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

10
11 In the Matter of:) ESCROW LICENSE NO.: 963-2328
)
12 THE COMMISSIONER OF BUSINESS) STATEMENT OF FACTS IN SUPPORT OF
13 OVERSIGHT,) ORDER TO DISCONTINUE VIOLATIONS
) PURSUANT TO FINANCIAL CODE
14 Complainant,) SECTION 17602
)
15 v.)
)
16 INATIONAL CLOSING AND ESCROW, INC.,)
17)
18 Respondent.)
19)

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

22 1. INational Closing and Escrow, Inc. (“ICE”) is an escrow agent licensed by the
23 Commissioner of Business Oversight pursuant to the Escrow Law (Fin. Code § 17000 et seq.). ICE
24 has its principal place of business located at 8813 Villa Jolla Drive, Suite #2003, San Diego CA
25 92037.

26 **Unauthorized Disbursement and Failure to Report Violations**

27 2. Under Financial Code section 17414 and California Code of Regulations, title 10,
28 sections 1738 and 1738.2, escrow funds shall not be disbursed unless authorized by the principal(s)

1 to the escrow transaction. ICE disbursed escrow funds without proper authorization from a principal
2 of the escrow transaction, as described more in detail below.

3 3. Under Financial Code section 17414, all licensees must immediately report an
4 abstraction or misappropriation of escrow funds in writing to the Commissioner. ICE failed to report
5 the misappropriation of ICE’s trust funds to the Commissioner immediately.

6 4. Under California Code of Regulations, title 10, section 1738.1, debit balances are
7 prohibited in trust accounts. ICE allowed a debit balance to exist in its trust account from January
8 20, 2016 until February 25, 2016.

9 5. On December 10, 2015, the principal of Escrow #CA8408-FA (“Principal”) signed a
10 disbursement of funds form (“DFF”) instructing ICE to disburse his sale proceeds by check that will
11 be held at ICE’s offices for pickup. Additionally, the Principal also signed an Email and Ecommerce
12 Authorization Form and Agreement (“EEAF”) authorizing ICE to communicate via email, which the
13 Principal signed on December 16, 2015, and again on December 23, 2015. The EEAF contained the
14 Principal’s email address.

15 6. On or about January 07, 2016, a non-principal (“Non-Principal”), assuming the
16 identity of the Principal, contacted an ICE escrow officer via telephone. During this conversation,
17 the Non-Principal requested that ICE disburse the sale proceeds by wire to a personal bank account
18 instead of by issuance of a check. ICE told the Non-Principal that a new DFF form would need to be
19 submitted.

20 7. On or about January 19, 2016, the Non-Principal, using a different email address than
21 the actual Principal’s email address that was previously provided to ICE, emailed ICE to request a
22 change in the wiring instructions. The Non-Principal provided a new DFF to ICE which requested
23 that the sale proceeds be wired to a non-personal bank account. ICE informed the Non-Principal that
24 the sale proceeds cannot be disbursed to a bank account that is not under the Non-Principal’s
25 personal name. Subsequently, the Non-Principal emailed a new DFF form to ICE requesting that the
26 sale proceeds be disbursed to a new bank account belonging to the Non-Principal that is purportedly
27 in the name of the actual Principal.

28 8. On or about January 20, 2016, ICE disbursed the actual Principal’s sale proceeds to

1 the Non-Principal’s bank account in accordance with the DFF signed by the Non-Principal.

2 9. On or about January 22, 2016, the actual Principal called ICE to ask about the status
3 of the sale proceeds. ICE informed the Principal that the sale proceeds were disbursed by wire to a
4 bank account in accordance with the Non-Principal’s email instructions. The actual Principal
5 informed ICE that he had never sent an email to ICE regarding the sale proceeds. Additionally, the
6 actual Principal indicated that the email address used by the Non-Principal to communicate with ICE
7 was not his email address and that the bank account ICE wired the sale proceeds to also did not
8 belong to the actual Principal.

9 10. As a result of ICE’s disbursal of the actual Principal’s trust funds to the Non-
10 Principal, a trust shortage was created in Escrow #CA8408-FA. The trust shortage in ICE’s trust
11 account existed from January 20, 2016 until February 25, 2016, when ICE fully replaced the trust
12 shortage.

13 11. On or about March 17, 2016, 54 days after ICE first discovered that a trust shortage
14 was created by ICE’s unauthorized disbursement of the actual Principal’s sale proceeds to the Non-
15 Principal on January 22, 2016, ICE reported the trust shortage to the Department.

16 12. Financial Code section 17602 provides:

17 If it appears to the commissioner that any licensed escrow agent has
18 violated its articles of incorporation, or any law or rule binding upon it,
19 the commissioner shall, by written order addressed to the agent direct
20 the discontinuance of such violation. The order shall be effective
immediately, but shall not become final except in accordance with the
provisions of Section 17604.

21 13. Financial Code section 17604 provides:

22 No order issued pursuant to Section 17602 or 17603 may become final
23 except after notice to any licensed escrow agent affected thereby of the
24 intention of the commissioner to make such order final and of the reasons
25 therefore and that upon receipt of a request the matter will be set down
26 for hearing to commence within 15 business days after such receipt unless
27 the licensed agent affected consents to a later date. If no hearing is requested
28 within 30 days after the mailing of such notice and none is ordered by the
commissioner, the order may become final without hearing and the licensed
escrow agent shall immediately discontinue the practices named in the order.
If a hearing is requested or ordered, it shall be held in accordance with the
provisions of the Administrative Procedure Act , Chapter 5 (commencing

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with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted thereunder. If upon the hearing, it appears to the commissioner that the licensed agent is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law binding upon it, the commissioner shall make the order of discontinuance final and the licensed escrow agent shall immediately discontinue the practices named in the order.

WHEREFORE, good cause showing, the Commissioner of Business Oversight is issuing an Order to Discontinue Violations and notifying ICE of her intention to make the order final.

Dated: October 26, 2016
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Johnny Vuong
Senior Counsel
Enforcement Division