

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 JOHNNY VUONG (State Bar No. 249570)
Senior Corporations Counsel
4 Department of Business Oversight
5 320 W. 4th Street, Suite 750
6 Los Angeles, California 90013
7 Telephone: (213) 576-7585
8 Facsimile: (213) 576-7181
Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) ESCROW LICENSE NO. 963-1948
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) ACCUSATION IN SUPPORT OF:
15)
16 Complainant,) 1) ORDER BARRING NANCY KIM
v.) FROM ANY POSITION
17) OF EMPLOYMENT, MANAGEMENT
CALIFORNIA ESCROW SERVICE, INC.,) AND CONTROL OF ANY ESCROW
AND NANCY KIM.) AGENT
18)
19 Respondents.) 2) ORDER REVOKING CALIFORNIA
20) ESCROW SERVICE, INC.'S
ESCROW AGENT LICENSE
21)
22)

23 The Commissioner of Business Oversight (“Commissioner”) is informed and believes and
24 based upon such information and belief, alleges and charges as follows:

25 I

26 Introduction

27 1. California Escrow Service, Inc. (“CES”) is an escrow agent licensed by the
28 Commissioner pursuant to the Escrow Law of the State of California (Financial Code section 17000

1 et seq.), with its principal place of business at 3580 Wilshire Blvd., Suite # 710, Los Angeles, CA
2 90010. Nancy Kim (“Kim”), was at all relevant times, President of CES.

3 II

4 June 6, 2014 Examination

5 2. On June 6, 2014, the Commissioner conducted a special examination of CES. During
6 the examination, the Commissioner’s examiner reviewed: CES’s financial statements from December
7 31, 2013 (“December 2013 Financials”); the daily reports and escrow liability reports as of June 5,
8 2014 (“June 2014 Reports”); and CES’s dormant trust account.

9 3. A review of the December 2013 Financials reflected debit balances in nine escrow
10 accounts totaling \$109,523.13 which were reported as misposting errors. The Commissioner’s
11 examiner found that for 8 of the 9 files, the debit balances were posting errors and had been
12 corrected. One particular escrow, Escrow 7337-KK, had an actual debit balance of \$0.10 created by
13 the misposting of seller proceeds to the account. Debit balances in escrow accounts are prohibited by
14 California Code of Regulations, title 10, section 1738.1. The Commissioner’s examiner requested
15 that CES replace the funds on the debit balance and correct the posting errors. CES corrected the
16 posting error and replaced the funds.

17 4. The Commissioner’s examiner also reviewed the June 2014 Reports and confirmed
18 that 14 escrow files contained debit balances totaling \$11,847.71. The Commissioner’s examiner
19 requested that CES provide her with the complete escrow files for the 14 escrows. A review of the 14
20 escrow files revealed that 7 of the escrow files did not have true debit balances but were due to
21 posting errors. However, Escrows: 3593-NK, 4167-NK; 4261-NK; 7198-KK; 7264-KK; 7337-KK;
22 and 7431-KK, contained debit balances totaling \$2,127.60, in violation of California Code of
23 Regulations, title 10, section 1738.1.

24 5. The debit balances arose in the 7 escrow transactions set forth above due to
25 outstanding trust account checks that were cancelled by CES and then re-issued to itself as the payee
26 without authorization, in violation of Financial Code section 17414, subdivision (a)(1) and California
27 Code of Regulations, title 10, section 1738, which prohibits unauthorized disbursements. The
28 Commissioner requested that CES replace \$2,127.60 in the trust fund. The Commissioner’s examiner

1 CES's dormant trust account to itself in the amount of \$158.00 with Kim as a signatory. CES
2 subsequently cancelled the outstanding check to the third party on or about March 19, 2014.

3 8. CES disbursed the trust funds to itself in the 47 escrow files set forth in Exhibit A by
4 charging "escrow hold open fees" to the escrow files. CES's escrow instructions contained a clause
5 whereby principals agree to allow CES to "irrevocably" charge a monthly "escrow hold open fee" to
6 the escrow account 90 days after the close of escrow if the account contained outstanding funds.
7 CES's "escrow hold open fee" is in violation of Financial Code section 17421.5, which only permits
8 fees to be charged for maintaining escrow accounts in situations where the escrow transaction is
9 postponed or canceled and only if all 4 requirements set forth in Financial Code section 17421.5,
10 subdivisions (a)(1)-(3) are met. The above-mentioned 47 escrow transactions were closed escrow
11 transactions and not canceled or postponed.

12 9. Additionally, the Commissioner's examiner found 9 escrow files in which CES
13 disbursed trust funds totaling \$11,770.71 to itself without authorization in violation of Financial Code
14 section 17414, subdivision (a)(1) and California Code of Regulations, title 10, section 1738. A chart
15 setting forth the 9 escrow files in which CES disbursed funds to itself without authorization is
16 attached as Exhibit B.

17 10. On or about October 1, 2014, the Commissioner served a demand upon Kim
18 demanding that CES replace \$25,986.54 that CES had disbursed to itself from its dormant trust
19 account. On or about October 8, 2014, Kim replaced \$25,986.54 that was short in the dormant trust
20 account.

21 IV

22 Liquid Asset and Tangible Net Worth Deficiencies

23 11. Pursuant to Financial Code section 17210, all licensees under the Escrow Law are
24 required to maintain at all times, a tangible net worth of fifty-thousand dollars (\$50,000.00),
25 including liquid assets of at least twenty-five thousand dollars (\$25,000.00) in excess of current
26 liabilities.

27 12. On or about November 2014, the Commissioner's examiner requested that CES
28 provide additional financial statements for the periods ending: March 31, 2014; June 30, 2014;

1 September 30, 2014; and October 31, 2014. On or about November 20, 2014, CES produced their
2 financial statements for the periods set forth above.

3 13. The Commissioner's examiner reviewed CES's financial statements for the periods
4 of: December 31, 2013; March 31, 2014; June 30, 2014; September 30, 2014; and October 31, 2014,
5 and found the following:

6 1) CES's December 31, 2013 balance sheet reflected that CES was deficient in meeting
7 the net worth requirements by \$34,874.00 and the liquid asset requirement by \$14,249.00;

8 2) CES's March 31, 2014 balance sheet reflected that CES was deficient in meeting the
9 net worth requirements by \$29,958.46 and the liquid asset requirement by \$14,333.46;

10 3) CES's June 30, 2014 balance sheet reflected that CES was deficient in meeting the net
11 worth requirements by \$39,882.71 and the liquid asset requirement by \$24,257.71;

12 4) CES's September 30, 2014 balance sheet reflected that CES was deficient in meeting
13 the net worth requirements by \$42,923.90 and the liquid asset requirement by \$27,298.90; and

14 5) CES's October 31, 2014 balance sheet reflected that CES was deficient in meeting the
15 net worth requirements by \$29,880.10 and the liquid asset requirement by \$14,255.10.

16 14. The Commissioner has not received any proof as of the date of this Accusation that
17 CES has corrected the liquid asset and tangible net worth deficiencies under Financial Code section
18 17210.

19 V

20 Failure to Reconcile General Account Ledger

21 15. On or about October 14, 2014, the Commissioner's examiner spoke with CES's CPA
22 who admitted that CES's general account has not been reconciled with the general account bank
23 statements since December 2013, in violation of California Code of Regulations, title 10, section
24 1732.3, which requires that general account ledgers be reconciled to the general account bank
25 statements at least once a month.

26 //

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI

Applicable Law

16. Financial Code section 17210 provides in pertinent part:

A licensed escrow agent shall maintain at all times a tangible net worth of fifty thousand dollars (\$50,000), including liquid assets of at least twenty-five thousand dollars (\$25,000) in excess of current liabilities.

17. Financial Code section 17414 provides in pertinent 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:

(1) Knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

18. Financial Code section 17420 provides in pertinent part:

It shall also be a violation for any person to enter into any arrangement ... or other device permitting any fee, commission, or compensation which is contingent upon the performance of any act, condition, or instruction set forth in an escrow to be drawn or paid, either in whole or in part, or in kind or its equivalent, prior to the actual closing and completion of the escrow.

19. Financial Code section 17421.5 provides:

(a) Notwithstanding Section 17420, a licensee may charge a fee for administering an escrow that has been postponed for at least two months from the most recent closing date agreed upon by the parties in the written instructions or has been canceled if all of the following requirements are met:

(1) The postponement or cancellation resulted from the acts or omissions of the parties to the escrow transaction.

(2) The fee was disclosed in the written instructions in not less than 8-point bold type on the face or front page of the instructions.

(3) The principal parties to the escrow transaction have executed the written fee instructions by initialing those instructions.

(b) This section shall apply to written instructions made on and after January 1, 2008.

20. Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order. . . bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the . . . bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

....

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any escrow processing activities, including disbursing any trust funds in the escrow agent's possession, custody or control, and the financial institution holding trust funds shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

....

21. Financial Code section 17608 provides 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.

1 22. California Code of Regulations, title 10, section 1732.3 provides:

2 An escrow agent shall establish and maintain currently the following
3 books with reference to its general accounts:

4 (a) General ledger reflecting the assets, liabilities, capital, income and
5 expense of the business, in accordance with generally accepted
6 accounting principles;

7 (b) Cash receipt and disbursement journal.

8 The bank accounts contained in the general ledger shall be reconciled
9 at least once each month with the bank statements of the general
10 accounts.

11 23. California Code of Regulations, title 10, section 1738 provides in pertinent part:

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

17 24. California Code of Regulations, title 10, section 1738.1 provides:

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

21 VII

22 Prayer

23 25. The Commissioner finds that by reason of the foregoing, Nancy Kim and California
24 Escrow Service, Inc. have violated Financial Code sections 17414 and 17421.5 and California Code
25 of Regulations, title 10, sections 1732.3, 1738 and 1738.1. Additionally, California Escrow Service,
26 Inc. has also violated Financial Code section 17210.

27 26. The Commissioner further finds that based upon Nancy Kim and California Escrow
28 Service, Inc.’s numerous and repeated violations of the Escrow Law, including misappropriation of
trust funds, it is in the best interests of the public to bar Nancy Kim from any position of
employment, management, or control of an escrow agent pursuant to Financial Code section 17423
and to revoke California Escrow Service, Inc.’s escrow agent’s license pursuant to Financial Code
section 17608.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, IT IS PRAYED THAT:

- 1) Nancy Kim be barred from any position of employment, management, and control of any escrow agent; and
- 2) California Escrow Service, Inc.’s escrow agent license be revoked.

Dated: March 6, 2015
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
JOHNNY VUONG
Senior Corporations Counsel
Enforcement Division