

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 EDWARD KELLY SHINNICK (CA BAR NO. 96209)
Senior Corporations Counsel
4 One Sansome Street, Suite 600
San Francisco, CA 94104
5 Telephone: (415) 972-8544
Facsimile: (415) 972-8550
6 Attorneys for Complainant

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

10
11 In the Matter of) File No.: 413-0740
THE COMMISSIONER OF BUSINESS)
12 OVERSIGHT OF THE STATE OF) ACCUSATION IN SUPPORT OF NOTICE OF
CALIFORNIA,) INTENT TO ISSUE ORDERS SUSPENDING
13) LICENSE AND IMPOSING PENALTIES
14 Complainant,)
15 vs.)
16 CASTLE & COOKE MORTGAGE, LLC)
17 Respondent.)
18)
19)

20
21 The Complainant is informed and believes and based upon such information and belief,
22 alleges and charges the Respondent as follows:

23 I
24 INTRODUCTION

25 1. Castle & Cooke Mortgage, LLC, (“Castle & Cooke” or “Respondent”) is a Delaware
26 limited liability company. Castle & Cooke has been licensed as a California Residential Mortgage
27 Lender licensed since January 3, 2006 by the Commissioner of Business Oversight (“Commissioner”
28

1 or “Complainant”)¹ pursuant to the California Residential Mortgage Lending Act (“CMRLA”). (Fin.
2 Code §§ 50000 et seq.). Castle & Cooke has its headquarters located at 2735 East Parley’s Way,
3 Suite 305, Salt Lake City, Utah 84109 and has a number of California branches including a main
4 office address of 4000 MacArthur Blvd. Suite 600, Newport Beach, CA 92260. Castle & Cooke
5 employs mortgage loan originators. The license number of Castle & Cooke is 413-0740.

6 II

7 RESIDENTIAL MORTGAGE LENDING ACT VIOLATIONS

8 2. A regulatory examination of the business of Castle & Cook, under the Residential
9 Mortgage Lender and/or Servicer License commenced on July 6, 2011. The examination was
10 conducted pursuant to Financial Code section 50302. Castle & Cooke was found to have
11 commingled escrow funds with licensee funds in violation of Financial Code section 50202; the trust
12 asset account balance did not reconcile with the trust liability control account balance, resulting in a
13 shortage of \$396,90.19 for the month ended May 31, 2011, in violation of California Code of
14 Regulations, title 10, section 1950.314.1; and the trust liability loan detailed account included debits
15 and credits from disputed amounts and incorrect entries resulting in a debit imbalance and shortage
16 of \$39,129.83 in violation of California Code of Regulations, title 10, section 1950.314.6. The
17 results of the examination were brought to the attention of Castle & Cooke on February 15, 2012, for
18 correction and future guidance,

19 3. Another regulatory examination of the business of Castle & Cook, under the
20 Residential Mortgage Lender and/or Servicer License was commenced on March 18, 2013. The
21 examination showed that Castle & Cooke continued to be not in compliance with California law in
22 the handling of trust funds. Appraisal fees in the amount of \$32,868.50 were collected from
23 borrowers, not deposited in a trust bank account, and commingled with Castle & Cook’s own funds
24 in violation of Financial Code section 50202; in three accounts as of February 28, 2014, Castle &
25 Cooke was not reconciling liability subsidiary ledgers to trust bank accounts in violation of
26 California Code of Regulations, title 10, section 1950.314.1; and there were trust fund shortages in
27

28 ¹ The Department of Corporations. became the Department of Business Oversight on July 1, 2013.

1 violation of California Code of Regulations, title 10, section 1950.314.6, for a total shortage of
2 \$120,553.11.

3 4. On March 25, 2014 the Department examiner requested financial documents to see if
4 Castle & Cooke had corrected the handling of trust funds. Castle & Cooke provided trust account
5 bank statements, bank reconciliation and trust liability ledgers dated February 28, 2014 that showed
6 an excess amount in two trust bank accounts totaling \$85,355.79, a continued failure to reconcile
7 ledgers again in violation of California Code of Regulations, title 10, section 1950.314.1. The results
8 of the examination were brought to the attention of Castle & Cooke on June 10, 2014. Castle &
9 Cooke was informed at that time that these violations were also noted in the prior examination, and
10 the procedures implemented had not been effective.

11 **III**

12 **RESIDENTIAL MORTGAGE LENDING ACT**

13 Financial Code section 50202, subdivision (a) provides that escrow funds for a purpose
14 authorized by the residential mortgage loan contract are subject to and must satisfy all applicable
15 state and federal requirements, and be maintained in a depository institution. Escrow funds may not
16 be commingled with the licensee’s funds and the trust bank account should be identified as “trust
17 account” or similar description.

18 California Code of Regulations, title 10, section 1950.314.1 requires that the escrow liability
19 ledgers be reconciled to the control account at least once each week and to the bank statement
20 balance at least once each month. In addition the trust asset accounts on the balance sheet should
21 reconcile to the trust liability accounts, the subsidiary ledgers, and to the trust bank balances.

22 California Code of Regulations, title 10, section 1950.314.6 states that a residential mortgage
23 lender, lender and servicer, or loan servicer shall not withdraw, pay out, or transfer moneys from any
24 loan or servicing account in excess of the amount to the credit of the account at the time of the
25 withdrawal, payment, or transfer.

26 California Financial Code section 50327 provides in pertinent part:

- 27 (a) The commissioner may, after notice and a reasonable opportunity to
28 be heard, suspend or revoke any license, if the commissioner finds that:

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

(1) the licensee has violated any provision of this division or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

California Financial Code section 50513 provides in pertinent part:

- (a) The commissioner may do one or more of the following:
 -
 - (4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).
 -
 - (b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.
 - (c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).
 - (d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

**IV
CONCLUSION**

The Commissioner finds that, by reason of the foregoing, Castle & Cooke Mortgage, LLC has violated Financial Code section 50202, California Code of Regulations, title 10, section 1950.314.1, and California Code of Regulations, title 10, section 1950.314.6. Therefore, grounds exist to:

- (1) suspend the CRMLA residential mortgage lender license of Castle & Cooke Mortgage, LLC pursuant to Financial Code section 50327, and

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) levy penalties against Castle & Cooke Mortgage, LLC pursuant to Financial Code section 50513 subdivision (b).

WHEREFORE, IT IS PRAYED that:

1. Pursuant to Financial Code section 50327, the residential mortgage lender license of Castle & Cooke Mortgage, LLC be suspended for up to 12 months; and

2. Pursuant to Financial Code section 50513 subdivision (b), penalties be levied against Castle & Cooke Mortgage, LLC for at least seven violations of provisions of the CRMA as found above over the course of two examinations, including commingling of escrow funds with licensee funds in violation of Financial Code section 50202; trust asset accounts that did not reconcile to trust liability accounts, liability ledgers, and trust bank balances in violation of California Code of Regulations, title 10, section 1950.314.1; and trust fund imbalances in violation of California Code of Regulations, title 10, section 1950.314.6, in an amount of at least \$25,000 per violation, for a total amount of penalties of at least \$175,000, or according to proof.

Dated: December 19, 2014
San Francisco, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Edward Kelly Shinnick
Senior Corporations Counsel
Enforcement Division