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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) OAH NO.: 2017100489
13)
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
15) FIRST AMENDED ACCUSATION IN
Complainant,) SUPPORT OF ORDER BARRING SULLIVAN
16 v.) GARRETT
17 SULLIVAN GARRETT)
18)
Respondent.)
19)
20 _____)

21
22 The Commissioner of Business Oversight (Commissioner) is informed and believes and based
23 upon such information and belief, alleges and charges as follows:

24
25 **I.**
26 **Introduction**

27 1. Sullivan Garrett (Garrett) was at all relevant times an escrow officer at New Era
28 Escrow, Inc. (New Era) an escrow agent licensed by the Commissioner pursuant to the Escrow Law

1 of the State of California (Financial Code section 17000 et seq.), with its principal place of business
2 at 509 North Sepulveda Boulevard, Suite 101, Manhattan Beach, CA 90266. At all relevant times,
3 Garrett was also an escrow officer at California Investors Escrow Co. (CIEC), another escrow agent
4 licensed by the Commissioner with its principal place of business at 7125 W. Manchester Avenue,
5 Los Angeles, CA 90045.

6 II.

7 November 23, 2015 Examination—New Era Escrow

8 2. On or about November 23, 2015, the Commissioner conducted a special examination
9 of New Era escrow files after receiving a letter from New Era indicating that it had terminated Garrett
10 from employment after discovering that Garrett mishandled escrow files and caused trust fund losses
11 that New Era was required to replace.

12 The special examination revealed that Garrett had mishandled escrow files in violation of the
13 Escrow Law as more fully described below:

14 3. Escrow #004003-SG: In Escrow #004003-SG, the transaction was a short sale
15 whereby the short sale lender had approved seller proceeds of \$85,032.93. However, Garrett failed to
16 include \$12,264.66 in tax liens that was owed by the seller in the Estimated Hud-1 that was sent to
17 the lender for approval. Rather than disclosing the omission to the parties, Garrett instead disbursed
18 seller proceeds of \$73,986.83 from the trust account instead of the \$85,032.93 that was approved by
19 the short sale lender, in violation of California Code of Regulations, title 10, section 1738.2.

20 4. Escrow #002615-SG: In Escrow #002615-SG, the transaction was a short sale
21 whereby the short seller had approved closing costs charges that disallowed the charging of
22 HOA/Management fees to the seller. Despite this instruction, Garrett charged \$1,299.68 in
23 HOA/Management fees to the seller, in violation of California Code of Regulations, title 10, section
24 1738.2. Additionally, a review of the escrow file also revealed that this file closed with a shortage of
25 \$1,855.58, in violation of California Code of Regulations, title 10, section 1738.2. This shortage was
26 subsequently replaced by New Era on October 29, 2015 upon a review of the file.

27 5. Escrow #004120-SG: In Escrow #004120-SG, the escrow instructions provided that
28 the buyer shall pay the cost of a one year home warranty plan not to exceed \$420.00. Despite

1 receiving an invoice in the amount of \$420.00 from Fidelity, Garrett disbursed to Fidelity the
2 remaining balance of trust funds in the amount of \$145.24, resulting in a shortage in Escrow #
3 004120-SG at closing, in violation of California Code of Regulations, title 10, section 1738.2. This
4 shortage was subsequently replaced by New Era on September 28, 2015 upon review of the file.

5 6. Escrows #003539-SG & 003540-SG: In Escrow #003539-SG and Escrow #003540-
6 SG, a business purchase agreement and joint escrow instructions were jointly executed by the
7 principals in or about July 2014 regarding the selling and purchase of a business, the inventory and
8 fixtures for the business and also the real estate in which the business was located, which required a
9 separate real property purchase agreement. Instead, of processing both the purchase and sale of the
10 business and real property simultaneously pursuant to the principals' written instructions, Garrett
11 only processed and closed the escrow transaction as a purchase and sale of commercial real estate on
12 October 3, 2014 and did not process the escrow for the purchase and sale of the business, in violation
13 California Code of Regulations, title 10, section 1738.2.

14 7. Escrow #003773-SG: In Escrow #003773-SG, on or about May 4, 2015, Garrett made
15 an unauthorized disbursement of trust funds in the amount of \$710.00 without any written
16 instructions to do so, to a business that did not provide any services to a principal of Escrow #
17 003773-SG, in violation of Financial Code section 17414 and California Code of Regulations, title
18 10, sections 1738 and 1738.2.

19 8. Escrow #002840-SG: In Escrow #002840-SG, the escrow was closed on July 30,
20 2013. However, the California Residential Purchase Agreement and Joint Escrow Instructions jointly
21 executed by the principals in June 2013 indicated that the seller was to pay the Homeowner
22 Association (HOA) fees. However, despite the written instructions dictating that the seller was to pay
23 the HOA fees, Garrett closed Escrow #002840-SG without collecting the HOA fee from the seller,
24 resulting in a shortage in Escrow #002840-SG at closing, in violation of California Code of
25 Regulations, title 10, section 1738.2. The seller subsequently brought in \$290.00 to pay the HOA
26 transfer fee on December 23, 2013 after the escrow had closed and Garrett disbursed the \$290.00 to
27 the HOA on December 24, 2013.

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1 9. Escrow #002850-SG: In Escrow #002850-SG, the file was closed on August 8, 2013.
2 However, Garrett closed Escrow #002850-SG without having the seller bring in a deposit for \$500.00
3 that was to be applied as a credit to the buyer for cabinets, resulting in a shortage in Escrow #002850-
4 SG at closing, in violation of California Code of Regulations, title 10, section 1738.2. The seller
5 subsequently deposited \$500.00 with New Era on September 6, 2013 after the escrow had closed for
6 the credit to the buyer and Garrett disbursed the \$500.00 to the buyer on September 6, 2013.

7 10. Escrow #003515-SG: In Escrow #003515-SG, the seller deposited a check in the
8 amount of \$875.00 on or about December 5, 2014. On or about December 12, 2014, the title
9 company issued an invoice to New Era for title charges, messenger fee, and deed recording in the
10 amount of \$1,040.53. Garrett closed Escrow #003515-SG in December 31, 2014, without paying the
11 invoice for the title company, resulting in a shortage in Escrow #003515-SG at closing, in violation
12 of California Code of Regulations, title 10, section 1738.2. On or about February 4, 2016, the title
13 company confirmed with New Era that their December 12, 2014 invoice was still outstanding. The
14 seller only deposited \$875.00, thus New Era was required to cover the shortage due to the title
15 company in the amount of \$165.53.

16 11. Escrow #003260-SG: In Escrow #003260-SG, the file was closed on April 24, 2014.
17 However, Garrett closed Escrow #003260-SG without having the buyer bring in a deposit for
18 \$1,000.00 that was to be applied as a credit to the seller for “adjustment to window installation,”
19 resulting in a shortage in Escrow #003260-SG at closing, in violation of California Code of
20 Regulations, title 10, section 1738.2. The buyer subsequently deposited \$1,000.00 with New Era on
21 May 23, 2104 after the escrow had closed and Garrett disbursed the \$1,000.00 to the seller on May
22 28, 2014.

23 12. Escrow #004338-SG: In Escrow #004338-SG, the transaction coordinator for the
24 transaction submitted her invoices for transaction coordination fees to Garrett on July 17, 2015, in the
25 amount of \$400.00 and \$325.00 respectively. Despite receiving the invoices, Garrett closed Escrow
26 #004338-SG on August 28, 2015, without paying the transaction coordination fees, resulting in a
27 shortage at closing in Escrow #004338-SG, in violation of California Code of Regulations, title 10,
28 section 1738.2.

1 13. On or about September 4, 2015, New Era terminated Garrett’s employment.

2 III.

3 **November 3, 2016 Examination—CIEC**

4 14. On or about November 3, 2016, the Commissioner conducted a regulatory
5 examination of CIEC. During the examination, the Commissioner’s examiner reviewed CIEC’s
6 escrow files and found that Garrett made an unauthorized disbursement in the manner more fully
7 described below:

8 15. In Escrow #14265-SG, on or about October 14, 2016, the buyer signed Amended
9 Escrow Instructions (Amended Instructions) instructing CIEC to disburse \$5,000.00 to Waymon
10 Robertson (Robertson) as a finder’s fee at the close of the escrow.

11 16. On or about October 14, 2016, Garrett issued check #63239 disbursing \$5,000.00 to
12 Robertson. However, Escrow #14265-SG did not close until October 17, 2016; three days after
13 Garrett disbursed the \$5,000.00 to Robertson. Garrett’s unauthorized disbursement of \$5,000.00 to
14 Robertson before the close of escrow is in violation of Financial Code section 17414 and California
15 Code of Regulations, title 10, sections 1738 and 1738.2.

16 IV.

17 **Sullivan Garrett Continued To Process Escrows Despite Being Personally Served With A**
18 **Notice of Intention Under Financial Code Section 17423**

19 17. On or about August 23, 2017, Garrett was personally served with the Cover Letter,
20 Notice of Intention to Issue Order Pursuant to Financial Code Section 17423 (Suspension from
21 Employment, Management, or Control of Any Escrow Agent) Accusation In Support Of Order
22 Suspending Sullivan Garrett; Statement to Respondent; Government Code Sections 11507.5, 11507.6
23 and 11507.7 relating to discovery; and Notice of Defense (collectively, Accusation). The cover letter
24 that was served with the Notice of Intention and Accusation stated that Garrett was prohibited from
25 processing escrows, including the disbursement of trust funds upon service of the Notice of Intention.

26 18. Despite being personally served with the Accusation on August 23, 2017, Garrett
27 continued his employment at CIEC and engaged in escrow processing in at least 165 escrow
28

1 transactions from August 23, 2017 through March 19, 2018, in violation of Financial Code section
2 17423, subdivision (c).

3 V.

4 Applicable Law

5 19. Financial Code section 17414 provides in pertinent part:

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

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

14 20. Financial Code section 17423 provides in pertinent part:

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

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

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25 (b) Within 15 days from the date of a notice of intention to issue an
26 order pursuant to subdivision (a), the person may request a hearing under the
27 Administrative Procedure Act (Chapter 5 (commencing with Section 11500)
28 of Division 3 of Title 2 of the Government Code). Upon receipt of a request,
the matter shall be set for hearing to commence within 30 days after such
receipt unless the person subject to this division consents to a later date. If
no hearing is requested within 15 days after the mailing or service of such
notice and none is ordered by the commissioner, the failure to request a
hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to
this section, the person who is the subject of the proposed order is

1 immediately prohibited from engaging in any escrow processing activities,
2 including disbursing any trust funds in the escrow agent’s possession,
3 custody or control, and the financial institution holding trust funds shall be
4 so notified by service of the notice, accusation and other administrative
pleadings. The prohibition against disbursement of trust funds may be set
aside, in whole or in part, by the commissioner for good cause.

5 21. California Code of Regulations, title 10, section 1738 provides in pertinent part:

6
7 (a) All money deposited in such “trust” or “escrow” account shall be
8 withdrawn, paid out, or transferred to other accounts only in
9 accordance with the written escrow instructions of the principals to the
10 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.

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12 22. California Code of Regulations, title 10, section 1738.2 provides:

13 An escrow agent shall use documents or other property deposited in escrow
14 only in accordance with the written escrow instructions of the principals to
the escrow transaction or the escrow instructions transmitted electronically
15 over the Internet executed by the principals to the escrow transaction,
or if not otherwise directed by written or electronically executed
16 instructions, in accordance with sound escrow practice, or pursuant to order
of a court of competent jurisdiction.

17 **VI.**

18 **Prayer**

19 23. The Commissioner finds that by reason of the foregoing, Sullivan Garrett has violated
20 Financial Code sections 17414 and 17423, subdivision (c) and California Code of Regulations, title
21 10, sections 1738.1 and 1738.2.

22 24. The Commissioner further finds that based upon Sullivan Garrett’s numerous and
23 repeated violations of the Escrow Law, including processing escrows despite the statutory prohibition
24 under Financial Code section 17423, it is in the best interests of the public to bar Sullivan Garrett
25 from any position of employment, management, or control of an escrow agent pursuant to Financial
26 Code section 17423.
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WHEREFORE, IT IS PRAYED THAT Sullivan Garrett be barred from any position of employment, management, or control of an escrow agent.

Dated: March 28, 2018
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
JOHNNY VUONG
Senior Counsel
Enforcement Division