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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11	In the Matter of:	)	Escrow License No.: 963-0108
12)	
13	THE COMMISSIONER OF BUSINESS	)	ACCUSATION IN SUPPORT OF ORDERS:
14	OVERSIGHT,)	
15	Complainant,	)	1) BARRING LOYANN L. RICHARDS
16	v.	)	FROM ANY POSITION OF
17	EXECUTIVE ESCROW COMPANY and	)	EMPLOYMENT, MANAGEMENT, OR
18	LOYANN L. RICHARDS, as an individual,	)	CONTROL OF ANY ESCROW
19	Respondents.	)	AGENT PURSUANT TO FINANCIAL
20		)	CODE SECTION 17423
		)	2) REVOKING ESCROW AGENT'S
		)	LICENSE PURSUANT TO
		)	FINANCIAL CODE SECTION 17608

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

23 I.

24 INTRODUCTION

- 25 1. Executive Escrow Company is an escrow agent first licensed on July 16, 1958 by the
- 26 Commissioner pursuant to the Escrow Law of the State of California (Fin. Code, § 17000 et seq.).
- 27 2. Executive Escrow Company is an active California corporation with its principal place of
- 28 business located at 115 South El Camino Real, San Clemente, California, 92672.

1 3. At all relevant times, Loyann L. Richards has been Executive Escrow Company’s president,
2 secretary, and registered agent for service of process.

3 4. The Commissioner now seeks to: (1) bar Loyann L. Richards (“Richards”) from any position
4 of employment, management, or control of any escrow agent; and, (2) revoke the escrow agent’s
5 license issued to Executive Escrow Company, based on serious violations of the Escrow Law, as set
6 forth more fully below.

7 **II.**
8 **STATEMENT OF FACTS**

9 5. The September 30, 2011 annual report submitted to the Commissioner by Executive Escrow
10 Company disclosed that the licensee failed to satisfy the liquid asset and tangible net worth
11 requirements of the Escrow Law. Pursuant to Financial Code section 17210, all licensees under the
12 Escrow Law are required to maintain, at all times, a tangible net worth of at least \$50,000.00,
13 including liquid assets of at least \$25,000.00 in excess of current liabilities.

14 6. After receiving the 2011 annual report, the Commissioner contacted Executive Escrow
15 Company and asked for assurance that the licensee would bring its accounts into compliance with the
16 financial requirements of section 17210.

17 7. On March 20, 2012, having not received a satisfactory response from Executive Escrow
18 Company, the Commissioner sent a letter asking the licensee to file monthly financial statements for
19 the months of February, March and April. The letter further informed Executive Escrow Company
20 that the Commissioner would take regulatory action, including suspension of its escrow license, if
21 there was not sufficient progress in correcting the matter.

22 8. On May 31, 2012, the Commissioner sent a regulatory letter to Executive Escrow Company
23 informing that review of the licensee’s financial statement for April 30, 2012 disclosed a tangible net
24 worth deficiency of \$27,003.90. The licensee was asked to provide proof of correction of the
25 deficiency within 30 days.

26 9. Due to Executive Escrow Company’s failure to adequately respond to the Commissioner’s
27 May 31, 2012 letter, the Commissioner sent another letter on December 11, 2012. This letter
28

1 demanded that Executive Escrow Company provide proof of correction of the liquid asset and
2 tangible net worth deficiencies within 10 days.

3 10. On December 4, 2012, a regulatory examination was commenced wherein it was confirmed
4 that Executive Escrow Company was still not in compliance with section 17210. A regulatory
5 examination letter reporting the findings of the examination, and demanding proof of correction of
6 the tangible net worth deficiencies, was mailed to the licensee on January 18, 2013.

7 11. On March 11, 2013, the Commissioner sent Executive Escrow Company a letter informing
8 that the liquid asset calculation reflected in the licensee's annual report for the period ending
9 September 30, 2012 did not comply with Financial Code section 17202.1. Making adjustments to the
10 licensee's November 30, 2012 financial statement, the Commissioner calculated a net liquid asset
11 deficiency of \$19,662.60 and a tangible net worth deficiency of \$164,554.28. Executive Escrow
12 Company was given 30 days to provide proof of correction.

13 12. On July 11, 2013, the Commissioner sent a letter to Executive Escrow Company informing
14 that review of the licensee's general ledger of February 28, 2013 disclosed a net liquid asset
15 deficiency of \$19,014.62 and a tangible net worth deficiency of \$69,879.96. The letter again
16 demanded proof of correction within 30 days and advised:

17 The Department has been in communication with you regarding the capital deficiencies of
18 your company since your annual report of September 30, 2011. The Department has been
19 patient in the handling of this matter as your replies have indicated an improving business.
20 These important issues of required capitalization must be addressed with corrective action. . .
21 Failure to cure the deficiencies will result in the suspension of your escrow license, which
22 would prohibit you from accepting new escrows.

23 13. On May 13, 2014, the Commissioner sent a letter via certified mail to Executive Escrow
24 Company informing that its annual report for the period ending on September 30, 2013 still disclosed
25 a net liquid asset deficiency of \$21,381.62 and a tangible net worth deficiency of \$95,883.05, which
26 was confirmed during a regulatory examination review of the licensee's financial statement as of
27 March 31, 2013.. The licensee was again given 30 days to provide proof of correction to the
28 Commissioner.

1 14. On July 21, 2014, the Commissioner’s examiner left a telephone message for Richards
2 informing that a response to the Commissioner’s May 13, 2014 letter was needed.

3 15. On July 23, 2013, the Commissioner’s examiner spoke to Richards, who claimed she had not
4 received the Commissioner’s letter dated May 13, 2014. The examiner, therefore, emailed a copy of
5 the May 13, 2014 letter to Richards and requested her immediate attention.

6 16. On August 4, 2014, the Commissioner’s examiner emailed Richards, again asking for a
7 response to the Commissioner’s May 13, 2014 letter. Richards provided no response to the
8 Commissioner’s inquiry.

9 17. On September 24, 2014, the Commissioner issued to Executive Escrow Company an Order to
10 Discontinue Escrow Activities Pursuant to Financial Code Section 17415 (hereafter “Order to
11 Discontinue Escrow Activities”). The Order to Discontinue Escrow Activities cited the licensee’s
12 ongoing violation of section 17210, which requires all licensees under the Escrow Law are required
13 to maintain, at all times, a tangible net worth of at least \$50,000.00, including liquid assets of at least
14 \$25,000.00 in excess of current liabilities.

15 18. The Order to Discontinue Escrow Activities issued to Executive Escrow via certified mail on
16 September 26, 2014 stated:

17 NOW, BASED UPON THE FOREGING, AND GOOD CAUSE APPEARING
18 THEREFORE, it is hereby ORDERED, under the provisions of Financial Code section
19 17415, that Executive Escrow Company immediately discontinue acceptance of any new
20 escrow or joint control business, and of money, documents or other property in connection
21 therewith. . . This order is to remain in full force and effect until further order of the
22 Commissioner.

21 19. The cover letter that was mailed to Executive Escrow Company with the Order to Discontinue
22 Escrow Activities further clarified:

23 This Order directs Executive Escrow Company to immediately discontinue acceptance of any
24 new escrow or joint control business, and of money, documents or other property in
25 connection therewith. The Order goes into effect as soon as you receive it until further
26 written order of this Department.

27 20. On October 10, 2014, the Commissioner issued to Executive Escrow Company an Amended
28 Order to Discontinue Escrow Activities Pursuant to Financial Code Section 17415 (“Amended Order

1 to Discontinue Escrow Activities”), which was sent by certified mail to the licensee’s address of
2 record on October 14, 2014.

3 21. The Amended Order to Discontinue Escrow Activities was mailed with a cover letter stating:

4 This Amended Order has only been issued for the sole purpose of correcting erroneous
5 amounts stated in Paragraph D of the original Order. Please note that the original Order
6 directing Executive Escrow Company to immediately discontinue acceptance of any new
7 escrow or joint control business, and of money, documents or other property in connection
8 therewith, remains in full effect.

9 22. On October 16, 2014, the Amended Order to Discontinue Escrow Activities was delivered by
10 certified mail to the licensee’s address of record, with receipt signed for by “K. Moltoni.”

11 23. The same day that the Amended Order to Discontinue Escrow Activities was delivered to the
12 licensee, Richards sent an email to the Commissioner’s examiner informing that she had been told by
13 a client that she could not open new escrows. Richards’ email asserted that the licensee was in the
14 process of preparing financial statements in response to the Commissioner’s longstanding demand.

15 24. Also on October 16, 2014, Richards spoke with the Commissioner’s counsel and verbally
16 acknowledged receipt of the Amended Order to Discontinue Escrow Activities.

17 25. On Friday, October 17, 2014, Richards sent an email to the Commissioner’s examiner stating:
18 “I need to know when the Cease and Desist Order has been lifted, so that we can go back to work!”

19 26. On Monday, October 20, 2014, the Commissioner’s counsel called Richards to provide details
20 about the type of documentation the Commissioner needed to verify compliance with the Escrow
21 Law before the Amended Order to Discontinue Escrow Activities could be set aside.

22 27. On October 29, 2014, the Commissioner’s examiner returned to Executive Escrow
23 Company’s licensed location to conduct a follow-up examination. The Commissioner’s examiner
24 reviewed the daily banking reports and accounting records and discovered that Executive Escrow
25 Company had opened seven new escrows after October 16, 2014, the date that the licensee signed for
26 certified receipt of the Amended Order to Discontinue Escrow Activities. The Commissioner’s
27 examiner also found receipts for monetary transactions in three separate files. The opening of these
28 seven new escrow accounts and three monetary transactions were commenced between October 20,
2014 and October 24, 2014.

1 28. On or about November 3, 2014, pursuant to the Commissioner's demand, Executive Escrow
2 Company provided bank statements and a balance sheet for the month ending September 30, 2014.
3 The statements showed liquid assets that included money market funds of \$75,000.00, which had
4 been deposited to the licensee's general account on September 26, 2014 to satisfy the liquid asset
5 requirements as of September 30, 2014.

6 29. On or about November 4, 2014, also pursuant to the Commissioner's demand, Executive
7 Escrow Company provided bank statements and a balance sheet for the month ending October 31,
8 2014. The October statements showed that \$74,000.00 of the \$75,000.00 in money market funds
9 were withdrawn from the general account on October 3, 2014 and then redeposited to the general
10 account on October 22, 2014, so that the month-end statement would not reflect a deficiency in liquid
11 assets.

12 30. Having provided prima facie evidence to the Commissioner showing that Executive Escrow
13 Company had a tangible net worth of at least \$50,000.00, including liquid assets of at least
14 \$25,000.00 in excess of current liabilities, in compliance with section 17210, the Commissioner
15 issued an order setting aside the Amended Order to Discontinue Escrow Activities on November 5,
16 2014.

17 III.

18 VIOLATIONS OF THE ESCROW LAW

19 A. Willful Violation of the Commissioner's Order

20 31. The Order to Discontinue Escrow Activities was issued to Executive Escrow Company on
21 September 24, 2014, and mailed certified to the licensee's address of record on September 26, 2014.
22 The Amended Order to Discontinue Escrow Activities was issued to Executive Escrow Company on
23 October 10, 2014, and the licensee signed for certified receipt on October 16, 2014.

24 32. On October 16, 2014, Richards verbally acknowledged to the Commissioner's counsel that
25 she had received the Amended Order to Discontinue Escrow Activities

26 33. Richards' email to the Commissioner's examiner dated October 17, 2014 further corroborates
27 Richards' receipt of the Amended Order to Discontinue Escrow Activities and evidences her
28 knowledge that she was not authorized to accept any new escrow or joint control business, money,

1 documents or other property in connection with a new escrow until further order of the
 2 Commissioner.

3 34. During the October 29, 2014 examination of Executive Escrow Company’s books and
 4 records, the Commissioner’s examiner discovered that Executive Escrow Company had opened at
 5 least seven new escrows after Richards acknowledged receiving the Order to Discontinue Escrow
 6 Activities on October 16, 2014. The new escrow activity consisted of the following:

<u>Escrow Account</u>	<u>Date Opened</u>	<u>Activity</u>
025912-DK	October 20, 2014	Receipt #63197 for \$30,000.00 issued on October 23, 2014
025913-DK	October 20, 2014	Receipt #1730 for \$11,250.00 issued on October 21, 2014
025914-DK	October 21, 2014	
025915-DK	October 21, 2014	Receipt #63196 for \$600.00 issued on October 21, 2014; Receipt #63198 for \$25.00 issued on October 24, 2014
025916-DK	October 21, 2014	
025917-DK	October 21, 2014	
025918-DK	October 21, 2014	

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 20 35. The foregoing shows that by opening at least seven new escrow accounts and issuing receipts
 21 in three monetary transactions after receiving the Commissioner’s Order to Discontinue Escrow
 22 Activities, Executive Escrow Company and Richards knowingly disregarded the Commissioner’s
 23 order in violation of section 17415.

24 B. Knowing Misrepresentation to the Commissioner

25 36. Section 17210 provides in pertinent part:

- 26 (a) An escrow agent licensed on or after January 1, 1986,
- 27 shall maintain at all times a tangible net worth of fifty thousand
- 28 dollars (\$50,000), including liquid assets of at least twenty-five
- thousand dollars (\$25,000) in excess of current liabilities.

1 37. Financial Code section 17414, subsection (a)(2), provides:

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

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

9 38. The above facts show that Richards violated section 17414 by knowingly making a
10 misstatement in writing in escrow books, accounts, reports, and/or statements when she manipulated
11 the balance of the licensee’s general account in an effort to make the liquid assets reported in the
12 September 2014 and October 2014 month-end statements appear to be in compliance with section
13 17210, which requires all licensees to maintain, at all times, a tangible net worth of at least
14 \$50,000.00, including liquid assets of at least \$25,000.00 in excess of current liabilities.

15 39. The bank statements reviewed by the Commissioner’s examiner disclose that Richards
16 deposited \$75,000.00 into the licensee’s general account on September 26, 2014, only to withdraw
17 the funds on October 3, 2014. Again on October 22, 2014, Richards redeposited the funds into the
18 general account for the purpose of showing a statutorily sufficient balance for the month-end
19 statement.

20 40. Manipulating bank account funds in the foregoing manner fails to satisfy the requirement of
21 section 17210 that the licensee meet financial net worth minimums “at all times,” not just at month’s
22 end. Richards’ conduct of manipulating the licensee’s bank account balance, on two separate
23 occasions near month’s end, shows a deliberate scheme to create the superficial appearance of
24 compliance with the minimum financial requirements of section 17210.

25 41. The foregoing evidence supports a finding that Richards knowingly made a misstatement of a
26 material fact in writing in escrow accounts and statements pertaining to escrow affairs in violation of
27 section 17414.

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IV.

ESCROW BAR AND REVOCATION STATUTES

42. Financial Code section 17423, subdivision (a)(1), provides:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or 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 censure, suspension, or 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.

43. Financial Code section 17608, subdivision (b), provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

...

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

V.

CONCLUSION

44. Complainant finds that, by reason of the foregoing, Loyann L. Richards has committed or caused a violation of the Escrow Law and of an order of the Commissioner, which violation was either known or should have been known by the person committing or causing it, and it is in the best interest of the public to bar Loyann L. Richards from any position of employment, management or control of any escrow agent pursuant to section 17423, subdivision (a)(1), of the Financial Code.

45. Complainant further finds that, by reason of the foregoing, by and through the actions of Loyann L. Richards, Executive Escrow Company has violated Financial Code sections 17210, 17414, and 17415, such that it is in the best interest of the public to revoke the escrow agent's license issued to Executive Escrow Company pursuant to section 17608 of the Financial Code.

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WHEREFORE, IT IS PRAYED that:

- (1) Loyann L. Richards be barred from any position of employment, management, or control of any escrow agent pursuant to Financial Code section 17423, subdivision (a)(1); and,
- (2) The escrow agent’s license issued to Executive Escrow Company be revoked pursuant to Financial Code section 17608.

DATED: April 13, 2015
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MIRANDA LEKANDER
Senior Counsel
Enforcement Division