

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:) Case No. 963-0288
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5 STAR ESCROW, INC.) OAH No. L2003020312
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 Respondent.))
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FINAL DECISION

This matter was heard before the Honorable Timothy S. Thomas, Administrative Law Judge of the Office of Administrative Hearings, Los Angeles, California on February 18, 2004.

Dyan Farr, Corporations Counsel, represented the California Corporations Commissioner (hereinafter complainant, or the Commissioner). Richard D. Salyer, Attorney at Law, represented Star Escrow, Inc. (hereinafter respondent, or Star).

The matter was submitted on February 18, 2004.

On March 2, 2004, the Administrative Law Judge issued a Proposed Decision which was served on all parties by the Department of Corporations on May 6, 2004, in accordance with Government Code Section 11517(c)(1). The Proposed Decision was not adopted as the Decision in this matter. Pursuant to Section 11517(c)(2)(E) of the Government Code, all parties were served on June 10, 2004 (Mr. Salyer was served again on July 14, 2004 at a new address) with notice of the determination not to adopt the Proposed Decision of the Administrative Law Judge and notified that the case would be decided by the California Corporations Commissioner upon the record, including the transcript of the proceedings held on February 18, 2004, and upon any written argument offered by the parties.

1 The parties were given the opportunity to present written arguments by July 24, 2004.
2 However, neither party submitted written arguments by or after the July 24, 2004 deadline.
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4 The record in this case, including the transcript of the proceedings of February 18, 2004,
5 has been given careful consideration. The following shall constitute the Decision of the
6 California Corporations Commissioner in the above-entitled matter.
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8 FACTUAL FINDINGS 9

10 1. California Financial Code section 17406(a) requires that escrow companies licensed
11 and doing business in this State must file with the Commissioner annual audited financial
12 statements, which must be prepared by a certified public accountant (CPA). Failure to comply
13 empowers the Commissioner to impose a monetary penalty for every day of non-compliance.
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15 2. Respondent is licensed escrow agent doing business at 3929 Tweedy Boulevard,
16 South Gate, California. Its owner and president is Carole Worrell, who has been in the escrow
17 business since 1976. Ms. Worrell was vice-president of Star from 1978 to 1984, when she
18 became separately licensed and opened Falcon Escrow. Falcon and Star merged in 1994 and Ms.
19 Worrell became the office manager of the new entity that continued to operate as Star Escrow,
20 Inc. Worrell became president and sole shareholder in 1997.
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22 3. Worrell is very familiar with the accounting and reporting requirements imposed by
23 law on escrow licensees. She has been responsible for retaining certified public accountants and
24 coordinating their services for over 25 years. She is aware that the Commissioner is demanding
25 with respect to compliance with the reporting requirements of section 17406, and is personally
26 aware of the importance and seriousness of the requirements. There is no evidence that Worrell
27 had a problem filing the audit reports for Star or Falcon in a timely fashion prior to the 2001
28 report.

1 4. As president and owner of Star, Worrell relies on her bookkeeper to provide all
2 information necessary to prepare the audit reports to the firm's CPA. The 2000 report, filed
3 sometime prior to April 15, 2001, was prepared by the accounting firm of Silva & Silva.
4 According to Worrell, her bookkeeper convinced her that the Silva firm was costing Star too
5 much money, and Worrell made the decision to change to CPA James Nicholas to do the 2001
6 report. Mr. Nicholas was hired sometime prior to April 15, 2002.

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8 5. On November 6, 2001 the Commissioner sent a reminder letter to the department's
9 licensees, including Star, that its 2001 audit report was due by April 15, 2002. The
10 Commissioner reminded Star, "The failure to file the audit report by the due date may result in
11 fines in accordance with Financial Code section 17408 and/or an immediate examination."

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13 6. Star failed to timely file the 2001 audit report. In her testimony, Worrell blamed
14 Nicholas for the failure. She states that she "yelled a lot" at him and her bookkeeper to produce
15 and file the document, but that every time she spoke to Nicholas he promised that the report was
16 nearly done. On April 30, 2002 Escrow Specialist Ann Davila of the Department of
17 Corporations telephoned Star and left a message that the annual report had not been received.
18 No one at Star returned the call. Davila wrote Worrell a letter on May 21, 2002, reminding her
19 of the deadline and potential for fines. Worrell did not respond. On June 4, 2002 Davila called
20 and spoke to Worrell, who cited "various reasons" for the delay, including her absence from the
21 business, a delay in getting the necessary information to the CPA, and the CPA's own workload.

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23 7. During the June 4, 2002 telephone conversation, Worrell informed Davila that she
24 was using a new CPA, although she had failed to notify the Commissioner of that fact as
25 required by law.¹ Worrell now states that she thought her bookkeeper had sent the required
26 notification.

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¹ Financial Code section 17406.1 requires this notification as well as a statement as to whether at the time of the
change there was any disagreement with the CPA in connection with the most recent report done by the former

1 8. In August 2002 the Department of Corporations conducted a routine audit of Star's
2 business. According to Worrell, all problems noted by the auditors were corrected. However,
3 the 2001 financial report had still not been prepared or filed.

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5 9. On August 20, 2002 the Department of Corporations sent a letter to respondent
6 advising Star of penalties that had accrued in the amount of \$61,500.²

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8 10. On November 4, 2002 complainant sent its annual reminder letter to Star concerning
9 the due date (April 15, 2003) of the 2002 report.

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11 11. On February 7, 2003 Star filed the annual report for the year 2001, nearly 10 months
12 late. Complainant claims penalties for the lateness of the 2001 report totaling \$146,500.

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14 12. On May 9, 2003 Ms. Davila wrote to Worrell to advise her that the Commissioner
15 had not received the 2002 report by the due date. On November 4, 2003 Steven C. Thompson,
16 Special Administrator of escrow law for the Commissioner, wrote to Worrell because the 2002
17 report still had not been filed. He advised Worrell that the penalty for the 2002 late filing had
18 accrued to \$99,500, and requested payment.

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20 13. On February 5, 2004 Special Administrator Thompson received the 2002 audited
21 financial statement of Star Escrow, Inc., from CPA Nicholas. Like the 2001 report, the 2002
22 report was nearly 10 months late.

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27 CPA. The section also requires the CPA to provide a letter stating he or she is in agreement with the notice and
stated reasons for the change.

28 ² Financial Code section 17408(b) provides for a penalty of \$100 per day for the first five days the audit report is
late, and \$500 per day thereafter. Complainant later noted that a calculation error had been made in connection with
the August 20, 2002 letter, and that the penalty that had accrued as of that time was actually \$64,000.

1 14. Worrell has now fired Nicholas and replaced him with Silva & Silva to do the 2003
2 report.³ Worrell testified that she did not replace Nicholas sooner because every time she spoke
3 with him he promised that his work was nearly completed, and he was within days of submitting
4 the report(s). She admits that in the nearly two years since she became aware of the seriousness
5 of the problem of late filing, she never once initiated, by call or letter, any contact with the
6 Department of Corporations. When contacted by the Commissioner's office, she states that she
7 could only tell Davila, or Thompson, "I can't do this stupid thing." She now defends her own
8 failure to act by saying, "I couldn't do anything short of killing the guy," referring to Nicholas.

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10 15. Thompson calculates the penalty due, as of the time of the hearing, as approximately
11 \$290,000 for both reports.

12 13 LEGAL CONCLUSIONS

14 1. Cause exists to discipline respondent's escrow license pursuant to Financial Code
15 sections 17406(a) and 17608, in that respondent failed to timely file audit reports for the years
16 2001 and 2002, based on Factual Findings 5 through 13.

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18 2. Cause exists to discipline respondent's escrow license pursuant to Financial Code
19 sections 17406.1 and 17608, in that respondent failed to notify the Commissioner that a different
20 accountant was to prepare the 2001 and 2002 audit reports than the accountant who prepared the
21 most recent reports, based on Factual Findings 4 through 7.

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23 3. Complainant urges revocation as the appropriate sanction for what he describes as a
24 "pattern of non-compliance." Certainly Worrell was guilty of negligence, if not complete
25 indifference, in her failure to act, or even affirmatively respond to inquires, for nearly two years.
26 She admits to appreciating the importance to the regulators and the people of this State of full
27 and timely reporting of her company's financial dealings each and every year. Escrow agents,
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³ Worrell testified that she brought the required notification of this latest change with her to the hearing.

1 more than almost any other professional, are entrusted with the funds of their clients and third
2 parties. Often the monies in trust represent the depositor's life savings. But to merely
3 acknowledge the importance of the trust conferred by a license is insufficient evidence of the
4 state of being worthy of that trust.

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6 In mitigation, no evidence was presented concerning, and these charges to not involve,
7 the mishandling or theft of trust account funds. Furthermore, no evidence was presented to
8 contradict Worrell's testimony to the effect that never before in the previous 24 years of business
9 had she failed in her responsibility to timely file the required financials. But her seemingly
10 stubborn refusal to do whatever was necessary to remedy the serious problem that developed
11 after April 15, 2002 is inexplicable. If, indeed, fault lay with Mr. Nicholas, Worrell's decision to
12 retain him to do the 2002 audit at a time when the Commissioner was claiming a right to
13 penalties approaching \$100,000 is unfathomable.

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15 On balance, absent harm to an individual consumer or evidence of dishonesty, the goal of
16 public protection will be advanced by the imposition of a period of suspension and a substantial
17 monetary penalty.

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ORDER

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3 1. The escrow license issued to Respondent Star Escrow, Inc. is hereby suspended for a
4 period of fifteen (15) consecutive calendar days commencing on the effective date of this
5 Decision. During this 15-day suspension period, Respondent shall not accept any new escrow
6 transactions, but may continue to service prior and existing escrows, in accordance with
7 Financial Code Section 17609. Immediately following the effective date of this Decision,
8 Respondent shall provide the Department of Corporations with a listing of all open escrows at
9 the time of the effective date of this Decision and shall submit, at the same time, a plan to service
10 those existing accounts so that no consumer is adversely affected.

11 2. Respondent shall pay a penalty of \$20,000 within five (5) business days after the
12 effective date of this Decision.

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15 This Decision shall become effective on October 20, 2004.

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17 IT IS SO ORDERED.

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19 Dated: September 20, 2004

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21 WILLIAM P. WOOD
22 California Corporations Commissioner
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