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**FILED**

FEB 18 2020

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:

TONY ROMAN HERNANDEZ,  
ROBERT ELDON HOLT, and  
MICHAEL ANGELO BARRAGAN,  
individually and as designated officer of  
Ameripride Properties, Inc.

Respondents

) DRE No. H-41347 LA

) OAH No. 2019060473

DECISION

The Proposed Decision dated January 10, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c) (2) (C) of the Government Code, the following corrections are made to the Proposed Decision.

Factual Findings, Page 5, Paragraph D ii, Line 2, "Villamar" shall read "Villmar".

The Decision suspends, restricts, or revokes one or more real estate licenses.

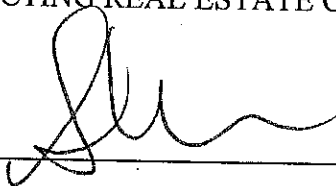
Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on March 9, 2020.

IT IS SO ORDERED

2/5/20  
SANDRA KNAU  
ACTING REAL ESTATE COMMISSIONER



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**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**TONY ROMAN HERNANDEZ, ROBERT HOLT, and MICHAEL  
ANGELO BARRAGAN, individually and as Designated Officer  
of Ameripride Properties, Inc.,**

**Respondents.**

**Agency Case No. H-41347 LA**

**OAH No. 2019060473**

**PROPOSED DECISION**

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 11, 2019, in Los Angeles, California.

Lisette Garcia, Staff Counsel, represented Veronica Kilpatrick, complainant, regarding whom the ALJ took official notice that in bringing the accusation she acted in her official capacity as a Supervising Special Investigator in the Department of Real Estate (Department or DRE). Jeff Kravitz, Attorney at Law, represented Michael Angelo Barragan, respondent. There was no appearance by or on behalf of either of the other two respondents, Tony Roman Hernandez or Robert Eldon Holt. The matter proceeded against them by default, under Government Code section 11520.

Under Government Code sections 7470 through 7476, 11425.20, and 11450.30, and California Code of Regulations, title 1, section 1030, subdivision (a), and without objection, DRE's motion to seal Exhibits 30, 31, and 32 was granted. The exhibits include copies of excerpts from audit working papers for Audit Numbers SD170051 (Ex. 30), SD170055 (Ex. 31), and SD17005 (Ex. 32). The protective order sealing the exhibits was issued because: (i) the exhibits contain financial information personal to respondents; and (ii) redaction of portions of the documents is not practicable and will not adequately protect privacy interests.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 10, 2019.

## **SUMMARY**

Respondent Hernandez conducted real estate business for which he was required to have, but lacked, a broker's license. Respondent Holt should have supervised respondent Hernandez, but did not. Their licenses are revoked. Respondent Barragan failed to supervise respondent Hernandez for years, allowing him and his father, Tony Moreno Hernández, after his father had surrendered his license, to manage properties unsupervised and to the detriment of clients.

## **FACTUAL FINDINGS**

1. Jurisdictional requirements were satisfied. In response to the April 11, 2019 accusation, each respondent submitted a Notice of Defense: (i) respondent Barragan on April 30, 2019; (ii) respondent Holt on May 10, 2019; and (iii) respondent Hernandez on May 12, 2019.

## Licensure

2. As set out in Exhibit 2, on March 14, 2001, DRE issued respondent Hernandez a salesperson license, number S/01302744, which is set to expire on March 13, 2021.

A. Respondent Hernandez was first employed by broker Amado Hernandez, 12220 Pigeon Pass Road (Pigeon Pass address), Suite O, Moreno Valley, California.

B. On December 18, 2012, respondent Hernandez changed his employing broker to respondent Barragan, whose address at the time was in Upland, California.

C. Twice respondent Hernandez renewed his license in the employment of respondent Barragan: (i) on March 3, 2013, at an address in Upland, and (ii) on March 8, 2017, at an address in Rancho Cucamonga, California.

D. Respondent Hernandez advised DRE his employment with respondent Barragan was discontinued as of May 31, 2017.

E. On May 31, 2017, respondent Hernandez advised DRE that his employing broker was respondent Holt, at the Pigeon Pass address, specifically 12220 Pigeon Pass Road, Suite T (not Suite O), Moreno Valley.

3. As set out in Exhibit 3, on April 15, 1976, DRE issued respondent Holt a salesperson license. On November 26, 1976, DRE issued respondent Holt a broker license, number B/00554017, which is set to expire on November 26, 2020.

A. On February 9, 2018, respondent Holt was affiliated as a broker associate with responsible broker Amado Hernandez at the Pigeon Pass address, Suite O.

B. On April 6, 2018, respondent Holt's affiliation with broker Amado Hernandez was discontinued.

C. On May 31, 2018, respondent Holt changed his main office address to Suite T (rather than O) at the Pigeon Pass address.

4. As set out in Exhibit 4, on May 5, 1994, DRE issued respondent Barragan a salesperson license. On March 10, 2009, DRE issued respondent broker license number B/01179436, which is set to expire on March 9, 2021.

A. Respondent Barragan holds, as Officer of The Mortgage Founders, Inc., license number C/01994843, valid from January 8, 2016 to January 7, 2020.

B. Respondent Barragan holds, as Officer of Ameripride Properties Inc., license number C/02066428, valid from August 7, 2018 to August 6, 2022.

C. Respondent Barragan's broker license includes an Individual Mortgage Loan Originator (MLO) License Endorsement, inactive as of November 1, 2015, approved as of February 16, 2016, terminated January 1, 2019, for failure to renew, and approved as of January 6, 2019.

D. DRE has authorized respondent Barragan to use two fictitious business names:

i. On December 9, 2009, DRE authorized respondent's doing business as (DBA) Ameripride Properties;

ii. On August 28, 2012, DRE authorized respondent's DBA Villamar Properties. This DBA was canceled on June 1, 2018. There is no evidence that the DBA was ever filed with any government authority. In contrast, Villamar Property Management was the subject of a Fictitious Business Name Statement, Exhibit 11, that TMH filed in the Orange County Clerk's Office on May 2, 2013. As indicated below, such as in the testimony and exhibits authenticated by property owner and Villamar Property Management client Alan Wong, TMH used the DBA's interchangeably.

E. Respondent Barragan's main office address has been at various times in Ontario, Chino Hills, Upland, and Rancho Cucamonga, California.

F. On March 7, 2013, DRE licensed respondent's branch office at 12220 Pigeon Pass Road, Suite T, Moreno Valley.

G. On June 1, 2018, the branch office license for 12220 Pigeon Pass Road, Suite T, Moreno Valley, was canceled.

H. On July 24, 2018, DRE licensed respondent's branch office at 8311 Haven Avenue, Suite 180 B, Rancho Cucamonga, California.

I. On December 11, 2018, the branch office license for 8311 Haven Avenue, Suite 180 B, Rancho Cucamonga, was canceled.

5. As set out in Exhibit 5, on June 7, 1990, DRE issued a salesperson license, number S/01078411, to the father of respondent Hernandez, Tony Moreno Hernandez (TMH).

A. TMH was first employed by broker Amado Hernandez at Suite O of the Pigeon Pass address.

B. On May 25, 2011, the employment of TMH by Amado Hernandez was discontinued.

C. TMH was employed by The Beeson Group for one month, August 26 to September 27, 2011.

D. On November 15, 2012, TMH's license was activated in the employment of respondent Barragan in Upland, California.

E. On August 28, 2013, DRE filed a Desist and Refrain Order against TMH in case number H-39017 LA.

F. On February 7, 2014, TMH surrendered his salesperson license in connection with a disciplinary action, case number H-38886 LA.

G. Also on February 7, 2014, the employment of TMH by respondent Barragan was discontinued.

H. Upon notice of intention, on April 23, 2019, DRE issued against TMH a preliminary bar order in case number H-41352 LA, under which TMH was prohibited from engaging in those real estate activities set forth in sections 1008, subdivision (c) and (d) of Business and Professions Code.

6. DRE has no record from January 1, 1975, to the present, of any license issued to "Villamar Properties Management" or "Villamar Properties." (Ex. 7.)

7. As set out in Exhibit 8, Amerpride Properties Inc. (API) holds a DRE license.

A. The Secretary of State authorized API as a domestic corporation, formed on January 4, 2016. (Ex. 8, p. 9.)



B. On March 20, 2018, respondent Barragan submitted API's Corporation License Application. (Ex. 8, p. 3.) The application was missing information and the application fee had not been submitted, as DRE advised respondent Barragan by letter dated May 31, 2018. (Ex. 8, p. 12.)

C. On August 7, 2018, DRE issued API a corporation license, number C/02066428, set to expire on August 6, 2022 (Ex. 8, p. 1.)

D. DRE lists API's designated officer as respondent Barragan. (Ex. 8, p. 1.)

E. API's main office is 9377 Haven Avenue, Rancho Cucamonga. (Ex. 8, p. 1.)

F. On December 11, 2018, DRE issued API's branch license for 8311 Haven Avenue, Rancho Cucamonga. (Ex. 8, p. 1.)

### **Client Complaints**

8. On January 11, 2018, Alan Wong submitted a complaint to DRE.

A. Mr. Wong complained that in 2012, he hired "Tony Hernandez" (it was at first unclear whether Mr. Wong meant TMH or Respondent Hernandez) and "Villamar Properties," also called "Villamar Property Management" (collectively Villamar) located at the Pigeon Pass address, Suite U, to manage three properties. He hired a new property management company on December 7, 2017 and terminated TMH and Villamar. TMH and Villamar collected security deposits which they failed to surrender to Mr. Wong despite demand. TMH and Villamar also held and would not provide Mr. Wong copies of the leases for his three properties. (Ex. 9, pp. 1 & 2.)

B. On May 9, 2018, Jason Parson, DRE Supervising Special Investigator I, emailed Mr. Wong. He wrote that DRE hoped to discover whether Mr. Wong had dealt with TMH or respondent Hernandez and in what ways for each. (Ex. 9, p. 7.)

C. DRE Special Investigator Patricia Davies, who testified at the hearing, obtained Mr. Wong's June 21, 2018 declaration, Exhibit 9, page 3. In his declaration and his consistent testimony at the hearing, Mr. Wong explained mismanagement by TMH and Villamar further.

i. TMH managed two leased single family residences with few problems until 2015. That year, Mr. Wong bought a third property that TMH was to manage. TMH initially collected \$1,600 for a month's rent, whereas he should have collected \$1,650. The mistake was corrected when, six months later, TMH raised the rent, but then he began continually to miss making deposits of rent into Mr. Wong's account.

ii. Mr. Wong was forced to call TMH nearly every month. The late rental deposits became an acute problem for Mr. Wong in December 2017. He needed the rent money to pay property taxes. Mr. Wong decided then to terminate TMH and Villamar.

iii. Following termination, Mr. Wong asked for the security deposits that TMH and Villamar were holding. Mr. Wong had described the failure to surrender the deposits in his original complaint to DRE.

iv. TMH and Villamar also failed to turn over leases. TMH did not surrender the security deposits or the leases until some weeks after Mr. Wong

engaged a lawyer. The lawyer demanded the deposits in a February 2, 2018 letter to the attention of "Tony Hernandez" at Villamar. (Ex. 9, p. 37.)

v. Villamar later provided Mr. Wong statements, copies of which Mr. Wong provided DRE on its request. Statements dated February 7, 2018 and March 30, 2018, entitled "Itemized for Security Deposit," list amounts "to be released." (Ex. 9, pp.11 & 13.) The statements indicate that Villamar paid Mr. Wong a portion of the tenant's security deposits after, for each of the two properties, subtracting and paying itself \$450 as a "cancellation contract fee." A February 3, 2018 statement for the other property Villamar managed indicates it paid Mr. Wong the total security deposit, \$1,500, without subtracting a fee. (Ex. 9, p. 14.)

vi. The fee is described in a one-page Management & Rental Contract with Villamar Property Management which Mr. Wong signed for each of his three properties. It stated that Villamar "will be responsible for qualifying, and screening prospective tenants, and making a fair decision on the rental of the property. Management will also do all necessary advertising, and promotion to rent the property. . . . ¶ All parties will follow . . . state housing laws." (Ex. 9, pp. 17, 24, & 30.)

vii. Leases in evidence for two of the properties show Villamar Property Management as the landlord.

viii. While the leases show Villamar's address as Suite U at the Pigeon Pass address, Villamar provided advertising flyers to Mr. Wong showing that Villamar's address was Suite D at the Pigeon Pass address. (Ex. 9, pp. 28-30.)

ix. Mr. Wong had no direct dealings with TMH's son, respondent Hernandez, except that he saw him at Villamar's premises on occasion and

in one instance in 2013, respondent Hernandez took photographs of property that Mr. Wong bought in 2013. TMH later provided property management services for that property.

9. As set out in Exhibit 10 and in her testimony at the hearing, on April 5, 2018, Heidy Ling submitted a complaint to DRE regarding Villamar's management of two rental properties she owned.

A. Ms. Ling's communications were with TMH and Villamar. She did not communicate directly with respondent Hernandez, only doing so to the extent that respondent Hernandez was operating Villamar.

B. In summer 2017, Ms. Ling telephoned Villamar several times about missing rent payments. She terminated the management agreement on January 11, 2018, demanding approximately \$6,000 in missing rental payments and security deposits. She also sought the leases and keys to the properties.

C. Special Investigator Ms. Davies obtained documentation and information from Ms. Ling.

D. Ms. Ling filed suit against Villamar in small claims court. A Small Claims Settlement Agreement was filed on May 31, 2018. (Ex. 10, p. 33.) Villamar agreed to three payments of \$2,000 each plus reimbursement of Ms. Ling's court fees, \$115.

E. As Ms. Ling testified, Villamar paid the agreed amounts except for the \$115 in court fees, which remains unpaid.

10. Special Investigators Ms. Davies and her supervisor, Mr. Parson, attempted to subpoena records from respondents Hernandez and Holt, as well as from Villamar.

A. The investigators prepared subpoenas addressed to respondent Hernandez and his father, TMH, and to both DBA's, Villamar Property Management, Villamar Properties.

B. A subpoena for bank records was frustrated by a May 17, 2018 objection and motion to quash. Counsel for Villamar Property Management and "Tony Hernandez" served the objection and motion on the subpoenaed party, JPMorgan Chase Bank, N.A. (Chase Bank). The subpoena sought records relating to a particular Chase Bank account of Villamar Property Management and "Tony Hernandez" from January 1, 2017 to the date of the subpoena in 2018: (i) bank signature cards; (ii) account statements; (iii) deposit slips and similar records of deposits; (iv) disbursements, transfers, and withdrawals from the account; (v) credit memoranda; (vi) debit memoranda; (vii) transfer authorizations; and (viii) application for the account and related agreements. Chase Bank refused to release records until the objection should be resolved. (Ex. 13, pp. 1-6, 17-26.)

C. DRE sought yet more types of records from respondent Holt, but was unable to serve him with the subpoena. (Ex. 13, pp. 31-41.)

D. Other substantial efforts by DRE to obtain by subpoena records from and relating to respondents Hernandez and Holt, including records from BBVA Compass Bank (Ex. 13, pp. 27-30, 43-46), were unsuccessful.

11. Memoranda of Interview, one prepared by Special Investigator Davies, Exhibit 15, and one prepared by Special Investigator Parson, Exhibit 16, recount

discussions on June 6, 2018, at Villamar's office in Suite U at the Pigeon Pass address. The discussion concerned both respondents Hernandez and Holt and closed soon after the investigators served TMH with a subpoena for records.

A. The Special Investigators sought to interview respondent Hernandez. At first they were effectively undercover, asking the receptionist whether they could speak about Villamar's property management services.

B. The receptionist told the Special Investigators they had just missed respondent Hernandez, but introduced them to Heidi Zelada, TMH's unlicensed assistant. She soon yielded to TMH.

C. TMH introduced himself as the office manager, "Tony Moreno." He sat down with the Special Investigators and asked about their properties. He said he had 15 years of property management experience, was not licensed (the Special Investigators were aware he had surrendered his license), but was trying to become licensed.

D. TMH provided business cards, Exhibit 15, pages 2 and 3. One business card depicted TMH as "Tony Hernandez," with the title, "General Manager," for Villamar Properties at both Suites T and U at the Pigeon Pass address. The other business card gives the name "Tony Hernandez" at Villamar Property Management at both Suites T and U at the Pigeon Pass address.

E. TMH said he and his female assistants were the only ones in the office who worked on property management with respect to approximately 15 to 20 properties, six of which were residential, the others commercial. Ms. Zelada worked on tenant issues.

F. TMH said he had just signed with a new broker, but could not remember his name. He stepped away briefly and returned to say his new broker was respondent Holt. He said respondent Holt visited Villamar once a day, but pressed for specifics on what respondent Holt did at the office, TMH could provide none.

G. At about this point the special investigators advised TMH they were there in their official capacity on behalf of DRE seeking information on TMH's operation, respondent Hernandez's activities, and the handling of trust funds.

H. According to TMH's responses to the special investigators' inquiries, respondent Hernandez: (i) was aware TMH was managing properties; (ii) did not work in property management; (iii) worked on sales transactions; (iv) came into the office when working on a sales transaction; (v) did not receive commission from TMH; rather (vi) was paid only through escrows; and (vii) did not have access to Villamar's bank account, which was not a trust account; TMH being the only signatory.

I. The Special Investigators served TMH with subpoenas for records relating to BBVA Compass Bank and Villamar's property management, TMH said he could not be subpoenaed because he was unlicensed. He said he would provide the subpoenas to his lawyer. TMH also changed his previous comments to say respondent Holt had not yet become his employing broker.

J. Ms. Davies's testimony at the hearing was consistent with the Memoranda of Interview.

12. On June 19, 2018, Special Investigator Davies printed screenshots, Exhibit 17, from a website, [tonysellshome.com](http://tonysellshome.com). Under a banner stating "Welcome, Bienvenidos!", there is a photograph depicting respondent Hernandez, directly below which is the description "Realtor, Property Manager."

13. In response to inquiries, respondent Holt wrote Special Investigator Davies a July 25, 2018 letter stating that he: (i) never employed TMH; had only one employee, respondent Hernandez; and (iii) met respondent Hernandez daily to supervise his activities. (Ex. 18.)

14. On October 10, 2018, Special Investigator Davies printed pages, Exhibit 19, from [tonysellshomes.com/aboutus/default.aspx](http://tonysellshomes.com/aboutus/default.aspx). Under the logo, "Casa Roman Real Estate & Investments," it states that "Tony Hernandez is licensed in the state of California," next to which appears respondent Hernandez's license number. This "about us" page goes on to state that TMH is part of "The Tony Hernandez Team/Villamar Properties" and the property management division. Another page of the website reiterates that respondent Hernandez is a "Realtor/Property Manager" and provides his license number.

15. Exhibit 21 includes May 8, 2018 statements by respondents Hernandez and Barragan which they emailed to DRE. They claimed that neither had worked in property management for Mr. Wong. They likewise claimed that neither had collected funds in trust in the past three years. Respondent Hernandez signed his statement as "Realtor/Villamar Properties," respondent Barragan his as "Broker/Villamar Properties." They sent the statements to the attention of Zaky Wanis, who conducted a forensic audit of respondents' activities regarding Mr. Wong's three properties and other property management activities.

16. Exhibit 22 includes the lease of 12220 Pigeon Pass Road, Suite U, Moreno Valley for the five-year term, January 1, 2019 through December 31, 2023. The lessee is Villamar Properties. Respondent Hernandez signed the lease on Villamar's behalf.



17. Exhibit 23 describes Special Investigator Davies's April 17, 2019 interview of Alejandra Anaya, an agent of the landlord that owns the property on Pigeon Pass Road where both respondent Hernandez and TMH are tenants. Ms. Anaya informed Special Investigator Davies that respondent Hernandez, doing business as Casa Roman, leased suite T, while TMH leased suite U, and the leases were amended accordingly. Exhibit 24 is Special Investigator Davies's March 13, 2019 photograph showing that respondent Hernandez's suite T had a large sign above its entrance to show that the business was named Casa Roman, while suite U's sign above the entrance announced that the business inside was Dell Mar Properties.

18. Based on the investigation into activities of respondents and TMH, Special Investigator Davies concluded that conduct by respondent Hernandez and TMH was fraud. Respondent Hernandez and TMH took advantage of their being able to use the same name, "Tony Hernandez," to mislead others. They hid from DRE and clients of Villamar that TMH did substantial property management. They hid that TMH's activity was without supervision by any broker. They made it appear that respondent Hernandez was in charge of much of TMH's property management business. In fact, respondent Hernandez attended to his own business in sales, and mostly ignored property management.

### **Audit of Respondent Barragan's Activities**

19. DRE employs Zaky Wanis as a General Auditor III. He holds a Bachelor of Commerce in Accounting. He has worked for DRE for approximately 15 years. Before that he worked for approximately three years for the Superior Court of California for the County of Orange. General Auditor Wanis conducts one to three investigative audits per month, depending on the complexity of the investigation, to determine whether licensees are in compliance with the Real Estate Law, Business and Professions

Code sections 10000 through 10580, and pertinent regulations. He has testified in over 20 cases.

20. General Auditor Wanis conducted an audit of respondent Barragan's real estate activities.

A. The purpose of the audit was to determine whether respondent Barragan handled trust funds and conducted his real estate activities as required by the Real Estate Law and pertinent regulations.

B. General Auditor Wanis interviewed respondent Barragan on May 8 and 15, 2018. He also reviewed books and records relating to respondent Barragan's real estate activities. In addition to documents supplied by respondent Barragan, there were records supplied by respondent Barragan's accountant, Alex Piaz, by respondent Barragan's office manager, and by respondent Hernandez. Following the interviews and review of records, General Auditor Wanis prepared a July 13, 2018 Audit Report Transmittal, Exhibit 28, and an Audit Report, Exhibit 29, and of the same date. With their signatures, Dorcas Cheng, a DRE Supervising Auditor I, signified she reviewed the Audit Report, and Jennifer Lin, a DRE Supervising Auditor II, signified she approved it. (Ex. 29, p, 22.)

C. As set out in the Audit Report and explained in the testimony of General Auditor Wanis, the audit, conducted on various dates from May 7, 2018 to July 13, 2018, examined respondent Barragan's activities during the audit period, from January 1, 2017 to April 30, 2018. (Ex. 29, p. 1.) The audit used the sampling method, taking samples of transactions at random from respondent Barragan's records and files, rather than examining all matters and papers that occurred during the audit period. The sampling method is an accepted practice of the audit profession.

D. The audit was in three parts:

- i. Audit number SD170053 examined respondent Barragan's escrow activities;
- ii. Audit number SD170055 examined respondent Barragan's real estate sales activities; and
- iii. Audit number SD170051 examined property management, including the property management activities of Villamar.

E. The Audit Report and Audit Report Transmittal are organized so as to discuss 16 issues, as noted below. The discussion is supported in detail by and makes extensive reference to the working papers of General Auditor Wanis. The following exhibits contain pertinent excerpts from the working papers for the following parts of the audit: Exhibit 31, Audit number SD170051; Exhibit 32, Audit number SD170055; Exhibit 33, Audit number SD170053.

### **Issue 1: Improprieties in Handling Trust Funds**

21. Audit number SD170053 found several types of irregularities in respondent Barragan's handling of trust funds in a Chase Bank account, account number ending in 5314, which the audit designates B/A 1. (Ex. 27, p. 4.) Respondent Barragan's conduct violated Business and Professions Code section 10145 and sections 2832.1, 2950, subdivision (g), and 2951 of title 10 of the California Code of Regulations (Regulations). As set out in Exhibit 28, page 1, under "Issue 1," there was a trust fund shortage from various causes, including:

A. Commingling: B/A 1 was short \$13,984 as of April 30, 2018. Among other problems, respondent Barragan comingled \$1,000 of B/A 1's trust funds

with a general account, account number ending in 7956, which the audit designated B/A 3.

B. Conversion or unauthorized disbursements: monies totaling \$10,700.35 were missing from B/A 1.

C. Inadequate record keeping: respondent Barragan had \$3,135.30 in B/A 1 which were not identified or accounted for.

D. No consent from owners: the audit found no evidence that the owners of funds respondent Barragan held in trust had consented in writing to his reducing the balance of trust funds in B/A 1 to less than the aggregate trust fund liabilities to all such owners.

22. Promptly after the audit, respondent Barragan cured the trust fund shortage by deposits from B/A 3 into B/A 1 on three dates in May and early June 2018. (Exs. 28, p. 2, 29, p. 6.)

23. Respondent Barragan held funds in trust in a separate account, account number ending in 8401, which audit number SD170053 designated B/A 2. As of April 30, 2018, B/A 2 was in balance. (Exs. 28, p. 2 & 29, p. 6.)

## **Issue 2: Improper Property Management Activities**

24. The audit noted respondent Barragan's improper activity in the management of Mr. Wong's three properties, as set out above. The audit also noted a lack of information resulting from obstacles placed by respondents Barragan and Hernandez and by TMH to DRE subpoenas.

### **Issue 3: Incomplete and Inaccurate Control Record re Escrows**

25. Respondent Barragan reported that for each of several transactions he handled the escrow. He used B/A 1 to handle monies related to the escrow activities. B/A 1 should have included a separate record for each beneficiary or transaction. The control record for B/A 1, including receipts and disbursement reports, was inaccurate and incomplete for several reasons, however. Some receipts were deposited into B/A 1 but not recorded in the receipts report of the control record. Some monies were recorded on the receipts report but not deposited into B/A 1. Some check records were recorded incorrectly in the disbursements report of the control record. The misconduct violated Business and Professions Code section 10145 and Regulations 2831, 2950, subdivision (d), and 2951. For example, as set out in Exhibits 28, page 4, and 29, pages 8 to 9:

A. On January 13, 2017, \$1,000 relating to Escrow AP-2058 was deposited into B/A 1 but not recorded.

B. On June 1, 2017, the control record shows a deposit of \$1,000 relating to Escrow AP-2071, but the funds were not deposited.

C. A check for \$6,480.46 dated January 9, 2017 relating to Escrow AP-2052 was recorded incorrectly as check number 16025, whereas the correct check number was 6017.

### **Issue 4: Inaccurate Separate Record for Each of Several Escrows**

26. Some receipts that respondent Barragan deposited into B/A 1 did not appear on a separate record, as required for each escrow he handled. Some monies were recorded in the separate record for several escrows but not deposited into B/A 1.

These inaccurate records also recorded some check numbers incorrectly. Respondent Barragan failed to maintain a separate record for the unidentified or unaccounted for funds in the sum of \$3,135.30 in B/A 1 noted above under Issue 1, Finding 21.C, (Exs. 28, 4 & 29, p. 9.) Like the misconduct in Issue 3 above, respondent's misconduct under this issue 4 violated Business and Professions Code section 10145 and Regulations 2831, 2950, subdivision (d), and 2951.

### **Issue 5: Failure to Maintain Monthly Reconciliations**

27. As a broker involved in escrows, respondent Barragan was required to maintain the monthly reconciliation of all separate records to the control record of all trust funds received and disbursed. He failed to maintain such a monthly reconciliation. This failure includes respondent Barragan's failure to maintain a separate record for the unidentified or unaccounted for funds in the sum of \$3,135.30 in B/A 1, as noted above under Issue 1, Finding 21.C, and in the immediately preceding paragraph under Issue 4, Respondent's misconduct violated Business and Professions Code section 10145 and Regulations 2831.2, 2950, subdivision (d), and 2951.

### **Issue 6: Trust Funds Inadequately Protected**

28. Respondent Barragan held trust funds in accounts not designated as trust accounts, such as B/A 1. Respondent Barragan used B/A 2 for his broker escrow activity. As a result, he handled trust funds using B/A 2, but this account was not set up in his name or a DBA authorized by DRE. Instead, B/A 2 was set up in the name of API. In addition, to protect trust funds, respondent Barragan was required to deposit them by the next business day following receipt. Instead, there were significant delays. Respondent's misconduct violated Business and Professions Code section 10145,

subdivision (a), and Regulations 2832, 2950, subdivision (f), and 2951. For example, as set out in Exhibit 29, page 10:

A. Respondent Barragan received \$3,000 in trust funds relating to Escrow number 2063 on March 31, 2017, but did not deposit the funds until April 10, 2017.

B. Respondent Barragan received \$2,500 in trust funds relating to Escrow number 2065 on April 3, 2017, but did not deposit the funds until April 10, 2017.

C. Respondent Barragan received \$1,000 in trust funds relating to Escrow number 2067 on May 2, 2017, but did not deposit the funds until June 6, 2017.

### **Issue 7: Commingling Trust Funds**

29. As noted in Finding 21.A, respondent Barragan comingled trust funds with funds not held in trust. Respondent Barragan transferred or deposited trust funds without authorization from B/A 1, including \$10,700.35 on June 22, 2017, to B/A 3. Respondent Barragan used these and other funds in B/A 3 for his personal and general business activities. (Exs. 28, p. 5 & 29, p. 10.) This misconduct violated violated Business and Professions Code sections 10145 and 10176, subdivision (e), and Regulation 2950, subdivision (g).

### **Issue 8: Trust Funds Conversion**

30. The June 22, 2017 transfer or deposit of \$10,700.35 in trust funds without authorization from B/A 1 to B/A 3 noted in the immediately preceding paragraph, resulted in the funds' conversion when B/A 3's balance was less than the trust funds deposited, as low as \$2,111.02 on August 8, 2017 and \$2,792.97 on April 30, 2018, the

end of the audit period. Respondent Barragan explained that the transfer or deposit of the funds and spending from B/A 3 were the result of fraudulent activity. On June 28, 2017, Chase Bank reimbursed the funds, \$10,700.35, to B/A 3, but respondent Barragan stated he forgot to transfer the funds back to B/A 1. The misconduct violated Business and Professions Code section 10145, and constituted dishonest dealing under Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j). (Exs. 28, p. 6 & 29, pp. 10-11.)

### **Issue 9: Failure to Notify DRE of Escrow Activities**

31. Respondent Barragan's escrow activities in 2017 exceeded number (five or more) and dollar (\$1 million) thresholds, so that he was required within 60 days after December 31, 2017 to fill out and submit an Escrow Activity Report, form number RE 890, to DRE. The audit found no timely Escrow Activity Report. Respondent Barragan claimed he submitted the report to DRE on May 23, 2018. The misconduct violated Business and Professions Code section 10146.1. (Exs. 28, p. 6 & 29, p. 11.)

### **Issue 10: Failure to Notify DRE re Employment of Broker-Associates**

32. As of January 1, 2018, respondent Barragan became obligated to notify DRE of broker-associates he employed. As set out in Exhibits 28, page 7, and 29, pages 11 and 12, respondent Barragan, in violation of Business and Professions Code section 10161.8, failed to report these five associations during the audit period:

A. Dieter Dammeier, B/01968727, whom respondent Barragan employed on January 6, 2018.

B. Kenneth R. Pollich, B/01886173, whom respondent Barragan employed on January 12, 2018. DRE records show that Mr. Pollich was licensed as a



broker on April 5, 2018, and has never been registered or licensed to respondent Barragan, but rather to Lawyer Realty Brokerage, broker license number B/01978321 from July 26, 2015 to April 4, 2018.

C. Robert L. Adams, Jr., B/00999019, whom respondent Barragan employed on January 12, 2018.

D. Orlando D. Montero, B/01273733, whom respondent Barragan employed on March 23, 2018.

E. Javier E. Suarez, B/01452518, whom respondent Barragan employed on July 1, 2011.

### **Issue 11: Failure to Notify DRE of Appointment of Manager**

33. Respondent Barragan was required to fill in and submit to DRE a Branch or Division Manager Appointment form, RE 242, regarding respondent Hernandez. As described above, respondent Hernandez was in charge of supervising and overseeing real estate activities, including supervision of clerical staff, at respondent Barragan's branch office at the Pigeon Pass address. Respondent Barragan failed to notify DRE, but claimed he filled in a form RE 242 on March 2, 2016 and then forgot to submit it. The misconduct was in violation of Business and Professions Code section 10164. (Exs. 28, p. 7 & 29, p. 12.)

### **Issue 12: Improper Use of Fictitious Business Names**

34. Respondent Barragan improperly used several unlicensed DBA's, in violation of Business and Professions Code section 10159.5 and Regulation 2731. As set out in Exhibits 28, page 7, and 29, pages 12 to 13.

A. Audit SD170053 found that, though DRE had not licensed use of the following DBA's:

i. Respondent Barragan used the DBA, "Ameripride Properties A Non-Independent Broker Escrow," on final escrow closing statements, estimated escrow closing statements, escrow instructions, amended escrow instructions, and escrow commission instructions for escrow transactions closed using B/A 2.

ii. Respondent Barragan used the DBA, "Ameripride Properties Inc.," on broker-associate agreements and on B/A 2's bank signature card, bank statements, and trust fund checks.

B. Respondent Barragan's agent, respondent Hernandez, used the DBA, "Villamar Property Management," in a sales transaction that closed on April 28, 2017.

### **Issue 13: Unlicensed Branch Office**

35. Respondent Barragan improperly used unlicensed branch offices, in violation of Business and Professions Code section 10163 and Regulation 2715. As set out in Exhibits 28, page 8, and 29, pages 13 to 14:

A. Audit SD170053 found that during the audit period respondent Barragan used the unlicensed branch office at 8311 Haven Avenue, Rancho Cucamonga, which appeared on B/A 2's trust fund checks.

B. Audit SD170055 found that during the audit period respondent Barragan's agent, respondent Hernandez, used the unlicensed branch office at the Pigeon Pass address for sales transactions. Examples are sales that closed on: (i) April

28, 2017; (ii) September 21, 2017; (iii) October 3, 2017; and (iv) March 16, 2018. The Pigeon Pass address appeared on several types of documents, including:

- i. Purchase agreements;
- ii. Listing agreements;
- iii. Buyer's inspection advisory;
- iv. Statewide buyer and seller advisory;
- v. FHA/VA amendatory clause;
- vi. Real estate transfer disclosure statement;
- vii. Agent visual inspection disclosure;
- viii. Disclosure regarding real estate agency relationship;
- ix. Seller's advisory;
- x. Possible representation of more than one buyer or seller;
- xi. Wire fraud and electronic funds transfer advisory;
- xii. Natural hazard disclosure statement;
- xiii. Water-conserving plumbing fixtures and carbon monoxide detector notice;
- xiv. Qualified substitute declaration of possession of transferor's affidavit of non-foreign status;
- xv. Buyer's inspection waiver;

- xvi. Water heater and smoke detector statement of compliance;
- xvii. Verification of property condition;
- xviii. Representative capacity signature disclosure;
- xix. Trust advisory;
- xx. Buyer's affidavit;
- xxi. Request for repair;
- xxii. Extension of time addendum; and
- xxiii. Seller property questionnaire.

Respondent Barragan told General Auditor Wanis that some of the documents listed, such as purchase agreements and escrow commission instructions, had been prepared not by him or his agent or his office staff, but by the cooperating broker or public escrow company involved in the transaction.

#### **Issue 14: Prohibited Escrow Activity**

36. Audit SD170053 found three instances of respondent Barragan's acting as the escrow agent in a transaction in which he was not a party, in the escrow for: (i) a mortgage loan transaction that closed on March 20, 2017, escrow number AP-2058; (ii) a real estate investment transaction that closed on February 7, 2018, escrow number AP-2096; and (iii) a real estate sales transaction that closed on December 19, 2017, escrow number AP-2092. The misconduct violated Business and Professions Code section 10086, subdivision (a), and Financial Code section 17006, subdivision (a)(4). (Exs. 28, p. 8 & 29, p. 14.)

### **Issue 15: Inadequate Supervision**

37. As set out under the Issues above, respondent Barragan failed to supervise activities by licensees and employees to ensure their compliance with the Real Estate Law. Among other failings, respondent Barragan failed to advise DRE that respondent Hernandez was respondent Barragan's branch manager at the Pigeon Pass address. The misconduct violated Business and Professions Code section 10177, subdivision (h), and Regulation 2725. (Exs. 28, p. 8 & 29, pp. 14-15.)

### **Issue 16: Unlawful Employment and Payment of Compensation**

38. As set out in Exhibits 28, pages 8 and 9, and 29, pages 15 and 16, in violation of Business and Professions Code sections 10137 and 10130, respondent Barragan allowed others to handle commissions from purchase and sales transactions improperly.

A. Respondent Barragan allowed respondent Hernandez to act as a real estate broker in purchase and sales transactions. Consequently, escrow companies paid commissions to respondent Hernandez directly, instead of to his employing broker, respondent Barragan. Respondent Hernandez signed all of the commission instructions examined. Some listed respondent Hernandez's license number, others respondent Barragan's license number. Audit SD170055 found no evidence, however, that respondent Barragan gave the escrow companies written instructions to pay commissions to respondent Hernandez.

B. Cancelled checks were made payable to Villamar Properties or Villamar Property Management. Examples are: (i) a listing broker's commission of \$8,475 paid in a transaction that closed on April 28, 2017; (ii) a selling broker's commission in the same transaction, also \$8,475; (iii) \$4,940 paid in a transaction that

closed on September 22, 2017, (iv) \$8,500 paid in a transaction that closed on October 4, 2017, and (v) \$6,300 paid in a transaction that closed on March 19, 2018.

C. Respondent Hernandez told respondent Barragan that, because of past financial problems, there was no bank account in his name. TMH deposited the commission checks into bank accounts with the name Villamar Property Management at BBVA Compass Bank, account numbers ending in 4687 and 8615. TMH then deposited a percentage of commissions into respondent Barragan's personal bank account, ending in 8038.

### **Respondent Barragan's Evidence**

39. Respondent Barragan fully cooperated with DRE's investigation, including the audit and its three parts. On cross-examination, General Auditor Wanis agreed that respondent was entirely cooperative and forthcoming.

40. Respondent Barragan presented his curriculum vitae, Exhibit A, which shows that respondent has many years of experience, starting as a realtor and progressing to his managing his own business as a mortgage broker and loan originator.

41. Dieter Dammeier, a DRE licensee, wrote one of a number of character reference letters. In his October 21, 2019 letter, Mr. Dammeier described respondent Barragan's "top notch" "work ethic and integrity." (Ex. B.) Respondent Barragan disclosed the allegations of the accusation against him and expressed his remorse and efforts "dedicated" to "correcting the situation." (*Ibid.*) Among other things, as Mr. Dammeier wrote, respondent Barragan enrolled in Continuing Professional Contractor Education courses to help him understand how to prevent improper conduct in the future. Mynor Bardales, another licensee, has known respondent Barragan for 15 years

and considers him a mentor. Mr. Bardales also wrote of respondent's integrity. Jeff Foht, also a licensee, wrote in his November 27, 2019 letter that respondent Barragan became his mentor over 20 years ago. He also speaks highly of respondent's integrity and efforts to help others. Licensed broker Alfred Sax wrote in his October 8, 2019 letter that, the allegations of the accusation notwithstanding, he has known respondent for many years as a "knowledgeable, altruistic and ethical kind of person and businessman." (Ex. B.) Mr. Sax also mentions respondent's enrollment in Continuing Professional Contractor Education courses to prevent any future incidents. Lizette Meza wrote that she worked in respondent's brokerage from 2005 to 2009 and they have continued to be friends. She admires his treating all agents he employed with "honesty, respect and kindness." (Ex. B.) She also writes that respondent's clients were always satisfied with respondent Barragan's work and professionalism.

42. Respondent Barragan works closely with Mr. Dammeier and licensees associated with Mr. Dammeier and believes that this work in conjunction with others has improved how he manages all aspects of his business and conducts himself as a broker.

43. Exhibit C is a set of course completion certificates showing that for several years past respondent has completed a variety of real estate courses, including courses sponsored by the California Association of Realtors. On November 24, 2019, for instance, respondent completed the California Trust Fund Continuing Education Course.

44. At the hearing, respondent Barragan did not attempt to explain away his misconduct, which he frankly acknowledged was disreputable and unreasonable. As respondent testified, he was required to supervise respondent Hernandez, but failed in this duty. Respondent offered no excuse for his allowing the arrangement with

respondent Hernandez by which the latter collected compensation directly from transactions and then paid respondent Barragan; whereas just the reverse should have occurred, respondent Barragan being responsible to collect monies and then to pay a real estate salesperson such as respondent Hernandez.

45. At present respondent Barragan works closely with Mr. Dammeier.

### **Costs**

46. DRE incurred a total of \$25,248.92 in reasonable costs (not including costs for the hearing):

A. For auditing the real estate activities of respondent Barragan, the costs are set out in detail in Exhibit 25: \$11,040.57;

B. For investigation into the activities of respondents, as set out in the Findings above, the costs are set out in detail in Exhibit 26: \$9,001.85; and

C. For enforcing the accusation against respondents, the costs are set out in detail in Exhibit 27: \$5,206.50.

### **LEGAL CONCLUSIONS**

1. Against each respondent, DRE has the burden of showing by "clear and convincing proof to a reasonable certainty" that license discipline is warranted.

(*Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal.App.3d 853, 855.) DRE met its burden in this case with respect to each respondent.



## **First Cause for Discipline: Consumer Complaints, Unlicensed Property Management, Dishonest Dealings**

2. Cause exists to discipline the license of respondent Hernandez under the accusation's First Cause for Discipline. Because of typographical error, the First Cause for Discipline is mislabeled "Second" on page 18, line 1, of the accusation. As alleged, respondent Hernandez acted in ways that caused justified consumer complaints, acted as a real estate broker in property management, though he had no broker license, and his real estate dealings were dishonest.

A. Justified Consumer Complaints: Respondent Barragan was respondent Hernandez's employing broker in 2013, but respondent Barragan did not supervise, and no broker supervised, the property management activities of respondent Hernandez, then or afterwards. Respondent Hernandez continued to act as a broker after respondent Holt became his employing broker on May 31, 2017, such as by advertising his position in Villamar. (Finding 12.) At least as of February 7, 2014, when TMH surrendered his license, but Villamar continued property management activities, respondent Hernandez was taking advantage of having a name similar to TMH's, to the detriment of a consumer such as Mr. Wong. Consumers were unable to tell that Villamar's property management was conducted jointly by respondent Hernandez and TMH without broker supervision. Respondent Hernandez is properly charged with all of the wrongdoing done in the name of Villamar.

i. Mr. Wong's complaints: Respondent Hernandez was improperly conducting property management activities beginning in at least 2013, when he photographed property owned by Mr. Wong as part of property management activities by Villamar. (Finding 8.C.ix.) The property management of Mr. Wong's properties was improperly performed in several ways, as set out in Finding 8.C.

ii. Ms. Ling's complaints: Respondent Hernandez improperly participated, under the Villamar DBA's, in unlicensed property management for Ms. Ling. As set out in Finding 9, Ms. Ling justifiably complained that respondent Hernandez, under the guise of Villamar, failed to provide her thousands of dollars in rent timely, and did not pay Ms. Ling the amounts that were overdue by months until she was forced to file suit. Even then, respondent Hernandez, acting in the guise of Villamar, failed to pay court costs, though the payment of costs was agreed.

B. Unlicensed Property Management: Respondent Hernandez was improperly conducting property management as Villamar, whether Villamar Properties or Villamar Property Management, or both. Respondent Hernandez was not authorized to use either of these two DBA's. Each was used, nonetheless, not only by respondents Hernandez, Barragan, and Holt, but also by TMH in his property management activities, which were occurring continually during all of the time that respondent Hernandez was licensed, beginning in 2012. Because respondent Hernandez participated in property management under the Villamar DBA's, he was responsible for the improper property management that TMH conducted as Villamar after TMH surrendered his license on February 7, 2014. Because respondent Hernandez was not licensed as a broker, his activities in property management and his acting as Villamar was in violation of Business and Professions Code section 10130.

C. Dishonest Dealings: As set out in Findings 8 and 9, respondent Hernandez's dealings with Mr. Wong and Ms. Ling were dishonest. In consequence, on multiple occasions and in multiple ways, respondent Hernandez violated Business and Professions Code section 10176, subdivision (i). Respondent's dealings were dishonest, in violation of the statute, in other respects. While respondent Hernandez and TMH were managing properties, without the broker supervision that should have been

exercised by respondents Barragan and Holt, respondent Hernandez, TMH, and respondents Barragan and Holt made it appear that a broker, first respondent Barragan, later respondent Holt, was the broker responsible for and supervising property management by Villamar. As set out in Finding 15, respondent Barragan wrote DRE to disclaim property management by Villamar, signing his letter on behalf of Villamar. Respondent Hernandez did likewise. Whereas respondent Barragan lacked knowledge of Villamar's activities, willfully refusing to pay attention to Villamar's activities, respondent Hernandez acted quite knowingly. He falsely disclaimed his own property management activities in signing his letter to DRE, as respondent Barragan did, on behalf of Villamar.

3. Respondent Hernandez violated that provision of Business and Professions Code section 10137 which states: "No real estate salesperson shall accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed." Respondent did so by operating Villamar and performing property management in such a way that respondent was compensated directly by the clients of Villamar, including Mr. Wong and Ms. Ling. Instead of receiving compensation from the broker, respondent Barragan, responsible for respondent Hernandez's real estate activities, respondent Hernandez paid a portion of his compensation to respondent Barragan.

4. Cause exists to discipline the license of respondent Holt under the accusation's First Cause for Discipline. Respondent Holt failed to supervise respondent Hernandez while the latter engaged in property management under the Villamar DBA's, in association with his unlicensed father, TMH, including on behalf of both Mr. Wong and Ms. Ling. As a result, respondent Holt is properly charged with having committed certain of the same wrongs as respondent Hernandez: (i) causing justified

consumer complaints; and (ii) dishonest dealing. As indicated in the preceding paragraph, respondent Holt aided and abetted respondent Hernandez, TMH, and Villamar in their property management activities. Respondent Holt, respondent Hernandez, TMH, and Villamar made it appear that the property management Villamar conducted was under respondent Holt's supervision, whereas respondent Holt allowed respondent Hernandez, TMH, and Villamar to conduct property management business without broker supervision.

5. Cause exists to discipline the license of respondent Barragan under the accusation's First Cause for Discipline. At a different, earlier period, but in the same ways as respondent Holt, respondent Barragan failed to supervise respondent Hernandez while the latter engaged in wrongdoing, including property management under the Villamar DBA's, in association with his unlicensed father, TMH. Respondent Barragan is properly charged with having committed certain of the same wrongs as respondent Hernandez: (i) causing justified consumer complaints; and (ii) dishonest dealing. Respondent Barragan aided and abetted respondent Hernandez, TMH, and Villamar in their property management activities and made it appear that the activities were under respondent Barragan's supervision. They were not.

### **Second Cause for Discipline: Unlicensed and Unsupervised Property Management**

6. The Second Cause for Discipline is set out beginning on page 21, line 1, of the accusation.

7. Respondent Hernandez violated the Real Estate Law on multiple occasions in multiple ways.

A. Cause exists under subdivision (d) of Business and Professions Code section 10177 to discipline the license of respondent Hernandez for his willful disregard and violation of the Real Estate Law. Respondent's disregard and violations occurred over a long period, while engaging in property management without a license from at least 2013 through the present. As Finding 16 indicates, respondent Hernandez proposes to continue Villamar's improper property management activity through 2022.

B. Cause exists under subdivision (g) of Business and Professions Code section 10177 to discipline the license of respondent Hernandez for negligence and incompetence in performing property management. Respondent Hernandez acted, in concert with TMH, as Villamar, which failed to manage the properties of Mr. Wong and Ms. Ling properly, as set out in Findings 8 and 9.

C. Cause exists under Business and Professions Code section 10137 to discipline the license of respondent Hernandez for improper compensation of TMH for property management activities, though the latter lost a license to engage in any real estate activities in 2014. The evidence indicates that the compensation was indirect. Respondent Hernandez obtained payment for property management activities which he allowed TMH to place in the latter's bank account, from which TMH would then pay himself. TMH would also use the compensation from property management by Villamar to pay rent on his separate suite at the Pigeon Pass address.

D. Cause does not exist to discipline any respondent's license under Business and Professions Code section 10139. The statute is concerned with punishment for wrongdoing, rather than license discipline.

8. Respondent Holt violated the Real Estate Law on multiple occasions in multiple ways.

A. Cause exists under subdivision (d) of Business and Professions Code section 10177 to discipline the license of respondent Holt for his willful disregard and violation of the Real Estate Law. Respondent's disregard and violations occurred when he notified DRE that he was the broker employing respondent Hernandez, after which respondent Holt allowed the unlicensed TMH to participate in real estate activities, particularly property management, under the DBA's of Villamar.

B. Cause exists under subdivision (g) of Business and Professions Code section 10177 to discipline the license of respondent Holt for negligence and incompetence in performing property management. Respondent Holt acted, in concert with respondent Hernandez and TMH, as Villamar, which failed to manage the properties of Mr. Wong and Ms. Ling properly, as set out in Findings 8 and 9.

C. Cause exists under Business and Professions Code section 10137 to discipline the license of respondent Holt for improper compensation of TMH for property management activities, though the latter lost a license to engage in any real estate activities in 2014. The evidence indicates that the compensation was indirect. Respondent Holt allowed respondent Hernandez to obtain payment for property management activities which TMH was allowed to place in his bank account, from which TMH would then pay himself. TMH would also use the compensation from property management by Villamar to pay rent on his separate suite at the Pigeon Pass address.

9. Respondent Barragan violated the Real Estate Law in several ways.

A. Cause exists under subdivision (d) of Business and Professions Code section 10177 to discipline the license of respondent Barragan for his willful disregard and violation of the Real Estate Law. Respondent's disregard and violations occurred when he notified DRE that he was the broker employing respondent Hernandez, after which respondent Barragan did not supervise respondent Hernandez and allowed him to work in concert with the unlicensed TMH in real estate activities, particularly property management, under the DBA's of Villamar.

B. Cause exists under subdivision (g) of Business and Professions Code section 10177 to discipline the license of respondent Barragan for negligence and incompetence in performing property management. Respondent Barragan acted, in concert with respondent Hernandez and TMH, as Villamar, and all failed to manage the properties of Mr. Wong and Ms. Ling properly, as set out in Findings 8 and 9.

C. Cause exists under Business and Professions Code section 10137 to discipline the license of respondent Barragan for improper compensation of TMH for property management activities, though the latter lost a license to engage in any real estate activities in 2014. The evidence indicates that the compensation was indirect. Respondent Barragan allowed respondent Hernandez to obtain payment for property management activities which TMH was allowed to place in a bank account that TMH controlled, from which TMH would then pay himself. TMH would also use the compensation from property management by Villamar to pay rent on his separate suite at the Pigeon Pass address.

### **Third Cause for Discipline: Disclosure of Licensed Status in Advertising**

10. Respondent Hernandez advertised his and Villamar's property management activities, despite that respondent Hernandez was not supervised and not licensed as a broker to conduct such advertised activities. In this way, in violation of Business and Professions Code section 10140.6, subdivision (a), respondent Hernandez acted to publish, circulate, distribute, or cause to be published, circulated, or distributed in a newspaper or periodical, or by mail, matter pertaining to an activity for which a real estate license was required, which was matter that did not contain a designation disclosing that respondent Hernandez was performing acts for which a broker license was required. Consequently, cause exists to discipline the license of respondent Hernandez.

11. Cause exists to discipline the license of respondent Holt. Respondent Holt was required to supervise respondent Hernandez in the activities described in previous paragraph, but failed to supervise respondent Hernandez. In this way, respondent Holt acted in concert with respondent Hernandez as described in the previous paragraph, in violation of Business and Professions Code section 10140.6, subdivision (a).

12. There are grounds to discipline the license of respondent Barragan.

A. Respondent Barragan was required to supervise respondent Hernandez in the activities described in Conclusion 10, but failed to supervise respondent Hernandez. In this way, respondent Barragan acted in concert with respondent Hernandez, in violation of Business and Professions Code section 10140.6, subdivision (a). Consequently, cause exists to discipline respondent Barragan's license.



B. Cause does not exist under Business and Professions Code section 10140.6, subdivision (b), to discipline respondent Barragan's MLO license endorsement. The evidence did not establish that respondent Hernandez or Villamar acted to publish, circulate, distribute, or cause to be published, circulated, or distributed matter pertaining to an activity or transaction that required an MLO license endorsement.

#### **Fourth Cause for Discipline: Use of Unlicensed DBA**

13. Respondent Hernandez made use of several DBA's for which he had no license or authorization from DRE: (i) Villamar Property Management; (ii) Villamar Properties; and (iii) Casa Roman Real Estate and Investments.

A. By use of such DBA's, respondent Hernandez willfully disregarded or violated the Real Estate Law, in violation of Business and Professions Code sections 10177, subdivision (d), 10159.5, subdivision (a)(1), and Regulation 2731, subdivision (a). Cause exists to discipline respondent Hernandez's license as a result.

B. By use of the DBA's, respondent Hernandez acted in violation of Business and Professions Code sections 10177, subdivision (g), in that respondent Hernandez demonstrated negligence or incompetence in performing an act, namely obtaining DRE license or authorization to use DBA's, for which respondent Hernandez was required to hold a license.

14. Respondent Holt acted in concert with respondent Hernandez to use DBA's use for which he had no license or authorization from DRE: (i) Villamar Property Management; (ii) Villamar Properties; and (iii) Casa Roman Real Estate and Investments.

A. Under Business and Professions Code sections 10177, subdivision (d), 10159.5, subdivision (a)(1), and Regulation 2731, subdivision (a), cause exists to discipline respondent Holt's license for his willful disregard or violation the Real Estate Law as a result of the use of the unlicensed and unauthorized DBA's.

B. By use of the DBA's, respondent Holt acted in concert with respondent Hernandez and in violation of Business and Professions Code sections 10177, subdivision (g). Respondent Holt demonstrated negligence or incompetence in performing an act, namely obtaining DRE license or authorization to use DBA's, for which respondent Holt was required to hold a license. Consequently, cause exists for discipline of respondent Holt's license.

15. Respondent Barragan acted in concert with respondent Hernandez to use DBA's use for which he had no license or authorization from DRE: (i) Villamar Property Management; (ii) Villamar Properties; and (iii) Casa Roman Real Estate and Investments.

A. Under Business and Professions Code sections 10177, subdivision (d), 10159.5, subdivision (a)(1), and Regulation 2731, subdivision (a), cause exists to discipline respondent Barragan's license for his willful disregard or violation the Real Estate Law as a result of the use of the unlicensed and unauthorized DBA's.

B. By use of the DBA's, respondent Barragan acted in concert with respondent Hernandez and in violation of Business and Professions Code sections 10177, subdivision (g). Respondent Barragan demonstrated negligence or incompetence in performing an act, namely obtaining DRE license or authorization to use DBA's, for which respondent Holt was required to hold a license. Consequently, cause exists for discipline of respondent Barragan's license.

C. Cause does not exist to discipline respondent Barragan's MLO license endorsement. The evidence did not establish that respondent Hernandez or Villamar acted to publish, circulate, distribute, or cause to be published, circulated, or distributed matter, such as DBA's, pertaining to an activity or transaction that required an MLO license endorsement.

### **Fifth Cause for Discipline: Substantial Misrepresentations**

16. Respondent Hernandez conducted property management for years without supervision and without a license for such activity. In addition, respondent Hernandez enabled his father, TMH, to carry on extensive property management operations for years after TMH surrendered his license in 2014. In consequence, cause exists under Business and Professions Code section 10176, subdivision (a), to discipline the license of respondent Hernandez.

### **Sixth Cause for Discipline: Dishonest Dealing or Fraud**

17. In carrying on a property management operation for years in concert with TMH, including after TMH surrendered his license in 2014, respondent Hernandez acted knowingly in violation of Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j). The misconduct resulted in damage to consumers, including Mr. Wong and Ms. Ling. The misconduct constituted dishonest dealing and fraud. In consequence, cause exists to discipline the license of respondent Hernandez.

**Seventh Cause for Discipline: Broker's Failure to Supervise  
(Respondent Barragan)**

18. Respondent Barragan failed to exercise reasonable supervision over the activities of respondent Hernandez during the years that he employed respondent Hernandez. Respondent Barragan failed to supervise respondent Hernandez both in real estate purchase and sale transactions and in property management operations. Respondent Barragan enabled respondent Hernandez to act in concert with TMH in extensive property management operations, even in the years since TMH surrendered his license in 2014. Respondent Barragan was acting in reckless disregard of the requirements of Business and Professions Code section 10177, subdivision (h), and Regulation 2725. In consequence, cause exists to discipline the license of respondent Barragan.

**Eighth Cause for Discipline: Broker's Failure to Supervise (Respondent Holt)**

19. Respondent Holt has failed since May 31, 2017 to exercise reasonable supervision over the activities of respondent Hernandez. Respondent Holt has failed to supervise respondent Hernandez particularly in property management operations. Respondent Holt enabled respondent Hernandez to continue to act in concert with TMH in extensive property management operations, years after TMH had surrendered his license. Respondent Holt was acting in reckless disregard of the requirements of Business and Professions Code section 10177, subdivision (h), and Regulation 2725. In consequence, cause exists to discipline the license of respondent Holt.

## **Aggravation, Mitigation and Rehabilitation**

20. There was no evidence of mitigating circumstances regarding the activities of respondent Holt and respondent Hernandez.

21. Respondent Hernandez's misconduct is aggravated by several factors. Respondent's operations in purchase and sale transactions was conducted in Suite T of the Pigeon Pass address, next door to TMH in suite U. Respondent Hernandez was seen at times in Suite U. Respondent Hernandez was necessarily aware, or should have been aware, that his father, TMH, had surrendered his license and was conducting extensive property management without a license for years, since 2014. Respondent Hernandez gave TMH financial control of funds generated by the improper property management operations. Respondent Hernandez was aware, or should have been aware, that these operations caused damage to consumers, including Mr. Wong and Ms. Ling. Respondent Hernandez did not halt this misconduct when DRE investigated the property management operations. Instead respondent Hernandez switched to a different employing broker, respondent Holt, and heedlessly continued in the misconduct. Respondent Hernandez was engaged in extensive fraud and dishonest dealings, in concert with others, including TMH and respondent Holt.

22. Respondent Holt's misconduct is aggravated in several ways. Respondent Holt was aware, or should have been aware, that respondent Hernandez switched to employment by respondent Holt in order to continue in misconduct, such as enabling TMH, after surrender of TMH's license, to conduct extensive property management that injured consumers, including Mr. Wong and Ms. Ling. Respondent Holt enabled continuing misconduct by respondent Hernandez and TMH. Respondent Holt was engaged in extensive fraud and dishonest dealings, in concert with others, including TMH and respondent Hernandez.

23. Respondent Barragan's misconduct is aggravated in several ways. Respondent Barragan's misconduct lasted years. Respondent Barragan disregarded many signals that respondent Hernandez was engaged in fraud and dishonest dealing, such as respondent Hernandez's collecting compensation directly from transactions and turning it over to TMH, so that TMH could control payment to respondent Barragan. Respondent Barragan was emboldened to disregard his duty under the law to supervise respondent Hernandez because the arrangements between them were lucrative. Respondent Barragan realized profits from respondent Hernandez's and TMH's activities though respondent Barragan did essentially nothing to earn such profits. Unlike respondent Holt, respondent Barragan's misconduct started before there was reason to suspect that respondent Hernandez was acting improperly and in concert with his unlicensed father, TMH. Respondent Barragan was acting recklessly and dishonestly. The evidence did not establish that respondent Barragan acted to defraud.

24. In mitigation, while respondent Barragan's conduct extended over years, it was aberrational, out of keeping with his general level of professionalism.

25. Also in mitigation, respondent Barragan was fully cooperative with DRE. In addition, he changed his conduct for the better with respect to respondent Hernandez and the irregularities and violations uncovered by the three-part audit promptly after DRE's investigation found improprieties.

26. Respondent Barragan has made efforts to rehabilitate himself. Most importantly is his change in attitude. He fully acknowledged that he had failed in many ways as a broker, and caused damage by failing to supervise respondent Hernandez. Fully acknowledging wrongfulness of past action is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

27. On balance, however, the evidence established that it would not be in interest of public protection, given the high financial sums and high-value property interests with which brokers deal, to allow respondent Barragan to retain his broker's license. Time for sustained good conduct and much further effort are required of respondent Barragan before his rehabilitation from his years-long misconduct may be considered complete. (See *In Re Menna* (1995) 11 Cal.4th 975, 991.)

28. DRE was forced to expend substantial resources in auditing respondent Barragan's activities. Consequently, fairness urges that respondent Barragan should bear the reasonable costs of the three-part audit and the greater part of the other costs that DRE is claiming reasonably.

### **ORDER**

Respondent Hernandez:

1. All licenses and licensing rights of respondent Tony Roman Hernandez under the Real Estate Law are revoked.

2. Pursuant to section 10106 of the Business and Professions Code, respondent Hernandez shall pay the Commissioner approximately one quarter of the reasonable cost for investigation in this matter. In reimbursement of the cost of investigation, respondent Hernandez shall pay \$2,250 within 60 days of the effective date of this Decision.

3. Pursuant to section 10106 of the Business and Professions Code, respondent Hernandez shall pay approximately one quarter of the Commissioner's reasonable cost for enforcement in this matter. In reimbursement of the cost of

enforcement, respondent Hernandez shall pay \$1,300 within 60 days of the effective date of this Decision.

Respondent Holt:

4. All licenses and licensing rights of respondent Robert Eldon Holt under the Real Estate Law are revoked.

5. Pursuant to section 10106 of the Business and Professions Code, respondent Holt shall pay the Commissioner approximately one quarter of the reasonable cost for investigation in this matter. In reimbursement of the cost of investigation, respondent Holt shall pay \$2,250 within 60 days of the effective date of this Decision.

6. Pursuant to section 10106 of the Business and Professions Code, respondent Holt shall pay approximately one quarter of the Commissioner's reasonable cost for enforcement in this matter. In reimbursement of the cost of enforcement, respondent Holt shall pay \$1,300 within 60 days of the effective date of this Decision.

Respondent Barragan:

7. All licenses and licensing rights of respondent Michael Angelo Barragan under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent Barragan makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent Barragan shall be subject to all of the provisions of Section 10156.7 of the



Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

A. The restricted license issued to respondent Barragan may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Barragan's conviction or plea of nolo contendere to a crime which is substantially related to respondent Barragan's fitness or capacity as a real estate licensee.

B. The restricted license issued to respondent Barragan may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Barragan has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.

C. Respondent Barragan shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until four years have elapsed from the effective date of this Decision.

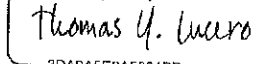
D. Pursuant to section 10148 of the Business and Professions Code, respondent Barragan shall pay the Commissioner's reasonable cost for the three-part audit which led to this disciplinary action. In reimbursement of the cost of the audit, respondent Barragan shall pay \$11,040.57 within 60 days of the effective date of this Decision.

E. Pursuant to section 10106 of the Business and Professions Code, respondent Barragan shall pay the Commissioner approximately one half of the reasonable cost for investigation in this matter. In reimbursement of the cost of

investigation, respondent Barragan shall pay \$4,500 within 60 days of the effective date of this Decision.

F. Pursuant to section 10106 of the Business and Professions Code, respondent Barragan shall pay approximately one half of the Commissioner's reasonable cost for enforcement in this matter. In reimbursement of the cost of enforcement, respondent Barragan shall pay \$2,600 within 60 days of the effective date of this Decision.

DATE: January 10, 2020

DocuSigned by:  
  
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THOMAS Y. LUCERO

Administrative Law Judge

Office of Administrative Hearings