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California Corporations Commissioner
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8

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

11
12 In the Matter of the Accusation of THE) File Nos.: 963-2090
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,)
14) ACCUSATION
Complainant,)
15)
16 vs.)
17 TINA DAVY,)
18)
19 Respondent.)
_____)

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

23 I

24 Respondent Tina Davy ("Davy") was at all times relevant herein, the vice-president and co-
25 owner of Escrow Diversified, Inc. ("Escrow Diversified"), an escrow agent licensed by the
26 California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the Escrow
27 Law of the State of California (California Financial Code Section 17000 et seq.). Escrow
28

1 Diversified had its principal place of business located at 7561 Center Avenue Building 48,
2 Huntington Beach, California 92647.

3 II

4 On or about October 11, 2007, the Commissioner, by and through his staff, commenced a
5 special examination of the books and records of Escrow Diversified. The special examination was
6 commenced after the Department of Corporations (“Department”) received information that trust
7 account check(s) issued by Escrow Diversified were unable to clear the account. The special
8 examination revealed that Escrow Diversified, by and through its president and co-owner, Tina M.
9 Coates (“Coates”), had wrongfully transferred trust funds in the amount of \$153,054.12 from the
10 trust account of Escrow Diversified into the general account and/or payroll accounts of Escrow
11 Diversified between April 2006 and September 2007 in violation of Financial Code sections 17409.
12 Thereafter, the wrongfully transferred trust funds were used to pay the operating and/or payroll
13 expenses of Escrow Diversified in violation of 17414(a)(1) and California Code of Regulations, title
14 10, sections 1738 and 1738.2.

15 The special examination further revealed that Escrow Diversified, by and through Coates,
16 had made two further unauthorized disbursements of trust funds from the Escrow Diversified trust
17 account totaling \$8,100.00 for the personal benefit of Coates in violation of Financial Code section
18 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.

19 The commingling and wrongful disbursements of trust funds by Escrow Diversified resulted
20 in a trust account shortage in violation of California Code of Regulations, title 10, section 1738.1.
21 An overpayment in one escrow transaction caused by over receipting funds into escrow caused a
22 shortage of \$1,000.00 resulting in a total trust account shortage of \$162,154.12. Escrow Diversified
23 has been unable to cure the trust account shortage to date.

24 III

25 Based upon the findings of the special examination, the Commissioner determined pursuant
26 to Financial Code sections 17415 and 17621 that Escrow Diversified was conducting its business in
27 such an unsafe, injurious and unauthorized manner so as to render further operations hazardous to
28 the public and to its customers, and that as a result thereof, Escrow Diversified was unable to meet

1 the demands of persons beneficially interested in the escrow trust account.

2 To protect the public and the customers of Escrow Diversified from such practices, the
3 Commissioner, on December 5, 2007, issued an Order To Discontinue Escrow Activities Pursuant to
4 Financial Code section 17415 against Escrow Diversified along with a Demand For and Order
5 Taking Possession of the Trust Account(s) and Escrow Records of Escrow Diversified Pursuant to
6 Financial Code Section 17621 and further issued an Order Appointing Peter Davidson as
7 Conservator Pursuant to Financial Code Section 17630.

8 Pursuant to the Order Appointing Conservator, Peter Davidson (“Davidson”) took possession
9 of the trust account(s) and existing escrow records of Escrow Diversified on December 5, 2007. On
10 or about September 9, 2008, the Commissioner filed a petition in the Orange County Superior Court,
11 Case number 30-2008-00111675-CU-PT-CJC, to have the conservatorship converted to a limited
12 receivership. On or about October 20, 2008, Davidson was appointed limited receiver over the trust
13 affairs of Escrow Diversified. Davidson remains in possession of the trust account(s) and existing
14 escrow records of Escrow Diversified to the extent the property of Escrow Diversified has been
15 identified and/or was in existence.

16 On or about April 8, 2008, Davidson filed a proof of loss claim with Escrow Agents’ Fidelity
17 Corporation (“EAFC”), the fidelity indemnifier for the independent escrow agent industry, in the
18 amount of \$161,154.12. Pursuant to Financial Code sections 17304 and 17310, EAFC covers losses
19 of trust funds suffered through fraudulent or dishonest abstraction, misappropriation, or
20 embezzlement by an officer, director, stockholder, manager, or employee of an escrow agent
21 licensee.

22 On or about July 30, 2008, EAFC issued and served its claim decision on Davidson stating
23 that it would indemnify Escrow Diversified in the amount of \$73,807.00. Based on further
24 discussions regarding certain claim denials, EAFC amended its claim decision to include a further
25 \$3,697.00 in indemnification for a total claim decision of \$77,504.00. EAFC denied \$43,790.36 of
26 the proof of loss claim based upon EAFC’s inability to review relevant escrow files. The pertinent
27 escrow files were unavailable for review because Escrow Diversified, by and through, Davy and
28 Coates, had destroyed all escrow files closed prior to approximately May 1, 2006. Financial Code

1 section 17404 and California Code of Regulations, title 10, section 1737.3 requires that all escrow
2 records be retained for a period of at least five years from the date of close of escrow.

3 The unlawful destruction of the escrow records not only resulted in EAFC denying
4 \$43,790.36 of the proof of loss claim, but also resulted in a loss to the affected escrow parties of any
5 reimbursement of their stolen trust funds in that a lack of records made it impossible to adequately
6 identify and/or otherwise locate such escrow parties.

7 IV

8 California Financial Code section 17423 provides in pertinent part:

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

13 (1) That the . . . bar is in the public interest and that the person has
14 committed or caused a violation of this division or rule or order of
15 the commissioner, which violation was either known or should have
16 been known by the person committing or causing it or has caused material
17 damage to the escrow agent or to the public.

18 V

19 Complainant finds that, by reason of the foregoing, Respondent Davy has violated Financial
20 Code section 17404 and California Code of Regulations, title 10, section 1737.3, haas caused
21 material damage to the public, and it is in the best interests of the public to bar Respondent Tina
22 Davy from any position of management or control of any escrow agent.

23 WHEREFORE, IT IS PRAYED that Respondent Tina Davy be barred from any position of
24 management or control of any escrow agent.

25 Dated: January 27, 2009
26 Los Angeles, CA

27 PRESTON DuFAUCHARD
28 California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel