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

11 In the Matter of:)	
12 THE COMMISSIONER OF BUSINESS)	ACCUSATION IN SUPPORT OF ORDER
13 OVERSIGHT,)	BARRING SUZANNE R. EWEN FROM
14 Complainant,)	EMPLOYMENT, MANAGEMENT, OR
15 v.)	CONTROL OF ANY ESCROW AGENT
16 SUZANNE R. EWEN,)	
17 Respondent.)	
18)	

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20 Complainant, the Commissioner of Business Oversight (Commissioner) is informed and
21 believes and based upon such information and belief, alleges and charges the Respondent as
22 follows:

23 **I.**

24 **Introduction**

25 1. The Commissioner seeks to bar Respondent Suzanne R. Ewen (Ewen) from any
26 position of employment, management, or control of any escrow agent pursuant to Financial Code
27 section 17423 for violations of the Escrow Law (Fin. Code §17000 et. seq.) (Escrow Law).

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1 2. Ewen was employed as an escrow manager of South Bay Escrow, Inc. (South Bay
2 Escrow).

3 3. South Bay Escrow was licensed by the Commissioner as an escrow agent on April 2,
4 1952 pursuant to the Escrow Law. In or about July 2017, South Bay Escrow informed the
5 Commissioner that it has ceased conducting business as an escrow agent. South Bay Escrow's last
6 known principal place of business was located at: 24236 Walnut Street, Torrance, California 90501.

7 4. Pursuant to Financial Code section 17601, if the Commissioner has reason to believe
8 that any escrow agent is violating the provisions of the Escrow Law, the Commissioner may
9 investigate the escrow agent's business and examine the books and records of the escrow agent, and
10 of every person who acts or claims to act as principal or agent.

11 5. On June 3, 2016, the Commissioner commenced a special examination of the books
12 and records of South Bay Escrow (June 2016 exam). The June 2016 exam revealed that Ewen
13 conducted business as an escrow agent in violation of the provisions of the Escrow Law, including:

14 a) knowingly or recklessly disbursing or causing the disbursement of escrow funds in
15 violation of Financial Code section 17414 subdivision (a), and California Code of Regulations, title
16 10, section 1738;

17 b) failing to properly maintain general and trust account records on a current
18 basis in violation of California Code of Regulations, title 10, sections 1732.2 and 1732.3;

19 c) failing to preserve books and records with reference to its escrow accounts in
20 violation of California Code of Regulations, title 10, section 1737.3;

21 d) failing to post all receipts and disbursements in violation of California Code of
22 Regulations, title 10, section 1732.1; and

23 e) failing to adjust reconciling items timely in violation of California Code of
24 Regulations, title 10, section 1732.2.

25 6. On August 23, 2017, the Commissioner issued an Order revoking South Bay
26 Escrow's license for: (i) failure to submit its annual audit report to the Commissioner within 105
27 days after the close of its fiscal year; (ii) failure to submit a closing audit report as of the date it
28 tendered its license to the Commissioner for surrender; and (iii) failure to make reports required by

1 law or by the Commissioner within ten days from the day designated for the making of the reports,
2 or within any extension of time granted by the Commissioner. The Commissioner's Order revoking
3 South Bay Escrow's license is a final Order.

4 II.

5 June 2016 Examination

6 (a) Failure to properly maintain general and trust account records on a current basis

7 7. During the June 2016 exam, the Commissioner's staff requested various books and
8 records, including the trust and general bank reconciliations, general ledgers and surety bond for
9 South Bay Escrow. A review of South Bay Escrow's books and records revealed that the last trust
10 account bank reconciliation South Bay Escrow conducted was in February 2016, while the last
11 general account bank reconciliation it completed was in December 2014. Ewen claimed that the last
12 bank reconciliation for the general account and posting of the general ledgers was for December
13 2014, however she did not provide copies of the records to substantiate her claim. Accordingly,
14 Ewen failed to properly maintain general and trust account records on a current basis in violation of
15 California Code of Regulations, title 10, sections 1732.2 and 1732.3.

16 (b) Failure to adjust reconciling items in a timely manner

17 8. A review of the bank reconciliation for South Bay Escrow's trust account for May
18 2016 disclosed that on December 14, 2015, Ewen withdrew or caused the withdrawal of \$1,000.00
19 from the trust account instead of the general account in violation of California Code of Regulations,
20 title 10, section 1732.2. The withdrawal caused a trust account shortage of \$1,000.00 from
21 December 14, 2015, until August 17, 2016, when the Commissioner's staff requested that the funds
22 be replaced. Ewen corrected the trust shortage on August 17, 2016, by issuing check number 17163
23 for \$1,350.00 from the general account number xxxxxx5128, payable to the trust account number
24 xxxxxx9550. A review of the general account bank statement for the month of December 2015
25 showed that the general account had a balance of \$483.42, as such, the withdrawal \$1,350.00 caused
26 a shortage in the general account.

27 9. The June 2016 exam further revealed that on April 15, 2016, Ewen withdrew or
28 caused the withdrawal of \$350.00 from the trust account instead of the general account in violation

1 of California Code of Regulations, title 10, section 1732.2. The withdrawal caused a trust account
2 shortage of \$350.00 from April 15, 2016, until August 17, 2016, when the Commissioner's staff
3 requested that the funds be replaced. The trust shortage was corrected on August 17, 2016, when
4 check number 17163 for \$1,350.00 was issued from the general account #xxxx5128 payable to the
5 trust account #xxxx9550. A review of the general account bank statement for the month of April
6 2016, disclosed the general account maintained a balance of \$902.50, which was sufficient to cover
7 the withdrawal of \$350.00 made on April 15, 2016, but not the entire \$1,350.00 withdrawn from the
8 trust account.

9 (c) Unauthorized disbursement of trust funds - Escrow Number 17984-TT

10 10. The Commissioner's staff reviewed South Bay Escrow's dormant checks and
11 related documents relating to Escrow file number 17984-TT. The escrow file was not available
12 for inspection; however, Ewen provided to the Commissioner's staff, a printout of the ledger and
13 the final escrow statement. A review of escrow file number 17984-TT disclosed that on
14 November 7, 2006, check number 13783 was issued to a borrower for \$349.53. On July 3, 2015,
15 check number 13783 was canceled and check number 18201 was issued to Ewen's relative for
16 \$300.00, leaving a balance of \$49.53 in escrow. The final escrow statement for escrow file
17 number 17984-TT did not reflect the payment of \$300.00 issued to Ewen's relative.
18 Accordingly, Ewen disbursed or caused the disbursement of funds totaling \$300.00 to her relative
19 without proper notification to, or authorization from the borrower in violation of Financial Code
20 section 17414 subdivision (a)(1).

21 11. On August 24, 2016, Ewen replaced check number 18201 for \$300.00 with check
22 number 17165 from the general account under receipt number 18049. The Commissioner's staff
23 requested that Ewen produce all escrow ledgers that show all the receipts and disbursements
24 reflected on the final escrow statement. Ewen failed to provide to the Commissioner's staff the
25 escrow ledger claiming that South Bay Escrow's accounting system automatically deletes all
26 periods and related transactions that date more than five years from the current date and forwards
27 only any remaining balance. The Commissioner's staff observed that although escrow closed on
28 November 7, 2006, the credit balance of \$349.53 was not disbursed until July 6, 2015. Further,

1 the record showed that the checks issued in the amount of \$300.00, and \$349.53, were both
2 cancelled on August 24, 2016. Accordingly, in addition to making unauthorized disbursements,
3 Ewen failed to preserve books and records with reference to its escrow accounts in violation of
4 California Code of Regulations, title 10, section 1737.3.

5 (d) Unauthorized Disbursement of trust funds - Escrow Number 17985-TT

6 12. Escrow file number 17985-TT was not available for inspection. Ewen provided
7 to the Commissioner's staff a printout of the ledger and the final escrow statement. A review of
8 Escrow file number 17985-TT disclosed that on or about December 17, 2015, check number
9 13830, which was initially issued to a borrower, G.N., in the amount of \$812.50, was replaced
10 with check number 18413 made payable to a different payee, S.B. for the same amount of
11 \$812.50. The ledger showed the incorrect payee name, G.N. for the check number 18413. In
12 addition, the final escrow statement did not disclose the disbursement amount of \$812.50 or
13 reflect the name of S.B. As such, Ewen disbursed or caused the disbursement of funds totaling
14 \$812.50 to S.B. without notification or authorization from the borrower in violation of Financial
15 Code section 17414 subdivision (a)(1).

16 13. On August 25, 2016, Ewen replaced the unauthorized disbursement of \$812.50 by
17 issuing check number 17167, in the amount of \$812.50, made payable to S.B. from the general
18 account under receipt number 18050. A corrected final escrow statement was not provided.
19 Instead, Ewen claimed that South Bay Escrow's accounting system automatically deletes all
20 periods and related transactions that date more than five years from the date of the disbursement. As
21 a result, the ledger does not disclose all the receipts and disbursements as shown on the final
22 escrow statement. To date, Ewen has not produced South Bay Escrow's older ledgers that list all
23 the transactions before the transactions are deleted by its accounting system. Accordingly, in
24 addition to making unauthorized disbursements, Ewen failed to preserve books and records with
25 reference to its escrow accounts in violation of California Code of Regulations, title 10, section
26 1737.3.

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III.

Applicable Law

14. California Code of Regulations, title 10, section 1738 provides in pertinent part:

(a) All money deposited in such “trust” or “escrow” account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.

....

15. California Code of Regulations, title 10, section 1738.2 provides:

An escrow agent shall use documents or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction, or if not otherwise directed by written or electronically executed instructions, in accordance with sound escrow practice, or pursuant to order of a court of competent jurisdiction.

16. California Code of Regulations, title 10, section 1732.2 provides:

(a) An escrow agent shall establish and maintain currently the following books with reference to its escrow accounts:

- (1) Escrow ledger containing a separate ledger sheet for each escrow;
- (2) Escrow liability controlling account;
- (3) Cash receipt and disbursement journal or a file containing copies of all receipts and checks and/or check stubs of checks issued by the escrow agent as a medium of posting to the records referred to in subsections (1) and (2) in which case adding machine tapes of totals of receipts and checks shall be retained. The records referred to in subsections (1) and (2) shall be reconciled at least once each month with the bank statements of the “trust” or “escrow” account. The records referred to in subsection (1) shall be reconciled at least once each week with the escrow liability controlling account referred to in subsection (2).

(b) An escrow agent engaged in the business of receiving escrows for deposit or delivery of the types of transactions specified in subdivision (c) of Section 17312 of the Financial Code and of the types of transactions not specified therein shall maintain separate escrow books

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and separate escrow trust accounts for each type of escrow business in the same manner as provided for in subsection (a).

17. Financial Code section 17414 provides in pertinent part:

(c) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursal of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

...

18. Financial Code section 17423 provides:

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

(1) That the ...bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the 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.

(e) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (1), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

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(f) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any escrow processing activities, including disbursing any trust funds in the escrow agent’s possession, custody or control, and the financial institution holding trust funds shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

IV.

Conclusion

Based upon the following, the Commissioner finds that grounds exist, and that it is in the public interest, to bar Suzanne R. Ewen from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED THAT:

Suzanne R. Ewen, be barred from position of employment, management, or control of any escrow agent.

Dated: February 28, 2018
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division