

**FILED**

OCT 10 2013

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By *[Signature]*

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In the Matter of the Accusation of )  
 )  
HILLS & HOME'S PROPERTY, )  
MANAGEMENT, INC. and )  
MELIZA LYNN ROBINSON-PITKIN, )  
 )  
Respondents. )  
\_\_\_\_\_ )

NO. H-11475 SF

OAH NO. 2013031100

DECISION

The Proposed Decision dated August 16, 2013, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on OCT 31 2013.

IT IS SO ORDERED 9/27/2013

REAL ESTATE COMMISSIONER

*[Signature]*  
WAYNE S. BELL

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of  
  
HILLS & HOME'S PROPERTY  
MANAGEMENT, INC.  
and MELIZA LYNN ROBINSON-PITKIN,  
  
Respondents.

Case No. H-11475 SF

OAH No. 2013031100

**PROPOSED DECISION**

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on August 12, 2013, in Oakland, California.

Annette E. Ferrante, Counsel, represented complainant Robin S. Tanner, a Deputy Real Estate Commissioner of the State of California.

Delphine S. Adams, Dickenson, Peatman & Fogarty, represented respondents Meliza Lynn Robinson-Pitkin and Hills & Home's Property Management, Inc.

**FACTUAL FINDINGS**

1. Robin S. Tanner made the accusation in her official capacity, as a Deputy Real Estate Commissioner of the State of California.

*Introduction*

2. The Bureau of Real Estate<sup>1</sup> (bureau) issued Meliza Lynn Robinson-Pitkin (respondent) a real estate salesperson license on June 5, 2002. The bureau issued a broker's license to respondent on January 24, 2008. Respondent's license is scheduled to expire on January 23, 2016. Hills & Home's Property Management, Inc. (HHPMI) was licensed as a corporation on April 3, 2008, with respondent identified as the designated officer. The corporation license is scheduled to expire on June 11, 2016.

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<sup>1</sup> The Department of Real Estate became the Bureau of Real Estate on July 1, 2013.

3. HHPMI is engaged in the business of property management. In 2011, HHPMI managed approximately 240 properties and received approximately \$5,400,000 in rents.

*The Bureau's Audit of HHPMI*

4. Between June 26, 2012, and August 31, 2012, the bureau conducted an audit of HHPMI. The auditor examined HHPMI's property management and sales activity records for the period of January 1, 2011, through May 31, 2012 (the audit period). The auditor did not make any non-compliance findings with regard to HHPMI's sales activity.

5. As to the property management activity, however, the audit revealed a trust fund shortage as of May 31, 2012. The auditor determined that during the audit period HHPMI accepted or received funds in trust in the course of property management activities, and deposited the funds into a trust account maintained by HHPMI at Exchange Bank. The adjusted bank balance of the trust funds was \$548,383.01; the total liabilities to the property owners as documented in HHPMI records was \$634,997.26. The audit therefore revealed a trust fund shortage in the amount of \$86,614.25. The shortage was due to a negative balance of \$3,762.23 in the HHPMI broker account, a negative balance of \$278 in the Jackson separate beneficiary record, and unidentified causes in the amount of \$82,574.02.

6. The audit also revealed that on four occasions during the audit period, HHPMI had failed to deposit trust funds into the trust account within three business days of receipt. On March 9, 2012, HHPMI received \$1,700 to be held in trust on one property, and \$1,000 to be held in trust on another property. On March 13, 2012, HHPMI received \$2,700 on a property and \$1,000 on another property. The funds were not deposited in the trust account until March 21, 2012. Therefore, the funds received on March 9, 2012, were deposited within eight business days; the funds received on March 13, 2012, were deposited within six business days.

7. The audit further revealed that HHPMI had failed to maintain an accurate control record; the balance in the control record differed from the bank balance.

8. In addition, the audit revealed that HHPMI had failed to reconcile the total of separate beneficiary/property records with a control record on a monthly basis.

9. Respondent was cooperative with the auditor and was surprised by the findings. As the designated broker/officer of HHPMI, respondent was responsible for the supervision and control of the activities conducted on behalf of HHPMI by its officers and employees. The audit revealed that during the audit period, respondent had failed to exercise reasonable supervision and control over the property management activities of HHPMI. Respondent had permitted the conduct described in Factual Findings 5 through 8 to occur, and failed to take reasonable

steps to ensure compliance with the Real Estate Law<sup>2</sup> and regulations, including the handling of trust funds, supervision of employees and the implementation of policies and procedures.

### *Costs*

10. Complainant requests reimbursement of the bureau's costs of enforcement in the amount of \$1,330.55. The costs of enforcement are supported by a declaration of counsel assigned to this case in which the general tasks performed, the time spent on each task and the method of calculating the costs are described.

11. Complainant also requests reimbursement of the bureau's audit costs in the amount of \$5,301.<sup>3</sup> A description of the general tasks performed during the audit, the time spent on each task and the method of calculation is described in an attachment to counsel's declaration.

### *Respondent's Evidence*

12. Respondent purchased HHPMI in December 2005, as a licensed a real estate salesperson. When respondent purchased the business, she understood that the records were in compliance with the Real Estate Law. The business's former designated officer/broker continued to supervise the business until 2008 when respondent became a licensed broker. Respondent was trained in property management by the former officer/broker. When respondent purchased the business, HHPMI had 67 properties; it now has over 300 properties. The prior owner used "Quickbooks" software. In 2007, respondent purchased new property management accounting software, "Promas," after performing internet research and contacting other property managers in the area for advice. Respondent has been dissatisfied with Promas; in her experience, it is not user-friendly and it often "crashes," requiring an employee to contact the company support line for help in rebuilding the files.

13. Following the audit, on October 28, 2012, respondent deposited \$7,352.77 into the trust account to cover bank fees from November 2007 forward. Respondent had been unaware that the business was required to deposit funds into the trust account to cover the cost of bank fees.

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<sup>2</sup> The Real Estate Law commences at Business and Professions Code section 10000. The rules and regulations of the commissioner commence at California Code of Regulations, title 10, section 2705.

<sup>3</sup> The audit costs reimbursement request originally included 16 hours spent by the auditor reviewing HHPMI's sales activity. At hearing, complainant withdrew the request for reimbursement of the time spent reviewing HHPMI's sales activity because no findings of non-compliance were made.

14. Upon learning of the discrepancies found by the auditor, respondent hired two consultants: Pam Strickland, a real estate broker and independent compliance consultant, and Renee Burke, a bookkeeper and the owner of ASAP Bookkeeping. Burke, who has worked in trust accounting since 1997, testified at hearing.

15. Burke wrote a report after having reviewed and reconciled the trust account from January 1, 2010, through February 28, 2013. Burke spent 148 hours bringing the trust account into compliance. She found no misuse of trust funds. In performing her review, Burke encountered many "glitches" and "crashes" in using the Promas software. Burke has used many different property management software programs and finds Promas to be the most cumbersome and difficult to use.

The majority of adjustments that she made were due to erroneous entries. The owners' starting balances in the trust account were either not known or never provided by the prior broker and therefore had to be reconstructed. The owners' balances were found to be overstated because multiple security deposits being held by the owners were included in the starting balances, which was unknown to the bureau's auditor. As of February 28, 2013, Burke was unable to account for \$17,790, and therefore she advised respondent to add \$17,900 into the trust account to cover this amount, plus monies to cover future bank fees. On August 8, 2013, respondent deposited \$17,900 into the trust account to cure the shortage and pay bank fees.

As of the date of hearing, Burke had reviewed and reconciled the trust account through July 31, 2013. All of the 2013 bank reconciliations are in balance. She has tied the check register to the bank balances through October 31, 2012.

16. In light of the difficulties experienced with Promas, respondent purchased a new property management software program, AppFolio, in November 2012. She retained Burke to help with the migration of the files from Promas to AppFolio. In addition, respondent retained Burke to review HHPMI's books on a monthly basis, and Strickland to perform an annual review to further ensure compliance.

17. Respondent has instituted new policies and procedures since learning HHPMI was not in full compliance with the Real Estate Law. She has learned a good deal from the audit, and from Strickland, Burke and her counsel, regarding appropriate trust fund policies and practices. Respondent accepts full responsibility for carefully supervising all HHPMI employees and activities, including trust fund handling. She will ensure that all trust funds are deposited within three business days, and will review all trust account records, owner records and bank statements on a monthly basis.

18. Respondent does not object to complainant's request for reimbursement of costs of enforcement and the audit; however, she asked for additional time to pay the costs.

## LEGAL CONCLUSIONS

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence that the licenses should be disciplined. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

### *Causes for Discipline*

2. Pursuant to Business and Professions Code section 10159.2, the designated broker/officer of a corporate broker licensee is responsible for the supervision of the activities conducted on behalf of the corporation by its officers and employees. As the designated broker/officer of HHPMI, respondent is responsible for the activities of HHPMI and its employees.

3. Pursuant to Business and Professions Code section 10177, subdivision (d), the commissioner is authorized to suspend or revoke the license of a real estate licensee who has willfully disregarded or violated the Real Estate Law, or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law. The term "willfully," as used in this subdivision, means "done deliberately: not accidental or without purpose." (*Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639; see also *Manning v. Fox* (1984) 151 Cal.App.3d 531, 542.) The evidence did not establish that respondent or HHPMI willfully violated the Real Estate Law.

4. Business and Professions Code section 10177, subdivision (g), authorizes the commissioner to suspend or revoke the license of a real estate licensee who has demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

5. Business and Professions Code section 10145, in conjunction with California Code of Regulations, title 10, section 2832.1, provides that the written consent of every principal who is an owner of funds in a trust account shall be obtained by a real estate broker prior to each disbursement, if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds. As set forth in Factual Findings 5 and 15, cause exists to impose discipline pursuant to Business and Professions Code sections 10145 and 10177, subdivision (g), in conjunction with California Code of Regulations, title 10, section 2832.1.

6. Business and Professions Code section 10145, in conjunction with California Code of Regulations, title 10, section 2832, requires that a licensee deposit trust funds into a trust account within three business days. As set forth in Factual Finding 6, cause for discipline exists pursuant to Business and Professions Code sections 10145 and 10177, subdivision (g), in conjunction with California Code of Regulations, title 10, section 2832.

7. Business and Professions Code section 10145, in conjunction with California Code of Regulations, title 10, section 2831, require a broker to maintain an accurate record of

all trust funds deposited into and disbursed from a trust account. As set forth in Factual Finding 7, cause for discipline exists pursuant to Business and Professions Code sections 10145 and 10177, subdivision (g), in conjunction with California Code of Regulations, title 10, section 2831.

8. Business and Professions Code section 10145, in conjunction with California Code of Regulations, title 10, section 2831.2, provides that the commissioner may suspend or revoke a real estate license where the licensee fails to reconcile the total of separate beneficiary/property records with a control record on a monthly basis. As set forth in Factual Finding 8, cause for discipline exists pursuant to Business and Professions Code sections 10145 and 10177, subdivision (g), in conjunction with California Code of Regulations, title 10, section 2831.2.

9. Business and Professions Code section 10159.2, in conjunction with California Code of Regulations, title 10, section 2725, provides that the commissioner may suspend or revoke a real estate license where the designated broker/officer fails to supervise and control the activities conducted by the officers and employees of a corporate licensee. Business and Professions Code section 10177, subdivision (h), provides that a broker licensee who fails to exercise reasonable supervision over the activities of salesperson, or the officer designated by a corporate broker license, failed to exercise reasonable supervision and control of the corporation for which a real estate license is required, constitutes cause for discipline.

Respondent failed to supervise and control the activities of HHPMI and its officers and employees while acting as HHPMI's designated broker/officer. (Factual Findings 2 and 5 through 9.) Cause for discipline therefore exists pursuant to Business and Professions Code sections 10159.2 and 10177, subdivision (h), and Code of Regulations, title 10, section 2725.

#### *Costs*

10. Complainant has requested reimbursement of the costs of the audit, and the costs of enforcement of this matter. Pursuant to Business and Professions Code section 10148, subdivision (b), the commissioner is entitled to charge a real estate broker for the cost of any audit, if the commissioner has found, in a final decision following a disciplinary hearing, that the broker has violated section 10145 or a regulation of the commissioner interpreting section 10145.

As set forth in Legal Conclusions 4 through 9, respondent violated section 10145 and the regulations interpreting section 10145. Complainant has established that the bureau has incurred audit costs in the amount of \$5,301. (Factual Finding 11.)

11. Business and Professions Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding, the commissioner may ask the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Section 10106 provides

that a certified copy of the actual costs, signed by the commissioner or the commissioner's designated representative shall be prima facie evidence of reasonable costs of investigation and enforcement. Complainant has established that the bureau has incurred costs in the amount of \$1,330.55. (Factual Finding 10.) The amount of the costs of enforcement is reasonable.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. It must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay. Respondent has not established a basis to reduce the costs of enforcement; however she requested additional time to pay costs. (Factual Finding 18.)

#### *Level of Discipline*

12. The purpose of disciplining a professional or occupational license is to protect the public, not to punish the licensee. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031.) In determining the appropriate level of discipline, the issue is whether respondent has been substantially rehabilitated. Respondent bears the burden of demonstrating rehabilitation.

In this matter, respondent was cooperative with the auditor, and when the shortage was discovered, respondent took immediate action to hire a compliance consultant and a bookkeeper. (Factual Findings 9 and 14.) The software that respondent had purchased made it difficult for respondent to accurately document the trust fund transactions, and therefore she has purchased new software. (Factual Findings 12, 15 and 16.) After many hours reviewing records by the bookkeeper hired by respondent, the amount of the shortage was reduced from \$86,614.25 to \$17,790, plus prior bank fees in the amount of \$7,352.77. (Factual Findings 13 and 15.) Respondent has deposited funds into the trust account to cover the shortage and bank fees. Respondent has retained Burke, who is experienced in trust fund handling, to help transfer the business' files to the new software, and to review the bookkeeping on a monthly basis. She has also retained Strickland to perform an annual review to ensure compliance. In addition, respondent has initiated new policies and procedures and has committed to supervising the trust fund handling carefully in the future. (Factual Finding 17.)

Under these circumstances, the public interest will not be threatened by leaving respondent's licenses intact, and issuing respondent a public reproof pursuant to Business and Professions Code section 495. Because respondent has received formal training in trust fund handling recently, she will be ordered to attend and complete a class in trust fund handling as a condition of the reproof.



ORDER

1. Meliza Lynn Robinson-Pitkin and Hills & Home's Property Management, Inc., are hereby reprovved for violations of Business and Professions Code sections 10145, 10159.2 and 10177, subdivisions (g) and (h), and California Code of Regulations, title 10, sections 2825, 2831, 2831.2, 2832 and 2832.1, revealed by the Bureau of Real Estate's audit.

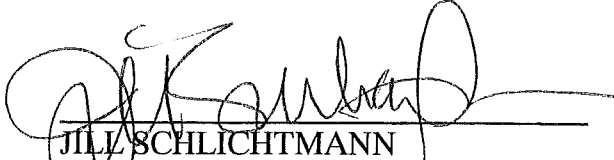
2. As a condition of this reprovval, Meliza Lynn Robinson-Pitkin shall, within six months of the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that she has successfully completed a course on trust fund handling that is approved by the Bureau of Real Estate.

3. As a further condition of this reprovval, Meliza Lynn Robinson-Pitkin and Hills & Home's Property Management, Inc., shall be jointly and severally liable to pay the sum of \$1,330.55 to the Bureau of Real Estate for the cost of enforcement of this matter. Said payment shall be made within six months of the effective date of this Decision.

4. As a further condition of this reprovval, Meliza Lynn Robinson-Pitkin and Hills & Home's Property Management, Inc., shall be jointly and severally liable to pay the sum of \$5,301 to the Bureau of Real Estate for the cost of the audit. Said payment shall be made within six months of the effective date of this Decision.

DATED:

8/16/13

  
JILL SCHLICHTMANN  
Administrative Law Judge  
Office of Administrative Hearings