

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JACQUELINE BURCHELL,

Respondent.

Case No.: 963-2547

OAH No.: 2012080549

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on November 26, 2012

IT IS SO ORDERED November 26, 2012 .

By: _____

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PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on September 10, 2012, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Judy L. Hartley, Senior Corporations Counsel, represented Jan Lynn Owen (Complainant).

No appearance was made by or on behalf of Jacqueline Burchell (Respondent).

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent was at all times relevant employed as the escrow manager and an escrow officer at Point Break Escrow, Inc. (Point Break), an escrow agent licensed by the California Corporations Commissioner (Commissioner) pursuant to the Escrow Law of the State of California (Fin. Code, § 17000 et seq.). Point Break is currently located at 151 Kalmus Drive, Suite D200, Costa Mesa, California 90601.
2. The Accusation was submitted on Complainant's behalf in her official capacity as Commissioner, and contains a request for an order barring Respondent from managing or controlling an escrow agent.
3. Respondent submitted a Notice of Defense, which contained a request for a hearing.
4. Respondent timely received notice of the hearing in this matter but failed to appear. The matter against her proceeded as a default, in which witnesses testified, other evidence was presented by Complainant's counsel, and argument made.

Background Information

5. Respondent was hired by Point Break in November of 2010. The owner of Point Break, Unberto Autore, had experience as a real estate agent and loan officer for several years, but not as much experience in escrow. Mr. Autore therefore greatly relied on Respondent in operating his escrow company when she was employed at Point Break.

6. Respondent brought in new business to Point Break, and introduced Mr. Autore to an investor who stated he was interested in purchasing bulk properties from a lender. By June of 2011, Mr. Autore became suspicious of Respondent when a wire transfer was returned from a title insurance company. He quickly learned of several other wire transfers that had been returned to Point Break. When Mr. Autore learned that some of the individuals associating with Respondent in transactions involving Point Break used different identities, he contacted the FBI. Respondent was fired from Point Break in mid-July of 2011.

7. Special Agent Ryan Bell of the FBI was investigating the actions of the investor Respondent introduced to Mr. Autore, as well as several other individuals. During the course of his investigation, Special Agent Bell determined that Respondent was involved in a scheme with those other individuals to use double escrows to transfer properties subject to short sales to bona fide purchasers without the actual approval or acknowledgement of the short sale lender. These individuals were able to procure bogus short sale approvals from the involved lenders, fraudulent purchase agreements, and unauthorized escrow instructions to acquire the properties at low sales prices without the bona fide sellers' (the lenders) knowledge. Then, using double escrows, these individuals sold the properties to bona fide purchasers at fair market value by using updated preliminary title reports which gave the buyers the false impression that titles to the properties were clear.

8. Special Agent Bell interviewed Respondent on September 9, 2011. She admitted to him her involvement in this scheme, including that she prepared false settlement statements for use in escrow to conceal facts about the transactions from certain parties, and that later she would remove the falsified statements from the escrow files to hide the fraud.

9. On or about September 22, 2011, the California Department of Corporations (Department) received a complaint that Respondent was processing fraudulent transactions at Point Break.

10. Department staff commenced a special examination of Point Break and reviewed 18 escrow files concerning ten properties. The examination disclosed that Respondent, who was the escrow officer for each of the escrow files, repeatedly violated the Escrow Law while processing double escrows, as described in more detail below.

Point Break Escrow #12530-JB

11. On or about January 31, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$1,500 to a Robert Urrera in violation of Financial Code section 17414, subdivision (a)(1), and California Code of

Regulations, title 10 (Regulation), sections 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement.

12. On or about January 31, 2011, Respondent violated Financial Code section 17414, subdivision (a)(2), by preparing, or causing to be prepared, a Final Master Settlement Statement that misrepresented the payment described above as a “miscellaneous fee to split from seller proceeds.”

13. On or about January 31, 2011, Respondent violated Financial Code section 17414, subdivision (a)(2), by preparing, or causing to be prepared, a Final Master Settlement Statement that misrepresented a refund to the buyer in the amount of \$250 as “messenger fees.”

14. On or about January 31, 2011, Respondent violated Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, by the manner in which escrow closed, when the short sale approval from the first lien holder provided that the subject property was not to be transferred within 30 days of close of escrow, but Respondent was processing another escrow transaction at the same time in which the subject property would be transferred to a third party upon close of escrow.

15. On or about February 1, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$10,500 for real estate commissions, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the short sale approval from the first lien holder provided for no commissions as a condition of closing escrow.

Point Break Escrow #12617-JB

16. On or about January 31, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$147,513.83 to Point Break escrow number 12530-JB, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction in the escrow file authorizing the disbursement. This disbursement consisted of buyer deposits, which Respondent transferred to escrow number 12530-JB, for use by the sellers to purchase the property being sold in this escrow.

17. On or about January 31, 2011, Respondent violated Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, by causing escrow to close, in that the lender’s instructions specifically provided that escrow “cannot close if sale is subject to seller obtaining title” and “you (escrow) are aware of any other transactions involving the borrower or the subject property in the previous 90 days that have not been approved by lender,” but Respondent was processing another escrow transaction at the same time in which the subject property was being acquired by the borrower.

18. On or about February 2, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$20,000 to Jameson Rodgers at Home Rescue Foundation, in violation of Financial Code section 17414, subdivision (a)(1),

and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement.

Point Break Escrow #12533-JB

19. On or about December 30, 2010, Respondent violated Financial Code section 17414, subdivision (a)(2), by preparing, or causing to be prepared, two different Final Master Settlement Statements of which neither was accurate.

20. On or about January 12, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$16,500 to Uptown Realtors, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement and the short sale approval from the first lien holder provided for no payment of this type as a condition of closing escrow.

Point Break Escrow #12550-JB

21. On or about February 8, 2011, Respondent violated Financial Code section 17404 by failing to maintain a copy of the lender's closing worksheet in the escrow file.

Point Break Escrow #12553-JB

22. On or about January 19, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$30,000 to Remax of North County, in violation of Financial Code sections 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the short sale approval from the first lien holder provided for no payments of this type as a condition of closing escrow.

23. On or about January 19, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$69,500 to Green Tree Servicing, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the short sale approval from the first lien holder provided for the payment of only \$5,000 to the second lien holder as a condition of closing escrow.

24. On or about January 19, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$3,216.89 to pay off an HOA lien, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the short sale approval from the first lien holder provided for no payment of HOA liens as a condition of closing escrow.

Point Break Escrow #12722-JB

25. On or about April 21, 2011, Respondent violated Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, by causing escrow to close when the short sale approval from the first lien holder provided for a maximum payment of \$18,750 in commissions as a condition of closing escrow, but Respondent disbursed, or caused to be disbursed, the sum of \$63,312 in commissions.

26. On or about April 21, 2011, Respondent violated Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, by causing escrow to close when the short sale approval from the first lien holder provided that the subject property was not to be transferred within 30 days of close of escrow, but Respondent was processing another escrow transaction at the same time in which the subject property would be transferred to a third party upon close of escrow.

Point Break Escrow #13082-JB

27. On or about April 27, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$1,400 to Cellular One, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction in the escrow file authorizing the disbursement.

28. On or about May 9, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$23,174 to Point Break escrow number 12529-JB, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction in the escrow file authorizing the disbursement.

Point Break Escrow #12797-JB

29. On or about March 30, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$150,000 to notary public Erick Martin Lopezsalas, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the signed instruction authorizing the disbursement was forged, and Respondent knew, or should have known, the escrow amendment authorizing the disbursement was forged.

Point Break Escrow #12875-JB

30. On or about May 25, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$50,000 to Wells Fargo Bank, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the short sale approval from the first lien holder provided for a maximum payment of \$3,000 to the second lien holder as a condition of closing escrow.

31. On or about May 25, 2011, Respondent violated Financial Code section 17414, subdivision (a)(2), by preparing, or causing to be prepared, two different Final Master Settlement Statements.

32. On or about June 1, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$16,000 to Coldwell Banker, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing such a disbursement and the short sale approval from the first lien holder provided for maximum payment of \$15,250 in commissions as a condition of closing escrow.

Point Break Escrow #12912-JB

33. On or about April 15, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$138,000 to notary public Erick Martin Lopezsalas, in violation of Financial Code sections 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the signed instruction authorizing the disbursement was forged, and Respondent knew, or should have known, the escrow amendment authorizing the disbursement was forged.

34. On or about April 15, 2011, Respondent violated Financial Code section 17414, subdivision (a)(2), by preparing, or causing to be prepared, a false Final Master Settlement Statement.

35. On or about April 15, 2011, Respondent violated Financial Code section 17404 by failing to maintain the first and second lien holders' short sale approval documents in the escrow file.

36. On or about April 17, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$35,668.03 to Cellular One, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the signed instruction authorizing the disbursement was forged, and she knew, or should have known, the escrow amendment authorizing the disbursement was forged.

37. On or about April 17, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$3,500 to Point Break escrow number 13041-JB, in violation of Financial Code sections 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that the signed instruction authorizing the disbursement was forged, and Respondent knew, or should have known, the escrow amendment authorizing the disbursement was forged.

Point Break Escrow #13041-JB

38. On or about April 21, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$1,000 to Cellular One, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement.

Point Break Escrow #12929-JB

39. On or about April 15, 2011, Respondent violated Financial Code section 17404 by failing to maintain the first lien holder short sale approval documents in the escrow file.

Point Break Escrow #12941-JB

40. On or about April 15, 2011, Respondent violated Financial Code section 17404 and Regulation 1741.3 by failing to prepare and/or maintain a Final Master Settlement Statement for the transaction.

Point Break Escrow #12962-JB

41. On or about May 4, 2011, Respondent violated Financial Code section 17404 and Regulation 1741.3 by failing to prepare and/or maintain a Final Master Settlement Statement containing both sides of the transaction.

42. On or about May 4, 2011, Respondent violated Financial Code section 17404 by failing to maintain a copy of the title charges and payoff worksheet in the escrow file.

Point Break Escrow #13014-JB

43. On or about May 5, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$368,267.38 to Point Break escrow number 12962-JB, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement. Additionally, as this escrow had not closed, ownership of these funds had not yet transferred to the seller, Discounted Property Investments, who with the assistance of Respondent, was using these funds to purchase the subject property in Point Break escrow number 12962-JB referenced above.

44. On or about May 5, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$75,800 to Home Mutual Investment, in violation of Financial Code sections 17414, subdivision (a)(1), and 17420, and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement, and the payment of fees and/or commissions is prohibited prior to close of escrow.

45. On or about May 5, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$37,600 to DGF, Inc., in violation of Financial Code sections 17414, subdivision (a)(1), and 17420, and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement and payments of this type prior to close of escrow.

46. On or about May 5, 2011, Respondent made, or caused to be made, an unauthorized disbursement of escrow fees in the amount of \$7,525 to Point Break, in

violation of Financial Code sections 17414, subdivision (a)(l), and 17420, and Regulations 1738 and 1738.2, in that payments of this type was prohibited prior to close of escrow.

47. On or about May 5, 2011, Respondent violated Financial Code section 17404 and Regulation 1741.3, by preparing a Final Master Settlement Statement notwithstanding that the escrow had yet to close.

Point Break Escrow #13019-JB

48. On or about May 9, 2011, Respondent violated Financial Code section 17414, subdivision (a)(2), by misrepresenting on receipt number 944 that the \$79,772.50 deposited into escrow was from the buyers, Discount Property Investment, when the funds were monies on deposit in Point Break escrow number 13040-JB (a concurrent escrow wherein Discounted Property Investment was selling the property to another party), which had yet to close.

49. On or about May 9, 2011, Respondent violated Financial Code section 17404 by failing to maintain escrow records, i.e., estimated settlement statements referred to as having been received by the title company from escrow were not retained in the escrow file.

50. On or about May 9, 2011, Respondent violated Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, by causing escrow to close when the short sale approval from the first lien holder provided that the subject property was not to be transferred within 30 days of close of escrow, but Respondent was processing another escrow transaction at the same time in which the subject property would be transferred to a third party upon close of this escrow.

51. On or about June 9, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$3,625 to Nabinor, Inc., in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement.

Point Break Escrow #13040-JB

52. On or about May 9, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$79,772.50 to Point Break escrow number 13019-JB, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement. This disbursement was comprised of funds from the buyers' deposits in this escrow, which Respondent transferred to Point Break escrow number 13019-JB to be used by the sellers in this escrow to purchase the property that was being sold in this escrow.

53. On or about May 9, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$35,943.00 to D & G, Inc., in violation of Financial Code section 17414, subdivision (a)(l), and Regulations 1738 and 1738.2, in that there was no signed instruction in the escrow file authorizing the disbursement.

54. On or about May 9, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$63,543 to Air Investments, Inc., in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction in the escrow file authorizing the disbursement.

55. On or about May 9, 2011, Respondent violated Financial Code section 17404 and Regulation 1741.3, by failing to prepare and/or maintain a Final Master Settlement Statement regarding both sides of the transaction.

56. On or about May 15, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$109,509.08 to Point Break escrow number 12529-JB, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction in the escrow file authorizing the disbursement.

57. On or about May 15, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$1,500 to Point Break escrow number 12531-JB, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction in the escrow file authorizing the disbursement.

Point Break Escrow #13026-JB

58. On or about May 5, 2011, Respondent made, or caused to be made, an unauthorized disbursement of trust funds in the amount of \$17,969.11 to Point Break escrow number 13014-JB, in violation of Financial Code section 17414, subdivision (a)(1), and Regulations 1738 and 1738.2, in that there was no signed instruction authorizing the disbursement.

Other Relevant Facts

59. The total amount of losses caused by the above-described scheme in which Respondent was involved was \$3.8 million.

LEGAL CONCLUSIONS

1. California Financial Code section 17423 provides, in pertinent part:
 - (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, . . . 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 . . . 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 the person committing or causing it or has caused material damage to the escrow agent or to the public.

2. Respondent has violated Financial Code sections 17404, 17414, subdivision (a)(1), 17414, subdivision (a)(2), and 17420, as well as Regulations 1738, 1738.2, and 1741.3, and it is in the best interests of the public to bar Respondent from any position of employment, management or control of any escrow agent. Respondent knowingly participated in a fraudulent scheme that ultimately lead to millions of dollars of financial losses, by creating false documents and violating provisions of the Escrow Law. Respondent failed to appear for the hearing or otherwise present any explanation for her conduct or mitigating evidence. (Factual Findings 1-59.)

ORDER

Respondent Jacqueline Burchell is barred from any position of employment, management or control of any escrow agent.

DATED: October 23, 2012

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings