

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MARY ANN SMITH
Deputy Commissioner
SEAN ROONEY
Assistant Chief Counsel
JOHNNY VUONG (State Bar No. 249570)
Senior Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013
Telephone: (213) 576-7585
Facsimile: (213) 576-7181
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	OAH NO.: 2017100489
)	
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	
)	
Complainant,)	SETTLEMENT AGREEMENT
v.)	
SULLIVAN GARRETT,)	Trial Date: July 11-13, 2018
)	Time: 9:00 A.M.
Respondent.)	Location: 320 W. Fourth Street, Suite # 630
)	Los Angeles, CA 90013
)	
)	

This Settlement Agreement (Settlement Agreement) is entered into between Complainant the Commissioner of Business Oversight (Commissioner) and Respondent Sullivan Garrett (Garrett). The Commissioner and Garrett shall collectively be referred to as the "Parties."

//
//
//

1 **RECITALS**

2 A. At all relevant times, Garrett was an employee and escrow officer at New Era Escrow,
3 Inc. (New Era) and California Investors Escrow Co. (CIEC). New Era is an escrow agent licensed by
4 the Commissioner under the Escrow Law (Fin. Code, § 17000 et seq.) (Escrow Law) with its
5 principal place of business at 509 N. Sepulveda Boulevard, Suite 101, Manhattan Beach, CA 90266.
6 CIEC is an escrow agent licensed by the Commissioner under the Escrow Law with its principal
7 place of business at 7125 W. Manchester Avenue, Los Angeles, CA 90045.

8 B. On or about August 16, 2017, the Commissioner issued a Notice of Intention to Issue
9 Order Pursuant to Financial Code section 17423 (Suspension From Any Position of Employment,
10 Management, or Control of Any Escrow Agent), Accusation, and accompanying documents
11 (Accusation).

12 C. The Commissioner personally served the Accusation on Garrett on August 23, 2017.
13 On or about August 30, 2017, Garrett filed a Notice of Defense acknowledging receipt of the above-
14 listed documents and requesting a hearing in the above-referenced matter. The matter was set to be
15 heard from April 9-11, 2018, before the Office of Administrative Hearings at 320 West Fourth Street,
16 Suite 630, Los Angeles, California 90013.

17 D. On or about March 28, 2018, the Commissioner issued a Notice of Intention to Issue
18 Order Pursuant to Financial Code section 17423 (Bar From Any Position of Employment,
19 Management, or Control of Any Escrow Agent), First Amended Accusation, and accompanying
20 documents (Amended Accusation).

21 E. The Commissioner personally served the Amended Accusation on Garrett on March
22 29, 2018. On or about April 2, 2018, Garrett filed a request for continuance of the April 9-11, 2018
23 hearing. On April 4, 2018, the Office of Administrative Hearings issued an Amended Order Granting
24 Continuance and Notice of Revised New Hearing Dates, continuing the April 9-11, 2018 hearing
25 until July 11-13, 2018, where the matter is currently scheduled to be heard before the Office of
26 Administrative Hearings at 320 West Fourth Street, Suite 630, Los Angeles, California 90013.

27 F. It is the intention and desire of the Parties to resolve this matter without the necessity
28 of a hearing and/or other litigation.

1 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
2 forth herein, the parties agree as follows:

3 **TERMS AND CONDITIONS**

4 1. Purpose. This Settlement Agreement is entered into for the purposes of judicial
5 economy and expediency, to avoid the expense of a hearing and possible further court proceedings.

6 2. Issuance of An Order Pursuant to Financial Code Section 17423. Garrett hereby agrees
7 to the issuance by the Commissioner of an order suspending Garrett from any position of
8 employment, management or control of any escrow agent for a period of 12 months (Suspension
9 Order). The Suspension Order shall become effective upon the Effective Date as defined in
10 paragraph 18 of this Settlement Agreement. A copy of the Suspension Order is attached and
11 incorporated as **Exhibit 1**.

12 3. Garrett’s Waiver of Hearing Rights and Dismissal of Petition for Writ of Mandate.

13 Garrett acknowledges his right to an administrative hearing under the Escrow Law in
14 connection with the Accusation and Amended Accusation and hereby waives that right to a hearing,
15 and to any reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow
16 Law, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
17 other provision of law in connection with these matters. Garrett agrees to dismiss the Petition of Writ
18 of Mandate (Writ) filed by Garrett in Los Angeles Superior Court under Case No. BS172844 within
19 30 days upon full execution of this Settlement Agreement. Failure to dismiss the Writ within 30 days
20 upon full execution of this Settlement Agreement shall be cause for the Commissioner to summarily
21 bar Garrett from any position of employment, management, or control of any escrow agent. Garrett
22 waives all hearing rights to contest the summary bar initiated pursuant to this provision, which may
23 be afforded under the Escrow Law, the California Administrative Procedure Act, the California Code
24 of Civil Procedure, or any other provision of law in connection with these matters.

25 4. Monitoring Period. Garrett agrees that for the 36 months immediately following full
26 execution of this Settlement Agreement, if the Department makes a finding that Garrett has violated
27 or is violating any provision of the Escrow Law or Suspension Order, the Commissioner may, in her
28 discretion, summarily bar Garrett from any position of employment, management, or control of any

1 escrow agent. Garrett waives all hearing rights to contest the summary bar initiated pursuant to this
2 provision, which may be afforded under the Escrow Law, the California Administrative Procedure
3 Act, the California Code of Civil Procedure, or any other provision of law in connection with these
4 matters.

5 5. Continuing Education. Garrett agrees to take 24 hours of continuing education within
6 12 months following full execution of this Settlement Agreement and submit proof of compliance to
7 Johnny O. Vuong, Senior Counsel, Department of Business Oversight, 320 West Fourth Street, Suite
8 750, Los Angeles, California 90013 within 30 days of completion of each course. Garrett agrees to
9 submit proposed continuing education classes to the Commissioner for approval prior to enrolling in
10 the classes with attention to: Johnny O. Vuong, Senior Counsel, Department of Business Oversight,
11 320 West Fourth Street, Suite 750, Los Angeles, California 90013. Garrett agrees that only classes
12 approved by the Commissioner pursuant to this provision will satisfy the 24 hours of continuing
13 education. Failure to fulfill the minimum hours of continuing education required under this
14 Settlement Agreement or failure to submit the compliance report by the specified deadline shall be
15 cause for the Commissioner to summarily bar Garrett from any position of employment,
16 management, or control of any escrow agent. Garrett waives all hearing rights to contest the summary
17 bar initiated pursuant to this provision, which may be afforded under the Escrow Law, the California
18 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
19 in connection with these matters.

20 6. Settlement Agreement Coverage. The Parties hereby acknowledge and agree that this
21 Settlement Agreement is intended to constitute a full, final and complete resolution of the Accusation
22 and Amended Accusation, excepting therefrom any proceeding or action if such proceeding or action
23 is based upon facts not presently known to the Commissioner or which were knowingly concealed
24 from the Commissioner by Garrett or is based upon failure by Garrett to abide by any of the terms in
25 this Settlement Agreement or Suspension Order. The Parties further acknowledge and agree that
26 nothing contained in this Settlement Agreement shall operate to limit the Commissioner's ability to
27 assist any other agency, (city, county, state or federal) with any prosecution, administrative, civil or
28 criminal, brought by any such agency against Garrett based upon any of the activities alleged in these

1 matters or otherwise.

2 7. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it
3 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with
4 respect to the advisability of executing this Settlement Agreement.

5 8. No Other Representation. Each of the Parties represents, warrants, and agrees that in
6 executing this Settlement Agreement it has relied solely on the statements set forth herein and has
7 had the opportunity to seek the legal advice of its own counsel. Each of the Parties further represents,
8 warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any
9 statement, representation, or promise of any other party, or any other person or entity not expressly
10 set forth herein, or upon the failure of any party or any other person or entity to make any statement,
11 representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to
12 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
13 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
14 contradict the terms of this Settlement Agreement.

15 9. Modifications and Qualified Integration. No amendment, change or modification of
16 this agreement shall be valid or binding to any extent unless it is in writing and signed by all of the
17 parties affected by it.

18 10. Full Integration. This Settlement Agreement is the final written expression and the
19 complete and exclusive statement of all the agreements, conditions, promises, representations, and
20 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or
21 contemporaneous agreements, negotiations, representations, understandings, and discussions between
22 and among the Parties, their respective representatives, and any other person or entity, with respect to
23 the subject matter covered hereby.

24 11. No Presumption From Drafting. In that the Parties have had the opportunity to draft,
25 review and edit the language of this Settlement Agreement, no presumption for or against any party
26 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
27 relating to, connected, to, or involving this Settlement Agreement. Accordingly, the Parties waive the
28 benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of

1 uncertainty, language of a contract should be interpreted most strongly against the party who caused
2 the uncertainty to exist.

3 12. Voluntary Agreement. Garrett enters into this Settlement Agreement voluntarily and
4 without coercion and acknowledges that no promises, threats or assurances have been made by the
5 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each
6 represent and acknowledge that he, she or it is executing this Agreement completely voluntarily
7 and without any duress or undue influence of any kind from any source.

8 13. Authority For Settlement. Each party warrants and represents that such party is
9 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and
10 without limiting the generality of the foregoing, each party warrants and represents that it is
11 fully entitled to enter into the covenants, and undertake the obligations set forth herein.

12 14. Waiver. The waiver of any provision of this Settlement Agreement shall not operate to
13 waive any other provision set forth herein, and any waiver, amendment and/or change to the terms of
14 this Settlement Agreement must be in writing and signed by the parties.

15 15. Counterparts. This Agreement may be executed in any number of counter-parts
16 by the Parties, and when each party has signed and delivered at least one such counterpart to the
17 other party, each counterpart shall be deemed an original and taken together shall constitute one
18 and the same Agreement.

19 16. Signatures. This Agreement may be executed by facsimile or scanned signature, and
20 any such facsimile or scanned signature by any party hereto shall be deemed to be an original
21 signature and shall be binding on such party to the same extent as if such facsimile or scanned
22 signature were an original signature.

23 17. Governing Law. This Settlement Agreement shall be construed and enforced in
24 accordance with and governed by California law.

25 18. Effective Date. This Settlement Agreement shall not become effective until signed by
26 all parties and delivered by the Commissioner's counsel by email to counsel for Sullivan Garrett,
27 Sam Maralan, Esq. at sm@zfatyburns.com.

28 19. Capacity to Contract. Each signator hereto covenants that he/she possesses all

1 necessary capacity and authority to sign and enter into this Settlement Agreement.

2

3 Dated: July 10, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

4

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

5

6

7

8

9 Dated: July 10, 2018

SULLIVAN GARRETT

10

By _____
Sullivan Garrett

11

12

13

APPROVED AS TO FORM:

14

15

SAM MARALAN, ESQ.
ZFATY BURNS
Counsel for Sullivan Garrett

16

17

18

19

JOHNNY O. VUONG
Counsel for Commissioner of Business Oversight

20

21

22

23

24

25

26

27

28