

FILED

FEB 18 2011

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-36614 LA
)	
H & M INVESTMENTS INC. doing)	
business as Casablanca Real Estate)	
Services, Casablanca Real Estate)	
Mortgage, and Casablanca Real Estate)	
Escrow; and HENRY ALLEN CASTRO,)	
individually and as designated)	
officer of H & M Investments)	
Inc.,)	
)	
Respondents,)	
)	
)	
)	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on January 27, 2011, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent H & M INVESTMENTS INC.'s and HENRY ALLEN CASTRO's express admissions; (2) affidavits; and (3) other evidence.

FACTUAL FINDINGS

1.

On April 27, 2010, Robin Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondents H & M INVESTMENTS INC. and HENRY ALLEN CASTRO. The Accusation, Statement to Respondent, and Notice of Defense were mailed by certified mail, to Respondents' last known mailing addresses on file with the Department on April 27, 2010 and on May 25, 2010.

2.

On January 27, 2011, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondents H & M INVESTMENTS INC. ("HMII") and HENRY ALLEN CASTRO'S ("CASTRO") default was entered herein.

3.

A. At all times mentioned, H & M INVESTMENTS INC. ("HMII") was licensed or had license rights issued by the Department of Real Estate ("Department") as a corporate real estate broker. On April 18, 2005, HMII was originally licensed.

B. At all times mentioned, HENRY ALLEN CASTRO ("CASTRO") was licensed or had license rights issued by the Department as a real estate broker. On April 24, 2003, CASTRO was originally licensed as a real estate broker.

C. At all times material herein, HMII was licensed by the Department as a corporate real estate broker by and through CASTRO, as the designated officer and broker responsible, pursuant to Code Sections 10159.2 and 10211 of the Business and Professions Code for supervising the activities requiring a real estate license conducted on behalf HMII of by HMII's officers, agents and employees, including CASTRO.

D. HMII is a California corporation owned by CASTRO, Melvin Castro and Amelia Huevo. CASTRO is the President, Melvin Castro, real estate salesperson and Secretary, and Amelia Huevo is the Treasurer of HMII.

4.

At all times mentioned, in City of Bell Gardens, County of Los Angeles, HMII and CASTRO acted as real estate brokers within the meaning of:

A. Code Section 10131(a). Respondents HMII and CASTRO operated a residential resale brokerage engaging in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others; and,

B. In addition, Respondents HMII and CASTRO conducted broker-controlled escrows through its escrow division, Casablanca Real Estate Escrow, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

Broker Escrow Audit

5.

On August 6, 2009, the Department completed an audit of the books and records of HMII pertaining to the broker-escrow activities described in Findings 4 that require a real estate license. The audit covered a period of time beginning on January 1, 2008 to May 31, 2009. The audit examination revealed violations of the Code and the Regulations as set forth in the following Findings and more fully discussed in Audit Report LA 080292 and the exhibits and work papers attached to said audit report.

6.

At all times mentioned, in connection with the activities described in Findings 4, above, HMII accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual

or prospective parties including borrowers and lenders, for sales and loan refinance transactions brokered and escrowed in-house by HMII and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by HMII in the banks listed below as follows:

"H & M Investments Inc. dba Casablanca Real Estate
Escrow - Escrow Division Trust Account
Account No. 13305838"
City National Bank
(T/A #1)

"H & M Investments Inc. dba Casablanca Real Estate
Escrow Trust Account
Account No. 83228775"
East West Bank
(T/A #2)

7.

In the course of activities described in Findings 4 and 6 above and during the examination period described in Findings 5, Respondents HMII and CASTRO acted in violation of the Code and the Regulations in which Respondents:

(a) (1) Permitted, allowed or caused the accumulation of unaccounted and unidentified funds in trust funds from T/A #1 where the accumulation of said funds reduced the total of aggregate funds as set forth below, to a combined accumulation which, on May 29, 2009, was \$9,704, in excess of the existing aggregate trust fund liability of HMII to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Sections 10145 and 10177(g) and Regulations 2950(d), 2950(g) and 2951.

(a) (2) Permitted, allowed or caused the disbursement of trust funds from T/A #2 where the disbursement of said funds reduced the total of

aggregate funds as set forth below, to a combined shortage which, on May 31, 2009, was \$15,483.04, less than the existing aggregate trust fund liability of HMII to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Sections 10145 and Regulations 2832.1, 2950(g) and 2951.

Lisa Cross Escrow

(b) On or about January 27, 2007, Arturo Lopez, an unlicensed person, opened an escrow with HMII's escrow division, Casablanca Real Estate Escrow (CREE) for the sale of Lisa Cross' real property located at 7800 Topanga Canyon Blvd., Apt. 303, Canoga Park, California. The CREE escrow was eventually cancelled by Lisa Cross. HMII also opened two other escrows for Arturo Lopez for two other sellers unrelated to the Lisa Cross escrow. HMII's conduct of opening an escrow with an unlicensed person constitutes negligence, in violation of Code Section 10177(g).

(c) Failed to maintain an accurate and complete control record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed by T/A #1 and T/A #2, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(d) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by T/A #1 and T/A #2, in violation of Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

(e) Permitted Kathy Reese, escrow officer, an unlicensed and unbonded person, to be an authorized signatory on the escrow trust accounts, T/A #1 and T/A #2, in violation of Code Section 10145 and Regulation 2834.

(f) Received undisclosed compensation by means of an earning credit agreement with East West Bank. The earnings credit was based on and calculated by trust fund activity in T/A #2 escrow trust account. Bank service charges were deducted from the earning credit accrued on the escrow trust account thus reducing HMII's cost of doing business. The earnings credit arrangement was not disclosed by HMII and CASTRO

to the beneficiaries of the escrow trust account, in violation of Code Sections 10176(a) and 10176(g).

(g) Failed to advise all parties to HMII's escrow operation "Casablanca Real Estate Escrow" of its ownership of and financial interest in said escrow division, in violation of Code Section 10145 and Regulation 2950(h).

(h) Failed to retain the salesperson license certificate for Jose Luis Alonzo-Garibay, in violation of Code Section 10160 and Regulation 2753.

(i) Failed to notify the Department of the termination of salespersons Julia A. Ochoa and Jose Luis Peraza, in violation of Code Section 10161.8 and Regulation 2752.

(j) Failed to maintain a signed broker salesperson agreement with seven of its twenty two salespersons, in violation of Regulation 2726.

(k) CASTRO had no system in place for regularly monitoring HMII's compliance with the Real Estate Law especially in regard to establishing, systems, policies and procedures to review trust fund handling, in violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

8.

The overall conduct of Respondents HMII and CASTRO constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

9.

The overall conduct of Respondent CASTRO constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of HMII as required by Code Section 10159.2 and Regulation 2725, and to keep HMII in compliance with the Real Estate Law, with specific regard to trust fund handling, advance fee handling with respect to conducting loan modification services for homeowners, and is cause

for the suspension or revocation of the real estate license and license rights of CASTRO pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

DETERMINATION OF ISSUES

1.

The conduct of Respondents H & M INVESTMENTS INC., and HENRY ALLEN CASTRO, as described in Finding 7, herein above, is in violation of Code Sections 10145, 10160, 10161.8, 10176(a) and 10176(g) and Regulations 2726, 2752, 2753, 2831, 2831.2, 2832.1, 2950(d), 2950(g) and 2950(h) and is cause for disciplinary action pursuant to Code Sections 10176(a) and 10176(g), 10177(d) and 10177(g).

2.

The conduct of Respondent and HENRY ALLEN CASTRO, as described in Findings 7(k), 8 and 9, herein above, constitutes negligence or incompetence, and lack of supervision and is cause for disciplinary action pursuant to Code Sections 10177(h), 10177(d) and 10177(g).

3.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The real estate broker license and license rights of Respondent H & M INVESTMENTS INC. and HENRY ALLEN CASTRO, under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on March 10, 2011

DATED: 2/16/11, 2011

JEFF DAVIS
Real Estate Commissioner

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

4 (213) 576-6982

FILED

JAN 27 2011

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

11 * * *

11	In the Matter of the Accusation of)	No. H-36614 LA
12)	
13	H & M INVESTMENTS INC. doing)	
14	business as Casablanca Real Estate)	
15	Services, Casablanca Real Estate)	
16	Mortgage, and Casablanca Real Estate)	
17	Escrow; and HENRY ALLEN CASTRO,)	
18	individually and as designated)	
19	officer of H & M Investments Inc.,)	
20)	
21	Respondents.)	
22)	
23)	

24 DEFAULT ORDER

25 Respondents H & M INVESTMENTS INC. and HENRY ALLEN
26 CASTRO, individually and as designated officer of H & M
27 Investments Inc., having failed to file a Notice of Defense
within the time required by Section 11506 of the Government Code,
are now in default. It is, therefore, ordered that a default be
entered on the record in this matter.

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IT IS SO ORDERED January 27, 2010
JEFF DAVI
Real Estate Commissioner

Dolores Weeks
By: DOLORES WEEKS
Regional Manager

FILED

APR 27 2010

DEPARTMENT OF REAL ESTATE
BY: [Signature]

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)

No. H- 36614 LA)

12 H & M INVESTMENTS INC. doing)
13 business as Casablanca Real Estate)
14 Services, Casablanca Real Estate)
15 Mortgage, and Casablanca Real Estate)
16 Escrow; and HENRY ALLEN CASTRO ,)
17 individually and as designated)
18 officer of H & M Investments Inc.,)

A C C U S A T I O N

19 Respondents.)

20 The Complainant, Robin Trujillo, a Deputy Real Estate
21 Commissioner of the State of California, for cause of Accusation
22 against H & M INVESTMENTS INC. dba Casablanca Real Estate First
23 Services, Casablanca Real Estate Mortgage, and Casablanca Real
24 Estate Escrow; and HENRY ALLEN CASTRO, individually and as
25 designated officer of H & M Investments Inc., alleges as follows:

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1 Castro, real estate salesperson and Secretary, and Amelia Huevo
2 is the Treasurer of HMII.

3 4.

4 At all times mentioned, in City of Bell Gardens, County
5 of Los Angeles, HMII and CASTRO acted as real estate brokers
6 within the meaning of:

7 A. Code Section 10131(a). Respondents HMII and CASTRO
8 operated a residential resale brokerage engaging in the business
9 of, acted in the capacity of, advertised or assumed to act as
10 real estate brokers, including the solicitation for listings of
11 and the negotiation of the sale of real property as the agent of
12 others; and,

13 B. In addition, Respondents HMII and CASTRO conducted
14 broker-controlled escrows through its escrow division, Casablanca
15 Real Estate Escrow, under the exemption set forth in California
16 Financial Code Section 17006(a)(4) for real estate brokers
17 performing escrows incidental to a real estate transaction where
18 the broker is a party and where the broker is performing acts for
19 which a real estate license is required.

20
21 Broker Escrow Audit

22 5.

23 On August 6, 2009, the Department completed an audit of
24 the books and records of HMII pertaining to the broker-escrow
25 activities described in Paragraph 4 that require a real estate
26 license. The audit covered a period of time beginning on
27

1 January 1, 2008 to May 31, 2009. The audit examination revealed
2 violations of the Code and the Regulations as set forth in the
3 following paragraphs and more fully discussed in Audit Report
4 LA 080292 and the exhibits and work papers attached to said audit
5 report.

6 .6.

7 At all times mentioned, in connection with the
8 activities described in Paragraph 4, above, HMII accepted or
9 received funds including funds in trust (hereinafter "trust
10 funds") from or on behalf of actual or prospective parties
11 including borrowers and lenders, for sales and loan refinance
12 transactions brokered and escrowed in-house by HMII and
13 thereafter made deposits and or disbursements of such funds.
14 From time to time herein mentioned during the audit period, said
15 trust funds were deposited and/or maintained by HMII in the banks
16 listed below as follows:
17

18
19 "H & M Investments Inc. dba Casablanca Real Estate Escrow -
20 Escrow Division Trust Account
Account No. 13305838" (T/A #1)
21 City National Bank

22
23 "H & M Investments Inc. dba Casablanca Real Estate Escrow Trust
24 Account
Account No. 83228775" (T/A #2)
25 East West Bank

1 7.

2 In the course of activities described in Paragraphs 4
3 and 6 above and during the examination period described in
4 Paragraph 5, Respondents HMII and CASTRO acted in violation of
5 the Code and the Regulations in which Respondents:

6 (a) (1) Permitted, allowed or caused the accumulation of
7 unaccounted and unidentified funds in trust funds from T/A #1
8 where the accumulation of said funds reduced the total of
9 aggregate funds as set forth below, to a combined accumulation
10 which, on May 29, 2009, was \$9,704, in excess of the existing
11 aggregate trust fund liability of HMII to every principal who was
12 an owner of said funds, without first obtaining the prior written
13 consent of the owners of said funds, in violation of Code
14 Sections 10145 and 10177(g) and Regulations 2950(d), 2950(g) and
15 2951.
16

17 (a) (2) Permitted, allowed or caused the disbursement of
18 trust funds from T/A #2 where the disbursement of said funds
19 reduced the total of aggregate funds as set forth below, to a
20 combined shortage which, on May 31, 2009, was \$15,483.04, less
21 than the existing aggregate trust fund liability of HMII to every
22 principal who was an owner of said funds, without first obtaining
23 the prior written consent of the owners of said funds, in
24 violation of Code Sections 10145 and Regulations 2832.1, 2950(g)
25 and 2951.
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Lisa Cross Escrow

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2 (b) On or about January 27, 2007, Arturo Lopez, an
3 unlicensed person, opened an escrow with HMII's escrow
4 division, Casablanca Real Estate Escrow (CREE) for the sale of
5 Lisa Cross' real property located at 7800 Topanga Canyon
6 Blvd., Apt. 303, Canoga Park, California. The CREE escrow was
7 eventually cancelled by Lisa Cross. HMII also opened two
8 other escrows for Arturo Lopez for two other sellers unrelated
9 to the Lisa Cross escrow. HMII's conduct of opening an escrow
10 with an unlicensed person constitutes negligence, in violation
11 of Code Section 10177(g).

12 (c) Failed to maintain an accurate and complete
13 control record for each beneficiary or transaction, thereby
14 failing to account for all trust funds received, deposited and
15 disbursed by T/A #1 and T/A #2, in violation of Code Section
16 10145 and Regulations 2831, 2950(d) and 2951.

17 (d) Failed to perform a monthly reconciliation of the
18 balance of all separate beneficiary or transaction records
19 maintained pursuant to Regulation 2831.1 with the record of all
20 trust funds received and disbursed by T/A #1 and T/A #2, in
21 violation of Code Section 10145 and Regulations 2831.2, 2950(d)
22 and 2951.

23 (e) Permitted Kathy Reese, escrow officer, an
24 unlicensed and unbonded person, to be an authorized signatory on
25 the escrow trust accounts, T/A #1 and T/A #2, in violation of
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Code Section 10145 and Regulation 2834.

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2 (f) Received undisclosed compensation by means of an
3 earning credit agreement with East West Bank. The earnings
4 credit was based on and calculated by trust fund activity in T/A
5 #2 escrow trust account. Bank service charges were deducted from
6 the earning credit accrued on the escrow trust account thus
7 reducing HMII's cost of doing business. The earnings credit
8 arrangement was not disclosed by HMII and CASTRO to the
9 beneficiaries of the escrow trust account, in violation of Code
10 Sections 10176(a) and 10176(g).

11 (g) Failed to advise all parties to HMII's escrow
12 operation "Casablanca Real Estate Escrow" of its ownership of and
13 financial interest in said escrow division, in violation of Code
14 Section 10145 and Regulation 2950(h).

15 (h) Failed to retain the salesperson license
16 certificate for Jose Luis Alonzo-Garibay, in violation of Code
17 Section 10160 and Regulation 2753.

18 (i) Failed to notify the Department of the termination
19 of salespersons Julia A. Ochoa and Jose Luis Peraza, in violation
20 of Code Section 10161.8 and Regulation 2752.

21 (j) Failed to maintain a signed broker salesperson
22 agreement with seven of its twenty two salespersons, in violation
23 of Regulation 2726.

24 (k) Had no system in place for regularly monitoring
25 HMII's compliance with the Real Estate Law especially in regard
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1 to establishing, systems, policies and procedures to review trust
2 fund handling, in violation of Code Sections 10159.2, 10177(h)
3 and Regulation 2725.

4 8.

5 The conduct of Respondents HMII and CASTRO, as
6 described in Paragraph 7, above, violated the Code and the
7 Regulations as set forth below:

8	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9	7(a)	Code Sections 10145 and 10177(g)
10		and Regulations 2832.1, 2950(g) and
11		2951
12		
13	7(b)	Code Section and 10177(g)
14		
15		
16	7(c)	Code Section 10145 and Regulations
17		2831, 2950(d) and 2951
18		
19	7(d)	Code Section 10145 and Regulations
20		2831.2, 2950(d) and 2951
21		
22		
23	7(e)	Code Section 10145 and Regulation
24		2834
25		
26	7(f)	Code Section 10176(a) and 10176(g)
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7(g)

Regulation 2950(h)

7(h)

Code Section 10160 and Regulation
2753

7(i)

Code Section 10161.8 and Regulation
2752

7(j)

Regulation 2726

7(k)

10159.2, 10177(h) and
Regulation 2725

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of HMII and CASTRO, under the provisions of Code Sections 10177(d) and/or 10177(g).

9.

The overall conduct of Respondents HMII and CASTRO constitutes negligence. This conduct and violation are cause for suspension or revocation of the real estate license and license rights of said Respondent pursuant to Code Section 10177(g).

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10.

1 The conduct, acts and omissions of Respondents HMII and
2 CASTRO constitute a breach of fiduciary duty with respect to the
3 Lisa Cross transaction with Casablanca Real Estate Escrow, HMII's
4 in-house broker-controlled escrow division. This conduct and
5 violation are cause for suspension or revocation of the real
6 estate license and license rights of said Respondent pursuant to
7 Code Section 10177(g).

11.

9 The overall conduct of Respondent CASTRO constitutes a
10 failure on Respondent's part, as officer designated by a
11 corporate broker licensee, to exercise the reasonable supervision
12 and control over the licensed activities including the Lisa Cross
13 escrow transaction, HMII's escrow division and trust fund
14 handling as required by Code Section 10159.2, and to keep HMII in
15 compliance with the Real Estate Law, and is cause for suspension
16 or revocation of the real estate license and license rights of
17 CASTRO pursuant to the provisions of Code Sections 10177(d),
18 10177(h) and/or 10177(g).

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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 the license and license rights of Respondents
5 H & M INVESTMENTS INC. and HENRY ALLEN CASTRO, under the Real
6 Estate Law (Part 1 of Division 4 of the Business and Professions
7 Code) and for such other and further relief as may be proper
8 under other applicable provisions of law including restitution
9 pursuant to Administrative Procedure Act, Government Code Section
10 11519.

11 Dated at Los Angeles, California

12 this 27 day of April 2010.

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14 Deputy Real Estate Commissioner

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23 cc: H & M Investments Inc.
24 c/o Henry Allen Castro D.O.
25 Robin Trujillo
26 Veronica Corpin
27 Sacto
Audits - Isabel Beltran