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California Corporations Commissioner
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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.: 963-2194
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) ORDER BARRING ANDREW WHITAKER
14 Complainant,) FROM ANY POSITION OF EMPLOYMENT,
15 vs.) MANAGEMENT OR CONTROL OF ANY
16) ESCROW AGENT PURSUANT TO
17) CALIFORNIA FINANCIAL CODE SECTION
18) 17423
19)
20)
PREFERRED METROPOLITAN ESCROW,)
INC., HEATHER WHITAKER, KATRINA)
WHITAKER, and ANDREW WHITAKER,)
21)
22 Respondents.)
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28)

21 The California Corporations Commissioner finds that:

- 22 1. Respondent Katrina Whitaker ("K. Whitaker") is, and was at all times relevant herein,
23 the president and a shareholder and director of Preferred Metropolitan Escrow, Inc. ("Preferred").
24 2. Preferred is an escrow agent licensed by the California Corporations Commissioner
25 ("Commissioner" or "Complainant") pursuant to the Escrow Law of the State of California
26 (California Financial Code Section 17000 et seq.). Preferred has its principal place of business
27 located at 10535 Foothill Boulevard, Suite 120, Rancho Cucamonga, California 91730.
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1 3. Respondent Heather Whitaker ("H. Whitaker") is, and was at all times relevant
2 herein, the vice-president, secretary, treasurer, and a shareholder and director of Preferred.

3 4. Andrew Whitaker ("A. Whitaker") is the father of H. Whitaker and K. Whitaker.

4 5. Nationwide Discount Home Loans, Inc. ("Nationwide") is, and at all times was, an
5 affiliate of Preferred. H. Whitaker is the president of Nationwide.

6 6. California Financial Code section 17201 provides that an application for an escrow
7 agent's license shall be in the form prescribed by the Commissioner. California Financial Code
8 section 17209 requires applicants to disclose to the Commissioner in the application all
9 incorporators, officers, directors, stockholders, and employees.

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

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

21 9. Pursuant to California Financial Code sections 17414.1 and 17419, a completed
22 statement of identity and employment application ("SIE") along with fingerprints is required to be
23 submitted for all persons seeking employment with an escrow agent or potential escrow agent,
24 except those required to file an SIQ, within ten days of employment. The application did not contain
25 an SIE for A. Whitaker.

26 10. The issuance of the escrow agent's license by the Commissioner to Preferred was
27 based upon all the information submitted with the application.

28 11. A regulatory examination of Preferred commenced by the Commissioner on

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

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

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

13 14. The regulatory examination of Preferred revealed the following additional violations:

14 A. Escrow Number 3959:

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

19 (2) On March 13, 2007, Respondents violated California Code of Regulations,
20 title 10, section 1740.1 by failing to disclose that the loan officer for the transaction was A.
21 Whitaker, the father of H. Whitaker and K. Whitaker.

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

25 B. Escrow Number 3963:

26 On March 22, 2007, Respondents violated Financial Code section 17414(a)(2) by
27 preparing, or causing to be prepared, trust receipt no. 123012, which misrepresented that the buyer
28 had deposited the sum of \$6,981.35 into escrow. An investigation into the deposit disclosed that the

1 funds were deposited by Nationwide through a disbursement by H. Whitaker.

2 C. Escrow Number 4035:

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

7 (2) On June 4, 2007, Respondents violated Financial Code section 17414(a)(1) by
8 closing escrow, or causing escrow to be closed, without obtaining a “Gift Letter from Donor of
9 \$23,000.00 Relatives Only” as required pursuant to the instructions of the lender.

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

13 D. Escrow Number 4095:

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

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

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

28 16. Preferred, despite numerous demands, failed to provide numerous escrow files,

1 ledgers, trust receipts, cleared and voided trust checks, and the general ledger and un-audited
2 financial statements for August 31, 2007 to the Commissioner. Additionally, Preferred failed to
3 provide any records concerning a second undisclosed trust account that was discovered during the
4 regulatory examination.

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

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

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

16 20. On May 21, 2007, the Commissioner notified Preferred in writing that its audit report
17 was due October 15, 2007. Preferred failed to file the audit report by October 15, 2007.

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

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

22 23. On March 24, 2008, the Commissioner issued a Notice of Intention to Issue an Order
23 Revoking Escrow Agent’s License and To Issue Order Pursuant to California Financial Code
24 Section 17423 (Bar from Employment, Management or Control of Any Escrow Agent), Accusation
25 and accompanying documents against Preferred, K. Whitaker, H. Whitaker, and A. Whitaker, and A.
26 Whitaker was personally served with those documents on April 4, 2008. There has been no request
27 for a hearing received by the Commissioner or any other response from A. Whitaker and the time to
28 request a hearing has expired.

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24. The above-described violations constitute grounds under Financial Code section 17423 to bar a person from any employment, management or control of any escrow agent.

THEREFORE, it is hereby ordered that Respondent Andrew Whitaker is barred from any position of employment, management or control of any escrow agent. This Order is effective as of the date hereof.

Dated: April 22, 2008
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Lead Corporations Counsel