

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
4 Department of Corporations
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604 Fax: (213) 576-7181
6 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11 In the Matter of the Statement of) Case No.: 963-2557
Issues/Accusation of THE CALIFORNIA)
12 CORPORATIONS COMMISSIONER,) STATEMENT OF ISSUES/ACCUSATION
13)
Complainant,)
14)
vs.)
15)
16 CHANNEL 1 ESCROW, INC. and KENOLA)
D. TONEY,)
17)
18 Respondents.)

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

21 I
22 INTRODUCTION

23 The proposed orders seek to deny the issuance of an escrow agent’s license to Channel 1
24 Escrow, Inc. ("Channel 1") pursuant to Financial Code section 17209.3 and to bar Kenola D. Toney
25 (“Toney”) from any position of employment, management or control of any escrow agent pursuant
26 to Financial Code section 17423 in that Channel 1 does not meet the requirements of Financial Code
27 section 17200.8 (escrow manager), false statements and/or omissions of material fact have been
28

1 made in the escrow agent’s license application for Channel 1 filed with the Commissioner, and
2 Toney has pled nolo contendere to crimes involving moral turpitude.

3 II

4 THE APPLICATION

5 On or about August 22, 2008, Channel 1, a California corporation, filed its application for an
6 escrow agent’s license (file no. 963-2557 hereinafter "application") with the Commissioner pursuant
7 to the Escrow Law, in particular, Financial Code Section 17209. The proposed location for
8 Channel 1 is 15705 Hawthorne Boulevard, Suite K, Lawndale, California 90260. The application
9 identified Toney as the president, secretary, treasurer, sole director, sole shareholder and escrow
10 manager. Toney verified the application as president of Channel 1.

11 As required by Financial Code section 17209(g), Channel 1 submitted with its application, a
12 Statement of Identity and Questionnaire (“SIQ”) for Toney. Toney executed the SIQ under penalty
13 of perjury. The SIQ at item 2 requires the employment history of the person for the last ten years.
14 Toney represented in the SIQ in response to item 2, among other things, that her last employment
15 ended in August 2007, and that during the period of September 2002 through Aril 2007 she was a
16 “Secondary Market Analyst” at Esteem Escrow/Dana Capital Group and her duties were “[a]udit
17 files for completeness to end line investors to facilitate purchase of closed portfolios; communicate
18 with investors, closers, and title companies”.

19 Also included with the application was a Statement of Identity and Employment Application
20 (“SIEA”). Toney executed the SIEA under penalty of perjury. The SIEA at item 2 requires the
21 employment history of the person for the last ten years. Toney reiterated in the SIEA what she had
22 represented in the SIQ, that her last employment ended in August 2007, and that during the period of
23 September 2002 through April 2007 she was a “Secondary Market Analyst” at Esteem Escrow/Dana
24 Capital Group and her duties were “[a]udit files for completeness to end line investors to facilitate
25 purchase of closed portfolios; communicate with investors, closers, and title companies”.

26 Toney, as the proposed escrow manager, submitted an Escrow Agent Manager Questionnaire
27 (“EAMQ”) with the application as required by California Financial Code section 17209(d). Toney
28 executed the EAMQ under penalty of perjury. The EAMQ only provides for reporting previous

1 escrow employment. The EAMQ submitted by Toney set forth sufficient escrow experience for
2 Toney to meet the escrow manager qualifications established in California Financial Code section
3 17200.8. Toney, while still representing that she was a “Secondary Marketing Analyst” for Esteem
4 Escrow/Dana Capital Group, Inc. for the period of September 2002 through April 2007, described
5 her duties in this position in the EAMQ as “[p]repared files and loan docs for funding, balanced
6 funding and disbursed proceeds, monitored recording of deeds”. On or about May 7, 2009, Toney
7 filed an amended EAMQ setting forth her position with Esteem Escrow/Dana Capital Group, Inc. for
8 the period of September 2002 through April 2007 as an “escrow officer”.

9 In furtherance of the application, on or about March 2, 2009, Toney submitted a letter to the
10 Department of Corporations (“Department”) explaining her employment history from August 2007
11 forward. In the letter, Toney stated that she had not been employed since August 2007 and instead
12 focused on applying for her own escrow license.

13 The SIQ at question #4 and the SIEA at question #5 specifically ask: “Have you ever been
14 refused a license to engage in any business in this state or any other state, or has any such license
15 ever been suspended or revoked? Toney responded no in response to these questions.

16 The SIQ at Question #5 and the SIEA at question #6 specifically ask: “Have you ever been
17 convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations?”
18 Toney, in responding, answered yes on both the SIQ and SIEA, and attached an explanation of the
19 convictions, which convictions were for petty theft and non-sufficient fund check and had occurred
20 back in 1991 and 1996, respectively.

21 III

22 LACK OF QUALIFIED ESCROW MANAGER

23 Pursuant to Financial Code sections 17209 and 17200.8, all escrow agents are required to
24 have a person who possesses a minimum of five years of responsible escrow or joint control
25 experience that will be stationed at the licensed location. The application identified Toney as that
26 person for Channel 1. As stated previously, Toney’s EAMQ set forth sufficient experience for
27 Toney to meet the escrow manager qualifications established in California Financial Code section
28 17200.8. However, Toney has been unable to submit sufficient or credible substantiation of

1 responsible escrow experience beyond sixteen (16) months. Accordingly, Channel 1 does not meet
2 the requirements of Financial Code sections 17209 and 17200.8.

3 IV

4 CRIMINAL CONVICTIONS

5 The SIQ and SIEA disclosed that Toney, after pleading nolo contendere, had been convicted
6 on or about May 21, 1991 and June 3, 1996, respectively, of Penal Code section 484(A) (theft of
7 personal property) and Penal Code section 476(A) (insufficient funds/checks), crimes involving
8 moral turpitude, which are substantially related to the qualification, functions and duties of a person
9 engaged in the escrow business, and are also offenses identified in subdivision (b) of Financial Code
10 section 17414.1. On August 3, 2000 and August 21, 2000, respectively, Toney obtained orders
11 expunging the convictions pursuant to Penal Code Section 1203.4. Pursuant to Financial Code
12 section 17423 (g), the courts' orders expunging the convictions are not relevant with respect to bar
13 proceedings under the Escrow Law.

14 V

15 FALSE STATEMENTS AND/OR OMISSIONS IN ITS APPLICATION

16 The Department, while reviewing the application, discovered that Toney had been employed
17 at Montebello Escrow, Inc., an escrow agent licensee of the Department, from on or about
18 January 25, 2008 through on or about June 2, 2008. Accordingly, the SIQ and SIEA submitted by
19 Toney were false in that they did not disclose Toney's employment with Montebello Escrow, Inc.
20 To exacerbate the matter, Toney falsely represented to the Department, when questioned further
21 about her employment from August 2007 forward, that she had not been employed during this
22 period.

23 The Department's review of the application further disclosed that Toney had misrepresented
24 her employment duties with Esteem Escrow/Dana Capital Group, Inc. on the initial EAMQ by
25 representing that during the entire time she was employed with Esteem Escrow/Dana Capital Group,
26 Inc. her job duties were "[p]repared files and loan docs for funding, balanced funding and disbursed
27 proceeds, monitored recording of deeds". Toney further exacerbated the misrepresentation by
28 amending her EAMQ to change her title from "Secondary Market Analyst" to "Escrow Officer".

1 Both the SIQ and SIEA filed by Toney stated that Toney was a “Secondary Market Analyst” at
2 Esteem Escrow/Dana Capital Group and her duties were “[a]udit files for completeness to end line
3 investors to facilitate purchase of closed portfolios; communicate with investors, closers, and title
4 companies”. Additionally, the SIQ executed by Toney under penalty of perjury on or about January
5 18, 2008 in connection with her employment at Montebello Escrow, Inc., when Toney was under no
6 pressure to qualify as an escrow manager, stated her title and duties with Esteem Escrow/Dana
7 Capital Group, Inc. were “Escrow Officer-Prepare files for Signing” at Esteem Escrow for the period
8 of September 2002 through October 2003 and “Secondary Marketing Analyst III prepare files for
9 sale to investors” at Dana Capital Group, Inc. for the period from October 2003 through April 2007.

10 The Department further discovered while reviewing the application that Toney had
11 misrepresented her answers to question #4 on the SIQ and question #5 on the SIEA, i.e., “Have you
12 ever been refused a license to engage in any business in this state or any other state, or has any such
13 license ever been suspended or revoked?” Toney responded no to these questions, but Toney had
14 previously been refused a notary public license in 1996.

15 In addition to being grounds for denial of an application or a bar from employment,
16 management or control, it is also a violation of Financial Code section 17702 to make any untrue
17 statement of material fact in any application filed with the Commissioner or omit any material fact
18 required to be stated in any such application.

19 VI

20 CONCLUSION

21 Complainant finds, by reason of the foregoing, that:

22 (1) Channel 1 and Toney, the president and sole shareholder of Channel 1, have made
23 false statements of material fact and/or omitted material facts in Channel 1’s escrow agent license
24 application.

25 (2) Channel 1 does not meet the requirements of Financial Code section 17200.8.

26 (3) Toney has been convicted of crimes involving moral turpitude, which are
27 substantially related to the qualification, functions and duties of a person engaged in the escrow
28 business.

1 (4) Channel 1 is incapable of operating its escrow business in compliance with the
2 Escrow Law as demonstrated by the violative actions of Toney.

3 (5) It is in the best interests of the public to deny the escrow agent application of Channel
4 1 and bar Toney from any position of employment, management or control of any escrow agent.

5 California Financial Code section 17209.3 provides in pertinent part:

6 The commissioner may refuse to issue any license being applied for
7 if upon his examination and investigation, and after appropriate notice
8 and hearing, he finds any of the following:

9 . . .

10 (c) That there is no officer or manager possessing a minimum of
11 five years of responsible escrow or joint control experience
12 stationed or to be stationed at the main office of the corporation

13 (e) A false statement of a material fact has been made in the
14 application for license.

15 (f) The applicant, any officer, director, general partner, or
16 incorporator of the applicant, or any person owning or controlling,
17 directly or indirectly, 10 percent or more of the outstanding equity
18 securities of the applicant has violated any provision of this
19 division or the rules thereunder or any similar regulatory scheme of
20 the State of California or a foreign jurisdiction.

21 California Financial Code Section 17423 provides in pertinent part:

22 (a) The commissioner may, after appropriate notice and opportunity
23 for hearing, by order, . . . bar from any position of employment,
24 management, or control any escrow agent, or any other person, if the
25 commissioner finds either of the following:

26 (1) That the . . . bar is in the public interest and that the person has
27 committed or caused a violation of this division or rule or order of the
28 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) That the person has been convicted of or pleaded nolo
contendere to any crime, or has been held liable in any civil action
by final judgment, or any administrative judgment by any public
agency, if that crime or civil or administrative judgment involved
any offense specified in subdivision (b) of Section 17414.1, or any
other offense reasonably related to the qualifications, functions, or

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duties of a person engaged in the business in accordance with the provisions of this division.

THEREFORE, Complainant asserts that he is justified under Financial Code sections 17209.3 and 17423 in denying the escrow agent license application of Channel 1 and barring Toney from any position of employment, management or control of any escrow agent.

WHEREFORE IT IS PRAYED that escrow agent license application of Channel 1 be denied and Toney be barred from any position of employment, management or control of any escrow agent.

Dated: July 28, 2009
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel