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

11 In the Matter of:	)	OAH CASE NO.: 2018070428
)	
12 THE COMMISSIONER OF BUSINESS	)	ESCROW LICENSE NO.: 963-2279
13 OVERSIGHT,)	
	)	FIRST AMENDED ACCUSATION
14 Complainant,)	
	)	Hearing Dates: October 22-25, 2018
15 v.	)	October 29-30, 2018
	)	Hearing Time: 9:00 a.m.
	)	Hearing Location: OAH, Los Angeles
16 REALTY ESCROW CORPORATION,	)	320 W. 4th Street, Suite 630
17 ROBERTO MELCHOR, as an individual,	)	Los Angeles, CA 90013
18 FRANK CANCINO, as an individual, and	)	Judge: Ji-Lan Zang
19 CAROL ALVAREZ, as an individual,)	
)	
20 Respondents.)	
)	

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), Frank Cancino (Cancino), and Carol
25 Alvarez (Alvarez) as follows:

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I.

Jurisdiction and Venue

1. The Commissioner brings this action under the provisions of Financial Code sections 17423 and 17608 and the rules and regulations promulgated under the California Escrow Law (Fin. Code, § 17000 et seq.) (Escrow Law).

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

II.

Statement of Facts

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

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

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

6. Realty employed Cancino as an escrow officer at all times relevant herein.

7. Cancino was an authorized check signer on Realty's trust account held at California Republic Bank at all times relevant herein.

8. Realty employed Alvarez as an escrow manager at all times relevant herein.

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

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

1 11. The special and regulatory examinations disclosed the following violations of the
2 Escrow Law.

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

4 12. Melchor paid referral fees or commissions to short sale negotiators¹ from Realty's
5 general account during the period 2014 to 2016. At least 15 individuals received payments from
6 Realty drawn on the company's general account for short sale negotiation activity. The payments
7 Realty made to short sale negotiators totaled approximately \$157,653.63 in 2014; \$96,775.00 in
8 2015; and \$124,960.00 in 2016.

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

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

18 15. Out of the 15 short sale negotiators identified by the Department's examiner to whom
19 Realty and Melchor made payments, only three of those individuals appear to hold salesperson
20 licenses issued by the California Department of Real Estate (DRE). Absent a few narrow exceptions
21 and limited exemptions, under Business and Professions Code section 10131, subdivisions (a) and (d)
22 of the Real Estate Law, only licensed real estate salespersons (under the supervision of a licensed
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24 _____
25 ¹ A short sale "is a pre-foreclosure residential real estate transaction where the owner of the mortgage loan, the lender or
26 lien holder . . . agrees to (i) allow the home owner to sell his or her property for less than – or 'short' of – the outstanding
27 amount owed on the mortgage loan, and to (ii) release the property from the mortgage." (Bell and Tutera, *Short Sales –
28 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_ShortSalesUpdate.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 broker), licensed brokers, or licensed attorneys may negotiate short sale transactions on behalf of
2 consumers in California.

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

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

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

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

22 20. Finally, Melchor, by and through Realty, paid referral fees to R.E. Marketing Services
23 Corp. (R.E.). According to secretary of state filings, licensed real estate salesperson Eduardo Antonio
24 Canas, aka Eduardo Alejandro Canas (Canas) incorporated R.E. on or about October 4, 2013.

25 21. Under the terms of the marketing agreement between R.E. and Realty, R.E. agreed to
26 "[W]ork with the real estate business community to secure new business for the Escrow Company."
27 In return for its services, Realty agreed to pay R.E. 35 percent of its gross receipts from any business
28 R.E. referred to Realty. Melchor told the Department's examiner that Realty paid R.E.

1 “for files it brought in per [R.E.’s] marketing.”

2 22. According to the payment records the Department’s examiner reviewed, R.E. received
3 referral fees paid from Realty’s general account totaling at least \$288,119.90 in 2014 and
4 \$193,300.00 in 2015.

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

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

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

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

16 **Escrow Transaction Violations**

17 26. Realty Escrow File Number 15-9314-FC

18 a. On or about October 26, 2015, Realty, by and through Cancino, made or
19 caused to be made, an unauthorized disbursement of trust funds in the amount of \$4,000.00 to
20 Eduardo A. Canas for a "sale date postponement fee" in violation of Financial Code section 17414,
21 subdivision (a)(1) and CCR sections 1738 and 1738.2, as the short sale approval from the first lien
22 holder did not provide for a sale date postponement fee as a condition of closing escrow.

23 b. On or about October 26, 2015, Realty, by and through Cancino, made or
24 caused to be made, an unauthorized disbursement of trust funds in the amount of \$2,500.00 to
25 Eduardo A. Canas for a "short sale processing fee" in violation of Financial Code section 17414,
26 subdivision (a)(1) and CCR sections 1738 and 1738.2, as the short sale approval from the first lien
27 holder did not provide for a short sale processing fee as a condition of closing escrow.

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1 c. On or about October 26, 2015, Realty, by and through Cancino, made or
2 caused to be made, an unauthorized disbursement of trust funds in the amount of \$7,000.00 to Gleice
3 Porretta for a "short sale negotiation fee" in violation of Financial Code section 17414, subdivision
4 (a)(1) and CCR sections 1738 and 1738.2, as the short sale approval from the first lien holder did not
5 provide for a short sale negotiation fee as a condition of closing escrow.

6 d. On or about October 26, 2015, Realty, by and through Cancino, violated
7 Financial Code section 17414, subdivision (a)(2) by preparing, or causing to be prepared, a final
8 settlement statement that misrepresented the payoff of an \$8,500.00 judgment lien to the law firm of
9 Hunt & Henriques. A September 18, 2015 letter from the lien holder's attorneys, Hunt & Henriques,
10 which the examiner discovered in Realty's escrow file, disclosed that the seller (judgment debtor) had
11 satisfied the lien in July of 2013 and the firm acknowledged sending the judgment debtor, in October
12 2013, a satisfaction of judgment for recordation.

13 27. Realty Escrow File Number 14-8725-CA

14 a. On or about January 30, 2015, Realty, by and through Alvarez, violated
15 Financial Code section 17414, subdivision (a)(1) and CCR sections 1738 and 1738.2 by causing
16 escrow to close in that the short sale approval from the first lien holder provided that the subject
17 property was not to be transferred within 30 days of close of escrow but Alvarez was processing
18 another escrow transaction at the same time in which the subject property would be transferred to a
19 third party upon close of escrow.

20 b. On or about January 30, 2015, Realty, by and through Alvarez, made or caused
21 to be made, an unauthorized disbursement of trust funds in the amount of \$5,944.00 to Glaucia
22 Oliveira for a "short sale processing fee" in violation of Financial Code section 17414, subdivision
23 (a)(1) and CCR sections 1738 and 1738.2, as the short sale approval from the first lien holder did not
24 provide for a short sale processing fee as a condition of closing escrow.

25 c. On or about January 30, 2015, Realty, by and through Alvarez, violated
26 Financial Code section 17414, subdivision (a)(2) by preparing, or causing to be prepared, a final
27 settlement statement that failed to disclose the payment of \$5,944.00 to Glaucia Oliveira for a "short
28 sale processing fee." The lender's file contained a final settlement statement, which Alvarez certified

1 to be the true and correct copy of the original prepared by Realty. But the final settlement statement
2 found in the lender's file showed only the buyer's side of the escrow transaction, Alvarez had omitted
3 the seller's side of the transaction and the short sale processing fee paid from the seller's closing
4 funds.

5 28. Realty Escrow File Number 15-9261-CA

6 a. On or about November 6, 2015, Realty, by and through Alvarez, made or
7 caused to be made, an unauthorized disbursement of trust funds in the amount of \$6,942.00 to
8 Glaucia Oliveira for a "short sale processing fee" in violation of Financial Code section 17414,
9 subdivision (a)(1) and CCR sections 1738 and 1738.2, as the short sale approval from the first lien
10 holder did not provide for a short sale processing fee as a condition of closing escrow.

11 b. On or about November 6, 2015, Realty, by and through Alvarez, made or
12 caused to be made, an unauthorized disbursement of trust funds in the amount of \$1,500.00 to Daniel
13 Cerros Haro for "reimbursement of city permits and repairs" in violation of Financial Code section
14 17414, subdivision (a)(1) and CCR sections 1738 and 1738.2, in that there was no signed instruction
15 in the escrow file authorizing the disbursement.

16 29. Realty Escrow File Number 16-9572-CA

17 a. On or about March 31, 2016, Realty, by and through Alvarez, made or caused
18 to be made, an unauthorized disbursement of trust funds in the amount of \$4,000.00 to Gleice
19 Porretta for a "short sale processing fee" in violation of Financial Code section 17414, subdivision
20 (a)(1) and CCR sections 1738 and 1738.2, as the short sale approval from the first lien holder did not
21 provide for a short sale processing fee as a condition of closing escrow.

22 b. On or about March 31, 2016, Realty, by and through Alvarez, made or caused
23 to be made, an unauthorized disbursement of trust funds in the amount of \$11,700.00 to Felipe
24 Ramos for a "lawyer fee" in violation of Financial Code section 17414, subdivision (a)(1) and CCR
25 sections 1738 and 1738.2 in that there was no signed instruction in the escrow file authorizing the
26 disbursement and the short sale approval from the first lien holder did not provide for the payment of
27 a lawyer fee as a condition of closing escrow.

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1 30. Realty Escrow File Number 14-8326-FC

2 a. On or about September 29, 2014, Realty, by and through Cancino, made or
 3 caused to be made, an unauthorized disbursement of trust funds in the amount of \$10,000.00 to
 4 Armando Tepale, a third party unrelated to the escrow transaction, in violation of Financial Code
 5 section 17414, subdivision (a)(1) and CCR sections 1738 and 1738.2, as there was no signed
 6 instruction in the escrow file authorizing the disbursement.

7 **III.**

8 **Applicable Statutes**

9 31. Financial Code section 17400, provides:

10 The commissioner may from time to time make, amend, and rescind the
 11 rules, forms, and orders that are necessary to carry out the provisions of
 12 this division, and define any terms, whether or not used in this division,
 13 insofar as the definitions are not inconsistent with the provisions of this
 14 division. For the purpose of rules and forms, the commissioner may,
 15 among other things, classify persons and matters within the
 16 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
 where in his or her opinion the requirement is not necessary in the
 public interest or for the protection of the public.

17 32. Financial Code section 17414, provides in relevant part:

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

21 (1) Knowingly or recklessly disburse or cause the disbursal of escrow
 22 funds otherwise than in accordance with escrow instructions, or
 23 knowingly or recklessly to direct, participate in, or aid or abet in a
 material way, any activity which constitutes theft or fraud in connection
 with any escrow transaction.

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

27 33. Financial Code section 17420, provides:
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1 Except for the normal compensation of his own employees, it shall be a
2 violation of this division for any person subject to this division to pay
3 over to any other person any commission, fee, or other consideration as
4 compensation for referring, soliciting, handling, or servicing escrow
5 customers or accounts.

6 It shall also be a violation for any person to enter into any arrangement,
7 either of his own making or of a subsidiary nature, or through any other
8 person having a dual capacity, or through any person having a direct or
9 indirect interest in the escrow, or other device permitting any fee,
10 commission, or compensation which is contingent upon the
11 performance of any act, condition, or instruction set forth in an escrow
12 to be drawn or paid, either in whole or in part, or in kind or its
13 equivalent, prior to the actual closing and completion of the escrow.

14 34. Financial Code section 17423, provides:

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

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

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

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

1 by the commissioner, the failure to request a hearing shall constitute a
2 waiver of the right to a hearing.

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

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

15 (e) Persons suspended or barred under this section are prohibited from
16 participating in any business activity of a licensed escrow agent and
17 from engaging in any business activity on the premises where a
18 licensed escrow agent is conducting escrow business. This subdivision
19 shall not be construed to prohibit suspended or barred persons from
20 having their personal escrow transactions processed by a licensed
21 escrow agent.

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

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

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

35. Financial Code section 17608, provides in pertinent part:

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

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4 (b) The licensee has violated any provision of this division or any rule
5 made by the commissioner under and within the authority of this
6 division.

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

10 36. CCR section 1726, provides in pertinent part:

11 (a) The Commissioner shall be notified in writing by the Escrow
12 Agents' Fidelity Corporation of the escrow agent's payment to the
13 corporation of the required membership fees for those escrow agents
14 subject to membership pursuant to subdivisions (a) and (c) of Section
15 17312 of the Financial Code and the escrow agent shall notify the
16 Commissioner, on the form set forth in subdivision (b) furnished by the
17 Commissioner, the names of any officer, director, trustee, employee or
18 other person directly or indirectly compensated by the escrow agent
19 before allowing the person in the regular discharge of his/her duties to
20 have access to moneys or negotiable securities belonging to or in the
21 possession of the escrow agent, or to draw checks upon the escrow
22 agent or the trust funds of the escrow agent[.]

23 37. CCR section 1738, provides in pertinent part:

24 (a) All money deposited in such "trust" or "escrow" account shall be
25 withdrawn, paid out, or transferred to other accounts only in
26 accordance with the written escrow instructions of the principals to the
27 escrow transaction or the escrow instructions transmitted electronically
28 over the Internet executed by the principals to the escrow transaction or
pursuant to order of a court of competent jurisdiction[.]

38. CCR section 1738.2, provides:

An escrow agent shall use documents or other property deposited in
escrow only in accordance with the written escrow instructions of the
principals to the escrow transaction or the escrow instructions
transmitted electronically over the Internet executed by the principals to
the escrow transaction, or if not otherwise directed by written or

1 electronically executed instructions, in accordance with sound escrow
2 practice, or pursuant to order of a court of competent jurisdiction.

3 **IV.**

4 **Prayer**

5 The Commissioner finds that, by reason of the foregoing, Realty violated Financial Code
6 sections 17414, subdivisions (a)(1) and (a)(2), 17420, and CCR sections 1726, 1738, and 1738.2 and
7 grounds exist to revoke its escrow and joint control agents license. The Commissioner further finds
8 that Melchor violated Financial Code section 17420 and that grounds exist to bar him from any
9 position of employment, management, or control of any escrow agent. The Commissioner finds that
10 Cancino violated Financial Code section 17414, subdivisions (a)(1) and (a)(2) and CCR sections
11 1738 and 1738.2 and that grounds exist to bar him from any position of employment, management, or
12 control of any escrow agent. The Commissioner also finds that Alvarez violated Financial Code
13 section 17414, subdivisions (a)(1) and (a)(2) and CCR sections 1738 and 1738.2 and that grounds
14 exist to bar her from any position of employment, management, or control of any escrow agent.

15 WHEREFORE, IT IS PRAYED that:

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

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

20 Under Financial Code section 17423, Cancino be barred from any position of employment,
21 management, or control of any escrow agent.

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1 Under Financial Code section 17423, Alvarez be barred from any position of employment,
2 management, or control of any escrow agent.

3 Dated: September 26, 2018
4 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

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By _____
Blaine A. Noblett
Senior Counsel
Enforcement Division