

BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

INTERNATIONAL CLOSING AND ESCROW, INC.

Respondent.

Case No. 963-2328

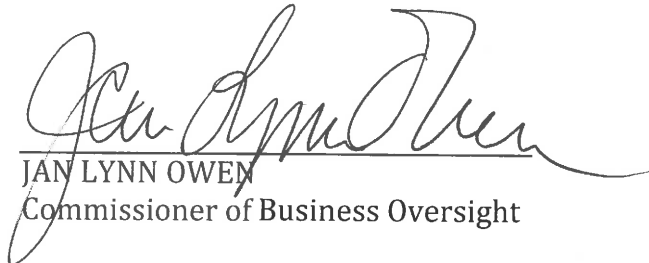
OAH No. 2017010109

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated May 26, 2017, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on July 14, 2017.

IT IS SO ORDERED this 14 day of June, 2017.

  
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JAN LYNN OWEN  
Commissioner of Business Oversight

BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA

In the Matter of the Order to Discontinue  
Violations Pursuant to Financial Code  
section 17602 by:

THE COMMISSIONER OF BUSINESS  
OVERSIGHT,

Complainant,

v.

INATIONAL CLOSING AND ESCROW,  
INC.,

Respondent.

Escrow License No. 963-2328

OAH No. 2017010109

**PROPOSED DECISION**

Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, State of California, heard this matter on April 26, 2017, in San Diego, California.

Johnny Vuong, Senior Counsel, represented complainant Mary Ann Smith, Deputy Commissioner of the Enforcement Division, Department of Business Oversight (Department).

Jennifer Felten, Attorney at Law, represented respondent iNational Closing and Escrow Inc. (ICE).

Evidence was received, the record was closed and the matter was submitted for decision on April 26, 2017.

**FACTUAL FINDINGS**

1. ICE is an escrow agent licensed by the commissioner. ICE has a principal place of business located at 8813 Villa Jolla Drive, Suite 2003, San Diego, California 92037.

2. Farnaz Arvin is the President, Owner and Escrow Manager of ICE. Arash Nasserri is married to Ms. Arvin, and is an escrow officer for ICE. Escrow No. CA 8408-FA involved the sale of Jonathon Brekke's real property, located in Irvine, California. Ms. Arvin was the escrow officer for the transaction. Ms. Arvin was not present at the hearing, but Mr. Nasserri was present and testified on behalf of ICE.

*Computer E-mail Hack Regarding Escrow No. CA 8408-FA*

3. Seller, Mr. Bekke, signed a Disbursement of Funds Form (DFF) dated December 10, 2015, instructing ICE to issue a check to him upon the close of escrow, and instructed ICE to hold the check at ICE's office until he picked it up. On January 7, 2016, Danielle Meza, an escrow officer in ICE's document department, received a telephone call from an individual purporting to be Mr. Brekke. The "impersonator" asked Ms. Meza to wire the sale proceeds to his personal bank account, instead of issuing a check. Ms. Meza told the impersonator that she would email him a new DFF to complete and return to ICE.

4. The escrow file was then transferred to Marissa Sanchez, an escrow officer in ICE's funding department. The following day, Ms. Sanchez received an email from the impersonator stating that he needed to change his wiring instructions. On January 19, 2016, Ms. Sanchez received a new DFF, dated December 10, 2015, from the impersonator directing ICE to wire the funds to BBVA Bank, to an account named Douglas & Company Hair, Account No. 6734855985. Ms. Sanchez advised the impersonator that she could not wire the funds to this account because it was not under Mr. Brekke's personal name. On the same day, the impersonator sent Ms. Sanchez a new DFF, also dated December 10, 2015, directing ICE to wire the funds to Santander Bank, to an account named Jonathon M. Brekke, Account No. 2881066720. On January 20, 2016, Ms. Sanchez wired the seller's proceeds in the amount of \$291,403.22 to Santander Bank.

5. On January 22, 2016, the real Mr. Brekke called ICE to inquire about his sale proceeds. Ms. Sanchez told Mr. Brekke that the proceeds were sent to Santander Bank on January 20, 2016, as directed in the DFF received by email on January 19, 2016. The email address was eaglepower555@mail.com. Mr. Brekke stated that he never sent an email to Ms. Sanchez regarding the sale proceeds, that he never had a bank account with Santander Bank, and that his email address was eaglepower555@gmail.com.

6. On February 25, 2016, ICE recovered \$192,536.52 from Santander Bank, and City National Bank issued a credit memo to ICE's trust account. To cure the shortage in the trust account, Mr. Nasserri issued a check from ICE's general account with City National Bank, in the amount of \$98,866.70, and deposited this amount to ICE's trust account, also with City National Bank. On March 1, 2016, Mr. Nasserri issued a check in the amount of \$291,403.22 from ICE's trust account to Mr. Brekke.

### *The Department's Investigation*

7. The Department assigned Milag Farag, a Corporation Examiner, to investigate the fraudulent transaction. During his investigation, he asked Mr. Nasserri why ICE did not contact the seller prior to wiring the funds to Satander Bank. Mr. Nasserri stated that, while escrow was open, Mr. Brekke traveled to Texas due to his mother's death, and was also in the process of moving to Florida. Mr. Nasserri also stated that once the email hacking was discovered, on January 22, 2016, he reported the incident to City National Bank, the San Diego Police Department, and the Federal Bureau of Investigation.

8. Mr. Farag found during his investigation that ICE did not follow the written escrow instructions maintained in the escrow file, nor did ICE obtain new written escrow instructions from the seller to change the method of payment for the property sales proceed from a check to a wire transfer. In addition, the email from the impersonator was not verified with Mr. Brekke before the trust funds were disbursed. Disbursing the trust funds to the impersonator resulted in a trust fund shortage of \$291,403.22, from January 20, 2016, to February 23, 2016, and a shortage of \$192,536.52 on February 24, 2016. Ms. Arvin discovered the unauthorized wire transfer on January 22, 2016, but did not deposit replacement funds into ICE's trust account until February 24 and 25, 2016. Ms. Arvin did not notify the Department of the incident until March 17, 2016.

9. Mr. Farag asked Mr. Nasserri about the delay in reporting the incident to the Department, and the delay in replacing the funds in ICE's trust account. Mr. Nasserri stated that he did not know that he needed to report the matter to the Department until he talked to a certified public accountant. With regard to the trust funds replacement, Mr. Nasserri stated that he was waiting to see how much he could recover from Satander Bank, and was waiting for confirmation that Mr. Brekke did not make a false statement about failing to receive his funds.

### *Respondent's Evidence*

10. Mr. Nasserri's testimony at hearing confirmed the events that took place. He asserted that he has never had a seller drive over 100 miles to his office to pick up a check, as directed in Mr. Brekke's DFF. Mr. Nasserri asserted that he had multiple conversations with the real Mr. Brekke that made him believe that the wire transfer instructions "were good." Mr. Nasserri stated that after he realized that the money was gone, "there was a lot I was learning on the fly at the time trying to handle this." Mr. Nasserri asserted that there were a lot of things going on at the same time, and he was receiving "lots of emails for over 500 clients."

11. Mr. Nasserri testified that there was "no one out there to help us." After ICE discovered the fraud, he quickly contacted ICE's attorney to help "guide us through the situation." Mr. Nasserri also tried to be comforting to Mr. Brekke, informing Mr. Brekke what he was doing each day while he attempted to correct the transaction. Mr. Nasserri told Mr. Brekke that ICE had three insurance policies, including a policy for cyber-crime. Even

though all of ICE's insurance claims were denied, Mr. Nasseri was determined to provide Mr. Brekke with his funds.

12. Mr. Nasseri stated that he reported the incident to the Department "right away," after speaking with his lawyer. ICE has instituted subsequent measures to ensure that a similar incident does not happen in the future. Mr. Nasseri stated that ICE "beefed up" its server, which is monitored hourly. ICE no longer accepts e-signatures, and any change in the disbursement of funds must be notarized. ICE now asks the seller security questions to confirm the seller's identity.

13. Patricia Jo Garcia testified on behalf of ICE. Ms. Garcia is a member of many escrow trade organizations, and has served on the Department's Escrow Law Advisory Committee. She is a lecturer on escrow transactions and has written publications on the subject.

14. Ms. Garcia opined that it is normal to accept escrow instructions by email, as today, a vast majority of communications are made by email. Moreover, it is not uncommon for sellers to have more than one email address. In order to minimize or prevent fraud in the industry, a company should use the phone to communicate with clients. Ms. Garcia characterized this as an "old school backup safety net." With regard to the reporting requirement set forth in Financial Code section 17414, subdivision (c), Ms. Garcia opined that the requirement typically refers to employee theft and embezzlement. The statute was written before wire transfers were common, and Ms. Garcia implied that the statute did not apply to the wire transfer in this case. She concluded that ICE did not engage in reckless behavior by following the wiring instructions the impersonator submitted.

#### *Discussion*

15. The evidence shows that ICE did not exercise its fiduciary duties throughout Mr. Brekke's escrow transaction. Because ICE did not follow proper protocol to protect its client, and did not have measures in place to prevent cyber attacks, ICE made itself vulnerable to a situation such as this one. To its credit, however, ICE has taken preventative measures to avoid any future cyber-attacks. ICE's expert witness, Ms. Garcia, conceded that a company should call the client to minimize or prevent fraud. Had ICE done so prior to the disbursement, it would have learned from Mr. Brekke that he did not change his written escrow instructions of December 10, 2015. ICE should have been suspicious of the impersonator's multiple DFF instructions, and should have required the impersonator at the very least to notarize the DFF instructions, to ensure that the DFFs were submitted by the real Mr. Brekke. Moreover, all DFFs were dated December 10, 2015, which should have also raised ICE's suspicion.

16. The evidence established that ICE: (1) made an unauthorized disbursement by wire transfer from Mr. Brekke's escrow account without adequate controls and safeguards; (2) did not report the misappropriation of funds immediately to the commission in writing; (3) allowed a debit balance to exist in the escrow account of \$291,403.22, from January 20, 2016, to February 23, 2016, and a shortage of \$192,536.52 on February 24, 2016; and (4) failed to

follow Mr. Brekke's written escrow instructions pursuant to his DFF dated December 10, 2015.

## LEGAL CONCLUSIONS

1. The Department of Business Oversight is the agency responsible for enforcing the Escrow Law of California. (Fin. Code, § 17000 et seq.)

2. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) And to be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

3. Financial Code section 17414, provides, in part:

(a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

[¶] . . . [¶]

(c) Any person subject to this division who knows of a person's involvement in an abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent shall immediately report the abstraction or misappropriation in writing to the commissioner and to Fidelity Corporation. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

4. Financial Code section 17602, provides:

If it appears to the commissioner that any licensed escrow agent has violated its articles of incorporation, or any law or rule binding upon it, the commissioner shall, by written order addressed to the agent direct 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.

5. Financial Code section 17604, provides:

No order issued pursuant to Sections 17602 or 17603 may become final except after notice to any licensed escrow agent affected thereby of the intention of the commissioner to make such order final and of the reasons therefor and that upon receipt of a request the matter will be set down for hearing to commence within 15 business days after such receipt unless the licensed agent affected consents to a later date . . . If a hearing is requested or ordered, it shall be held in accordance with the provisions of 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 of 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 of this state, or any rule 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.

6. California Code of Regulations, title 10, section 1738, provides:

(a) All money deposited in such "trust" or "escrow" account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.

(b) The escrow agent shall comply with, at a minimum, the following procedures for wire transfers (also known as "electronic fund transfers"):

(1) The instructions of the principals authorizing the wire transfer must contain, at a minimum, the amount of the funds to be wire transferred, the name of the financial institution, the account number and the account name receiving the funds.

(2) The escrow agent shall retain confirmation of the wire transfer from the financial institution that contains, at a minimum, the amount of the funds wire transferred and

the account number and name of the account the funds were wire transferred to.

- (3) If necessary, the escrow books shall be properly adjusted to reflect the wire transfer of funds from the escrow account.
- (4) The escrow **agent shall maintain a proper audit trail and adequate controls and safeguards for funds disbursed by wire transfer.**

(Emphasis added in bold.)

- 7. California Code of Regulations, title 10, section 1738.1, provides:

An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

- 8. California Code of Regulations, title 10, section 1738.2, provides:

An escrow agent shall use documents or other property deposited in escrow only in accordance with the written instructions of the principals to the escrow transaction, or if not otherwise directed by written instructions, in accordance with sound escrow practice, or pursuant to order of a court of competent jurisdiction.

*Causes to Make Order of Discontinuance Final*

9. ICE made an unauthorized disbursement of funds and failed to follow the principal's written instructions, by reason of Findings 3, 4, and 16, in violation of California Code of Regulations, title 10, section 1738. Such conduct constitutes conducting business in an unsafe and injurious manner, pursuant to Financial Code section 17604. Therefore, cause exists to make the Order of Discontinuance final.

10. Respondent failed to immediately report to the commissioner the shortage in the escrow account, by reason of Findings 8, 9, and 16, in violation of Financial Code section 17414, subdivision (c). Such conduct constitutes conducting business in an unsafe and injurious manner, pursuant to Financial Code section 17604. Therefore, cause exists to make the Order of Discontinuance final.

11. Respondent allowed a shortage to exist in the escrow account, by reason of Findings 8 and 16, in violation of California Code of Regulations, title 10, section 1738.1.



Such conduct constitutes conducting business in an unsafe and injurious manner, pursuant to Financial Code section 17604. Therefore, cause exists to make the Order of Discontinuance final.

12. Respondent did not follow the principal's written escrow instructions, by reason of Findings 3, 4, and 16, in violation of California Code of Regulations, title 10, section 1738.2.

### ORDER

The Order to Discontinue Violations Pursuant to Financial Code section 17602, issued against respondent iNational Closing and Escrow, Inc., is **AFFIRMED**, and shall be **FINAL**.

DATED: May 26, 2017

DocuSigned by:  
*Danette C. Brown*  
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**DANETTE C. BROWN**  
Administrative Law Judge  
Office of Administrative Hearings