BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Amended Accusation Against:	File no. 963-2025
NAOMI ESTRADA, also know as NEOMI ESTRADA,	OAH No.: L2007050852

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated June 11, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on September 19, 2008

IT IS SO ORDERED this 18th day of September 2008

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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STATE OF CALIFORNIA

In the Matter of the Amended Accusation Against:	File no. 963-2025
NAOMI ESTRADA, also known as **NEOMI** ESTRADA,	OAH No. L2007050852
Respondent.	

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 4-6, 2007, and May 12-13, 2008, in Los Angeles, California.

Uche L. Enenwali and Johnny O. Vuong, Corporations Counsel, represented Preston DuFauchard, the California Corporations Commissioner (Complainant).

Rose Pothier, Esq., and Thomas J. Prenovost, Esq., represented Naomi Estrada, a.k.a. Noemi Estrada (Respondent),[1] who was present on each hearing day.

The record was closed and the matter was submitted for decision at the conclusion of the hearing on May 13, 2008.

FACTUAL

FINDINGS *Parties*

and Jurisdiction

1. The Amended Accusation, dated May 12, 2008, superseded the initial Accusation, which was dated April 30, 2007. Both pleadings were signed on behalf of Complainant by Uche L. Enenwali, in her official capacity as Corporations Counsel.

2. On or about April 30, 2007, Respondent was served with a "Notice of Intention to Issue Order Pursuant to California Financial Code Section 17423," which notified Respondent that it was Complainant's intention to order that Respondent be barred from any position of employment, management, or control of any escrow agent in this state.

[1] Respondent's alias is correctly spelled "Noemi Estrada."

3. On or after May I4, 2007, Respondent submitted a Notice of Defense, which contained a request for a hearing.

Background Information

4. Respondent is in her mid-20's. She has been in the escrow business since 1999, when she worked (for two years) as an escrow assistant at Millennium Escrow, Respondent then worked for one-and-a-half years as an escrow assistant at Total Escrow. She thereafter worked approximately two years at Mara Escrow as a junior escrow officer. Respondent's supervisor at Mara Escrow was Dorothy Macias. Ms. Macias viewed Respondent as being trained well enough for a promotion. Respondent developed a following as an escrow officer and began receiving business referrals. She thereafter went to work for C. Gull Escrows, Inc. (C. Gull). The five escrows that are the subject of this matter were transacted when Respondent worked at C. Gull.

5. Respondent worked as an escrow officer for C. Gull from August 2004 through April 2006. C. Gull is an escrow agent licensed by the Commissioner pursuant to the Escrow Law of the State of California. (Fin. Code, § 17000 et seq.)[2] C. Gull has its principal place of business in Cerritos, California. Respondent's immediate supervisors at C. Gull were its escrow manager, Sandra Ramirez (Ramirez), and C. Gull's president, Cecilia Bibera (Bibera). C. Gull's shareholders and directors were Frank Lynch III and Barbara Lynch.

6. At the time of the events in question, Respondent was a 23-year-old single mother with a two-year-old son. The father of her son is Omar Rios, a person involved in some of the five escrows that are the subject of this matter. During the events in question, Respondent did not reside with Mr. Rios, nor has she ever received child support from him. In fact, Respondent's son (now four years old) uses the surname of "Estrada" and not "Rios." However, during the events in question Respondent continued to have a relationship with Mr. Rios. For example, Mr. Rios referred escrow business to Respondent, and occasionally visited Respondent at the C. Gull office. The status of Mr. Rios as the father of Respondent's son was thus widely known throughout the C. Gull office.[3] Mr. Rios was not, and is not, licensed by the California Department of Real Estate (DRE) in any capacity, including as a real estate broker or salesperson.

7. The Commissioner has on file for Ramirez, Bibera, and the Lynches signed affidavits, in the form required by the Commissioner, certifying and declaring that each has read and understands provisions of the statutes and regulations of the Escrow Law of the State of California (the Escrow Law). Such affidavits are required of shareholders, directors, corporate officers and escrow managers of licensed escrow agents.

8. Nobody at C. Gull reviewed any of the provisions of the Escrow Law with Respondent or attempted to confirm that she had ever read or understood them. The Commissioner does not require that people acting as escrow officers read or sign an

[2] Escrow agents can only be corporations licensed by the Commissioner (Fin. Code, § 17200). All further statutory references are to the Financial Code unless otherwise noted.

[3] Respondent's continuing relationship with Mr. Rios was confirmed by the fact that during the hearing Mr. Rios telephonically contacted a witness who was scheduled to testify, Mr. Manuel Cazarin, and asked him to "try to help out" Respondent.

affidavit certifying that he/she has read and understands provisions of the Escrow Law. As established by the persuasive and uncontroverted testimony of the Commissioner's Special Administrator, Kathleen Partin, every escrow officer is expected to have an understanding of the general duties of an escrow officer, e.g. impartiality and following escrow instructions.

9. Respondent was viewed by her supervisors at C. Gull as an experienced escrow officer who already had her own business following. Respondent rarely asked for help and did not seem to have trouble with her job duties. Therefore, Respondent was provided with essentially no training and very little supervision while at C. Gull. Respondent processed an average of approximately 40-50 escrow files per month, for a total of 700-900 escrow files while at C. Gull. By her supervisors' description, Respondent had a "busy desk." Even so, C. Gull had no notice of problems or deficiencies in Respondent's work until approximately April 2006, as discussed below.

10. On or about December 5, 2005, the Commissioner commenced a routine regulatory examination of the books and records of C. Gull. Thereafter, C. Gull advised the Commissioner's staff involved in the regulatory examination that it had been named as a defendant in a civil lawsuit, based on an escrow processed by Respondent. Therefore, in June 2006, a special examination (Examination) of C. Gull's books and records was commenced by the Commissioner. C. Gull had also done an internal audit of escrow files handled by Respondent, the results of which were given to the Commissioner's staff. The five escrow transactions that are the subject of this matter were identified during the Examination.

11. C. Gull paid a sum to settle the lawsuit mentioned above. As of April 2006, Respondent was no longer employed by C. Gull, for reasons not established. The Lynches still own C. Gull, but Ramirez and Bibera left the company in or about April 2007. Marvina Vrabel is the new Escrow Manager at C. Gull. The Lynches asked Ms. Vrabel to improve the company's escrow practices in order to prevent future lawsuits and business losses. Ms. Vrabel testified in this matter as Respondent's expert witness on practices and standards in the escrow field.

12. The Commissioner has not taken administrative action against C. Gull or any former or current C. Gull employee, except for Respondent.

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Disbursal of Trust Funds of $625.00

17. An amended escrow instruction purportedly signed by Mr. Carrillo and authorizing disbursement of $625.00 to Mr. Rios was received by Respondent. The amended escrow instruction did not specify the purpose of the payment to Mr. Rios. Based on the amended escrow instruction, Respondent disbursed escrow funds of $625.00 to Mr. Rios, by check number 23133, on or about September 16, 2005. An invoice from Mr. Rios for an appraisal and traveling costs in the amount of $625.00 was in the escrow file. Although an appraisal of the property had been conducted by Joseph Wong at the cost of $550, the escrow file lacks any supporting documents indicating that Mr. Wong in fact conducted an appraisal or why Mr. Rios was being paid for an appraisal done by Mr. Wong. In addition, the signature of Mr. Carrillo on the amended escrow instruction was a forgery and he had not authorized this payment to Mr. Rios.

18. Respondent undertook no effort to verify the signature on the amended escrow instruction or to confirm that Mr. Carrillo had authorized this payment.

19. Due to the unusual circumstances in which the amended escrow instruction was received, Respondent was on notice that some investigation was required before executing the amended escrow instruction.[4] For example, no escrow instructions had been executed by the parties, and the Purchase Agreements that had been received by C. Gull had various alterations and amendments. Yet, the amended instruction stated that "[m]y previous instructions ... are hereby supplemented and/or amended ...." The purported amended escrow instruction requested payment for appraisal fees to a person Respondent knew was not a real estate appraiser (Mr. Rios). The invoice supporting the amended escrow instruction was vague and there was no documentation in the escrow file indicating that an appraisal had actually occurred. The amended escrow instruction was made on stationary of C. Gull but was not notarized. There was no evidence presented indicating that Mr. Carrillo signed the document in Respondent's presence.

20. Had Respondent exercised her duty to verify the signature of Mr. Carrillo, she would have discovered within a few minutes of reviewing the escrow file that Mr. Carrillo's signature was a forgery. For example, the purported signature of Mr. Carrillo on the amended escrow instruction, when compared with the check he signed to deposit the $5,000 into escrow, was obviously a forgery, and was inconsistent with other signatures purportedly made by Mr. Carrillo on other documents contained in the escrow file.

[4] As an escrow holder (the escrow officer of a licensed escrow agent), Respondent had a fiduciary duty toward her principals to exercise reasonable diligence and skill in carrying out escrow instructions. *(Kangarlou v. Progressive Title Company, Inc.* (2005) 128 Cal.App4th 1174, 1179.) Escrow holders have the duty to verify the signature on an amendment to escrow instructions to assure that the signatures are those of the parties to the escrow. *(Lee v. Escrow Consultants, Inc.* (1989) 210 Ca1.App.3d 915, 924.) Respondent cites the case of *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Company* (2002) 27 Cal.4th 705 for the proposition that she had no duty to verify signatures on escrow instructions. However, that case simply holds that escrow holders have no general duty to police the affairs of its depositors, and specifically dealt with the issue of whether an escrow holder has a duty to third parties to a transaction, but not whether the signature of an escrow instruction should have been verified. In any event, the court in *Summit Financial* went on to hold that certain circumstances may establish a duty of an escrow holder to police its depositors, such as when there is clear evidence of fraud. (*Id.*, at p. 711.)

21. Respondent's disbursement of these funds without any effort to verify the signature under these circumstances was reckless.

22. Based on the above, it was established by a preponderance of the evidence that Respondent recklessly disbursed $625.00 to Mr. Rios, pursuant to a forged signature of the buyer and without his authorization, and therefore the disbursement was otherwise than in accordance with escrow instructions, which violated or caused a violation of section 17414, subsection (a)(1).[5] (The pertinent portion of the state is found at Legal Conclusion 2, ¶ B.)

Disbursal of Trust Funds of $4,375.00

23. On or about March 20, 2006, an escrow amendment purportedly signed by both principals authorized the cancellation of the escrow and the release of $4,375.00 to Mr. Rios. The escrow amendment did not specify the purpose of the payment to Mr. Rios, nor was there any documentation in the escrow file indicating that Mr. Rios was owed that sum. Based on the amended escrow instruction, Respondent issued check number 28102, dated March 23, 2006, in the amount of $4,375.00. Respondent undertook no effort to verify the signatures on the amended instruction or to confirm that the principals had authorized this payment. In actuality, the principals' signatures on the amended escrow instruction were forged, and the disbursal was not authorized by either of them.

[5] Complainant's contention was unpersuasive that Respondent violated this statute because she knowingly made the disbursement contrary to escrow instructions. It was not established by a preponderance of the evidence that Respondent knew the amended escrow instruction was forged and therefore it was not established that she knowingly made a disbursal contrary to escrow instructions. Complainant's citation to the case of *Brown v. Department of Health Services* (1978) 86 Cal.App.3d 548, 554-555, is unavailing. The *Brown* case held only that to be found in violation of a statute requiring that an act be knowingly done, it is enough to prove knowledge of the requisite acts, not knowledge that the law is being violated. In the case at bar, section 17414, subsection (a)(1), requires a showing that an escrow holder knowingly causes the disbursal of escrow funds in violation of escrow instructions. Pursuant to the *Brown* case, Complainant had to prove not just that Respondent knowingly made the disbursal, but also that she knew the disbursal was contrary to escrow instructions. Complainant failed to do so with regard to any of the five escrow transactions.

24. The extent of Mr. Rios' involvement in this transaction, or any of the other four, is not clear. Mr. Cazarin testified generally that he and Mr. Rios tried to buy property together; he did not testify specifically how Mr. Rios was involved in this transaction. Respondent testified only that Mr. Rios was an "investor." Other witnesses, including the Commissioner's staff involved in the Examination, vaguely testified that they believed Mr. Rios was a mortgage broker or loan agent relative to this transaction. That testimony is insufficient to establish that Mr. Rios acted as such, primarily because it is in conflict with the testimony of those directly involved in this transaction who viewed Mr. Rios as an investor, the evidence that Mr. Rios was not engaged in such activity, and the lack of any reference to him in any of the mortgage/loan documents generated relative to the five escrows that are the subject of this case.

25. For the same reasons stated above in Factual Finding 19, Respondent was on notice that some investigation was warranted before carrying out the amended escrow instruction.[6] There was no information contained in the escrow file indicating Mr. Rios was entitled to any compensation or was owed any sum by the principals. The signatures on the amended escrow instruction were obvious forgeries and inconsistent with other purported signatures of the parties contained in the escrow file. A quick review of the escrow file would have revealed the forgeries.

26. Respondent disbursed the trust funds without any effort to verify the signatures, which was reckless under the circumstances.

27. Based on the above, it was established by a preponderance of the evidence that Respondent recklessly disbursed $4,375.00 to Mr. Rios, pursuant to forged signatures of the principals without their authorization, and therefore the disbursement was otherwise than in accordance with escrow instructions, which violated or caused a violation of section 17414, subsection (a)(1).

28. After conducting its internal investigation and being sued by Mr. Carrillo, C. Gull deposited $5,000 into the escrow account on April 18, 2006, as reimbursement for the two disbursements described above.

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[6] Respondent also had a fiduciary duty to investigate whether Mr. Rios was licensed by the DRE before honoring a vague request to compensate him as a third party to the sale of real property. *(Kangarlou v. Progressive Title Company, Inc.* (2005) 128 Cal.App.4th 1174, 1179.)

Notice of Interest

29. Respondent made no disclosure about Mr. Rios relative to this escrow file. Complainant contended but did not establish by a preponderance of the evidence that Respondent was required to make a disclosure due to Mr. Rios' status as the father of her child. California Code of Regulations, title 10, section 1740.1 requires an escrow agent to make a written disclosure of a relationship or affiliation with either a principal to the escrow transaction or to a person who has acted as a broker or salesman in relation to the escrow transaction.[7] It was not established by a preponderance of the evidence that Mr. Rios was either a principal of record pursuant to the Purchase Agreements or even an undisclosed principal whose role in the transaction was being intentionally hidden. Mr. Rios is not a real estate broker or salesperson, and it was not established that he was involved in obtaining a mortgage or loan for this transaction. Thus, Mr. Rios falls under neither category requiring a written disclosure. Under these circumstances, it was not established by a preponderance of the evidence that Respondent violated or caused a violation of regulation section 1740.1 by failing to give a notice of interest regarding Mr. Rios.[8] (The regulation is found at Legal Conclusion 2, ¶ D.)

2. Escrow Number 12501-CB

30. Escrow file number 12501-CB was opened on or about August 22. 2005, in connection with the sale or purchase of a property located in El Segundo, California. The buyer and seller were Respondent and Javier Rocha, respectively. Respondent opened this escrow file while Bibera was on vacation in the Philippines. Although she designated Bibera as the escrow officer, Respondent initially processed the escrow alone. Upon Bibera's return from vacation, the two collaborated in processing the remainder of the escrow. In fact, Bibera executed the close of the escrow.

Escrow Instructions

31. The escrow instructions included a condition that Respondent pay five percent of the closing funds from her own moneys.

[7] Neither the Financial Code nor title 10 of the California Code of Regulations defines the word "principal." No other statutory definition was found pertinent to this situation. However, "principal" is defined in Black's Law Dictionary as "one who authorizes another to act on his or her behalf as an agent." (Black's Law Dict. (7th ed. 1999) p. 1210, col. 2.) The standard legal definition thus indicates that a principal is a party to the pertinent contract, i.e. the one able to authorize others to act on his or her behalf, as opposed to those who act pursuant to the principal's authorization, such as an escrow agent or officer, real estate broker or salesperson, or mortgage broker or loan agent.

[8] All further regulatory references are to the California Code of Regulations. title 10, unless otherwise noted.

32. C. Gull received a gift letter, dated September 28, 2005, from Respondent's uncle, Anthony Arana (Arana), in which it was stated that he was Respondent's uncle and was making a gift of $40,210.19 to Respondent without any expectation of repayment. On or about September 30, 2005, C. Gull received $40,210.19 in the form of a cashier's check from Mr. Arana for and on behalf of Respondent. That amount constituted a deposit of five percent of the closing funds Respondent was to make as the buyer pursuant to the escrow instructions.

33. Respondent's expert witness, Ms. Vrabel, and C. Gull's former President, Ms. Bibera, both persuasively testified that the gift, transaction was appropriately deemed to be a five percent payment of the closing funds from Respondent's own moneys. It was therefore not established by a preponderance of the evidence that Respondent failed to follow escrow instructions in violation of regulation section 1738.2 in this respect. (The regulation is found at legal Conclusion 2, ¶ C.)

Disbursal of Trust Funds

34. According to an amended escrow instruction dated September 15, 2005, the seller, Mr. Rocha, agreed to refinance or absorb the amount of $43,000 pursuant to a promissory note with interest, which Respondent thereafter issued. The principals to the transaction signed an amended escrow instruction dated September 30, 2005, in which they agreed that $40,000 from the seller's net proceeds would be paid to Arana Enterprises, which was owned and controlled by Mr. Arana. As established by Respondent's uncontroverted testimony, Bibera verified with Mr. Rocha the validity of this amended escrow instruction.

35. On or about October 5, 2005, after escrow closed, check number 23732, in the amount of $40,000, was issued to Arana Enterprises. It was established by a preponderance of the evidence that the lender knew of these transactions, including Mr. Arana's above-described gift to Respondent, and did not disapprove. It was not established by a preponderance of the evidence that any of those transactions violated any of the terms and conditions of the lending documents. In fact, Ms. Vrabel and Ms. Bibera both persuasively testified that all conditions of the escrow instructions, including funding and loan requirements such as this, were successfully carried out before the escrow closed. Both also persuasively testified that this transaction did not involve any misconduct toward the lender.[9]

36. Based on the above, it was not established by a preponderance of the evidence that the disbursement of $40,000 to Arana, or any other disbursement made in this escrow, were otherwise than in accordance with escrow instructions, and therefore there was no violation of section 17414, subsection (a)(1), regarding this transaction.

[9] Complainant essentially contended that the disbursement was in violation of the escrow instructions because it showed that the gift transaction was a sham and constituted lender fraud. Complainant's strongest evidence for that contention was the opinion testimony to that affect by Mona Elsheikh, a member of the Commissioner's staff who conducted the Examination. However, Ms. Elsheikh readily admitted that she is not an expert on lending issues such as this, and it became apparent that her testimony essentially boiled down to supposition. The testimony on this point by Ms. Vrabel and Ms. Bibera was more direct and convincing, and those two witnesses demonstrated a better familiarity with the involved documents and how they fit in with this transaction.

Sound Escrow Practice

37. As established by the persuasive testimony of Respondent's expert witness, Ms. Vrabel, and C. Gull's former Escrow Manager, Ms. Ramirez, it is against sound escrow practice for an escrow officer to handle or process an escrow file in which she is a principal. In this case, Respondent actively processed this escrow file in which she was a principal. It was therefore established by a preponderance of the evidence that by handling or processing an escrow file in which she was a principal, Respondent conducted business contrary to sound escrow practice in violation of regulation section 1738.2.

Notice of Interest

38. Respondent failed to disclose that she was related to or affiliated with C. Gull as an employee who was also acting as an escrow officer in connection with this transaction. Because Respondent was a principal in this transaction and was affiliated with the escrow agent, C. Gull, a written notice disclosing that interest was required. Respondent's failure to do so was in violation of regulation section 1740.1.

3. Escrow Number 11642-NE

39. Escrow file number 11642-NE was opened on or about March 17, 2005, in connection with the sale of property located in Glendale, California. The buyer was Respondent's uncle, Mr. Arana. The sellers were Jorge Alvarado and Manuel Cazarin. Respondent was the escrow officer who processed and closed the escrow.

Disbursal of Funds of $927.36

40. An amended escrow instruction dated May 23, 2005, purportedly signed by the two sellers, requested that Mr. Rios be paid $927.36 at the close of escrow from the sellers' proceeds. Based on the amended escrow instruction, Respondent issued a check payable to Mr. Rios in the amount of $927.36. The escrow amendment did not specify the purpose of the payment to Mr. Rios, nor was there any documentation in the escrow file indicating that Mr. Rios was owed any amount. The amended escrow instruction contained the false signatures of the two sellers, and it was not established by a preponderance of the evidence that either seller authorized the disbursal.[10] Respondent undertook no effort to verify the signatures on the amended escrow instruction or to confirm that the sellers authorized this disbursal.

41. Due to the unusual circumstances in which the amended escrow instruction was received, Respondent was on notice that some investigation was required before executing the amended escrow instruction. For example, the

[10] Mr. Cazarin testified that he did not know of the disbursement, did not authorize it, and did not sign the amended escrow instruction. A declaration from Mr. Alvarado was admitted only as administrative hearsay. Since there was no other admissible evidence indicating that Mr. Alvarado authorized the disbursement or signed the amended escrow instruction, his declaration alone is insufficient to support findings that he did so. (Gov. Code, § 11513, subd. (d).) In any event, even if a finding could be made based on the declaration that Mr. Alvarado had authorized the payment, the evidence clearly established that the other seller, Mr. Cazarin, had not.

purported amended escrow instruction did not state the nature of the payment to Mr. Rios. There was no invoice supporting the amended escrow instruction and there was no documentation in the escrow file indicating that Mr. Rios was owed any amount. The amended escrow instruction was made on stationary of C. Gull but was not notarized. There was no evidence presented indicating that the two sellers signed the document in Respondent's presence. Had Respondent exercised her duty to verify the signatures, she would have discovered within a few minutes of reviewing the escrow file that the signatures were forged. Respondent's disbursement of these funds without any investigation under these circumstances was reckless.

42. Based on the above, it was established by a preponderance of the evidence that Respondent recklessly disbursed $927.36 to Mr. Rios, pursuant to forged signatures and without authorization of the sellers, other than in accordance with escrow instructions, which violated or caused a violation of section 17414, subsection (a)(1).

Notice of Interest

43. Respondent did not inform the principals in writing of her relationship or affiliation with Mr. Rios and/or Mr. Arana prior to her employment as an escrow officer in connection with the transaction.

44. As found above, Respondent was not required to make a disclosure regarding the status of Mr. Rios as the father of her child, and therefore her failure to do so was not in violation ofregulation section 1740.1.

45. Respondent was required to make a disclosure regarding her relationship and/or affiliation with Mr. Arana, in that Mr. Arana was a principal to the escrow transaction and was a close relative of the escrow officer, Respondent. Among other evidence supporting this finding, Respondent's expert witness, Ms. Vrabel, conceded in her cross-examination testimony that Respondent was affiliated with Mr. Arana by virtue of his being her uncle and therefore she should have disclosed that relationship. Respondent's failure to make a disclosure regarding her uncle violated or caused a violation of regulation section 1740.1.

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Escrow Instructions

46. The escrow instructions required the buyer, Mr. Arana, to deposit $1,000 into escrow prior to April 15, 2005. Although Mr. Arana deposited $8,600.00 into escrow on May 18, 2005, it was not established by a preponderance of the evidence that any part of that amount covered the initial $1,000.00 deposit. The fact that that payment was so long after the deadline for the initial $1,000.00 deposit supports this finding. Moreover, Respondent's expert witness, Ms. Vrabel, testified that she was unable to find any evidence in the escrow file indicating that the initial $1,000.00 deposit had been made. While Ms. Vrabel established by her persuasive testimony that escrow officers are not generally required to monitor whether principals have made required payments or deposits, Ms. Elsheikh established by her persuasive testimony that they are required to do so before closing an escrow. In this case. Respondent closed the escrow without Mr. Arana having made the initial $1,000.00 deposit, meaning that she failed to carry out a written escrow instruction, which violated or caused a violation of regulation section 1738.2.

47. The escrow instructions also allowed the sellers to give the buyer credit for non-recurring costs up to a maximum of $7,000.00, but prohibited any credit or refund to the buyer for recurring closing costs. Although the buyer was given credit for $7.000.00 of non-recurring costs, the buyer was also given credit for some recurring closing costs, which was in violation of the escrow instructions. Respondent therefore failed to carry out written a escrow instruction, which violated or caused a violation of regulation section 1738.2.

Disbursal of Trust Funds

48. By giving the buyer a credit for the recurring costs referenced above, Respondent knowingly disbursed or caused the disbursal of funds to the buyer, her uncle, without proper notification to, or authorization from, the sellers or the lender, in violation of the written escrow instructions. Respondent therefore violated or caused a violation of section 17414, subsection (a)(1).

4. Escrow Number 11877-NE

49. Escrow file number 11877-NE was opened on April 28, 2005, in connection with the refinance of a property located in Pomona, California, and owned by Carlos V. Medina. Respondent was the escrow officer who processed and closed the escrow.

Disbursal of Trust Funds of $355.10

50. Respondent's brother Ramon Estrada performed an appraisal of Mr. Medina's property in connection with the refinance at the cost of $355.10. Mr. Medina testified that he verbally authorized payment in that amount be made to Mr. Estrada from the proceeds of the escrow. However, an undated letter purportedly signed by Mr. Medina requesting such a payment to Mr. Estrada was received into escrow, but Mr. Medina testified that he did not sign the letter. In reliance on the letter, Respondent issued check number 21748, dated August 3, 2005, in the amount

of $355.10, payable to Mr. Estrada. It was not established that Respondent undertook any effort to verify the signature of Mr. Medina on the undated letter.

51. Due to the unusual circumstances in which the letter in question was received, Respondent was on notice that some investigation was required before executing the letter instruction. For example, the letter did not state the nature of the payment to Mr. Estrada. There was no invoice supporting the letter and there was no documentation in the escrow file indicating that Mr. Estrada had performed an appraisal or was owed any amount. The letter was not on any stationary and was not notarized. There was no evidence presented indicating that Mr. Medina signed the document in Respondent's presence. Had Respondent exercised her duty to verify the signature, she would have discovered within a few minutes of reviewing the escrow tile that the signature was forged. Respondent's disbursement of these funds without any investigation under these circumstances was reckless.

52. Based on the above, it was established by a preponderance of the evidence that the disbursal of $355.10 was recklessly made, other than as directed in written escrow instructions, and therefore violated or caused a violation of section 17414, subsection (a)(1), and regulation section 1738.2.

53. In mitigation, the appraisal had been performed and Mr. Medina had verbally authorized the disbursement.

Disbursal of Trust Funds of $250.00

54. In or about August 2005, Respondent disbursed $250.00 to Ms. Jeannette Estrada, her aunt, for notary services. Although a review of the escrow file during the Examination did not reveal a supporting invoice, it was established by a preponderance of the evidence that Ms. Estrada had performed notary services and had presented to escrow a valid invoice supporting that expense or disbursement. Therefore, the disbursement was not made in violation of regulation section 1738.2.

5. Escrow Number 12256-CB

55. Escrow file number 12256-CB was opened on or about July 7, 2005. for the purchase of property located in Glendale, California. The seller and buyer were Respondent and Mr. Arana, respectively. Respondent opened this escrow file, but designated Bibera as the escrow officer. According to Bibera, Respondent processed the bulk of the escrow file, with Bibera processing some of it. Bibera conceded during her cross-examination testimony that it was acceptable for Respondent to have designated Bibera as the escrow officer since she had some involvement in processing the file. In any event, the escrow was ultimately cancelled and the escrow did not close.

Sound Escrow Practice

56. As established by the persuasive testimony of Respondent's expert witness, Ms. Vrabel, and C. Gull's former Escrow Manager, Ms. Ramirez, it is against sound escrow practice for an escrow officer to process an escrow file in which she is a principal. In this case, Respondent actively processed an escrow file in which she was a principal. It was therefore established by a preponderance of the evidence that by improperly handling or processing an escrow file in which she was a principal, Respondent conducted business contrary to sound escrow practice in violation of regulation section 1738.2.

Other Relevant Facts

57. Aggravation. Complainant contends, but did not establish by a preponderance of the evidence, that Respondent continued to work as an escrow officer after being served with the Notice of Intention to Issue Order Pursuant to California Financial Code Section 17423.[11] Although on February 15, 2008, Experience Escrow filed with the Commissioner a Summary of Personnel form that states Respondent had been hired as an "Escrow Officer/Public Relations" employee on February 14, 2008, it was established only that Respondent performed duties in public relations and not processing escrow files. Significantly, the Escrow Manager of Experience Escrow, Ms. Dorothy Macias, told a member of the Commissioner's staff, when interviewed about the filing, that Respondent worked only as a receptionist and in public relations. While Ms. Macias admitted Respondent was some times left alone in the office, Ms. Macias did not state that Respondent engaged in any escrow activity. Respondent specifically denied engaging in escrow duties at Experience Escrow when she testified. Respondent left that job by May 2008.

58. Mitigation. Respondent has no record of prior administrative action taken by the Commissioner. It was not established by a preponderance of the evidence that Respondent financially benefited from her misconduct. As found above, it was not established by a preponderance of the evidence that Respondent made the disbursements that are the subject of this case knowing that the underlying amended escrow instructions were forgeries.

59. Rehabilitation. Respondent established some level of rehabilitation by testifying that she will handle things differently in the future to avoid repeating the problems discussed above. For example, Respondent testified that she will now verify signatures before carrying out escrow instructions; she will either disclose the involvement of relatives for any escrow file she processes, or will not accept the business; and she will ask for help from supervisors when she encounters unfamiliar situations.

[11] Pursuant to section 17423, subsection (c), upon receipt of the notice, the person who is subject thereto is immediately prohibited from engaging in any escrow processing activities.

60. Asserted Defense. It was not established that some or all of the violations described above were caused by, or substantially attributed to, a lack of training and supervision over Respondent while she was employed by C. Gull. Respondent was an experienced escrow officer by the time of her employment at C. Gull, who did not demonstrate the need for further training. Nobody, other than Respondent, testified that she was inexperienced or unable to act competently as an escrow officer. Respondent's level of experience was such that she either knew what was required of her or to ask a supervisor when she did not know. Respondent rarely asked for help while at C. Gull and her supervisors had no notice at the relevant times that she needed further training. This finding is supported by the fact that only five problem escrow files were discovered from over 200 files Respondent processed while at C. Gull. It is more than coincidence that the violations Respondent committed were in favor of her friends and relatives. Under these circumstances, it was established by a preponderance of the evidence that Respondent's misconduct in this case was the result of extremely poor judgment and recklessness and not a lack of training or supervision.

61. Asserted Defense. Respondent also contends, but did not establish, that her workload was so voluminous that she could not avoid some of the violations found above. For the same reasons discussed immediately above, this contention is not persuasive. There is also no evidence that Respondent complained about such a problem to her superiors.

LEGAL CONCLUSIONS

1. *Burden and Standard of Proof* The parties agree Complainant has the burden of proof in this case. As no other statute or law specifically applies to this case, the standard of proof is preponderance of the evidence. (Evid. Code,§ 115.) The clear and convincing evidence standard from cases such as *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, and *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, applies only to disciplinary actions involving professional licenses, due to the fact that such licenses are obtained after extensive education, training, and passing a rigorous state-administered examination. In this case, Respondent has no license with the Commissioner. Moreover, no evidence was submitted indicating the position she previously engaged in, an escrow officer, involves professional employment or activity.

2. *Applicable Law.* The legal authority alleged in the Amended Accusation as cause for administrative action against Respondent is as follows:

A. Section 17403.2, subsection (a), which provides "[n]o person subject to this division shall solicit or accept an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after signing or initialing of the escrow instruction or amended or supplemental escrow instruction, nor permit any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction, unless the addition, deletion or alteration is signed or initialed by all persons who had signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion or alteration."

B. Section 17414, subsection (a)(1), which provides:

> (a) 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.

C. California Code of Regulations, title 10, section 1738.2, which provides "[a]n 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."

D. California Code of Regulations, title 10, section 1740.1, which provides "[a]n escrow agent shall act without partiality to any of the parties to an escrow transaction. If an escrow agent or a person or company related to or affiliated with the escrow agent is a principal to the escrow transaction or is acting or has acted as broker or salesman in relation to the escrow transaction, the escrow agent shall advise in writing all parties to the escrow transaction of such relationship or affiliation before being employed as escrow agent in connection with such transaction. Such advice shall be on the face of the escrow instructions in not less than eight (8) point bold type. Internet escrow agents may transmit the advice electronically over the Internet to all parties to the escrow transaction."

E. Section 17423, which provides, in pertinent part:

> (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, ... 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 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 made material damage to the escrow agent or to the public.

3. *Cause for Administrative Action.* Cause was established pursuant to section 17423 to censure, suspend or bar Respondent, as follows:

A. It was established by a preponderance of the evidence that Respondent violated or caused the violation of the following statutes and regulations of the Escrow Law: section 17414, subdivision (a)(1) (with respect to Escrow Nos. 12567-NE [twice], 11642-NE [twice] and 11877-NE); regulation section 1738.2, for failing to follow written escrow instructions (with respect to Escrow No. 11642-NE [twice]); regulation section 1738.2, for conducting business contrary to sound escrow practices (with respect to Escrow Nos. 12501-CB and 12256-CB); and regulation section 1740.1 (with respect to Escrow Nos. 12501-C13 and 11642-NE). (Factual Findings 13-57.)

B. It was also established by a preponderance of the evidence that it is in the public interest to take administrative action against Respondent. Her misconduct occurred while she acted as an escrow officer for a licensed escrow agent. Thus, there is a direct and substantial nexus between her misconduct and a restriction of her further ability to process escrows. Moreover, Respondent breached her fiduciary duties to the principals of the five escrow transactions in question by failing to act impartially and by violating written escrow instructions. It is in the public interest for the Commissioner to take administrative action against such a person to protect the public from repetition of similar misconduct in the future. (Factual Findings 1-57.)

C. It was also established by a preponderance of the evidence that Respondent knew or should have known that she was violating or causing a violation of the statutes and regulations of the Escrow Law. Respondent was an experienced escrow officer by the time of her employment at C. Gull. She appeared to competently perform her duties at C. Gull. She rarely asked questions of her supervisors. Thus, it was not demonstrated in this case that Respondent's violations were caused by her lack of knowledge of the subject matter. In any event, escrow officers are expected to know the general duties of their positions, such as acting impartially and following escrow instructions. It is therefore reasonable to infer that Respondent knew or should have known that her actions were in violation of the Escrow Law, such as failing to disclose the involvement of a relative in an escrow she processed; acting as an escrow officer for a file in which she was also a principal; failing to undertake any investigation of amended escrow instructions received under suspicious circumstances; and failing to ensure that written escrow instructions were carried out before closing escrow. (Factual Findings 1-57, 61.)

D. It was also established by a preponderance of the evidence that Respondent caused material damage to her employing escrow agent, C. Gull, in that, at least with regard to Escrow Number 12567-NE, C. Gull was required to reimburse one of the principals for funds wrongly disbursed by Respondent. Respondent also caused material damage to her principals in Escrow Numbers 11642-NE and 11877-NE relative to the wrongful disbursements in those transactions. (Factual Findings 1-57.)

4. Disposition. It was established by a preponderance of the evidence that the public interest would be served best by Respondent's 12-month suspension from any position of employment, management or control of any escrow agent pursuant to section 17423. Respondent's misconduct was serious, meaning a censure alone is insufficient. However, Respondent's misconduct was not so severe as to warrant a lifetime bar. There are several factors which indicate moderate administrative action is warranted. For example, it was not established that Respondent was complicit in the suspicious activity of Mr. Rios or otherwise in the wrongful disbursements. She did not financially benefit from those transactions. At worst, Respondent exercised poor judgment and recklessness in trying to assist friends and relatives by taking short-cuts and relaxing her diligence. Respondent has no other record of administrative action by the Commissioner. She has abided by the Commissioner's notice pursuant to section 17423, and therefore no aggravating facts were established. On the other hand, Respondent established some facts mitigating her misconduct. Respondent also demonstrated some level of rehabilitation. Thus, it appears that Respondent has learned her lesson and is not likely to engage in future misconduct. Under the circumstances, a bar is not warranted. (Factual Findings 1-62.)

ORDER

Respondent Naomi Estrada, also known as Noemi Estrada, is suspended for a period of 12 months from any position of employment, management or control of any escrow agent, pursuant to Financial Code section 17423.

DATED: June 11, 2008

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings