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 14 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
 15 OF THE STATE OF CALIFORNIA

16	In the Matter of:)	ESCROW LICENSE NO.: 963-2665
17)	
18	THE COMMISSIONER OF FINANCIAL)	
19	PROTECTION AND INNOVATION,)	
20)	ORDER TO DISCONTINUE ESCROW
21	Complainant,)	ACTIVITIES PURSUANT TO FINANCIAL
22)	CODE SECTION 17415
23	v.)	
24	FIVE STAR ESCROW,)	
25)	
26	Respondent.)	
)	

27 TO: FIVE STAR ESCROW
 28 10509 Vista Sorrento Parkway, Suite 300
 San Diego, California 92121

1 THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION FINDS THAT:

2 1. Five Star Escrow (Five Star) is licensed as an escrow agent under the California
3 Escrow Law (Escrow Law) (Fin. Code, § 17000 et seq.), with license number 963-2665.

4 2. Five Star’s principal place of business is located at 10509 Vista Sorrento Parkway,
5 Suite 300, San Diego, California 92121.

6 3. The California Department of Financial Protection and Innovation (DFPI)
7 commenced a special examination of Five Star’s books and records on October 10, 2023, after the
8 DFPI was contacted by Five Star’s counsel regarding an incident involving Five Star and Escrow
9 13412-D, in which Five Star believed proceeds from the sale were wired to a fraudulently created
10 bank account for which the seller had no access. The special examination resulted in the following
11 findings:

- 12 a. On or about August 16, 2023, Five Star opened Escrow No. 13412-D. As part of the
13 sale transaction, there was a dual agent broker representing the seller and buyer, who
14 was also the foreclosure attorney for the seller (Agent).
- 15 b. Escrow closed on September 6, 2023, and notarized escrow wire instructions for the
16 proceeds were emailed from the Agent to Five Star the same day, identifying the bank
17 account as the Agent’s client trust account.
- 18 c. According to Five Star, the Agent has claimed that all emails to and from his account
19 beginning on September 8, 2023, were not from him. On September 8, 2023, Five
20 Star received an email from an individual who allegedly impersonated the Agent
21 (Imposter). The Imposter emailed Five Star and stated that the seller had changed
22 their mind and wanted all the proceeds to be wired to their direct account, which was
23 a different account from the September 6, 2023, wire instructions.
- 24 d. Per the September 8, 2023, email exchanged, the Imposter states he included the
25 seller in the conversation. Upon investigating the matter, Five Star states the email
26 address for the seller in the CC address line was different from the email address of
27 the actual seller (Spoofed Seller Email).
- 28 e. Five Star requested notarized wire instructions and a newly signed addendum to the

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purchase agreement so they could distribute the funds to the new account. Later that day on September 8, 2023, the Imposter emailed Five Star the new wire instructions, which were not properly notarized.

f. Five Star’s escrow officer then called the phone number obtained from the Spoofed Seller Email to verbally verify the new escrow wire out instructions. Upon investigating the matter, the seller stated she never received a phone call.

g. On September 11, 2023, the Imposter provided a signed copy of the new addendum by both parties, which once received Five Star initiated the wire out for \$708,197.34 on the same day in the benefit of the seller. In making the disbursement, Five Star did not adhere to its wire transfer policy, which states that all wire transfer instructions must be notarized.

h. On September 20, 2023, the Agent’s employee contacted Five Star and stated that the Agent had not received the seller’s proceeds. On September 20, 2023, Five Star contacted the Federal Bureau of Investigation (FBI) and filed a complaint form to report the issue as they felt fraud was involved.

i. Five Star failed to immediately report the unauthorized disbursement to the DFPI. Despite being aware of the unauthorized disbursement on September 20, 2023, and notifying the FBI, Five Star did not notify the DFPI of the unauthorized disbursement until October 3, 2023, more than 12 days after the unauthorized disbursement occurred.

4. The unauthorized disbursement caused a total trust shortage of \$708,197.34. Five Star claims that it has recovered \$35,484.45 from the fraudulent wire; however, the DFPI has received no documentary evidence of this recovery.

5. On September 6, 2024, the DFPI sent a demand letter to Five Star to replenish the trust shortage caused by the unauthorized disbursement. The demand letter demanded that Five Star replenish \$672,712.89 and provide supporting documentation for the alleged recovered funds of \$35,484.45 by Five Star. Thus far, Five Star has not replenished the trust shortage or provided evidence that any amount has been recovered.

1 6. Five Star was already subject to an order to discontinue violations, pursuant to a
2 consent Order dated June 6, 2019 (2019 Consent Order), as a result of a similar type of incident
3 where funds that were actually due to the principals of the transaction were diverted to an imposter
4 by false emailed wiring instructions and Five Star failed to timely notify the DFPI of the
5 unauthorized disbursement.

6 7. The unauthorized disbursement made on September 11, 2023 is now Five Star’s
7 second instance of failing to immediately report the unauthorized disbursement of trust funds to the
8 Commissioner, in violation of Financial Code section 17414, subdivision (c), and the second time
9 that Five Star’s compliance systems failed to adequately prevent these types of unauthorized
10 disbursements.

11 8. Based on the foregoing, the Commissioner finds that Five Star has:

- 12 a. made an unauthorized disbursement from the trust account, in violation of
- 13 Financial Code section 17414, subdivision (a)(1) and California Code of
- 14 Regulations, title 10, section 1738;
- 15 b. failed to maintain a proper audit trail and adequate controls and safeguards for
- 16 funds disbursed by wire transfer in violation of California Code of Regulations,
- 17 title 10, section 1738, subdivision (b)(4);
- 18 c. failed to follow written escrow instructions, in violation of California Code of
- 19 Regulations, title 10, section 1738.2;
- 20 d. caused a shortage in the trust account of at least \$933.357, in violation of
- 21 California Code of Regulations, title 10, section 1738.1.; and
- 22 e. failed to immediately report the unauthorized disbursement of trust funds to the
- 23 Commissioner in violation of California Financial Code section 17414,
- 24 subdivision (c).

25 9. The Commissioner also finds that Five Star is conducting escrow business in such an
26 unsafe or injurious manner as to render further operations hazardous to the public or to customers.

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10. Financial Code section 17415 provides as follows:

(a) If the commissioner, as a result of any examination or from any report made to the commissioner, shall find that any person subject to this division is in an insolvent condition, is conducting or has conducted escrow business in such an unsafe or injurious manner as to render further operations hazardous to the public or to customers, is failing or has failed to comply with the provisions of Section 17212.1 or 17414.1, is permitting or has permitted its tangible net worth to be lower than the minimum required by law, is failing or has failed to maintain its liquid assets in excess of current liabilities as set forth in Section 17210, or is failing or has failed to comply with the bonding requirements of Chapter 2 (commencing with Section 17200) of this division, the commissioner may, by an order addressed to and served by registered or certified mail or by personal service on such person and on any other person having in their possession or control any escrowed funds, trust funds, or other property deposited in escrow with said person, direct discontinuance of the disbursement of trust funds by the parties or any of them, the receipt of trust funds, the delivery or recording of documents received in escrow, or other business operations. No person having in their possession any of these funds or documents shall be liable for failure to comply with the order unless they received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner in whole or in part, the person is the subject of an order for relief in bankruptcy, or pursuant to Chapter 6 (commencing with Section 17621) of this division the commissioner has assumed possession of the escrow agent.

(b) Within 15 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

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NOW, THEREFORE, BASED UPON THE FOREGOING, AND GOOD CAUSE APPEARING, it is hereby ORDERED, under the provisions of Financial Code section 17415, that Five Star Escrow immediately discontinue acceptance of any new escrow or joint control business, and of money, documents or other property in connection therewith.

This order is to remain in full force and effect until further order of the Commissioner.

Dated: September 12, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division