BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT FOR THE STATE OF CALIFORNIA, Complainant, v. ALI SHEKARCHIAN, A.K.A. ALIREZA SHEKARCHIAN Respondent.	OAH No. 2014040981

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated December 19, 2014, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter pursuant to Government Code Section 11517(c)(2)(A).

This Decision shall become effective on May 1, 2015.

IT IS SO ORDERED this 3rd day of April, 2015.

COMMISSIONER OF BUSINESS OVERSIGHT

[redacted]

Jan Lynn Owen

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY
STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, vs. ALI SHEKARCHIAN, a.k.a. ALIREZA SHEKARCHIAN, Respondent.	OAH No. 2014040981

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on September 22, 2014, at Los Angeles. Joyce Tsai, Senior Corporations Counsel, represented the Commissioner of Business Oversight, State of California. Faryan Andrew Afifi, Attorney at Law, represented respondent Ali Shekarchian, who was present.

At the conclusion of the hearing, the Administrative Law Judge granted the request of the Senior Corporation Counsel to file written argument. On October 6, 2014, the Senior Corporations Counsel and respondent's counsel timely filed closing briefs, which were marked as Exhibits 6 and G, respectively.[1]

On October 31, 2014, the Administrative Law Judge issued a Post-Hearing Order, directing the parties to file supplemental briefs addressing the issue of whether the transactions in this matter were exempt from regulation. On November 21, 2014, the Senior Corporations Counsel and respondent's counsel filed supplemental closing briefs, which were marked as Exhibits 7 and H, respectively.

[1] Complainant's Opening Brief, which was presented at the hearing, was marked as Exhibit 5.

Oral and documentary evidence and written arguments having been received and considered, the Administrative Law Judge submitted this matter for decision on November 21, 2014, and finds as follows:

FACTUAL FINDINGS

1. On January 23, 2014, Mary Ann Smith in her official capacity as Deputy Commissioner, Enforcement Division, Department of Business Oversight (Department), made and issued the Desist and Refrain Order on behalf of complainant Jan Lynn Owen, Commissioner of Business Oversight (Commissioner), pursuant to the provisions of Corporations Code section 25532. The Desist and Refrain Order was issued to and served upon respondent Ali Shekarchian, also known as Alireza Shekarchian, for allegedly violating Corporations Code sections 25110 and 25401.

2. On or about March 26, 2014, Faryan Andrew Afifi, Attorney at Law, filed a letter with the Department, stating that he represented respondent and requesting a hearing on the Desist and Refrain Order. Said counsel thereby acknowledged that respondent had received the Desist and Refrain Order. Subsequently, the Department properly served respondent with notices of hearing pursuant to Government Code section 11509. Jurisdiction exists in this matter. The issue presented by this matter is the propriety of the issuance of the Desist and Refrain Order to respondent.

3. As of April 3, 2014, the records of the Department do not show any filing by respondent under the California Corporate Securities Law for any form of qualification or permit authorizing the offer and sale of securities in this state, or any application therefor, or for any notice of exemption (Exh. 2).

4. (A) At all times relevant herein, respondent has been engaged in the business of lending and investing from an office in Beverly Hills. Respondent's family has been engaged in the business of private lending and making real estate loans for many years.

(B) At all times relevant herein, Jason Harcoan (Harcoan) has been an investor and entrepreneur. He has a master of business of administration from the University of Melbourne in Australia. While he currently lives in New York and London and is a partner in a private equity fund which invests in distressed assets in southern Europe, Harcoan had previously lived in Los Angeles for approximately five years.

(C) At all times relevant herein, Hamid Dehdashty (Dehdashty) has been engaged in the business of lending and investing. Dehdashty is respondent's cousin.

5. (A) At all times relevant herein, Gourmet Green Room, Inc. (Gourmet Green Room), has been a California corporation engaged in the business of growing, harvesting, and selling marijuana for medical purposes from offices and a dispensary in Los Angeles.

Matthew J. Tanney is the president, and Michael D. Healy (Healy) is the chief executive officer of operations, of Gourmet Green Room

(B) At all times relevant herein, Mother Nature, Inc., has been a California corporation engaged in the business of growing, harvesting, and/or selling marijuana for medical purposes from offices and a dispensary in the San Fernando Valley area of Los Angeles County.

Gourmet Green Room, Inc.

6. On an undetermined date in 2008, respondent and Harcoan met while playing basketball at the Los Angeles Sport Club (LA Sports Club) in west Los Angeles. Soon, the two of them became close friends. They socialized with each other three or four times per week and went out together to restaurants and nightclubs. Respondent introduced Harcoan to his girlfriend and her sister. Later, Harcoan became involved with the sister and borrowed money from her. Harcoan and respondent often talked about the stock market and investments.

7. In or about 2009, respondent and Harcoan met Tanney and Healy while playing basketball at the LA Sports Club and learned about the latter two's operation of a licensed medical marijuana dispensary or enterprise called Gourmet Green Room. Tanney and Healy became aware that respondent was involved in the business of private lending and asked respondent for a loan for their marijuana dispensing company. Tanney and Healy also approached Harcoan and other members at the LA Sports Club for loans.

8. On an undetermined date, respondent and Harcoan discussed the desirability and profitability of lending money to Tanney and Healy and their medical marijuana business. Harcoan was skeptical but respondent was intrigued. Respondent had placed an associate at the offices of Gourmet Green Room to check whether the company would be able to repay a loan. He came to believe that the medical marijuana business would be growing and he wanted to learn about and gain a foothold in the business. Respondent informed Harcoan that he was going to loan money to Tanney and Healy and their company, and that his loan or loans would be secured. Respondent discussed lending money to Tanney and Healy with his cousin Dehdashty. The two of them decided not only to lend money but also to engage in business with them and their company, Gourmet Green Room.

9. (A) On or about August 17, 2009, Dehdashty entered into a general partnership agreement with Gourmet Green Room for the purpose of cultivating and growing marijuana to expand and develop new business for the company.

(B) On or about August 17, 2009, Dehdashty loaned $280,000 to Gourmet Green Room. The loan was evidenced by a promissory note signed by Tanney and Healy in their capacities as president and chief executive officer of operations, respectively. The promissory note was immediately payable upon written demand with interest. In order to

secure payment of the loan, Dehdashty had Gourmet Green Room enter into a security agreement that granted Dehdashty a security interest in its business assets, accounts, and interests.

(C) On February 1, 2010, Gourmet Green Room borrowed an undetermined amount of money from Dehdashty and executed another promissory note and security agreement. The security agreement was executed on behalf of Gourmet Green Room by Tanney and Healy.[2] Tanney also executed a Personal Guaranty whereby he guaranteed the obligation of Gourmet Green Room to repay the February 1, 2010 loan made to the company by Dehdashty.

3825 Grand Partnership

10. On an undetermined date in 2009, after respondent and his cousin Dehdashty had made a loan or loans to Gourmet Green Room, Harcoan changed his mind about Gourmet Green Room and told respondent that he wanted to join him in doing business with the company. Respondent presented Harcoan with an opportunity to purchase a limited partnership interest related to the operation of a facility to develop business for Green Room with his cousin Dehdashty. Although he did not know Dehdashty, Harcoan was friendly with respondent and decided to purchase the limited partnership interest.

11. On April 15, 2010, Harcoan signed and entered into a limited partnership agreement with Dehdashty for the purpose of operating a Gourmet Green Room facility located at 3825 Grand Avenue, Los Angeles.[3] The partnership, which was named 3825 Grand Partnership, was to be managed exclusively by Dehdashty. Harcoan was required to make an initial capital contribution to the limited partnership of $130,000, which was payable to Dehdashty, for the latter's sole use and benefit. Dehdashty was named as the managing partner of the limited partnership agreement. Harcoan was a limited partner without any managerial control of the partnership and, thus, expected profits from the managerial efforts of Dehdashty. (See *People v. Graham* (1985) 163 Cal.App.3d 1159, 1164-1169.) Harcoan was entitled to 10 percent of the net profits generated from the Gourmet Green Room facility at 3825 Grand Avenue until he received the return of his initial capital contribution of $130,000 and five percent of the net profits thereafter. The

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[2] The amount of this loan was not established by the evidence inasmuch as the promissory note dated February 1, 2010, was not included in respondent's Exhibit E.

[3] In his declaration (Exh. C) that was submitted for the civil case of *Dehdashty v. Gourmet Green Room, Inc., Tanney, and Healy*, filed in the Superior Court of California, County of Los Angeles, Harcoan stated that he executed the Limited Partnership Agreement and wrote a $130,000 check payable to Dehdashty. Harcoan admitted that he did not submit the partnership agreement to the Department, as set forth in his declaration that he sent to the Department (Exh. B).

balance of the net profits from the limited partnership were payable to Dehdashty. On or about April 19, 2010, Harcoan paid $130,000 to Dehdashty.

12. (A) On May 10, 2010, after Harcoan signed the limited partnership agreement, Dehdashty loaned $1.3 million to Gourmet Green Room. The loan was immediately payable upon written demand with interest. Tanney in his capacity as president signed and executed the promissory note. In order to secure payment of the loan, Tanney also entered into a security agreement on behalf of Gourmet Green Room with Dehdashty. It was not established, however, whether or not the $130,000 paid by Harcoan was part of the loan proceeds.

(B) Contrary to respondent's assertions, the business relationship that existed between Harcoan and Dehdashty with respect to the operations of Gourmet Green Room was not that of borrower and lender. The $130,000 that Harcoan gave to Dehdashty was not a loan. Dehdashty did lend money to Gourmet Green Room and he was engaged in a general partnership with the company to expand and develop new business for the company. Dehdashty also became engaged in a limited partnership with Harcoan to operate Gourmet Green Room's Grand Avenue facility. As established by the Limited Partnership Agreement of the 3825 Grand Partnership, the $130,000 that Harcoan gave Dehdashty was a capital contribution or an investment in the limited partnership to operate said facility. No probative evidence was presented to show that Harcoan's $130,000 was provided to Gourmet Green Room as a loan.[4]

13. (A) Based on Findings 3 – 4, 5(A), and 6 – 11 above, the limited partnership interest in the 3825 Grand Partnership constituted a security within the meaning of Corporations Code sections 25019 and 25110. (See *People v. Simon*, 9 Cal.4th 493 (1995); *Securities Exchange Commission v. W.J. Howey Co.*, 328 U.S. 293 (1946).) The limited partnership interest was an investment contract whereby Harcoan invested his money in a common enterprise and was led to expect profits solely from the efforts of the Dehdashty as the managing general partner. (See *Consolidated Management Group, LLC v. Department of Corporations* (2008) 162 Cal.App.4th 598, 610.)

(B) Based on Findings 3 – 4, 5(A), 6 – 11, and 13(A) above, respondent offered to sell and did sell a limited partnership interest in the 3825 Grand Partnership, a security, to Harcoan within the meaning of Corporations Code section 25017, subdivisions (a) and (b). Respondent solicited Harcoan with an offer to buy said security for value and sold said security to him.

(C) Based on Findings 3 – 4, 5(A), 6 – 11, and 13(A) above, respondent's offer to sell and the sale of said security to Harcoan was made in the State of California within the meaning of Corporations Code sections 25008 and 25017.

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[4] A loan and promissory note may also be a security within the meaning of Corporations Code section 25110. (See *People v. Graham, supra; People v. Simon, supra.)*

(D) Based on Findings 3 – 4, 5(A), 6 – 11, and 13(A) above, it was not established that the Commissioner issued a permit or other form of qualification to respondent authorizing him to offer and sell securities in this state under Corporations Code section 25110. Respondent did not present any evidence to establish that the offering of the limited partnership interest was qualified by the Commissioner or the Department.

(E) Based on Findings 3 – 4, 5(A), 6 – 11, and 13(A) above, respondent did not establish that his offer to sell the limited partnership interest was exempt from the qualification requirement under Corporations Code section 25110 due to application of state or federal law or regulation. Respondent did not present any evidence of an exemption and thus failed to establish under Corporations Code section 25163 that said security or transaction was exempt from the qualification requirement.

14. (A) It was not established that respondent made a material misrepresentation to Harcoan when he offered and sold the limited partnership interest in 3825 Grand Partnership to him. The evidence did not support the contention that respondent falsely told Harcoan that he had invested in, or acquired an ownership interest in, Gourmet Green Room in order to sell the limited partnership interest to him. Nor was it established that Harcoan was led to believe that he had purchased an equity interest in Gourmet Green Room.

(B) Here, the testimony and statements of Harcoan were not sufficient to prove that respondent made material misrepresentations in the offer and sale of the limited partnership interest because Harcoan was not an entirely reliable or credible witness. First, Harcoan initially claimed that he did not receive any documents about his purported investment in Gourmet Green Room. Yet, Harcoan asserted that he did receive a "short-form investment contract" and had signed the limited partnership agreement in the locker room of the LA Sports Club without having first read or received the full agreement. It is difficult to fathom that a person of Harcoan's educational and business background would readily write a check for $130,000 without reviewing the agreement even if he was close friends with respondent. Second, respondent failed to provide the Commissioner with a copy of the limited partnership agreement, which had a tendency in reason to show that Harcoan had something to hide and was not fully candid with the Department. Third, the evidence demonstrated that respondent still owes Harcoan money and that he and Harcoan are not aligned on the same side with respect to the management control of Gourmet Green Room and the priority of debts or loans owed by the company. In other words, Hacoan would be naturally biased against respondent. This is not to say, however, that respondent was a fully believable witness either.

Mother Nature Transaction

15. (A) In 2010, respondent and Dehdashty were engaged in discussions with another medical marijuana dispensary. They were negotiating with the principals of Mother Nature, a medical marijuana dispensary located in the San Fernando Valley, to move their business into an allegedly more desirable location in West Los Angeles. Respondent and

Dehdashty had bought or were planning to buy a building in West Los Angeles and hoped to lease the premises to Mother Nature at a premium rental rate.

(B) On or about May 18, 2010, respondent purchased a building on Cotner Avenue in west Los Angeles for $2,230,000. Said real estate transaction was placed in escrow with an anticipated closing date of November 15, 2010. Respondent paid a deposit of $50,000

(C) On an undetermined date, respondent obtained an agreement with Mother Nature wherein its principals would move their medical marijuana business into the new building in West Los Angeles, and respondent would pay consideration or a fee of $125,000 to Mother Nature to relocate there. Harcoan did not perform any due diligence before giving his money to respondent and did not receive a contract or document for his payment.

16. (A) In or about June 2010, respondent asked Harcoan if he would be interested in paying one-half of the $125,000 fee for Mother Nature to relocate to the new building. Harcoan agreed to pay one-half of the relocation fee because he was interested in gaining entrance into the medical marijuana dispensary business. On July 9, 2010, Harcoan gave a $62,500 check to respondent as his half of the relocation fee payable to Mother Nature and made the check payable to Dehdashty at respondent's request. It was not established that Harcoan's payment was used to pay the deposit for respondent's purchase of the Cotner Avenue building, or for any purchase by respondent or Dehdashty, of any interest in Mother Nature.

(B) It was not established that respondent told Harcoan that he purchased or acquired Mother Nature for $2 million, or that he told Harcoan that he was authorized to offer and sell investments in Mother Nature. It was not established that the $62,500 that Harcoan gave to respondent was, in fact, an investment in, an investment contract, a loan to, or a purchase of any interest in Mother Nature. Unlike Harcoan's capital contribution of $130,000 to the limited partnership to operate Gourmet Green Room's Grand Avenue facility, there were no documents corroborating Harcoan's testimony that he made an investment, or purchased an interest, in Mother Nature. Neither Harcoan nor respondent signed an agreement or document that described the $62,500 payment as an investment or that stated what consideration or benefits Harcoan was to receive for paying the $62,500. Harcoan's testimony and the electronic mail messages between Harcoan and respondent were not sufficient to demonstrate that Harcoan invested in, or believed that he had invested in, a common enterprise with respondent to buy or to invest in Mother Nature.

17. (A) Based on Findings 3 – 4, 5(B), and 15 – 16 above, it was not established that respondent offered or sold to Harcoan an investment or investment contract in Mother Nature, which constituted a security. A security is a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. (*S.E.C. v. W.J. Howey Co.* (1946) 328 U.S. 293, 298-299; *People v. Graham* (1985) 163 Cal.App.3d 1159, 1165.) It was not established what common enterprise Hacoan invested in when he gave $62,500 to respondent

for his half of the fee for Mother Nature to relocate. Nor was it established what profits Hacoan expected when he gave his sum to respondent or how he expected profits to be made. As such, the payment made by Harcoan was not a security within the meaning of Corporations Code sections 25109 and 25110.

18. Based on Findings 3 – 4, 5(B), 6 – 8, and 15 – 16 above and 22 and 24 below, the weight of the evidence suggested that Harcoan paid the $62,500 to respondent because of their friendship and his desire to enter the medical marijuana dispensary business. For his part, respondent needed the money and took advantage of their friendship and their history of casually giving large amounts of money to one another or their friends. That Harcoan may have expected a financial return "from hopes falsely induced" did not transmute his payment of the fee into a security. (See *People v. Syde* (1951) 37 Cal.2d 765, 769.)

19. Because the evidence did not demonstrate that respondent made an offer, sale, or purchase of security in connection with the Mother Nature transaction, it is not necessary to determine whether respondent, in connection with an offer or sale of a security, made an untrue statement of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of violated Corporations Code section 25401

Other Evidence

20. On August 10, 2010, Dehdashty demanded that Matthew Taney and Gourmet Green Room immediately repay the $1.3 million in loans, plus interest, that he had made to Gourmet Green Room. Subsequently, Dehdashty foreclosed on the security interests for the loans and filed a lawsuit against Gourmet Green Room and its officers Tanney and Healy for breach of contract and fraud.

21. On October 8, 2010, respondent and the seller canceled the escrow for the sale of the Cotner Avenue building that respondent had planned to buy and lease to Mother Nature. Respondent was refunded from escrow one-half of his $50,000 deposit that he made for the purchase of the building. He testified that he was not refunded any portion of the $125,000 relocation fee paid to Mother Nature.

22. In November 2010, respondent borrowed $50,000 from Harcoan. Respondent told Harcoan that he needed the money because he had tax problems and the Internal Revenue Service (IRS) had frozen or encumbered his bank accounts. On November 17, 2010, and at respondent's request, Harcoan had his bank issue a cashier's check of $50,000 payable to respondent's girlfriend. It was not established that any document was prepared to evidence the loan.

23. (A) On December 26, 2010, Harcoan asked respondent to prepare documents to memorialize the $62,500 that he had given respondent for "the store in the valley." He also asked respondent when he could repay his $50,000 loan. On December 27, 2010,

respondent informed Harcoan that he would ask his attorney to draw up a contract for Harcoan's "investment" in Mother Nature and that he could repay the $50,000 loan at any time in cash but could not access his checking accounts.

(C) On January 18, 2011, Harcoan told respondent that he needed the payment of his $50,000 loan and he asked respondent if he could also "buy [him] out of Mother Nature ($62,500)." Harcoan also asked respondent whether his $62,500 was "generating a return" and how much income he could expect to receive from the first crop of marijuana of Gourmet Green Room. In response, respondent stated that he could buy Harcoan out of Mother Nature and repay the loan and that he should know about the return on Harcoan's investment in Gourmet Green Room by the first day of the next month.

(D) On March 21, 2011, Harcoan again asked respondent when he could repay his $50,000 loan and return the "$62,500 from Mother Nature" and inquired about the status of his investment in Gourmet Green Room. On March 31, 2010, Harcoan told respondent that he had trusted him and was disappointed that he now had to "beg" for his money. On April 1, 2011, respondent told Harcoan that he would repay his loan and "buy [him] out of Mother Nature" but did not know when he could do it. Respondent added that his problem with the IRS was coming to an end, thanked Harcoan for his help, and commiserated with Harcoan that he was going through "tough times as well."

24. On April 20, 2011, Harcoan borrowed $125,000 from the sister of respondent's girlfriend; the sister lived in Texas. Harcoan executed a Personal Loan Agreement under which he promised to repay the loan without interest in three months, or by July 20, 2011.

25. (A) In 2011, Harcoan decided to personally invest money in Gourmet Green Room, Inc. He loaned $350,000 to Gourmet Green Room, Inc., by giving the money directly to Tanney. When Harcoan made his loan to Gourmet Green Room, Harcoan was aware that the company and respondent and/or Dehdashty were involved in litigation.

(B) On November 30, 2012, Harcoan caused a Uniform Commercial Code filing to be made with the California Secretary of State. The financing agreement for Harcoan's $350,000 loan to Gourmet Green Room, Inc., was filed. It showed that Harcoan is the secured party and that Matthew Taney, Gourmet Green Room, Inc., and "Gourmet Green Room, L.L.C.", are the debtors on the $350,000 loan made by Harcoan to Gourmet Green Room, Inc.

26. In or about November 2012, Dehdashty was awarded a judgment in his lawsuit against Gourmet Green Room and its officers Tanney and Healy. Gourmet Green Room is currently being operated under a receivership because the company owes money to Dehdashty due to the judgment. In addition, Harcoan has placed a lien on the assets of Gourmet Green Room because he is owed payment on the $350,000 loan that he made to the company. There is an ongoing dispute as to whether Dehdashty's judgment has priority over Harcoan's loan as well as to who should have management control of Gourmet Green Room.

27. Harcoan testified that he has not been refunded the $62,500 payment that he made to respondent for Mother Nature to change the location of its medical marijuana business or the $50,000 personal loan that he made to respondent. It was not established that Harcoan received any profits from his limited partnership interest or sought to withdraw or dissociate from the partnership.

* * * * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Corporations Code section 25110 provides, in pertinent part, that it is unlawful for any person to offer or sell in this state any security in an issuer transaction unless such sale has been qualified or unless such security or transaction is exempted.

2. Corporations Code section 25401 provides, in pertinent part, that it is unlawful for any person to offer or to sell a security in California by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. A fact is considered material if there is a substantial likelihood that, under all the circumstances, a reasonable investor would consider that fact important in reaching an investment decision; this test of materiality under the California Corporations Code is the same as that under the federal Securities Act of 1933. (*Insurance Underwriters Clearing House, Inc. v. Natomas Co.* (1986) 184 Cal.App.3d 1520, 1526, review denied Oct. 30, 1986.)

3. Grounds exist to uphold the Desist and Refrain Order under Corporations Code section 25532 in that respondent offered and sold a security in the State of California in the form of an interest in a limited partnership to operate and develop business for a medical marijuana facility, without issuance of a qualification for such offer of a security, and not pursuant to any exemption from qualification, in violation of Corporations Code section 25110, based on Findings 3 – 4, 5(A), and 6 – 13 above.

4. Grounds do not exist to uphold the Desist and Refrain Order under Corporations Code section 25532 for violating Corporations Code section 25401 in that it was not established that, by having offered and/or sold a security or securities in the State of California, respondent made written or oral communications that included an untrue statement of a material fact or omitted to state a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading, based on Findings 14(A) and 19 above. For this cause, the Commissioner sought to prove that respondent violated Corporations Code section 25401 through the testimony and declaration

of its primary witness Harcoan. However, Harcoan was not a credible witness with respect to these allegations, based on Findings 6 – 8, 11, 14(B), and 20 – 26 above.

5. It is well settled that the trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Ibid.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App.2d 762, 767.) Further, the trier of fact may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) The testimony of "one credible witness may constitute substantial evidence." (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

6. The trier of fact must weigh the evidence, consider the credibility of witnesses, and resolve the conflicts in the evidence or in the reasonable inferences that may be drawn therefrom. (*Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 696.) An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action. (Evid. Code, § 600, subd. (b).) An inference is not evidence but rather the result of reasoning from evidence; an inference of fact must be based upon substantial evidence and not conjecture. (*Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles* (2004) 117 Cal.App.4th 1138, 1149.)

7. Discussion—This matter presented a situation where there was no proof of a public offering or advertising of the sale of a security but rather largely private dealings between individuals with money. Neither complainant's primary witness Harcoan nor respondent was fully candid or credible about these business dealings with each other. Given the amounts of money that were exchanged, the outstanding debts still owed, and the ongoing legal dispute over the control of a company that was object of the parties' attention and financial gain, their lack of forthrightness and cooperation was not unexpected.

The self-serving nature of the witnesses' testimony thus required that greater weight be placed on the documentary evidence, including the partnership agreement and other documents. The testimonial evidence was used to provide background and supplemental information, when found to be consistent and credible. Accordingly, it was the documentary evidence that established the existence of an offer and sale of a security in the form of a limited partnership interest and which elevated the transaction from a private and joint venture among a few individuals to an investment contract that could be offered and sold to the public. The conclusion that the limited partnership interest was a security comports with the regulatory purpose of the Corporate Securities Law to protect the public against spurious schemes, however ingeniously devised, to attract risk capital and to afford those who risk their capital at least a fair chance of realizing their objectives in legitimate ventures. (*Silver Hills Country Club v. Sobieski* (1961) 55 Cal.2d 811).

Based on the probative evidence, respondent offered and sold a security when he presented the limited partnership agreement in the 3825 Grand Partnership to Harcoan and collected his capital contribution of $130,000. Harcoan expected profits to arise from the efforts of the general partner Dehdashty. Respondent's offer and sale of the limited partnership interest was not qualified or permitted under the Corporate Securities Law, was not shown to be exempt for qualification, and thus violated Corporation Code section 25110, The Desist and Refrain Order was properly issued by the Commissioner, pursuant to Corporations Code section 25532.

* * * * * * *

WHEREFORE, the following Order is hereby made:

ORDER

The Desist and Refrain Order, OAH Case No. 2014040981, issued by the California Corporations Commissioner to respondent Ali Shekarchian, also known as Alireza Shekarchian, is sustained, based on Conclusions of Law 1, 3, and 5 - 7 above. Respondent Ali Shekarchian is ordered to desist and refrain from the further offering or selling in the State of California of securities, including, but not limited to, limited partnership interests in 3825 Grand Partnership, unless and until qualification has been made or received under the California Corporations Law, or unless otherwise exempt.

Dated: December 19, 2014

[redacted]

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings