

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SOPHIA C. KIM (State Bar No. 265649)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:)	ESCROW LICENSE NO.: 963-0038
)	
12 THE COMMISSIONER OF BUSINESS)	ORDER REVOKING ESCROW AGENT’S
13 OVERSIGHT,)	LICENSE
)	
14 Complainant,)	
)	
15 v.)	
)	
16 BUILDERS DISBURSEMENTS, INC.,)	
)	
17 Respondent.)	
)	
)	
)	

20
21
22 The Commissioner of Business Oversight (Commissioner) of the Department of Business
23 Oversight (Department), finds that:

24 **I.**
25 **Introduction**

26 1. Builders Disbursements, Inc. (BDI) is a joint control agent licensed by the
27 Commissioner pursuant to Section 17005.1 of the Escrow Law of the State of California,
28 commencing at Fin. Code § 17000 *et seq.* (Escrow Law).

1 10. Receiving no response from BDI, on or around June 12, 2018, the Department made
2 a further request to BDI for its 2017 Audit Report.

3 11. As of September 20, 2019, BDI had not filed its annual audit report.

4 **III.**

5 **Failure to File Special Report in Violation of Financial Code Section 17406**

6 12. Financial Code section 17406, subdivision (e) requires all licensees under the
7 Escrow Law to make other special reports as the Commissioner may require.

8 13. On or around July 28, 2017, the Department demanded that BDI provide within 30
9 days its financial statements for June 30, 2017, including the general account bank statement and
10 reconciliation, to determine BDI’s compliance with Financial Code section 17210, which provides
11 that an escrow agent licensed on or after January 1, 1986 shall maintain at all times a tangible net
12 worth of \$50,000.00, including liquid assets of at least \$25,000.00 in excess of current liabilities.
13 BDI failed to respond by the deadline of on or around August 28, 2017.

14 14. On or around February 13, 2018, the Department issued a formal demand to BDI for
15 its financial statements for the periods ending on June 30, 2017, August 31, 2017, and January 31,
16 2018, within 10 days, or by no later than February 23, 2018, and that failure to provide the required
17 financial statements could result in the suspension of BDI’s joint control license.

18 15. On or around February 13, 2018, BDI responded partially to the Department’s
19 formal demand by providing its financial statements for the period ending on June 30, 2017, but
20 failing to submit its financial statements for the periods ending on August 31, 2017 and January 31,
21 2018.

22 16. On or around March 29, 2018, the Department issued a 10 day-demand for the
23 required August 31, 2017 and January 31, 2018 financial statements, notifying BDI that pursuant to
24 Financial Code section 17408, subdivision (b), it will be assessed a penalty of \$100.00 per day for
25 the first five days the reports are overdue, and thereafter, \$500.00 per day for each day the reports
26 are overdue.

27 ///

28 ///

1 17. On or around April 11, 2018, the Department extended the deadline for BDI to
2 provide its financial statements, including the general account bank statement and reconciliation,
3 for the periods ending on August 31, 2017 and January 31, 2018, to no later than April 25, 2018.

4 18. As of September 20, 2019, BDI had not submitted its financial statements, including
5 the general account bank statement and reconciliation, for the periods ending on August 31, 2017
6 and January 31, 2018, in violation of Financial Code section 17406, subdivision (e).

7 **IV.**
8 **Suspension Order and Penalty Order**

9 19. On January 15, 2019, the Commissioner issued to BDI an Accusation to Issue
10 Orders: (1) Suspending Escrow Agent’s License Pursuant to Financial Code Section 17608; and (2)
11 Imposing Penalties Pursuant to Financial Code Section 17408, and related pleadings (Accusation)
12 pursuant to the Escrow Law.

13 20. On or around January 25, 2019 the Department served BDI with the Accusation via
14 certified mail at its principal place of business on file with the Department.

15 21. BDI did not request an administrative hearing to challenge the allegations contained
16 in the Accusation.

17 22. On February 22, 2019 the Commissioner issued an Order Suspending Escrow
18 Agent’s License Pursuant to Financial Code Section 17608 for the *greater* period of: (1) six
19 months, to commence on February 22, 2019, and continue through close of business on August 22,
20 2019; or (2) until BDI has submitted the following: (i) its 2017 Annual Report that was due on
21 April 16, 2018; (ii) financial statements, including the general account bank statement and
22 reconciliation, for the periods ending on August 31, 2017 and January 31, 2018; and (iii) financial
23 statements, including the general account bank statement and reconciliation, for the last four
24 quarters immediately preceding the date of submission, including but not limited to March, June,
25 September, and December 2018 (Suspension Order).

26 23. The Suspension Order prohibited BDI from accepting any new escrow or joint
27 control business but allowed BDI to continue to process prior and open escrows in accordance with
28 Financial Code section 17609.

1 24. On February 22, 2019, the Commissioner, having found that BDI violated Financial
2 Code section 17406, subdivisions (a) and (e) of the Escrow Law, ordered BDI to pay to the
3 Commissioner as follows, pursuant to Financial Code section 17408: (1) for the 2017 Audit Report
4 demanded on or about April 24, 2018, a penalty accruing until the date of submission exceeding
5 221 days, of at least \$111,000.00; and (2) for BDI's financial statements, including the general
6 account bank statement and reconciliation, for the periods ending on August 31, 2017 and January
7 31, 2018, demanded by the extended deadline of on or about April 25, 2018, a penalty accruing
8 until the date of submission exceeding 220 days, of at least \$110,500.00, for a total sum of
9 \$221,500.00, plus an additional \$500.00 a day for each day after the date of this Order that each of
10 the foregoing is not filed (Penalty Order).

11 25. On or around March 1, 2019 the Department served BDI with the Suspension Order
12 and Penalty Order via certified mail at its principal place of business on file with the Department.

13 26. BDI did not request an administrative hearing to contest the Penalty Order.
14 Therefore, pursuant to Financial Code section 17408, subdivision (d), the Penalty Order is deemed a
15 final order of the Commissioner.

16 27. On or around March 7 and May 15, 2019, the Department's examiner visited BDI's
17 principal place of business and requested the 2017 Annual Report and financial statements,
18 including general account bank statements and reconciliations required under the Suspension Order
19 and Penalty Order. On or around May 24 and June 10, 2019, the Department notified BDI via
20 email that the Department had not yet received the foregoing records from BDI.

21 28. As of September 20, 2019, BDI had neither complied with the final Penalty Order
22 nor submitted the following records required under the Suspension Order: (i) its 2017 Audit Report
23 that was due on April 16, 2018; (ii) financial statements, including the general account bank
24 statement and reconciliation, for the periods ending on August 31, 2017 and January 31, 2018; and
25 (iii) financial statements, including the general account bank statement and reconciliation, for the
26 last four quarters immediately preceding the date of submission, including but not limited to March,
27 June, September, and December 2018.¹

28 _____
¹ On or around September 20, 2019, BDI provided to the Department's examiner assorted documents that included trust bank account reconciliations for December 31, 2016, a partial collection of trust bank account statements for July 2017

1 29. Therefore, BDI remains suspended pursuant to the Suspension Order for a period
2 now exceeding six months until it submits the records required therein.

3 **V.**

4 **Repeat Violation of Financial Code section 17406**

5 30. On or around April 15, 2019, BDI again violated Financial Code section 17406,
6 subdivision (a), which requires all licensees under the Escrow Law to file an annual audit report
7 containing audited financial statements within 105 days after the close of the calendar or the
8 licensee’s fiscal year, as applicable.

9 31. On or around April 24, 2019, the Department issued a 10 day-demand notifying BDI
10 that its 2018 annual audit report (2018 Audit Report) was not received by the deadline of April 15,
11 2019, and that if the Department does not receive it within 10 days from April 24, 2018, then
12 pursuant to Financial Code section 17408, subdivision (b), BDI will be assessed a penalty for
13 \$100.00 per day for the first five days the 2018 Audit Report is overdue, and thereafter, \$500.00 per
14 day for each day the 2018 Audit Report is overdue until it is received as required pursuant to
15 Financial Code section 17406. BDI was again notified that failure to file the 2018 Audit Report
16 may result in revocation of its escrow agent’s license pursuant to Financial Code section 17602.5.

17 32. BDI failed to file its 2018 Audit Report by the 10 day-deadline of May 4, 2019.

18 33. As of September 20, 2019, BDI has failed to file both its 2017 and 2018 Audit
19 Reports, in violation of Financial Code section 17406.

20 **VI.**

21 **2019 Regulatory Examination**

22 34. On or about August 5, 2019, the Commissioner commenced a regulatory
23 examination of the books and records of BDI pursuant to Financial Code section 17405 (2019
24 Regulatory Exam).

25 35. The 2019 Regulatory Exam disclosed that since at least December 31, 2016, BDI
26 failed to reconcile at least once each month the bank statements of its trust accounts with the escrow

27 through December 2017, a partial collection of operating bank account statements for July 2017 through December 2017,
28 and a general ledger that was posted up to June 30, 2017. BDI also provided operating bank account statements for June
2019 through August 2019, but without the general ledger, and a partial collection of trust bank account statements for
April 2019 through August 2019, but without the bank reconciliations.

1 ledger and escrow liability controlling account, in violation of Financial Code section 17404 and
2 California Code of Regulations, title 10, section 1732.2.

3 36. The 2019 Regulatory Exam further disclosed that since at least June 30, 2017, BDI
4 failed to establish and maintain currently its general ledger reflecting the assets, liabilities, capital,
5 income and expense of the business, in accordance with generally accepted accounting principles,
6 in violation of Financial Code section 17404 and California Code of Regulations, title 10, section
7 1732.3.

8 **VII.**
9 **Accusation to Revoke**

10 37. On September 26, 2019, pursuant to Financial Code section 17608, the
11 Commissioner issued to BDI a Notice of Intent to Issue Order Revoking Escrow Agent’s License,
12 Accusation, and accompanying documents for BDI’s repeated violations of Financial Code section
13 17406, violations of Financial Code section 17404 and California Code of Regulations, title 10,
14 sections 1732.2 and 1732.3, and as of at least September 20, 2019, failure to comply with the
15 Commissioner’s final Penalty Order (Accusation to Revoke).

16 38. On October 3, 2019, BDI was served with the Accusation to Revoke via certified
17 mail at its principal place of business on file with the Department. The Department has received no
18 request for a hearing from BDI regarding the Accusation to Revoke and the time to request a
19 hearing has expired.

20 **VIII.**
21 **Revocation Order**

22 NOW GOOD CAUSE APPEARING THEREFORE, it is hereby ordered that the joint
23 control agent’s license of Builders Disbursements, Inc. be revoked effective this date.

24 Dated: October 22, 2019
25 Los Angeles, California

26 MANUEL P. ALVAREZ
27 Commissioner of Business Oversight

28 By _____
MARY ANN SMITH
Deputy Commissioner