

BEFORE THE
DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter the Accusation Against:

CASA BLANCA ESCROW, INC. and ERLINDA
HERNANDEZ,

Respondents.

Case No.: 963-2196

OAH No.: 2012070639

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commissioner of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on October 30, 2012.

IT IS SO ORDERED October 30, 2012.

COMMISSIONER OF CORPORATIONS

By _____

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In the Matter of the Accusation Against:

CASA BLANCA ESCROW, INC., and
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PROPOSED DECISION

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on August 10 and 13, 2012 in Los Angeles, California.

Judy L. Hartley, Senior Trial Counsel, represented Jan Lynn Owen, California Corporations Commissioner (Complainant).

Erlinda Hernandez (Respondent or Respondent Hernandez) represented herself and Casa Blanca Escrow, Inc. (Respondent Casa Blanca), (collectively, Respondents).

The record was held open for submission of additional information from Respondents. Respondents filed a response on August 21, 2012, which was marked for identification only as Exhibit GG. Complainant filed a response on August 24, 2012, which was marked for identification only as Exhibit 49. Respondent filed an additional letter on August 30, 2012, which was marked for identification only as Exhibit HH. The matter was deemed submitted on August 30, 2012.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. Respondent Casa Blanca is an escrow agent licensed by the California Corporations Commissioner (Commissioner), acting pursuant to the Escrow Law of the State of

California (California Financial Code¹ section 17000 et seq.). Respondent Casa Blanca has its principal place of business at 436 S. Citrus Avenue, Covina, California.

3. Respondent Hernandez is, and at all times material has been, the president and sole shareholder of Respondent Casa Blanca.

4. On September 3, 2010, the Commissioner conducted a regulatory examination of Respondents' books and records. The regulatory examination revealed numerous violations of the Escrow Law, including unauthorized disbursements in at least 41 escrows, between January 2006 and October 2010. All of the violations were established by the evidence, as set forth in the Accusation, and copied herein. The Accusation is deemed incorporated by reference, in its entirety, to the extent that it is not restated below.

5. On November 11, 2005, in escrow number 1101, a refund from Landsafe Title was receipted in for escrow number 1101 in the amount of \$1,067.31. Respondents made no attempt to refund the monies to the seller until March 31, 2008, but voided the refund check on the escrow ledger the same day. Thereafter, on February 23, 2009, Respondent Hernandez disbursed the \$1,067.31 title refund to Respondent Casa Blanca by trust check number 19638.

6. On September 11, 2005, in escrow number 1256, a refund from Stewart Title was received in the amount of \$1,000. Respondents made no attempt to refund the monies to the appropriate escrow party. Instead, on August 15, 2008, Respondents disbursed \$696.34 of the title refund to Respondent Casa Blanca by trust check number 19353.

7. On November 3, 2005, in escrow number 1321, a refund from Investors Title Company was receipted in for escrow number 1321 in the amount of \$200. Respondents issued a refund check to the borrower on or about November 7, 2005, but voided the outstanding refund check on the escrow ledger on or about January 29, 2006. Respondents then disbursed the \$200 title refund to Respondent Casa Blanca by way of trust check number 13571.

8. On August 29, 2005, also in escrow number 1321, Respondents wired \$397.96 less in proceeds to the borrower than what was owed according to the closing statement. Subsequently, on or about August 15, 2008, Respondents disbursed the \$397.96 to Respondent Casa Blanca via trust check number 19354.

9. On August 4, 2005 and November 28, 2005, in escrow number 1336, Respondents cancelled outstanding trust check numbers 11326 and 11350 issued on August 2, 2005, to Informative Research and McCraw Insurance in the amounts of \$165 and \$512, respectively. Thereafter on August 15, 2008, Respondents disbursed funds totaling \$677 to Respondent Casa Blanca via trust check number 19356.

¹ All further references are to the Financial Code.

10. On February 5, 2006, in escrow number 1714, Respondent paid Goodyear Home Loans Corporation \$500 less than what was owed according to the closing statement. Thereafter, on August 21, 2008, Respondents disbursed \$391.40 of the \$500 to Respondent Casa Blanca via trust check number 19368.

11. On June 1, 2009, in escrow number 1723, Respondents violated Financial Codes sections 17404 and 17414, subdivision (a)(2) when they posted trust check number 18208 in the amount of \$1,055 as void on the escrow ledger in that trust check number 18208 had already cleared the bank on August 31, 2007. Thereafter on June 1, 2009, and January 12, 2010, Respondents disbursed the \$1,055 to Respondent Casa Blanca by issuing trust check numbers 19884 and 20399 in the respective amounts of \$900 and \$1055.

12. On February 13, 2006, in escrow number 1754, Respondents paid the buyer \$265.94 less than what was owed according to the closing statement. Thereafter, on January 26, 2010, Respondents disbursed the \$265.94 to Respondent Casa Blanca via trust check number 20420.

13. On January 29, 2008, in escrow number 1760, Respondents cancelled outstanding trust check number 13805 that had been issued to UNLV/CITI in the amount of \$192. Then, on August 21, 2008, Respondents disbursed the \$192 to Respondent Casa Blanca via trust check number 19363.

14. On March 28, 2006, in escrow number 1860, Respondents paid the buyer \$1000 less than what was owed according to the closing statement. Thereafter on May 25, 2006, Respondents over disbursed escrow fees to Respondent Casa Blanca by \$100 via transfer to the fee account. Then, on August 21, 2008, Respondents disbursed the remaining \$900 to Respondent Casa Blanca via trust check number 19364.

15. On August 31, 2006, in escrow number 1864, a refund from Landsafe Title was received in the amount of \$891.83. Respondents made no attempt to refund the monies to the appropriate escrow party, and on August 21, 2008, and January 10, 2010, Respondents disbursed the \$893.83 title refund to Respondent Casa Blanca via trust check numbers 19365 and 20400.

16. On August 21, 2008, in escrow number 1938, Respondents disbursed the sum of \$542.81 to Respondent Casa Blanca via trust check number 19366. The \$542.81 consisted of the remaining funds left after close of escrow, which closing occurred on May 17, 2006.

17. On August 21, 2008, in escrow number 2062, Respondents disbursed the sum of \$178.08 to Respondent Casa Blanca via trust check number 19367. The \$178.08 consisted of the remaining funds left after close of escrow, which closing occurred on or about June 30, 2006.

18. On October 24, 2006, in escrow number 2155, a refund from North American Title was received in for escrow number 2155 in the amount of \$1,500. Respondents made failed to refund the monies to the appropriate escrow party. Then, on March 5, 2009, Respondents disbursed \$1,200 of the \$1,500 title refund to Respondent Casa Blanca via a transfer to the fee account despite having already taken full escrow fees at close of escrow in August 2006.

19. On June 30, 2008, also in escrow number 2155, Respondents failed to post to the escrow ledger trust check number 19272 they issued in the amount of \$2,270.70 in violation of Financial Codes section 17404 and California Code of Regulations title 10, section 1732.2, subdivision (a)(1). Respondents' failure to post trust check number 19272 gave the appearance that there was \$ 2,270.70 more on deposit in the escrow. Respondents finally posted trust check 19272 to the escrow ledger on or about December 28, 2008, but posted the check as voided despite the check having cleared the bank on or about July 1, 2008. In addition, on February 9, 2010, Respondents disbursed a further \$600 to Casa Blanca via transfer to the fee account despite having already taken full escrow fees at close of escrow in August 2006.

20. On June 1, 2009, in escrow number 2368, Respondents disbursed \$750 to Casa Blanca via trust check number 19882 despite having already taken full escrow fees at close of escrow in November 2006. In addition, on February 9, 2010, Respondents disbursed an additional \$500 in escrow fees to Casa Blanca via transfer to the fee account despite having already taken full escrow fees at the close of escrow in November 2006.

21. On January 27, 2010, in escrow number 2657, Respondents cancelled outstanding trust check number 18226 that had been issued on April 17, 2007 to ASAP Mortgage in the amount of \$565 and on the same day disbursed the \$565 to Respondent Casa Blanca via trust check number 20421.

22. On July 2, 2009, in escrow number 2812, Respondents disbursed \$80.81 to Respondent Casa Blanca via trust check number 19973. Respondent failed to post this disbursement to the escrow ledger. On September 9, 2010, Respondents posted the July 2009 check to the ledger as void, when it had in fact cleared in July 2009.

23. On February 19, 2009, in escrow number 3042, Respondents disbursed \$344.97 in escrow fees to Respondent Casa Blanca via transfer to the fee account even though they had already taken full escrow fees at the close of escrow in December 2007. In addition, on October 27, 2010, Respondent disbursed another escrow fee of \$300 to Respondent Casa Blanca, despite having taken full escrow fees at the close of escrow in December 2007.

24. On January 27, 2010, in escrow number 3046, Respondents disbursed \$300 to Respondent Casa Blanca via trust check number 20423. This amount was \$300 over the fee amount that Respondents were authorized to collect.

25. a. On December 15, 2008, in escrow number 3114, Respondents disbursed \$750 to Respondent Casa Blanca as escrow fees via transfer to the fees account. The \$750 paid to Respondent Casa Blanca was part of a \$1,000 deposit made by the buyer on July 15, 2008. On September 9, 2009, Respondents refunded \$650 of the buyer's deposit causing a debit balance in the escrow in violation of California Code of Regulations title 10, section 1738.1 in that insufficient funds existed in this escrow to make the refund in that the escrow fees taken by Respondents on December 15, 2008, left only a \$250 balance in the escrow account.

b. In addition, on September 9, 2009, Respondents violated Financial Code section 17414, subdivision (a)(2), when they failed to post the \$650 refund to the escrow ledger, thereby giving the appearance that the escrow had a positive balance of \$250 when it was overdrawn by \$400.

c. On January 12, 2010, Respondents disbursed a further \$250 to Casa Blanca via trust check number 20402. This disbursement violated California Code of Regulations title 10, section 1738.1 as it caused the debit balance in the escrow to increase to \$650.

26. In 2008 and 2009, in escrow number 3134, Respondents disbursed a total of \$2,700 to Respondent Casa Blanca's fee account. For a portion of these payments, Respondent voided the check on the escrow ledger. This gave the appearance that the escrow had more money to its credit than what actually existed. Respondents also violated escrow laws and regulations by disbursing \$2,950 to an escrow party and failed to post this disbursement in its ledger. In addition, this disbursement violated regulations because there were insufficient funds in the account.

27. In July 2008, Respondent made unauthorized disbursements from escrow number 3140, without sufficient funds and failed to post the check to the escrow ledger.

28. In January 2009, in escrow number 3147, Respondents made an unauthorized disbursement to Respondent Casa Blanca when the escrow had no funds to cover the disbursement.

29. In July 2008, in escrow number 3158, Respondents posted a check as void on the escrow ledger when it in fact had cleared the bank in June 2008. Then, in January 2009, Respondents disbursed the money to Respondent Casa Blanca.

30. In May 2008, in escrow number 3171, Respondents disbursed a check to itself against a deposit that had not yet cleared the bank. The bank returned the deposit for insufficient funds.

31. In December 2008, in escrow number 3180, Respondents over-disbursed escrow fees to Respondent Casa Blanca, and failed to post trust checks to the escrow ledger.

32. In January 2009, in escrow number 3195, Respondents received a title refund and failed to refund the monies to the appropriate escrow parties, but instead issued the refund to Respondent Casa Blanca.

33. In September 2008, in escrow number 3207, Respondents failed to post an outgoing wire to the escrow ledger and over-disbursed escrow fees to Respondent Casa Blanca.

34. In November 2008, in escrow number 3266, Respondents deposited money they received for this escrow account into their general account where they used the funds to pay for operating expenses, and they failed to post the funds received to the escrow ledger until April 2010.

35. In January 2009, in escrow number 3273, Respondents posted a check to an escrow party as void on the escrow ledger when it in fact had cleared the bank the previous day. Respondents then disbursed a portion of the funds to its fee account.

36. In July 2009, in escrow number 3295, Respondents disbursed all of the funds in the escrow account to Respondent Casa Blanca, and then disbursed funds to an escrow party but failed to post the disbursement to the escrow ledger. In addition, when Respondents disbursed the funds to the escrow party, the escrow account had insufficient funds.

37. In January 2009, in escrow number 3312, Respondents received a deposit which they failed to post to the escrow account. Instead, Respondents deposited the check into their general account where the funds were used to pay for operating expenses.

38. In April 2009, in escrow number 3326, Respondents deposited funds received from the title company for this escrow account into their general account where the funds were used to pay for operating expenses.

39. In August and September 2009, in escrow account number 3334, Respondents over-disbursed escrow fees to Respondent Casa Blanca and failed to post one of the disbursements to the escrow ledger.

40. In July 2009, in escrow number 3447, Respondents disbursed money to Respondent Casa Blanca and posted the disbursement as voided on the escrow ledger, even though the check had cleared.

41. In July 2009, in escrow number 3471, Respondents deposited money received from an escrow party for the escrow account into the general account where the funds were used to pay operating expenses.

42. In April and June 2010, in escrow number 3477, Respondents failed to post two checks to the escrow ledger and over-disbursed escrow fees to Respondent Casa Blanca.

43. In August 2009, in escrow number 3497, Respondents received \$5,000 to open an escrow account. Respondents disbursed \$4,500 to Respondent Casa Blanca's fee account. There was no closing statement detailing escrow fees as the escrow cancelled. In October 2009, Respondents failed to post a check payable to the escrow buyers for \$1,481.50 to the escrow ledger. In addition, the account was overdrawn because of the \$4,500 disbursement that Respondents made to Respondent Casa Blanca.

44. In January 2010, in escrow number 3510, Respondents failed to post trust checks to the escrow ledger, and over-disbursed fees to Respondent Casa Blanca.

45. In April 2010, in escrow number 3537, Respondents disbursed escrow fees to Respondent Casa Blanca even though they had previously disbursed monies to Respondent Casa Blanca in November 2009 which was returned for insufficient funds.

46. In December 2009, in escrow number 3552, Respondents disbursed a check to Respondent Casa Blanca. In January 2010, they posted the disbursement as voided on the escrow ledger even though the check had cleared in December 2009. In addition, in January 2010, Respondents failed to post a separate disbursement to the escrow ledger.

47. In March 2010, in escrow number 3562, Respondents failed to post an outgoing wire to the escrow ledger. In addition, Respondents over-disbursed escrow fees to Respondent Casa Blanca for this account.

48. Respondents failed to file their annual audit report for the fiscal year ending on August 31, 2011. As of the date of this hearing, Respondents still had not submitted their report.

49. Respondents failed to timely file their annual audit reports for three consecutive years: the report for 2008 was 731 days late, the report for 2009 was 436 days late, and the report for 2010 was 280 days late.

50. Kathleen Partin (Partin), Department Special Administrator for Escrow Law, testified at the hearing. Partin explained that any escrow fees have to be authorized, and that Respondents on numerous occasions took unauthorized fees. Partin also explained the importance of timely filing audit reports because the reports inform the Department about whether an escrow company is meeting the requirements of the law, and whether the trust accounts are properly maintained.

51. Kitlin Chan (Chan), Department Escrow Examiner, also testified at the hearing. Chan performed an examination of Respondents' books and records, which began in September 2010. Chan found that Respondents dispersed money without proper authorization, and that their books and records were not updated. She also found that some of the escrow accounts were overdrawn. Chan found that on multiple occasions, money came back into escrow from title which should have been refunded to parties and was not. Instead, Respondents issued a check to themselves. Chan determined that it was not appropriate for Respondent to keep the refunded money because Respondents had already taken their escrow fees at the close of escrow. Chan referenced Respondents' documents and described in great detail multiple examples of the unauthorized disbursements and overdrawn accounts.

52. Respondent testified at the hearing. She admitted that there were several instances that she was supposed to refund money and that she did not. She explained that she thought she could charge a monthly fee to hold open an escrow account, but her testimony was flatly refuted by that of Partin who cited the applicable law. Respondent had no legitimate explanation for the haphazard method with which she ran her company, and her attitude during the proceeding was remarkable. Respondent failed to recognize the illegality of her actions and attempted to justify her actions without reason. She denied that the misconduct was blatant, and referred to her errors as "small." Respondent acknowledged that her books were out of date, and claimed that financial difficulties prevented her from complying with the audits. She also blamed her computer system. Respondent failed to grasp the gravity of the misconduct that occurred.

53. Respondents submitted multiple documents and attempted to explain the rationale for her actions. All evidence has been considered. As Complainant aptly pointed out, in many instances, Respondent's documents were duplicative. Moreover, Respondents' submissions fail to address and rebut the allegations.

54. The total outstanding shortage on Respondent's escrow ledger and fee ledger as of 2010 was \$125,902.84. To date, Respondent has repaid approximately \$27,000. Respondent asked for 90 days to borrow funds so that she can repay the outstanding escrow monies owed.

LEGAL CONCLUSIONS

1. The Commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that the licensee has violated any provision of the Escrow Law or any rule of the Commissioner. (Fin. Code, § 17608).

2. Cause exists to discipline Respondent Casa Blanca's license pursuant to Financial Code section 17404 and California Code of Regulations, title 10, section 1732.2, in that Respondents failed to reconcile its trust account since August 31, 2009, by reason of factual finding numbers 2 through 54.

3. Cause exists to discipline Respondent Casa Blanca's license pursuant to Financial Code section 17414, subdivision (a)(1), and California Code of Regulations, title 10, sections 1738 and 1738.2, in that Respondents made unauthorized disbursements in 41 escrow accounts, by reason of factual finding numbers 2 through 54.

4. Cause exists to discipline Respondent Casa Blanca's license pursuant to Financial Code section 17404 and 17414, subdivisions (a)(1) and (a)(2), and California Code of Regulations, title 10, sections 1738, 1732.2, 1738.1 and 1738.2, in that Respondents made unauthorized disbursements in 41 escrow accounts, caused shortages in many accounts, and made numerous posting adjustments to escrow ledgers to reconcile the unauthorized disbursements, by reason of factual finding numbers 2 through 54.

5. Cause exists to discipline Respondent Casa Blanca's license pursuant to Financial Code section 17406, in that Respondents failed to timely file their audit reports for the years 2008 through 2010, and failed to submit any report for 2011, by reason of factual finding numbers 48 and 49.

6. Cause exists to bar Respondent Hernandez from any position of employment, management, or control of any escrow agent pursuant to Financial Code section 17404, 17406 and 17414, subdivisions (a)(1) and (a)(2), and California Code of Regulations, title 10, sections 1738, 1732.2, 1738.1 and 1738.2, in that Respondent Hernandez caused Respondent Casa Blanca to commit numerous violations, by reason of factual finding numbers 2 through 54.

7. Barring Respondent Hernandez from any position of employment, management, or control of any escrow agent is in the public interest, in light of the established violations and Respondent Hernandez' involvement and failure to prevent the violations, by reason of factual finding numbers 2 through 54 and legal conclusion numbers 1 through 6.

ORDER

1. The escrow agent license issued to Casa Blanca Escrow, Inc. is revoked.
2. Erlinda Hernandez is barred from any position of employment, management, or control of any escrow agent.

Dated: September 28, 2012

AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings