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

11)
12 In the Matter of the Accusation of THE) File No.: 963-1931
COMMISSIONER OF CORPORATIONS OF)
13 THE STATE OF CALIFORNIA,) ORDER REVOKING ESCROW AGENT'S
14 Complainant,) LICENSE PURSUANT TO CALIFORNIA
15) FINANCIAL CODE SECTION 17608
16 vs.)
17 FIRST NATIONAL ESCROW,)
18 Respondent.)
19)

20 The Commissioner of Corporations of the State of California, ("Commissioner" or
21 "Complainant") finds that:

22 I.
23 INTRODUCTION

- 24 1. FIRST NATIONAL ESCROW ("Respondent" or "First National") is an escrow agent
25 licensed by the Commissioner pursuant to the Escrow Law of the State of California (California
26 Financial Code Section 17000 et seq.) ("Escrow Law").
27 2. Pursuant to Escrow Law section 17608, the Commissioner may revoke First National's
28 escrow agent license for violations of the Escrow Law after notice and a reasonable opportunity to

1 be heard.

2 3. On March 18, 2013, the Commissioner issued an Accusation for Revocation (“Accusation”)
3 to First National for the violations described below.

4 4. The Commissioner sent, via certified US Mail, the Accusation to First National’s last known
5 address as reported to the Commissioner by First National.

6 5. In accordance with Escrow Law section 17613 and the provisions of Chapter 5, Part 1,
7 Division 3, Title 2, of the Government Code, First National was given a reasonable opportunity to
8 request a hearing to challenge the Accusation.

9 6. To date, and in the time period allowed under the Escrow Law, First National has not
10 requested a hearing to challenge the Accusation for Revocation.

11 7. The Commissioner now hereby revokes the escrow agent license issued to First National
12 Escrow, based upon the following facts and law.

13 **II.**

14 **FACTS**

15 8. First National had its principal place of business located at 3579 Arlington Avenue, #600,
16 Riverside, California 92506.

17 9. First National employed as an escrow officer Karen Gardner (“Gardner”).

18 10. The Commissioner commenced a special examination of the books and records of First
19 National after receiving a complaint on or about March 23, 2010, related to an escrow arranged by
20 Gardner.

21 11. The Commissioner’s Examiner found several violations of the Escrow Law during the
22 examination, involving multiple transactions handled by Gardner, including misuse of funds, failure
23 to follow escrow instructions, and favoring one party over another in escrows.

24 12. Gardner was involved with “lapping” transactions, where she used money from escrows to
25 cover shortages in unrelated escrows, without authorization from the parties whose money she was
26 using. She repeatedly misrepresented to clients what was happening with their money. In the end,
27 Gardner’s unauthorized and illegal use of escrow funds left First National with escrow trust fund
28 shortages of over one million dollars (\$1,000,000).

1 13. As a result, on February 2, 2012, the Commissioner barred Gardner from any position of
2 employment, management, or control of any escrow agent, pursuant to section 17423 of the
3 Financial Code, for violations of Sections 17414(a)(1) and 17414(a)(2) of that law, as well Sections
4 1738 and 1738.2 of Title 10 of the California Code of Regulations.

5 14. Raquel Bauer was the escrow manager at First National at the time the losses took place. She
6 was involved in the daily operation of First National, and as escrow manager, was responsible for
7 escrow officer Gardner's compliance with the escrow agent's procedures and compliance with the
8 Escrow Law.

9 15. Robert Bauer was the President of First National at the same time the illegal activities took
10 place. As President of a licensed escrow agent under the California Escrow Law, Robert Bauer was
11 responsible for complying with the law and ensuring the escrow agent and its employees complied
12 with the Escrow Law.

13 16. In order to investigate the losses and violations further, and to attempt to obtain restitution for
14 customers of First National, the Commissioner needed information and records from First National.

15 17. Financial Code section 17405 and Code of Regulations, title 10, section 1730(b) state that
16 business records of an escrow agent must be provided to the Commissioner upon request, and the
17 location of those records must be made known to the Commissioner.

18 18. The Commissioner requested First National business records from both Robert Bauer and
19 Raquel Bauer. The Bauers did not provide the records as requested and did not provide the location
20 of those records to the Commissioner.

21 19. As a result of the foregoing, the Commissioner issued an order on December 14, 2011,
22 barring Robert Bauer and Raquel Bauer from any position of employment, management, or control
23 of any escrow agent, pursuant to section 17423 of the Financial Code.

24 20. First National declared bankruptcy in 2011. However, First National is still a licensed
25 escrow agent under the Escrow Law and therefore must still comply with the California Escrow Law
26 and regulations.

27 21. In light of the losses incurred by First National's clients, the Commissioner kept First
28 National's license in effect so that a claim could be made with the Escrow Agents' Fidelity

1 Corporation (“EAFC”) for the trust fund losses. (Financial Code section 17314 states that EAFC
2 shall pay a “member” for loss of trust obligations, pursuant to certain requirements. Financial Code
3 section 17312 defines “member” as a licensee.)

4 22. After filing a proof of loss claim with EAFC, the Chapter 7 Bankruptcy Trustee for First
5 National, Karl T. Anderson (“Trustee”), entered into a Settlement Agreement with EAFC. Under the
6 Settlement Agreement, EAFC agreed to pay one million dollars (\$1,000,000) for trust fund losses of
7 First National customers.

8 23. On December 19, 2012, the U.S. Bankruptcy Court, Central District of California, issued an
9 order approving the Settlement Agreement.

10 24. As of February 13, 2013, the Trustee had received the one million dollars (\$1,000,000) from
11 EAFC for the trust fund losses.

12 **III.**

13 **ESCROW LAW VIOLATIONS**

14 25. Pursuant to Financial Code section 17406(a), all licensees under the Escrow Law are required
15 to file an annual audit report containing audited financial statements (“Annual Report”) within one
16 hundred and five (105) days after the close of their fiscal year. First National failed to file its Annual
17 Reports as required under the Escrow Law.

18 26. In addition, First National has been deficient in meeting the net worth requirements of
19 Financial Code section 17210(a).

20 27. First National has also failed to maintain its Surety Bond, as required under Financial Code
21 section 17202, and failed to pay assessments due under section 17207(e) of the Escrow Law.

22 28. As described previously, First National is in Bankruptcy, has suffered significant trust fund
23 losses as a result of Escrow Law violations (Financial Code Sections 17405 and 17414(a)), and its
24 owner and manager have been barred from the industry.

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IV.

APPLICABLE CALIFORNIA ESCROW LAW

29. Financial Code section 17202 states, in pertinent part:

At the time of filing an application for an escrow agent's license, the applicant shall deposit with the commissioner a bond satisfactory to the commissioner in the amount of at least twenty-five thousand dollars (\$25,000). Thereafter, a licensee shall maintain a bond satisfactory to the commissioner in the amount of: (1) twenty-five thousand dollars (\$25,000) if 150 percent of the previous year's average annual trust fund obligations, as calculated under Section 17348, equals two hundred fifty thousand dollars (\$250,000) or less;

30. Financial Code section 17207(e) provides, in pertinent part:

(1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee not to exceed two thousand eight hundred dollars (\$2,800) for each office or location.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.

(3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

(4) If an escrow agent fails to pay the amount due on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

31. Financial Code section 17210(a) provides:

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

32. Financial Code section 17405 states, in pertinent part:

(a) The business, accounts and records of every person performing as an escrow agent, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice. The provisions of this section shall not apply to persons specified in Section 17006.

1 (b) Any person subject to this division shall, upon request, exhibit and allow
2 inspection and copying of any books and records by the commissioner or his or
3 her authorized representative.

4 33. Financial Code section 17406(a) provides:

5 Each licensee shall submit to the commissioner, at the licensee's own expense, an
6 audit report containing audited financial statements covering the calendar year or,
7 if the licensee has an established fiscal year, then for that fiscal year, within 105
8 days after the close of the calendar or fiscal year, as applicable. At that time, each
9 licensee shall also file additional relevant information as the commissioner may
10 require.

11 34. Financial Code section 17414(a) states:

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

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

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

22 35. Financial Code section 17608 provides:

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

25 (a) The licensee has failed to maintain in effect a bond required under the
26 provisions of this division.

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

(c) Any fact or condition exists which, if it had existed at the time of the original
application for such license, reasonably would have warranted the commissioner
in refusing originally to issue such license.

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IV.

**ORDER REVOKING ESCROW AGENT’S LICENSE
PURSUANT TO FINANCIAL CODE SECTION 17608**

The Commissioner finds that, by reason of the foregoing, First National Escrow has violated Financial Code sections 17202, 17207(e), 17210(a), 17405, 17406(a), and 17414(a), which constitutes grounds for the revocation of its escrow agent’s license under Financial Code section 17608.

NOW GOOD CAUSE APPEARING THEREFOR, pursuant to Financial Code section 17608, the escrow agent’s license issued to FIRST NATIONAL ESCROW is hereby revoked. This order is necessary, in the public interest, and consistent with the purposes, policies, and provisions of the California Escrow Law.

Dated: May 23, 2013
Sacramento, CA

JAN LYNN OWEN
Commissioner of Corporations

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division