitious business name
18 "Frank Howard Allen Realtors" without first registering that fictitious business name with
19 the Bureau as required by Code Section 10159.5 and Regulation Section 2731.

20 SPI previously registered the fictitious business name "Frank Howard Allen
21 Realtors" with the Bureau. The fictitious business name was cancelled effective January 26,
22 2010, but continued to appear on the business cards of Brian Mayo and Jennifer Ann Powell
23 during the audit period. They have since stopped using these business cards.

24 The ALJ found that the evidence did not establish that SPI conducted real estate
25 activities using the fictitious business names "Valley of the Moon Realty Partners" or "Frank
26 Howard Allen Property Management" during the audit period. "Valley of the Moon Realty
27 Partners d.b.a. Frank Howard Allen Property Management" appeared on the bank statements

1 for Bank Account #1 but those statements were not disseminated to the public. In any event,
2 Bank Account #1 was closed on May 15, 2011. There was no showing that SPI otherwise
3 used the names "Valley of the Moon Realty Partners" or "Frank Howard Allen Property
4 Management."

5 (i) SPI failed to place the real estate license numbers on the business cards of
6 Brian Mayo and Jennifer Ann Powell as required by Code Section 10140.6 and Regulation
7 Section 2773.

8 The ALJ found that SPI updated the business cards of Brian Mayo and
9 Jennifer Ann Powell to include their real estate license numbers.

10 13. Henry Mayo, Jennifer Ann Powell, and Brian Mayo were fiduciaries to SPI's
11 property management clients and owed a duty of utmost good faith and loyalty to their
12 clients and were required to place the interests of their clients above their own interests.
13 Their fiduciary duties included:

14 (a) protecting trust funds provided by or on behalf of Respondent's
15 clients by properly handling the funds, including the deposit of such funds in a trust account
16 as required under Code Section 10145;

17 (b) not depositing trust funds into an investment vehicle: such as a
18 certificate of deposit without the expressed written consent of all beneficiaries of the trust
19 funds;

20 (c) not depositing trust funds into investment vehicles that were not
21 liquid and could not be accessed without delay should access be required;

22 (d) depositing trust funds in an account properly titled as a trust account
23 and/or titling the asset as being held for the benefit of the trust account beneficiaries and
24 thereby protecting the trust funds from Respondents' creditors; and, (e) not taking any
25 secret or undisclosed compensation, commission or profit under any agreement employing
26 Respondents to do any acts for which a license is required for compensation.

27 14. In December 2006, Respondents withdrew \$70,000 in trust funds from Bank
Account #1 and purchased a certificate of deposit (CD) at Sonoma Valley Bank in the name

1 of "Sonoma Properties, Inc." The signature card for the CD did not set forth any trust
2 designation. Henry Mayo signed the signature card, but acknowledges that he did not read
3 it carefully.

4 When they used trust funds to open the CD, Brian Mayo and Jennifer Ann Powell did
5 not realize they were in violation of real estate laws. The CD was automatically renewed in
6 2007, 2008, 2009, and 2010. In 2008, Respondents deposited an additional \$15,000 into the
7 CD. A total of \$7,122.23 in interest was earned on the CD in 2007, 2008, 2009, and 2010, all
8 of which was withdrawn and disbursed to Brian Mayo and Jennifer Ann Powell, with each
9 taking a 50 percent share of the accrued interest. Westamerica Bank, which had acquired
10 Sonoma Valley Bank, issued a renewal notice for the CD dated March 14, 2011, which
11 showed a current balance of \$85,041.24. The notice did not set forth any trust designation.
12 At no time did Respondents notify their clients, the beneficiaries of the trust funds used to
13 open the CD, of the existence of the CD or the interest payments received by Brian Mayo and
14 Jennifer Ann Powell. Nor did Respondents obtain express written approval from the
15 beneficiaries or inform the beneficiaries of the withdrawal of the funds used to purchase the
16 CD, the repeated renewals of the CD, or the disbursements of interest payments on the CD to
17 Brian Mayo and Jennifer Ann Powell. Respondents thereby violated Code Section 10145 and
18 Regulation Sections 2830.1, 2831.1 and 2832.1.

19 The ALJ found that as set forth in Factual Finding 12(c) Respondents corrected the
20 shortage in Bank Account #1 by depositing \$92,122.23 (and additional accrued interest) into
21 Trust Account #2, the replacement account for Bank Account #1, which was closed on May
22 15, 2011. The ALJ also found that Henry Mayo has asked the Bureau for guidance on how
23 to disburse the accrued interest to its rightful owners.

24 15. Henry Mayo, the designated officer broker of SPI, failed to exercise
25 reasonable supervision and control over the activities of SPI and its employees, including
26 Jennifer Ann Powell and Brian Mayo, in violation of Code Sections 10159.2 and 10177,
27 subdivisions (d), (g), and (h), and Regulation Section 2725.

1 The ALJ found that: Henry Mayo is determined to ensure violations do not occur
2 again, that he is now more active and vigilant in his supervision and control of SPI and its
3 employees, he is working with his attorney and with Real Estate Compliance Solutions to
4 ensure his understanding of and compliance with the Bureau's laws and Regulations and he is
5 in frequent contact with Brian Mayo and Jennifer Ann Powell and reviews SPI's records on
6 a weekly basis.

7 The facts support the finding, not made by the ALJ, that withdrawing \$70,000.00 from a
8 trust account and setting up a new account that bears interest and is not designated as a trust
9 account, was not a passive act. Respondents took additional affirmative action, including
10 withdrawing an additional \$15,000.00 from the trust fund to deposit in the CD account and in
11 three successive years renewed the CD account.

12 Despite Henry Mayo's contentions that he did not know that Brian Mayo was taking
13 trust funds and placing them in an interest bearing Account, not designated as a trust account,
14 the record contradicts Respondent. Henry Mayo initially asserted that he first learned that
15 Brian Mayo and Jennifer Powell withdrew the trust fund and took the interest for themselves
16 when the auditor asked Respondent about it, he soon thereafter conceded that he knew earlier.
17 (RT p106:24-p107:2) When Brian Mayo testified at the hearing, he stated that in 2006, he
18 informed his father, Henry Mayo, of what he was doing, when he initially set up the interest
19 bearing account. (RT:p132:6-10) The ALJ even found in No. 14 that Henry Mayo signed the
20 signature card for the interest bearing CD Account. While the ALJ made no further findings in
21 that regard, under real estate law, as designated officer, Henry Mayo was responsible for
22 knowing what he was signing and cannot now hide behind his excuse that "he did not read it
23 carefully".

24 16. The ALJ found that Henry Mayo has a long history of civic involvement and
25 community service. He contributes time, leadership, and resources to numerous community
26 organizations and causes, including the Santa Rosa Memorial Hospital, St. Andrews
27 Presbyterian Church, the American Legion, the Sonoma Community Center, the Green Center

1 at California State University-Sonoma, the Sonoma Plaza Kiwanas Club, the Sonoma Valley
2 United Way, the Boy Scouts, and the Girl Scouts. He helped develop the first public housing
3 in Sonoma County. He has received numerous awards and commendations, including from
4 Member of Congress Mike Thompson, California State Senator Wesley Chesbro, and the
5 Sonoma County Board of Supervisors.

6 17. The Commissioner disciplined SPI's and Henry Mayo's licenses in February
7 2005 pursuant to Code Section 10177.5. The discipline stemmed from a 2002 superior court
8 judgment against SPI, Henry Mayo, and other parties regarding matters unrelated to the
9 present violations.

10 While the ALJ cited the fact that SPI and Henry Mayo suffered prior discipline, he
11 failed to discuss the gravity of discipline under Section 10177.5 of the Code.

12 Section 10177.5 states in part: "When a final judgment is obtained in a civil action
13 against any real estate licensee upon grounds of fraud, misrepresentation, or deceit with
14 reference to any transaction for which a license is required, the Commissioner may suspend or
15 revoke the licensee of such license."

16 18. The ALJ found that Brian Mayo regrets not following the rules applicable to
17 trust funds. He has learned his lesson and the evidence did not show that he is likely re-
18 offend. He has been married more than 24 years and has two children. He relies on his real
19 estate license to support his family. He has been active in the St. Luke Presbyterian Church,
20 including as a Sunday School teacher, Christmas Pageant Director, and church elder. He is a
21 volunteer with the Cub Scouts (Den Leader, Pack Leader) and Boy Scouts (Outings Chair,
22 Assistant Scoutmaster) and with Miller Creek Middle School, San Rafael. He is also active in
23 the Sonoma Valley Rotary Club.

24 19. The ALJ found that Jennifer Ann Powell regrets taking interest payments from
25 the CD. She acknowledges that it was wrong and never wants to be in such a situation again.
26 The evidence did not show that she is likely re-offend. She has been married for eight years

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1 and is the mother of two young boys. She volunteers at her children's pre-school and is a
2 member of the Mothers Club of Sonoma.

3 20. The Bureau incurred a reasonable cost of \$8,706.60 for the audit work of its
4 staff members Robert J. Leonard, Michael J. Rivera, and Thomas Cameron in this matter. The
5 Bureau also incurred a reasonable costs of \$2,078.45 for the investigation and enforcement
6 work of its investigators Fred U. Baranski, Robert K. Foreman, and Terrence Patterson and
7 counsel Annette E. Ferrante in this matter.

8 CONCLUSIONS OF LAW

9 1. Respondents violated Code Sections 10140.6, 10145 (including subdivisions
10 (d) and (g)), and 10159.5, and Regulation Sections 2773, 2831, 2831.1, 2831.2, 2832, and
11 2832.1. (Factual Finding 12.)

12 2. Respondents violated Code Section 10145 and Regulation Sections 2830.1,
13 2831.1 and 2832.1. (Factual Finding 14.)

14 3. Henry Mayo violated Code Sections 10159.2 and 10177, subdivisions (d), (g),
15 and (h), and Regulation Section 2725. (Factual Finding 15.)

16 4. Complainant has established, by clear and convincing evidence, cause to
17 discipline Respondents' licenses. The evidence did not establish, however, that Respondents
18 were willfully deceptive or dishonest in the violations set forth in Legal Conclusions 1, 2, and
19 3.

20 5. The ALJ found that: Henry Mayo acknowledged at hearing that he did not do a
21 good job supervising SPI and its employees, he regrets and is sincerely remorseful for the
22 violations that took place in this matter and he is now more active and vigilant in his supervision
23 and control of SPI and its employees. The ALJ additionally found that: Brian Mayo and
24 Jennifer Ann Powell are remorseful about their violations; they have learned a hard lesson and it
25 is not likely that they will re-offend and Respondents are working with their attorney and with
26 their real estate compliance consultant Keith Loughran to ensure that they understand and
27 comply with the Bureau's laws and regulations.

1 The ALJ made findings that Respondents, including Henry Mayo, regretted their mistakes
2 and were trying to correct past bad practices and also found that they did not intentionally violate
3 real estate law. California courts have repeatedly found that the Real Estate laws do not have an
4 intent requirement.

5 “Incompetence is not a defense to a breach of fiduciary duty. The disciplinary procedures
6 are designed to protect the public not only from the conniving real estate salesperson but also
7 from the uninformed, negligent, or unknowledgeable licensee.” (Handeland v Dept. Of Real
8 Estate (1976) 58 Cal.App.3d 513)

9 “The primary goal of licensing laws is to protect the public not only from unscrupulous
10 individuals, but also from irresponsible persona as well.” (Merrill v Department of Motor
11 Vehicles (1969) 71 Cal.2d 907)

12 The trust fund violations were the result of uninformed, negligent or unknowledgeable
13 licensees at best and involved the lack of supervision by Henry Mayo. Withdrawing trust funds
14 and placing them in an interest bearing account, not designated as a trust account, was at the very
15 least negligent and irresponsible. None of those violations are excused by Respondents’
16 contentions, even if they are to be believed, that they did not know that they were violating real
17 estate law.

18 6. The ALJ found that Respondents cooperated with the Bureau's audit. They took
19 steps to correct their violations during and after the audit. They are working with their attorney
20 and their compliance consultant to ensure ongoing compliance. Henry Mayo, Brian Mayo, and
21 Jennifer Ann Powell have been engaged in positive civic and community activities. Taking
22 these matters into account, the appropriate discipline in this matter is the stayed revocation of
23 their licenses under probationary terms. Outright revocation of their licenses is not necessary to
24 protect the public and would be punitive in nature.

25 7. Pursuant to Code Section 10106, Respondent Henry Kiser Mayo will be ordered
26 to pay Complainant’s audit (\$8,706.60) and all Respondents will be ordered to pay the
27 Bureau’s investigation and enforcement costs (\$2,078.45).

ORDER

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2 1. All licenses and licensing rights of Respondent Sonoma Properties, Inc. (SPI)
3 under the Real Estate Law are revoked.

4 2. All licenses and licensing rights of Respondent Henry Kiser Mayo under the Real
5 Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be
6 issued to Respondent pursuant to Code Section 10156.5 if Respondent makes application therefor
7 and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days
8 from the effective date of this decision. The restricted license issued to Respondent shall be
9 subject to all of the provisions of Code Section 10156.7 and to the following limitations,
10 conditions and restrictions imposed under authority of Code Section 10156.6:

11 a. The restricted license issued to Henry Kiser Mayo may be suspended prior
12 to hearing by order of the Real Estate Commissioner in the event of Respondent's conviction or
13 plea of nolo contendere to a crime that is substantially related to his fitness or capacity as a real
14 estate licensee.

15 b. The restricted license issued to Henry Kiser Mayo may be suspended prior
16 to hearing by order of the Real Estate Commissioner on evidence satisfactory to the
17 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
18 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to
19 the restricted license.

20 c. Henry Kiser Mayo shall not be eligible to apply for the issuance of an
21 unrestricted real estate license nor for the removal of any of the conditions, limitations or
22 restrictions of a restricted license until two years have elapsed from the effective date of this
23 decision.

24 d. Henry Kiser Mayo shall submit with any application for license under an
25 employing broker, or any application for transfer to a new employing broker, a statement
26 signed by the prospective employing real estate broker on a form approved by the Bureau of
27 Real Estate which shall certify:

1 (1) That the employing broker has read the decision of the
2 Commissioner which granted the right to a restricted license; and

3 (2) That the employing broker will exercise close supervision over
4 the performance by the restricted licensee relating to activities for which a real estate license is
5 required.

6 e. Henry Kiser Mayo shall, within nine months from the effective date of this
7 decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,
8 since the most recent issuance of an original or renewal real estate license, taken and successfully
9 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
10 Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the
11 Commissioner may order the suspension of the restricted license until Respondent presents such
12 evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to
13 the Administrative Procedure Act to present such evidence.

14 3. All licenses and licensing rights of Respondent Henry Brian Mayo under the
15 Real Estate Law are revoked; provided, however, a restricted real estate salesperson license
16 shall be issued to Respondent pursuant to Code Section 10156.5 if Respondent makes
17 application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted
18 license within 90 days from the effective date of this decision. The restricted license issued to
19 Respondent shall be subject to all of the provisions Code Section 10156.7 and to the following
20 limitations, conditions and restrictions imposed under authority of Code Section 10156.6:

21 a. The restricted license issued to Henry Brian Mayo may be suspended
22 prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's
23 conviction or plea of nolo contendere to a crime that is substantially related to Respondent's
24 fitness or capacity as a real estate licensee.

25 b. The restricted license issued to Henry Brian Mayo may be suspended
26 prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
27 Commissioner that Respondent has violated provisions of the California Real Estate Law,

1 the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions
2 attaching to the restricted license.

3 c. Henry Brian Mayo shall not be eligible to apply for the issuance of an
4 unrestricted real estate license nor for the removal of any of the conditions, limitations or
5 restrictions of a restricted license until two years have elapsed from the effective date of this
6 decision.

7 d. Henry Brian Mayo shall submit with any application for license under
8 an employing broker, or any application for transfer to a new employing broker, a statement
9 signed by the prospective employing real estate broker on a form approved by the Bureau of
10 Real Estate which shall certify:

11 (1) That the employing broker has read the decision of the
12 Commissioner which granted the right to a restricted license; and

13 (2) That the employing broker will exercise close supervision over
14 the performance by the restricted licensee relating to activities for which a real estate license is
15 required.

16 e. Henry Brian Mayo shall, within nine months from the effective date of
17 this decision, present evidence satisfactory to the Real Estate Commissioner that Respondent
18 has, since the most recent issuance of an original or renewal real estate license, taken and
19 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
20 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
21 condition, the Commissioner may order the suspension of the restricted license until
22 Respondent presents such evidence. The Commissioner shall afford Respondent the
23 opportunity for a hearing pursuant to the Administrative Procedure Act to present such
24 evidence.

25 4. All licenses and licensing rights of Respondent Jennifer Ann Powell under the
26 Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall
27 be issued to Respondent pursuant to Code Section 10156.5 if Respondent makes application

1 therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license
2 within 90 days from the effective date of this decision. The restricted license issued to
3 Respondent shall be subject to all of the provisions Code Section 10156.7 and to the following
4 limitations, conditions and restrictions imposed under authority of Code Section 10156.6:

5 a. The restricted license issued to Jennifer Ann Powell may be suspended
6 prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's
7 conviction or plea of nolo contendere to a crime that is substantially related to Respondent's
8 fitness or capacity as a real estate licensee.

9 b. The restricted license issued to Jennifer Ann Powell may be suspended
10 prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
11 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
12 Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to
13 the restricted license.

14 c. Jennifer Ann Powell shall not be eligible to apply for the issuance of an
15 unrestricted real estate license nor for the removal of any of the conditions, limitations or
16 restrictions of a restricted license until two years have elapsed from the effective date of this
17 decision.

18 d. Jennifer Ann Powell shall submit with any application for license under
19 an employing broker, or any application for transfer to a new employing broker, a statement
20 signed by the prospective employing real estate broker on a form approved by the Bureau of
21 Real Estate which shall certify:

22 (1) That the employing broker has read the decision of the
23 Commissioner which granted the right to a restricted license; and

24 (2) That the employing broker will exercise close supervision over
25 the performance by the restricted licensee relating to activities for which a real estate license is
26 required.

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

10 5. Pursuant to Code Section 10148, Respondent Henry Kiser Mayo shall
11 pay the sum of \$8,706.60 for the Commissioner's cost of the audit which led to this
12 disciplinary action. Respondent Henry Kiser Mayo shall pay such cost within sixty (60)
13 days of receiving an invoice therefore from the Commissioner. The Commissioner may
14 indefinitely suspend the restricted license of Respondent Henry Kiser Mayo pending a
15 hearing held in accordance with Government Code Section 11500 if payment is not timely
16 made as required, or as provided for in a subsequent agreement between Respondent Henry
17 Kiser Mayo and the Bureau. The suspension shall remain in effect until payment is made in
18 full or until Respondent Henry Kiser Mayo enter into an agreement satisfactory to the
19 Commissioner to provide for payment, or until a decision providing otherwise is adopted
20 following a hearing held pursuant to this condition.

21 6. The licenses and licensing rights of all Respondents are
22 indefinitely suspended unless or until all Respondents, jointly and severally, pay
23 the sum of \$2,078.45 for the Commissioner's reasonable costs of investigation and enforcement
24 which led to this disciplinary action. Said payment shall be in the form of a cashier's check or
25 certified check made payable to the Bureau of Real Estate and must be received prior to the
26 effective date of this Decision in order to avoid suspension of Respondents' restricted licenses.

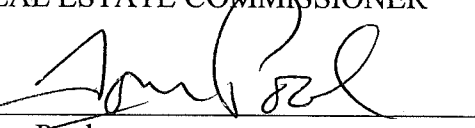
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This Decision shall become effective at 12 o'clock noon on SEP 30 2013

IT IS SO ORDERED 9-5-13

REAL ESTATE COMMISSIONER


By Tom Pool

File

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FILED

APR 16 2013

DEPARTMENT OF REAL ESTATE
By L. Just

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

In the Matter of the Accusation of
SONOMA PROPERTIES, INC.,
HENRY KISER MAYO,
JENNIFER ANN POWELL, AND
HENRY BRIAN MAYO,
Respondents.

No. H-11375 SF
OAH No. 2012070968

NOTICE

TO: SONOMA PROPERTIES, INC., HENRY KISER MAYO, JENNIFER ANN POWELL,
AND HENRY BRIAN MAYO, Respondents, and FRANK M. BUDA, their Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated
February 28, 2013, of the Administrative Law Judge is not adopted as the Decision of the Real
Estate Commissioner. A copy of the Proposed Decision dated February 28, 2013, is attached for
your information.

In accordance with Section 11517(c) of the Government Code of the State of
California, the disposition of this case will be determined by me after consideration of the record
herein including the transcript of the proceedings held on January 22, 2013, and any written
argument hereafter submitted on behalf of Respondents and Complainant.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

SONOMA PROPERTIES, INC.,
HENRY KISER MAYO,
JENNIFER ANN POWELL, and
HENRY BRIAN MAYO,

Respondents.

Case No. H-11375 SF

OAH No. 2012070968

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 22, 2013.

Annette E. Ferrante, Real Estate Counsel, represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, State of California.

Attorney Frank M. Buda, represented respondents Sonoma Properties, Inc., Henry Kiser Mayo, Jennifer Ann Powell, and Henry Brian Mayo.

The matter was submitted on January 22, 2013.

FACTUAL FINDINGS

1. Complainant E.J. Haberer II, Deputy Real Estate Commissioner, Department of Real Estate, issued the accusation in his official capacity.
2. On June 7, 1973, the department licensed respondent Sonoma Properties, Inc. (SPI) under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a corporate real estate broker.
3. Respondent Henry Kiser Mayo (Henry Mayo) is licensed under the Real Estate Law as a real estate broker. He has been licensed since April 3, 1972, a period of more than 40 years.
4. Respondent Jennifer Ann Powell is licensed under the Real Estate Law as a real estate salesperson. She has been licensed since August 18, 2005. Her license has not previously been subjected to discipline.

5. Respondent Henry Brian Mayo (Brian Mayo) is licensed under the Real Estate Law as a real estate salesperson. He has been licensed since April 14, 1995. His license has not previously been subjected to discipline.

6. Henry Mayo has been the designated officer of SPI since November 5, 2009. Pursuant to Business and Professions Code section 10159.2, Henry Mayo as the designated officer of SPI is responsible for the supervision of the activities of SPI's officers, agents, real estate licensees and employees, including real estate salespersons Brian Mayo and Jennifer Ann Powell.

7. SPI engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of Business and Professions Code section 10131, subdivision (b), including the leasing or renting or offer to lease or rent, or placing for rent, or solicitation of listings of places for rent, or solicitation of prospective tenants, or negotiation of the sale purchase or exchanges of lease on real property, or on a business opportunity, or collection of rents from real property, or improvements thereon, or from business opportunities.

8. Beginning on February 11, 2011, the Department of Real Estate conducted an audit of SPI's real estate activities for the period July 1, 2010, through January 31, 2011 (the "audit period"). This was a routine audit, not prompted by a consumer complaint. Robert Leonard, General Auditor III, Department of Real Estate, was assigned to the audit, which was conducted intermittently from February 11 through August 1, 2011. Leonard examined respondents' real estate licenses, bank statements, accounting records, bank signature card documents, and property management files.

Auditor Leonard issued an audit report dated August 2, 2011. Michael J. Rivera, Audit Team Supervisor, and Thomas Cameron, Supervising Auditor, signed off on the audit report.

9. Respondents cooperated with the department's audit, including meeting with and providing documents to department staff. During and after the audit, respondents sought to correct violations and to ensure compliance with the Real Estate Law going forward.

Respondents' efforts to correct violations and ensure ongoing compliance with legal requirements included seeking the advice of their attorney and engaging the services of Keith Loughran of Real Estate Compliance Solutions. Loughran is a licensed real estate broker and serves as a compliance consultant and expert witness in real estate audits, administrative actions, and civil matters. Before becoming the proprietor of Real Estate Compliance Solutions in 1997, Loughran was employed from 1985 to 1997 by the Department of Real Estate, including as Senior Investigative Auditor and Acting Supervisor.

Loughran reviewed the department's accusation in this matter, the department's August 2, 2011, audit report, the department's discovery documents and audit file, and SPI's

books and records. He also interviewed Henry Mayo, Jennifer Ann Powell, and Brian Mayo. Loughran subsequently authored a January 9, 2013, report and attachments responding to the accusation. Loughran's report documented respondents' efforts to correct the violations alleged in the accusation. Loughran appeared as a witness for respondents at the hearing in this matter.

10. Within the audit period, SPI received funds in trust (trust funds) from or on behalf of owners, tenants, and others in connection with the rental or lease of residential property, for or in expectation of compensation, and thereafter from time to time made disbursements of such trust funds.

11. SPI deposited trust funds into and made disbursements from three bank accounts that it maintained for the handling of trust funds:

(a) Trust Account #1: an account entitled "Sonoma Properties Inc Trust Account" at Sonoma Valley Bank, 202 West Napa Street, Sonoma. The last four digits of the account number were 7976 and the signatories were Henry Mayo, Brian Mayo, and Jennifer Ann Powell;

(b) Bank Account #1: an account at Sonoma Valley Bank, 202 West Napa Street, Sonoma, entitled on its signature card as "Valley of the Moon Realty Partners DBA Frank Howard Allen Property Management" and on its bank statements as "Valley of the Moon Realty Partners DBA Frank Howard Allen Property Mgmt Attn: Brian Mayo / Sec Dep Trust Account." The last four digits of the account number were 7330 and the signatories were Henry Mayo, Brian Mayo, and Jennifer Ann Powell; and,

(c) Bank Account #2: an account entitled "Valley of the Moon Realty Partners DBA Frank Howard Allen Property Management" at Sonoma Valley Bank, 202 West Napa Street, Sonoma. The last four digits of the account number were 4008 and the signatories were Henry Mayo, Brian Mayo, and Jennifer Ann Powell. This was a predecessor account to Trust Account #1. It was closed on December 10, 2010, and funds of \$19,113.19 were transferred to Trust Account #1.

12. SPI committed violations of the Business and Professions Code and the California Code of Regulations during the audit period. Respondents took steps to correct the violations during and after the department's audit.

(a) SPI failed to properly designate Bank Account #1 and Bank Account #2 as trust accounts in the name of SPI, in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.¹

¹ "Code section" refers to the Business and Professions Code and "regulation section" refers to Title 10 of the California Code of Regulations.

SPI closed Bank Account #2 on December 10, 2010, prior to the department's audit. SPI closed Bank Account #1 on May 15, 2011, prior to the completion of the department's audit report.

Since June 2011, SPI has used two trust accounts to hold trust funds. These are Trust Account #1 and an account at Westamerica Bank entitled "Security Deposit Trust Account," which will be referred to as Trust Account #2. Trust Account #2 replaced Bank Account #1. Both Trust Account #1 and Trust Account #2 are designated as SPI trust accounts.

(b) SPI caused the balance of funds in Trust Account #1 to be reduced to an amount which, as of January 31, 2011, was \$8,199.83 less than the aggregate liability of Trust Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Code section 10145 and regulation section 2832.1.

Auditor Leonard originally calculated the shortage as \$17,290.30, but acknowledged at hearing that the shortage was \$8,199.83, as calculated by respondents.

Prior to the August 1, 2011, issuance of the department's audit report, SPI corrected the shortage by deposits into Trust Account #1, including rental receipts, owner advances and security deposit transfers. The deposits are documented in the attachments to Loughran's January 9, 2013, report.

(c) SPI caused the balance of funds in Bank Account #1 to be reduced to an amount which, as of January 31, 2011, was approximately \$92,122.23 less than the aggregate liability of the account to all owners of such funds, without the prior written consent of each and every owner of the funds, in violation of Code section 10145 and regulation section 2832.1.

The shortage in Bank Account #1 was caused by SPI's withdrawals to purchase a certificate of deposit and the withdrawal of interest of \$7,122.23 by Jennifer Ann Powell and Brian Mayo.

After January 31, 2011, SPI corrected the shortage in Bank Account #1 by depositing \$92,122.23 (and additional accrued interest) into Trust Account #2, the replacement account for Bank Account #1, which was closed on May 15, 2011.

(d) SPI deposited trust funds of multiple beneficiaries into an interest bearing account, Bank Account #1, that was not in the name of the broker as trustee, and failed to keep such funds separate and apart from funds belonging to any other person for whom SPI held funds in trust, as required by Code section 10145, subdivision (d).

SPI sought to correct the above violation by closing Bank Account #1 on May 15, 2011. The two bank accounts used by SPI since June 2011 are non-interest bearing trust accounts in the name of SPI.

(e) SPI failed to maintain complete and accurate records of all trust funds received and disbursed (control record) for Trust Account #1, in violation of Code section 10145 and regulation section 2831.

The department's audit report cited regulation section 2831 because the control record for Trust Account #1 did not have a column listing the account balance after posting transactions each day. At the time of the audit, SPI used a version of the Tenant File software that did not generate a report that contained such a column.

SPI has since updated its version of Tenant File and now generates a report titled "Check Register" that contains a running balance column that is updated after posting each transaction.

(f) SPI failed to maintain separate records for each beneficiary or property of trust funds accepted or received for Bank Account #1, in violation of Code section 10145, subdivision (g), and regulation section 2831.1.

SPI used Bank Account #1 as a depository for security deposits. Bank Account #1 was closed on May 15, 2011. Trust Account #2 replaced Bank Account #1 and has separate records for each beneficiary, in compliance with Code section 10145, subdivision (g), and regulation section 2831.1.

(g) SPI failed to perform and maintain reconciliations of the total of separate beneficiary records with a control record on at least a monthly basis for Trust Account #1 and Bank Account #1, in violation of Code section 10145 and regulation section 2831.2.

SPI corrected the above violation by closing Bank Account #1 and replacing it with Trust Account #2. SPI now maintains monthly reconciliations for Trust Account #1 and Trust Account #2, in compliance with Code section 10145 and regulation section 2831.2.

(h) SPI conducted real estate activities using the fictitious business name "Frank Howard Allen Realtors" without first registering that fictitious business name with the department as required by Code section 10159.5 and regulation section 2731.

SPI previously registered the fictitious business name "Frank Howard Allen Realtors" with the department. The fictitious business name was cancelled effective January 26, 2010, but continued to appear on the business cards of Brian Mayo and Jennifer Ann Powell during the audit period. They have since stopped using these business cards.

The evidence did not establish that SPI conducted real estate activities using the fictitious business names "Valley of the Moon Realty Partners" or "Frank Howard Allen Property Management" during the audit period. "Valley of the Moon Realty Partners d.b.a. Frank Howard Allen Property Management" appeared on the bank statements for Bank

Account #1 but those statements were not disseminated to the public. In any event, Bank Account #1 was closed on May 15, 2011. There was no showing that SPI otherwise used the names "Valley of the Moon Realty Partners" or "Frank Howard Allen Property Management."

(i) SPI failed to place the real estate license numbers on the business cards of Brian Mayo and Jennifer Ann Powell as required by Code section 10140.6 and regulation section 2773.

SPI updated the business cards of Brian Mayo and Jennifer Ann Powell to include their real estate license numbers.

13. Henry Mayo, Jennifer Ann Powell, and Brian Mayo were fiduciaries to SPI's property management clients and owed a duty of utmost good faith and loyalty to their clients and were required to place the interests of their clients above their own interests. Their fiduciary duties included:

(a) protecting trust funds provided by or on behalf of respondents' clients by properly handling the funds, including the deposit of such funds in a trust account as required under Code section 10145;

(b) not depositing trust funds into an investment vehicle such as a certificate of deposit without the expressed written consent of all beneficiaries of the trust funds;

(c) not depositing trust funds into investment vehicles that were not liquid and could not be accessed without delay should access be required;

(d) depositing trust funds in an account properly titled as a trust account and/or titling the asset as being held for the benefit of the trust account beneficiaries and thereby protecting the trust funds from respondents' creditors; and,

(e) not taking any secret or undisclosed compensation, commission or profit under any agreement employing respondents to do any acts for which a license is required for compensation.

14. In December 2006, respondents withdrew \$70,000 in trust funds from Bank Account #1 and purchased a certificate of deposit (CD) at Sonoma Valley Bank in the name of "Sonoma Properties Inc." The signature card for the CD did not set forth any trust designation. Henry Mayo signed the signature card, but acknowledges that he did not read it carefully.

When they used trust funds to open the CD, Brian Mayo and Jennifer Ann Powell did not realize they were in violation of real estate laws. The CD was automatically renewed in

2007, 2008, 2009, and 2010. In 2008, respondents deposited an additional \$15,000 into the CD. A total of \$7,122.23 in interest was earned on the CD in 2007, 2008, 2009, and 2010, all of which was withdrawn and disbursed to Brian Mayo and Jennifer Ann Powell, with each taking a 50 percent share of the accrued interest. Westamerica Bank, which had acquired Sonoma Valley Bank, issued a renewal notice for the CD dated March 14, 2011, which showed a current balance of \$85,041.24. The notice did not set forth any trust designation. At no time did respondents notify their clients, the beneficiaries of the trust funds used to open the CD, of the existence of the CD or the interest payments received by Brian Mayo and Jennifer Ann Powell. Nor did respondents obtain express written approval from the beneficiaries or inform the beneficiaries of the withdrawal of the funds used to purchase the CD, the repeated renewals of the CD, or the disbursements of interest payments on the CD to Brian Mayo and Jennifer Ann Powell. Respondents thereby violated Code section 10145 and regulation sections 2830.1, 2831.1 and 2832.1.

As set forth in Factual Finding 12(c) respondents corrected the shortage in Bank Account #1 by depositing \$92,122.23 (and additional accrued interest) into Trust Account #2, the replacement account for Bank Account #1, which was closed on May 15, 2011. Additionally, Henry Mayo has asked the department for guidance on how to disburse the accrued interest to its rightful owners.

15. Henry Mayo, the designated officer broker of SPI, failed to exercise reasonable supervision and control over the activities of SPI and its employees, including Jennifer Ann Powell and Brian Mayo, in violation of Code sections 10159.2 and 10177, subdivisions (d), (g), and (h), and regulation section 2725.

Henry Mayo is determined to ensure violations do not occur again. He is now more active and vigilant in his supervision and control of SPI and its employees. He is working with his attorney and with Real Estate Compliance Solutions to ensure his understanding of and compliance with the department's laws and regulations. He is in frequent contact with Brian Mayo and Jennifer Ann Powell and reviews SPI's records on a weekly basis.

16. Henry Mayo has a long history of civic involvement and community service. He contributes time, leadership, and resources to numerous community organizations and causes, including the Santa Rosa Memorial Hospital, St. Andrews Presbyterian Church, the American Legion, the Sonoma Community Center, the Green Center at California State University – Sonoma, the Sonoma Plaza Kiwanis Club, the Sonoma Valley United Way, the Boy Scouts, and the Girl Scouts. He helped develop the first public housing in Sonoma County. He has received numerous awards and commendations, including from Member of Congress Mike Thompson, California State Senator Wesley Chesbro, and the Sonoma County Board of Supervisors,

17. The commissioner disciplined SPI's and Henry Mayo's licenses in February 2005 pursuant to Business and Professions Code section 10177.5. The discipline stemmed from a 2002 superior court judgment against SPI, Henry Mayo, and other parties regarding matters unrelated to the present violations.

18. Brian Mayo regrets not following the rules applicable to trust funds. He has learned his lesson and the evidence did not show that he is likely re-offend. He has been married more than 24 years and has two children. He relies on his real estate license to support his family. He has been active in the St. Luke Presbyterian Church, including as a Sunday School teacher, Christmas Pageant Director, and church elder. He is a volunteer with the Cub Scouts (Den Leader, Pack Leader) and Boy Scouts (Outings Chair, Assistant Scoutmaster) and with Miller Creek Middle School, San Rafael. He is also active in the Sonoma Valley Rotary Club.

19. Jennifer Ann Powell regrets taking interest payments from the CD. She acknowledges that it was wrong and never wants to be in such a situation again. The evidence did not show that she is likely re-offend. She has been married for eight years and is the mother of two young boys. She volunteers at her children's pre-school and is a member of the Mothers Club of Sonoma.

20. The department incurred a reasonable cost of \$8,706.60 for the audit work of its staff members Robert J. Leonard, Michael J. Rivera, and Thomas Cameron in this matter. The department also incurred a reasonable cost of \$2,078.45 for the investigation and enforcement work of its investigators Fred U. Baranski, Robert K. Foreman, and Terrence Patterson, and counsel Annette E. Ferrante in this matter.

LEGAL CONCLUSIONS

1. Respondents violated Code sections 10140.6, 10145 (including subdivisions (d) and (g)), and 10159.5, and regulation sections 2773, 2831, 2831.1, 2831.2, 2832, and 2832.1. (Factual Finding 12.)
2. Respondents violated Code section 10145 and regulation sections 2830.1, 2831.1 and 2832.1. (Factual Finding 14.)
3. Henry Mayo violated Code sections 10159.2 and 10177, subdivisions (d), (g), and (h), and regulation section 2725. (Factual Finding 15.)
4. Complainant has established, by clear and convincing evidence, cause to discipline respondents' licenses. The evidence did not establish, however, that respondents were willfully deceptive or dishonest in the violations set forth in Legal Conclusions 1, 2, and 3.
5. Henry Mayo acknowledged at hearing that he did not do a good job supervising SPI and its employees. He regrets and is sincerely remorseful for the violations that took place in this matter. He is now more active and vigilant in his supervision and control of SPI and its employees. Similarly, Brian Mayo and Jennifer Ann Powell are remorseful about their violations; they have learned a hard lesson and it is not likely that they

will re-offend. Respondents are working with their attorney and with their real estate compliance consultant Keith Loughran to ensure that they understand and comply with the department's laws and regulations.

6. Respondents cooperated with the department's audit. They took steps to correct their violations during and after the audit. They are working with their attorney and their compliance consultant to ensure ongoing compliance. Henry Mayo, Brian Mayo, and Jennifer Ann Powell have been engaged in positive civic and community activities. Taking these matters into account, the appropriate discipline in this matter is the stayed revocation of their licenses under probationary terms. Outright revocation of their licenses is not necessary to protect the public and would be punitive in nature.

7. Pursuant to Code section 10106, respondents will be ordered to pay complainant's audit (\$8,706.60), and investigation and enforcement costs (\$2,078.45).

Respondents will also be ordered to pay the reasonable cost of a subsequent audit to determine if they have corrected the trust fund violations found in decision, should the department decide to conduct such an audit.

ORDER

1. All licenses and licensing rights of respondent Sonoma Properties, Inc. (SPI) under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to SPI pursuant to Code section 10156.5 if it 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 SPI shall be subject to all of the provisions of Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Code section 10156.6:

a. The restricted license issued to SPI may be suspended prior to hearing by order of the Real Estate Commissioner in the event of SPI conviction or plea of nolo contendere to a crime that is substantially related to its fitness or capacity as a real estate licensee.

b. The restricted license issued to SPI may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the commissioner that it 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.

c. SPI 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.

Not Adopted

Not Adopted

2. All licenses and licensing rights of respondent Henry Kiser Mayo under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to him pursuant to Code section 10156.5 if he 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 him shall be subject to all of the provisions of Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Code section 10156.6:

a. The restricted license issued to Henry Kiser Mayo may be suspended prior to hearing by order of the Real Estate Commissioner in the event of his conviction or plea of nolo contendere to a crime that is substantially related to his fitness or capacity as a real estate licensee.

b. The restricted license issued to Henry Kiser Mayo may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the commissioner that he 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.

c. Henry Kiser Mayo 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.

d. Henry Kiser Mayo shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he 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 he fails to satisfy this condition, the commissioner may order the suspension of the restricted license until the he presents such evidence. The commissioner shall afford him the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

3. Respondent Henry Mayo shall report in writing to the Department of Real Estate as the Real Estate Commissioner may direct while the restricted license is in effect. These reports may include information concerning respondents' activities for which a real estate license is required, including but 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 respondents engaged during the period covered by the report.

4. All licenses and licensing rights of respondent Henry Brian Mayo under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license

shall be issued to him pursuant to Code section 10156.5 if he 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 him shall be subject to all of the provisions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Code section 10156.6:

a. The restricted license issued to Henry Brian Mayo may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of his conviction or plea of nolo contendere to a crime that is substantially related to his fitness or capacity as a real estate licensee.

b. The restricted license issued to Henry Brian Mayo may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the commissioner that he 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.

c. Henry Brian Mayo 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.

d. Henry Brian Mayo shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(1) That the employing broker has read the decision of the commissioner which granted the right to a restricted license; and

(2) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

e. Henry Brian Mayo shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he 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 he fails to satisfy this condition, the commissioner may order the suspension of the restricted license until the he presents such evidence. The commissioner shall afford him the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Not Adopted 10/11

5. All licenses and licensing rights of respondent Jennifer Ann Powell under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to him pursuant to Code section 10156.5 if she 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 her shall be subject to all of the provisions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Code section 10156.6:

a. The restricted license issued to Jennifer Ann Powell may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of her conviction or plea of nolo contendere to a crime that is substantially related to her fitness or capacity as a real estate licensee.

b. The restricted license issued to Jennifer Ann Powell may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the commissioner that she 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.

c. Jennifer Ann Powell 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.

d. Jennifer Ann Powell shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(1) That the employing broker has read the decision of the commissioner which granted the right to a restricted license; and

(2) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

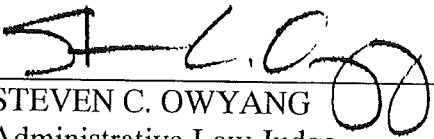
e. Jennifer Ann Powell shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that she has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education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

Not Adopted

Not Adopted

6. Pursuant to Code section 10148, respondents shall pay to the department \$8,706.60 for the cost of the audit and \$2,078.45 for the cost of investigation and enforcement in this matter. Additionally, respondents shall pay for the reasonable cost for a subsequent audit to determine if they have corrected the trust fund violations found in decision, should the department decide to conduct such an audit. In calculating the amount of the department's reasonable cost, the department 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 costs within 60 days of receiving an invoice from the department detailing the activities performed during the audit and the amount of time spent performing those activities. The commissioner may suspend the restricted licenses issued to respondents pending a hearing held in accordance with Government Code section 11500 if payment is not timely made as required, or as provided for in a subsequent agreement between respondents and the department. The suspension shall remain in effect until payment is made in full or until respondents enter into an agreement satisfactory to the department to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED: February 28, 2013



STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings