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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,) AMENDED ACCUSATION IN SUPPORT OF:
15)
16 Complainant,) 1) ORDER BARRING NANCY KIM
17 v.) FROM ANY POSITION
18 CALIFORNIA ESCROW SERVICE, INC.,) OF EMPLOYMENT, MANAGEMENT
AND NANCY KIM.) AND CONTROL OF ANY ESCROW
19 Respondents.) AGENT
20)
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 California Code of Regulations, title 10, section 1738, which
27 prohibits unauthorized disbursements. The Commissioner requested that CES replace \$2,127.60 in
28 the trust fund. The Commissioner’s examiner also requested that CES replace trust funds in the

1 amount of \$504.00 in 4 of the 7 above-mentioned escrow transactions that also had additional
2 unauthorized disbursements, in violation of California Code of Regulations, title 10, section 1738.
3 CES replaced both \$2,127.60 and \$504.00 in trust funds upon demand by the Commissioner.

4 6. The Commissioner's examiner spoke with Kim about the practice of cancelling
5 outstanding trust fund checks and re-issuing them to CES. Kim responded that she felt CES was
6 entitled to the outstanding trust funds because of the work and cost associated with reaching out to
7 payees prior to escheating – procedures which CES is obligated to comply with under the Unclaimed
8 Property Law (Code of Civil Procedure section 1500 et seq.) The examiner informed Nancy that
9 outstanding funds are required to be escheated to the State of California.

10 III

11 Dormant Trust Account Shortage

12 7. The Commissioner's examiner also reviewed CES's dormant trust account
13 reconciliation for March 2014 which revealed that a large number of checks were being disbursed to
14 CES from the dormant trust account. The Commissioner's examiner reviewed the escrow files related
15 to the trust fund checks that were issued to CES from the dormant trust account and discovered that
16 CES canceled outstanding trust fund checks to third-parties in at least 47 escrow files totaling
17 \$14,215.80 and re-issued the checks to itself as the payee, in violation of California Code of
18 Regulations, title 10, section 1738. Kim was a signatory on the checks. Additionally, the funds were
19 also due to be escheated to the State of California pursuant to the Unclaimed Property Law. A chart
20 describing the 47 escrow transactions in which CES cancelled outstanding trust fund checks to third-
21 parties and then re-issued the checks to itself as the payee is attached as Exhibit A. (The names of the
22 payees are redacted for privacy purposes).

23 The following is an example:

24 Escrow No. 7459-KK - On or about June 22, 2012, CES issued Check No. 34102 to a third
25 party in the amount of \$158.00. On or about March 18, 2014, CES issued Check No. 36123 from
26 CES's dormant trust account to itself in the amount of \$158.00 with Kim as a signatory. CES
27 subsequently cancelled the outstanding check to the third party on or about March 19, 2014.
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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 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.

18. 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.

19. 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

1 commissioner, which violation was either known or should have been
2 known by the person committing or causing it or has caused material
3 damage to the escrow agent or to the public.

4

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

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

22

23 20. Financial Code section 17608 provides in pertinent part:

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

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

29 21. California Code of Regulations, title 10, section 1732.3 provides:

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

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

35 (b) Cash receipt and disbursement journal.

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

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

(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 escrow 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.

23. 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.

VII

Prayer

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

25. The Commissioner further finds that based upon Nancy Kim and California Escrow Service, Inc.'s numerous and repeated violations of the Escrow Law, 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.

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: January 20, 2016
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

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By _____
JOHNNY VUONG
Senior Corporations Counsel
Enforcement Division