

BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

v.

ALL ESCROW SERVICES, INC.

Respondent.

Case No. 963-1892

OAH No. L2007100909

FINAL DECISION (AFTER
REJECTION OF PROPOSED
DECISION) AND ORDER

This matter was scheduled regularly for hearing on March 12, 2008, in Los Angeles, California, before Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, State of California.

Preston DuFauchard, the California Corporations Commissioner (Complainant or Commissioner), was represented by Blaine A. Noblett, Corporations Counsel.

All Escrow Services (Respondent) was present and was represented by Edward Wankovsky, Secretary/Treasurer of All Escrow Services.

Oral and documentary evidence were received. The record was left open until April 11, 2008, to permit the parties to submit written closing arguments, which were timely received, read, considered and marked for identification. The record was closed on April 11, 2008, and the matter was submitted for decision.

In this action Complainant seeks to impose fines totaling \$3,300 on All Escrow Services, Inc., for failure to timely file its annual audit report containing audited financial statements for its fiscal year ended January 31, 2007, as required by Financial Code Section 17406.

On April 23, 2008, the Administrative Law Judge issued a Proposed Decision that was served on all parties by the Department of Corporations on May 28, 2008, in accordance with Government Code section 11517(c)(1). The Proposed Decision was not adopted as the Decision in this matter.

Pursuant to section 11517(c)(2)(E) of the Government Code, all parties were served on July 30, 2008, with an Order of Rejection of Proposed Decision of the Administrative Law Judge and notified that the case would be decided by the California Corporations Commissioner upon the record and upon any written argument offered by the parties.

Pursuant to section 11517(c)(2)(E)(iv) of the Government Code, all parties were served on August 8, 2008, with an Order to Delay Final Decision from September 12, 2008, to on or before October 10, 2008. The parties were permitted to

submit written argument by September 15, 2008. Complainant and Respondent submitted timely written argument.

The record in this case, including the transcript of the proceedings of March 12, 2008, has been given careful consideration. The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated April 23, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following technical and minor changes pursuant to Government Code Section 11517(c)(2)(E).

In the CONCLUSIONS OF LAW section of the Proposed Decision, on page 4, in item number 8, line number 4: "14806" should be "17408"; in item number 9, line number 6: "14708" should be "17408"; item number 9, line number 8: "In re Neilsen's Estate" should be "In re Neilson's Estate"; and on page 5, item number 10, line number 9: "14708" should be "17408"; and item number 11, line number 7: "14706" should be "17406".

This Decision shall become effective on October 9, 2008.

IT IS SO ORDERED.

DATED: October 8, 2008.

PRESTON DuFAUCHARD
CALIFORNIA CORPORATIONS COMMISSIONER

Inc. ("Respondent" or, alternatively, "All Escrow") constitute a "written demand" as set forth in Financial Code section 17408(b)¹? The Complainant, in response to the Commissioner's request, submits the following written argument.

II.

STATEMENT OF FACTS

All Escrow is an escrow agent licensed by the Commissioner pursuant to the California Escrow Law, Code section 17000, *et seq.* (hereinafter referred to as the "Escrow Law").

Respondent received its escrow license from the Commissioner on January 5, 2001.

All Escrow's fiscal year end is January 31st. (Complainant's Exhibit 6, pp. 17, 18-19, 20.) Respondent's annual audit report was to have been filed with the Department not later than May 15, 2007. (*Id.*)

On or about December 11, 2006, the Commissioner's Senior Examiner sent Respondent a letter, informing All Escrow that its annual audit report for its fiscal year ended January 31, 2007 was to be filed with the Department not later than May 15, 2007. (Complainant's Attachment 'A' to Exhibit 6, pp. 18-19 [the "December 11th Letter"].)

Again on May 31, 2007, shortly after the due date for All Escrow's annual audit report, the Commissioner sent Respondent a second letter by return receipt, which it received on June 4, 2007. (Complainant's Attachment 'B' to Exhibit 6, p. 20 [the "May 31st Letter"].)

On June 18, 2007, the Department received All Escrow's annual audit report. (Complainant's Exhibits 6, p. 17, 7, and 8.) By the Complainant's calculation, All Escrow's annual audit report was thirty-three (33) days late. (Complainant's Exhibit 6.)

III.

WHAT CONSTITUTES A WRITTEN DEMAND FOR PURPOSES OF SECTION 17408(b) OF THE CODE?

Subdivision (a) of Code section 17406 requires licensees to submit an audit report containing

¹ All further statutory references are to the Financial Code ("Code"), unless otherwise noted.

audited financial statements within 105 days after the close of its fiscal year. (*See* Fin. Code, § 17406, subd. (a).)

In the event a licensee fails to submit its annual audit report within 105 days after the close of its fiscal year, the Commissioner may impose a penalty “. . . within the time specified in any *written demand* . . . ” (Fin. Code, § 17408, subd. (b).) (Emphasis added.)

These are the only two sections of the Code implicated in the present proceeding. One requires a licensee to submit its annual report within 105 days of the close of its fiscal year. The other authorizes the Commissioner, after making a demand for the annual audit report, to impose a penalty for any late filing. The Code, nevertheless, does not define the word "demand" for purposes of the Escrow Law. Thus, the first question that must be answered in addressing the Commissioner's inquiry is what is meant by the term "demand."

While the word demand is not defined under the Escrow Law, the Complainant may turn to the common meaning of a word in construing it for purposes of the Code.² In *Smith v. Municipal Court of Glendale* (1959) 167 Cal.App.2d 534, 538, the California Appellate Court for the Second District found that if a particular law does not define a word, it is assumed that the Legislature intended the word to have its ordinary meaning. The Court in *Smith* then went on to find that the word demand was defined in its ordinary usage as "[a]n asking with authority, claiming or challenging as due." (*Id.* at 538.)

The definition given demand in *Smith* is consistent with the definitions set forth in the dictionary: "[t]o ask for urgently or firmly, leaving no chance for refusal or denial. To claim as just or due. To need or require as useful, just, proper, or necessary." (*New College Edition of the American Heritage Dict.* (1980) p. 350, col. 2.); "[t]o claim as one's due; to require . . ." (*Black's Law Dict.* (7th ed.) p. 441, col. 2.)

Furthermore, the Supreme Court in *Williams v. Long* (1903) 139 Cal. 186, held that as a general rule, in the absence of a statute, no formal language is necessary to constitute a valid demand,

² (*See Turner v. General Motors Acceptance Corp.* (1999) 180 F.3d 451, 455. citing *U.S. v. Perrin* (1979) 444 U.S. 37, 42 ["A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."].) (Exhibit 'A' to Appendix of Authorities, submitted herewith.)

because "[a]ny language is sufficient which is so clear as to leave no doubt or misunderstanding as to what is intended by the request." (*Williams v. Long, supra*, 139 Cal. 186 at 189.) (Citation omitted.)

In the instant case, while there is a statute requiring the Commissioner to make a "written demand," the statute does not specify the type of demand or the language required when such a demand is made. (*See* Fin. Code, § 17408, subd. (b).) Thus, in light of *Williams*, we must conclude that so long as the Commissioner's request is so clear as to leave a licensee with no doubt or misunderstanding as to what is intended, a demand has been made which comports with section 17408, subdivision (b) of the Code.

Based upon the foregoing authorities, there can be no question but that both of the Complainant's letters sent to Respondent constitute written demands within the meaning of the Escrow Law.

IV.

THE COMPLAINANT'S DECEMBER 11TH LETTER CONSTITUTES A WRITTEN DEMAND FOR PURPOSES OF SECTION 17408(b) OF THE CODE

The Complainant's December 11th Letter, mailed to Respondent at its address of record on file with the Commissioner, states in relevant part:

The provisions of Financial Code Section 17406 require that each escrow agent licensee submit to the Commissioner, on or before 105 days after the close of its fiscal year, an audit report prepared by an independent certified public accountant (CPA) or an independent public accountant. The Department's records show that your fiscal year ends on January 31, 2007. *The audit report must be filed with the Department not later than May 15, 2007.*

The penalties for failure to file the audit report by the due date of May 15, 2007... is \$100 per day for the first five days the report is overdue and \$500 per day thereafter for each day the report is overdue in accordance with the provisions of Financial Code Section 17408 . . ." (December 11th Letter.) (Emphasis added.)

In light of *Smith's* definition of the word demand, i.e., "an asking with authority," the Complainant's December 11th Letter to Respondent constitutes a written demand for purposes of section 17408, subdivision (b). First, citing Code section 17406, the letter sets forth the time period

in which Respondent must submit its annual report, "105 days after the close of its fiscal year." (December 11th Letter). Second, the Complainant's correspondence sets forth the date its annual audit report is to be filed, "not later than May 15, 2007." (*Id.*) (Emphasis added.) Third, the Complainant clearly informs the Respondent that penalties will attach should it file the report later than the May 15th, 2007 deadline. (*See id.*) Clearly, then, the Department's December 11th Letter leaves no doubt or misunderstanding as to what is intended by the request. Either Respondent tenders its annual audit report to the Commissioner by May 15, 2007, or it is to face penalties calculated at the statutory rate. (*See id.*) The Complainant's December 11th Letter is a demand within the meaning of the Code. (*See In the Matter of the Commissioner of Corporations of the State of California v. Armstrong Escrow Corporation*, OAH Case No. L2000090275, dated February 9, 2001 at p. 4, ¶ 7 [the court held that the Commissioner's first demand letter, written before the licensee's annual audit report was due, constituted a "written demand" within the terms of subdivision (b) of section 17408].) (Exhibit 'B' to Appendix of Authorities, submitted herewith.)

Here, in the instant case, after receiving the Complainant's December 11th Letter, Respondent failed to timely submit its annual audit report within the deadline set forth in the Commissioner's written demand. Accordingly, the Commissioner may impose penalties against the Respondent, calculated at the statutory rate.

A. Even Assuming Arguendo that the Commissioner's December 11th Letter is Not Considered a "Demand," The Commissioner Sent a Second Letter to Respondent Dated May 31st, which Satisfies Code section 17408(b)

Administrative Law Judge ("ALT") Ralph B. Dash opines that the Commissioner's December 11th Letter, written six weeks before the due date of the annual audit report, cannot constitute a valid written demand, since it is presumed that people comply with the law and at the point in time that the letter was written the Complainant had no reason to believe Respondent would not comply. (*See Proposed Decision* at p. 4, ¶ 9.) However, even assuming arguendo that the Commissioner agrees with the Court's analysis on this issue, the Department had sent Respondent a second letter dated May 31st, which must constitute a valid written demand under the Escrow Law for the reasons that follow.

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THE COMPLAINANT'S MAY 31ST LETTER CONSTITUTES A WRITTEN DEMAND
FOR PURPOSES OF CODE SECTION 17408(b)

The Complainant's May 31st Letter may also be construed as a written demand for purposes of section 17408, subdivision (b). Here, the Department's May 31st Letter informs the Respondent that its annual audit report was not received for the fiscal year ended January 31, 2007. (*See* May 31st Letter.) The letter goes on to state that Respondent's annual audit report was due on May 15, 2007. (*Id.*) Finally, the Department in its letter states that penalties will attach for Respondent's failure to timely submit its annual audit report. (*See id.*) Clearly the Complainant's May 31st Letter constitutes a written demand for purposes of section 17408, subdivision (b), as it leaves no doubt or misunderstanding as to what is intended by the request.

A. In the Alternative, Under *Armstrong* the Complainant's May 31st Letter Qualifies as a Demand for Purposes of the Code

Even assuming arguendo that the Complainant's May 31st Letter does not constitute a written demand, because the letter was expressed in terms of a reminder and warning, such a view is inapposite to prior decision³ adopted by the Commissioner, in which the court held that such a "warning letter" satisfied the "demand" requirement of subdivision (b) of section 17408 of the Code. (*In the Matter of the Commissioner of Corporations of the State of California v. Armstrong Escrow Corporation, supra*, at p. 7, ¶ 3.) (Exhibit 'B.')

In *Armstrong*, a matter addressing nearly the identical legal issue presented here, the Department had prepared two reminder letters to Respondent Armstrong, an escrow agent licensed by the Commissioner under the Escrow Law. Both letters admonished Respondent Armstrong that its annual audit report was due by a date certain, and that should it not timely file the report, penalties would accrue for every day the report was late. The first letter was dated prior to the annual audit report's due date. The second letter was sent after the filing deadline had passed. When Armstrong

³This was not a decision adopted as precedent by the Commissioner.

submitted its annual audit report several months late, the Commissioner sought to impose penalties against the licensee.

The Court held that while the Commissioner's first demand letter, dated prior to the due date of the annual report, *constituted a written demand for purposes of the Code*, (*Id.* at p. 4, ¶ 7) the Commissioner had failed to prove that that the letter was mailed, such that there was no presumption that it was received by the Respondent. (*Id.* at p. 7, ¶ 2.) Consequently, the Commissioner had failed to prove that he had made a written demand with the first letter. (*Id.*) However, turning to the second reminder letter, the Court opined that it could constitute a written demand for purposes of the Code, even though it did not actually specify a time within which the Respondent was to file its annual audit report. (*See id.* at p. 7, ¶ 5.) The Court reasoned that because the second letter was sent after the filing deadline, it was reasonable to treat the notice as a demand that the report be filed *immediately*, which the Court interpreted to mean two days from the date of receipt of the reminder letter. (*See id.* at pp. 7-8, at ¶¶ 5, 6.)

Applying *Armstrong's* reasoning to the instant case⁴, we must conclude that if the December 11th Letter fails to qualify as a written demand, then the May 31st letter is surely a demand under the Escrow Law. Accordingly, under the timing parameters set forth in *Armstrong*, Respondent had two days from the date of receipt of the May 31st letter to submit its annual audit report. The record demonstrates that Respondent received the May 31st Letter on June 4, 2007. (*See* May 31st Letter [return receipt dated "6-4"].) Thus, Respondent's report was due on June 6, 2007. The record reflects the fact that the Department did not receive Respondent's annual audit report until June 18, 2007; hence, under *Armstrong*, Respondent's annual audit report was eleven (11) days late, such that penalties should accrue in the amount of \$1,100.00⁵.

⁴ To reiterate, it is the Complainant's position that the Commissioner need not reach the analysis set forth in *Armstrong* to answer the question presented in the instant case, *i.e.*, the Commissioner should conclude that the Department's December 11, 2006 letter constitutes a written demand for purposes of section 17408, subdivision (b), such that penalties accrued from May 16th, 2007, the day the report was considered late. (*See In the Matter of the Commissioner of Corporations of the State of California v. Armstrong Escrow Corporation, supra*, at p. 4, ¶ 7 [Commissioner's first letter comprised a written demand under section 17408, subdivision (b) of the Code.] (Exhibit 'B.')

⁵ Penalties calculated at the rate of one hundred dollars (\$100) per day.

VI.

CONCLUSION

For the reasons set forth above, Complainant respectfully submits that the either or both of the Complainant's letters submitted into evidence constitute a "written demand" for purposes of Code section 17408, subdivision (b).

DATED: August 25, 2008
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Blaine A. Noblett
Corporations Counsel

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Order Imposing
Penalties of

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

v.

ALL ESCROW SERVICES, INC.,

Respondent.

File No.: 963-1892

OAH No. L2007100909

ORDER TO DELAY FINAL DECISION

(Government Code Section 11517(c)(2)(E)(iv))

The California Corporations Commissioner hereby delays the final decision In the Matter of the Order Imposing Penalties of THE CALIFORNIA CORPORATIONS COMMISSIONER vs. ALL ESCROW SERVICES, INC., because of special circumstance. The California Corporations Commissioner finds that delay in the final decision is required to provide Respondent with sufficient time to adequately prepare written argument. It is hereby ordered that the final decision by the California Corporations Commissioner be delayed from September 12, 2008, to on or before October 10, 2008, and that the deadline for each party to submit written argument to the California Corporations Commissioner be extended from August 15, 2008, to on or before September 15, 2008.

Dated: August 8, 2008
Sacramento, California

PRESTON DuFAUCHARD
CALIFORNIA CORPORATIONS COMMISSIONER

Order - All Escrow Services, Inc.

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Order Imposing
Penalties of:

File No.: 963-1892

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

OAH No. L2007100909

v.
ALL ESCROW SERVICES, INC.,
Respondent.

ORDER OF REJECTION OF PROPOSED DECISION
(Gov't Code § 11517(c)(2)(E))

The California Corporations Commissioner hereby rejects the Proposed Decision In the Matter of the Order Imposing Penalties of THE CALIFORNIA CORPORATIONS COMMISSIONER v. ALL ESCROW SERVICES, INC., dated April 23, 2008. The California Corporations Commissioner will decide the case under the provisions of Government Code Section 11517(c)(2)(E).

The parties are advised that, in accordance with Government Code Section 11517(c)(2)(E)(ii), each party may submit written argument to the California Corporations Commissioner. Each party's right to argue on any matter that the party feels should be argued is not limited, however, each party is advised that the Commissioner based his rejection of the

Proposed Decision on the question of whether either or both letters in evidence sent by the Department of Corporations to the respondent constitute a "written demand" as set forth in Financial Code Section 17408(b).

Any written argument that each party may submit to the California Corporations Commissioner in this matter must be received by the Department of Corporations, Office of Legislation and Policy, 1515 K Street, Suite 200, Sacramento, California 95814, on or before August 15, 2008.

Dated: July 29, 2008
Sacramento, California

PRESTON DuFAUCHARD
CALIFORNIA CORPORATIONS COMMISSIONER

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the of the Order Imposing
Penalties of:

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

v.

ALL ESCROW SERVICES, INC.,

Respondent.

Case No. 963-1892

OAH No. L2007100909

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 12, 2008, at Los Angeles, California.

Blaine A. Noblett, Corporations Counsel, represented the Commissioner of Corporations (Complainant).

Edward Wankovsky, Secretary/Treasurer¹ of All Escrow Services, Inc. (Respondent) represented Respondent.

The record was left open until April 11, 2008 to permit the parties to submit written closing arguments. Complainant's closing argument was timely received, read, considered and marked Exhibit 9 for identification. Respondent's closing argument was timely received, read, considered and marked Exhibit A for identification. The record was closed on April 11, 2008

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. On October 3, 2007, Complainant, through his duly authorized representative, issued an Order Imposing Penalties against Respondent. The Order was issued pursuant to

¹ Although Mr. Wankovsky is an Attorney-at-Law, his appearance at the hearing was solely in his capacity as an officer of Respondent.

Financial Code² section 17408, subdivision (b) for Respondent's failure to submit timely an audit report required by section 17406. Respondent timely filed an appeal and this hearing ensued.

2. The facts of this case are not substantially in dispute. Under the provisions of section 17406, subdivision (a), Respondent was required to "submit to the commissioner" an audit report containing audited financial statements within 105 days after the close of Respondent's fiscal year. Respondent's fiscal year ends on January 31. The fiscal year in question is 2007. One hundred five days after January 31, 2007 is May 16, 2007, not May 15, 2007 as Complainant contends.

3. Respondent's accountant mailed Respondent's audit report to the Commissioner on June 14, 2007. The report was received by the Department of Corporations on June 18, 2007. The Order requires Respondent to pay penalties of \$3300, or \$100 for each day that Respondent's report was late. There are 33 days between May 16, 2007 and June 18, 2007.

4. On December 11, 2006, the Commissioner, through a duly authorized deputy, sent Respondent a letter, advising Respondent that its audit report was due by May 15, 2007. As noted above, this date is erroneous; the actual due date was May 16, 2007. This discrepancy is de minimis and does not affect the outcome of this matter. The letter further advised Respondent that failure to timely submit the report could lead to the imposition of monetary penalties "under Financial Code section 17408."

5. On May 31, 2007, the Commissioner, through a duly authorized deputy, sent Respondent a letter regarding the lateness of Respondent's audit report. The letter again specified the report was due no later than May 15, 2007 and again referenced the penalty provisions of section 17408. The letter concluded, ". . . this matter could be referred to the Special Administrator for the assessment of penalties and/or administrative action" but did not specify a date by which the report had to be received before the matter would actually be referred to the Special Administrator for the imposition of penalties. Respondent received this letter on June 4, 2007. Respondent mailed its audit report 10 days after it received this letter.

6. The Special Administrator testified at the hearing of this matter. She stated that she allows a grace period of 10 days for receipt of audit reports, so that penalties would not be assessed unless the report is more than 10 days late.

* * * * *

CONCLUSIONS OF LAW 1.

1. Section 17406, subdivision (a), provides as follows:

²Unless otherwise specified, all statutory references are to the Financial Code.

Each licensee shall submit to the commissioner, at the licensee's own expense, an audit report containing audited financial statements covering the calendar year or, if the licensee has an established fiscal year, then for that fiscal year, within 105 days after the close of the calendar or fiscal year, as applicable. At that time, each licensee shall also file additional relevant information as the commissioner may require.

2. California Code of Regulations, title 10, section 1741.5 sets forth, in detail, what information the audit report must contain. Neither this regulation nor section 17406, subdivision (a) references any penalty either for failure to include in the report all required information or to timely file the report.

3. Section 17408, subdivision (b), provides as follows:

The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the commissioner, or (2) to furnish any material information required by the commissioner to be included in the report. The amount of the penalty may not exceed one hundred dollars (\$100) for each day for the first five days the report or information is overdue, and thereafter may not exceed five hundred dollars (\$500) for each day the report or information is overdue.

4. It is well established that penalties must be based upon statutory authority, including properly adopted rules or regulations, and penalty statutes must be strictly construed to protect the individual or entity. In the absence of clear rules, an individual or entity cannot be subject to penalties. (See, *Waterman Convalescent Hospital v. Jurupa Comm. Services Dist.* (1997) 53 Cal. App. 4th 1550, 1556.)

5. The rules of statutory construction are quite clear, and were well enunciated by the California Supreme Court in *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, a case involving the Executive Director of the Medical Board of California. In that case, the Court narrowly construed the word "discovery" as it is used in Evidence Code Section 1157. In so doing, the Court set forth the manner by which a legal term is to be construed within the confines of a particular statute when it stated, commencing at page 19:

It is true that courts ordinarily give the words of a statute the usual, every day meaning they have in lay speech (citation omitted). But that rule has an important exception, and it governs this case: when a word used in a statute has a well-established legal meaning, it will be given that meaning in construing the statute. This has long been the law of California: The rule of construction of statutes is plain. Where they make use of words and phrases of a well-known and definite sense in the law, they are to be received and expounded in the same sense in the statute. . . .The rule applies most obviously when the meaning of the word in question is wholly or primarily legal (Citations omitted).

But the rule is also applicable when the word has both a specific legal meaning and a more general sense in informal legal usage or in lay speech (citations omitted). In that event the lawmakers are presumed to have used the word in its specifically legal sense.

6. The word "demand," as it is used in section 17408, subdivision (b), has a specific legal meaning. It is defined in *Black's Law Dictionary*, Fifth Edition, (1979) West Publishing Company, citing the California case of *Smith v. Municipal Court* (1959) 167 Cal.App. 2d 534 as, "an imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act."

7. Section 17408, subdivision (b), uses the word "demand" in its legal sense when it provides, "The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner" The penalty comes from the failure to comply with the demand of the Commissioner. The penalty, while calculated with reference to the time period provided in section 17406, subdivision (a), does not derive from that code section. Rather, it is derived from the failure to comply with a demand made by the commissioner after one has already failed to comply with the statute.

8. Section 17408, subdivision (b), is an omnibus penalty statute. It provides for a penalty when one fails timely to comply with the Commissioner's written demand for compliance. This penal statute is applicable to a variety of reports required by the Financial Code. As an example, section 14806, including its various subdivisions, calls for different kinds of reports to be filed in no less than five separate circumstances. However, there is no penalty set forth in that code section for one's failure to comply timely with reporting requirements. The penalties stem solely from a failure to comply with the "written demand of the commissioner" that one must comply with the reporting requirements.

9. Neither the letter of December 11, 2006 nor the letter of May 31, 2007, can be construed as a "demand" letter within the meaning of section 17408, subdivision (b). All either of those letters do is recite the law. They could be referred to as reminder letters or even warning letters, but not demand letters. The letter of December 11, 2006, written six weeks before the due date of the report, is not a demand letter within the meaning of section 17408, subdivision (b), because the law itself demanded compliance-at that point in time, the Commissioner had no reason to believe Respondent would not comply with the law. It is presumed that people do comply with the law. (*In re Neilsen 's Estate* (1962, 57 Cal.2d 733, 745.) In fact, generally, every person may assume that every other person will perform his duty and obey the law. (*Pinello v. Taylor* (1933) 128 Ca.App. 509, 512). Thus, prior to the due date of the report, there was no reason to believe that Respondent would not comply with section 17406, subdivision (a), and therefore there was nothing for the Commissioner to demand that Respondent do:

10. The letter of May 31, 2007, coming after Respondent failed comply with section 17406, subdivision (a), comes closer to being a "demand letter" of the Commissioner than the letter of December 11, 2006, but does not comply with the requirements of section

17408, subdivision (b). The letter specifically states that, as of the date of that letter, no referral "to the Special Administrator for the assessment of penalties" had as yet been made for Respondent's failure to comply with section 17406, subdivision (a). However, that letter did not specify a time period within which Respondent had to comply before the matter would be referred to the Special Administrator for the assessment of penalties. It is the failure to timely comply with the demand of the Commissioner that triggers the imposition of penalties, not the failure to timely file the audit report. The letter of May 31, 2007, did not specify the time within which Respondent had to comply with that letter; thus, no "demand" had been made, within the meaning of section 14708, subdivision (b), by the Commissioner, with which Respondent's failure to comply would result in the imposition of penalties.

11. The contemporaneous construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is clearly erroneous or unauthorized. (*Rivera v. City of Fresno*, 6 Cal. 3d 132 (1971) at page 140.) In her testimony, the Special Administrator acknowledged that a grace period of at least 10 days was given before the assessment of penalties might begin. The fact that the letter of May 31, 2007 was sent to Respondent on May 31, 2007, confirms that the Commissioner did allow a certain grace period for compliance. However, Section 14706, subdivision (a), does not provide for any grace period. The only way a grace period could be extended, meaning a grace period from the imposition of penalties, not a grace period from compliance with the filing requirements, would be under section 17408, subdivision (b), which does not specify any period of time within which the Commissioner must make his written demand for compliance. The letter of May 31, 2007 did not specify any time period from the date of that letter within which Respondent had to comply with any demand from the Commissioner; thus, it cannot be construed as a demand letter under the provisions of section 17408, subdivision (b).

* * * * *

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The appeal of Respondent All Escrow Services, Inc. is sustained. The Order of the Commissioner, dated October 3, 2007, requiring Respondent All Escrow Services, Inc. to pay a penalty of \$3300 is vacated.

Date: April 23, 2008

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings