

FILED

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DEPARTMENT OF REAL ESTATE
BY: 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
ALTA VISTA INVESTMENTS INC., and) No. H-38473 LA
PAUL A. CUBILLOS, individually and as)
designated officer of Alta Vista Investments Inc.,) ACCUSATION
)
Respondents,)
)

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ALTA VISTA INVESTMENTS INC. (AVII) and PAUL A. CUBILLOS ("CUBILLOS"), individually and as designated officer of Alta Vista Investments Inc. (collectively "Respondents"), is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

From April 24, 2004, until its expiration on April 23, 2012, Respondent AVII has been licensed as a real estate corporation. At all times relevant herein, AVII was acting by and through Respondent CUBILLOS as its designated broker-officer pursuant to Business and

1 Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the
2 Real Estate Law.

3
4 3.

5 From March 15, 2005, through the present, Respondent CUBILLOS has been
6 licensed as a real estate broker.

7 4.

8 AVII is owned by CUBILLOS, a real estate broker and AVII's president.

9 5.

10 Whenever reference is made in an allegation in this Accusation to an act or
11 omission of "Respondents", such allegation shall be deemed to mean that the officers, directors,
12 employees, agents and real estate licensees employed by or associated with Respondents
13 committed such act or omission while engaged in the furtherance of the business or operations of
14 Respondents and while acting within the course and scope of their corporate authority and
15 employment.

16 FIRST CAUSE OF ACCUSATION
(Audit of Real Estate Sales)

17 6.

18 At all times mentioned, in the State of California, County of Orange, Respondents
19 AVII and CUBILLOS acted as real estate brokers and conducted licensed activities within the
20 meaning of:

21 A. Code Section 10131(a). Respondents engaged in the business of a residential
22 resale brokerage and acted in the capacity of, advertised or assumed to act as a real estate broker,
23 including the solicitation and negotiation of the sale of real property as the agent of others;

24 B. In addition, AVII conducted broker-controlled escrows through its escrow
25 division under the exemption set forth in California Financial Code Section 17006(a)(4) for real
26 estate brokers performing escrows incidental to a real estate transaction where the broker is a

1 party and where the broker is performing acts for which a real estate license is required.

2 Real Estate Sales Audit

3 7.

4 On May 23, 2011, the Department completed an audit examination of the books
5 and records of Respondent AVII pertaining to the real estate sales activities described in
6 Paragraph 6, which require a real estate license. The audit examination covered a period of time
7 beginning on October 1, 2008 to November 21, 2010. The audit examination revealed violations
8 of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") set forth
9 in the following paragraphs, and more fully set forth in Audit Report LA100188 and the exhibits
10 and work papers attached thereto.

11 Trust Account

12 8.

13 At all times mentioned, in connection with the activities described in Paragraph 6,
14 above, AVII did not maintain a trust account.

15 Violations of the Real Estate Law
16 (Real Estate Sales Audit)

17 9.

18 In the course of activities described in Paragraph 6 above, and during the
19 examination period, described in Paragraph 7, Respondents AVII and CUBILLOS, acted in
20 violation of the Code and the Regulations in that Respondents:

21 (a) Intentionally, substantially and negligently misrepresented to sellers that AVII
22 held earnest money deposits for the buyers Guzman, IMC Financial Group Inc., Miletich,
23 Ramirez, Tong, Camarena, and Mahboubian, in violation of Code Sections 10176(a) and
24 10177(g).

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26 ///

(b) Failed to disclose AVII's buyers agents real estate license identification numbers on purchase agreements for buyers Miletich, Ramirez, and Tong, at the time the sales contracts were drawn, in violation of Code Section 10140.6(b)(1).

(c) After notice and subpoena on January 4, 2011 and January 18, 2011, failed to provide proof of retention of all records of AVII's activity during the audit period requiring a real estate broker license for the real properties tabled below, in violation of Code Section 10148.

Table: Real Property Records Not Retained

98 Via Contento,	Rancho Santa Margarita
1406 Shawnee Avenue	Anaheim
740 W/ 8th Street	San Bernardino

10.

The conduct of Respondents AVII and CUBILLOS, described in Paragraph 9, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9(a)	Code Sections 10176(a) and 10177(g)
9(b)	Code Section 10140.6
9(c)	Code Section 10148

The foregoing violations constitute cause for discipline of the real estate licenses and license rights of Respondents AVII and CUBILLOS under the provisions of Code Sections 10176(a), 10177(d) and/or 10177(g).

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On June 30, 2011, the Department completed an audit examination of the books and records of Respondent AVII pertaining to the broker-controlled escrow activities described in Paragraph 6, which require a real estate license. The audit examination covered a period of time beginning on October 1, 2008 to December 31, 2010. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") set forth in the following paragraphs, and more fully set forth in Audit Report LA090281 and the exhibits and work papers attached thereto.

12.

At all times mentioned, in connection with the activities described in Paragraph 6, above, AVII accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to real estate transactions, including escrow services provided in-house by AVII's escrow division. Thereafter AVII made deposits and or disbursements of such trust funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by AVII in the trust account herein set forth.

Bank: Comerica Bank
3025 El Camino Real,
Tustin, CA 92782-4555

Account Name: Alta Vista Investments Inc
Escrow Trust Account

Account Number: XXXXX0641

Signatory: Paul Cubillos

Violations of the Real Estate Law
(Broker Controlled Audit)

13.

In the course of activities described in Paragraphs 6 and 12, above, and during the examination period, described in Paragraph 11, Respondents AVII and CUBILLOS, acted in violation of the Code and the Regulations in that Respondents:

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account, TA 1, where the disbursement of funds reduced the total of aggregate funds in AVII's escrow trust account, to an amount which, on December 31, 2010, was at a minimum \$210,593.28, less than the existing aggregate trust fund accountability of AVII 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 Section 10145(a) and Regulations 2832.1, 2950(g) and 2951. The shortage was caused by overdrawn escrow balances, unearned fees, and unauthorized disbursements.

(b) Failed to maintain a control record in the form of a columnar record in chronological order, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(c) Failed to maintain a separate record for each beneficiary or transaction for T/A 1, in violation of Code Section 10145 and Regulations 2831.1, 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 the escrow trust account, in violation of Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

1 (e) Converted \$142,788.68 in escrow trust funds from TA 1, by the
2 instrumentalities of teller withdrawals, electronic Web Funds Transfer, and by telephone
3 transfers without the written authorization form the parties paying the money into the escrow, in
4 violation of Code Sections 10145 and 10176(i) and Regulation 2950(g).

5
6 (f) Failed to place trust funds, including earnest money deposits for the real
7 property located at 2551 W. Crescent Avenue, Anaheim, California, accepted on behalf of
8 another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund
9 account in the name of the trustee at a bank or other financial institution not later than three
10 business days following receipt of the funds by the broker or by the broker's salesperson, in
11 violation of Code Section 10145 and Regulation 2832(d), 2950(d) and 2951

12
13 (g) Failed to disclose in writing to all parties to the escrow of AVII's financial
14 interest and ownership of AVII's escrow division, in violation of Code Section 10145 and
15 Regulation 2950(h).

16
17 (h) After notice and subpoena on January 4, 2011 and January 18, 2011, failed to
18 provide proof of retention of all records of AVII's activity during the audit period requiring a real
19 estate broker license for the real properties tabled below, in violation of Code Section 10148.

20 Table: Real Property Records Not Retained

21

22 736 E. Vernon	Los Angeles
23 2551 W. Crescent Avenue	Anaheim

24

25 (i) Respondent CUBILLOS failed to exercise reasonable control and supervision
26 over the activities conducted by AVII's employees and/or licensees as necessary to secure full

1 compliance with the Real Estate laws, as required under Code Section 10159.2 and Regulation
2 2725, in violation of Code Section 10177(h).

3 14.

4 The conduct of Respondents AVII and CUBILLOS, described in Paragraph 13,
5 above, violated the Code and the Regulations as set forth below:
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7 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
8 13(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
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10 13 (b)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
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12 13 (c)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
13	
14 13 (d)	Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
15	
16 13 (e)	Code Sections 10145 and 10176(i) and Regulation 2950(g)
17	
18 13 (f)	Code Section 10145 and Regulations 2832, 2950(d) and 2951
19	
20 13 (g)	Code Section 10145 and Regulation 2950(h)
21	
22 13 (h)	Code Section 10148 and Regulation 2950(e)
23	
24 13 (i)	Code Sections 10177(h) and 10159.2 and Regulation 2725 (CUBILLOS)

25 The foregoing violations constitute cause for discipline of the real estate licenses and license
26 rights of Respondents AVII and CUBILLOS under the provisions of Code Sections 10176(i),
10177(d) and/or 10177(g), and 10177(h) (CUBILLOS).

1 THIRD CAUSE OF ACCUSATION
2 (Negligence)

3 15.

4 The overall conduct of Respondents AVII and CUBILLOS constitutes negligence
5 and is cause for discipline of the real estate license and license rights of said Respondents
6 pursuant to the provisions of Code Section 10177(g).

7 FOURTH CAUSE OF ACCUSATION
8 (Fiduciary Duty)

9 16.

10 The conduct, acts and omissions of Respondents AVII and CUBILLOS constitute
11 a breach of fiduciary duty, owed to AVII's clients and trust fund beneficiaries of good faith, trust,
12 confidence and candor, within the scope of their contractual and escrow relationship, in violation
13 of Code Sections 10176(i) and 10177(g) and constitutes cause for discipline of the real estate
license and license rights of said Respondents pursuant to the provisions of said Code Sections.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and/or license rights of Respondents ALTA VISTA INVESTMENTS
4 INC. and PAUL A. CUBILLOS, individually and as designated officer of Alta Vista Investments
5 Inc. under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions
6 Code) and for such other and further relief as may be proper under other applicable provisions of
7 law, including, but not limited to; (1) restorral of the trust fund shortage of 210,593.28, (2)
8 restitution, (3) costs of audit pursuant to Code Section 10148; and (4) costs of investigation and
9 enforcement pursuant to Code Section 10106.
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13 Dated at Los Angeles, California.

14 this 24th day of September, 2012.
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18 MARIA SUAREZ
Deputy Real Estate Commissioner
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23 cc: Alta Vista Investments Inc.
24 Paul A. Cubillos
25 Maria Suarez
26 Audits - Chona Soriano
Sacto