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FILED
MAY 17 2011
DEPARTMENT OF REAL ESTATE
By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO.	H-36089 LA
)		L-2009110188
ANA ISELA MONTELONGO, doing business)		
as American Arrow and American Mortgage)		
Alliance,)		
)		
Respondent.)		

DECISION AFTER REJECTION

The matter came on for hearing before Nancy Beezy-Micon, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on July 27, 2010, July 28, 2010 and September 16, 2010. James R. Peel, Real Estate Counsel, represented Deputy Commissioner Robin Trujillo (Complainant). ANA ISELA MONTELONGO, individually and doing business as American Arrow and American Mortgage Alliance (Respondent) was present and represented herself. Oral and documentary evidence was received and the matter stood submitted on September 16, 2010.

On October 18, 2010, the Administrative Law Judge issued a Proposed Decision which was not adopted as the decision of the Real Estate Commissioner. Pursuant to Section

1 11517(c) of the Government Code of the State of California, on December 20, 2010

2 Respondent was served with a copy of the Proposed Decision dated October 18, 2010, and with
3 Notice that the case would be decided upon the record, including the transcript of proceedings
4 held on July 27, 2010, July 28, 2010 and September 16, 2010.

5 The Department requested a copy of the transcript from Star Reporting Service.
6 On March 17, 2011, the Department received a letter from the reporting service indicating that
7 they would not be able to provide a transcript for the hearing, as the reporter's note file was
8 illegible and the audio file was inaudible.

9 I have given careful consideration to the documentary evidence in this case and
10 the Proposed Decision, which contained detailed Findings of Fact and Legal Conclusions of the
11 Administrative Law Judge. The Findings of Fact and Legal Conclusions in the Proposed
12 Decision of the Administrative Law Judge are hereby adopted.

13 WHEREFORE, THE FOLLOWING ORDERS are hereby made:

14 ORDER

15 1. The Second Cause of the Accusation against Respondent ANA ISELA
16 MONTELONGO is hereby dismissed.

17 2. A public reproof is hereby issued pursuant to Business and Professions Code
18 section 495 for Respondent's violations found in the Department's audit, as set forth in the First
19 Cause of Accusation.

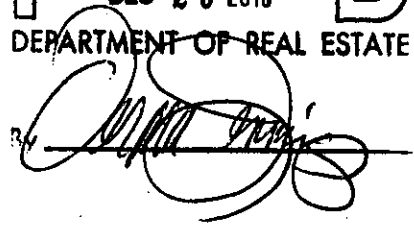
20 This Decision shall become effective at 12 o'clock
21 noon on JUN - 6 2011.

22 IT IS SO ORDERED

23 4-26-2011
24 JEFF DAVI
25 Real Estate Commissioner
26 
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SARAO
FLAG

FILED
DEC 20 2010
DEPARTMENT OF REAL ESTATE



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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

ANA ISELA MONTELONGO,
dba American Arrow and American
Mortgage Alliance,

Respondent.)

No. H-36089 LA

L-2009110188

NOTICE

TO: ANA ISELA MONTELONGO, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 18, 2010, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 18, 2010, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 27 and 28, and September 16, 2010, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 27 and 28, and September 16,

1 2010, at the Los Angeles office of the Department of Real Estate unless an extension of the time
2 is granted for good cause shown.

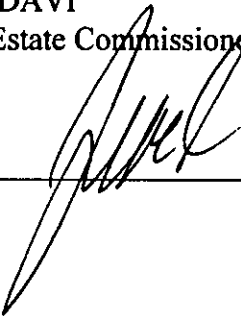
3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: _____

12/7/2010

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8 JEFF DAVI
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ANA ISELA MONTELONGO,
doing business as
American Arrow
and American Mortgage Alliance,

Respondents.

Case No. H-36089 LA

OAH No. 2009110188

PROPOSED DECISION

This matter was heard by Nancy Beezy Micon, Administrative Law Judge with the Office of Administrative Hearings, on July 27 and 28, and September 16, 2010, in Los Angeles, California.

James R. Peel, Real Estate Counsel, represented Deputy Real Estate Commissioner Robin L. Trujillo (Complainant).

Ana Isela Montelongo, individually, and doing business as American Arrow and American Mortgage Alliance (Respondent), represented herself.

Complainant seeks to discipline Respondent's real estate licenses based on two causes of action. The primary allegation, contained in the second cause of the Accusation, is that Respondent engaged in fraudulent conduct in connection with a client's home loan re-finance and subsequent loan for the purchase of a home by misrepresenting the payment amount on the loan for the home purchase, and falsifying loan documents, which Complainant alleges were never signed by the property owners. The first cause of action, based on the results of an audit conducted as a result of the allegations of wrongdoing, alleges that Respondent's books and records violated portions of the California Business and Professions Code (Code) and the California Code of Regulations, Title 10, Chapter 6 (Regulations). Respondent denied any wrongdoing. She does not dispute that the audit revealed she inadvertently violated portions of the Code and some of the Regulations. Based on the documentary and witness testimony at hearing, the evidence showed that the allegations of dishonest dealings by Respondent were based upon declarations, which were false, submitted to the Department of Real Estate (the Department) by the homeowners, who had defaulted on the loan for their home.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on September 16, 2010.

FACTUAL FINDINGS

Jurisdictional Matters and License History

1. On June 29, 2009, Complainant, acting in her official capacity, filed the Accusation. On July 23, 2009, Respondent filed the Notice of Defense. This action then ensued.

2. Respondent was first licensed as a real estate salesperson with the Department on October 2, 1997. The Department issued a real estate broker license to Ana Isela Montelongo, doing business as American Arrow and American Mortgage Alliance, on May 2, 2001. Respondent's real estate broker license was in effect at all times relevant to this action and will expire on May 3, 2013, unless renewed.

3. At all relevant times, Respondent acted as a real estate broker and conducted licensed activities, including soliciting borrowers and lenders and negotiating loans on real property, within the meaning of Code section 10131, subdivisions (a) and (d). In addition, Respondent conducted escrows under the exemption set forth in California Financial Code section 17006, subdivision (a)(4).

4. There is no history of any formal administrative discipline having been taken against Respondent's real estate broker or salesperson licenses.

Respondent's Alleged Fraudulent Conduct

5. Complainant seeks to impose discipline on Respondent's licenses on the basis of Respondent's actions in connection with a home re-finance transaction and home purchase transaction involving Armando Quintero (Quintero) and Maria Dolores Obispo (Obispo). Quintero and Obispo hold themselves out as husband and wife. They live together and have children together.

6. The Re-Finance Transaction. In July 2006, "Armando Quintero, A Single Man" re-financed his home at 9761 Encina Avenue, in Bloomington, California (the Bloomington property), where Quintero and Obispo lived (the re-finance transaction). Quintero obtained a \$405,000 loan on the Bloomington property through Argent Mortgage Company. Respondent at no time had an ownership or other monetary interest in Argent Mortgage Company. Respondent's company, American Escrow Alliance, handled the escrow on the re-finance transaction. Quintero received cash from the transaction, including approximately \$70,000 that was used to purchase a new home in Redlands, California.

7. The Purchase Transaction. In September 2006, "Maria Dolores Obispo, A Married Woman, as Her Sole and Separate Property" purchased a home at 816 Buckingham

Drive in Redlands, California (the Redlands property) for \$652,000 (the purchase transaction). Obispo obtained a loan for \$586,800 from Argent Mortgage Company to purchase the Redlands property. The escrow on the purchase transaction was handled by Escrow Pros, Inc. (Escrow Pros), a company owned by James and Lisa Faragher. Respondent at no time had an ownership or other monetary interest in Escrow Pros. Respondent acted as the real estate agent for Obispo on the purchase transaction.

8. The specific allegations concerning alleged dishonest dealings by Respondent are contained in paragraphs IX through XV of the second cause for discipline of the Accusation. The charging paragraphs read as follows:

X

Respondent arranged for the re-finance of Armando Quintero and Maria Dolores Obispo's ("Owners") property located at 9761 Encina, Bloomington, California so that the Owners could have cash to purchase a property located at 816 Buckingham Drive, Redlands, California.

XI

Respondent acted as the broker in both transactions and provided escrow services.

XII

Respondent falsely informed the Owners that the payments on the Redlands property would be \$2,800 per month but in truth the payments were \$4,861 per month which the Owners could not afford and which eventually caused the Owners to lose the property.

XIII

Respondent never had the Owners sign any documents for either transaction. The Owners never signed any document with a notary.

XIV

Respondent was able to arrange both transactions or caused both transactions to take place by preparing and submitting falsified documents to the escrow companies and lenders involved in these transactions.

XV

The conduct of Respondent, as alleged above, is grounds to revoke her real estate license and license rights pursuant to Code Sections 10176(i), 10177(f), (g) and (j).

The Basis for the Allegations of Fraudulent Conduct

9. Complainant received sworn statements from Quintero and Obispo, which were the basis for the allegations in the second cause for discipline of the Accusation.

10. According to the sworn statement submitted by Quintero in May 2008, Respondent told him that, if he re-financed his home in Bloomington, he could "pull out 100+ dollars" to purchase and make improvements upon a beautiful house in Redlands. Quintero wrote that "before she gave me the key" Respondent told him the mortgage payment on the loan would be approximately \$2800 when, in fact, the first statement required a \$4,861 mortgage payment. Quintero contended that Respondent "sign[ed] all final documents for the refinance and purchase of both homes." Quintero stated that he did not report the fraud earlier because Respondent threatened him with "immigration procedures" when he confronted her. Quintero wrote that Respondent wired all of the re-finance money to her escrow company. He wrote that he had "much proof" showing "different numbers" and "different signatures" as well as "notary fraud" and "paperwork" with "much more proof of fraud."

11. Quintero and Obispo submitted a sworn declaration to the Department on March 5, 2009. In the declaration, Quintero and Obispo make claims that are similar to the claims contained in their sworn statements, including the following:

Ana Montelongo told us that there was a good home in the [Redlands] area for us. Ana Montelongo stated that after the refinance she would help us sell our home in Bloomington. Around two months went by (we are not sure of the exact date), Ana Montelongo came to our house and told us that she made it happen and she gave us the keys. Prior to us getting the house, Ana Montelongo's husband, Rene Montelongo, showed us the house as well as the school and we just cruised by different places in Redlands in his car. We did not get out of his car to look on [sic] the inside of the house. Apparently, we had to make an appointment with the owner of the house that was still staying there at the time. The owner was non cooperative [sic] and refused to show the home without an appointment. We thought the outside of the home was great as well as what we saw when we were driving around the area.

12. In the March 2009 declaration, Quintero and Obispo claim that Respondent told them the payments on the Redlands property would be "from \$2300 to \$2800 a month." Quintero and Obispo also claimed that the manager of Escrow Pros told them that Respondent had gone to Escrow Pros, obtained the escrow documents, and brought the signed documents back to the escrow company saying that Quintero and Obispo were "at the airport" and documents need to be signed right away. Quintero and Obispo claim they did not sign the real estate documents. They also claim they never appeared in front of a notary.

13. At hearing, Quintero and Obispo claimed they never agreed to purchase the Redlands property. They claimed not to have seen the interior of the Redlands home before the keys were delivered to them. They claimed the amount of the mortgage payment on the Redlands property was misrepresented to them by Respondent to be between \$2,300 and \$2,800 per month. They claimed to receive no money from the re-finance transaction. Quintero denied receiving any cash from the re-finance transaction. They denied signing the re-finance and purchase transaction documents, including the escrow closing documents.

14. Quintero and Obispo lived in the Redlands home for approximately one year and a half. The lender foreclosed on the Redlands property due to nonpayment on the loan. Quintero, after the re-finance and purchase transactions, sold the Bloomington property to his cousin as a short sale. Quintero denied that he initially used Respondent as the listing agent on the sale of the Bloomington property. He also denied asking Respondent to release the listing when he decided to have a relative handle the sale.

The Lack of Credibility of Quintero and Obispo

15. The claims of Quintero and Obispo were not consistent with other reliable evidence and witness testimony.

16. Quintero and Obispo hope to recover monetary damages as a result of the allegations made against Respondent. The March 2009 declaration states: "We just want to see justice done to Ana Montelongo and we would like to be compensated for our loss." This evidence, together with the lawsuit discussed in factual finding number 17, establishes that Quintero and Obispo have monetary motivations for the complaints they made to the Department.

17. Quintero and Obispo brought a complaint for damages against Respondent, the owners of Escrow Pros, and other individuals involved in the re-finance transaction, alleging there was a conspiracy to defraud them. In a complaint for damages, dated August 18, 2008, Quintero and Obispo allege that Respondent processed the re-finance transaction on the Bloomington property without obtaining consent, signatures, or approval for the transaction. According to the lawsuit, all signatures on the re-finance and purchase transaction documents were forged. Quintero and Obispo contend Respondent gave them the keys to the Redlands property without Quintero and Obispo having seen the property. In the lawsuit, Quintero and Obispo assert that Respondent told them the mortgage payments on the Redlands property "would be no more than two-thousand dollars (\$2,000.00)." The details in the complaint differ from the allegations in Quintero's sworn statement and the Quintero and Obispo declaration. Most notably, the allegation in the lawsuit that Respondent said the mortgage payment would be "no more than \$2,000" contradicts the amounts stated in the sworn statement and declaration.

18. William J. Morgan (Morgan), the listing agent for the seller of the Redlands property, was called as a witness by Respondent. Morgan is a real estate broker, who has

worked in real estate for approximately 29 years. Morgan was not named as a defendant in the lawsuit brought by Quintero and Obispo and he has no interest in the outcome of these proceedings. Morgan convincingly testified that he was present on more than one occasion when Quintero and Obispo were shown the interior of the Redlands property. According to Morgan, Quintero and Obispo conducted an inspection of the interior of the Redlands property on September 3, 2006 and requested that certain repairs be made to the property. Morgan had no doubt that Quintero and Obispo conducted an additional "walk through" inspection of the Redlands property on September 18, 2006, to make sure the repairs they had previously requested, such as the reinforcement of a safety rail outside the bedroom and the repair of a toilet, had been made to the property before the close of escrow. Morgan also recalled Quintero and Obispo being present at the property, and seeing the interior, on an occasion when the police had been called due to the seller's reluctance to leave the property. Morgan's testimony was supported by his written log of events pertaining to the Redlands property purchase transaction (activity log). Morgan's activity log was prepared between July 5, 2006, when escrow was opened on the Redlands property, and October 2006, when the seller was removed from the property. Morgan testified that if Quintero and Obispo claim they had not seen the interior of the Redlands property before the close of escrow, that statement would not be true. The testimony of Morgan establishes that Quintero and Obispo actively participated in the Redlands purchase transaction and that, by denying that they ever saw the interior of the Redlands property before the close of escrow, they were not truthful.

19. James Faragher (Faragher), one of the owners of Escrow Pros, was called as a witness by Complainant as the custodian of records for the escrow documents pertaining to the Redlands transaction.¹ Faragher did not corroborate the claims made by Quintero and Obispo concerning Respondent's alleged dishonest dealings surrounding the signing of the escrow documents at Escrow Pros. Rather, as part of his escrow file, Faragher brought the escrow trust receipt and a copy of a \$2,000 escrow deposit check, dated June 18, 2006, which Escrow Pros received from Obispo when the escrow was opened for the purchase of the Redlands property. The authenticity of the signature on the \$2,000 escrow deposit check was not disputed. The signature of the first and last name on the check appears to match the signature of the first and last name for Obispo on the property purchase documents. The escrow deposit check shows that Obispo intended to purchase the Redlands property and was aware of the purchase transaction. It calls into question Obispo's veracity since she denied being aware of the Redlands property purchase until after escrow was closed and denies that she signed the purchase transaction documents.

According to Faragher, Quintero and Obispo came to his office two months after the close of escrow claiming they had no knowledge of purchasing the property. Faragher asked Obispo to give him an exemplar of her signature. The signature on the exemplar contains a circle over the letter "i" in Obispo. It is not consistent with the signature

¹ Faragher's wife and his escrow company, who were originally named as defendants in the lawsuit brought by Quintero and Obispo, were later dismissed as defendants. Faragher nevertheless testified with conviction concerning his belief that Quintero and Obispo are "liars".

contained on the check from Obispo's checking account. Based on the signature on the escrow deposit check, the signature on the exemplar was false.

20. Faragher provided a check, dated September 27, 2006, for \$600.43, which was sent to Obispo as cash due to the buyer of the Redlands property. The check was endorsed by Obispo. The authenticity of the signature on the check was not disputed. The endorsement signature on the \$600.43 check from escrow matches the signature on the \$2,000 escrow deposit check from Obispo. It also appears to match the signature of the first and last name for Obispo on the Redlands purchase transaction documents. This is further evidence of Obispo's participation in and knowledge of the Redlands property purchase transaction, and her lack of veracity in claiming she did not sign the purchase documents or otherwise know she was purchasing the Redlands property.

21. The August 2006 loan application on the Redlands property shows that the proposed monthly mortgage payment on the property would be \$4,075.69. Respondent's assertion that the bank funding the loan would have mailed a copy of the loan application to the borrower was not disputed by Complainant. The mailing address contained on the document is the address for the Bloomington property, where Quintero and Obispo lived before they moved to the Redlands property. This evidence establishes that Quintero and Obispo were informed that the mortgage payment on the Redlands property would be over \$4,000 per month. The contention of Quintero and Obispo that they believed the mortgage payment would be "about \$2800" (Quintero sworn statement), "from \$2300 to \$2800 a month" (Quintero and Obispo declaration), or "no more than \$2,000" (lawsuit) is further called into question by this evidence.

22. Quintero and Obispo did not provide a plausible explanation for why they occupied the Redlands property in approximately October 2006, and made initial mortgage payments on the Redlands property, if they believed they were not the owners of the property.

23. Quintero's signature contained on the loan application for the re-finance of the Bloomington property is identical to Quintero's signature on his driver's license.

24. The Bloomington property had been re-financed by Quintero on at least three occasions before the re-finance transaction. The previous re-finance transactions on the Bloomington property were not handled by Respondent. The income information contained in the loan application for the re-finance transaction handled by Respondent is consistent with information Quintero supplied when re-financing the Bloomington property on the previous occasions. A loan application handled by America's Wholesale Lender in August 2005, for example, shows that Quintero asserted he earned \$8,804.15 per month as a truck driver. This is in line with the loan application on the Bloomington re-finance, which states that Quintero earned \$9,800 per month as a self-employed truck driver and owner, with five years on the job. Further, Quintero's signature on the real estate documents in 2005 matches his signature on the loan application on the re-finance documents for the Bloomington property.

25. Respondent presented special power of attorney documents signed by Quintero and Obispo in connection with the lawsuit against Respondent. The signature of Quintero on the special power of attorney document is identical to his signature in connection with the Bloomington property loan re-finance. Obispo's signature on the special power of attorney document is identical to her signature on the \$2,000 escrow deposit check for her purchase of the Redlands property and her signature on the endorsement to the \$600.43 check from Escrow Pros. Based on this evidence, Quintero's and Obispo's claims that they did not sign the re-finance documents and were not aware of the Redlands purchase transaction are found not to be credible.

26. Quintero and Obispo provided Respondent with documents required to support representations made in the real estate transactions. Obispo, for example, provided a food worker certificate to support the income she claimed to be making as the owner of a catering business. She also gave Respondent copies of her bank records, and provided documentation to show that utilities were in her name. Quintero supplied documentation concerning his social security number and the fact that homeowner's insurance was in place on the Bloomington property. Quintero also supplied documentation concerning a lawsuit that had been filed against him in August 2005. The judgment in the lawsuit needed to be paid off before the re-finance transaction could be funded. This is further evidence of Quintero and Obispo's knowledge of and participation in the re-finance and purchase transactions.

27. The Redlands property purchase required a deposit in the amount of \$70,927.69. The settlement statement on the Bloomington re-finance, introduced into evidence by Complainant, show that \$68,927.69 was sent to Escrow Pros for Obispo's purchase of the Redlands property. When combined with the \$2,000 escrow deposit made by Obispo, the exact amount of money required for the Redlands property purchase was sent to escrow.

28. Quintero received two checks from the re-finance transaction: one in the amount of \$8,174.30 and the other in the amount of \$2,000. Respondent presented a bank statement showing that Quintero and Obispo made a deposit in their checking account at Washington Mutual Bank in the amount of \$8,174.30 on August 7, 2006. This evidence refutes Quintero's claim that he did not receive cash from the re-finance transaction. It also shows that Quintero participated in the re-finance transaction and was aware of it.

29. Other parts of the testimony of Quintero and Obispo also raised questions about their truthfulness. Most notably, Quintero and Obispo provided contradictory information concerning the date of their alleged marriage. Quintero initially asserted he and Obispo were married in a library in 2007. He then said the marriage took place in 2004 or 2005. Obispo initially asserted the marriage took place in 2002. Then, after a break in the hearing, Obispo contended the marriage took place sometime between 2002 and 2004. Neither Quintero nor Obispo could state the exact date, or even the month, of their alleged marriage. (The deed of trust on the re-finance transaction, dated July 21, 2006, lists Quintero as "a single man".)

30. The demeanor of Quintero and Obispo also called into question their veracity. Rather than calmly responding to questioning with concrete information, Quintero raised his voice and became red in the face when asserting his position. Obispo appeared evasive and uncomfortable on the stand. She claimed not to understand English but then responded in English to some of the questioning.

31. Real estate agent Theresa Vidal (Vidal) presented testimony on behalf of Respondent. Obispo is the mother of Vidal's step-daughter. According to Vidal, Quintero and Obispo believed Respondent had stolen money from them, and asked her to review the real estate documents pertaining to the re-finance transaction, which they gave to her for review. Vidal reviewed the documents and informed Quintero and Obispo that no money was missing and that the documents showed everything had been done appropriately.² This evidence is further corroboration of the fact that Quintero and Obispo were aware of the re-finance transaction.

32. The signatures of Quintero and Obispo on the deed of trusts for the re-finance and purchase transactions were notarized. Other than presenting the testimony of Quintero and Obispo, Complainant did not present evidence to show any improprieties in the notarization process.

Respondent's Response to Allegations of Fraudulent Conduct

33. Respondent denies wrongdoing. Respondent explained that she and her family became friends with Quintero and Obispo after she worked for them as their real estate agent when they purchased the home in Bloomington. Respondent asserts that Quintero and Obispo participated in the re-finance and purchase transactions because they wanted to live in a beautiful home in a nice area with good schools for their children. Respondent pointed out that the fees she received in handling the escrow on the re-finance transaction and as the agent in the purchase transaction were less than the fees that other professionals received in handling the same type of transactions. According to Respondent, Quintero and Obispo were well aware of the details of the property transactions, including the amount of the mortgage payment on the Redlands property. Respondent credibly testified that she told Quintero and Obispo what the amount of the mortgage payment would be on the Redlands property. In addition, documents were sent to them by the lender for the loan which stated the proposed amount of the mortgage payment.

34. Respondent believed that Quintero and Obispo qualified for the re-finance and purchase transactions when they were made. According to Respondent, Quintero and Obispo

² Vidal also confirmed that Respondent was initially the real estate agent listing the Bloomington property for sale after the re-finance and purchase transactions at issue in this case. Vidal was asked to take over the listing and Respondent cooperated in cancelling her listing so that Vidal could become the listing agent.

drove a nice car, which she believed may have been a Jaguar brand. They owned fine crystal, had expensive artwork, Obispo wore fine jewelry, Quintero owned a semi-truck, and Obispo owned an expensive catering truck. Respondent explained that, based upon the high bid that Obispo gave her to cater Respondent's daughter's *quincienera* celebration, Respondent believed that Obispo earned the amount Obispo stated on the loan documents for the catering business. Respondent further recalled the pastor of their church commenting on generous donations made by Obispo to the church, and Obispo catering church events. Respondent convincingly testified that Obispo was a "go-getter" and that Respondent had no reason to doubt that Quintero qualified for the re-finance transaction and that Obispo qualified for the loan on the Redlands property. Respondent was aware that Quintero had already qualified for three previous re-finance transactions on the Bloomington property.

The Audit

35. The Department's investigator relied upon the declarations from Quintero and Obispo in referring the case for legal action. The Department did not independently verify the allegations of fraudulent conduct by Respondent. In response to the allegations, however, the Department conducted an audit of Respondent's books and records.

36. The audit covered the period from January 1, 2006 to December 31, 2008. The examination of Respondent's books and records took place from March 5, 2009 to May 6, 2009. The audit showed that Respondent did not misappropriate any client funds. It did, however, reveal facts, which formed the basis for allegations in the first cause of the Accusation. The violations cited in the audit report were of a minor, technical nature.

37. a. The audit found Respondent had a trust account shortage of \$774.23 in violation of Code section 10145, subdivision (a), and Regulation 2832.1.

b. Respondent does not dispute that she was required to pay \$774.23 to cover bank service charges. According to Respondent the bank charged fees during a period when she had no earnings in the trust account. She therefore covered the bank fees by depositing money into the account.

38. a. The audit found Respondent failed to maintain a control record for all receipts and disbursements in connection with the escrow activity in violation of Regulation 2831. Specifically, the record was not in chronological sequence and the information was not contained in a columnar form. The record was also missing the amount of trust funds received and, in some instances, to whom trust funds were forwarded.

b. Respondent concedes that she did not maintain her records by using the method preferred by the Department. However, Respondent contends that she maintained all pertinent documents, and kept a record of all transactions. She never mishandled a deposit check.

39. a. The audit found separate records were inaccurate and incomplete in violation of Regulation 2831.1. Wire out amounts of broker's fees and commissions recorded on the separate records were not the exact amounts reflected on the bank statements. Respondent did not maintain a separate record for her escrow fees and commissions. The records were missing the balance after posting transactions.

b. Respondent concedes that she did not record fees and commissions separately. She contends that the amount, however, was not short.

40. a. The audit found Respondent did not maintain monthly reconciliations of all separate records to the control record in violation of Regulation 2831.2.

b. Respondent agrees with this allegation.

41. a. The audit found Respondent failed to designate the trust account as a trust account in violation of Regulation 2832. Instances were found where earnest money deposits were held beyond three business days following acceptance of the offer to purchase.

b. Respondent disputes this allegation. According to Respondent, the account was designated as a trust account. The checks showed the account was a trust account. Respondent concedes that the signature card at the bank, which was examined by the auditor, did not list the account as a trust account. As soon as Respondent learned of this fact, she went to the bank and changed the signature card to indicate it was a trust account. Respondent does not dispute that earnest money deposits were sometimes held beyond three days because listing agents sometimes failed to timely inform her of what escrow company was being used so she could send the fees. Respondent now requires buyers to sign a form acknowledging that deposits will be held until they are authorized to be released to the appropriate party.

42. a. The audit found that Respondent commingled her own funds with the escrow trust funds in violation of Code section 10176, subdivision (e).

b. Respondent does not dispute that she deposited her own money to cover fees, such as when she needed to cover bank service charges. She asserts that she made sure checks did not bounce.

43. a. The audit found Respondent failed to advise all parties in writing of broker's ownership interest in the escrow division in violation of Code section 2950, subdivision (h).

b. Respondent denies this allegation. She produced evidence to show that she had Quintero and Obispo sign an "Affiliated Business Arrangement Disclosure Statement Notice" advising them that American Mortgage Alliance has a business relationship with American Escrow Alliance ("in house escrow 100% ownership interest") and American Arrow RE ("dba 100%"). Quintero and Obispo signed the form to

acknowledge their understanding that American Mortgage Alliance may receive a financial benefit as a result of the referral to American Escrow Alliance and/or American Arrow. Respondent concedes she did not use the disclosure form preferred by the Department. The evidence, however, shows that parties were advised that Respondent had an ownership interest in the escrow division.

44. a. The audit found that Respondent used the unlicensed fictitious business name American Escrow Alliance in violation of Regulation 2731.

b. Respondent denies this allegation. Respondent contends she registered the name American Escrow Alliance with the County Recorder. She did not know the registration had expired. As soon as the audit made her aware of the problem, Respondent updated the fictitious business name registration with the County Recorder.

45. a. The audit found Respondent failed to provide each borrower with the required mortgage loan disclosure statement in violation of Code section 10240.

b. Respondent asserts that she provided borrowers with loan disclosure statements that were produced by the mortgage software program she used. Respondent believes this is another instance where the form she used was not the one preferred by the Department.

46. a. The auditor found that Respondent failed to notify the Department of the employment of two salespeople when they entered Respondent's employment.

b. Respondent denies this allegation. According to Respondent, the Department's computer system dropped the information concerning the employment of the salespeople when Respondent was late in submitting compliance information pertaining to educational course requirements with the Department. Respondent asserts the Department has now changed its practice to have its computer system update the information online, after information on educational requirements is received. Complainant did not refute Respondent's assertions on this point.

47. a. The audit found Respondent failed to maintain written policies, rules, procedures, and systems to review, oversee, inspect, and manage the activities conducted by Respondent.

b. Respondent denies this allegation. According to Respondent, she maintained a method for training her agents and overseeing real estate transactions. Respondent uses a reminder checklist system of what needs to be done in each real estate transaction. She and the auditor disagreed on the adequacy of her system.

48. The auditor testified at the hearing. He acknowledged that the audit did not reveal any fraudulent business activity by Respondent. According to the auditor, the audit basically revealed that Respondent maintained poor trust fund records.

49. Respondent testified credibly at hearing; she supported her testimony with documentary evidence. She did not deny most of the violations found by the auditor, or question the auditor's competence. She argued that the violations found in the audit were of a minor, technical nature, and that she closed her escrow business at the end of 2006 or beginning of 2007. She undertook the business as an adjunct to real estate sale services because she felt lenders charged too much money for their services, and Respondent wanted to save money for her clients. After experiencing the paperwork involved in the transactions and the cost of the software and other related processing services, Respondent stopped providing the loan services. She therefore also closed the escrow trust account. The violations found in the audit no longer apply to Respondent's real estate business activities.

50. Respondent has been married for 25 years. She has six children, four boys and two girls. Two of the children are adopted. Respondent and her family are all involved in community service. Respondent volunteered her time as a teacher as part of a teaching cooperative for home-schooled children. She has been a team mom, room mom, and scout leader. She attends church regularly and taught Sunday school when her children were younger. She has been involved in Micah House, an AIDS outreach organization to benefit children in Africa. One of Respondent's children went to Africa to volunteer for this organization.

LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this proceeding to demonstrate by "clear and convincing evidence to a reasonable certainty" that Respondent's licenses should be disciplined. (*Realty Projects v. Smith* (1973) 32 Cal.App.3d 204.) This means that Complainant is required to adduce evidence that is clear, explicit, and unequivocal – so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1893; *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Cause does not exist to discipline Respondent's real estate license pursuant to Code sections 10176, subdivision (i), and 10177, subdivisions (f), (g), and (j) because Complainant did not establish that Respondent engaged in any dishonest dealings in connection with the re-finance transaction on the Bloomington property or the purchase transaction on the Redlands property. Instead, the evidence established that Complainant relied upon sworn statements and a declaration from Quintero and Obispo, who were shown not to be credible. One example of the lack of credibility of Quintero and Obispo is the assertion made by Quintero and Obispo in their sworn statements to the Department and in their testimony at hearing that they never saw the interior of the Redlands property before the close of escrow. This claim was credibly contradicted by testimony and documentary evidence from William J. Morgan, the listing agent representing the seller of the Redlands property. Morgan established that he was present when Quintero and Obispo conducted an inspection of the interior of the property, at which they requested specific repairs to be made

by Morgan's client before the close of escrow. Quintero and Obispo later walked through the property to make sure the repairs had been made. They were also present when the seller was reluctant to vacate the property. Morgan presented an activity log, which was prepared at the time of the escrow on the Redlands property, as corroboration for his testimony. If a trier-of-fact finds a witness is willfully false on one point, it may find him and/or her to be false on others. (*People v. Lawrence* (2009) 177 Cal.App.4th 547, 553-54.) Quintero and Obispo are found to entirely lack credibility. Complainant therefore did not establish the facts it alleged as a result of the sworn statements and declaration from Quintero and Obispo.

3. The factual allegations underlying the second cause for discipline of the Accusation were not proven. Complainant failed to show, for example, as alleged in paragraph XII of the Accusation, that Respondent misrepresented the amount of the mortgage payment on the Redlands property to be \$2,800 per month when it was actually \$4,861 per month. The evidence showed the lender on the property prepared documentation with a "proposed" mortgage amount over \$4,000, and would have sent this estimate to Quintero and Obispo at the Bloomington property, where they lived at the time of the transaction. Even Quintero and Obispo's sworn statements on this point, and their lawsuit, contradicted each other on the amount they believed the mortgage payment would be. Complainant further did not establish that Quintero and Obispo did not sign any documents for the re-finance and purchase transactions, as alleged in paragraph XIII of the Accusation. Obispo clearly provided a \$2,000 escrow deposit check for the Redlands property. On August 7, 2006, Quintero and Obispo deposited \$8,174.30 in proceeds from the re-finance into their bank account at Washington Mutual Bank. Obispo cashed a \$600.43 check, dated September 27, 2006, from Escrow Pros, which handled the escrow on the Redlands property, as cash due to buyer from escrow. The endorsement signature on that check matched the way Obispo signed her first and last name on the documents in the purchase transaction. Quintero and Obispo provided Respondent with documentation to support the representations made in the loan documents. They were clearly aware of and participated in the transactions. They immediately took possession of the Redlands property and did not complain to the Department until they were going through foreclosure proceedings as a result of their failure to make loan payments on the Redlands property. Quintero and Obispo had motivation to be less than candid in the claims asserted in the second cause for discipline of the Accusation. The claims are found to be unsupported and the second cause of the Accusation should therefore be dismissed.

4. Cause exists to discipline Respondent's licenses for her failure, as revealed by the Department's audit, to properly maintain her books and records, in violation of Code sections 10145, subdivision (a), and 10176, subdivision (e), and Regulations 2731, 2831, 2831.1, 2831.2, 2832, and 2832.1. Complainant did not establish that Respondent failed to advise parties in writing of her ownership interest in the escrow division, in violation of Code section 2950, or that she failed to provide each borrower with required loan disclosure statements, in violation of Code section 10240. The evidence established instead that Respondent used forms that are not preferred by the Department. Complainant also failed to establish that Respondent failed to notify the Department of the employment of salespersons working for her. The evidence established that the Department's software system had

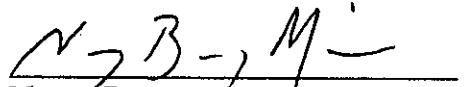
dropped the information on the salespersons as a result of Respondent's late submission to the Department of course requirement information. The Department has since changed its computer system to update this type of information.

5. 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.) The violations established by the audit, which are the basis for the first cause of the Accusation, were of a technical nature. The auditor testified that the audit basically revealed that Respondent maintained poor trust fund records. It did not reveal any fraudulent activity by Respondent. Respondent immediately corrected the technical deficiencies, once they were made known to her. She closed her escrow business so it is unlikely she will repeat the mistakes. Under these circumstances, the public interest will not be threatened by leaving Respondent's licenses intact, and issuing Respondent a public reproof pursuant to Code section 495. Any further discipline of Respondent's licenses would be unduly punitive.

ORDER

The second cause of the Accusation is dismissed. A public reproof is hereby issued pursuant to Business and Professions Code section 495 for Respondent's violations of Code sections 10145, subdivision (a), and 10176, subdivision (e), and Regulations 2731, 2831, 2831.1, 2831.2, 2832, and 2832.1 revealed by the Department's audit. Inclusion of this Decision in the Department's public files is deemed publication of the reproof.

Dated: October 18, 2010


Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings

Not
Adopted

Handwritten initials/signature in top left corner.

1 JAMES R. PEEL, Counsel (SBN 47055)
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7

FILED
JUN 29 2009
DEPARTMENT OF REAL ESTATE
Handwritten signature over the stamp.

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-36089 LA
12 ANA ISELA MONTELONGO,) A C C U S A T I O N
13 doing business as)
14 American Arrow)
15 and American Mortgage Alliance,)
16 Respondents.)

16 The Complainant, Robin L. Trujillo, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against ANA ISELA MONTELONGO doing business as
19 American Arrow and American Mortgage Alliance, alleges as
20 follows:

21 I

22 The Complainant, Robin L. Trujillo, acting in her
23 official capacity as a Deputy Real Estate Commissioner of the
24 State of California, makes this Accusation against ANA ISELA
25 MONTELONGO.

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II

ANA ISELA MONTELONGO (hereinafter referred to as "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, hereinafter Code).

III

At all times herein mentioned, Respondent was licensed by the Department of Real Estate of the State of California as a real estate broker dba American Arrow and American Mortgage Alliance.

IV

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 Section 10131(a) and (d) of the Code including soliciting borrowers and lenders and negotiating loans on real property. Respondent conducted her own escrows exempt from the provisions of the Escrow Law by Section 17006(a)(4) of the Financial Code.

FIRST CAUSE OF ACCUSATION

V

On or about May 6, 2009, the Department completed an examination of Respondent's books and records, pertaining to the activities described in Paragraph IV above, covering a period from January 1, 2006, through December 31, 2008, which examination revealed violations of the Code and of the California
///

1 Code of Regulations, Title 10, Chapter 6 (Regulations) as set
2 forth below.

3 VI

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

10 VII

11 In the course of activities described in Paragraphs IV
12 and VI and during the examination period described in Paragraph
13 V, Respondent acted in violation of the Code and the Regulations
14 as follows, and as more specifically set forth in Audit Report
15 Nos. LA 080194, LA 080226 and LA 080227 and related exhibits.

16 1. Violated Code Section 10145(a) and Regulation
17 2832.1 by maintaining as of December 31, 2008, a trust account
18 shortage of \$774.23 in one trust account.

19 2. Violated Regulation 2831 by not maintaining a
20 control record for all receipts and disbursements.

21 The record maintained of all trust funds received not
22 placed in the trust account was inaccurate and incomplete. The
23 record was not in chronological sequence and the information
24 contained in the record was not in a columnar form. The record
25 was missing the amount of trust funds received and to whom funds
26 were forwarded.

27 ///

1 3. Violated Regulation 2831.1 in that the separate
2 records were inaccurate and incomplete. Wire out amounts of
3 broker's fees and commissions recorded on the separate records
4 were not the exact amounts reflected on the bank statements.
5 Respondent did not maintain a separate record for her escrow fees
6 and commissions. The records were missing the balance after
7 posting transaction.

8 4. Violated Regulation 2831.2 by not maintaining
9 monthly reconciliations of all separate records to the control
10 record.

11 5. Violated Regulation 2832 by failing to designate
12 the trust account as a trust account.

13 Earnest Money Deposits were held without written
14 authorization from the principals beyond three business days
15 following acceptance of the offer to purchase.

16 6. Violated Code Section 10176(e) by commingling
17 broker's funds with escrow trust funds.

18 7. Violated Code Section 2950(h) by failing to advise
19 all parties in writing of broker's ownership interest in the
20 escrow division.

21 8. Violated Regulation 2731 by using the unlicensed
22 fictitious business name American Escrow Alliance.

23 9. Violated Code Section 10240 by failing to provide
24 each borrower with the required Mortgage Loan Disclosure
25 Statement.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent ANA ISELA MONTELONGO under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 24 day of June, 2009.


ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: Ana Isela Montelongo
Audit Section
Robin L. Trujillo
Sacto
Phil Ihde