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California Corporations Commissioner
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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of THE) File No.: 963-1931
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) ACCUSATION
14)
Complainant,)
15)
vs.)
16)
RAQUEL BAUER)
17)
and)
18)
ROBERT BAUER,)
19)
20 Respondents.)

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

24 I

- 25 1. Respondent Robert Bauer was at all times relevant herein, the President of First National
26 Escrow (“First National”).
27 2. Respondent Raquel Bauer was at all times relevant herein, the escrow manager at First
28 National.

1 3. First National is an escrow agent, licensed by the California Corporations Commissioner
2 ("Commissioner" or "Complainant") pursuant to the Escrow Law of the State of California,
3 California Financial Code Section 17000 et seq. ("Escrow Law").

4 4. First National has its principal place of business located at 3579 Arlington Avenue, #600,
5 Riverside, California 92506.

6 5. First National employed as an escrow officer Karen Gardner ("Gardner").

7 6. The Commissioner commenced a special examination of the books and records of First
8 National after receiving a complaint on or about March 23, 2010, related to an escrow arranged by
9 Gardner.

10 7. The Commissioner's Examiner found several violations of the Escrow Law during the
11 examination, involving multiple transactions handled by Gardner, including misuse of funds, failure
12 to follow escrow instructions, and favoring one party over another in escrows.

13 8. The Commissioner took enforcement action against Gardner for these violations. The
14 Commissioner issued an Accusation to Bar Gardner from any position of employment, management,
15 or control of any escrow agent, pursuant to Section 17423 of the Escrow Law, for violations of
16 Sections 17414(a)(1) and 17414(a)(2) of that law, as well Sections 1738 and 1738.2 of Title 10 of
17 the California Code of Regulations.

18 9. Gardner was involved with "lapping" transactions, where she used money from escrows to
19 cover shortages in unrelated escrows, without authorization from the parties whose money she was
20 using. She repeatedly misrepresented to clients what was happening with their money. In the end,
21 Gardner's unauthorized and illegal use of escrow funds left First National with escrow trust fund
22 shortages of over one million dollars (\$1,000,000).

23 10. Respondent Raquel Bauer was the escrow manager at First National at the time the losses
24 took place. Not only was Raquel Bauer Gardner's manager, she was also involved in the daily
25 operation of the escrow agent, First National, and as escrow manager, was responsible for escrow
26 officer Gardner's compliance with the escrow agent's procedures and compliance with the Escrow
27 Law. As such, she either did know or should have known of Gardner's illegal activities.

28 11. Furthermore, Raquel Bauer personally involved herself in at least one of these lapping

1 transactions. A client to a particular escrow repeatedly spoke to Bauer, and informed Bauer that
2 Gardner had not followed the escrow instructions, and had not returned the client’s money as agreed.
3 Bauer made misrepresentations to this client about where the client’s money was and when it would
4 be returned. After this, the client threatened legal action via letter sent directly to Raquel Bauer.
5 Only then did the client’s money get returned. The Commissioner’s Examiner discovered that the
6 money that was used to refund this client came from an unrelated escrow account, without
7 authorization from the parties to that unrelated escrow.

8 12. Respondent Robert Bauer was the President of First National at the same time these illegal
9 activities took place. As President of a licensed escrow agent under the California Escrow Law,
10 Robert Bauer is responsible for complying with the law and ensuring the escrow agent and its
11 employees comply with the Escrow Law. As such, Robert Bauer had a duty to know what was
12 happening at the escrow agent and to address it promptly. In addition, he has a responsibility to
13 work with the Commissioner to provide information and assistance to address the client losses at
14 First National.

15 13. First National has declared bankruptcy. However, First National still holds an escrow agent
16 license from the Commissioner, and therefore must still comply with the California Escrow Law and
17 regulations.

18 14. In order to investigate these losses and violations further, and to attempt to obtain
19 replacement funds for customers of First National, the Commissioner required information and
20 records from First National.

21 15. On June 23, 2011, the Commissioner sent a letter to Robert Bauer, as President of First
22 National, that requested business records of First National, pursuant to section 17405 of the
23 California Financial Code and section 1730, Title 10, of the California Code of Regulations. It was
24 sent certified mail, return receipt requested, and was returned by the Post Office as unclaimed.

25 16. On July 15, 2011, the Commissioner sent a follow up letter to Robert Bauer, via regular mail,
26 requesting the same business records, and enclosing the June 23rd letter. The Commissioner sent a
27 copy of these letters, via regular mail, to First National’s bankruptcy attorney, Walter Scott. The
28 letters both requested a response within fifteen (15) days.

1 17. The Commissioner also contacted Raquel Bauer via phone and requested access to the
2 records.

3 18. To date, the Commissioner has not received the requested information and records.

4 II

5 California Financial Code section 17405 provides in pertinent part:

6 (a) The business, accounts and records of every person performing as an escrow
7 agent, whether required to be licensed under this division or not, are subject to
8 inspection and examination by the commissioner at any time without prior notice....

9 (b) Any person subject to this division shall, upon request, exhibit and allow
10 inspection and copying of any books and records by the commissioner or his or her
11 authorized representative.

12 California Code of Regulations, title 10, section 1730(b) provides:

13 An escrow agent shall notify the Commissioner in writing of the location of its
14 books, records and accounts. Such books, records and accounts shall be maintained
15 at such location unless the escrow agent notifies the Commissioner in writing at least
16 15 days prior to changing the location of such books.

17 California Code of Regulations, title 10, section 1738 provides:

18 (a) All money deposited in such "trust" or "escrow" account shall be withdrawn, paid
19 out, or transferred to other accounts only in accordance with the written escrow
20 instructions of the principals to the escrow transaction or the escrow instructions
21 transmitted electronically over the Internet executed by the principals to the escrow
22 transaction or pursuant to order of a court of competent jurisdiction.

23 (b) The escrow agent shall comply with, at a minimum, the following procedures for
24 wire transfers (also known as "electronic fund transfers"):

25 (1) The instructions of the principals authorizing the wire transfer must contain, at a
26 minimum, the amount of the funds to be wire transferred, the name of the financial
27 institution, the account number and the account name, receiving the funds.

28 (2) The escrow agent shall retain confirmation of the wire transfer from the financial
institution that contains, at a minimum, the amount of the funds wire transferred and
the account number and name of the account the funds were wire transferred to.

(3) If necessary, the escrow books shall be properly adjusted to reflect the wire
transfer of funds from the escrow account.

(4) The escrow agent shall maintain a proper audit trail and adequate controls and
safeguards for funds disbursed by wire transfer. All money deposited in such "trust"

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or "escrow" account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.

California Code of Regulations, title 10, 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 electronically executed instructions, in accordance with sound escrow practice, or pursuant to order of a court of competent jurisdiction.

California Financial Code section 17423 provides in pertinent part:

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

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

III

Complainant finds that, by reason of the foregoing, Respondents Robert Bauer and Raquel Bauer have violated Section 17405(b) of the Financial Code, and Sections 1730(b), 1738, and 1738.2 of Title 10 of the California Code of Regulations, and it is in the best interests of the public to bar Respondents Robert Bauer and Raquel Bauer from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that Respondents Robert Bauer and Raquel Bauer be barred from any position of employment, management or control of any escrow agent.

Dated: November 8, 2011
Sacramento, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Joanne Ross
Corporations Counsel