

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 JOYCE TSAI
Senior Corporations Counsel (SBN 241908)
4 DEPARTMENT OF BUSINESS OVERSIGHT
1350 Front Street, Suite 2034
San Diego, CA 92101
5 Telephone: (619) 525-4043

6 Attorneys for Complainant

7
8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10 In the Matter of)	File No. 963-2272
)	
11 THE COMMISSIONER OF BUSINESS)	ACCUSATION IN SUPPORT OF
12 OVERSIGHT OF THE STATE OF)	
13 CALIFORNIA,)	
14 Complainant,)	
15 v.)	ORDER BARRING FROM
16 AMERICAN LIBERTY ESCROW, INC.;)	EMPLOYMENT, MANAGEMENT, OR
GILBERT PINO; and)	CONTROL
17 MIRTYS RODRIGUEZ,)	
18 Respondents.)	

19 Complainant is informed and believes, and based upon such information and belief, alleges
20 and charges Respondents as follows:

21 **I.**
22 **INTRODUCTION**

23 Complainant is the Commissioner of Business Oversight (“Commissioner;” formerly the
24 California Corporations Commissioner). The Commissioner is head of the Department of
25 Business Oversight (“Department”).

26 Respondent American Liberty Escrow, Inc. (“American”) is an escrow agent licensed by
27 the Commissioner pursuant to the Escrow Law (Financial Code section 17000 et seq.). Its license
28

1 was issued on November 8, 2005. American’s principal place of business is 555 Parkcenter Drive
2 #100, Santa Ana, CA 92705.

3 At all relevant times, Respondent Gilbert Pino (“Pino”) was the president and owner of
4 American. Respondent Mirtys Rodriguez (“Rodriguez”) was the escrow officer and manager of
5 American at all relevant times until June 6, 2014.

6 **II.**

7 **FACTUAL BACKGROUND**

8 Financial Code section 17210 provides that escrow agents licensed after January 1, 1986,
9 shall maintain at all times a tangible net worth of at least \$50,000.00 and liquid assets of at least
10 \$25,000.00.

11 Pursuant to Financial Code section 17406, all licensees under the Escrow Law are required
12 to file an annual audit report containing audited financial statements (“audit report”) within one
13 hundred and five (105) days after the close of their fiscal year. American’s fiscal year end is
14 December 31. Accordingly, American was required to file its 2013 audit report on or before April
15 15, 2014. American did not file its 2013 audit report by April 15, 2014.

16 On or about May 28, 2014, the Commissioner commenced a special examination of
17 American’s books and records.

18 The Commissioner’s examination of American’s audit report for fiscal year 2013 showed
19 that American did not have liquid assets of at least \$25,000.00 and a tangible net worth of at least
20 \$50,000.00.

21 The examination of American’s audit report for fiscal year 2012 showed that American did
22 not have liquid assets of at least \$25,000.00 and a tangible net worth of at least \$50,000.00 for that
23 year.

24 Based on the Commissioner’ examination of American’s balance sheet for the period
25 between July 1, 2013 and June 30, 2014, American did not have liquid assets of at least
26 \$25,000.00 and a tangible net worth of at least \$50,000.00 during that period.

27 On July 31, 2013, American’s general account at Citizens Business Bank (“CBB”) had a
28 negative balance of \$160.16. On August 15, 2013, American transferred \$160.16 from its CBB

1 trust account to its CBB general account to cover the shortage. This transfer was performed by
2 Rodriguez.

3 In or about May 2013, American changed its bank account from CBB to Sunwest Bank.
4 On August 27, 2013, American issued a check in the amount of \$2,570.65 from its CBB trust
5 account and deposited the check to its general account at Sunwest Bank. The check was
6 handwritten by Rodriguez and signed by Pino.

7 On August 15, 2013, American transferred \$12,800.00 from its CBB trust account to its
8 Sunwest Bank general account. This transfer was performed by Rodriguez.

9 The Commissioner's review of escrow file number 6680 showed that on November 19,
10 2012, American made a check for \$380.00 payable to First American Home Buyer. On March 21,
11 2013, American canceled payment on that check and on the same day, American issued a check
12 payable to itself in the amount of \$380.00. This escrow file had a debit balance of \$380.00 from
13 March 21, 2013 until August 27, 2014.

14 On June 28, 2013, Sunwest Bank charged an overdraft fee to American's trust account.
15 Therefore, American's trust account had a shortage of \$12.71 from June 28, 2013 until August 24,
16 2014.

17 The Commissioner's review of escrow file number 6800 showed that on September 3,
18 2013, American wire transferred \$21.00 to Western Resources Title, but never recorded this wire
19 transfer on the ledger. This transfer was performed by Rodriguez. As a result, from September 3,
20 2013 until August 27, 2014, this escrow file had a debit balance of \$21.00 that was not shown on
21 the ledger.

22 The Commissioner's review of escrow file number 6367 found that American issued a
23 receipt for \$500.00 on January 7, 2014, but there was no deposit of \$500.00. On the same day,
24 American issued a check for \$500.00 to Desert Management. This resulted in a debit balance of
25 \$500.00 from January 7, 2014 until August 26, 2014.

26 The Commissioner's review of escrow file number 6747 showed that the borrower was
27 charged \$2,141.22 for property taxes. The funding sheet from Fidelity National Title Company
28 disclosed the same charge for property taxes. On October 21, 2013, American received a refund

1 of \$2,141.22 from Fidelity National Title Company for this borrower's property taxes. These
2 funds should have been refunded to the borrower, but instead, Rodriguez issued a check in the
3 amount of \$2,141.22 from American's trust account to American's general account.

4 Based on the examination of the bank statements for American's general account and
5 monthly balance sheet for the period between August 1, 2013 and June 30, 2014, it appears that
6 trust funds were comingled with general account funds, misappropriated, and used for operating
7 expenses. During this period, the bank balance was consistently higher than the book balance.

8 **III.**

9 **VIOLATIONS OF THE ESCROW LAW**

10 Financial Code section 17409, subdivision (a), provides, in pertinent part:

11 All moneys deposited in escrow to be delivered upon the close of the escrow or
12 upon any other contingency shall be deposited and maintained in a noninterest-
13 bearing demand or checking account in a bank, a state or federal savings bank, or a
14 state or federal savings association or in a noninterest-bearing account subject to
15 immediate withdrawal in an industrial loan company insured by the Federal
16 Deposit Insurance Corporation and approved to receive those moneys by the
17 commissioner. Thereafter, these moneys may be deposited in an interest-bearing
18 account in a bank, a state or federal savings bank, a state or federal savings
19 association, an industrial loan company approved to receive those moneys by the
20 commissioner, or a state or federal credit union, if the depositor is qualified for
21 membership under the bylaws of that credit union, and the moneys are maintained
22 separate, distinct, and apart from funds belonging to the escrow agent. Those funds,
23 when deposited, are to be designated as "trust funds," "escrow accounts," or under
24 some other appropriate name indicating that the funds are not the funds of the
25 escrow agent.

26 Financial Code section 17411 provides:

27 No person shall knowingly keep or cause to be kept any funds or money in any
28 bank or state or federal savings and loan association under the heading of "trust
funds" or "escrow accounts" or any other name designating such funds or money as
belonging to the clients of any escrow agency, except actual escrow or trust funds
deposited with such agency.

Code of Regulations, Title 10, section 1738, provides:

(a) All money deposited in such "trust" or "escrow" account shall be withdrawn,
paid out, or transferred to other accounts only in accordance with the written
escrow instructions of the principals to the escrow transaction or the escrow

1 instructions transmitted electronically over the Internet executed by the principals
2 to the escrow transaction or pursuant to order of a court of competent jurisdiction.

3 (b) The escrow agent shall comply with, at a minimum, the following procedures
4 for wire transfers (also known as "electronic fund transfers"):

5 (1) The instructions of the principals authorizing the wire transfer must contain, at a
6 minimum, the amount of the funds to be wire transferred, the name of the financial
7 institution, the account number and the account name, receiving the funds.

8 (2) The escrow agent shall retain confirmation of the wire transfer from the
9 financial institution that contains, at a minimum, the amount of the funds wire
10 transferred and the account number and name of the account the funds were wire
11 transferred to.

12 (3) If necessary, the escrow books shall be properly adjusted to reflect the wire
13 transfer of funds from the escrow account.

14 (4) The escrow agent shall maintain a proper audit trail and adequate controls and
15 safeguards for funds disbursed by wire transfer.

16 Code of Regulations, Title 10, section 1738.1, provides: "An escrow agent shall not
17 withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount
18 to the credit of such account at the time of such withdrawal, payment, or transfer."

19 Code of Regulations, Title 10, section 1732.3, provides:

20 An escrow agent shall establish and maintain currently the following books with
21 reference to its general accounts:

22 (a) General ledger reflecting the assets, liabilities, capital, income and expense of
23 the business, in accordance with generally accepted accounting principles;

24 (b) Cash receipt and disbursement journal.

25 The bank accounts contained in the general ledger shall be reconciled at least once
26 each month with the bank statements of the general accounts.

27 Financial Code section 17414, subdivision (a), provides:

28 It is a violation for any person subject to this division or any director, stockholder,
trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of escrow funds
otherwise than in accordance with escrow instructions, or knowingly or recklessly
to direct, participate in, or aid or abet in a material way, any activity which
constitutes theft or fraud in connection with any escrow transaction.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

Financial Code section 17420 provides:

Except for the normal compensation of his own employees, it shall be a violation of this division for any person subject to this division to pay over to any other person any commission, fee, or other consideration as compensation for referring, soliciting, handling, or servicing escrow customers or accounts.

It shall also be a violation for any person to enter into any arrangement, either of his own making or of a subsidiary nature, or through any other person having a dual capacity, or through any person having a direct or indirect interest in the escrow, or other device permitting any fee, commission, or compensation which is contingent upon the performance of any act, condition, or instruction set forth in an escrow to be drawn or paid, either in whole or in part, or in kind or its equivalent, prior to the actual closing and completion of the escrow.

**IV.
AUTHORITY TO SANCTION**

Financial Code section 17602.5 provides in pertinent part as follows:

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 grounds for the suspension or revocation of the license held by such escrow agent.

Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

....

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

Financial Code section 17423, subsection (a), provides, in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by

1 the person committing or causing it or has caused material damage to the escrow
2 agent or to the public.

3 **V.**

4 **PRAYER FOR RELIEF**

5 Complainant finds that, by reason of the foregoing, American has violated Financial Code
6 sections 17409, 17411, 17414, 17420, and 17210, and Code of Regulations Title 10, sections
7 1738, 1738.1, and 1732.3, which constitutes grounds for the revocation of its escrow agent's
8 license.

9 WHEREFORE, IT IS PRAYED that the Respondent American Liberty Escrow, Inc.'s
10 escrow agent's license be revoked pursuant to Financial Code sections 17602.5 and 17608.

11 Further, Complainant finds that, by reason of the foregoing, Pino and Rodriguez have
12 violated Financial Code sections 17409, 17411, 17414, 17420, and 17210, and Code of
13 Regulations Title 10, sections 1738, 1738.1, and 1732.3, and that it is in the public interest to bar
14 Pino and Rodriguez from any position of employment, management, or control of any escrow
15 agent.

16 WHEREFORE, IT IS PRAYED that Respondents Gilbert Pino and Mirtys Rodriguez be
17 barred from any position of employment, management, or control of any escrow agent.

18 Dated: December 19, 2014

JAN LYNN OWEN
Commissioner of Business Oversight

19
20 By: _____
21 Joyce Tsai
22 Senior Corporations Counsel
23 Enforcement Division
24
25
26
27
28