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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of:)
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,) **CONSENT ORDER**
15 Complainant,)
16 v.)
17 HOMEWARD BOUND LLC and)
18 ARLENE JUNE ESCOBAR,)
19 Respondents.)
20

21 This Consent Order (Consent Order) is entered into between the Commissioner of Business
22 Oversight (Commissioner) and Homeward Bound LLC (Homeward Bound) and Arlene June
23 Escobar (Escobar), and is made with respect to the following facts:

24 **RECITALS**

25 A. Homeward Bound is, and was at all relevant times, a California limited liability
26 company, with its principal place of business located at: 9587 Arrow Route, Suite G, Rancho
27 Cucamonga, California 91730.
28

1 B. Escobar is, and was at all times relevant, the Chief Executive Officer and sole owner
2 of Homeward Bound.

3 C. The Commissioner licenses and regulates the activities of escrow agents in California
4 pursuant to the Escrow Law (Fin. Code, § 17000 et seq.)

5 D. Commencing in or about 2014 and continuing through at least April 3, 2018,
6 Homeward Bound and Escobar engaged in the business of an escrow agent in this state.

7 E. An unlicensed escrow activity examination by the Commissioner of Homeward
8 Bound that commenced on or about April 3, 2018 disclosed that Homeward Bound and Escobar
9 were processing escrow transactions on behalf of 12 licensed real estate brokers. The instructions
10 for each escrow transaction represented that Homeward Bound was a third party contracted by each
11 real estate broker to process the escrow transaction, and that each transaction was being done under
12 that real estate broker’s license and direct supervision pursuant to the exemption provided for in
13 Financial Code section 17006, subdivision (d). Homeward Bound and Escobar assert that they
14 opened no escrows independent from these broker relationships.

15 F. Each real estate broker that contracted with Homeward Bound and Escobar, in turn,
16 listed Homeward Bound’s office address of 9587 Arrow Route Suite G, Rancho Cucamonga,
17 California 91730 as a branch office on its real estate license. However, Homeward Bound and
18 Escobar were actually processing the escrows as follows:

19 (i) Homeward Bound had entered into a contract with each of the real estate
20 brokers to provide escrow staff to open, process, and close escrow transactions for the brokers;

21 (ii) The persons processing the escrow transactions were paid employees of
22 Homeward Bound;

23 (iii) The escrow transactions were processed at the offices of Homeward Bound
24 under the direct supervision of Homeward Bound, not under the direct supervision of the real estate
25 brokers;

26 (iv) Homeward Bound employees were simultaneously processing escrow
27 transactions for 12 real estate brokers;

28

1 (v) The network and software used to process the escrow transactions were
2 owned by Homeward Bound—each broker purchased a separate user license to permit Homeward
3 Bound to segregate the broker-owned escrows;

4 (vi) The address, phone number, and fax number disclosed on different real estate
5 broker’s escrow documents as the contact information for each real estate broker’s escrow company
6 belonged to Homeward Bound, as did the contact information on final closing statements, trust
7 checks, purchase agreements, and escrow instructions;

8 (vii) Homeward Bound held custody of blank trust checks for different real estate
9 brokers’ trust accounts at Homeward Bound’s offices although neither Homeward Bound nor any of
10 its employees were signatories on the accounts;

11 (viii) Prior to closing escrow, Homeward Bound would direct the real estate brokers
12 to come to Homeward Bound’s office to review and approve escrow instruction packages, review
13 and approve amendments, review and approve closing items, review and approve signed documents,
14 review and approve disbursement ledgers, review and approve invoices, and sign trust checks;

15 (ix) While not being a signatory on the trust accounts, Homeward Bound had full
16 online access to trust accounts associated with each real estate broker-owned escrow; and,

17 (x) The escrow fees charged to the principals of the escrow transactions were
18 disclosed as fees charged by a broker-controlled escrow company when, in fact, the fees were split
19 between the real estate brokers and Homeward Bound.

20 G. Homeward Bound and Escobar have not been issued a license by the Commissioner
21 authorizing them to engage in business as an escrow agent under the Escrow Law.

22 H. Homeward Bound and Escobar were not exempt from the licensing requirements of
23 Financial Code section 17200.

24 I. Homeward Bound and Escobar, in handling the escrows described above, made use
25 of and circulated letterheads, escrow instructions, receipts, or other documents containing words
26 indicating that they were in the escrow business. Additionally, Homeward Bound and Escobar
27 maintained a website indicating they offered “Broker Owned Escrow Services.”
28

1 J In response to the Commissioner’s investigation, Homeward Bound and Escobar have
2 represented to the Commissioner that they have returned all active escrow files and relinquished all
3 control of escrow accounts to the appropriate real estate brokers.

4 K. The Commissioner finds that this action is appropriate, in the public interest, and
5 consistent with the purposes fairly intended by the policies and provisions of the Escrow Law.

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

8 **TERMS AND CONDITIONS**

9 1. Purpose. This Consent Order resolves the violations cited above in a manner that
10 avoids the expense of a hearing and possible further court proceedings, protects consumers, is in the
11 public interest, and is consistent with the purposes, policies, and provisions of the Escrow Law.

12 2. Finality of Consent Order. Homeward Bound and Escobar hereby agree to comply
13 with this Consent Order and, further, stipulate that this Consent Order is hereby deemed a final and
14 enforceable order issued pursuant to the Commissioner’s authority under Financial Code section
15 17403, subdivision (b), and Financial Code section 17416.

16 3. Desist and Refrain Order. Pursuant to Financial Code section 17416, the
17 Commissioner hereby orders Homeward Bound and Escobar to desist and refrain from engaging in
18 the business of receiving escrows for deposit or delivery without first obtaining a license from the
19 Commissioner, or otherwise being exempt, in violation of Financial Code section 17200. Further,
20 pursuant to Financial Code section 17403, subdivision (b), the Commissioner orders Homeward
21 Bound and Escobar to desist and refrain from issuing, circulating, or publishing any advertisement
22 by any means of communication, or making use of or circulating any letterheads, billheads, blank
23 notes, blank receipts, blank escrow instructions, certificates, circulars, or any written, printed,
24 partially written or printed paper containing any name or other words indicating that any of them are
25 in the escrow business, in violation of Financial Code section 17403.

26 4. Waiver of Hearing Rights. Homeward Bound and Escobar acknowledge they have
27 read this Consent Order, are aware of a right to a hearing on the Desist and Refrain Order and with
28 respect to the issuance of this Consent Order, and hereby permanently waive all rights to a hearing

1 and to any reconsideration, appeal, or other rights which may be afforded pursuant to the California
2 Financial Code, the California Administrative Procedure Act, the California Code of Civil
3 Procedure, or any other provision of law in connection with this matter.

4 5. Future Actions by the Commissioner. The Commissioner reserves the right to be
5 bring any future action against Homeward Bound, Escobar, or any of their partners, owners, officers,
6 directors, shareholders, employees, or successors for any and all unknown or future violation of the
7 Escrow Law. This Consent Order shall not serve to exculpate Homeward Bound, Escobar, or any of
8 their partners, owners, officers, directors, shareholders, employees, or successors from liability for
9 any and all unknown or future violations of the Escrow Law.

10 6. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
11 interest.

12 7. Full and Final Settlement. The parties hereby acknowledge and agree that this
13 Consent Order is intended to constitute a full, final, and complete resolution of the allegations
14 contained in this Consent Order. However, the parties acknowledge and agree that nothing
15 contained in this Consent Order shall operate to limit the Commissioner's ability to assist any other
16 agency (city, county, state, federal, or otherwise) with any administrative, civil, or criminal
17 prosecution brought by any such agency against Homeward Bound, Escobar, or any other person
18 based upon any of the activities alleged in these matters or otherwise.

19 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
20 has received independent advice from its attorney(s) and/or representatives with respect to the
21 advisability of executing this Consent Order, or has had the opportunity to obtain such advice.

22 9. Reliance. Each of the parties represents, warrants, and agrees that in executing this
23 Consent Order it has relied solely on the statement set forth herein and has had the opportunity to
24 seek the legal advice of its own counsel. Each of the parties further represents, warrants, and agrees
25 that in executing this Consent Order it has placed no reliance on any statement, representation, or
26 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
27 failure of any party or any other person or entity to make any statement, representation, or disclosure
28 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any

1 party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the
2 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
3 Order.

4 10. Full Integration. This Consent Order is the final written expression and the complete
5 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
6 between the parties with respect to the subject matter hereof, and supersedes all prior or
7 contemporaneous agreements, negotiations, representations, understandings, and discussions
8 between and among the parties, their respective representatives, and any other person or entity, with
9 respect to the subject matter covered hereby.

10 11. No Presumption Against Drafter. In that the parties have had the opportunity to draft,
11 review, and edit the language of this Consent Order, no presumption for or against any party arising
12 out of drafting all or any part of this Consent Order will be applied in any action relating to,
13 connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil
14 Code section 1654 and any successor or amended statutes, providing that in cases of uncertainty,
15 language of a contract should be interpreted most strongly against the party who caused the
16 uncertainty to exist.

17 12. Waiver or Modification. The waiver of any provision of this Consent Order shall not
18 operate to waive any other provision set forth herein, and any waiver, amendment and/or change to
19 the terms of this Consent Order must be in writing and signed by the parties.

20 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
21 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
22 the provisions hereof.

23 14. Governing Law. This Consent Order shall be construed and enforced in accordance
24 with and governed by California law.

25 15. Effective Date. This Consent Order will become effective on the date it is signed by
26 all parties and delivered by the Commissioner to Homeward Bound and Escobar by electronic mail
27 to Arlene Escobar at: arleneescobar@outlook.com.
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1 16. Counterparts. The parties agree that this Consent Order may be executed in one or
2 more separate counterparts, each of which when so executed, shall be deemed an original. A fax
3 signature shall be deemed the same as an original signature. Such counterparts shall together
4 constitute and be one and the same instrument.

5 17. Public Record. Homeward Bound and Escobar acknowledge that the Consent Order
6 and Desist and Refrain Order are matters of public record.

7 18. Information Willfully Withheld. This Consent Order may be revoked, and the
8 Commissioner may pursue any and all remedies available under law against Homeward Bound and
9 Escobar if the Commissioner later discovers that Homeward Bound or Escobar knowingly or
10 willfully withheld information relied upon in this Consent Order.

11 19. Settlement Authority. Each signator hereto covenants that he/she possesses all
12 necessary capacity and authority to sign and enter into this Consent Order on behalf of each named
13 party.

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15 Dated: July 30, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

16
17 By _____
18 MARY ANN SMITH
19 Deputy Commissioner
20 Enforcement Division

21 Dated: July 25, 2018

HOMEWARD BOUND LLC

22
23 By _____
24 Arlene June Escobar
25 Individually, and as Chief Executive Officer of
26 Homeward Bound LLC
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