

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

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11 In the Matter of) File No.: 413-0740
THE COMMISSIONER OF BUSINESS)
12 OVERSIGHT OF THE STATE OF) STATEMENT OF FACTS IN SUPPORT OF
13 CALIFORNIA,) ORDER TO DISCONTINUE VIOLATIONS
14 Complainant,) PURSUANT TO CALIFORNIA FINANCIAL
CODE SECTION 50321 AND NOTICE OF
15 vs.) INTENT TO MAKE ORDER FINAL
16 CASTLE & COOKE MORTGAGE, LLC)
17 Respondent.)
18)
19)

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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. The license number
5 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
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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.

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By reason of the foregoing, Castle & Cooke Mortgage, LLC has violated Financial Code section 50202, subdivision (a), and California Code of Regulations, title 10, sections 1950.314.1, and 1950.314.6.

Financial Code section 50321 provides in pertinent part:

If, after investigation, the commissioner has reasonable grounds to believe that any licensee has violated its articles of incorporation or any law or rule binding upon it, the commissioner shall, by written order addressed to the licensee, direct the discontinuance of the violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 50323.

Financial Code section 50323 provides:

(a) No order issued pursuant to Section 50321 or 50322 may become final except after notice to the affected licensee of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

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IV
CONCLUSION

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue Violations Pursuant to Financial Code section 50321 and notifying Castle & Cooke Mortgage, LLC of her intention to make the order final.

Dated: December 19, 2014
San Francisco, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Edward Kelly Shinnick
Senior Corporations Counsel
Enforcement Division