

1 ALAN S. WEINGER  
Deputy Commissioner  
2 JOANNE J. ROSS (CA BAR NO. 202338)  
3 Corporations Counsel  
Department of Corporations  
4 1515 K Street, Ste. 200  
Sacramento, California 95814  
5 Telephone: (916) 324-9687 Fax: (916) 445-6985

6 Attorneys for Complainant

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

10 In the Matter of the Accusation of THE ) OAH Case No.: 2010100340  
CALIFORNIA CORPORATIONS )  
11 COMMISSIONER, ) ORDER BARRING KAREN GARDNER  
FROM EMPLOYMENT, MANAGEMENT OR  
12 Complainant, ) CONTROL OF ANY ESCROW AGENT  
(CALIFORNIA FINANCIAL CODE  
13 vs. ) SECTION 17423)  
14 )  
KAREN GARDNER )  
15 )  
16 Respondent. )  
17 \_\_\_\_\_ )

18 Pursuant to the October 21, 2011 Proposed Decision of Administrative Law Judge Howard  
19 W. Cohen, adopted by the California Corporations Commissioner on February 2, 2012, attached and  
20 incorporated herein as Exhibit A, it is hereby ordered that KAREN GARDNER is barred from any  
21 position of employment, management or control of any escrow agent. This Order is effective as of  
22 February 2, 2012.

23 Dated: February 7, 2012  
Los Angeles, CA

JAN LYNN OWEN  
California Corporations Commissioner

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25  
26 By \_\_\_\_\_  
Alan S. Weinger  
27 Deputy Commissioner  
28

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
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10 BEFORE THE DEPARTMENT OF CORPORATIONS  
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12 In the Matter of the Accusation of THE ) OAH No. 2010100340  
CALIFORNIA CORPORATIONS )  
13 COMMISSIONER, ) AMENDED ACCUSATION  
)  
14 Complainant, )  
)  
15 vs. )  
)  
16 KAREN GARDNER, )  
)  
17 Respondent. )  
18

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19  
20 The Complainant is informed and believes, and based upon such information and belief,  
21 alleges and charges Respondent as follows:

22 I

23 1. Respondent Karen Gardner ("Gardner") was at all times relevant herein, employed as an  
24 escrow officer at Outlook Escrow, Inc., ("Outlook") or First National Escrow ("First National"),  
25 escrow agents licensed by the California Corporations Commissioner ("Commissioner" or  
26 "Complainant") pursuant to the Escrow Law of the State of California, California Financial Code  
27 Section 17000 et seq. ("Escrow Law").

28 2. Outlook has its principal place of business located at 6840 Indiana Avenue, Suite 150,

1 Riverside, California 92506.

2 3. First National has its principal place of business located at 3579 Arlington Avenue, #600,  
3 Riverside, California 92506.

4 4. Gardner was employed as an escrow officer at Outlook from about February 15, 2007  
5 through June 15, 2009.

6 5. Gardner then became employed as an escrow officer at First National beginning in or around  
7 September 2009. She left her employment with First National on September 9, 2010.

8 II

9 6. On or about September 15, 2009, the Commissioner received a complaint regarding Outlook  
10 on an escrow handled by Respondent, Gardner.

11 7. The complaint alleged that Gardner had mishandled an escrow on a property complainants  
12 were selling in Nevada.

13 8. The escrow instructions and Purchase Agreement (collectively, the “Agreement”) stated that  
14 the buyer on the property was supposed to deposit fifty thousand dollars (\$50,000) into the escrow  
15 account within five days from the date the Agreement was executed. The Agreement was executed  
16 on May 16, 2009.

17 9. The Agreement stated that the fifty thousand dollars (\$50,000) would be unconditionally  
18 released to the seller on June 15, 2009.

19 10. Gardner issued a “Proof of Funds” letter dated May 18, 2009, confirming that unencumbered  
20 funds of fifty thousand dollars (\$50,000) were indeed in the account.

21 11. On or about, June 15, 2009, Outlook informed the sellers that there were no funds in their  
22 escrow account.

23 12. The Department performed an examination of Gardner’s activities at Outlook after receiving  
24 the seller’s complaint.

25 13. During this examination, the examiner found instructions to Gardner from the President of  
26 “Kyburz Capital” that state that Gardner should expect several calls to “verify POF” (proof of  
27 funds), and state what Gardner should claim was the amount held in escrow for each.

28 14. The examiner found “Proof of Funds” and verification of deposit documents that were signed

1 by Gardner that verified amounts in escrow accounts ranging from fifty thousand dollars (\$50,000)  
2 to over two hundred million dollars (\$200,000,000). The estimated total is two hundred fifty-six  
3 million, fifty thousand dollars (\$256,050,000).

4 15. In fact, these escrow accounts, reviewed by the Department’s Examiner, never had the  
5 amounts claimed in them.

6 16. Consequently, it became clear to the Department’s examiner that Gardner knowingly and/or  
7 recklessly made misstatements and/or failed to state material facts pertaining to escrows or escrow  
8 affairs.

9 III

10 17. After being terminated from Outlook in June 2009, Gardner began working at First National  
11 in or around September 2009.

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

15 19. During her examination of First National’s records, the Department’s Examiner reviewed the  
16 transaction listed in the complaint.

17 20. The Examiner found that Karen Gardner did not follow the instructions given by the lender’s  
18 agent for the transaction.

19 21. The "Closing Instruction Letter" sent by the lender via its agent, Diversified Funding, Inc.  
20 (“Diversified”), on March 2, 2010, stated that four hundred thousand dollars (\$400,000) was  
21 supposed to be escrowed for: “the two-part simultaneous closing that will take place in two separate  
22 transactions on or before March 2, 2010. If the closings do not happen within three business days of  
23 receipt of the funds, then you are instructed to return the principal amount of \$400,000.00 to:  
24 ORALABS, INC.: Key Bank National Association ABA#: 307070267 ACCT#: 769681015459.”

25 22. The funds were received by First National on March 3, 2010. However, the closings did not  
26 take place within the three business days of March 3, 2010.

27 23. In fact, First National did not return the funds to Oralabs until almost two weeks later, on or  
28 about March 19, 2010, in direct violation of the lender’s instructions.

1 24. Following this examination, the Department received additional complaints regarding  
2 Respondent. As a result, the Department’s Examiner commenced a special examination of the books  
3 and records related to Respondent’s activities at First National.

4 25. The Department’s Examiner found several violations of the Escrow Law involving different  
5 transactions.

6 26. In one of these transactions, lender Crown Financial, LLC (“Crown”) issued lender  
7 instructions dated on June 10, 2010 (“Crown Instructions”).

8 27. In item 7 of the Crown Instructions, Crown stated that the loan funds needed to be returned  
9 immediately if the transaction did not close by June 18, 2010.

10 28. In item 9 of the Crown Instructions, Crown specified that: “Lifeway has no authority to give  
11 you any instructions whatsoever for disbursement of the Escrow Deposit except to return it to  
12 Crown.”

13 29. The Manager of Crown, as well as June Cox, CEO of Lifeway Capital Group, Inc. (the buyer  
14 in the transaction), and Respondent Karen Gardner signed the instructions.

15 30. On June 10, 2010, First National received two hundred and twenty-four thousand (\$224,000)  
16 from Crown.

17 31. Respondent sent an email to June Cox (“Cox”), CEO of Lifeway Capital Group, Inc.  
18 (“Lifeway”). Respondent’s email was sent on the same day Crown’s money was received at First  
19 National. Respondent stated to Cox, “ok just got the wire for \$224,000 where do I apply it”.

20 32. Cox replied that Respondent should “transfer \$51,919.77 from 10892kg to Pinehurst #10857  
21 and the balance to 10821”.

22 33. Respondent proceeded to disburse the funds precisely as Cox at Lifeway had instructed.

23 34. On June 10, 2010, Respondent issued check number 43720 in the amount of fifty-one  
24 thousand nine-hundred nineteen dollars and seventy seven cents (\$51,919.77) from Escrow number  
25 10892KG to Escrow number 10857KG.

26 35. Then on June 11, 2010, Respondent issued check number 43734 for the balance of one  
27 hundred seventy-two thousand eighty dollars and twenty-three cents (\$172,080.23) from Escrow  
28 number 10892KG to Escrow number 10821KG.

1 36. Respondent knowingly or recklessly disbursed or caused the disbursal of escrow funds  
2 otherwise than in accordance with the lender’s escrow instructions that specifically stated Lifeway  
3 was not authorized to instruct Respondent regarding disbursements.

4 37. In addition to these violations, the Department’s Examiner discovered the misuse of escrow  
5 funds by Respondent.

6 38. On March 18, 2010, First National received one million five hundred thousand dollars  
7 (\$1,500,000) from Bidamar Corporation and Shawbeth, Inc. (collectively referred to herein as  
8 “Shawbeth”) that was credited to Shawbeth’s escrow number 10808.

9 39. On March 19, 2010, First National received a further eighteen thousand two hundred and  
10 three dollars and seventy-nine cents (\$18,203.79) from Shawbeth.

11 40. On March 19, 2010, Respondent transferred one million three hundred three thousand and  
12 forty-seven dollars and thirty-nine cents (\$1,303,047.39) to escrow number 10807.

13 41. Respondent then made multiple disbursements from escrow number 10807 with the one  
14 million three hundred and three thousand forty-seven dollars and thirty-nine cents (\$1,303,047.39)  
15 she transferred of Shawbeth’s money.

16 42. There were multiple disbursements in various amounts, including, for example, a wire  
17 transfer to City National Bank in the amount of four hundred twenty thousand and five hundred  
18 ninety five dollars (\$420,595). This was a payoff for an unrelated escrow. Shawbeth did not  
19 authorize these disbursements of its money.

20 43. It became clear to the Department’s Examiner that Respondent was involved in the misuse of  
21 escrow trust funds.

22 IV

23 California Financial Code section 17414, subsections (a)(1) and (a)(2) provide:

- 24 (a) It is a violation for any person subject to this division or  
25 any director, stockholder, trustee, officer, agent, or employee of  
26 any such person to do any of the following:

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(1) Knowingly or recklessly disburse or cause the disbursement 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.

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

California Code of Regulations, title 10, section 1738 provides:

(a) All money deposited in such "trust" or "escrow" account shall be withdrawn, paid out, or transferred to other accounts 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 pursuant to order of a court of competent jurisdiction.

(b) The escrow agent shall comply with, at a minimum, the following procedures for wire transfers (also known as "electronic fund transfers"):

(1) The instructions of the principals authorizing the wire transfer must contain, at a minimum, the amount of the funds to be wire transferred, the name of the financial institution, the account number and the account name, receiving the funds.

(2) The escrow agent shall retain confirmation of the wire transfer from the financial institution that contains, at a minimum, the amount of the funds wire transferred and the account number and name of the account the funds were wire transferred to.

(3) If necessary, the escrow books shall be properly adjusted to reflect the wire transfer of funds from the escrow account.

(4) The escrow agent shall maintain a proper audit trail and adequate controls and safeguards for funds disbursed by wire transfer. All money deposited in such "trust" or "escrow" account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.

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California Code of Regulations, title 10, section 1738.2 provides:

An 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.

California Financial Code section 17423 provides in pertinent 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.

V

Complainant finds that, by reason of the foregoing, Respondent Gardner has violated Sections 17414(a)(1) and 17414(a)(2) of the Financial Code, and Sections 1738 and 1738.2 of title 10 of the California Code of Regulations and it is in the best interests of the public to bar Respondent Gardner from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that Respondent Gardner be barred from any position of employment, management or control of any escrow agent.

Dated: October 29, 2010  
Sacramento, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
Joanne Ross  
Corporations Counsel



1 PRESTON DuFAUCHARD  
2 California Corporations Commissioner  
3 ALAN S. WEINGER  
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17 COMMISSIONER, ) ACCUSATION  
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26 The Complainant is informed and believes, and based upon such information and belief,  
27 alleges and charges Respondent as follows:

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1. Respondent Karen Gardner ("Gardner") was at all times relevant herein, employed as an  
escrow officer at Outlook Escrow, Inc., ("Outlook") or First National Escrow ("First National"),  
escrow agents licensed by the California Corporations Commissioner ("Commissioner" or  
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5 through June 15, 2009.

6 5. Gardner then became employed as an escrow officer at First National beginning in or around  
7 September 2009. She left her employment with First National on September 9, 2010.

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9 6. On or about September 15, 2009, the Commissioner received a complaint regarding Outlook  
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11 7. The complaint alleged that Gardner had mishandled an escrow on a property complainants  
12 were selling in Nevada.

13 8. The escrow instructions and Purchase Agreement (collectively, the “Agreement”) stated that  
14 the buyer on the property was supposed to deposit fifty thousand dollars (\$50,000) into the escrow  
15 account within five days from the date the Agreement was executed. The Agreement was executed  
16 on May 16, 2009.

17 9. The Agreement stated that the fifty thousand dollars (\$50,000) would be unconditionally  
18 released to the seller on June 15, 2009.

19 10. The sellers were concerned about the escrowed money and the out-of-state escrow company.  
20 There were also other purchase offers, so they wanted to verify the validity of this purchase offer.  
21 They requested verification from Gardner that the fifty thousand dollars (\$50,000) was in the escrow  
22 account.

23 11. Gardner issued a “Proof of Funds” letter dated May 18, 2009, confirming that unencumbered  
24 funds of fifty thousand dollars (\$50,000) were indeed in the account.

25 12. On or about June 9, 2009, the seller visited Outlook in person; she asked Gardner to verify  
26 that the fifty thousand dollars (\$50,000) were in her account. Gardner orally verified that the funds  
27 were in the account.

28 13. On or about, June 15, 2009, Outlook informed the sellers that there were no funds in their

1 escrow account.

2 14. The Department performed an examination of Gardner’s activities at Outlook after receiving  
3 the seller’s complaint.

4 15. During this examination, the examiner found instructions to Gardner from the President of  
5 “Kyburz Capital” that state that Gardner should expect several calls to “verify POF” (proof of  
6 funds), and state what Gardner should claim was the amount held in escrow for each.

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9 to over two hundred million dollars (\$200,000,000). The estimated total is two hundred fifty-six  
10 million, fifty thousand dollars (\$256,050,000).

11 17. In fact, these escrow accounts, reviewed by the Department’s Examiner, never had the  
12 amounts claimed in them.

13 18. Consequently, it became clear to the Department’s examiner that Gardner knowingly and/or  
14 recklessly made misstatements and/or failed to state material facts pertaining to escrows or escrow  
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17 19. After being terminated from Outlook in June 2009, Gardner began working at First National  
18 in or around September 2009.

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

22 21. During her examination of First National’s records, the Department’s Examiner reviewed the  
23 transaction listed in the complaint received by the Department.

24 22. The Examiner found that Karen Gardner did not follow the instructions given by the lender  
25 for the transaction.

26 23. The "Closing Instruction Letter" sent by the lender, Diversified, on March 2, 2010, stated that  
27 four hundred thousand dollars (\$400,000) was supposed to be escrowed for: “the two-part  
28 simultaneous closing that will take place in two separate transactions on or before March 2, 2010. If

1 the closings do not happen within three business days of receipt of the funds, then you are instructed  
2 to return the principal amount of \$400,000.00 to: ORALABS, INC.: Key Bank National Association  
3 ABA#: 307070267 ACCT#: 769681015459.”

4 24. The funds were received by First National on March 3, 2010. The closings did not take place  
5 within the three business days of March 3, 2010. In fact, First National did not return the funds to  
6 Oralabs until almost two weeks later, on or about March 19, 2010.

7 IV

8 California Financial Code section 17414, subsections (a)(1) and (a)(2) provide:

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

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

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

21 California Code of Regulations, title 10, section 1738 provides:

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

26 V

27 California Financial Code section 17423 provides in pertinent part:

28 (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

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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.

VI

Complainant finds that, by reason of the foregoing, Respondent Gardner has violated Sections 17414(a)(1) and 17414(a)(2) of the Financial Code and Section 1738 of title 10 of the California Code of Regulations and it is in the best interests of the public to bar Respondent Gardner from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that Respondent Gardner be barred from any position of employment, management or control of any escrow agent.

Dated: September 27, 2010  
Sacramento, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
Joanne Ross  
Corporations Counsel