


State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM

PUBLIC MATTER

Counsel For The State Bar Sherrie B. McLetchie Deputy Trial Counsel 180 Howard, 7th Floor San Francisco CA 94105 (415) 538-2297 Bar # 85447	Case Number (s) 05-O-03317 [05-O-13282; 06-O-15469; 07-O-13110; 09-O-13024]-PEM	(for Court's use) FILED  DEC 14 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Sydney Elise Fairbairn, # 122349 269 Posada Del Sol Novato, CA 94949 (415) 883-2199	Submitted to: Assigned Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW	
Co-Counsel Phillip Feldman, # 40792, 14401 Sylvan, Suite 208 Van Nuys CA 91401 (818) 986-9890	<input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Sydney Elise Fairbairn Bar # 122349, A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 7, 1986.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent of the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 23 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code § §6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ Prior record of discipline [see standard 1.2(b)]
 - (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☒ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property. See Count One, Facts, ¶¶1-5, Count Three, Facts, ¶¶1-12, Count Four, Facts, ¶¶1-15, Count Five, Facts, ¶¶1-16, Count Six, Facts, ¶¶1, Count Eight, Facts, ¶¶1-5, Count Nine, Facts, ¶¶1-12, Count Ten, Facts, ¶¶1-5, Count Eleven, Facts, ¶¶1, Count Thirteen, Facts, ¶¶1-4, and Count Fourteen, Facts, ¶¶1-5.
- (4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement to the consequences of his or her misconduct.
- (6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Counts One (multiple NSF CTA checks) & Counts Three through Six, Eight through Eleven, and Thirteen through Fourteen (four c/wa victimized in related transactions).
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☒ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. By entering into this stipulation.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat of force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances are involved.**

Additional mitigating circumstances:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: SYDNEY FAIRBAIRN

**CASE NUMBER(S): 05-O-01317 [05-O-13282; 06-O-15469;
07-O-13110; 08-O-13024]-PEM**

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND
STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the Second Amended Notice of Disciplinary Charges, filed on August 17, 2009, and the facts and/or conclusions of law contained in this stipulation.

FACTS AND CONCLUSION OF LAW.

COUNT ONE
Case No. 05-O-01317

FACTS

1. At all times pertinent, respondent maintained an attorney client trust account, account number 053-1049XXX, at Wells Fargo Bank ("CTA").
2. On or about November 19, 2004, respondent issued check number 2023, for \$300, payable to "Delvin Armstrong" with the memo line notation "Hernandez." This check was honored by the bank against insufficient funds in respondent's CTA. At the time the check was honored, respondent had \$-101.16 in her CTA.
3. On or about November 22, 2004, respondent issued check number 2021, for \$38.56, written out to payee "Quill" with the memo line notation "Hernandez Costs." This check was honored by the bank against insufficient funds in respondent's CTA. At the time the check was honored, respondent had \$-101.16 in her CTA.
4. On or about December 8, 2004, respondent issued check number 2030 for \$17,204 (to Logistical Recovery Systems). This check was returned by the bank as issued against insufficient funds. At the time the check was dishonored by the bank, respondent had \$-6,044.52 in her CTA.
5. Respondent issued check 2030 before she was notified by her bank that a \$14,000 check from NCMIC Insurance Company, which respondent had previously deposited into her CTA, had been

rejected due to a problem with the encoding on NCMIC's check. NCMIC re-issued the check to respondent on or about December 16, 2004.

CONCLUSION OF LAW

By not maintaining funds in her CTA sufficient to pay check numbers 2021, 2023, and 2030, respondent failed to maintain client funds in trust, in wilful violation of Business and Professions Code, section 4-100(A.)

GENERAL BACKGROUND FACTS FOR COUNTS TWO THROUGH FOURTEEN

1. From about July 24, 2003, until July 18, 2005, respondent represented Mondragon Development Company, Inc. ("Mondragon") through its president, Jorge Hernandez ("Hernandez").
2. At all times pertinent, Mondragon was suspended by the Department of Corporations for failure to pay taxes and respondent knew that Mondragon was so suspended.
3. Mondragon advertized itself as a real estate development company that would provide "traditional real estate development services of financial, architectural, construction, and management under the same roof."
4. William Rivera ("Rivera"), Sandra Turner, ("Turner"), Barbara Galyen ("Galyen"), and Sergio De Araujo ("De Araujo") each invested with Hernandez. Rivera, Turner, Galyen, and De Araujo signed joint development agreements for the development of property at 888 Bodega Way, Petaluma, California ("Bodega Way").
5. Respondent received investment funds from Rivera, Turner, Galyen, and De Araujo for the Bodega Way project, pursuant to the joint development agreements signed by each investor.
6. Respondent deposited the funds from Rivera, Turner, Galyen, and De Araujo into her CTA.
7. Besides Bodega Way, Hernandez had several other projects, such as "Appian Way" and the "Truman Project."
8. In addition, Hernandez became involved in a lawsuit regarding the Bodega Way, entitled Eastside Development Co. LLC v. Jorge Hernandez and Linda Evans, Sonoma County Superior Court case no. MCV-183723 ("Eastside case").

9. Respondent maintained funds for "Appian Way" and the "Truman Project" in her CTA on behalf of Hernandez.

10. In holding funds in her CTA, respondent did not distinguish between "Appian Way" and the "Truman Project" funds from the received funds for Bodega Way.

11. Respondent also disbursed funds from her CTA to Hernandez who may have utilized the funds on an unlawful detainer matter, Eastside case, he was handling pro se.

12. Respondent also represented Hernandez in a suit entitled Evans v. Lerner, case no. CV011500 filed in Marin County Superior Court.

13. On or about September 27, 2005, Hernandez entered into a Stipulation for Entry of Judgment or Dismissal in the Eastside case. In the Stipulation for Entry of Judgment, Hernandez surrendered possession of Bodega Way to Eastside Development ("Eastside").

14. On or about September 27, 2005, Hernandez signed a Memorandum of Understanding with Eastside, Linda Evans, and De Araujo. The Memorandum of Understanding specified that Bodega Way would be sold to De Araujo, and that De Araujo would be waiving all claims of approximately \$78,000 concerning repairs and investment in Bodega Way. In fact, De Araujo did not purchase Bodega Way.

15. The Memorandum of Understanding did not address the investments of Turner or Rivera in Bodega Way.

16. In about late September 2005, respondent was aware of the Memorandum of Understanding and the Stipulation for Entry of Judgment. Thereafter, respondent did not advise Galyen or Turner of the Memorandum of Understanding or the Stipulation for Entry of Judgment, because respondent relied on Hernandez' false representation to her that both Galyen and Turner had been present during the Eastside settlement negotiations and were therefore already aware of the settlement.

COUNT TWO


Case Nos. 07-O-13110 [Rivera] & 09-O-13024 [De Araujo]

FACTS

1. The General Background Facts are hereby incorporated by reference.

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2. On or about April 25, 2004, respondent was present when Hernandez presented De Araujo with a "Joint Development Agreement" ("Rivera/De Araujo Joint Development Agreement") which he executed on or about April 25, 2004.

3. On or about April 26, 2004, Rivera executed the Rivera/De Araujo Joint Development Agreement which was presented to him by Hernandez.

4. The terms of the Rivera/De Araujo Joint Development Agreement stated that Rivera and De Araujo would each provide \$25,000 to Mondragon to develop a single family residence at Bodega Way. Upon the sale of Bodega Way, Rivera and De Araujo would each receive \$40,000 (\$15,000 net profit each).

5. The Rivera/De Araujo Joint Development Agreement stated that Hernandez would "rehabilitate an existing residence for the purposes of resale." The Rivera/De Araujo Joint Development Agreement did not specify who owned Bodega Way.

6. In fact, Hernandez did not own Bodega Way.

7. Thereafter, on or about April 27, 2004, Hernandez entered into an Option Agreement to Purchase Real Property. The Option Agreement was for Bodega Way, and specified that Hernandez had an option to purchase Bodega Way for \$520,000 on or before October 15, 2004.

8. In April 2004, and at all times pertinent, respondent was aware that Hernandez did not own Bodega Way.

9. When Rivera and De Araujo entered into the Rivera/De Araujo Joint Development Agreement, they were not aware that Hernandez did not own Bodega Way. Rivera and De Araujo both thought Hernandez owned Bodega Way.

10. Prior to April 25, 2004, respondent revised a prior version of a joint venture development agreement at Hernandez' request. Her modifications included the following: substituting the phrase "to rehabilitate an existing residence for the purposes of resale" for the original phrase: "to purchase an existing residence for the purposes of rehabilitation and sale" (emphasis added). Respondent also recommended a second modification. Her second recommended modification was to remove the language "the price for the purchase of this property is \$520,000. The terms for the purchase of the property are listed on Schedule "A"

of this document." According to respondent, Hernandez did not attach any Schedule A to any copy of the revised joint development agreement he gave anyone.

11. The changes recommended by respondent were incorporated by Hernandez into the Rivera/De Araujo Joint Development Agreement. After receiving the Rivera/De Araujo Joint Development Agreement, Rivera and De Araujo believed Hernandez owned Bodega Way.

12. The Rivera/De Araujo Joint Development Agreement stated that: "Each party to this agreement has the option to secure, at his/its own expense, a viable accounting office to review the financial dealing of this endeavor. All parties shall cooperate with one another in disclosing all financial matters to the others. The parties owe one another a disclosure duty."

13. In conformity with the Rivera/De Araujo Joint Development Agreement, on or about April 27, 2004, Rivera and De Araujo each gave respondent checks in the amount of \$25,000. De Araujo's check was made payable to Sydney Fairbairn "In trust for the Mondragon Development Corporation."

14. Thereafter, respondent deposited Rivera's and De Araujo's checks for \$25,000 into her CTA.

15. Thereafter, respondent disbursed to Hernandez the funds invested by Rivera and De Araujo.

CONCLUSION OF LAW

By disbursing Rivera and De Araujo's investment payments to Hernandez when she knew that the Rivera/De Araujo Joint Development Agreement was misleading, respondent with gross negligence committed acts of moral turpitude, in wilful violation of Business and Professions Code section 6106.

COUNT THREE Case No. 06-O-15469

FACTS

1. The General Background Facts and the Facts of Count Two are hereby incorporated by reference.

2. By receiving funds from Rivera pursuant to the Rivera/De Araujo Joint Development Agreement which specified that Mondragon had a duty to disclose, and placing those funds into her CTA, respondent owed fiduciary duties to Rivera to accurately maintain records of Rivera's funds and to disburse Rivera's funds on the Bodega Way.

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3. On or about September 26, 2007, respondent, through counsel, provided the State Bar with a purported accounting of the Rivera funds. Respondent provided a handwritten ledger entitled "Jorge Hernandez Trust Account Activity" ("September 2007 accounting"). In addition, respondent provided copies of checks, front and back, detailing expenditures up to \$25,000. The check numbers ranged from 1756 through 1986, and were issued during the time period from April 9, 2004, through August 31, 2004.

4. Respondent disbursed at least 21 checks during to Hernandez, during April 9, 2004, through August 31, 2004, by way of checks written out to "cash" without any written request or other documentation from Hernandez.

5. Respondent did not take any steps to verify that Hernandez was spending the funds obtained from Rivera, and written out to "cash" on Bodega Way.

6. In or about October or November, 2006, respondent presented to the State Bar an purported accounting ("Oct/Nov accounting") for the funds of Turner, purporting to account for the funds respondent received from Turner, which were in turn allegedly spent on Bodega Way.

7. The checks respondent identified in the September 2007 accounting for Rivera were also included in the checks that respondent identified in the Oct/Nov accounting for Turner.

8. On or about March 14, 2007, respondent presented to the State Bar, a purported accounting ("March 2007 accounting") for the funds of Galyen, purporting to account for the funds respondent received from Gaylen, which were allegedly spent on Bodega Way.

9. Twelve of the checks which respondent identified in the September 2007 accounting for Rivera, were also the same checks which respondent identified in the March 2007 accounting for Galyen.

10. Respondent did not identify the source of the funds as between the investors Galyen, Turner, Rivera, and De Araujo when making distributions to Hernandez.

11. Respondent is unable to account with specificity for the Galyen, Turner, Rivera, and De Araujo funds.

12. Respondent did not identify the purposes for the payments of the funds, as between Hernandez' Bodega Way project and his other legal matters and/or projects.

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CONCLUSION OF LAW

By disbursing the Rivera funds to Hernandez, by way of checks written out to cash, or written out to Hernandez, without any written request or other documentation from Hernandez, by not verifying that Hernandez was spending the funds obtained from Rivera, and written out to "cash" on the Bodega Way property; and by not distinguishing Rivera's funds from the funds of any other investor in the Bodega Way project, respondent violated rule 4-100(B)(4), Rules of Professional Conduct.

COUNT FOUR

Case No. 06-O-13282

FACTS

1. The General Background Facts and Facts of Counts Two and Three are hereby incorporated by reference.
2. On or about June 10, 2004, Turner went to respondent's law office, 900 4th Street, Fourth Floor, San Rafael, California, and entered into an agreement with Mondragon. She signed a document entitled "Joint Development Agreement" ("Turner Joint Development Agreement") which was presented to her by respondent.
3. The terms of the Turner Joint Development Agreement stated that Turner would provide \$25,000 to Mondragon to develop a single family residence at Bodega Way. Upon the sale of Bodega Way, Turner would receive \$37,500 (\$12,500 net profit).
4. The Turner Joint Development Agreement stated that Hernandez owned the residence at Bodega Way.
5. However, Turner received a copy of Hernandez' Option to Purchase Agreement for Bodega Way, and was aware that Hernandez only had an option to purchase.
6. The Turner Joint Development Agreement between Turner and Mondragon Development Company stated that: "Each party to this agreement has the option to secure, at her own expense, a viable accounting office to review the financial dealing of this endeavor. All parties shall cooperate with one another in disclosing all financial matters to the others. The parties own one another a disclosure duty."
7. In conformity with the Turner Joint Development Agreement, Turner gave respondent check number 1849, dated June 9, 2004, for \$25,000.

8. Respondent advised Turner that she, respondent, would maintain Turner's investment funds for Mondragon in her CTA, and assure that the funds were spent on Bodega Way, in accordance with the Turner Joint Development Agreement.

9. Turner invested in Mondragon in reliance upon respondent's statement that respondent would be maintaining Turner's investment funds in her CTA and monitoring the disbursement of the investment funds to Bodega Way.

10. On or about June 9, 2004, respondent deposited Turner's check for \$25,000 in o her CTA and received the funds.

11. On or about July 10, 2004, Turner gave respondent an additional \$100,000, by way of check number 870, as a loan secured by a promissory note from the Mondragon. The promissory note states that the funds were to be used for the sole purpose of funding operations of the company, Mondragon, and that Mondragon would pay off the note either when additional investment funds were obtained or when Bodega Way was sold, whichever occurred first.

12. Respondent assured Turner that she would place Turner's \$100,000 in her CTA and assured Turner that respondent would confirm that the funds were spent on the Bodega Way property.

13. On or about July 12, 2004, respondent deposited the \$100,000 from Turner in o her CTA and received the funds.

14. Between about September 3, 2004, and February 12, 2005, respondent disbursed \$25,690 of her CTA funds to Hernandez by way of 20 checks written out to "cash", or written out to "Hernandez" without any written request or other documentation from Hernandez. A true and correct partial accounting of respondent's disbursements to Hernandez from her CTA is hereby attached and incorporated as "Exhibit 1" to this NDC.

15. Respondent did not take any steps to verify that Hernandez was spending the funds obtained from Turner and written out to "cash" or "Hernandez" on Bodega Way.

CONCLUSION OF LAW

By receiving funds from Turner and depositing them into respondent's CTA; by assuring Turner that her the funds were spent on Bodega Way, by receiving funds pursuant to the Turner Joint Development

Agreement which specified that Mondragon had a duty to disclose, by disbursing the Turner funds to Hernandez by way of checks written out to cash, or written out to Hernandez without any receipt or other documentation from Hernandez, by not taking any steps to verify that Hernandez was spending the funds obtained from Turner and written out to "cash" or "Hernandez" on Bodega Way, by not distinguishing Turner's funds from the funds of any other investor in Bodega Way, by not advising Turner when Hernandez surrendered possession of Bodega Way to Eastside, and by not accurately maintaining records of Turner's funds and disbursement of Turner's funds on Bodega Way, respondent violated rule 4-100(B)(4), Rules of Professional Conduct.

COUNT FIVE
Case No. 06-O-13282

FACTS

1. The General Background Facts and the Facts of Counts Two through Four are hereby incorporated by reference.
2. On or about February 10, 2006, Turner wrote a letter to respondent addressed to 990 A St. Suite 401, San Rafael, California. Turner sent the letter to respondent via United States Postal Service, postage prepaid. In the letter of February 10, 2006, Turner asked respondent for a full accounting of the \$25,000 and \$100,000 payments she gave to respondent for Mondragon.
3. Respondent received Turner's February 10, 2006 letter shortly after February 10, 2006, and was aware of its contents. Respondent did not provide Turner with an accounting as requested.
4. On or about March 24, 2006, attorney Adamont Georgeson ("Georgeson") wrote to respondent on behalf of Turner. In his March 24, 2006 letter, Georgeson advised respondent that he was representing Turner. Georgeson requested a full accounting of the Turner funds that were received, deposited, and disbursed into and from respondent's CTA, related to Turner's investment and loan to Mondragon and Hernandez.
5. Respondent received Georgeson's letter of March 24, 2006, shortly after its mailing, and was aware of its contents. Respondent did not provide Turner with an accounting as requested by Georgeson.
6. On or about April 3, 2006, Georgeson and respondent spoke about the Turner funds. Respondent declined to provide Georgeson with an accounting of the Turner funds.

7. On or about April 3, 2006 Georgeson again wrote to respondent on behalf of Turner. In his April 3, 2006 letter, Georgeson again requested a full accounting of the Turner funds that were received, deposited, and disbursed into and from respondent's CTA related to Turner's investment and loan to Mondragon and Hernandez.

8. Respondent received Georgeson's April 3, 2006 letter shortly after its mailing, and was aware of its contents. Respondent did not provide Georgeson with the accounting as requested.

9. Respondent provided the State Bar with the Oct/Nov 2006 accounting to Turner. The Oct/Nov 2006 accounting consisted of a redacted ledger entitled "Jorge Hernandez Trust Account Activity." The first un-redacted line item noted a deposit from Turner dated "9/2" (year unspecified) for the sum of \$5,000; and another deposit from Turner dated "9/29" (year unspecified) for the sum of \$9,750. In addition to the redacted ledger, respondent produced copies of 188 checks, check numbers 1764 through 2186, totaling \$281,650.14 in disbursements from April 26, 2004, through September 21, 2005.

10. Respondent's Oct/Nov 2006 accounting of the Turner funds was defective in the following respects:

- (i) respondent's accounting did not account for the deposits of the total of \$125,000 in Turner funds;
- (ii) respondent did not create her accounting contemporaneously with her disbursement of the funds, respondent created the accounting after the fact in response to the State Bar's investigation;
- (iii) respondent did not distinguish, or account for, Turner's funds as distinguished from any other of the several investors in the Bodega Way project;
- (iv) respondent wrote a significant number of the checks out to "cash" or to "Hernandez" (at least \$25,690 beginning April 26, 2004, through February 12, 2005) and, by doing so, respondent was unable to specifically account for the Turner funds;

11. On or about May 27, 2005, respondent provided the State Bar with a purported accounting of client funds in connection with case number 05-O-01317 ("May 2005 accounting").

12. In the May 2005 accounting, respondent provided a client ledger for client Hernandez referenced "Evans v. Lerner."

13. In the May 2005 accounting, respondent listed 48 checks (totaling \$57,664.69) that she also provided in the Oct/Nov 2006 accounting.

14. In the Oct/Nov 2006 accounting, respondent attributed these same checks/disbursements to the Turner deposits, as funds disbursed on funding operations of Mondragon Development Corporation.

15. In the May 2005 accounting, respondent did not attribute any of the 48 checks to the Turner deposit.

16. A true and correct list of the checks which were duplicated in each accounting but attributed to different deposits, is hereby attached and incorporated as "Exhibit 1" to this Stipulation (which is the same "Exhibit 1" referenced in Count Four, page 11, paragraph 14 of this Stipulation).

CONCLUSION OF LAW

By not accounting for the receipt of \$125,000 from Turner in her accountings, by not accurately accounting for the distribution of the Turner funds, by not keeping contemporaneous client ledgers of the Turner disbursements, by not fully documenting the purposes of the disbursements to "cash" or "Hernandez," and by wrongfully attributing \$57,664.69 both to the Turner deposit and to other deposits, reflecting incomplete and inaccurate accounting, respondent failed to maintain, and to preserve for five years from final appropriate disposition, complete records of all client funds or other properties coming into Respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

COUNT SIX

Case No. 06-O-13282

FACTS

1. The General Background Facts and Facts of Counts Two through Five are hereby incorporated by reference.

CONCLUSION OF LAW

Respondent failed to render appropriate accounts to Turner regarding all Turner's funds coming into respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

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[COUNT SEVEN INTENTIONALLY OMITTED]

COUNT EIGHT
Case No. 06-O-13282

FACTS

1. The General Background Facts and the Facts of Counts Two through Six are hereby incorporated by reference.
2. Respondent assured Turner that Turner's \$125,000 investment would be spent on Bodega Way.
3. In fact, respondent exercised no oversight over the Turner funds, but merely funneled them through her CTA to Hernandez.
4. Respondent allowed Hernandez to use her CTA as Hernandez' business' operating account.
5. On or about January 24, 2007, respondent advised the State Bar that she directed investors to make their checks payable to respondent because "Hernandez did not have access to the banking system."


CONCLUSION OF LAW

By allowing her client, Hernandez, to use her CTA as a business operating account, and by issuing CTA checks to Hernandez and to "cash" with no contemporaneous, accurate accounting, and by holding investors' funds in the account without providing oversight or contemporaneous accounting, respondent with gross negligence, committed acts of moral turpitude, in violation of Business and Professions Code, section 6106.

COUNT NINE
Case No. 06-O-15469

FACTS

1. The General Background Facts and the Facts of Counts Two through Six, and eight are hereby incorporated by reference.
2. On or about June 10, 2004, Galyen went to respondent's law office, 900 4th Street, Fourth Floor, San Rafael, California, and entered into an agreement with Mondragon. Galyen signed a document entitled "Joint Development Agreement," which was presented to her by respondent ("Galyen Joint Development Agreement").


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3. The terms of the Galyen Joint Development Agreement stated that Galyen would provide \$25,000 to Mondragon to develop a single family residence at Bodega Way. Upon the sale of Bodega Way, Galyen would receive \$37,500 (\$12,500 net profit).

4. The Galyen Joint Development Agreement stated that Hernandez owned Bodega Way. Galyen was not aware that Hernandez did not own Bodega Way, and that Hernandez only had an option to purchase Bodega Way.

5. Respondent advised Galyen that she, respondent, would maintain Galyen's investment funds for Mondragon in her CTA, and assured Galyen that the funds would be spent on Bodega Way in accordance with the Galyen Joint Development Agreement.

6. Galyen invested in Mondragon in reliance upon respondent's assurance that respondent would be maintaining Galyen's investment funds in her CTA and monitoring the disbursement of the investment funds to the Bodega Way project.

7. In conformity with the Galyen Joint Development Agreement, Galyen gave respondent check number 1849, dated June 9, 2004, in the amount of \$25,000.

8. On or about June 11, 2004, respondent deposited Galyen's check for \$25,000 into her CTA.

9. The Galyen Joint Development Agreement between Galyen and Mondragon stated that: "Each party to this agreement has the option to secure, at her own expense, a viable accounting office to review the financial dealing of this endeavor. All parties shall cooperate with one another in disclosing all financial matters to the others. The parties owe one another a disclosure duty."

10. By receiving funds from Galyen and placing them into her CTA, by assuring Galyen that the funds would be spent on Bodega Way, and by receiving funds pursuant to the Galyen Joint Development Agreement which specified that Mondragon had a duty to disclose, respondent owed fiduciary duties to Galyen, to accurately maintain records of Galyen's funds and disburse Galyen's funds on Bodega Way.

11. Respondent disbursed the majority of her CTA funds to Hernandez by way of checks written out to "cash" or written out to "Hernandez" without any written request or other documentation from Hernandez. A true and correct partial accounting of respondent's disbursements to Hernandez, from her CTA from September 3, 2004, through February 12, 2005, is hereby attached and incorporated as "Exhibit

1" to this Stipulation (which is the same "Exhibit 1" referenced in Count Four, page 11, paragraph 14, and Count Five, page 14, paragraph 16 of this Stipulation). During this time period, respondent gave Hernandez 20 checks made out to "cash" or "Hernandez" for a total of \$25,690.

12. Respondent did not require any written request or other documentation from Hernandez, or take any steps to verify that Hernandez was spending the funds obtained from Galyen, and written out to "cash" or "Hernandez" on the Bodega Way project.

CONCLUSION OF LAW

By disbursing the Galyen funds to Hernandez by way of checks written out to "cash" or "Hernandez" without any written request or other documentation from Hernandez, by not taking any steps to verify that Hernandez was spending the funds obtained from Galyen, and written out to "cash" or "Hernandez" on the Bodega Way project, and by not distinguishing Galyen's funds from the funds of any other investor in the Bodega Way project, respondent violated rule 4-100(B)(4), Rules of Professional Conduct.

COUNT TEN Case No. 06-O-15469

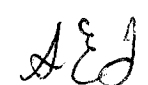

FACTS

1. The General Background Facts and the Facts of Counts Two through Six, and Eight through Nine are hereby incorporated by reference.

2. On or about November 28, 2005, Galyen went to respondent's office and spoke to respondent. Galyen requested a refund of her \$25,000 investment and a complete accounting of her \$25,000 investment.

3. Respondent was aware of Galyen's request for an accounting and did not provide her an accounting of her \$25,000 investment in Mondragon.

4. On or about March 14, 2007, respondent provided the State Bar with an accounting of Galyen's funds. Respondent's March 2007 accounting consisted of a one-page ledger sheet entitled "Client Trust Account: Barbara Gaylen (sic) Ledger." The ledger consisted of a list of sixteen checks numbered 1821 through 1920, for a total of \$25,000. Respondent represented to the State Bar that the checks were the disbursement of the Galyen funds on the Bodega Way property.



5. Respondent prepared the March 2007 accounting at the request of the State Bar. She did not prepare it contemporaneously with the expenditures noted on the accounting.

6. Each of the checks noted on respondent's March 2007 accounting, and attributed to the Galyen deposit, are also noted on respondent's Oct/Nov 2006 accounting. On the Oct/Nov 2006 accounting, respondent attributed these same checks to the Turner deposit of funds. Many of the checks were issued to "Hernandez" for "cash".

CONCLUSION OF LAW

By not keeping a contemporaneous client ledger of the Galyen disbursements; by not fully documenting the purposes of the disbursements other than to "cash" or "Hernandez"; and by wrongfully attributing \$25,000 in the exact same checks/disbursements both to the Galyen deposit and the Turner deposit, reflecting incomplete and inaccurate accounting, respondent failed to maintain, and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

COUNT ELEVEN Case No. 06-O-15469

FACTS

1. The General Background Facts and the Facts of Counts Two through Six, and Eight through Ten are hereby incorporated by reference.

CONCLUSION OF LAW

Respondent failed to render appropriate accounts to Galyen regarding all Galyen's funds coming into respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

[COUNT TWELVE INTENTIONALLY OMITTED]

COUNT THIRTEEN Case No. 06-O-15469

FACTS

1. The General Background Facts and the Facts of Counts Two through Six and Eight through Eleven are hereby incorporated by reference.


AEG

2. Respondent assured Galyen that Galyen's \$25,000 investment would be spent on Bodega Way.

3. In fact, respondent exercised no oversight over the Galyen funds, but merely funneled them through her CTA to Hernandez.

4. Respondent allowed Hernandez to use her CTA as Hernandez' business' operating account.

CONCLUSION OF LAW

By allowing her client, Hernandez, to use her CTA as a business operating account, and by making extensive cash payments to Hernandez, with no contemporaneous, accurate accounting; and by holding an investor's funds in the account without providing oversight or contemporaneous accounting, respondent with gross negligence, committed acts of moral turpitude, in violation of Business and Professions Code, section 6106.

COUNT FOURTEEN Case No. 09-O-13024

FACTS

1. The General Background Facts and the Facts of Counts Two and Three are hereby incorporated by reference.

2. On or about August 28, 2004, Hernandez solicited another \$25,000 investment in Bodega Way from De Araujo, promising another \$15,000 return within 180 days on the new \$25,000 investment. De Araujo invested another \$25,000 by check made out to "Sydney Fairbairn" as directed by Hernandez. Thereafter, the second \$25,000 check was deposited into respondent's CTA.

3. In addition to the \$50,000 invested in Bodega Way, De Araujo also contributed labor and equipment.

4. By receiving funds from De Araujo and placing them into her CTA, and by receiving funds pursuant to the Rivera/De Araujo Joint Development Agreement which specified that Mondragon had a duty to disclose, respondent owed fiduciary duties to De Araujo, to accurately maintain records of De Araujo's funds and to disburse De Araujo's funds on the Bodega Way project only.

5. Respondent disbursed the De Araujo funds to Hernandez without any written request or other documentation from Hernandez.

6. Respondent did not take any steps to verify that Hernandez was spending the funds obtained from De Araujo on Bodega Way.

CONCLUSION OF LAW

By disbursing the De Araujo funds to Hernandez without verifying that Hernandez was spending the funds obtained from De Araujo on Bodega Way, and by not distinguishing De Araujo's funds from the funds of any other investor in the Bodega Way project, respondent violated rule 4-100(B)(4).

PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A. (7) was November 9, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 9, 2009, the costs in this matter are at least \$6,130. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings. This figure does not include any costs associated with Lawyers' Assistance Program and/or Alternative Discipline Program costs and/or expenses, if any.

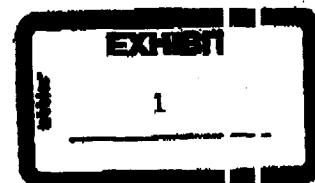
WAIVER OF OBJECTION TO CLIENT SECURITY FUND PAYMENTS

Respondent agrees to waive any objection to payment by the State Bar Client Security Fund of the principal amount of any restitution ordered by the State Bar Court in this case.

EXHIBIT 1

The "double credit" expenditures - i.e. listed as attributed to Turner's deposit in the handwritten ledger, as well as listed and attributed to a different depositor in the May 27, 2005 accounting, include, but are not limited, to the following:

DATE	CHECK #	AMOUNT	PAYEE	NOTATION, IF ANY
09/03/04	1995	5,000.00	cash	Hernandez
9/14/04	1004	2,500.00	cash	Hernandez
09/14/04	1005	1,500.00	Castellanos	Hernandez-Petaluma
09/14/08	1008	982.50	Moore	Investor Relation Services
09/14/04	1009	2,407.50		two explanations: On check - transfer to repair loan On ledger - payment of rent
09/17/04	1014	675.00	Prosser	Hernandez invoice
09/18/04	1015	2,800.00	cash	none
09/23/04	1023	80.00	JD	phone
10/21/04	2007	600.00	cash	Hernandez
10/22/04	2008	1,000.00	cash	Hernandez
10/22/04	2009	500.00	Jackson	Hernandez
10/3/04	2013	100.00	Hernandez	
11/19/04	2020	750.00	Moore	Hernandez
11/13/04	2022	3,000.00	cash	Hernandez
11/22/04	2021	38.56	Quill	Hernandez costs
12/13/04	2038	900.00	cash	Hernandez
12/3/04	2036	3,000.00	cash	Hernandez
12/16/04	2040	500.00	cash	Hernandez
12/21/04	2042	920.00	Tsang	Hernandez
01/15/05	2048	1,000.00	cash	Hernandez
11/18/05	2051	2,000.00	cash	Hernandez
11/18/05	2053	2,657.50	San Raf.	Rent (Hernandez)
11/24/05	2068	4,200.00	Kitchen	Hernandez
11/21/05	2067	2,000.00	Cash	payroll
11/20/04	2064	1,500.00	cash	Petaluma
01/20/05	2063	1,200.00	Kisser, etc.	Hernandez (Truman)
01/27/05	2073	145.13	Yardbirds	Hernandez
01/27/05	2072	2,000.00	Cash	Hernandez
01/26/05	2071	2,000.00	Just Remnants	Hernandez
01/24/05	2069	1,692.00	Yardbirds	Hernandez
01/31/05	2078	1,000.00	cash	Petaluma
01/28/05	2077	1,500.00	Hernandez	
01/28/05	2074	238.00	City of Petaluma	
02/04/05	2082	1,000.00	cash	
02/03/05	2081	1,035.00	Concrete	
02/02/05	2080	350.00	Electric	



Handwritten signature and initials.

<u>DATE</u>	<u>CHECK #</u>	<u>AMOUNT</u>	<u>PAYEE</u>	<u>NOTATION, IF ANY</u>
02/02/05	2079	750.00	blue print mart	
02/07/05	2086	1,507.50	San Rafael Plaza (rent)	
02/07/05	2085	3,000.00	Hernandez	
02/05/05	2084	1,000.00	Hernandez	
02/04/05	2083	1,000.00	Hernandez	
02/10/05	2091	400.00	Burke	Hernandez
02/09/05	2090	2,000.00	Hernandez	
02/09/05	2089	295.00	CYI Insurance	
02/09/05	2088	1,161.00	Shannonrock (Hernandez)	
02/23/05	2103	500.00	Cash	Hernandez
02/19/05	2102	1,000.00	Hernandez	
02/12/05	2092	2,000.00	Hernandez	

TOTAL CHECKS: 48

TOTAL AMOUNT: \$57,664.69

[Handwritten signature]

AEJ

(Do not write above this line.)

In the Matter of
Sydney E. Fairbairn

Case number(s):

05-O-1317 [06-O-13282; 06-O-15469; 07-O-13110]-PEM

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

11/13/09
Date

11.10.09
Date

11/18/09
Date

Sydney E. Fairbairn
Respondent's Signature

Phillip Feldman
Respondent's Counsel's Signature

Sherrie B. McLetchie
Deputy Trial Counsel's Signature

Sydney E. Fairbairn
Print Name

Phillip Feldman
Print Name

Sherrie B. McLetchie
Print Name

(Do not write above this line.)

In the Matter Of Sydney E. Fairbairn	Case Number(s): 05-o-1317 [06-O-13282; 06-O-15469; 07-O-13110; 09-O-13024]-PEM
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

Dec 14, 2009
Date

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on December 14, 2009, I deposited a true copy of the following document(s):


STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

SYDNEY E. FAIRBAIRN, ESQ.
ERICA DENNINGS, ESQ.

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 14, 2009**


Laurretta Cramer
Case Administrator
State Bar Court