

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
5 Department of Corporations
320 West 4th Street, Ste. 750
6 Los Angeles, California 90013-2344
Telephone: (213) 576-7604 Fax: (213) 576-7181

7 Attorneys for Complainant
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.: 963-2194
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) ACCUSATION
14)
Complainant,)
15)
16 vs.)
17)
PREFERRED METROPOLITAN ECSROW,)
18 INC., HEATHER WHITAKER, KATRINA)
WHITAKER, and ANDREW WHITAKER,)
19)
Respondents.)
20)

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

23 I

24 Respondent Preferred Metropolitan Escrow, Inc. ("Preferred") is an escrow agent licensed by
25 the California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the
26 Escrow Law of the State of California (California Financial Code Section 17000 et seq.). Preferred
27 has its principal place of business located at 10535 Foothill Boulevard, Suite 120, Rancho
28 Cucamonga, California 91730.

1 According to the records of the Department of Corporations (“Department”), Respondent
2 Heather Whitaker ("H. Whitaker") is, and was at all times relevant herein, the vice-president,
3 secretary, treasurer and a shareholder and director of Preferred.

4 According to the records of the Department, Respondent Katrina Whitaker ("K. Whitaker")
5 is, and was at all times relevant herein, the president and a shareholder and director of Preferred.

6 Andrew Whitaker (“A. Whitaker”) is the father of H. Whitaker and K. Whitaker.

7 Nationwide Discount Home Loans, Inc. (Nationwide”) is, and at all times was, an affiliate of
8 Preferred. H. Whitaker is the president of Nationwide.

9 II

10 California Financial Code section 17201 provides that an application for an escrow agent’s
11 license shall be in the form prescribed by the Commissioner. California Financial Code section
12 17209 requires applicants to disclose to the Commissioner in the application all incorporators,
13 officers, directors, stockholders, and employees.

14 The escrow agent’s license application filed with the Commissioner by Preferred on
15 November 17, 2004, which application resulted in the issuance of the escrow agent’s license that is
16 the subject of this action (license number 963-2194, hereinafter "application"), stated that H.
17 Whitaker was the secretary of Preferred and that K. Whitaker was the president, treasurer, director
18 and sole shareholder of Preferred. No other officers, directors, or shareholders were noted in the
19 application. K. Whitaker signed the application under penalty of perjury.

20 California Financial Code section 17209 further requires that an application for an escrow
21 agent’s license contain a completed statement of identity and questionnaire (“SIQ”) for all
22 stockholders, directors, officers, trustees, managers and other persons participating in the escrow
23 business (other than usual and customary employees who file under Section 17414.1 and 17419)
24 along with their fingerprints. The application did not contain an SIQ for A. Whitaker.

25 Pursuant to California Financial Code sections 17414.1 and 17419, a completed statement of
26 identity and employment application (“SIE”) along with fingerprints is required to be submitted for
27 all persons seeking employment with an escrow agent or potential escrow agent, except those
28 required to file an SIQ, within ten days of employment. The application did not contain an SIE for

1 A. Whitaker.

2 The issuance of the escrow agent’s license by the Commissioner to Preferred was based upon
3 all the information submitted with the application.

4 A regulatory examination of Preferred commenced by the Commissioner on or about
5 September 5, 2007 (“regulatory examination”) revealed that A. Whitaker controlled 100% of the
6 operations of Preferred. A. Whitaker had been convicted of grand theft involving real property and
7 sale subject to blanket encumbrance on or about December 5, 1990. Pursuant to California Financial
8 Code section 17423, subsection (a)(2), A. Whitaker is, and was, subject to an immediate action to
9 prohibit him from serving in any capacity with an escrow agent.

10 Pursuant to California Financial Code sections 17212.1, 17414.1 and 17419, escrow agents
11 are required to amend their application(s) if there is any change in any of the persons required to be
12 identified in the application(s) and/or if new usual and customary employees have been hired.
13 Preferred has not filed any application amendment with the Commissioner regarding A. Whitaker.

14 Respondents Preferred, H. Whitaker and K. Whitaker, by allowing A. Whitaker to hold a
15 position with Preferred and by further failing to inform the Commissioner of this information,
16 violated California Financial Code sections 17209, 17212.1, 17414.1 and/or 17419.

17 III

18 The regulatory examination of Preferred revealed the following additional violations:

19 1. Escrow Number 3959:

20 (a) On or about March 29, 2007, Respondents violated Financial Code section
21 17414(a)(2) by preparing, or causing to be prepared, trust receipt no. 123028, which misrepresented
22 that the buyer had deposited the sum of \$38,624.73 into escrow. An investigation into the deposit
23 disclosed that the funds were deposited by Nationwide through a wire transfer.

24 (b) On or about March 13, 2007, Respondents violated California Code of Regulations,
25 title 10, section 1740.1 by failing to disclose that the loan officer for the transaction was A.
26 Whitaker, the father of H. Whitaker and K. Whitaker.

1 (c) On or about March 26, 2007, Respondents violated Financial Code section 17404 and
2 California Code of Regulations, title 10, sections 1737.3 and 1741.3 by failing to prepare and/or
3 maintain a closing statement for this escrow.

4 2. Escrow Number 3963:

5 On or about March 22, 2007, Respondents violated Financial Code section 17414(a)(2) by
6 preparing, or causing to be prepared, trust receipt no. 123012, which misrepresented that the buyer
7 had deposited the sum of \$6,981.35 into escrow. An investigation into the deposit disclosed that the
8 funds were deposited by Nationwide through a disbursement by H. Whitaker.

9 3. Escrow Number 4035:

10 (a) On or about June 4, 2007, Respondents violated Financial Code section 17414(a)(2)
11 by preparing, or causing to be prepared, trust receipt no. 123096, which misrepresented that the
12 buyer had deposited the sum of \$39,215.06 into escrow. An investigation into the deposit disclosed
13 that the funds were deposited by Nationwide through a disbursement by H. Whitaker.

14 (b) On or about June 4, 2007, Respondents violated Financial Code section 17414(a)(1)
15 by closing escrow, or causing escrow to be closed, without obtaining a “Gift Letter from Donor of
16 \$23,000.00 Relatives Only” as required pursuant to the instructions of the lender.

17 (c) On or about June 4, 2007, Respondents violated Financial Code section 17404 and
18 California Code of Regulations, title 10, sections 1737.3 and 1741.3 by failing to prepare and/or
19 maintain a closing statement for this escrow.

20 4. Escrow Number 4095:

21 (a) On or about July 11, 2007 and September 26, 2007, Respondents violated Financial
22 Code section 17414(a)(2) by falsifying escrow records, or causing escrow records to be falsified, to
23 reflect the deposit of \$59,500.00 into escrow, including the preparation of trust receipt no. 123125,
24 which misrepresented that the buyer had deposited the sum of \$59,500 into escrow. An
25 investigation into the deposit disclosed that no such funds were deposited into escrow and that the
26 copy of the cashier’s check contained in the records of Preferred, and alleged to be the source of the
27 deposit, had been altered to change the amount from \$59.50 to \$59,500.00.
28

1 (b) On or about July 11, 2007, Respondents violated Financial Code section 17404 by
2 failing to prepare and/or maintain any records that would disclose the disposition of this escrow as it
3 does not appear that this transaction closed at Preferred.

4 IV

5 The regulatory examination further disclosed that Preferred failed to provide books and
6 records to the Commissioner as required by California Financial Code section 17405 and/or maintain
7 books and records in violation of California Financial Code section 17404 and California Code of
8 Regulations, title 10, sections 1732.2 and 1732.3.

9 Preferred, despite numerous demands, failed to provide numerous escrow files, ledgers, trust
10 receipts, cleared and voided trust checks, and the general ledger and un-audited financial statements
11 for August 31, 2007 to the Commissioner. Additionally, Preferred failed to provide any records
12 concerning a second undisclosed trust account that was discovered during the regulatory
13 examination.

14 Preferred also failed to provide any supporting documentation for the numerous book and
15 bank adjustments made by Preferred concerning the August 31, 2007 trust account reconciliation.

16 V

17 Preferred, despite numerous demands, failed to provide financial statements for its most
18 recent period ending August 31, 2007. Accordingly, the Commissioner was unable to determine
19 whether Preferred met the liquid asset and tangible net worth requirements of Financial Code section
20 17210.

21 VI

22 Pursuant to Financial Code section 17406, all licensees under the Escrow Law are required to
23 file an annual audit report containing audited financial statements (“audit report”) within one
24 hundred and five (105) days after the close of their fiscal year. Preferred’s fiscal year end is June 30.
25 Accordingly, Preferred was required to file its audit report on or before October 15, 2007.

26 On or about May 21, 2007, the Commissioner notified Preferred in writing that its audit
27 report was due October 15, 2007. Preferred failed to file the audit report by October 15, 2007.
28

1 On or about October 25, 2007, a follow up letter was sent to Preferred concerning its failure
2 to file the audit report. Preferred was notified in the letter that failure to file to the audit report could
3 result in assessment of penalties, a special examination and/or administrative action.

4 Preferred has yet to file the audit report as required by Financial Code section 17406.

5 VII

6 California Financial Code section 17608 provides in pertinent part:

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

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

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

15 California Financial Code section 17423 provides in pertinent part:

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

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

25 VIII

26 Complainant finds that, by reason of the foregoing, Respondents have violated California
27 Financial Code sections 17209, 17210, 17212.1, 17404, 17405, 17406, 17414 subsections (a)(1) and
28 (a)(2), 17414.1 and 17419 and California Code of Regulations, title 10, sections 1732.2, 1732.3,
1737.3, 1740.1 and 1740.3, and it is in the best interests of the public to revoke the escrow agent's
license of Respondent Preferred Metropolitan Escrow and to bar Respondents Heather Whitaker,
Katrina Whitaker, and Andrew Whitaker from any position of employment, management or control
of any escrow agent.

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WHEREFORE, IT IS PRAYED that the escrow agent’s license of Respondent Preferred Metropolitan Escrow be revoked, and that Respondents Heather Whitaker, Katrina Whitaker, and Andrew Whitaker be barred from any position of employment, management or control of any escrow agent.

Dated: March 24, 2008
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel