

BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF FINANCIAL PROTECTION
AND INNOVATION,

Complainant,

v.

C. GULL ESCROW, INC.,

Respondent.

Agency Case No. 9632025

OAH No. 2024080869

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Financial Protection and Innovation as its Decision in the above-entitled matter, with technical or other minor changes as shown on the Errata Sheet. The attached Errata Sheet is incorporated by reference pursuant to Government Code section 11517, subdivision (c)(2)(C).

This Decision shall become effective on March 23, 2025.

IT IS SO ORDERED THIS 21st day of February 2025.




KHALIL C. MOHSENI
Commissioner of Financial Protection and Innovation

**BEFORE THE
DEPARTMENT OF FINANCIAL PROTECTION
AND INNOVATION
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

C. GULL ESCROW, INC.,

Escrow License No. 963-2025

Respondent.

Agency Case No. 9632025

OAH No. 2024080869

PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on October 14, 2024, by videoconference.

Senior Counsels Marlou de Luna and Louis T. Laverone represented complainant Clothilde V. Hewlett, Commissioner of Financial Protection and Innovation (Department). No appearance was made by, or on behalf of, respondent C. Gull Escrow, Inc.

Documentary evidence and testimony were received. The record closed and the matter was submitted for decision on the hearing day.

SUMMARY

Complainant alleges respondent's escrow agent license is subject to discipline for failing to file timely file annual audit reports for fiscal years 2019 and 2020, failure to file an annual audit report for fiscal year 2021, failure to maintain adequate tangible assets, including liquid assets, and failure to prepare its balance sheets and income statements in accordance with Generally Accepted Accounting Principles. Respondent did not appear at the hearing and offered no defense to complainant's charges.

Complainant proved its charges by a preponderance of the evidence. Complainant seeks penalties in the amount of \$81,500 for the late filings and revocation of respondent's license. Considering the severity of respondent's misconduct and the absence of any mitigation or rehabilitation evidence, imposition of the monetary penalty sought by respondent and revocation of respondent's license is warranted.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent, a California corporation, is an escrow agent licensed by the Department under the California Escrow Law, Financial Code section 17000 et seq. Respondent received its escrow agent license on December 16, 2003. Frank J. Lynch, IV (Lynch) is respondent's president and chief financial officer.

2. On July 15, 2022, complainant issued an Accusation and Notice of Intention to Issue Order Revoking Escrow Agent's License against respondent. The Accusation charged respondent with failing to file annual audit reports for fiscal years

2019 and 2020; filing to maintain required minimum tangible assets, including liquid assets; and failing to file statements prepared in accordance with Generally Accepted Accounting Principles (GAAP).

3. On August 5, 2022, respondent filed a notice of defense challenging the charges and requesting a hearing.

4. On December 11, 2023, complainant issued an Amended Accusation, the operative pleading for this matter. The Amended Accusation added an additional charge of failing to file an annual audit report for fiscal year 2021. Pursuant to Government Code section 11507, the additional charges in the Amended Accusation are deemed controverted.

5. On August 23, 2024, OAH served both parties with a Notice of Assigned Hearing Dates notifying them of the hearing date and information for accessing the videoconference platform to be used. OAH mailed and electronically transmitted the hearing notice to both parties. The address used for respondent was the same as the address listed in the Notice of Defense.

6. On the hearing day, as neither respondent nor any representative appeared for respondent, complainant moved to proceed with the hearing pursuant to Government Code section 11520, subdivision (a), which, in pertinent part, provides, "If the respondent . . . fails . . . to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent[.]" Complainant's motion was granted and the hearing ensued.

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Charges Alleged Against Respondent

FAILURE TO FILE ANNUAL CHARGES

7. Licensed escrow agents such as respondent are required to file an annual audit report each fiscal year. The reports are due 105 days after the end of the escrow agent's fiscal year. Department Financial Institutions Manager Sultanna Wan, a Department employee of almost 15 years, testified at the hearing that the purpose of annual audit reports is to ensure licensees are in sound financial condition.

8. Respondent's fiscal year ends on December 31. For fiscal year 2019, respondent was required to file its annual audit report on or before April 15, 2020. On April 30, 2020, Lynch emailed Department personnel seeking a 90-day extension to file respondent's 2019 annual audit report. (Exh. 26, p. A219.) In light of the COVID-19 health crisis, the Department extended the due date to June 15, 2020. (*Id.* at p.A221.) Lynch did not file respondent's 2019 annual audit report by the extended due date, June 15, 2020.

9. On June 23, 2020, Department staff issued a written demand to respondent that it file the 2019 annual audit report within 10 days. (Exh. 26, p. A224) On June 26, 2020, Lynch requested a second extension, which Department staff denied. (*Id.* at pp. A229 and A233.) Lynch filed the 2019 annual audit report on December 4, 2020, 151 days after the extended due date of June 15, 2020.

10. For fiscal year 2020, respondent was required to file its annual audit report on or before April 15, 2021. Department staff issued to respondent a written demand requiring respondent to file the report by June 3, 2021. (Exh. 27, p. A238.) Lynch filed the 2020 annual audit report on June 25, 2021, 21 days after the June 3, 2021 due date set out in the written demand. (*Id.* at p. A243.)

11. Respondent failed to file an annual audit report for fiscal year 2021. Although Department staff sent a demand letter seeking the report by September 10, 2022, respondent did not respond. (Exh. 22, pp. A154-A155.)

FAILURE TO MAINTAIN REQUIRED LIQUID ASSETS AND TANGIBLE NET WORTH

12. Escrow agents are required to maintain a tangible net worth of \$50,000, including liquid assets of at least \$25,000 in excess of current liabilities.

13. Respondent's 2019 annual audit report reflected a tangible net worth deficiency of \$61,848 and a liquid asset deficiency of \$70,267.00 (Exh. 21, p. A148.) In a letter dated December 8, 2020, complainant directed respondent to correct these liquid asset and tangible net worth deficiencies within 30 days and to provide the company's November 2020 financial statement and a bank letter to substantiate the amount of a certificate of deposit (CD) listed in the 2019 annual audit report. (Exh. 21, p. A149.) Respondent provided a letter stating it had corrected the liquid asset deficiency (Exh. 23, p. A164.) but did not provide the company's November 2020 financial statement. According to Ms. Wan's testimony, complainant requested respondent submit proof of a cash infusion to correct the liquid asset and tangible net worth deficiencies reflected in the 2019 annual audit report and respondent did not comply with this request.

14. On January 25, 2021, Lynch sent a communication to the Department stating he was unable to have his accountant complete the company's 2020 accounting records but there had been two cash infusions made to its accounts to correct the deficiencies. The first, one from another company for which Lynch is the sole shareholder, All California Brokerage, Inc (ACBI), was for \$20,000 and the second,

a loan of \$23,000 from the Paycheck Protection Program (PPP), a total of \$43,000 was insufficient to offset the deficiencies reflected in the 2019 annual audit report.

15. Although respondent maintained there was a subsequent \$5,000 infusion from ACBI, Ms. Wan determined that still was not enough to offset the asset deficiencies. According to her testimony, respondent's bank account balance for the relevant period was \$37,730.60. That total was less than the three infusions of cash - \$23,000 plus \$5,000 from ACBI as well as the \$20,000 from the PPP loan, a total of \$48,000 - respondent represented had been deposited to offset the asset deficiencies reflected in the 2019 annual audit report.

16. Respondent did not provide further evidence establishing it had cured the asset deficiencies. A balance sheet for the period December 31, 2019 reflects unaddressed deficiencies as follows: Regarding gross tangible assets, respondent's gross tangible assets' value totaled \$36,215.00 and its liabilities totaled \$48,063.99, resulting in a tangible net worth of negative \$11,848. Given the requirement that escrow agents maintain tangible assets of \$50,000, the balance sheet's data represented a deficiency of negative \$61,848.00. Regarding liquid assets, the same balance sheet reflected that respondent retained liquid assets totaling \$2,796.00 and carried current liabilities of \$48,063.00, a net liquid asset of negative \$45,267.00. Given the requirement that escrow agents maintain liquid assets of \$25,000, the balance sheet reflects a deficiency of negative \$70,267.00. (Exh. 21, p. A148.)

17. Ms. Wan stated licensees must correct deficiencies to avoid the temptation to "dip into" funds licensees maintain in trust in order to operate. The purpose of the tangible asset minimums is therefore to protect consumers from licensees operating without sufficient working capital.

FAILURE TO FILE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

18. Under applicable law, escrow agents are required to include balance sheets with annual audit reports and these balance sheets are required to be prepared in accordance with GAAP, a set of standardized rules and guidelines used to govern financial reporting and accounting principles.

19. During her testimony, Ms. Wan stated her review of a balance sheet submitted by respondent revealed multiple entries inconsistent with GAAP, including (i) the balance sheet does not contain the name of whomever prepared it nor the period of time it is intended to cover, simply stating "All Dates"; (ii) a cash adjustment (correction \$4,750 does not contain sufficient explanation of its purpose or origin; (iii) a line item named "uncategorized asset" of \$1,344.51 is improper as, under GAAP, all assets must be identified and properly categorized; and (iv) while the bank statements indicate respondent is operating at a loss, the balance sheet shows positive cash flow. (Exh 23, pp. 166-169.)

Respondent's Attempted License Surrender

20. On April 18, 2022, respondent attempted to surrender its license. Department Licensing Examiner Mary Queen Padilla was assigned to administer respondent's surrender package. Ms. Padilla found respondent's package, including the required closing audit, was insufficient to be approved by the Department. In particular, the closing audit respondent submitted included two unexplained disbursements of \$427,500 and \$143,577.89. The Department made multiple attempts to obtain an adequate explanation of why respondent made these disbursements and with what authorization but respondent never provided an adequate explanation. Due

to respondent's failure to explain the disbursements, the Department did not accept respondent's surrender package.

21. At the hearing, both Ms. Padilla and complainant's final witness, Department Financial Manager Gary Suzuki, emphasized how concerning and inconsistent with consumer safety the unexplained disbursements were. As Mr. Suzuki stated during his testimony, respondent's disbursements were not typical of transactions related to escrow operations. They appeared to be made to a vendor respondent used but without invoices or other documentation establishing their validity. Considering the fiduciary duties escrow agents perform, such large transactions raise the possibility of misuse of client funds. Nonetheless, the Amended Accusation does not contain grounds for license discipline based on respondent's surrender application or the unexplained disbursements in the associated closing audit.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the moving party, complainant bears the burden of proof "as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.) Complainant maintained and nothing in the record controverts that an escrow agent is a nonprofessional occupational license. Therefore, the standard of proof is preponderance of the evidence. (*Mann v. DMV* (1999) 76 Cal.App.312, 318-319.) The term "preponderance of the evidence" means "evidence that has more convincing force than that opposed to it" or "more

likely than not." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2000) 171 Cal.App.4th 1549, 1567; *Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1387-1388.)

Authority to Discipline Licensees

2. Financial Code section 17602.5 provides:

If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the day designated for the making of the reports, or within any extension of time granted by the commissioner, or fails to include therein any matter required by law or by the commissioner, such failure shall constitute ground for the suspension or revocation of the license held by such escrow agent.

3. Financial Code section 17608, subdivision (b) authorizes the commissioner to suspend or revoke a license if the licensee has violated any provision of the Escrow Law or any rule made by the commissioner.

Grounds for Discipline

FAILURE TO FILE ANNUAL AUDIT REPORTS

4. Financial Code section 17406 provides that all licensees under the Escrow Law are required to file an annual audit report within 105 days after the close of their fiscal year. Pursuant to Financial Code section 17408, the Commissioner may impose a financial penalty when licensees fail to file required reports. The penalty formula for late reports is \$100 per day for the first five days the report is overdue, and \$500 per day thereafter.

5. As set out in Factual Findings 8 and 9, respondent filed its 2019 annual audit report 151 days late. Therefore, the penalty for the 2019 late filing is \$500 (\$100 x five) for the first five days and \$73,000 (\$500 x 146) for the following 146 day, a total of \$73, 500.

6. As set out in Factual Finding 10, respondent filed its 2020 annual audit report 21 days late. Therefore, the penalty for the 2020 late filing is \$500 for the first five days and \$8,000 (\$500 x 16) for the remaining days, a total of \$8,500.

7. As set out in Factual Finding 11, respondent did not file its 2021 annual audit report.

FAILURE TO MAINTAIN REQUIRED LIQUID ASSETS AND TANGIBLE NET WORTH

8. Pursuant to Financial Code section 17210, licensees are required to maintain a tangible net worth of \$50,000, including liquid assets of at least \$25,000 in excess of current liabilities.

9. As set out in Factual Finding 16, respondent failed to meet the required tangible net worth and liquid asset minimum requirements.

FAILURE TO FILE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

10. Pursuant to Financial Code section 17406, all reports and financial statements referred to in Financial Code section 17406, which include balance sheets for all annual audit reports, be prepared in accordance with GAAP.

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11. As set out in Factual Finding 19, Ms. Wan identified multiple errors she maintained were GAAP errors. However, complainant did not provide or reference the GAAP provisions at issue. As such, complainant did not sufficiently prove all the elements required to establish this cause for discipline.

Disposition

12. A preponderance of the evidence established respondent is subject to penalties totaling \$81,500.00 for failing to timely file its annual audit reports for fiscal years 2019 and 2020.

13. A preponderance of the evidence established grounds for revoking respondent's escrow agent's license for failing to timely file its annual audit reports for fiscal years 2019 and 2020, failure to file its annual audit report for fiscal year 2021; and failure to maintain sufficient levels of tangible assets, including liquid assets. As respondent did not appear, no evidence of mitigation or rehabilitation was presented. Under these circumstances and given the important consumer protections compromised by respondent's transgressions, nothing short of revocation is appropriate.

ORDER

1. Respondent C. Gull Escrow, Inc. is assessed a penalty of \$81,500, payable to the Department under terms established by the Department.

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2. The escrow agent's license, Escrow License No. 963-2025, issued to respondent is revoked.

DATE: 11/13/2024


Deena R. Ghaly (Nov 13, 2024 13:31 PST)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings

ERRATA SHEET

(Changes to Proposed Decision – In the Matter of the Accusation against C. Gull
Escrow, Inc.– OAH No. 2024080869)

1. On Page 2, in the “Summary” section, second paragraph, amend “\$81,500” to “\$82,000.”
2. On Page 3, in the “actual Findings, Jurisdictional Matters” section, Paragraph 2, amend “filing” to “failing.”
3. On Page 11, in the “Disposition” section, Paragraph 12, amend “\$81,500” to “\$82,000.”
4. On Page 11, in the “Order” section, Paragraph 1, amend “\$81,500” to “\$82,000.”