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2 California Corporations Commissioner
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4 Deputy Commissioner
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13 BEFORE THE DEPARTMENT OF CORPORATIONS
14 OF THE STATE OF CALIFORNIA

15 In the Matter of the Accusation of THE) Case No.:
16 CALIFORNIA CORPORATIONS)
17 COMMISSIONER,) ACCUSATION
18)
19 Complainant,)
20)
21 vs.)
22)
23 KAREN GARDNER,)
24)
25 Respondent.)

26 The Complainant is informed and believes, and based upon such information and belief,
27 alleges and charges Respondent as follows:

28 I

1. Respondent Karen Gardner ("Gardner") was at all times relevant herein, employed as an
escrow officer at Outlook Escrow, Inc., ("Outlook") or First National Escrow ("First National"),
escrow agents licensed by the California Corporations Commissioner ("Commissioner" or
"Complainant") pursuant to the Escrow Law of the State of California, California Financial Code
Section 17000 et seq. ("Escrow Law").

2. Outlook has its principal place of business located at 6840 Indiana Avenue, Suite 150,

1 Riverside, California 92506.

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

4 4. Gardner was employed as an escrow officer at Outlook from about February 15, 2007
5 through June 15, 2009.

6 5. Gardner then became employed as an escrow officer at First National beginning in or around
7 September 2009. She left her employment with First National on September 9, 2010.

8 II

9 6. On or about September 15, 2009, the Commissioner received a complaint regarding Outlook
10 on an escrow handled by Respondent, Gardner.

11 7. The complaint alleged that Gardner had mishandled an escrow on a property complainants
12 were selling in Nevada.

13 8. The escrow instructions and Purchase Agreement (collectively, the “Agreement”) stated that
14 the buyer on the property was supposed to deposit fifty thousand dollars (\$50,000) into the escrow
15 account within five days from the date the Agreement was executed. The Agreement was executed
16 on May 16, 2009.

17 9. The Agreement stated that the fifty thousand dollars (\$50,000) would be unconditionally
18 released to the seller on June 15, 2009.

19 10. The sellers were concerned about the escrowed money and the out-of-state escrow company.
20 There were also other purchase offers, so they wanted to verify the validity of this purchase offer.
21 They requested verification from Gardner that the fifty thousand dollars (\$50,000) was in the escrow
22 account.

23 11. Gardner issued a “Proof of Funds” letter dated May 18, 2009, confirming that unencumbered
24 funds of fifty thousand dollars (\$50,000) were indeed in the account.

25 12. On or about June 9, 2009, the seller visited Outlook in person; she asked Gardner to verify
26 that the fifty thousand dollars (\$50,000) were in her account. Gardner orally verified that the funds
27 were in the account.

28 13. On or about, June 15, 2009, Outlook informed the sellers that there were no funds in their

1 escrow account.

2 14. The Department performed an examination of Gardner’s activities at Outlook after receiving
3 the seller’s complaint.

4 15. During this examination, the examiner found instructions to Gardner from the President of
5 “Kyburz Capital” that state that Gardner should expect several calls to “verify POF” (proof of
6 funds), and state what Gardner should claim was the amount held in escrow for each.

7 16. The examiner found “Proof of Funds” and verification of deposit documents that were signed
8 by Gardner that verified amounts in escrow accounts ranging from fifty thousand dollars (\$50,000)
9 to over two hundred million dollars (\$200,000,000). The estimated total is two hundred fifty-six
10 million, fifty thousand dollars (\$256,050,000).

11 17. In fact, these escrow accounts, reviewed by the Department’s Examiner, never had the
12 amounts claimed in them.

13 18. Consequently, it became clear to the Department’s examiner that Gardner knowingly and/or
14 recklessly made misstatements and/or failed to state material facts pertaining to escrows or escrow
15 affairs.

16 III

17 19. After being terminated from Outlook in June 2009, Gardner began working at First National
18 in or around September 2009.

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

22 21. During her examination of First National’s records, the Department’s Examiner reviewed the
23 transaction listed in the complaint received by the Department.

24 22. The Examiner found that Karen Gardner did not follow the instructions given by the lender
25 for the transaction.

26 23. The "Closing Instruction Letter" sent by the lender, Diversified, on March 2, 2010, stated that
27 four hundred thousand dollars (\$400,000) was supposed to be escrowed for: “the two-part
28 simultaneous closing that will take place in two separate transactions on or before March 2, 2010. If

1 the closings do not happen within three business days of receipt of the funds, then you are instructed
2 to return the principal amount of \$400,000.00 to: ORALABS, INC.: Key Bank National Association
3 ABA#: 307070267 ACCT#: 769681015459.”

4 24. The funds were received by First National on March 3, 2010. The closings did not take place
5 within the three business days of March 3, 2010. In fact, First National did not return the funds to
6 Oralabs until almost two weeks later, on or about March 19, 2010.

7 IV

8 California Financial Code section 17414, subsections (a)(1) and (a)(2) provide:

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

12 (1) Knowingly or recklessly disburse or cause the disbursement of
13 escrow funds otherwise than in accordance with escrow instructions,
14 or knowingly or recklessly to direct, participate in, or aid or abet in a
15 material way, any activity which constitutes theft or fraud in
16 connection with any escrow transaction.

17 (2) Knowingly or recklessly make or cause to be made any misstatement
18 or omission to state a material fact, orally or in writing, in escrow books, accounts,
19 files, exhibits, statements, or any other document pertaining to an escrow
20 or escrow affairs.

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

22 All money deposited in such "trust" or "escrow" account shall be
23 withdrawn, paid out, or transferred to other accounts only in accordance
24 with the written escrow instructions of the principals to the escrow
25 transaction or pursuant to order of a court of competent jurisdiction.

26 V

27 California Financial Code section 17423 provides in pertinent part:

28 (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

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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.

VI

Complainant finds that, by reason of the foregoing, Respondent Gardner has violated Sections 17414(a)(1) and 17414(a)(2) of the Financial Code and Section 1738 of title 10 of the California Code of Regulations and it is in the best interests of the public to bar Respondent Gardner from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that Respondent Gardner be barred from any position of employment, management or control of any escrow agent.

Dated: September 27, 2010
Sacramento, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Joanne Ross
Corporations Counsel