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8

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11
12 In the Matter of the Accusation of THE) File No.: 963-2298
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) ACCUSATION
14)
Complainant,)
15)
16 vs.)
17 PREMIERE TRANSACTIONS ESCROW,)
INC. AND THERESA L. MADDEN,)
18)
19 Respondents.)

20 The Complainant is informed and believes, and based upon such information and belief,
21 alleges and charges Respondents as follows:

22 I

23 Respondent Premiere Transactions Escrow, Inc. ("Premiere") is an escrow agent licensed by
24 the California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the
25 Escrow Law of the State of California (California Financial Code Section 17000 et seq.). Premiere
26 had its principal place of business located at 23172 Plaza Pointe Drive, Suite 110, Laguna Hills,
27 California 92653.

28 Respondent Theresa L. Madden ("Madden") is, and was at all times relevant herein, the

1 president and sole shareholder of Premiere.

2 II

3 On or about July 25, 2008, the Commissioner, by and through his staff, commenced a special
4 examination of the books and records of Premiere. The special examination was commenced after
5 the Department of Corporations (“Department”) received information that escrow customers were
6 unable to get hold of Premiere regarding their escrow transactions. The special examination initially
7 revealed that commencing on or about May 22, 2007 and continuing through at least August 11,
8 2008, Premiere, by and through Madden, had transferred or otherwise disbursed trust funds totaling
9 at least \$172,803.85 to its operating account and/or the personal account(s) of Madden, or otherwise
10 for the payment of business operating expenses or other non-trust related expenses in violation of
11 Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title 10,
12 sections 1738 and 1738.2. One recent unauthorized disbursement from the trust account, which
13 occurred on or about August 11, 2008, was issued to Madden’s son in the amount of \$3,000.00.

14 The special examination further revealed that Madden had abandoned Premiere and its
15 escrow business, despite significant trust funds remaining on deposit in the trust account¹, and the
16 landlord was in the process of evicting Premiere from its licensed location.

17 Further examination of the books and records since the Department took possession of the
18 escrow and trust account records as described below, revealed that the unauthorized disbursements
19 had commenced on December 1, 2006 and totaled \$176,679.85 as of August 11, 2008, the date of
20 the last known unauthorized disbursement. The resulting trust account shortage currently existing in
21 violation of California Code of Regulations, title 10, section 1738.1 is at least \$129,061.17 after
22 giving credit for earned escrow fees that appear not to have been transferred out of the trust account
23 and the sum of \$33,873.68 that Madden otherwise replaced.

24 The unauthorized disbursements and/or diversion of trust funds discovered during the special
25 examination are described as follows:

26 **A. Internet Transfers From The Trust Account To The Operating Account:**

27 _____
28 ¹ As of August 20, 2008, there remained a balance of \$87,845.11 in the trust account of Premiere.

1 Commencing on or about December 1, 2006 and continuing through at least June 6,
 2 2008, Madden made thirty-four (34) unauthorized disbursements of trust funds to the operating
 3 account of Premiere totaling \$92,555.00 via Internet transfers in violation of Financial Code section
 4 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The specific
 5 dates and amounts of the unauthorized transfers of trust funds from the trust account to the operating
 6 account of Premiere are as follows:

	<u>AMOUNT</u>	<u>DATE</u>
7		
8	1. \$5,805.00	December 1, 2006
9	2. \$1,200.00	March 30, 2007
10	3. \$3,000.00	April 16, 2007
11	4. \$ 950.00	June 4, 2007
12	5. \$5,000.00	September 13, 2007
13	6. \$1,000.00	October 12, 2007
14	7. \$3,000.00	October 24, 2007
15	8. \$5,000.00	October 31, 2007
16	9. \$3,000.00	November 7, 2007
17	10. \$3,000.00	November 14, 2007
18	11. \$1,000.00	December 11, 2007
19	12. \$2,000.00	December 24, 2007
20	13. \$ 500.00	December 26, 2007
21	14. \$4,000.00	January 11, 2008
22	15. \$2,000.00	January 25, 2008
23	16. \$2,000.00	January 30, 2008
24	17. \$3,000.00	February 8, 2008
25	18. \$3,000.00	February 25, 2008
26	19. \$2,250.00	February 27, 2008
27	20. \$3,000.00	March 4, 2008
28	21. \$2,000.00	March 7, 2008

1	22.	\$2,000.00	March 11, 2008
2	23.	\$3,000.00	March 14, 2008
3	24.	\$2,000.00	March 19, 2008
4	25.	\$2,000.00	March 25, 2008
5	26.	\$5,000.00	April 1, 2008
6	27.	\$2,000.00	April 8, 2008
7	28.	\$2,000.00	April 9, 2008
8	29.	\$1,500.00	April 11, 2008
9	30.	\$5,000.00	April 18, 2008
10	31.	\$3,000.00	May 6, 2008
11	32.	\$ 500.00	May 28, 2008
12	33.	\$ 350.00	June 2, 2008
13	34.	\$8,500.00	June 6, 2008

B. Internet Transfers From The Trust Account To The Personal Account of Madden:

Commencing on or about May 22, 2007 and continuing through at least through May 20, 2008, Madden made twenty-three (23) unauthorized disbursements of trust funds to the personal account of Madden totaling \$45,920.00 via Internet transfers in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The specific dates and amounts of the unauthorized transfers of trust funds from the trust account to Madden’s personal account are as follows:

		<u>AMOUNT</u>	<u>DATE</u>
23	1.	\$1,400.00	May 22, 2007
24	2.	\$4,010.00	August 1, 2007
25	3.	\$1,010.00	August 30, 2007
26	4.	\$3,050.00	August 31, 2007
27	5.	\$1,010.00	September 7, 2007
28	6.	\$1,510.00	September 11, 2007

1	7.	\$1,010.00	September 26, 2007
2	8.	\$3,010.00	October 3, 2007
3	9.	\$1,510.00	October 9, 2007
4	10.	\$ 510.00	October 12, 2007
5	11.	\$1,010.00	October 18, 2007
6	12.	\$2,010.00	October 26, 2007
7	13.	\$2,010.00	October 30, 2007
8	14.	\$ 510.00	November 7, 2007
9	15.	\$3,000.00	November 20, 2007
10	16.	\$4,000.00	January 8, 2008
11	17.	\$1,000.00	February 1, 2008
12	18.	\$1,500.00	February 8, 2008
13	19.	\$ 350.00	April 28, 2008
14	20.	\$5,000.00	May 1, 2008
15	21.	\$1,000.00	May 9, 2008
16	22.	\$1,500.00	May 15, 2008
17	23.	\$5,000.00	May 20, 2008

C. Wire Transfers From The Trust Account For Payment of Safeguard Supply

Invoices:

Commencing on or about July 26, 2006 and continuing through at least May 17, 2007, Madden made five (5) unauthorized disbursements of trust funds to Safeguard Supply to pay for business supplies totaling \$1,142.08 via wire transfers in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The specific dates and amounts of the unauthorized transfers of trust funds from the trust account to Safeguard Supply are as follows:

	<u>AMOUNT</u>	<u>DATE</u>
1.	\$248.41	July 26, 2006
2.	\$ 34.79	August 15, 2006

- 1 3. \$257.03 September 22, 2006
- 2 4. \$258.01 February 14, 2007
- 3 5. \$343.84 May 17, 2007

4 **D. Trust Funds Deposited Into The Operating Account Instead Of The Trust**
5 **Account:**

6 1. On or about January 11, 2007, Madden issued trust receipt number 1347 in
7 escrow number 600314-TM for monies received from the borrower in the amount of \$4,093.11, but
8 deposited the trust monies into the operating account.

9 2. On or about January 16, 2007, Madden issued trust receipt number 1349 in
10 escrow number 600325-TM for monies received from Old Republic Title Company in the amount of
11 \$2,483.55, but deposited the trust monies into the operating account.

12 **E. Other Unauthorized Disbursements/Diversions of Trust Funds:**

13 1. On or about August 6, 2007, Madden made an unauthorized disbursement of
14 trust funds to Premiere in the amount of \$1,461.00 via trust check number 4548 in escrow number
15 600224-TM in violation of Financial Code section 17414(a)(1) and California Code of Regulations,
16 title 10, sections 1738 and 1738.2. That same day, in order to cover up the \$1,461.00 debit balance
17 this unauthorized disbursement caused in violation of California Code of Regulations, title 10,
18 section 1738.1, Madden violated Financial Code section 17414(a)(2) by posting another check, trust
19 check number 2565, as canceled on the escrow ledger. Trust check number 2565 had been issued on
20 November 27, 2006 in escrow number 600224-TM to CITI for \$1,461.00 and had cleared the trust
21 account on December 5, 2006.

22 2. On or about April 9, 2007, Madden made an unauthorized disbursement of
23 trust funds to Premiere in the amount of \$625.00 via trust check number 3489 in escrow number
24 600263-TM in violation of Financial Code section 17414(a)(1) and California Code of Regulations,
25 title 10, sections 1738 and 1738.2. On or about April 9, 2007, in order to cover up the \$625.00 debit
26 balance this unauthorized disbursement caused in violation of California Code of Regulations, title
27 10, section 1738.1, Madden violated Financial Code section 17414(a)(2) by posting another check,
28 trust check number 2708, as canceled on the escrow ledger. Trust check number 2708 had been

1 issued on December 18, 2006 in escrow number 600263-TM to Premiere for \$625.00 and had
2 cleared the trust account on December 19, 2006.

3 3. On or about January 16, 2008, Madden made an unauthorized disbursement of
4 trust funds to Premiere in the amount of \$1,050.00 via trust check number 5079 in escrow number
5 600891-MJ in violation of Financial Code section 17414(a)(1) and California Code of Regulations,
6 title 10, sections 1738 and 1738.2. On or about February 20, 2008, in order to cover up the
7 \$1,050.00 debit balance this unauthorized disbursement caused in violation of California Code of
8 Regulations, title 10, section 1738.1, Madden violated Financial Code section 17414(a)(2) by
9 posting trust check number 5079 as canceled on the escrow ledger, when trust check number 5079
10 had cleared the trust account on January 17, 2008.

11 4. On or about August 13, 2007 and November 13, 2007, Madden made two
12 unauthorized disbursements of trust funds to Premiere in the respective amounts of \$2,000.00 and
13 \$926.00 via trust check numbers 4581 and 4938 in escrow number 600146-TM in violation of
14 Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and
15 1738.2. On or about November 13, 2007, in order to cover up at least \$2,000.00 of the \$2,926.00
16 debit balance these unauthorized disbursements caused in violation of California Code of
17 Regulations, title 10, section 1738.1, Madden violated Financial Code section 17414(a)(2) by
18 posting trust check number 4581, described hereinabove, as canceled on the escrow ledger. Trust
19 check number 4581 had cleared the trust account on August 13, 2007.

20 5. On or about December 12, 2007, Madden made an unauthorized disbursement
21 of trust funds to Premiere in the amount of \$1,837.11 via trust check number 5032 in escrow number
22 600878-TM in violation of Financial Code section 17414(a)(1) and California Code of Regulations,
23 title 10, sections 1738 and 1738.2. On or about March 10, 2008, in order to cover up the \$1,837.11
24 debit balance this unauthorized disbursement caused in violation of California Code of Regulations,
25 title 10, section 1738.1, Madden violated Financial Code section 17414(a)(2) by posting trust check
26 number 5032, described hereinabove, as canceled on the escrow ledger when trust check number
27 5032 had cleared the trust account on December 13, 2007.

28 6. On or about August 21, 2007, Madden made an unauthorized disbursement of

1 over the trust affairs of Premiere in order to offer any possible recovery of trust funds for the
2 affected escrow customers of Premiere.

3 V

4 California Financial Code section 17608 provides in pertinent part:

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

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

10 (c) Any fact or condition now exists which, if it had existed at the
11 time of the original application for such license, reasonably would have
12 warranted the commissioner in refusing originally to issue such license.

13 California Financial Code section 17423 provides in pertinent part:

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

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

23 VI

24 Complainant finds that, by reason of the foregoing, Respondents Premiere and Madden have
25 violated Financial Code sections 17409 and 17414(a)(1) and California Code of Regulations, title
26 10, sections 1738, 1738.1, and 1738.2 and it is in the best interests of the public to revoke the escrow
27 agent's license of Respondent Premiere and to bar Respondent Madden from any position of
28 employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that Respondent Madden be barred from any position of
employment, management or control of any escrow agent and the escrow agent's license of
Respondent Premiere be revoked effective upon the termination of the proposed receivership, if a

1 receiver is appointed in the pending action seeking same, or if no receiver is appointed, then at such
2 time as the Commissioner deems appropriate.

3 Dated: December 10, 2008
4 Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

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By _____
Judy L. Hartley
Senior Corporations Counsel