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7 BEFORE THE DEPARTMENT OF CORPORATIONS
8 OF THE STATE OF CALIFORNIA

9
10 In the Matter of) OAH CASE No. 2010070424
11 THE CALIFORNIA CORPORATIONS) AGENCY CASE No. 963-2527
12 COMMISSIONER,)
13 Complainant,) **ORDER REVOKING ESCROW AGENT'S**
14 v.) **LICENSE (FINANCIAL CODE SECTION**
15 FIRST SOUTHWESTERN ESCROW, INC.,) **17608); BARRING MICHAEL, THERESITA**
16 MICHAEL MACAPAGAL, THERESITA) **AND KATHERINE MACAPAGAL FROM**
17 MACAPAGAL, and KATHERINE) **ESCROW INDUSTRY (FINANCIAL CODE**
18 MACAPAGAL,) **SECTION 17423); AND DENYING**
19) **APPLICATIONS FOR BRANCH OFFICE**
20) **LICENSES (FINANCIAL CODE SECTION**
21) **17209.3)**
22 Respondents.)
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21 I.

22 INTRODUCTION

23 NOW THEREFORE the California Corporations Commissioner ("Commissioner") finds that:

- 24 1. An escrow license was issued to First Southwestern Escrow Inc. (hereinafter referred to as
25 "FSE Inc.") on November 25, 2008. The principal place of business of FSE Inc. is 30593 Union
26 City Blvd., Suite 104, Union City, CA 94587. The escrow license number is 963-2527.
27 2. On October 23, 2009 the Department of Corporations commenced an examination of FSE
28 Inc., and also several other office locations for which branch office status had been applied for but

1 had not yet been approved.

2 3. As a result of the findings of the examiner relating to the activities of FSE Inc., both
3 licensed and unlicensed, the Department of Corporations served on the principals of FSE Inc. on
4 June 28, 2010, the following documents:

- 5 a) Notice of Intention to Issue Order Revoking Escrow Agent’s License for First Southwestern
6 Escrow Inc. pursuant to Financial Code section 17608;
- 7 b) Notice of Intention to Issue Order Barring Michael Macapagal, Theresita Macapagal and
8 Katherine Macapagal from any Position of Employment, Management or Control of any Escrow
9 Agent pursuant to Financial Code section 17423;
- 10 c) Notice of Order Denying Applications for License for Branch Offices pursuant to Financial Code
11 section 17209.3;
- 12 d) Notice of Intention to Issue Order Imposing Penalties pursuant to Financial Code section 17213.2;
- 13 e) FSE Inc. and the Macapagals were also served with an Accusation and Statement of Issues, a
14 Notice of Defense and Government Code sections 11507.5, 11507.6 and 11507.7.

15 4. On July 12, 2010, FSE Inc. and the Macapagals requested in writing a hearing on the
16 issues set out in the Accusation/ Statement of Issues. A two day hearing was set for October 27 and
17 28, 2010 at the office of Administrative Hearings in Oakland, California. On September 20, 2010
18 the Macapagals formally withdrew their request for a hearing in a letter sent to the Department of
19 Corporations, and in consideration of this withdrawal of their hearing request, the Department of
20 Corporations consented to drop its request for penalties and fines.

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22 **II.**

23 **UNLICENSED ACTIVITY**

24 1. At all relevant times herein, the President of FSE Inc. was Theresita Macapagal and the
25 Vice President was Katherine Macapagal. Michael Macapagal identified himself as the “Manager”
26 of FSE Inc. on the Summary of Personnel form provided to the Department of Corporations
27 examiner.

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1 2. On October 23, 2009 the Commissioner commenced a regulatory examination of FSE Inc.
2 After visiting offices in Daly City at 455 Hickey Blvd., Suite 205 C, Daly City CA 94015 (“Daly
3 City office”) and offices in Milpitas at 500 East Calaveras Blvd., Suite 214, Milpitas, CA 95035,
4 (“Milpitas office”) and examining documents from a third location, at 1652 West Texas St., Suite
5 273, Fairfield, CA 94533, (“Fairfield office”) it became clear that FSE Inc. and its principals were
6 operating three unlicensed branch offices in violation of California Financial Code section 17213.2.
7 FSE Inc. had filed applications for branch office licenses for the Daly City office and the Milpitas
8 office on September 24, 2009. No application for a branch office license for the Fairfield office was
9 ever filed. No licenses have been issued by the Commissioner for any of the foregoing three offices.

10 3. The Department of Corporations examiner, during a visit to the unlicensed Daly City
11 office, discovered a closing report from August 1, 2008 to October 22, 2009 that showed 332 closed
12 escrows and 38 cancelled escrows, all of which were processed in the unlicensed Daly City office.
13 The same examiner discovered that for the Milpitas office from December 8, 2008 to October 23,
14 2009 there were 853 closed escrows and 51 cancelled escrows processed in the unlicensed Milpitas
15 office.

16 4. In April, 2009 Katherine and Michael Macapagal discussed allegations with the
17 Department of Corporations that they were operating an unlicensed escrow office in Milpitas.
18 Katherine Macapagal provided to the Department of Corporations an unsigned and undated letter
19 that stated: “NO escrow work under First Southwestern Escrow is currently being processed in
20 Milpitas for our company. We have no branch currently operating in Milpitas.” This statement to
21 the Department of Corporations was demonstrably false and a violation of Financial Code section
22 17702.

23 5. The examiner for the Department of Corporations obtained a Summary of Personnel form
24 from FSE Inc., and by comparing this form with Department records was able to determine that there
25 were 17 employees for FSE Inc. working at the various FSE Inc. offices who had not submitted the
26 required fingerprint applications. This failure to submit the requisite employee fingerprints and
27 identifying information was a violation of CCR Title 10, section 1726 and Financial Code sections
28 17414.1(d), 17419 and 17702.

1 6. It was also determined that FSE Inc. operated its general account in the name of another
2 corporate entity and the necessary liquidity requirement were not met, in violation of Financial Code
3 section 17210.

4 7. During the examination it was determined that the daily manual control had never been
5 prepared for any of the unlicensed branch offices operated by FSE Inc. in violation of CCR, Title 10,
6 section 1732.2, and that the bank reconciliations were not prepared on a monthly basis and bank
7 service charges had been debited directly from the respective trust accounts in violation of CCR,
8 Title 10, section 1732.2.

9 8. Michael Macapagal, the husband of the President of FSE Inc. and the son of the Vice
10 President of FSE Inc. is not listed on any application filed with the Department of Corporations to be
11 an escrow officer or manager, either with FSE Inc. on its original license application or on any of the
12 branch applications FSE Inc. has filed with the Department of Corporations. The conclusion of the
13 examiner for the Department of Corporations after observing Michael Macapagal in the Union City
14 office was that Michael Macapagal was the de facto manager of all FSE Inc. operations and as such
15 should have been disclosed to the Department of Corporations. Mr. Macapagal listed himself on the
16 Summary of Personnel form as a "Manager", and therefore he should have been disclosed on
17 applications filed with the Department of Corporations and he should have completed a Statement
18 and Identity Questionnaire ("SIQ") and filed his fingerprints with the Department of Corporations
19 pursuant to Financial Code section 17212.1.

20 **III.**

21 **REVOCATION OF LICENSE AND BAR FROM EMPLOYMENT AND DENIAL OF**
22 **BRANCH LICENSE APPLICATIONS**

23 California Financial Code section 17608 provides in relevant part:

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

- 26 (b) The licensee has violated any provision of this division or any rule made by
- 27 the commissioner under and within the authority of this division.
- 28 (c) Any fact or condition now 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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California Financial Code section 17423 provides in relevant part:

(a) 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.

California Financial Code section 17209.3 states in pertinent part:

The commissioner may refuse to issue any license being applied for, and shall refuse to issue any license being applied for if upon his examination and investigation, and after appropriate hearing, he finds any of the following:

(b) That any incorporator, officer, or director of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(c) That there is no officer or manager possessing a minimum of five years of responsible escrow or joint control experience stationed or to be stationed at the main office of the corporation and that there is no officer, manager or employee possessing a minimum of four years of responsible escrow or joint control experience stationed or to be stationed at each branch.

(d) That the proposed licensee's financial program is unsound.

(e) A false statement of a material fact has been made in the application for license.

(f) The applicant, any officer, director, general partner, or incorporator of the applicant,... has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

The Commissioner finds that, by reason of the foregoing, Respondents have violated California Financial Code sections 17200.8, 17209.3,17210, 17210.2, 17212.1, 17213.2, 17405, 17414.1 and 17419 and California Code of Regulations Title 10, sections 1726, 1732.2, and it is in the best interest of the public to revoke the escrow agent's license of Respondent First Southwestern

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Escrow Inc. and to bar Respondents Theresita Macapagal, Katherine Macapagal, and Michael Macapagal from any position of employment, management or control of any escrow agent, and deny the issuance of escrow agent’s branch licenses to FSE Inc. for the offices in Daly City and Milpitas.

THEREFORE, pursuant to Financial Code section 17608 the escrow license issued to First Southwest Escrow Inc. is hereby revoked. Further, pursuant to Financial Code section 17423, Michael Macapagal, Theresita Macapagal and Katherine Macapagal are barred from any position of employment, management or control of any escrow agent in this state. This revocation and the bar order shall be effective 45 days from the date it is served on FSE Inc. and the Macapagals. Pursuant to Financial Code section 17209.3 the applications filed by FSE Inc. and the Macapagals for branch offices are denied. The denial of branch office applications is effective as of the date hereof.

Dated: September 27, 2010
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
Alan S. Weinger
Deputy Commissioner