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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) ESCROW LICENSE NO.: 963-2279
12)
13 THE COMMISSIONER OF BUSINESS) ACCUSATION
OVERSIGHT,)
14)
15 Complainant,)
16 v.)
17)
18 REALTY ESCROW CORPORATION,)
ROBERTO MELCHOR, as an individual, and)
19 FRANK CANCINO, as an individual,)
20 Respondents.)
21)

22 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and
23 believes, and based upon such information and belief, alleges and charges Respondents Realty
24 Escrow Corporation (Realty), Roberto Melchor (Melchor), and Frank Cancino (Cancino) as follows:

25 **I.**

26 **Jurisdiction and Venue**

27 1. The Commissioner brings this action under the provisions of Financial Code sections
28 17423 and 17608 and the rules and regulations promulgated under the California Escrow

1 Law (Fin. Code, § 17000 et seq.) (Escrow Law).

2 2. The Commissioner is authorized to administer and enforce the Escrow Law and the
3 rules issued under title 10 of the California Code of Regulations (CCR) that regulate the business and
4 activities of independent escrow and joint control agents.

5 **II.**

6 **Statement of Facts**

7 3. Realty is an independent escrow and joint control agent licensed by the Commissioner
8 under the Escrow Law since at least November 22, 2005. Realty has its principal place of business
9 located at 6055 E. Washington Boulevard, Suite 1000, Commerce, California.

10 4. Melchor is Realty's owner, president, and escrow officer.

11 5. Melchor is the authorized check signer designated on Realty's general account held at
12 California Republic Bank.

13 6. Cancino was an escrow officer employed by Realty at all times relevant herein.

14 7. On or about December 16, 2016, the Commissioner, through her audit staff,
15 commenced a special regulatory examination of Realty based on a review of the company's annual
16 audit reports for fiscal years 2014, 2015, and 2016. The Commissioner's review disclosed Realty had
17 paid individuals significant commissions and made contract service payments representing between
18 42 to 70 percent of Realty's total operating expenses during those years.

19 8. Through her audit staff, the Commissioner commenced a regulatory examination of
20 Realty on or about March 2, 2017.

21 9. The special and regulatory examinations disclosed the following violations of the
22 Escrow Law.

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Unlawful Referral Fees Paid to Others in Violation of Financial Code section 17420

10. Melchor paid referral fees or commissions to short sale negotiators¹ from Realty's general account during the period 2014 to 2016. At least 15 individuals received payments from Realty drawn on the company's general account for short sale negotiation activity. The payments Realty made to short sale negotiators totaled approximately \$157,653.63 in 2014; \$96,775.00 in 2015; and \$124,960.00 in 2016.

11. When the Department's examiner questioned Melchor about the payments Realty made to some of the individuals, he replied that the payments were made to "Outside servicer[s] that negotiated Short Sales and [were] paid on a per file basis[.]" Melchor also told the examiner, when she questioned how payments to the short sale negotiators were calculated, that they were paid either on a per file basis or a regular salary basis and that the payment amount was determined by the short sale negotiator's experience and the number of files he or she brought to the company.

12. But Financial Code section 17420 prohibits an escrow agent and its owner from paying over to any other person any commission, fee, or other consideration as compensation for referring, soliciting, handling, or servicing escrow customers or accounts.

13. Out of the 15 short sale negotiators identified by the Department's examiner to whom Realty and Melchor made payments, only three of those individuals appear to hold salesperson licenses issued by the California Department of Real Estate (DRE). Absent a few narrow exceptions and limited exemptions, under Business and Professions Code section 10131, subdivisions (a) and (d) of the Real Estate Law, only licensed real estate salespersons (under the supervision of a licensed broker), licensed brokers, or licensed attorneys may negotiate short sale transactions on behalf of consumers in California.

¹ A short sale "is a pre-foreclosure residential real estate transaction where the owner of the mortgage loan, the lender or lien holder . . . agrees to (i) allow the home owner to sell his or her property for less than – or 'short' of – the outstanding amount owed on the mortgage loan, and to (ii) release the property from the mortgage." (Bell and Tutera, *Short Sales – An Overview and Warning to Real Estate Licensees Re: Fraud, and Legal and Ethical Minefields* (2010) at p. 1 <http://www/bre.ca.gov/files/pdf/ca/2010/ConsumerAlert_ShorSalesUpdate.pdf> [as of June 26, 2018].) A short sale negotiator facilitates the short sale transaction, usually on behalf of the seller, negotiating directly with the lender. In California, absent a few narrow and limited exceptions and exemptions, a short sale negotiator must be an attorney or an individual licensed by the Bureau of Real Estate as a salesperson (acting under the supervision of a broker) or a broker. (*Ibid.*; Bus. & Prof. Code, § 10131, subd. (a) and (d).)

1 14. When questioned by the Department’s examiner about the licensure status of the short
2 sale negotiators to whom Realty paid commissions, Melchor responded “I do not know if they are
3 licensed real estate agents or are associated with a real estate company. I do know that they were
4 independent processors and processed short sales for different real estate companies.”

5 15. In addition to paying commissions to short sale negotiators, the Department’s
6 examiner identified at least one licensed real estate salesperson to whom Melchor paid referral fees
7 from Realty’s general account. Melchor, through Realty, paid Gerardo “Jerry” Cervantes (Cervantes)
8 at least \$4,128.62 in 2014; \$10,245.15 in 2015; and \$12,060.00 in 2016.

9 16. According to Melchor, Cervantes is a Realty “[s]ales representative that is paid on a
10 per file basis and generates business for Realty Escrow only[.]” Melchor listed Cervantes as a Realty
11 employee in the “Summary of Personnel” forms he submitted to the Department on behalf of the
12 company in October 2014, October 2016, and December 2016. Cervantes’ name does not appear on
13 Realty’s October 2015 Summary of Personnel. Cervantes’ current employing broker, per the DRE
14 website, is True Choice Funding Corp.

15 17. The Department’s examiner advised Melchor that paying a sales representative “on a
16 per file basis, contingent on obtaining [a] business referral for the company[.]” would violate
17 Financial Code section 17420 and the Escrow Law’s prohibition on paying compensation to
18 individuals for referring, soliciting, handling, or servicing escrow customers or accounts. Melchor
19 responded, “Undertstood, we will re-structure the way Mr. Cervantes is paid.”

20 18. Finally, Melchor, by and through Realty, paid referral fees to R.E. Marketing Services
21 Corp. (R.E.). According to secretary of state filings, licensed real estate salesperson Eduardo Antonio
22 Canas, aka Eduardo Alejandro Canas (Canas) incorporated R.E.

23 19. Under the terms of the marketing agreement between R.E. and Realty, R.E. agreed to
24 “[W]ork with the real estate business community to secure new business for the Escrow Company.”
25 In return for its services, Realty agreed to pay R.E. 35 percent of its gross receipts from any business
26 R.E. referred to Realty. Melchor told the Department’s examiner that Realty paid R.E. “for files it
27 brought in per [R.E.’s] marketing.”
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1 20. According to the payment records the Department’s examiner reviewed, R.E. received
2 referral fees paid from Realty’s general account totaling at least \$288,119.90 in 2014 and
3 \$193,300.00 in 2015.

4 **Unreported Employees in Violation of Financial Code section 17400 and CCR section 1726**

5 21. During the course Realty’s examination, it came to the Commissioner’s attention that
6 Realty had failed to report to the Department at least ten employees working at the company’s
7 licensed location.

8 22. Under the Escrow Law, prior to allowing any employee access to moneys or
9 negotiable securities belonging to or in the possession of the escrow agent, or to draw checks upon
10 the escrow agent or the trust funds of the escrow agent, the escrow agent must inform the Department
11 of that individual’s identity in writing. (CCR section 1726.)

12 23. But the Department’s examiner could find no written record in the Department’s files
13 of the ten employees identified by Realty and the company’s employees appeared to have access to
14 the trust account.

15 **Unauthorized Disbursal of Trust Funds in violation of Financial Code section 17414 and CCR
16 section 1738**

17 24. In Realty escrow file number 14-8326-FC, Realty, through Cancino, disbursed
18 \$10,000.00 to a third party (unrelated to the escrow transaction) without any written authorization in
19 violation of Financial Code section 17414, subdivision (a)(1) and CCR section 1738.

20 **III.**

21 **Applicable Statutes**

22 25. Financial Code section 17400, provides:
23 The commissioner may from time to time make, amend, and rescind the
24 rules, forms, and orders that are necessary to carry out the provisions of
25 this division, and define any terms, whether or not used in this division,
26 insofar as the definitions are not inconsistent with the provisions of this
27 division. For the purpose of rules and forms, the commissioner may,
28 among other things, classify persons and matters within the
commissioner’s jurisdiction and may prescribe different requirements
for different classes. The commissioner may, in the commissioner’s
discretion, waive any requirement of any rule or form in situations

1 where in his or her opinion the requirement is not necessary in the
2 public interest or for the protection of the public.

3 26. Financial Code section 17414, provides in relevant part:

4 (a) It is a violation for any person subject to this division or any
5 director, stockholder, trustee, officer, agent, or employee of any such
6 person to do any of the following:

7 (1) Knowingly or recklessly disburse or cause the disbursement of escrow
8 funds otherwise than in accordance with escrow instructions, or
9 knowingly or recklessly to direct, participate in, or aid or abet in a
10 material way, any activity which constitutes theft or fraud in connection
11 with any escrow transaction.

12 (2) Knowingly or recklessly make or cause to be made any
13 misstatement or omission to state a material fact, orally or in writing, in
14 escrow books, accounts, files, reports, exhibits, statements, or any other
15 document pertaining to an escrow or escrow affairs[.]

16 27. Financial Code section 17420, provides:

17 Except for the normal compensation of his own employees, it shall be a
18 violation of this division for any person subject to this division to pay
19 over to any other person any commission, fee, or other consideration as
20 compensation for referring, soliciting, handling, or servicing escrow
21 customers or accounts.

22 It shall also be a violation for any person to enter into any arrangement,
23 either of his own making or of a subsidiary nature, or through any other
24 person having a dual capacity, or through any person having a direct or
25 indirect interest in the escrow, or other device permitting any fee,
26 commission, or compensation which is contingent upon the
27 performance of any act, condition, or instruction set forth in an escrow
28 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.

29 28. Financial Code section 17423, provides:

30 (a) The commissioner may, after appropriate notice and opportunity for
31 hearing, by order, censure or suspend for a period not exceeding 12
32 months, or bar from any position of employment, management, or
33 control any escrow agent, or any other person, if the commissioner
34 finds either of the following:

1 (1) That the censure, suspension, or bar is in the public interest and that
2 the person has committed or caused a violation of this division or rule
3 or order of the commissioner, which violation was either known or
4 should have been known by the person committing or causing it or has
5 caused material damage to the escrow agent or to the public.

6 (2) That the person has been convicted of or pleaded nolo contendere to
7 any crime, or has been held liable in any civil action by final judgment,
8 or any administrative judgment by any public agency, if that crime or
9 civil or administrative judgment involved any offense specified in
10 subdivision (b) of Section 17414.1, or any other offense reasonably
11 related to the qualifications, functions, or duties of a person engaged in
12 the business in accordance with the provisions of this division.

13 (b) Within 15 days from the date of a notice of intention to issue an
14 order pursuant to subdivision (a), the person may request a hearing
15 under the Administrative Procedure Act (Chapter 5 (commencing with
16 Section 11500) of Division 3 of Title 2 of the Government Code).
17 Upon receipt of a request, the matter shall be set for hearing to
18 commence within 30 days after such receipt unless the person subject
19 to this division consents to a later date. If no hearing is requested within
20 15 days after the mailing or service of such notice and none is ordered
21 by the commissioner, the failure to request a hearing shall constitute a
22 waiver of the right to a hearing.

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

(d) Fidelity Corporation shall disclose to all licensees the identity of
persons who have been censured, suspended, or barred from any
position of employment, management, or control.

(e) Persons suspended or barred under this section are prohibited from
participating in any business activity of a licensed escrow agent and
from engaging in any business activity on the premises where a
licensed escrow agent is conducting escrow business. This subdivision
shall not be construed to prohibit suspended or barred persons from

1 having their personal escrow transactions processed by a licensed
2 escrow agent.

3 (f) This section shall apply to any violation, conviction, plea, or
4 judgment occurring at any time prior to and after the enactment of this
5 section.

6 (g) The provisions of Section 17414.1 exempting convictions for which
7 a person has obtained a certificate of rehabilitation from the prohibition
8 against serving as an officer, director, stockholder, trustee, agent, or
9 employee of an escrow agent, or in any position involving any duties
10 with an escrow agent, shall not apply to permit the reinstatement of any
11 person barred by the commissioner pursuant to this section, nor to
12 prohibit the commissioner from bringing any action pursuant to this
13 section.

14 (h) If any provision of this section or the application thereof to any
15 person or circumstances is held invalid, that invalidity shall not affect
16 other provisions or applications of this section which can be given
17 effect without the invalid provision or application, and to this end the
18 provisions of this section are severable.

19 29. Financial Code section 17608, provides in pertinent part:

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

22 (b) The licensee has violated any provision of this division or any rule
23 made by the commissioner under and within the authority of this
24 division.

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

28 30. CCR section 1726, provides in pertinent part:

(a) The Commissioner shall be notified in writing by the Escrow
Agents' Fidelity Corporation of the escrow agent's payment to the
corporation of the required membership fees for those escrow agents
subject to membership pursuant to subdivisions (a) and (c) of Section
17312 of the Financial Code and the escrow agent shall notify the
Commissioner, on the form set forth in subdivision (b) furnished by the
Commissioner, the names of any officer, director, trustee, employee or

1 other person directly or indirectly compensated by the escrow agent
2 before allowing the person in the regular discharge of his/her duties to
3 have access to moneys or negotiable securities belonging to or in the
4 possession of the escrow agent, or to draw checks upon the escrow
agent or the trust funds of the escrow agent[.]

5 31. CCR section 1738, provides in pertinent part:

6 (a) All money deposited in such "trust" or "escrow" account shall be
7 withdrawn, paid out, or transferred to other accounts only in
8 accordance with the written escrow instructions of the principals to the
9 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[.]

10 **IV.**

11 **Prayer**

12 The Commissioner finds that, by reason of the foregoing, Realty violated Financial Code
13 sections 17400, 17414, subdivision (a)(1), 17420, and CCR sections 1726 and 1738, and grounds
14 exist to revoke its escrow and joint control agents license. The Commissioner further finds that
15 Melchor violated Financial Code section 17420 and that grounds exist to bar him from any position
16 of employment, management, or control of any escrow agent. The Commissioner also finds that
17 Cancino violated Financial Code section 17414, subdivision (a)(1) and CCR section 1738 and that
18 grounds exist to suspend him from any position of employment, management, or control of any
19 escrow agent for a period of up to 12 months.

20 WHEREFORE, IT IS PRAYED that:

21 Under Financial Code section 17608, the escrow and joint control agents license of Realty be
22 revoked.

23 Under Financial Code section 17423, Melchor be barred from any position of employment,
24 management, or control of any escrow agent.

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1 Under Financial Code section 17423, Cancino be suspended from any position of
2 employment, management, or control of any escrow agent for a period of up to 12 months.

3 Dated: June 29, 2018
4 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

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6 By _____
7 Blaine A. Noblett
8 Senior Counsel
9 Enforcement Division
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