

VILLARINO, JORGE AUGUSTO  
ID# 48 12 20

H-31812 LA

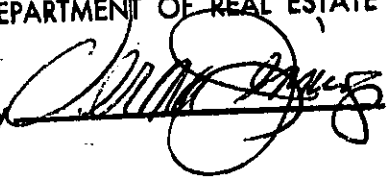
FLAGGED---4-12-05  
RE BROKER SUSPENDED---2-23-06 for 90 Dys  
(Stayed for 2 years on T/C)

Released---2-23-06

**FILED**  
FEB - 3 2006  
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

\* \* \* \* \*

In the Matter of the Accusation of )  
 )  
 )  
 JORGE AUGUSTO VILLARINO, )  
 )  
 )  
 Respondent. )  
\_\_\_\_\_ )

No. H-31812 LA  
L-2005060310

DECISION

The Proposed Decision dated October 27, 2005, of the Administrative Law Judge of the Office of Administrative Hearings has been considered by me.

Pursuant to Section 11517(b)(3) of the Government Code of the State of California, the Proposed Decision on page 2, Factual Findings 5, line 3 "a period from August 1, 2002" is amended to read "a period from June 1, 2002"; on page 2, Factual Findings 7(A) "(#04203-03088)" is amended to read "(#04203-03880)"; and on page 4, Factual Findings 11, line 2, is amended to read "altogether".

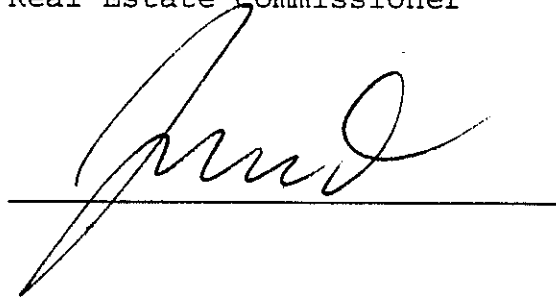
**AMENDED**

This Decision shall become effective at 12 o'clock noon on February 23, 2006.

IT IS SO ORDERED

1-3-06

JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JORGE AUGUSTO VILLARINO,

Respondent.

Case No. H-31812 LA

OAH No. L2005060310

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on October 7, 2005.

James Peel, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Alexis Galindo, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

1. The Complainant, Janice A. Waddell, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, brought the Accusation in her official capacity.
2. Jorge Augusto Villarino, Respondent, is presently licensed and/or has license rights under the Real Estate law (Part 1 of Division 4 of the Business and Professions Code).
3. At all times herein mentioned, Respondent, was licensed by the Department of Real Estate of the State of California as a real estate broker. Respondent previously had his license disciplined as a result of the Decision in Case No. H-28174 LA effective November 23, 1999, which resulted in a 90 day suspension stayed for two years on terms and conditions.

4. At all times herein mentioned, Respondent, on behalf of others in expectation of compensation, engaged in the business, 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 sections 10131, subdivisions (a) and (d) and Financial Code section 17006, subdivision (a)(4). Respondent maintained trust account no. 04203-03880 at the Bank of America.

5. On August 4, 2003, the Department completed an examination (audit) of Respondent's books and records, pertaining to the activities described in Finding 4, covering a period from ~~August~~ <sup>June</sup> 1, 2002, through July 23, 2003, which examination revealed violations of the Business and Professions Code and California Code of Regulations, title 6, Chapter 6 (Regulations) as set forth in Finding 7.

6. The examination described in Finding 5, was done by a properly trained and competent auditor employed by the Department. The examination determined that, in connection with the activities described in Finding 4, Respondent accepted or received funds, including funds in trust (hereinafter "trust funds") from or on behalf of principals, and thereafter made deposit or disbursement of such funds.

7. In the course of activities described in Findings 4 and 6, and during the examination period described in Finding 5, Respondent acted in violation of the Business and Professions Code (Code) and the Regulations as follows:

- A. As of 7/23/02, the trust account with Bank of America (<sup>03880</sup>#04203-~~03888~~) had a shortage of \$825.98. \$621.06 was caused by overdrawn broker's fund and \$204.92 was caused by negative balance of a beneficiary account. The shortage is a violation of Code section 10145 and Regulation 2832.1.
- B. Respondent failed to maintain books and records in accordance with accepted principles of accounting and good business practice for trust funds received and disbursed for the trust account with Bank of America (#04203-03880). The failure is a violation of Regulation 2831.
- C. Respondent failed to maintain a separate record for each beneficiary of trust funds received and disbursed for the trust account with Bank of America (#04203-03880). The failure is a violation of Regulation 2831.1.
- D. A monthly reconciliation of the record of all trust funds received and disbursed with the balance of all separate beneficiary trust fund records was not maintained for the trust account with Bank of America (#04203-03880). This is a violation of Regulation 2831.2.
- E. Trust account with Bank of America (#04203-03880) was not in the name of the broker or in the licensed fictitious names of the broker as a trustee. This is a violation of Regulation 2832.

- F. Respondent failed to have fidelity bond coverage of at least equal to the maximum amount of the trust funds for Hector Martinez, whose salesperson license expired on October 7, 2002. The failure is a violation of Regulation 2834.
- G. During the audit period, Respondent kept the commission belonging to him for more than twenty-five (25) days in the trust account when there was no dispute between the broker and the broker's principal as to the broker's portion of the funds. This is a violation of Regulation 2835.
- H. The fictitious business name Highland Realty was used in the escrow transactions trust account with Bank of America (#04203-03880) and was printed on the checks without first obtaining a license from the Department. This is a violation of Regulation 2731.
- I. Respondent failed to advise all parties in writing that he was the agent and also the escrow holder in the transaction. The failure is a violation of Regulation 2950(h).
- J. Respondent failed to maintain a Pest Control Report in some of the examined files. The failure is a violation of Code section 10148.
- K. Respondent failed to retain on file for a period of three years a true and correct copy of the Mortgage Loan Disclosure Statement as signed by the borrower and by the real estate broker negotiating the loan or by a real estate salesperson acting for the broker in negotiating the loan. The failure is a violation of Code section 10240.

8. Respondent is a long time licensee of the Department. He was first licensed as a Real Estate Salesperson in 1974, and in 1978 was licensed as a Real Estate Broker. In 1981 he opened Highland Realty in San Bernardino. The name was approved by the Department and a branch license was issued. In 1986, he closed the office and in 2001, Respondent opened the office again. Over the years of licensure he had never operated an escrow business until 2002, when he opened an escrow division at the Highland Realty. The trust account was opened and two signatures were required for the trust checks. Respondent did not have any special training in escrow management nor did he attend any special seminars for escrow operations. Respondent essentially relied on the expertise of a newly hired escrow officer who represented himself to be knowledgeable and versed in the escrow business. The escrow instructions were pre-printed along with the checks, letterhead and file jackets. Escrows were opened, cancelled and closed without incident. Respondent visited the office on a weekly basis. He reviewed the files, signed checks and counseled the agents at the office. After the audit of August 4, 2003, Respondent learned of the violations set forth in Finding 7. He immediately ceased the escrow operations at Highland Realty and he

terminated his association with Highland Realty. He has no desire or intent to again operate an escrow business or any escrow trust accounts.

9. Respondent was not aware of the violations set forth in Finding 7 until they were called to his attention by the Department's Auditor, Kitlin Chan. He, therefore, did not willfully disregard the Department's laws or regulations. Additionally, there is no evidence that Respondent acted in a dishonest way or deceptive manner. He was fully cooperative with the Department during and after the examination period.

10. Respondent, by his own admission, has no special training or experience in either accounting or in the operation of an escrow business. Given that lack of training and experience Respondent should have closely monitored, audited and supervised the performance of his escrow officer. He failed to do so. That failure demonstrated negligence in performing an act – supervision - for which he is required to hold a real estate license.

11. In mitigation, once Respondent was informed that he was in violation he ~~immediately~~ <sup>ALTOGETHER</sup> stopped the escrow activity and closed the operation all together to prevent any further violations. There was no financial loss to any person as a result of Respondent's negligence.

#### LEGAL CONCLUSIONS

1. No cause exists for discipline of Respondent's real estate license and license rights pursuant to Business and Professions Code section 10177, subdivision (d) by reason of Finding 9.

2. Cause exists for discipline of Respondent's real estate license and license rights pursuant to Business and Professions Code section 10177, subdivision (g) by reason of Findings 7 and 10.

3. The prior discipline of Respondent occurred six years ago and Respondent did timely meet the conditions of the stayed suspension. The violation in this case arose from the operation of an escrow business which no longer exists. Accordingly, a stayed suspension of ninety (90) days upon terms and conditions including the payment of a fine, is consistent with the public interest.

#### ORDER


A. All licenses and licensing rights of Respondent Jorge Augusto Villarino under the provisions of the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that if Respondent petitions, forty-five (45) days of the suspension imposed upon Respondent shall be permanently stayed upon the condition that:

1. Respondent pay a monetary penalty pursuant to Business and Professions Code section 10175.2 in the amount of \$100 per day, for a total of Four thousand five hundred dollars (\$4,500.00).
2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision in this matter.
3. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

B. The remaining forty-five (45) days of the suspension imposed upon Respondent shall be stayed for a period of two (2) years, subject to the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

Dated: October 27, 2005

  
RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:rfm

*Handwritten initials/signature*

1 JAMES R. PEEL, Counsel (SBN 47055)  
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3  
4 Telephone: (213) 576-6982  
-or- (213) 576-6913 (Direct)

**FILED**  
APR 12 2005  
DEPARTMENT OF REAL ESTATE  
*Handwritten signature*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H31812 LA  
12 JORGE AUGUSTO VILLARINO, ) A C C U S A T I O N  
13 Respondent. )  
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15 The Complainant, Janice A. Waddell, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against JORGE AUGUSTO VILLARINO, alleges as follows:  
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19 I

20 The Complainant, Janice A. Waddell, acting in her  
21 official capacity as a Deputy Real Estate Commissioner of the  
22 State of California, makes this Accusation against JORGE AUGUSTO  
VILLARINO.

23 II

24 JORGE AUGUSTO VILLARINO (hereinafter referred to as  
25 "Respondent") is presently licensed and/or has license rights  
26



1 under the Real Estate Law (Part 1 of Division 4 of the Business  
2 and Professions Code) (hereinafter Code).

3 III

4 At all times herein mentioned, Respondent, was licensed  
5 by the Department of Real Estate of the State of California as a  
6 real estate broker. Respondent previously had his license  
7 disciplined as a result of the Decision in Case No. H-28174 LA  
8 effective November 23, 1999 which resulted in a 90 day suspension  
9 stayed for two years on terms and conditions.

10 IV

11 At all times herein mentioned, Respondent, on behalf of  
12 others in expectation of compensation, engaged in the business,  
13 acted in the capacity of, advertised or assumed to act as a real  
14 estate broker in the State of California within the meaning of  
15 Sections 10131(a) and (d) of the Code and 17006(a)(4) of the  
16 Financial Code. Respondent maintained trust account No. 04203-  
17 03880 at the Bank of America.

18 V

19 On or about August 4, 2003, the Department completed an  
20 examination of Respondent's books and records, pertaining to the  
21 activities described in Paragraph IV above, covering a period  
22 from June 1, 2002, through July 23, 2003, which examination  
23 revealed violations of the Code and Title 10, Chapter 6,  
24 California Code of Regulations ("Regulations") as set forth  
25 below.

1 VI

2 The examination described in Paragraph V above,  
3 determined that, in connection with the activities described in  
4 Paragraph IV above, Respondent accepted or received funds,  
5 including funds in trust (hereinafter "trust funds") from or on  
6 behalf of principals, and thereafter made deposit or disbursement  
7 of such funds.

8 VII

9 In the course of activities described in Paragraphs IV  
10 and VI and during the examination period described in Paragraph  
11 V, Respondent acted in violation of the Code and the Regulations  
12 as follows, and as more specifically set forth in Audit Report  
13 Nos. LA 020462 and LA 030047 and related exhibits.

14 1. Violated Section 10145/Regulation 2832.1. The  
15 trust account had a shortage of \$825.98 on July 23, 2003.

16 2. Violated Regulation 2831. Respondent did not  
17 maintain records of all trust funds received and disbursed.

18 3. Violated Regulation 2831.1. Separate records for  
19 each beneficiary or transaction were not maintained.

20 4. Violated Regulation 2831.2. Respondent did not  
21 maintain records of monthly reconciliation of the trust account.

22 5. Violated Regulation 2832. The trust account was  
23 not in the name of the broker or in the licensed fictitious name  
24 of the broker as trustee.

25 6. Violated Regulation 2834. Respondent failed to  
26 have fidelity bond coverage of at least equal to the maximum  
27 amount of the trust funds for Hector Martinez whose real estate

1 license expired on October 7, 2002. Hector Martinez was a  
2 signatory on the trust account.

3 7. Violated Regulation 2835. Respondent maintained  
4 commissions belonging to him for more than 25 days in the trust  
5 account.

6 8. Violated Regulation 2731. Respondent employed the  
7 unlicensed fictitious business name Highland Realty in his real  
8 estate brokerage business.

9 9. Violated Regulation 2950(h). Respondent failed to  
10 advise all parties in writing that he was the agent and escrow  
11 holder in the transaction.

12 10. Violated Section 10148. Respondent failed to  
13 maintain a copy of all Pest Control Reports.

14 11. Violated Section 10240. Respondent failed to  
15 retain on file for a period of three years a true and correct  
16 copy of the Mortgage Loan Disclosure Statement as signed by the  
17 borrower and by the real estate broker negotiating the loan or by  
18 a real estate salesperson acting for the broker in negotiating  
19 the loan.

20 VIII

21 The conduct of Respondent, as alleged above, subjects  
22 his real estate licenses and license rights to suspension or  
23 revocation pursuant to Sections 10177(d) and/or 10177(g) of the  
24 Code.

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1                   WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of respondent  
5 JORGE AUGUSTO VILLARINO under the Real Estate Law (Part 1 of  
6 Division 4 of the Business and Professions Code) and for such  
7 other and further relief as may be proper under other applicable  
8 provisions of law.

9 Dated at Los Angeles, California

10 this 6 day of April, 2005.

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14 Deputy Real Estate Commissioner  
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22  
23

24 cc: Jorge Augusto Villarino  
25 Janice A. Waddell  
26 Audit Section  
27 Kitlin Chan  
Sacto.