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

10 In the Matter of the Accusation
11 of the CALIFORNIA CORPORATIONS
12 COMMISSIONER,

13 Petitioner,

14 vs.

15 FAIRWAY ESCROW CORPORATION, a
16 California corporation; and
17 GRACE HU, an individual

18 Respondents.

Case No.:

ACCUSATION TO REVOKE ESCROW
AGENT LICENSE AND TO BAR FROM
EMPLOYMENT, MANAGEMENT OR
CONTROL OF ANY ESCROW AGENT

19 The California Corporations Commissioner ("Commissioner") is
20 informed and believes, and based upon such information and belief,
21 alleges and charges Respondents as follows:

22 INTRODUCTION

23 The proposed orders seek to revoke the escrow agent's license
24 of respondent Fairway Escrow Corporation ("Fairway") pursuant to §
25 17608 of the California Escrow Law, and to bar respondent Grace Hu
26 pursuant to § 17423 of the California Escrow Law from employment,
27 management, or control of any escrow agent.
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I.

RESPONDENTS

1. Fairway is a California corporation located at 18842 Norwalk Boulevard, Artesia, California 90701. Fairway is engaged in the business of an escrow agent pursuant to §§ 17003 and 17004 of the California Financial Code.

2. Grace Hu is the President and owner of Fairway, and was also a member of the Cerritos City Council ("Council"), and has served as the mayor of Cerritos, at all relevant times herein.

II.

FACTS

3. Janus Escrow Corporation ("Janus") is a California corporation located at 1725 South Nogales Street, Suite 101, Rowland Heights, California 91748. Janus is engaged in the business of an escrow agent pursuant to §§ 17003 and 17004 of the California Financial Code.

4. At all relevant times herein, Wan Jung Chou Sung ("Wan Sung") was the sole owner, officer, director and President of Janus, owning 50,000 shares of Janus stock.

5. On July 9, 2001 and July 12, 2001, the Department of Corporations commenced a regulatory examination of Janus.

6. On July 13, 2001, the Department of Corporations commenced a regulatory examination of Fairway.

7. On February 8, 2002, the Department of Corporations conducted a further regulatory examination of Janus and Fairway.

1 8. The Department of Corporations reviewed approximately 84
2 escrow files, and bases the allegations contained herein on a
3 sample of 20 escrow files:

- 4 a. Fairway Escrow #4867 FC / Janus Escrow #2138 FE
- 5 b. Fairway Escrow #4886-RG / Janus Escrow #2266 FE
- 6 c. Fairway Escrow #4862-RG / Janus Escrow #2418 FE
- 7 d. Fairway Escrow #4873-RG / Janus Escrow #2419 FE
- 8 e. Fairway Escrow #4885-RG / Janus Escrow #2432 FE
- 9 f. Fairway Escrow #4883-RG / Janus Escrow #2433 FE
- 10 g. Fairway Escrow #5098-RG / Janus Escrow #2686 FE
- 11 h. Fairway Escrow #4896-FC / Janus Escrow #2226
- 12 i. Fairway Escrow #4879-RG / Janus Escrow #2240 FE
- 13 j. Fairway Escrow #4939-RG / Janus Escrow #2295 FE
- 14 k. Fairway Escrow #4923-RG / Janus Escrow #2325 FE
- 15 l. Fairway Escrow #5022-FC / Janus Escrow #2359 FE
- 16 m. Fairway Escrow #4945-RG / Janus Escrow #2392 FE
- 17 n. Fairway Escrow #4940-FC / Janus Escrow #2650 FE
- 18 o. Fairway Escrow #4919-FC / Janus Escrow #2774 FE
- 19 p. Fairway Escrow #4863 FC / Janus Escrow #2161 FE
- 20 q. Fairway Escrow #4864 FC / Janus Escrow #2167 FE
- 21 r. Fairway Escrow #4865 FC / Janus Escrow #2164 FE
- 22 s. Fairway Escrow #4870 FC / Janus Escrow #2169 FE
- 23 t. Fairway Escrow #4926 FC / Janus Escrow #2168 FE

24 9. A review of Project escrow files at Fairway and Janus
25 revealed that Fairway and Janus are engaged in a scheme to make it
26 appear that Janus is the settlement agent for the Cerritos Senior
27 Housing ("Project") escrow transactions rather than Fairway, to
28

1 hide Grace Hu and Fairway's involvement with the Project. Grace Hu
2 was involved in the city council's decision to approve the Project.

3 10. According to information provided by Grace Hu, prior to
4 March 15, 2001, when the Project was in the initiation and approval
5 stages, Grace Hu served on the city council of the City of Cerritos
6 and approved the Project.

7 11. The Project was subsequently approved by the city
8 council.

9 12. Cerritos Senior Housing LLC chose Grace Hu's company,
10 Fairway, to process the escrows.

11 13. On or about March 15, 2001, Grace Hu stepped down from
12 the City Council.

13 14. On or about April 2001, the first Project escrow was
14 opened by Fairway.

15 15. In or about June 2001, the Builders received inquiries
16 from the City of Cerritos regarding the nature of the selection
17 process that resulted in Fairway processing the escrows.

18 16. To avoid the appearance of any impropriety or conflict of
19 interest, Grace Hu began transferring escrow files from Fairway to
20 Janus.

21 17. Project escrow instructions designate Fairway as the
22 escrow agent of the escrows, as well as the settlement agent.

23 18. Fairway fully processed the Project escrows. Fairway
24 then transferred completed and closed escrow files as well as
25 escrow funds to Janus.

26 19. After receiving the escrow files from Fairway, Janus
27 issued remaining disbursement checks and then re-issued the closing
28 statement under Janus' own name to give the appearance that the

1 file was actually processed by Janus. The process of transferring
2 the files delayed the disbursement of the closing funds, in some
3 cases by over a week. Janus' involvement in the files took place
4 only after the escrows had closed.

5 20. To make it appear that Janus, rather than Fairway,
6 processed the escrows files, Janus received escrow fees, and then
7 transferred the fees to Fairway.

8 21. Rather than one closing statement per escrow file, all
9 escrow files contained two closing statements: one prepared by
10 Fairway and the other prepared by Janus. These closing statements
11 were different.

12 22. Janus prepared false closing statements showing it as the
13 settlement agent and the receiver of the escrow fees when in fact
14 Fairway received the escrow fees from Janus, and Fairway had
15 performed all functions of processing the escrows, except for
16 making the final disbursements.

17 23. The lenders and title companies were led to believe that
18 Fairway was the only escrow company involved in these transactions.
19 The title company addressed all correspondence, including documents
20 sent after closing, to Fairway.

21 24. Property purchasers were led to believe that Janus
22 handled the escrow transactions, and received different closing
23 statements than the lenders and title companies.

24 25. Original escrow instructions did not authorize the
25 transfer of escrow files from Fairway to Janus. Most escrow
26 instructions were later amended to allow for the transfer, but
27 seven escrow files failed to contain instructions authorizing the
28 transfer of the escrow files.

1 26. Upon the closing of all escrows, Fairway will earn
2 approximately \$100,000 in fees.

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5 III.

6 MATERIAL MISSTATEMENT OR OMISSION

7 (All Respondents)
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9 25. Cal. Fin. Code § 17414 provides that:

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

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

18 26. Fairway was the settlement agent designated in the escrow
19 instructions rather than Janus. However, Janus in fact acted as
20 the settlement agent. Fairway and Janus prepared two sets of
21 closing statements but Fairway received the fees. The documents
22 maintained by respondents are therefore false. Accordingly,
23 respondent Fairway knowingly misstated and omitted material facts
24 in their escrow documents pertaining to the Project escrows.
25 Therefore, good cause exists to revoke the escrow license of
26 Fairway, and to permanently bar Grace Hu from employment,
27 management, or control of any escrow agent.

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1 IV.

2 TRANSFER OF ESCROW FUNDS

3 (All Respondents)

4 27. Cal. Code Regs. tit. 10, § 1738 pertaining to Withdrawals
5 from Special Accounts provides that:

6 All money deposited in such "trust" or "escrow" account shall be
7 withdrawn, paid out, or transferred to other accounts only in
8 accordance with the written instructions of the principals to the
9 escrow transaction or pursuant to order of a court of competent
jurisdiction.

10 28. The transfer of escrow funds from Fairway to Janus was
11 not in accordance with the written escrow instructions of escrow
12 files (a) through (g) indicated above in paragraph 9, and therefore
13 was done without proper authorization of the principals.
14 Therefore, good cause exists to revoke the escrow license of
15 Fairway, and to permanently bar Grace Hu from employment,
16 management, or control of any escrow agent.

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18 V.

19 DISBURSAL OF ESCROW FUNDS

20 (All Respondents)

21 29. Cal. Fin. Code § 17414(a) provides that:

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

24 (1) Knowingly or recklessly disburse or cause the disbursement of
25 escrow funds otherwise than in accordance with escrow
26 instructions . . .

27 30. The disbursement of escrow funds of escrow files (a) through
28 (g) indicated above in paragraph 9, from Fairway to Janus was not

1 in accordance with the written escrow instructions. Therefore,
2 good cause exists to revoke the escrow license of Fairway, and to
3 permanently bar Grace Hu from employment, management, or control of
4 any escrow agent.

5 VI.

6 USE OF DOCUMENTS OR PROPERTY

7 (All Respondents)

8 31. Cal. Code Regs. tit. 10, § 1738.2 provides that:

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

13 32. The transfer of seven escrow files and funds from Fairway
14 to Janus was not in accordance with the written instructions of the
15 principals to the Project escrow transaction. Accordingly, the
16 transfer was conducted without the proper authorization of the
17 principals. Therefore, good cause exists to revoke the escrow
18 license of Fairway, and to permanently bar Grace Hu from
19 employment, management, or control of any escrow agent.

20 VII.

21 STATEMENT OF ACCOUNT

22 (All Respondents)

23 33. Cal. Code Regs. tit. 10, § 1741.3 provides that:

24 Upon completion of an escrow transaction an escrow agent shall
25 render to each principal to the escrow transaction a statement of
26 his account in writing. Such statement shall specify all receipts
27 and disbursements of escrow funds for his account. Charges made by
28 the escrow agent for his services, and all disbursements by the
escrow agent to a broker or salesman in connection with an escrow
transaction shall be clearly designated as such and shall be shown
separately from disbursements of the escrow agent. Payments outside

1 of escrow, if shown in the statement, shall be set forth separately
2 from payments by or to the escrow agent.

3 34. Fairway was the settlement agent according to the escrow
4 instructions rather than Janus. Fairway and Janus failed to
5 specify in its closing statements all disbursements and receipts of
6 escrow funds between Fairway and Janus. Therefore, good cause
7 exists to revoke the escrow license of Fairway, and to permanently
8 bar Grace Hu from employment, management, or control of any escrow
9 agent.

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11 XIII.

12 GROUND FOR REVOCATION AND BAR

13 35. Cal. Fin. Code § 17423 provides that:

14 (a) The commissioner may, after appropriate notice and opportunity
15 for hearing, by order, censure or suspend for a period not
16 exceeding 12 months, or bar from any position of employment,
17 management, or control any escrow agent, or any other person, if
18 the commissioner finds either of the following:

19 (1) That the censure, suspension, or bar is in the public
20 interest and that the person has committed or caused a
21 violation of this division or rule or order of the
22 commissioner, which violation was either known or should have
23 been known by the person committing or causing it or has
24 caused material damage to the escrow agent or to the public.

25 (e) Persons suspended or barred under this section are prohibited
26 from participating in any business activity of a licensed escrow
27 agent and from engaging in any business activity on the premises
28 where a licensed escrow agent is conducting escrow business. This
subdivision shall not be construed to prohibit suspended or barred
persons from having their personal escrow transactions processed by
a licensed escrow agent.

36. Cal. Fin. Code § 17608 provides that:

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

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

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

6 37. The violations of law committed by respondent Fairway are
7 grounds for license revocation and is in the public interest.

8 38. The violations of law committed by Grace Hu are grounds
9 for permanent bar from employment, management, or control, and is
10 in the public interest.

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12 CONCLUSION

13 The Commissioner finds, by reason of the foregoing, that there
14 are grounds available under Cal. Escrow Law §§ 17608 and 17423 to
15 revoke Fairway's escrow agent's licenses, and to bar Grace Hu from
16 employment, management, or control of any escrow agent,
17 respectively.

18 WHEREFORE COMPLAINANT PRAYS that Fairway's escrow agent
19 license be revoked, and that Grace Hu be barred from any position
20 of employment, management, or control of any escrow agent.

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22 Dated: August 7, 2002
23 Los Angeles, California

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DEMETRIOS A. BOUTRIS
California Corporations Commissioner

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26 By _____
27 Marc S. Crandall
28 Corporations Counsel