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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of:) OAH Case No. 2017120732
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) Agency Case No. 963-2147
13)
14 Complainant,) SETTLEMENT AGREEMENT
15)
16 v.) Hearing Dates: June 11-13, 2018
Hearing Time: 9:00 a.m.
17 JUAN R. VILLANUEVA,) Judge: Joseph D. Montoya
18 Respondent.)
19)
20)

21 In the Matter of the Accusation of:)
22 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
23)
24 Complainant,)
25)
26 v.)
27 ROSARIO NUNEZ,)
Respondent.)
28)

1 This Settlement Agreement (Settlement Agreement) is entered into between the
2 Commissioner of Business Oversight (Commissioner) and Juan R. Villanueva (Villanueva) and
3 Rosario Nunez (Nunez) (collectively, Respondents), and is made with respect to the following facts:

4 RECITALS

5 A. The Commissioner has jurisdiction over the licensing and regulation of independent
6 escrow agents operating in California under the Escrow Law (Fin. Code, § 17000 et seq.) (Escrow
7 Law).

8 B. Omega Escrow, Inc. (Omega) was an escrow agent first licensed by the
9 Commissioner under the Escrow Law on July 5, 2005.

10 C. Villanueva was Omega’s president, owner, and an authorized signer on the
11 company’s escrow trust account held at Bank of America.

12 D. Nunez was Omega’s escrow manager and an authorized signer on the company’s
13 escrow trust account held at Bank of America.

14 E. On February 16, 2015, Villanueva applied to the Commissioner to approve the transfer
15 of Omega’s ownership by submitting a signed corporate resolution that rescinded a previous
16 resolution to surrender Omega’s escrow agent’s license, and to acknowledge that he was to remain
17 responsible for the company’s operations and management until the Department accepted and
18 approved the change of ownership application.

19 F. The Department issued Omega an amended escrow agent’s license on September 10,
20 2015, approving Omega’s request to change its name to Trilogy Escrow, Inc. (Trilogy).

21 G. In December 2015, Trilogy closed Omega’s trust account held at Bank of America.

22 H. On February 1, 2016, the Department approved Villanueva’s change of ownership
23 request, allowing him to sell his 100-percent ownership stake in the company to Collaboration888,
24 LLC.

25 I. Trilogy’s annual audit report for its fiscal year ended December 31, 2015 was due by
26 April 15, 2016. During the preparation of Trilogy’s annual audit report, the new owners discovered a
27 claimed \$13,431.89 shortage in Omega’s trust account and ledger. The trust shortage appeared, in
28 part, in Omega’s Bank of America trust account. According to Trilogy’s certified public accountant,

1 the trust shortage could be traced to two unauthorized cash withdrawals, a bank fee, and unauthorized
2 escrow fees.

3 J. In April 2016, Trilogy's new owners, in order to correct the trust shortage in Omega's
4 trust account, transferred funds from the company's general account to the new trust account held at
5 California Republic Bank. In May and November 2016, the new owners escheated \$13,431.89 in
6 funds to the State Controller's Office on behalf of Omega.

7 K. After reviewing Omega's trust account records, the Commissioner determined
8 Villanueva or Nunez or both made the following unauthorized disbursements of trust funds in violation of
9 Financial Code section 17414, subdivision (a)(1):

- 10 1. A \$5,000.00 withdrawal on March 21, 2014.
- 11 2. A \$375.00 rent payment on July 1, 2014.
- 12 3. A \$6,000.00 withdrawal on July 10, 2014.
- 13 4. A \$9,000.00 cash withdrawal on October 19, 2015.
- 14 5. A \$1,201.94 cash withdrawal on December 10, 2015.

15 L. Neither Omega nor Trilogy could produce signed written authorizations demonstrating
16 that the transactions 1 and 3 were authorized by the principals to the escrow or that the disbursements 2, 4
17 and 5 were related to any escrow file.

18 M. On the basis of the Commissioner's determination that Respondents had violated the
19 Escrow Law, on November 6, 2017, the Commissioner issued an accusation and notices of intention
20 to bar Respondents. The Commissioner issued a first amended accusation on May 16, 2018
21 (Accusation) after the Respondents supplied evidence of signed written authorizations in three
22 transactions.

23 N. Respondents timely filed their joint notice of defense under section 11506 of the
24 Government Code. The administrative hearing is currently set for trial before the Office of
25 Administrative Hearings on June 11 through 13, 2018.

26 O. The Commissioner finds that entering into this Settlement Agreement is in the public
27 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and
28 provisions of the Escrow Law.

1 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
2 forth herein, the parties agree as follows:

3 TERMS AND CONDITIONS

4 1. Purpose. It is the intention and desire of the parties to resolve this matter amicably
5 without the necessity of a hearing or other litigation for the purpose of judicial economy and
6 expediency and to avoid the expense of a hearing and possible further court proceedings.

7 2. Acknowledgment. Respondents acknowledge that the Commissioner issued the
8 Accusation, in which the Commissioner alleged the Respondents violated Financial Code section
9 17414 of the Escrow Law as described above. The Commissioner acknowledges that Respondents
10 filed a joint notice of defense in response to the Accusation.

11 3. Waiver of Hearing Rights. Without any admission of liability, Respondents agree
12 that this Settlement Agreement shall have the effect of withdrawing their joint request for an
13 administrative hearing on the matter set forth herein. Respondents acknowledge their right to an
14 administrative hearing under the Escrow Law in connection with the Accusation and hereby waive
15 their right to a hearing and to any reconsideration, appeal, or other rights which may be afforded
16 them under the Escrow Law, the Administrative Procedure Act (APA) (Gov. Code, § 11340 et
17 seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in
18 connection with these matters.

19 4. Dismissal of Nunez. The Commissioner hereby agrees to dismiss Nunez from the
20 present matter. As part of this Settlement Agreement, Nunez releases all claims against the
21 Commissioner arising out of this matter, which could have been brought in this matter, or arose
22 during the Commissioner's investigation here. Also, as part of this Settlement Agreement, the
23 Commissioner releases all claims against Nunez arising out of this matter, which could have been
24 brought in this matter, or arose during the Commissioner's investigation here.

25 (a) **Acknowledgements Regarding Mutual Releases**. The parties hereby
26 expressly acknowledge and agree that, with respect to entering into this
27 Settlement Agreement and the releases provided for herein:

28 i. each has had a reasonable time within which to consider the terms
memorialized in this Settlement Agreement before agreeing to them;

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- ii. each has carefully read and fully understands all of the provisions of this Settlement Agreement;
- iii. each is, through this Settlement Agreement, releasing all claims they may have against the other as more specifically described herein;
- iv. each knowingly and voluntarily agrees to all of the terms set forth in this Settlement Agreement;
- v. each knowingly and voluntarily intends to be legally bound by all of the terms set forth in this Settlement Agreement; and
- vi. each was advised and hereby is advised in writing, to consider the terms of this Settlement Agreement and to consult with an attorney of its or his or her own choice prior to executing this Settlement Agreement, and each has so consulted with an attorney of its or his or her own choice prior to executing this Settlement Agreement, or has waived that right.

(b) **General Release.** The parties hereby waive any claims known and unknown to them against the other, their agents, officers, or employees which are based on the facts underlying the present matter. The parties specifically waive any rights provided by Civil Code section 1542, that provides: “A general release does not extend to claims which the Creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by them must have materially affected his settlement with the Debtor.”

5. Bar. For a period of 48 months immediately following the Effective Date of this Settlement Agreement, as defined in paragraph 19., Villanueva shall be barred from any position of employment, management, or control of any escrow agent licensed under the Escrow Law.

6. Repayment of Escrow Trust Funds. As part of this Settlement Agreement Villanueva agrees to pay \$12,500.00 to Trilogy Escrow, Inc. (the Repayment). The Repayment shall be due within 48 hours of the Effective Date of this Settlement Agreement, as defined in paragraph 19., and made payable in the form of a cashier’s check to Trilogy Escrow, Inc., and transmitted to the attention of Beatriz Hom, President – Trilogy Escrow, Inc., 1325 Corona Pointe Court, Suite 103, Corona, California 92879.

(a) **Proof of Repayment.** Villanueva shall submit evidence of the Repayment to the Commissioner, to the attention of Blaine A. Noblett, senior counsel, no later than 15 days after the Effective Date of this Settlement Agreement, as

1 defined in paragraph 19. Such evidence must include a copy of the cashier's
2 check and proof of mailing.

3 7. Remedies for Breach. Villanueva agrees that for 48 months immediately following
4 the Effective Date of this Settlement Agreement, as defined in paragraph 19., if the Commissioner
5 makes a finding that Villanueva has violated or is violating any provision of this Settlement
6 Agreement, or the Escrow Law, or any rule, regulation, or law under the jurisdiction of the
7 Commissioner or that he is subject to a disciplinary action taken by the State of California (or any
8 legal subdivision of the state, including city and county), another state, any agency of the federal
9 government, or another country for any action substantially related to the activity regulated under
10 the Escrow Law, the Commissioner may, in her sole discretion, issue to Villanueva a final order
11 permanently barring him from employment, management, or control of any escrow agent under the
12 Escrow Law. Villanueva waives all notice and hearing rights to contest any bar order issued under
13 this provision, which may be afforded under the Escrow Law, the APA, the CCP, or any other
14 provision of law in connection with this matter.

15 8. Costs. The Commissioner and Respondents stipulate and agree that each party shall
16 bear and pay their own costs and expenses relating to this matter and the performance of or
17 compliance with any condition or covenant set forth in this Settlement Agreement, including without
18 limitation, the costs and fees of their respective attorneys, accountants, advisors, consultants, agents
19 and other representatives incidental to the preparation and carrying out of this Settlement Agreement.

20 9. Full and Final Settlement. The parties hereby acknowledge and agree that this
21 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
22 Accusation, and that no further proceedings or actions will be brought by the Commissioner in
23 connection with the Accusation, either under the Escrow Law or any other provision of law,
24 excepting any proceeding to enforce compliance with the terms of this Settlement Agreement or
25 action if such proceeding is based upon discovery of new and further violations of the Escrow Law
26 which do not form the basis for this Settlement Agreement or which Respondents knowingly
27 concealed from the Commissioner.

28 10. Commissioner's Duties. The parties further acknowledge and agree that nothing in

1 this Settlement Agreement shall limit the Commissioner’s ability to assist any other agency (city,
2 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any
3 such agency against Respondents or any other person based upon any of the activities alleged in
4 these matters or otherwise.

5 11. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
6 interest.

7 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
8 has received independent advice from its attorney(s) or representative(s) with respect to the
9 advisability of executing this Settlement Agreement.

10 13. Counterparts. The parties agree that this Settlement Agreement may be executed in
11 one or more separate counterparts, each of which shall be deemed an original when so executed.
12 Such counterparts shall together constitute and be one and the same instrument.

13 14. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
14 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
15 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent
16 unless it is in writing and signed by all the parties affected by it.

17 15. Headings and Governing Law. The headings to the paragraphs of this Settlement
18 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
19 construction or interpretation of the provisions hereof. This Settlement Agreement shall be
20 construed and enforced in accordance with and governed by California law.

21 16. Full Integration. Each of the parties represents, warrants, and agrees that in executing
22 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
23 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
24 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
25 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
26 party or any other person or entity to make any statement, representation, or disclosure of anything
27 whatsoever. The parties have included this clause (1) to preclude any claim that any party was in
28 any way fraudulently induced to execute this Settlement Agreement and (2) to preclude the

1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
2 Settlement Agreement.

3 17. Presumption from Drafting. In that the parties have had the opportunity to draft,
4 review, and edit the language of this Settlement Agreement, no presumption for or against any party
5 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
6 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive
7 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
8 of uncertainty, language of a contract should be interpreted most strongly against the party that
9 caused the uncertainty to exist.

10 18. Voluntary Agreement. Respondents enter into this Settlement Agreement voluntarily
11 and without coercion and acknowledge that no promises, threats, or assurances have been made by
12 the Commissioner, or any officer or agent thereof, about this Settlement Agreement.

13 19. Effective Date. This Settlement Agreement shall become final and effective when
14 signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondents’
15 counsel Michael A. Rivera at riveralawyer@hotmail.com.

16 20. Authority to Execute. Each signatory hereto covenants that he/she possesses all
17 necessary capacity and authority to sign and enter into this Settlement Agreement.

18 IN WITNESS WHEREOF, the parties hereto have approved and executed this Settlement
19 Agreement on the dates set forth opposite their respective signatures.

20 JAN LYNN OWEN
21 Commissioner of Business Oversight

22 Dated: 6/8/18

23 By _____
24 MARY ANN SMITH
25 Deputy Commissioner
26 Enforcement Division

27 JUAN R. VILLANUEVA, as an Individual

28 Dated: 6/8/18

By _____
JUAN R. VILLANUEVA

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ROSARIO NUNEZ, as an Individual

Dated: 6/8/18

By _____
ROSARIO NUNEZ

Approved as to Form and Content

By _____

Michael A. Rivera, Esq.
Attorney at Law

on behalf of Respondents Juan R. Villanueva and Rosario Nunez