

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of
THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

v.

INFINITY ESCROW, INC.,

Respondents.

Case number: 963-2281

OAH No.: L2008040359

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated August 25, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter, with the following change:

Pursuant to Government Code Section 11517(c)(2)(B), the order imposing penalties is hereby withdrawn.

This Decision shall become effective on December 5, 2008.

IT IS SO ORDERED this 5th day of December 2008.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

**BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA**

**In the Matter of the Accusation of
THE CALIFORNIA CORPORATIONS
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v.

INFINITY ESCROW, INC.,

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PROPOSED DECISION

This matter came on regularly for hearing on August 14, 2008, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

California Corporations Commissioner, Preston DuFauchard, (Complainant or Commissioner) was represented by Judy L. Hartley, Senior Corporations Counsel.

No appearance was made by or on behalf of Respondent despite Respondent's having been properly served with notice of the date, time and place of the hearing.

Oral and documentary evidence was received. On August 14, 2008, the record was closed, and the matter was submitted for decision.

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FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. On or about March 4, 2008, Complainant served Respondent with, among other things, a Notice of Intention to Issue Order Suspending Escrow Agent's License, the Accusation that is the operative pleading in this case, and an Order Imposing Penalties Pursuant to California Financial Code Section 17408 (Order Imposing Penalties). Respondent filed a timely Notice of Defense.

2. The Accusation contains a prayer that "Respondent's escrow agent's license be suspended until such time as Respondent files its audit report for the fiscal year end August 31, 2007 or for a period of one month, whichever period is greater."

3. Pursuant to Financial Code section 17408, the Order Imposing Penalties required Respondent to pay penalties of \$8,000 plus \$100 for each day after March 4, 2008 that Respondent's annual audit report was not filed.

4. Complainant established the truth of the allegations set forth in paragraphs I and II of the Accusation. Those facts are repeated verbatim below and are incorporated as factual findings herein.

I

Infinity Escrow, Inc. ("Respondent" or "Infinity") is an escrow agent licensed by the California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the Escrow Law of the State of California (California Financial Code Section 17000 et seq.).

II

Pursuant to Financial Code section 17406, all licensees under the Escrow Law are required to file an annual audit report containing audited financial statements ("audit report") within one hundred and five (105) days after the close of their fiscal year. Respondent's fiscal year end is August 31. Accordingly, Respondent was required to file its audit report on or before December 15, 2007.

On or about July 10, 2007, Complainant notified Respondent in writing that its audit report was due December 15, 2007. Respondent failed to file the audit report by December 15, 2007.

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On or about December 26, 2007, a follow up letter was sent to Respondent concerning its failure to file the audit report. Respondent was notified in the letter that failure to file to [sic] the audit report could result in assessment of penalties, a special examination and/or administrative action.

Respondent has yet to file the audit report as required by Financial Code section 17406.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists to suspend or revoke Respondent's escrow agent's license, pursuant to Financial Code sections 17602.5 and 17608, for failure to file its annual audit report, as set forth in Findings 1, 2, 3 and 4.

2. Cause exists to order Respondent to pay monetary penalties, pursuant to Financial Code section 11408, subdivision (b), for failure to file its annual audit report following a written demand to do so, as set forth in Finding 4.

3. Financial Code section 17602.5 states:

If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the day designated for the making of the reports, or within any extension of time granted by the commissioner, or fails to include therein any matter required by law or by the commissioner, such failure shall constitute grounds for the suspension or revocation of the license held by such escrow agent.

4. Financial Code section 17608 states in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

[¶]...[¶]

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

[¶]...[¶]

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5. Financial Code section 17408 states in relevant part:

(b) The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the commissioner, or (2) to furnish any material information required by the commissioner to be included in the report. The amount of the penalty may not exceed one hundred dollars (\$100) for each day for the first five days the report or information is overdue, and thereafter may not exceed five hundred dollars (\$500) for each day the report or information is overdue.

(c) If, after an order has been made under subdivision (b), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the Administrative Procedure Act, Chapter 5 (commencing 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 under that chapter.

(d) If the person fails to file a written request for a hearing within 30 days of the date of service of the order, the order imposing the penalty shall be deemed a final order of the commissioner, and the penalty shall be paid within five business days.

(e) If a hearing is requested, the penalty shall be paid within five business days after the effective date of any decision in the case ordering payment to be made.

6. No defense having been raised to Respondent's failure to timely file its annual audit report, the imposition of license suspension or revocation and monetary penalties is warranted. The annual audit report was due on December 15, 2007. The Order Imposing Penalties was issued on March 4, 2008. A total of 80 days passed between those two dates. At a daily rate of \$100, Complainant correctly calculated the amount of the initial penalty at \$8,000.

7. Complainant is seeking only the suspension of Respondent's escrow agent's license and the imposition of monetary sanctions. Complainant does not seek license revocation at this time.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The escrow agent's license of Infinity Escrow, Inc. is suspended until such time as Respondent files its annual audit report for the fiscal year ending August 31, 2007, or for a period of one month from the effective date of this Decision, whichever period is greater.

2. The Order Imposing Penalties Pursuant to California Financial Code Section 17408 is affirmed. Respondent shall pay to the Commissioner the sum of \$8,000, plus an additional \$100 per day for each day after March 4, 2008, that the annual audit report for the fiscal year ending August 31, 2007, is not filed.

3. Payment shall be due within five business days after the annual audit report for the fiscal year ending August 31, 2007, is filed, or within five business days after the effective date of this Decision, whichever is later.

DATED: August 25, 2008

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings