

BEFORE THE DEPARTMENT OF
BUSINESS OVERSIGHT OF THE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

vs.

GREGORY K. DELONG, SR.,

Respondent.

Case No.: 963-2518

OAH No.: 2012110949

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated July 8, 2013, is hereby adopted by the Department of Business Oversight, formerly the Department of Corporations, as its Decision in the above-entitled matter with technical and minor changes on the attached Errata Sheet pursuant to Government Code Section 11517(c)(2)(C).

This Decision shall become effective on November 20, 2013.

IT IS SO ORDERED this 21st day of October, 2013.

COMMISSIONER OF BUSINESS OVERSIGHT

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Jan Lynn Owen

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PROPOSED DECISION

Administrative Law Judge Laurie R. Pearlman, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 8-9, 2013.

Sophia C. Kim, Corporations Counsel, represented Complainant California Corporations Commissioner.¹

Rose Pothier, Attorney at Law, represented Respondent Gregory K. DeLong, Sr. (hereinafter "Respondent") who was present at the hearing.

Oral and documentary evidence was received and the matter was submitted on May 9, 2013.

FACTUAL FINDINGS

1. Complainant made the Accusation in her official capacity as the California Corporations Commissioner (Commissioner). The Accusation seeks to bar Respondent from any position of employment, management, or control of any escrow agent on the basis that it is in the public interest to do so, he has been convicted of extortion, that the conviction is reasonably related to the qualifications, functions and duties of a person engaged in the escrow business, and on the basis that he willingly made an untrue statement of a material

¹ The Accusation does not identify the Corporations Commissioner by name.

fact in an application filed with the Commissioner or willfully omitted a material fact in his application.

2. On January 17, 2012, the Commissioner received from Lenders Choice Escrow, Inc. (Lenders Choice), an escrow agent licensed by the Commissioner under the California Escrow Law (California Financial Code § 17000 et seq.), a Statement of Identity and Employment Application for Respondent as its proposed escrow officer, executed by Respondent on January 5, 2012. In response to Question No. 6 of the application, which asked if the applicant has ever been convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations, Respondent answered "Yes" and attached several documents, including a copy of the Judgment Including Sentence Under the Sentencing Reform Act (Judgment) filed in *United States v. Gregory Kenneth Delong, et al.* (Federal case.) Respondent also included an explanation about the Federal case.

3. On June 5, 2001, in the United States District Court for the Western District of Pennsylvania, Respondent was convicted on his plea of guilty to one count of violating the Travel Act, Title 18, United States Code, section 1952.² Three other counts were dismissed, pursuant to the plea deal. Respondent was sentenced to serve two months imprisonment (he served two months in a half-way house and two months in home detention), was placed on supervised release for two years, and was ordered to pay a fine of \$1,000 and a special assessment of \$100. The Judgment was filed on October 11, 2001.

4. The facts and circumstances surrounding Respondent's conviction are that from December 1999 through April 2000, while he was employed as escrow manager³ by GMAC Mortgage dba Ditech.com (Ditech), a mortgage lender, Respondent and two other Ditech managers participated in an extortion scheme against ATM Corporation of America (ATM). ATM provided various services to mortgage lenders, including Ditech. These services included providing equity reports, title insurance and notary closings. Ditech accounted for approximately twenty percent of ATM's total monthly sales. Beginning in December 1999, Ditech managers engaged in a series of meetings with an ATM official in which they solicited kickbacks from ATM, under the threat that Ditech would stop using ATM's mortgage services if the kickbacks were not agreed to and paid. The Ditech employees promised that ATM would receive substantially more business from Ditech if the kickbacks were paid. To carry out the kickback scheme, Jay Marx (Marx), a Ditech manager, arranged to have his stepfather placed on ATM's payroll as a "ghost employee"

² This provision was triggered because Respondent and his co-conspirators used interstate travel and interstate communications from Ditech's Costa Mesa, California office to ATM's office in Pittsburgh, Pennsylvania to carry out an "unlawful activity" (i.e., the extortion scheme described in more detail below.)

³ In February 2000, Respondent was employed as an Escrow Administrator for Ditech Escrow Corporation. As a result of a merger between Ditech.com (a mortgage banker) and DiTech Escrow Corporation (a licensed escrow agent) in March 2000, Respondent was transferred to the newly-formed Ditech, a Department licensee.

who did not actually perform any work for ATM. The salary paid to this “ghost employee” would then be passed along to Respondent, Marx and another Ditech manager, with a percentage to be retained by the “ghost employee.” In furtherance of this scheme, ATM provided a check to the “ghost employee” in the amount of \$11,451.20. After being tipped off to the extortion scheme by ATM, with ATM’s cooperation the Federal Bureau of Investigation (FBI) secretly recorded conversations between the Ditech managers and ATM regarding the extortion scheme. The FBI arrested Respondent and the two other Ditech managers in May, 2000.

5. By letter dated May 29, 2012, the Commissioner asked Respondent to provide thirteen additional documents from the Federal case in order to ascertain the underlying facts behind the Travel Act violation. On June 13, 2006, the District Court had issued an order in the Federal case stating, “These pleadings are to remain sealed for the next 10 years.”⁴ (Exhibit 13.) On June 28, 2012, Respondent informed the Commissioner that he had contacted the District Court to obtain the requested documents, but was informed by the Court clerk that the records from the Federal case were sealed and could not be released to him. Respondent also tried to obtain the documents from the court’s electronic records system (PACER) and from the California and Pennsylvania attorneys who had represented him in the District Court, but was unsuccessful. On August 31, 2012, the Commissioner was able to obtain from the District Court ten of the thirteen court documents sought. In a second call by Respondent to a different Court clerk, the clerk then agreed to release only these same ten documents to Respondent, who provided them to the Commissioner on September 7, 2012.

6. In Respondent’s letter to the Commissioner dated September 7, 2012, he insisted that he had played a “minor role” in the extortion scheme. (Exhibit 11, p. 383.) However, in its “Tentative Findings and Rulings on Sentencing Factors”, the District Court found that Respondent “was clearly aware of the full nature and scope of the scheme at least by March 9, 2000.... In sum, Mr. DeLong’s participation does not exhibit an individual less culpable than the average participant.... he is not entitled to a downward adjustment for having a minor role in the offense.” (Exhibit 8, p. 327-328).

7. Based on Respondent’s conviction for an offense involving extortion and his having made an untrue statement of material fact or omitted a material fact in his application (by stating that he played only a minor role in the extortion scheme, disclosing the Travel Act violation without mentioning solicitation and acceptance of a commercial bribe and the facts involving his receipt of the ATM check, and insisting that the court records were unavailable because they were sealed), the Commissioner barred Respondent from any position of employment, management or control of any escrow agent. Respondent filed a

⁴ The last line of the Order, above the signature block, states “Document: 67, 89”. This may indicate that the District Court only intended to keep these two documents under seal, but the evidence at hearing established that at the time these documents were requested by Respondent, there was considerable confusion at the District Court as to which documents were under seal.

timely Notice of Defense and requested a hearing in the matter. The above-captioned hearing ensued.

8. a. Respondent was respectful of the proceedings. He has no previous or subsequent criminal convictions, aside from the 2001 District Court case. He expressed remorse and stated that he accepts responsibility for his role in the extortion scheme, yet he continued to emphasize that his role was a minor one. Although Respondent admitted that he became involved in the extortion scheme, he asserted that it was Marx who was the mastermind who initiated the conspiracy. Respondent testified that he had no authority to direct or recommend business to ATM, but was brought into the scheme due to "longevity" in that he and the other two managers involved "had been around each other for a few years." He said that he realized it was a kickback scheme, but had no idea that extortion, bribery, or threats to reduce ATM's share of business were involved. Respondent stated that at the time he thought that as long as the "ghost employee" paid taxes on the salary he earned from ATM for his no-show job, the scheme was not improper. According to Respondent, soliciting kickbacks of this nature constituted "a gray area" since title companies were "loosely regulated." Respondent's version of events strains credibility and reflects his continuing failure to truly take responsibility for his involvement in the extortion scheme. Respondent stressed that he did not become involved in the scheme until March 2000 when details of the kickback scheme were discussed at a dinner meeting he attended in Pennsylvania with Marx and an ATM official. He now realizes that the scheme was "100% wrong" and that he used poor judgment at the time and "should have walked away." Respondent said he "was stupid to say [he] would accept a bribe", he has "paid the penalty," and he would never do that again. He successfully completed all of the terms and conditions of his sentence. No restitution was ordered because the District Court noted that there was no identifiable victim.

b. Respondent emphasized that he did disclose the 2001 conviction to the Commissioner and took all steps available to him to obtain the additional court documents requested by the Commissioner. Based on the information he obtained from the District Court Clerk, on PACER, and in the District Court's order, stating that the court records were sealed, Respondent did not attempt to mislead the Commissioner or to misrepresent the status of the documents' availability.

9. Lender's Choice began doing business in June 2008. Evette Delong, Respondent's wife, is the company's president and owns 10% of its stock. Respondent has done escrow-related work without incident in the areas of Insurance and Real Estate, which are not regulated by the Financial Code, as is the Department of Corporations. Although he hopes to act as escrow officer for Lender's Choice, Respondent currently does not do any escrow-related work for Lender's Choice. He acts as an administrative assistant for Lender's Choice, where his current duties include getting lunch, passing along messages, paying bills, and helping with supplies, payroll, and the computer system.

10. An escrow agent has a very high fiduciary responsibility to its customers and clients. An escrow agent is charged with processing sizeable funds and proceeds for

customers' real estate transactions. Honesty, integrity, and trustworthiness are imperative qualities that an escrow agent and its employees must possess in order that the public's interest is protected.

11. Respondent's conviction involving extortion, although it occurred 12 years ago, raises grave concerns regarding his ability to work in an industry requiring such a high degree of integrity and honesty. Respondent's criminal offense occurred while working for a licensee of the Commissioner, in the escrow business. This heightens the concerns regarding his fitness to be employed in the escrow industry because Respondent has shown a willingness to engage in financial misdeeds and has demonstrated the sophistication to commit such an offense. Respondent's honesty and integrity is the only protection against future harm to the public if he is to be employed by an escrow agent.

12. Passage of time since Respondent's conviction for extortion and the fact that he served out his sentence without incident are not enough to determine whether he is sufficiently rehabilitated from that offense. A conviction involving an act of extortion is not only reasonably related, but is substantially related to his duties as an escrow officer. Where the criminal offense is so closely related to the duties of an escrow officer, Respondent's bar from employment in the escrow industry is warranted.

13. There is insufficient evidence to establish that the public's interest can be protected if Respondent's is allowed to work in any position involving any duties with an escrow agent in this state. Respondent's conviction involving extortion is substantially related to his qualifications, function, and duties of employment within an escrow agent's office.

LEGAL CONCLUSIONS

1. Section 17702 of the Financial Code provides that it is unlawful for any person to willfully make any untrue statement of a material fact in any application filed with the Commissioner or to willfully omit any material fact which is required to be stated in any such application.

2. Cause does not exist to bar Respondent from any position of employment, management or control of any escrow agent, pursuant to Financial Code section 17702, in that there is insufficient evidence to establish that Respondent willfully made any untrue statement of a material fact in the application filed with the Commissioner or willfully omitted any material fact which is required to be stated in any such application, as set forth in Factual Findings 2, 5 and 8(b), and Legal Conclusion 1.

3. The Travel Act, Title 18, United States Code, section 1952, is a Federal criminal statute which prohibits the use of interstate travel or "any facility in interstate or foreign commerce" for the purpose of carrying out "an unlawful activity." Subdivision (b) of the Travel Act defines "unlawful activity" to include extortion.

4. Financial Code section 17423, subdivision (a)(2), provides that the Commissioner may bar from any position of employment, management, or control any person, if the Commissioner finds that the person has been convicted of, or pleaded to, any crime specified in section 17414.1, subdivision (b), which includes offenses involving extortion.

5. Financial Code section 17423, subdivision (a)(1), provides that the Commissioner may bar from any position of employment, management, or control any person, if the Commissioner finds that the bar is in the public interest and that the person has committed a violation which was either known or should have been known by the person committing the violation, or which has caused material damage to the escrow agent or to the public. d

6. Cause exists to bar Respondent from any position of employment, management or control of any escrow agent, pursuant to Financial Code section 17423, subdivisions (a)(1) and (a)(2), in that such a bar is in the public interest, in that Respondent was convicted of a crime involving extortion, a crime specified in subdivision (b) of Section 17414.1, and a crime that is reasonably related to the qualifications, functions and duties of a person engaged in the escrow business, by reason of Factual Findings 1 through 13 and Legal Conclusions 3 through 5.

7. There is insufficient evidence of rehabilitation to conclude that Respondent would not be a risk to the public interest if he is allowed to be employed in a position within an escrow agent's office, by reason of Factual Findings 1 through 13.

ORDER

Respondent Gregory Kenneth Delong, Sr. shall be barred from any position of employment, management or control with any escrow agent in the State of California.

DATED: July 8, 2013

/s/

LORIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings

ERRATA SHEET

(Changes to Proposed Decision □ Gregory K. Delong, Sr.)

- 1) On page 5 of the Proposed Decision, paragraph number 13 of the Factual Findings, line 2, delete □Respondent□ and insert □Respondent□
- 2) On page 5 of the Proposed Decision, paragraph number 3 of the Legal Conclusions, line 3, delete □Subdivision (b) of the Travel Act□ and insert □18 U.S.C. Section 1952(b)□
- 3) On page 6 of the Proposed Decision, paragraph 4 of the Legal Conclusions, line 5, after □extortion□ add □or any other offense reasonably related to the qualifications, functions or duties of a person engaged in the escrow business□
- 4) On page 6 of the Proposed Decision, paragraph 6 of the Legal Conclusions, line 4, delete □subdivision (b) of the Travel Act□ and insert □18 U.S.C. Section 1952(b)□