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8

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
11

12	In the Matter of the Accusation THE)	OAH No.: L-2207010310
	CALIFORNIA CORPORATIONS)	
13	COMMISSIONER,)	File No.: 963-1934
)	
14	Complainant,)	ORDER REVOKING ESCROW AGENT’S
15)	LICENSE
16	vs.)	
)	
17	ASSET ESCROW SERVICES, INC., TESSA)	
18	M.A. SIMS and RAYNA HILL,)	
)	
19	Respondents.)	

20 Pursuant to the Settlement Agreement entered into between Asset Escrow Services, Inc.
21 (“Asset”), Tessa M.A. Sims (“Sims”), Rayna Hill (“Hill”)(collectively “Respondents”) and the
22 California Corporations Commissioner ("Commissioner") on April 12, 2007, the escrow agent’s
23 licenses of Asset, which include two branch licenses, are hereby revoked effective August 20, 2007.

24 Pursuant to the terms of the Settlement Agreement, Asset admits the following for purposes
25 of this action and any future proceedings initiated by or brought before the California Corporations
26 Commissioner only:

27 1. Asset is an escrow agent licensed by the Commissioner pursuant to the Escrow Law
28 of the State of California (California Financial Code Section 17000 et seq.). Asset has its principal

1 place of business located at 707 Escondido Avenue, Suite 206, Vista, California 92084. Asset also
2 has two branch locations situated at 2725 Jefferson Street, Suite 12, Carlsbad, California 92008 and
3 41593 Winchester Road, Suite 202, Temecula, California 92590.

4 2. Sims is, and was at all times relevant herein, the president and sole shareholder of
5 Asset.

6 3. Hill is, and was at all times relevant herein, the administrative assistant for Asset at its
7 Vista location.

8 4. On May 12, 2006, the Commissioner commenced a regulatory examination of the
9 books and records of Asset. The regulatory examination revealed among other violations, that trust
10 funds in the amount of \$278,707.17 had been wrongfully transferred from the trust account of Asset
11 into the general account of Asset in violation of California Financial Code section 17409. At least
12 \$248,707.17 of the Asset trust funds wrongfully transferred to the Asset general account (“general
13 account”) were allowed to remain in the general account for anywhere from 1 to 54 days. During this
14 time, certain of these trust funds were used for the general operations of Asset, and at least
15 \$60,000.00 of these trust funds were transferred to the personal account of Sims during the time
16 period in which she was purchasing the commercial building where the main office of Asset is
17 located. The commingling of trust funds is prohibited because of the serious risk of misuse and loss.
18 The commingling of trust funds by Asset resulted in a trust account shortage and numerous ongoing
19 debit balances in violation of California Code of Regulations, title 10, section 1738.1. Asset has
20 corrected the trust account shortage caused by the unlawful transfers of trust funds.

21 5. The unlawful transfers discovered during the regulatory examination of Asset are
22 described as follows:

23 A. On January 19, 2006, Respondents issued, and/or caused to be issued, wire
24 number 934 to transfer earned escrow fees from the Carlsbad trust account to the general account.
25 The amount transferred from the Carlsbad trust fund to the general account was \$41,784.78, when
26 earned escrow fees only totaled \$1,784.78. This transfer was in violation of California Financial
27 Code section 17409, which prohibits commingling of trust funds with non-trust funds. The trust
28 funds were not returned to the Carlsbad trust account or any other Asset trust fund until February 21,

1 2006, causing a \$40,000.00 shortage (debit balance) in the Carlsbad trust account from January 19,
2 2006 until February 21, 2006.

3 B. On January 31, 2006, Respondents issued, and/or caused to be issued, wire
4 number 952 to transfer earned escrow fees from the Carlsbad trust account to the general account.
5 The amount transferred from the Carlsbad trust fund to the general account was \$9,673.38, however
6 these escrow fees had already been paid. This transfer was in violation of California Financial Code
7 section 17409, which prohibits commingling of trust funds with non-trust funds. The trust funds
8 were not returned to the Carlsbad trust account or any other Asset trust fund until
9 February 1, 2006, causing a further shortage of \$9,673.38 in the Carlsbad trust account from January
10 31, 2006 until February 1, 2006.

11 C. On February 2, 2006, Respondents issued, and/or caused to be issued, wire
12 number 582 to transfer earned escrow fees from the Temecula trust account to the general account.
13 The amount transferred from the Temecula trust fund to the general account was \$2,995.00, however
14 these earned escrow fees had already been paid. This transfer was in violation of California
15 Financial Code section 17409, which prohibits commingling of trust funds with non-trust funds. The
16 trust funds were not returned to the Temecula trust account or any other Asset trust fund until March
17 29, 2006, causing a shortage of \$2,995.00 in the Temecula trust account from February 2, 2006 until
18 March 29, 2006.

19 D. On February 21, 2006, Respondents issued, and/or caused to be issued, wire
20 number 989 transferring \$2,277.00 from the Carlsbad trust account to the general account. There
21 were no earned escrow fees involved with this transfer. This transfer was in violation of California
22 Financial Code section 17409, which prohibits commingling of trust funds with non-trust funds. The
23 trust funds were not returned to the Carlsbad trust account or any other Asset trust fund until March
24 28, 2006, causing a shortage of \$2,277.00 in the Carlsbad trust account from February 21, 2006 until
25 March 28, 2006.

26 E. On February 28, 2006, Respondents issued, and/or caused to be issued, wire
27 number 1009 transferring \$6,040.00 from the Carlsbad trust account to the general account. There
28 were no earned escrow fees involved with this transfer. This transfer was in violation of California

1 Financial Code section 17409, which prohibits commingling of trust funds with non-trust funds. The
2 trust funds were not returned to the Carlsbad trust account or any other Asset trust fund until March
3 10, 2006, causing a further shortage of \$6,040.00 in the Carlsbad trust account from February 28,
4 2006 until March 10, 2006.

5 F. On March 15, 2006, Respondents issued, and/or caused to be issued, wire
6 number 1147 to transfer earned escrow fees from the Vista trust account to the general account. The
7 amount transferred from the Vista trust fund to the general account was \$37,721.79, when earned
8 escrow fees only totaled \$3,721.79. This transfer was in violation of California Financial Code
9 section 17409, which prohibits commingling of trust funds with non-trust funds. The trust funds
10 were not returned to the Vista trust account or any other Asset trust fund until March 21, 2006,
11 causing a shortage of \$34,000.00 in the Vista trust account from March 15, 2006 until March 21,
12 2006.

13 G. On March 15, 2006, Respondents issued, and/or caused to be issued, wire
14 number 1029 to transfer earned escrow fees from the Carlsbad trust account to the general account.
15 The amount transferred from the Carlsbad trust fund to the general account was \$44,410.00, when
16 earned escrow fees only totaled \$4,410.00. This transfer was in violation of California Financial
17 Code section 17409, which prohibits commingling of trust funds with non-trust funds. The trust
18 funds were not returned to the Carlsbad trust account or any other Asset trust fund until March 22,
19 2006, causing a further shortage of \$40,000.00 in the Carlsbad trust account from March 15, 2006
20 until March 22, 2006.

21 H. On March 15, 2006, Respondents issued, and/or caused to be issued, wire
22 number 653 to transfer earned escrow fees from the Temecula trust account to the general account.
23 The amount transferred from the Temecula trust fund to the general account was \$33,710.00, when
24 earned escrow fees only totaled \$3,710.00. This transfer was in violation of California Financial
25 Code section 17409, which prohibits commingling of trust funds with non-trust funds. The trust
26 funds were not returned to the Temecula trust account or any other Asset trust fund until March 21,
27 2006, causing a further shortage of \$30,000.00 in the Temecula trust account from March 15, 2006
28 until March 21, 2006.

1 I. On March 20, 2006, Respondents, in what appears to be an attempt to return
2 the trust funds wrongfully transferred via wire number 653 described in paragraph H above,
3 transferred \$33,710.00 from the general account to the Vista trust account. However, the unlawful
4 transfer of trust funds had occurred between the Temecula trust account and the general account.
5 This transfer was in violation of California Financial Code section 17409, which prohibits
6 commingling of trust funds with non-trust funds. The general funds were returned to the general
7 account from the Vista trust account on March 21, 2006 at the same time the unlawful transfer of
8 trust funds from the Temecula trust account to the general account was corrected. See paragraph H
9 above.

10 J. On March 21, 2006, Respondents transferred, and/or caused to be transferred,
11 \$3,721.79 in earned escrow fees from the Vista trust account to the general account, however, these
12 earned escrow fees had already been paid. This transfer was in violation of California Financial
13 Code section 17409, which prohibits commingling of trust funds with non-trust funds. The trust
14 funds were not returned to the Vista trust account or any other Asset trust fund until April 24, 2006,
15 causing a further shortage of \$3,721.79 in the Vista trust account from March 21, 2006 until April
16 24, 2006.

17 K. On April 14, 2006, Respondents issued, and/or caused to be issued, wire
18 number 1199 to transfer earned escrow fees from the Vista trust account to the general account. The
19 amount transferred from the Vista trust fund to the general account was \$82,100.00, when earned
20 escrow fees only totaled \$2,100.00. This transfer was in violation of California Financial Code
21 section 17409, which prohibits commingling of trust funds with non-trust funds. The trust funds
22 were not returned to the Vista trust account or any other Asset trust fund until May 26, 2006, causing
23 a shortage of \$80,000.00 in the Vista trust account from April 14, 2006 until May 26, 2006.

24 6. A review of the bank account records of Asset Escrow for the period of January 1,
25 2006 through May 31, 2006 disclosed that a significant portion of the Asset trust funds unlawfully
26 transferred to the general account were used for the general operations of Asset and the personal use
27 of Sims in violation of California Financial Code section 17414(a)(1) as follows:
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1 A. During January 2006, the amount of trust funds on deposit in the general
2 account was \$40,000.00 beginning on January 19, 2006 and increased to \$49,673.38 on January 31,
3 2006. The balance in the general account was a negative \$30,135.72 just prior to the transfer of
4 \$40,000.00 in trust funds and a negative \$15,593.89 just prior to the transfer of a further \$9,673.38
5 in trust funds. The balance in the general account was only \$6,879.58 on January 31, 2006 when
6 trust funds on deposit in the general account totaled \$49,673.38 indicating that Asset was using at
7 least \$42,793.80 in trust funds for general operations in January 2006.

8 B. During February 2006, the amount of trust funds on deposit in the general
9 account fluctuated from \$49,673.38 on February 1, 2006, when the general account balance was only
10 \$10,159.63 and ended with \$11,312.00 on February 28, 2006, when the general account balance was
11 \$12,282.20. On February 15, 2006, the balance in the general account fell to a negative \$21,115.23
12 when \$42,995.00 in trust funds were on deposit in the general account indicating that Asset used at
13 least \$21,879.77 in trust funds for general operations in February 2006.

14 C. As of March 1, 2006, the amount of trust funds on deposit in the general
15 account was \$11,312.00 until March 10, 2006 when \$6,040.00 was returned to the Carlsbad trust
16 account. The amount of trust funds on deposit in the general account increased to \$109,272.00 on
17 March 15, 2006 when a further \$104,000.00 was wrongfully transferred into the general account.
18 The balance in the general account was only \$16,677.89 after the transfer of the \$104,000.00 in trust
19 funds indicating that Asset was using trust funds of at least \$92,594.11 for general and other
20 operations in March 2006.

21 Additionally, on March 8, 2006 and March 15, 2006, the sum of \$26,000.00 and
22 \$34,000.00, respectively, were transferred from the general account to the personal account of Sims.
23 Thereafter, on March 15, 2006, the sum of \$68,148.45 was transferred from Sims personal account
24 to an escrow for deposit on behalf of Sims for her purchase of the office building where Asset was
25 located indicating that trust funds were at least temporarily used to help Sims purchase the office
26 building.

27 Respondents contend however that with respect to the March 8, 2006 and March 15,
28 2006, transfers of \$26,000.00 and \$34,000.00, respectively, from the general account to Sims'

1 personal account, Sims had transferred funds from her personal account in the amount of the
2 \$120,000.00 into the general account during the months of January and February 2006 to be used in
3 the purchase of the Vista office building, and believed that the transfer of \$60,000.00 from the
4 general account to the personal account of Sims during the month of March 2006 was against these
5 personal funds.

6 D. As of April 1, 2006, the amount of trust funds on deposit in the general
7 account was \$3,721.79 until April 14, 2006 when a further \$80,000.00 in trust funds was wrongfully
8 transferred to the general account. The balance in the general account was negative \$370.93 after
9 the April 14, 2006 transfer of trust funds indicating that Asset was using trust funds of at least
10 \$83,721.79 for general operations in April 2006.

11 E. The sum of \$80,000.00 in trust funds remained on deposit in the general
12 account until May 26, 2006. During May 2006, the general account balance fell to \$12,238.29
13 indicating that Asset used as much as \$67,761.71 in trust funds for general operations during May
14 2006.

15 7. The regulatory examination also disclosed that Asset had failed to maintain books and
16 records in violation of California Financial Code section 17404 and California Code of Regulations,
17 title 10, sections 1732.2 and 1732.3 in that Asset had no trust account reconciliation for the period
18 ended April 30, 2006 and no general account ledger for January through April 2006. Asset did not
19 provide the trust account reconciliations until June 21, 2006. As of September 28, 2006, Asset was
20 still unable to provide the April 2006 general ledger. The bank statements for the general account
21 disclosed that it continued to be overdrawn in May, June, July and August 2006.

22 8. The most current balance sheet available as of the start of the regulatory examination
23 was for March 31, 2006 and disclosed a liquid asset deficiency of \$136,230.24 and a tangible net
24 worth deficiency of \$44,764.24. A draft of the balance sheet for April 30, 2006 provided on
25 September 28, 2006 discloses a liquid asset deficiency of \$284,315.40 and a tangible net worth
26 deficiency of \$198,115.49. California Financial Code section 17210 requires all escrow agent
27 licensees to maintain liquid assets of at least \$25,000.00 in excess of current liabilities and a tangible
28 net worth of at least \$50,000.00.

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Dated: August 16, 2007
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Lead Corporations Counsel