

FILED
APR 22 2005
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

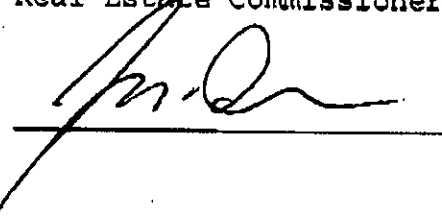
In the Matter of the Accusation of)	No. H-30856 LA
HECTOR MANUEL LAINO, individually and)	L-2004070573
doing business as Capital Lenders,)	
Capital West Realty, La Mont)	
Investments, Realty Angels, Realty of)	
Angels; and DAMIAN NILS DUNLAP,)	
individually and doing business)	
as Premium Home Funding, Premium)	
Home Realty and Red Carpet-American)	
Dream Realty, and as designated)	
officer of BSLM, Inc.,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated March 21, 2005, 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 May 12, 2005.

IT IS SO ORDERED 4-19-05

JEFF DAVI
Real Estate Commissioner


BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of:

HECTOR MANUEL LAINO, individually and doing business as, Capital Lenders, Capital West Realty, La Mont Investments, Realty Angels, Realty of Angels; and DAMIAN NILS DUNLAP, individually and doing business) as Premium Home Funding, Premium Home Realty and Red Carpet-American Dream Realty, and as designated officer of BSLM, Inc.,

Respondents.

Case No. H- 30856 LA

OAH No. L2004070573

PROPOSED DECISION

This matter was heard on March 7, 2005, at Los Angeles, California, by Christopher J. Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Respondent HECTOR MANUEL LAINO (Respondent) and his attorney, Eugene Salmonsens, Esq., did not appear after having received due notice of the hearing and all jurisdictional requirements have been met, so the matter proceeded as a default. Prior to hearing, the Accusation against DAMIAN NILS DUNLAP, individually and doing business as Premium Home Funding, Premium Home Realty and Red Carpet-American Dream Realty, and as designated officer of BSLM, Inc., was resolved.

Complainant Maria Suarez (Complainant), Deputy Real Estate Commissioner, was represented by Chris Leong, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (Code).
3. Respondent was and still is licensed by the Department as a real estate broker.

4. At all times material herein, Jennifer Gail Villafana (Villafana) was and still is licensed by the Department as a real estate salesperson. Villafana was employed by Respondent from November 1, 2001 to February 9, 2003.

5. At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker for others in the State of California, within the meaning of Code section 10131, subdivision (a) and (d), including the operation and conduct of a real estate sales, loan and loan servicing business with the public wherein Respondent sold and purchased real property on behalf of owners or real property and/or solicited borrowers for loans secured by interest in real property and/or serviced loans secured by interest in real property, in expectation of compensation. In addition, Respondent conducted broker-escrow activity pursuant to the exemption in Financial Code section 17006, subdivision (a)(4).

6. All further references to Respondent include the employees, agents and real estate licensees employed by or associated with Respondent who were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority and employment.

7. On or about September, 2002, the State of California, Department of Corporations, filed an Order to Desist and Refrain against Villafana because of violations of California Financial Code sections 17403 and 17416.

Audit Findings

8. On April 30, 2003, the Department concluded its examination of Respondent's books and records pertaining to his activities as a real estate broker in Audit No. LA 020253, including escrow activities, covering a period from approximately January 1, 2002, to January 31, 2003. The examination revealed violations of the Code and of California Code of Regulations, title 10, chapter 6, (Regulations), as set forth below and as more specifically set forth in Audit No. LA 020253 and the Exhibits attached to said Audit report.

9. In connection with the broker escrow, real estate sales, loan and loan servicing activity, Respondent accepted or received funds, including funds in trust (trust funds) from or on behalf of actual and prospective parties to transactions handled by Respondent and thereafter made deposits and/or disbursements of such funds. Trust funds were deposited and/or maintained by Respondent at Comerica Bank-California, 9920 S. La Cienega Boulevard 11th Floor, Los Angeles, CA 90045, in the name of Romania Village Financial, Inc., dba Tri-West Escrow Trust Account, Account No. 1892005461 (the escrow trust account).

10. Respondent acted in violation of the Code and the Regulations in that Respondent:

(a) maintained the escrow trust account in a manner that resulted in a shortage of \$232,527.81, as of 1-31-03. The shortage was caused by four overdrawn escrows totaling \$235,045.56 and an unidentified amount of funds totaling \$2,517.75, in violation of Code Section 10145 and Regulations 2832.1 and 2951.

(b) through his employee, Villafana, fabricated buyers' deposits in order to obtain the purchase loan from the lender in four escrow transactions. Also Villifana performed two escrows for the same transaction on the same property in two instances, in violation of Code section 10176, subdivision (a).

(c) failed to maintain a record of all escrow trust funds received and disbursed during the audit period, in violation of Code section 10145 and Regulations 2831 and 2951.

(d) failed to maintain separate records for each escrow during the audit period, in violation of Code section 10145 and Regulations 2831.1 and 2951.

(e) failed to perform a monthly reconciliation of the trust fund records during the audit period, in violation of Code section 10145 and Regulations 2831.2 and 2951.

(f) failed to maintain the escrow trust account in Respondent's name as trustee and allowed the trust account to be in the name of Villafana's unlicensed corporation, "Roman Village Financial, Inc., in violation of Code Section 10145 and Regulations 2832 and 2951.

(g) failed to maintain Respondent as a signatory on the escrow trust account and allowed Villafana to be a signatory on the trust account without obtaining specific written authorization, in violation of Code section 10145 and Regulations 2834 and 2951.

(h) failed to maintain books, records and accounts in accordance with accepted principles of accounting and good business practices for Tri West Escrow, in violation of Regulation 2950, subdivision (d).

(i) failed to advise all parties in writing of Villafana's ownership interest in Tri West Escrow, in violation of Regulation 2950, subdivision (h).

(j) failed to maintain copies of Mortgage Loan Disclosure Statements in the transaction files, in violation of Code section 10240.

(k) failed to exercise adequate supervision over escrow activities conducted by Villafana at his Los Angeles branch office, in violation of Code Section 10177, subdivision (h) and Regulation 2725.

11. No evidence of mitigation or rehabilitation was presented.

LEGAL CONCLUSIONS AND DISCUSSION


Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

Cause exists to suspend or revoke all real estate licenses and license rights of Respondent under the provisions of Code Sections 10176, subdivision (a), 10177, subdivision (d), 10177, subdivision (g), and 10177, subdivision (h), based on the conduct, acts and omissions of Respondent as described in Factual Findings 1-11.

ORDER

All licenses and licensing rights of Respondent HECTOR MANUEL LAINO under the Real Estate Law are revoked.

DATED: March 21, 2005.



CHRISTOPHER J. RUIZ
Administrative Law Judge
Office of Administrative Hearings

S.A.E.

1 Department of Real Estate
320 West Fourth Street, Suite 350
2 Los Angeles, California 90013-1105
3 Telephone: (213) 576-6982
-or- (213) 576-6910 (Direct)
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FILED
APR - 5 2005
DEPARTMENT OF REAL ESTATE

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
12 HECTOR MANUEL LAINO, individually)	NO. H-30856 LA
13 and doing business as)	L-2004070573
14 Capital Lenders, Capital West)	
15 Realty, La Mont Investments,)	
16 Realty Angeles, Realty of)	<u>STIPULATION AND AGREEMENT</u>
17 Angeles; and <u>DAMIAN NILS DUNLAP,</u>)	
18 individually and doing business)	
19 as Premium Home Funding, Premium)	
20 Home Realty and Red Carpet-)	
21 American Dream Realty, and as)	
22 Designated officer of BSLM, Inc.,)	
23 Respondents.)	

20 It is hereby stipulated by and between DAMIAN NILS
21 DUNLAP, individually and doing business as Premium Home
22 Funding, Premium Home Realty and Red Carpet- American Dream
23 Realty, and as designated officer of BSLM, Inc. (hereafter
24 "Respondent"), represented by Charles Benninghoff, and the
25 Complainant, acting by and through Chris Leong, Counsel for the
26 Department of Real Estate, as follows for the purpose of
27 settling and disposing of the Accusation filed on April 22,

1 2004. The matter as to HECTOR MANUEL LAINO, individually, and
2 doing business as Capital Lenders, Capital West Realty, La Mont
3 Investments, Realty Angeles and Realty of Angeles, will be
4 handled separately.

5 1. All issues which were to be contested and all
6 evidence which was to be presented by Complainant and
7 Respondent at a formal hearing on the Accusation, which hearing
8 was to be held in accordance with the provisions of the
9 Administrative Procedure Act, shall instead and in place
10 thereof be submitted solely on the basis of the provisions of
11 this Stipulation and Agreement (hereafter "Stipulation").

12 2. Respondent has received, read and understands the
13 Statement to Respondent, the Discovery Provisions of the
14 Administrative Procedure Act and the Accusation, filed by the
15 Department of Real Estate in this proceeding.

16 3. Respondent filed a Notice of Defense pursuant to
17 Section 11506 of the Government Code for the purpose of
18 requesting a hearing on the allegations in the Accusation.
19 Respondent hereby freely and voluntarily withdraws said Notice
20 of Defense. Respondent acknowledges that he understands that
21 by withdrawing said Notice of Defense that he will thereby
22 waive his right to require the Commissioner to prove the
23 allegations in the Accusation at a contested hearing held in
24 accordance with the provisions of the Administrative Procedure
25 Act and that Respondent will waive other rights afforded to him
26 in connection with the hearing, such as the right to present
27 evidence in defense of the allegations in the Accusation and

1 the right to cross-examine witnesses.

2 4. In the interest of expedience and economy,
3 Respondent chooses not to proceed with the hearing, contest the
4 factual allegations in Paragraphs 1 through 14 of the
5 Accusation, but to remain silent and understands that, as a
6 result thereof, these factual statements, without being
7 admitted or denied, will serve as a prima facie basis for the
8 disciplinary action stipulated to herein. The Real Estate
9 Commissioner shall not be required to provide further evidence
10 to prove such allegations.

11 5. It is understood by the parties that the Real
12 Estate Commissioner may adopt the Stipulation as his Decision
13 in this matter, thereby imposing the penalty and sanctions on
14 Respondent's real estate license and license rights as set
15 forth in the "Order" below. In the event that the Commissioner
16 in his discretion does not adopt the Stipulation, it shall be
17 void and of no effect, and Respondent shall retain the right to
18 a hearing and proceeding on the Accusation under all the
19 provisions of the Administrative Procedure Act and shall not be
20 bound by any admission or waiver made herein.

21 6. The stipulation herein, and Respondent's decision
22 not to contest the Accusation, are made solely for the purpose
23 of reaching an agreed disposition of this proceeding and are
24 expressly limited to this proceeding and any other proceeding
25 or case in which the Department of Real Estate or another
26 licensing agency of this state, another state or if the federal
27 government is involved, and otherwise shall not be admissible

1 in any other criminal or civil proceedings.

2 7. The Order or any subsequent Order of the Real
3 Estate Commissioner made pursuant to this Stipulation shall not
4 constitute an estoppel, merger or bar to any further
5 administrative or civil proceedings by the Department of Real
6 Estate with respect to any conduct which was not specifically
7 alleged to be causes for accusation in this proceeding.

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations and waivers
10 and solely for the purpose of settlement of the pending
11 Accusation without a hearing, without admitting any wrongdoing,
12 it is stipulated and agreed that the following Determination of
13 Issues shall be made:

14 I

15 The conduct, acts and omissions of Respondent DAMIAN
16 NILS DUNLAP, as alleged in the Accusation, are grounds for the
17 suspension or revocation of all real estate licenses and
18 license rights of Respondent under the provisions of Code
19 Section 10177(h).

20 ORDER

21 WHEREFORE, THE FOLLOWING ORDER is hereby made:

22 All licenses and licensing rights of Respondent DAMIAN
23 NILS DUNLAP, under the Real Estate Law shall be suspended for a
24 period of thirty (30) days from the effective date of this
25 Decision; provided, however, that the thirty (30) day suspension
26 shall be stayed for two (2) years upon the following terms and
27 conditions:

1 1. Respondent shall obey all laws, rules and
2 regulations governing the rights, duties and responsibilities
3 of a real estate licensee in the State of California; and

4 2. That no final subsequent determination be made,
5 after hearing or upon stipulation, that cause for disciplinary
6 action occurred within two (2) years of the effective date of
7 this Decision. Should such a determination be made, the
8 Commissioner may, in his discretion, vacate and set aside the
9 stay order and reimpose all or a portion of the stayed
10 suspension. Should no such determination be made, the stay
11 imposed herein shall become permanent.

12 3. Respondent shall, within six (6) months from the
13 effective date of this Decision, take and pass the Professional
14 Responsibility Examination administered by the Department
15 including the payment of the appropriate examination fee. If
16 Respondent fails to satisfy this condition, the Commissioner
17 may order suspension of Respondent's license until Respondent
18 passes the examination.

19 4. Respondent's license shall be indefinitely
20 suspended unless or until Respondent submits proof satisfactory
21 to the Commissioner of having taken and successfully completed
22 the continuing education course on trust fund accounting and
23 handling specified in subdivision (a) of Section 10170.5 of the
24 Business and Professions Code. Proof of satisfaction of this
25 requirement includes evidence that Respondent has successfully
26 completed the trust fund account and handling continuing
27

1 education course within 120 days prior to the effective date of
2 the Decision in this matter.

3 5. Pursuant to Section 10148 of the Business and
4 Professions Code, Respondent shall pay the Commissioner's
5 reasonable cost for: a) the audit which led to this disciplinary
6 action and, b) a subsequent audit to determine if Respondent has
7 corrected the trust fund violations found in the Determination of
8 Issues. The cost of the audit which led to this disciplinary
9 action is \$3,481.72. In calculating the amount of the
10 Commissioner's reasonable cost, the Commissioner may use the
11 estimated average hourly salary for all persons performing audits
12 of real estate brokers, and shall include an allocation for
13 travel cost, including mileage, time to and from the auditor's
14 place of work and per diem. Said amount for the subsequent audit
15 shall not exceed \$3,481.72. Respondent shall pay such cost
16 within 60 days of receiving an invoice from the Commissioner
17 detailing the activities performed during the audit and the
18 amount of time spent performing those activities. The
19 Commissioner may, in his discretion, vacate and set aside the
20 stay order, if payment is not timely made as provided for herein,
21 or as provided for in a subsequent agreement between the
22 Respondent and the Commissioner. The vacation and the set aside
23 of the stay shall remain in effect until payment is made in full,
24 or until Respondent enters into an agreement satisfactory to the
25 Commissioner to provide for payment. Should no order vacating
26 the stay be issued, either in accordance with this condition or
27 condition "3.", the stay imposed herein shall become permanent.

1
2 DATED:

3/9/05

CHRIS LEONG

CHRIS LEONG, ESQ.
Counsel for Complainant

4 * * *

5 I have read the Stipulation and Agreement, have
6 discussed it with my representative, and its terms are
7 understood by me and are agreeable and acceptable to me. I
8 understand that I am waiving rights given to me by the
9 California Administrative Procedure Act (including but not
10 limited to Sections 11506, 11508, 11509 and 11513 of the
11 Government Code), and I willingly, intelligently and
12 voluntarily waive those rights, including the right of
13 requiring the Commissioner to prove the allegations in the
14 Accusation at a hearing at which I would have the right to
15 cross-examine witnesses against me and to present evidence in
16 defense and mitigation of the charges.

17 Respondent can signify acceptance and approval of the
18 terms and conditions of this Stipulation and Agreement by
19 faxing a copy of the signature page, as actually signed by
20 Respondent, to the Department at fax number (213) 576-6917.
21 Respondent agrees, acknowledges and understands that by
22 electronically sending to the Department a fax copy of his
23 actual signature as it appears on the Stipulation and
24 Agreement, that receipt of the faxed copy by the Department
25 shall be as binding on Respondent as if the Department had
26 received the original signed Stipulation and Agreement.

MAR-03-2005 15:42

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FAX NO. 2135786817

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DATED: March 3 2005 *Damian Nils*
DAMIAN NILS DONLAP, Respondent

DATED: March 4 2005 *Charles Benninghoff*
CHARLES BENNINGHOFF
Representative for Respondent
Approved as to form

* * *

The foregoing stipulation and agreement is hereby
adopted as my Decision in this matter and shall become
effective at 12 o'clock noon on _____.

IT IS SO ORDERED _____

JEFF DAVI
Real Estate Commissioner

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DATED: _____

DAMIAN NILS DUNLAP, Respondent

DATED: _____

CHARLES BENNINGHOFF
Representative for Respondent
Approved as to form

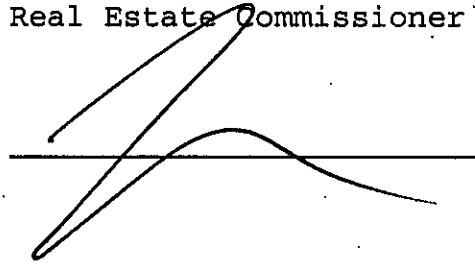
* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision in this matter and shall become
effective at 12 o'clock noon on May 5, 2005.

IT IS SO ORDERED

3-24-05

JEFF DAVI
Real Estate Commissioner



SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)

Case No. H-30856 LA

HECTOR MANUEL LAINO, etc.,)
and DAMIAN NILS DUNLAP, etc.,)

OAH No. L-2004070573

Respondent(s)

FILED
NOV 24 2004
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on MARCH 7 and 8, 2005, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: November 24, 2004

By

CHRIS LEONG
CHRIS LEONG, Counsel

cc: Hector Manuel Laino
Damian Nils Dunlap
Benninghoff & Ramirez-Professional Advocates
/Sacto.
OAH
Ron Revilla/L.A. Audits

1 CHRIS LEONG, Counsel (SBN 141079)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6910 (Direct)

FILED
APR 22 2004
DEPARTMENT OF REAL ESTATE

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 HECTOR MANUEL LAINO, individually) No. H-30856 LA
13 and doing business as) A C C U S A T I O N
14 Capital Lenders, Capital West)
15 Realty, La Mont Investments,)
16 Realty Angels, Realty of)
17 Angels; and DAMIAN NILS DUNLAP,)
18 individually and doing business)
19 as Premium Home Funding, Premium)
20 Home Realty and Red Carpet-)
21 American Dream Realty, and as)
22 designated officer of BSLM, Inc.,)
23 Respondents.)

24 The Complainant, Maria Suarez, a Deputy Real Estate
25 Commissioner of the State of California, for cause of
26 Accusation against HECTOR MANUEL LAINO, individually and doing
27 business as Capital Lenders, Capital West Realty, La Mont
Investments, Realty Angels, Realty of Angels (hereafter
"LAINO"); and DAMIAN NILS DUNLAP, individually and doing
business as Premium Home Funding, Premium Home Realty and Red
Carpet-American Dream Realty, and as designated officer of

1 BSLM, Inc. (hereafter "DUNLAP"); (hereafter sometimes both
2 referred to as "Respondents"), is informed and alleges in her
3 official capacity as follows:

4 1.

5 Respondents are presently licensed and/or have
6 license rights under the Real Estate Law, Part 1 of Division 4
7 of the California Business and Professions Code (hereafter
8 "Code").

9 2.

10 At all times material herein, Respondent LAINO was
11 and still is licensed by the Department of Real Estate of the
12 State of California (hereafter "Department") as a real estate
13 broker.

14 3.

15 At all times material herein, DUNLAP was and still is
16 licensed by the Department as a real estate broker.

17 4.

18 At all times material herein, Jennifer Gail Villafana
19 (hereafter "Villafana") was and still is licensed by the
20 Department as a real estate salesperson. Villafana was
21 employed by LAINO from November 1, 2001 to February 9, 2003 and
22 has been employed by DUNLAP from February 10, 2003 to present.

23 5.

24 At all times material herein, Respondents engaged in
25 the business of, acted in the capacity of, advertised or
26 assumed to act as real estate brokers for others in the State
27 of California, within the meaning of Code Section 10131(a) and

1 (d), including the operation and conduct of a real estate
2 sales, loan and loan servicing business with the public wherein
3 Respondents sold and purchased real property on behalf of
4 owners or real property and/or solicited borrowers for loans
5 secured by interest in real property and/or serviced loans
6 secured by interest in real property, in expectation of
7 compensation. In addition, Respondents conducted broker-escrow
8 activity pursuant to the exemption in Financial Code Section
9 17006(a)(4).

10 6.

11 All further references to "Respondents", unless
12 otherwise specified, include the parties identified in Paragraphs
13 2 through 5, above, and also include the employees, agents and
14 real estate licensees employed by or associated with said
15 parties, who at all times herein mentioned were engaged in the
16 furtherance of the business or operations of said parties and who
17 were acting within the course and scope of their authority and
18 employment.

19 PRIOR DEPARTMENTAL ACTION/DISCIPLINE

20 7.

21 In or about September, 2002, the State of California,
22 Department of Corporations, filed an Order to Desist and
23 Refrain against Villafana citing violations of California
24 Financial Code Sections 17403 and 17416.

25 ///

26 ///

27

FIRST CAUSE OF ACCUSATION

(First Audit Findings)

8.

On April 30, 2003, the Department concluded its examination of Respondent LAINO's books and records pertaining to LAINO's activities as a real estate broker in Audit No. LA 020253, including escrow activities, covering a period from approximately January 1, 2002 to January 31, 2003. The examination revealed violations of the Code and of Title 10, Chapter 6, California Code of Regulations (hereafter "Regulations"), as set forth below and as more specifically set forth in Audit No. LA 020253 and the Exhibits attached to said Audit report.

9.

At all times herein, in connection with the broker escrow, real estate sales, loan and loan servicing activity described in Paragraph 5, above, Respondent LAINO accepted or received funds, including funds in trust (hereafter "trust funds") from or on behalf of actual and prospective parties to transactions handled by Respondent LAINO and thereafter made deposits and/or disbursements of such funds. Trust funds were deposited and/or maintained by LAINO at Comerica Bank-California, 9920 S. La Cienega Boulevard 11th Floor, Los Angeles, CA 90045, in the name of Romania Village Financial, Inc., dba Tri-West Escrow Trust Account, Account No. 1892005461 (hereafter TA#1).

1
2 Respondent LAINO acted in violation of the Code and
3 the Regulations in that:

4 (a) as of January 31, 2003, the escrow trust account
5 contained a shortage of \$232,527.81. The shortage was caused
6 by four overdrawn escrows totaling \$235,045.56 and an
7 unidentified amount of funds totaling \$2,517.75, in violation
8 of Code Section 10145 and Regulations 2832.1 and 2951.

9 (b) In four escrow transactions, Villafana
10 fabricated buyers' deposits in order to obtain the purchase
11 loan from the lender. Also Villifana performed two escrows for
12 the same transaction on the same property in two instances, in
13 violation of Code Section 10176(a).

14 (c) failed to maintain a record of all escrow trust
15 funds received and disbursed during the audit period, in
16 violation of Code Section 10145 and Regulations 2831 and 2951.

17 (d) failed to maintain separate records for each
18 escrow during the audit period, in violation of Code Section
19 10145 and Regulations 2831.1 and 2951.

20 (e) failed to perform a monthly reconciliation of
21 the trust fund records during the audit period, in violation of
22 Code Section 10145 and Regulations 2831.2 and 2951.

23 (f) failed to maintain the escrow trust account in
24 LAINO's name as trustee and allowed the trust account to be in
25 the name of Villafana's unlicensed corporation, "Roman Village
26 Financial, Inc., in violation of Code Section 10145 and
27 Regulations 2832 and 2951.

1 (g) failed to maintain LAINO as a signatory on the
2 escrow trust account and allowed Villafana to be a signatory on
3 the trust account without obtaining specific written
4 authorization, in violation of Code Section 10145 and
5 Regulations 2834 and 2951.

6 (h) failed to maintain books, records and accounts
7 in accordance with accepted principles of accounting and good
8 business practices for Tri West Escrow, in violation of
9 Regulation 2950(d).

10 (i) failed to advise all parties in writing of
11 Villafana's ownership interest in Tri West Escrow, in violation
12 of Regulation 2950(h).

13 (j) failed to maintain copies of Mortgage Loan
14 Disclosure Statements in the transaction files, in violation of
15 Code Section 10240.

16 (k) failed to exercise adequate supervision over
17 escrow activities conducted by Villafana at his Los Angeles
18 branch office, in violation of Code Section 10177(h) and
19 Regulation 2725.

20 SECOND CAUSE OF ACCUSATION

21 (Second Audit Findings)

22 11.

23 On April 30, 2003, the Department concluded its
24 examination of Respondent DUNLAP's books and records pertaining
25 to Respondent's activities as a real estate broker in Audit No.
26 LA 020353, including escrow activities, covering a period from
27 approximately February 1, 2003 to February 28, 2003. The

1 examination revealed violations of the Code and of the
2 Regulations, as set forth below and as more specifically set
3 forth in Audit No. LA 020353 and the Exhibits attached to the
4 Audit report.

5 12.

6 At all times herein, in connection with the broker
7 escrow, real estate sales, loan and loan servicing activity
8 described in Paragraph 11, above, Respondent DUNLAP accepted or
9 received funds, including trust funds from or on behalf of
10 actual and prospective parties to transactions handled by
11 DUNLAP and thereafter made deposits and/or disbursements of
12 such funds. Trust funds were deposited and/or maintained in
13 TA#1.

14 13.

15 Respondent acted in violation of the Code and the
16 Regulations in that:

17 (a) as of February 28, 2003, the escrow trust
18 account contained a shortage of \$240,686.44. The shortage was
19 caused by six overdrawn escrows totaling \$240,103.51 and an
20 unidentified amount of funds totaling \$582.93, in violation of
21 Code Section 10145 and Regulations 2832.1 and 2951.

22 (b) failed to maintain a record of all escrow trust
23 funds received and disbursed during the audit period, in
24 violation of Code Section 10145 and Regulations 2831 and 2951.

25 (c) failed to maintain separate records for each
26 escrow during the audit period, in violation of Code Section
27 10145 and Regulations 2831.1 and 2951.

1 (d) failed to perform a monthly reconciliation of
2 the trust fund records during the audit period, in violation of
3 Code Section 10145 and Regulation 2831.2 and 2951.

4 (e) failed to maintain the escrow trust account in
5 DUNLAP's name as trustee and allowed the trust account to be in
6 the name of Villafana's unlicensed corporation, "Roman Village
7 Financial, Inc., in violation of Code Section 10145 and
8 Regulations 2832 and 2951.

9 (f) failed to maintain DUNLAP as a signatory on the
10 escrow trust account and allowed Villafana to be a signatory on
11 the trust account without obtaining specific written
12 authorization, in violation of Code Section 10145 and
13 Regulations 2834 and 2951.

14 (g) failed to maintain books, records and accounts
15 in accordance with accepted principles of accounting and good
16 business practices for Tri West Escrow, in violation of
17 Regulation 2950(d).

18 (h) failed to advise all parties in writing of
19 Villafana's ownership interest in Tri West Escrow, in violation
20 of Regulation 2950(h).

21 (i) failed to exercise adequate supervision over
22 escrow activities conducted by DUNLAP at his Los Angeles branch
23 office, in violation of Code Section 10177(h) and Regulation
24 2725.

25 14.


26 The conduct, acts and omissions of Respondents, as
27 described in Paragraphs 1 through 13, violated the Code and the

1 Regulations as set forth above and constitutes cause for the
2 suspension or revocation of all real estate licenses and
3 license rights of Respondents under the provisions of Code
4 Sections 10176(a), 10177(d) and/or 10177(g) and/or 10177(h).

5 WHEREFORE, Complainant prays that a hearing be
6 conducted on the allegations of this Accusation and that upon
7 proof thereof, a decision be rendered imposing disciplinary
8 action against all licenses and/or license rights of
9 Respondents, HECTOR MANUEL LAINO, individually and doing
10 business as Capital Lenders, Capital West Realty, La Mont
11 Investments, Realty Angels, Realty of Angels; and DAMIAN NILS
12 DUNLAP, individually and doing business as Premium Home
13 Funding, Premium Home Realty and Red Carpet-American Dream
14 Realty, and as designated officer of BSLM, Inc. under the Real
15 Estate Law (Part 1 of Division 4 of the Business and
16 Professions Code), and for such other and further relief as may
17 be proper under other applicable provisions of law.

18 Dated at Los Angeles, California

19 this 7th day of April, 2004.

20
21
22 
23 Deputy Real Estate Commissioner

24 cc: Hector Manuel Laino
25 Damian Nils Dunlap
26 Sacto.
27 LA Audit/Revilla
RLJ