

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

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

Complainant,

v.

APPLE ESCROW, MARY ANN PALMER,
and VERONICA AMAYA,

Respondents.

OAH Case No. 2010060388

Agency Case No. 963-1201

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 5, 2010, in Los Angeles, California.

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

Veronica Amaya (Respondent Amaya) represented herself as escrow officer of Apple Escrow.

Mary Ann Palmer (Respondent Palmer) failed to appear, despite being properly served with the Notice of Hearing and other jurisdictional documents.

No one represented Apple Escrow (Respondent Apple Escrow is referred to as “Apple Escrow”), however, Complainant’s counsel asserted at hearing that Apple Escrow was no longer a party at issue in this proceeding, as Complainant had revoked Apple Escrow’s escrow agent license by order, dated June 3, 2010, as noted, *post*.

Complainant amended the Accusation. On page two, line 27, the figure “\$15,000.00” was amended to read “13,000.00.” On page four, line six, the figure “\$1,5051.00” was amended to read “\$1,505.00.”

The parties submitted the matter for decision on October 5, 2010.

STATEMENT OF THE CASE

Complainant contends that Respondents violated several provisions of the Financial Code and California Code of Regulations by making improper disbursements from Apple Escrow's trust account into its general account between 2008 and 2010. These disbursements resulted in an uncured trust account shortage. Complainant further contends Respondents misappropriated funds from dormant escrow trust funds in 2008, and failed to perform monthly bank reconciliations on the trust account since May 2008.

Complainant's counsel asserted at hearing that Apple Escrow's licensure was revoked and not longer at issue in this proceeding. Consequently, Complainant solely sought an order barring Respondents Amaya and Palmer from any position of employment, management, or control of any escrow agent.

Respondent Amaya conceded the violations alleged by Complainant, but asserted that she largely followed Respondent Palmer's direction and that Respondent Palmer was the main violator. Respondent Amaya asks to not be barred as requested by Complainant.

FACTUAL FINDINGS

1. Complainant originally licensed Apple Escrow as an escrow agent. The evidence did not establish the dates of licensure. Respondent Palmer acted as Apple Escrow's manager. The evidence did not establish the dates of her employment with Apple Escrow. Respondent Amaya acted as an escrow officer at Apple Escrow since approximately 2003.

2. Complainant filed the Accusation on or about May 3, 2010. Complainant properly served Respondents with the Accusation and other jurisdictional documents.

3. Respondents Amaya and Palmer filed Notices of Defense timely.

4. Apple Escrow failed to file a notice of defense or request for hearing. Consequently, Complainant issued an order revoking Apple Escrow's escrow agent license on June 3, 2010, in accordance with Financial Code section 17423, "effective upon the termination of the conservatorship, or receivership, if a receiver is later appointed." Complainant issued an order appointing Peter A. Davidson as conservator, pursuant to Financial Code section 17630, on April 20, 2010. There was no evidence establishing the termination of the conservatorship or the appointment of a receiver.

5. The evidence established all of Complainant's allegations in the Accusation, and Respondent Amaya did not contest them. Therefore, the allegations in the Accusation were established as the facts in this matter and are set forth verbatim (in pertinent part) as Factual Findings 6 through 26. References therein to "Palmer" and "Amaya" identify Respondent Palmer and Respondent Amaya, respectively.

6. “On or about March 10, 2010, the Commissioner received information that a check written against the trust account of Apple Escrow had been returned non-sufficient funds. Based upon such information, the Commissioner, by and through his staff, commenced a special examination of the books and records of Apple Escrow on or about March 11, 2010.

7. “The special examination revealed among other violations, that Apple Escrow had a trust account shortage of at least \$47,707.32 in violation of California Code of Regulations, title 10, section 1738.1. The special examination further revealed that the shortage was the result of at least sixteen (16) disbursements that Apple Escrow, by and through Palmer and Amaya, made from the trust account to its general account in the form of unauthorized fees or other unauthorized disbursements. These disbursements, which commenced in or about April 2008 and continued through at least March 9, 2010, were in violation of Financial Code sections 17409, 17414(a)(1), 17420 and/or 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The Commissioner has made several demands on Apple Escrow to cure the trust account shortage described herein. However, Apple Escrow has failed to cure the shortage and continues in its failure to cure the shortage. Further investigation disclosed that Apple Escrow, by and through Palmer and Amaya, had also misappropriated \$19,613.79 in dormant escrow trust funds between October 27, 2008 and December 31, 2008.”

Unauthorized Fees

8. “On or about June 15 and June 16, 2009, in escrow number 08-9529-va, Respondents disbursed \$10,000.00 in unauthorized escrow fees to Apple Escrow by way of trust check numbers 13138 and 13139 in the respective amounts of \$7,000.00 and \$3,000.00 in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. Additionally, Respondents had taken escrow fees totaling \$13,000.00 prior to close of escrow in violation of Financial Code sections 17414(a)(1), 17420 and 17421. The unauthorized disbursements described herein caused a debit balance to exist in this escrow in the amount of \$10,000.00 in violation of California Code of Regulations, title 10, section 1738.1, and also caused a trust account shortage in the same amount.

9. “On or about December 5, 2008, in escrow number 08-9578-va, Respondents disbursed \$1,000.00 in unauthorized and unearned escrow fees to Apple Escrow by way of trust check number 12856 in violation of Financial Code section 17414(a)(1), 17420 and 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The unauthorized disbursement described herein caused a debit balance to exist in this escrow in the amount of \$1,000.00 in violation of California Code of Regulations, title 10, section 1738.1, and also caused a trust account shortage in the same amount when escrow later canceled on or about March 9, 2009 and the buyer’s deposit was refunded in full.

10. “The Commissioner has been unable to determine the cause of the debit balance of \$7,629.00 in escrow number 08-9595-va and the corresponding trust account

shortage as Respondents have failed to provide the Commissioner with the escrow file in violation of Financial Code section 17404.

11. “On or about August 17, 2009, in escrow number 09-9666-va, Respondents disbursed \$1,865.00 in unauthorized and unearned escrow fees to Apple Escrow by way of trust check number 13256 in violation of Financial Code section 17414(a)(1), 17420 and 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The unauthorized disbursement described herein caused a debit balance to exist in this escrow in the amount of \$1,865.00 in violation of California Code of Regulations, title 10, section 1738.1, and further caused a trust account shortage in the same amount when escrow later canceled on or about January 10, 2010 and the buyer’s deposit was refunded in full.

12. “On or about September 17, 2009, in escrow number 09-9674-va, Respondents disbursed \$2,061.00 in unauthorized and unearned escrow fees to Apple Escrow by way of trust check number 13277 in violation of Financial Code section 17414(a)(1), 17420 and 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The unauthorized disbursement described herein caused a debit balance to exist in this escrow in the amount of \$1,391.00 in violation of California Code of Regulations, title 10, section 1738.1, and also caused a trust account shortage in the same amount when escrow later canceled on or about December 3, 2009 and a refund check was issued to the buyer in the amount of the deposit less a \$750.00 cancellation fee, which fee remains in dispute.

13. “On or about October 8, 2009, in escrow number 09-9681-va, Respondents disbursed \$1,505.00 in unauthorized and unearned escrow fees to Apple Escrow by way of trust check number 13295 in violation of Financial Code section 17414(a)(1), 17420 and 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The unauthorized disbursement described herein caused a debit balance to exist in this escrow in the amount of \$1,255.00 in violation of California Code of Regulations, title 10, section 1738.1, and also caused a trust account shortage in the same amount when escrow later canceled on or about December 3, 2009 and a refund check was issued to the buyer in the amount of the deposit less a \$250.00 cancellation fee.

14. “On or about December 21, 2009, in escrow number 09-9700-va, Respondents disbursed \$3,200.00 in authorized and unearned escrow fees to Apple Escrow by way of trust check number 13334 in violation of Financial Code section 17414(a)(1), 17420 and 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The unauthorized disbursement described herein caused a debit balance to exist in this escrow in the amount of \$3,200.00 in violation of California Code of Regulations, title 10, section 1738.1, and also caused a trust account shortage in the same amount as no funds were ever deposited into this escrow.

15. “On or about March 3, 2010, in escrow number 10-9715-va, Respondents disbursed \$1,236.20 in unauthorized and unearned escrow fees to Apple Escrow by way of trust check number 13425 in violation of Financial Code section 17414(a)(1), 17420 and 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The

unauthorized disbursement described herein caused a debit balance to exist in this escrow in the amount of \$236.20 in violation of California Code of Regulations, title 10, section 1738.1, and also caused a trust account shortage in the same amount as only \$1,000.00 in funds had been deposited into this escrow. On or about March 12, 2010, after the special examination commenced, Apple Escrow deposited the sum of \$236.20 into this escrow from its general [*sic*] to cover the debit balance. However, as escrow number 10-9715-va never closed prior to the Commissioner having taken possession of Apple Escrow as further described below, a debit balance of \$1,000.00 and corresponding trust account shortage currently exists in this escrow as Apple Escrow will not earn the escrow fees represented by the additional \$1,000.00 taken back on March 3, 2010.

16. “On or about March 3, 2010, in escrow number 10-9716-va, Respondents disbursed \$2,557.50 in unauthorized and unearned escrow fees to Apple Escrow by way of trust check number 13426 in violation of Financial Code section 17414(a)(1), 17420 and 17421 and California Code of Regulations, title 10, sections 1738 and 1738.2. The unauthorized disbursement described herein did not cause a debit balance to the escrow as sufficient funds existed to cover the unauthorized disbursement. Additionally, a trust account shortage did not ensue as a result of the unauthorized disbursement as escrow closed and the escrow fee previously taken became earned.”

Unlawful Transfers

17. “On or about October 27, 2009, Respondents made an unauthorized disbursement of trust funds to the Apple Escrow general account in the amount of \$6,200.00 via wire number 4758 in violation of Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds were used to pay the general operating expenses of Apple Escrow causing a shortage in the amount of \$6,200.00 to exist in the trust account.

18. “On or about October 28, 2009, Respondents made an unauthorized disbursement of trust funds to the Apple Escrow general account in the amount of \$2,500.00 via wire number 5202 in violation of Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds were used to pay the general operating expenses of Apple Escrow causing a shortage in the amount of \$2,500.00 to exist in the trust account.

19. “On or about October 31, 2009, Respondents made an unauthorized disbursement of trust funds to the Apple Escrow general account in the amount of \$1,850.00 via wire number 14669 in violation of Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds were used to pay the general operating expenses of Apple Escrow causing a shortage in the amount of \$1,850.00 to exist in the trust account.

20. “On or about December 29, 2009, Respondents made an unauthorized disbursement of trust funds to the Apple Escrow general account in the amount of \$6,300.00

via wire number 7448 in violation of Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds were used to pay the general operating expenses of Apple Escrow causing a shortage in the amount of \$6,300.00 to exist in the trust account.

21. “On or about January 12, 2010, Respondents made an unauthorized disbursement of trust funds to the Apple Escrow general account in the amount of \$1,300.00 via wire number 3806 in violation of Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds were used to pay the general operating expenses of Apple Escrow causing a shortage in the amount of \$1,300.00 to exist in the trust account.

22. “On or about February 16, 2010, Respondents made an unauthorized disbursement of trust funds to the Apple Escrow general account in the amount of \$1,500.00 via wire number 9550 in violation of Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds were used to pay the general operating expenses of Apple Escrow causing a shortage in the amount of \$1,500.00 to exist in the trust account.

23. “On or about March 9, 2010, Respondents made an unauthorized disbursement of trust funds to the Apple Escrow general account in the amount of \$1,100.00 via wire number 5093 in violation of Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds were used to pay the general operating expenses of Apple Escrow causing a shortage in the amount of \$1,100.00 to exist in the trust account.”

Over-disbursements

24. “On or about June 4, 2009, in escrow number 09-9637-va, Respondents over-disbursed loan proceeds by \$381.12 causing a debit balance to exist in the escrow in violation of California Code of Regulations, title 10, section 1738.1, and further caused a trust account shortage in the same amount.”

Misappropriation of Dormant Trust Funds

25. “Commencing on or about October 27, 2008 and continuing through at least December 31, 2008, Apple Escrow, by and through Palmer and Amaya, misappropriated at least \$19,613.79 in dormant trust funds by canceling the original outstanding trust checks and re-issuing the checks to Apple Escrow.”

Failure to Perform Bank Reconciliations on the Trust Account

26. “The Commissioner also discovered during the special examination that Apple Escrow had failed to perform monthly bank reconciliations on the trust account since May 31, 2008 in violation of Financial Code section 17404 and California Code of Regulations,

title 10, section 1732.2. On or about March 11, 2010, the Commissioner demanded that Apple Escrow provide a trust account bank reconciliation for the period ended [sic] February 28, 2010, however, Apple Escrow has failed to provide the bank reconciliation. A trust account reconciliation for the period ended [sic] February 28, 2010 prepared by the Commissioner based upon Apple Escrow's month-end reports and trust bank statements disclosed a negative adjusted balance of \$67,385.36 in the trust account."

27. Respondent Amaya explained that Respondent Palmer direct her to sign checks and take actions to improperly disburse and misappropriate funds for the benefit of Respondent Palmer and Apple Escrow. She described Respondent Palmer as using Apple Escrow's trust account as Respondent Palmer's "own personal checking account." According to Respondent Amaya, she and Respondent Palmer had a turbulent and contentious business relationship. Respondent Amaya understood her actions were improper, but chose to follow Respondent Palmer's directions because she wanted to keep her job. Respondent Amaya explained that she is a single mother with three children and wanted to keep her home and maintain her family's economic well-being. She noted that she appeared at the instant proceeding to explain these facts and asked Complainant to consider her presence at hearing, in contrast to Respondent Palmer's absence, as evidence of her lesser role in the improper actions. Respondent Amaya's explanations and assertions failed to establish any defense or mitigation to her actions.

28. Respondent Amaya asserted that on more than one occasion, she asked Respondent Palmer to terminate her employment, but Respondent Palmer would not, and therefore she continued working as an escrow officer at Apple Escrow. When asked on cross-examination why she did not quit, she responded that she wanted the satisfaction of "being let go." That explanation was illogical and failed to establish any defense or mitigation to her actions.

29. Respondent Amaya argued that she was not present throughout the entire period of the transgressions, as she had back surgery in May 2009, and was in recovery from May 13, 2009, through September 1, 2009. However, Respondent Amaya came into the office during her recovery time to sign a number of the checks transacting some of the improper disbursements. Her argument failed to establish any defense or mitigation to her actions.

LEGAL CONCLUSIONS

1. Cause exists to sustain Complainant's Accusation, as set forth in Factual Findings 1-29, and Legal Conclusions 2-4.

2. Financial Code section 17608 states in part that Complainant may revoke any license if the licensee has violated the statutes and regulations relating to escrow licensees.

3. Financial Code section 17423 states in part that Complainant may "bar from any position of employment, management, or control of any escrow agent, or any other

person,” if Complainant finds that the “bar is in the public interest and that the person has committed or caused a violation” of the statutes and regulations relating to escrow licensees, “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.”

4. Respondents Amaya and Palmer’s actions violated statutes and regulations relating to escrow licensees, Financial Code sections 17404, 17409, and 17414, subdivision (a)(1), and California Code of Regulations, title 10, sections 1732.2, 1738, 1738.1, and 1738.2. Their violations were known or should have been known to each Respondent to cause material damage to Apple Escrow and the public. With no defenses and no pertinent evidence of mitigation, it is appropriate for Complainant to have revoked Apple Escrow’s escrow agent license, and bar Respondents Amaya and Palmer, as sought.

ORDER

Respondent Mary Ann Palmer and Respondent Veronica Amaya are each barred from any position of employment, management, or control of any escrow agent.

Dated: November 1, 2010

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings