

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Commissioner of
Business Oversight

OAH No. 2019030885

v.

LORENA CARRILLO,

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted, with technical changes pursuant to Government Code Section 11517, subdivision (c)(2)(C), by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on April 3, 2020

IT IS SO ORDERED this 3rd day of March, 2020



MANUEL P. ALVAREZ
Commissioner of Business Oversight

**BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA**

In the Matter of:

THE COMMISSIONER OF BUSINESS OVERSIGHT, Complainant

v.

LORENA CARRILLO, Respondent

OAH No. 2019030885

PROPOSED DECISION

Jeremy Cody, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 24 and July 25, 2019 and October 17, 2019, in Los Angeles, California.

Vanessa T. Lu and Trevor Carroll, Counsel for the Department of Business Oversight, represented complainant, the Commissioner of Business Oversight (Commissioner).

Lorena Carrillo (respondent) appeared and represented herself.

Oral and documentary evidence was received. The ALJ granted complainant's request that Exhibits 9, 13, L and K be redacted to protect respondent's personal information (driver's license number, home addresses and date of birth) and that

Exhibit 11 be admitted under seal. The ALJ issued a Protective Order Sealing Confidential Records (Protective Order) with respect to Exhibit 11.

On the last day of hearing, the ALJ granted complainant's oral motion to file an amended pleading to conform to proof. The ALJ issued a written order holding the record open until November 1, 2019, to allow complainant to file an amended pleading and respondent to file any written objections. A copy of the ALJ's order was marked and admitted as Exhibit 14. Complainant timely filed a Second Amended Accusation, which was marked and admitted as Exhibit 15. No written objections were filed by respondent.

The record was closed and the matter was submitted for decision on November 1, 2019.

SUMMARY

The Commissioner seeks an order barring respondent, a former escrow officer and manager, from any position of employment, management or control of any escrow agent, based on allegations that: (1) respondent made an untrue statement about a material fact and willfully omitted a material fact on her application submitted to the Commissioner at the time she was hired as an escrow officer; (2) respondent was convicted in 2013 of engaging in fraud to obtain governmental aid; and (3) respondent mismanaged an escrow account while working as an escrow manager, by making unauthorized and falsified deposits that were contrary to escrow instructions and sound escrow practice.

At the administrative hearing, the preponderance of the evidence established that respondent committed each of the above-noted acts or omissions, which

constitute violations of the Financial Code and California Code of Regulations relating to escrow matters. Respondent's misconduct and prior criminal record support the imposition of the requested bar. Respondent offered insufficient evidence to justify or mitigate her misconduct. The public would not be protected if a lesser discipline were imposed, such as suspension or censure. Therefore, respondent shall be barred from any position of employment, management or control of any escrow agent.

FACTUAL FINDINGS

Jurisdictional and Background Facts

1. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of escrow operations under the California Escrow Law (Fin. Code, § 17000 et seq.) (Escrow Law).
2. Complainant served respondent with notice of intent to issue an order pursuant to Financial Code section 17423 (barring respondent from employment, management or control of any escrow agent) with a First Amended Accusation attached. Respondent filed a Notice of Defense.
3. Pursuant to the ALJ's order, complainant filed a Second Amended Accusation ("Accusation") on October 23, 2019, which is the operative pleading.
4. Casa Bella Escrow Services, Inc. (Casa Bella) is an escrow agent, under a license issued on April 1, 2014, by the Commissioner. Casa Bella operates its escrow business at an office located in Temecula, California.

Respondent's Employment Applications

2016 APPLICATION

5. In 2016, Casa Bella employed respondent for several months as an escrow officer. As required by Financial Code section 17419, respondent completed a Statement of Identity and Employment Application dated May 9, 2016 (2016 Application), which she signed under the penalty of perjury. (Ex. 13.) The 2016 Application was then forwarded to the Commissioner.

6. Question No. 6 on the Application read, in pertinent part:

Have you ever been convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations?

NOTE: 'Convicted' includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere or a forfeiture of bail. All convictions must be disclosed even if the plea or verdict was thereafter set aside and the charges against you dismissed or expunged or if you have been pardoned. . . .

(Ex. 13, p. DBO 619.)

7. Respondent checked the "no" box in response to Question No. 6 on the 2016 Application. This answer was untrue and known by respondent to be untrue. Respondent signed the 2016 Application under penalty of perjury on May 9, 2016. Three years earlier, on January 1, 2013, in the Superior Court of California, County of Riverside, Case No. SWF 1201982, respondent was convicted, on her plea of guilty, of violating Welfare and Institutions Code section 10980, subdivision (c)(2) (Fraud to

Obtain Aid), a misdemeanor. Respondent was ordered to pay restitution of \$1,522 and placed on summary probation for 36 months. By answering "no" and failing to disclose her January 1, 2013 conviction in response to Question No. 6, respondent willfully made an untrue statement of material fact and omitted a material fact required to be stated in the 2016 Application, in violation of Financial Code section 17702.

8. Question No. 10 on the 2016 Application read: "Have you ever been a subject of a bankruptcy or a petition in bankruptcy?" (Ex. 13, p. DBO 618.) Respondent checked the "no" box in response to Question No. 10 and did not provide any details in the available space. Respondent's answer to Question No. 10, was untrue and known by her to be untrue. On April 1, 2004, respondent filed a Chapter 13 Bankruptcy Petition, and on December 10, 2007, respondent filed a Chapter 13 Bankruptcy Discharge in U.S. Bankruptcy Court, Central District of California, Los Angeles, Case No. 2:04-BK-17477. By answering "no" and failing to disclose her bankruptcy petition and discharge in response to Question No. 10, respondent willfully made an untrue statement and omitted a material fact required to be stated in the 2016 Application, in violation of Financial Code section 17702.

2017 APPLICATION

9. In March 2017, Casa Bella again employed respondent, this time as an escrow manager. In connection with this employment, Casa Bella completed a Statement of Identity and Employment Application for respondent dated March 15, 2017 (2017 Application). Casa Bella submitted the 2017 Application to the Commissioner on March 20, 2017.

10. The 2017 Application (Exhibit 9) contained the same Question Nos. 6 and 10, and the same answers, as checked on the earlier 2016 Application that was signed

by respondent on May 9, 2016. As with the 2016 Application, both responses to Question Nos. 6 and 10 in the 2017 Application were untrue and known by respondent to be untrue. Respondent was aware that Casa Bella intended to copy her answers from the earlier application, but did nothing to correct the answers on the 2017 Application. By answering "no" and failing to disclose in the 2017 Application her January 1, 2013 conviction in response to Question No. 6, and her bankruptcy case in response to Question No. 10, respondent willfully made untrue statements, and omitted material facts required to be disclosed in the 2017 Application, in violation of Financial Code 17702.

Escrow File Number 2313-LC

11. Respondent worked as an escrow manager for Casa Bella from March 2017, until March 2, 2018. As escrow manager, respondent was responsible for reviewing daily and monthly reports for any items that needed to be corrected in Casa Bella's accounts.

12. In particular, respondent was responsible for managing Escrow File Number 2313-LC (Escrow Account), which was opened on August 25, 2017, and closed on October 11, 2017. Respondent was authorized to reconcile any account irregularities appearing in daily or monthly reports regarding the Escrow Account.

13. On October 11, 2017, the final closing funds from First American Title Company were credited to the Escrow Account. Earned fees of \$2,227 were transferred to Casa Bella's fee ledger and all the disbursements were issued by October 12, 2017. The ledger balance in the Escrow Account was zero on that date.

14. In the months following the closing, from November 2017 through April 2018, the Escrow Account showed a shortage of \$1,000, as reported each month in a

3-Way Bank Reconciliation report. Respondent knew, or should have known, of the \$1,000 debit balance in the Escrow Account; yet, she made no attempt to correct it. During this period, Casa Bella failed to report the shortage to the Department and Escrow Agents' Fidelity Corporation.

15. On July 9, 2018, the Commissioner commenced a regulatory examination of Casa Bella. Kitlan Chan, an Escrow Law specialist, performed the examination and prepared a written report dated August 10, 2018. (Exhibit 11.) Ms. Chan testified credibly at the hearing regarding the examination findings.

16. Ms. Chan's written report summarized the unauthorized transactions that led to the \$1,000 shortage in the Escrow Account, as follows:

My review of the escrow file indicated that [respondent] received an invoice after the close of escrow. All the funds had been disbursed, so in order to pay this invoice, [respondent] created a false balance on the escrow ledger. [Respondent] made three attempts to cover the shortage. Initially, she issued a receipt for \$2,000 without depositing the corresponding funds into the bank. On the same day, she transferred funds from the fee account and canceled the receipt on the next day. This would have corrected the shortage, but [then] the fee transfer was reversed and a second receipt for \$1,000 without a supporting deposit was posted to the ledger. The company replaced the funds in April 2018 but failed to report the incident to the DBO and EAFC directly.

(Ex.11, p. DBO 43.)

17. In her testimony, Ms. Chan explained the Escrow Account debit issue in more detail. At the close of the Escrow Account on October 11, 2017, a payment owed to a principal, Curtis Dump Truck & Backhoe Services (Curtis), was overlooked. On November 15, 2017, respondent paid Curtis from escrow funds, then issued receipt numbers 2652 and 2694 to cover this shortfall, but no funds were deposited into the Escrow Account to cover those receipts.

18. On November 15, 2017, Respondent issued receipt number 2652 for \$2,000 for funds "received" from seller. However, there was no \$2,000 deposit from seller credited to the Escrow Account. On November 16, 2017, receipt number 2652 was canceled. The comment section on the canceled receipt showed "wrong amount" and "never printed" was handwritten on the canceled receipt. (Ex. 9, DBO 101.). Furthermore, respondent transferred \$2,227 from the fee ledger to the Escrow Account on November 15, 2017, then transferred the \$2,227 back to the fee ledger on November 30, 2017.

19. On November 30, 2017, respondent issued receipt number 2694, reflecting that \$1,000 had been received, but no funds were credited to the Escrow Account. In fact, no wire transfer had been sent by the seller or received into the Escrow Account, as this entry was fabricated by respondent. In the Escrow Account records, receipt number 2694 was listed as "R#2694 E# 2313-LC Wire T, issued on 11/20/17 with no deposit at bank." Receipt number 2694 caused a \$1,000 shortage in the Escrow Account.

20. In April 2018, the \$1,000 shortage in the Escrow Account was noted by Casa Bella's certified public accountant (CPA) in its annual report regarding Casa Bella.

On April 17, 2018, Casa Bella canceled receipt number 2694. On April 30, 2018, Casa Bella deposited general account check number 2212 in the amount of \$1,000 into the Escrow Account to correct the debit balance. Respondent's post-closing transactions amounted to unsound escrow practice. Ms. Chan opined that based on her years of experience in investigating escrow matters, the post-closing transactions conducted in the Escrow Account, as detailed in her report, constituted unusual and abnormal business practice that violated various statutes and regulations of the Escrow Law.

21. Respondent left her employment with Casa Bella on March 2, 2018. When she was questioned by Casa Bella's President about the shortage in the Escrow Account in April 2018, respondent said she could not recall anything about the file or the circumstances regarding the shortage. At the hearing, respondent testified that since she had managed dozens of escrow files at Casa Bella, she could not recall any specific details about the transactions related to the Escrow Account.

Respondent's Evidence and Contentions

22. As to the charge that she willfully omitted material facts on the 2016 Application, respondent claimed she had answered "no" to Question Nos. 6 and 10, thereby failing to disclose her criminal conviction and her bankruptcy filing, because she was "busy" when she filled out the application and did not appreciate the importance of these questions. She testified that she did not intend to deceive the Department, but that she made a "mistake" and was careless in filling out the form. Respondent's testimony regarding her failure to disclose her conviction and bankruptcy filing on the 2016 Application was not credible.

23. As for the 2017 Application, respondent testified that she did not fill out that application because she was too busy, and because Casa Bella staff, Vera Hellman,

told her to just sign the last page of the 2017 Application form and staff would fill in the remainder of the application using respondent's answers from her 2016 Application. On the last page of the 2017 Application, where the affiant is directed to sign under penalty of perjury, attesting that the contents are true and correct, there is a signature that purports to be respondent's signature; however, respondent testified credibly that it is not her signature. Respondent did recall signing a blank application. Respondent noted correctly that the signature on the 2017 Application misspells her last name. Respondent also noted that true and correct copies of her signature could be found at Exhibits 4 (p. DBO 3) and 11 (p. DBO 68). Those signatures look markedly different from the misspelled signature on the 2017 Application (Exhibit 9). Nonetheless, given that respondent was aware that the answers for Question Nos. 6 and 10 in her 2016 Application were untrue, she bears responsibility for allowing her employer to copy those untrue answers on the 2017 Application, which she knew would be forwarded to the Commissioner.

24. As for respondent's 2013 conviction for welfare fraud, respondent claimed that in the course of applying for public assistance after the break-up of her marriage, she had mistakenly failed to list certain assets on her welfare application, which resulted in her being charged with committing fraud in obtaining aid. Respondent further claimed that in signing the negotiated plea agreement, she did not realize that she was pleading guilty to a crime involving fraud. Respondent's explanations do not establish mitigation or excuse for her failure to disclose the

conviction on the 2016 and 2017 Applications. Her explanations must be disregarded as an improper attempt to collaterally attack the validity of her conviction.¹

25. As to the allegation that respondent made unauthorized transfers and entered false entries in the Escrow Account after the close of escrow, respondent claimed she could not recall any of the transactions that occurred in connection with the Escrow Account. Instead, she attempted to deflect blame by contending that other Casa Bella employees had access to Casa Bella's bank account and could have altered the Escrow Account. This contention is not credible. First, the check issued to Curtis weeks after the close of escrow (Ex. 11, p. DBO 97) was signed by respondent. Second, in the electronic instructions that document the post-closing transactions, respondent is listed as both the "escrow officer" and the "user." Ms. Chan testified credibly that according to her understanding of the computer system for these transactions, each "user" has his or her own password; therefore, it would be nearly impossible, and highly unlikely, for another employee to perform transactions on the system using respondent's password. None of respondent's arguments or testimony at the hearing change the fact that, as the escrow manager for the Escrow Account, she was responsible for reconciling the debit balance in the Escrow Account as of November

¹ Respondent's entry of the guilty plea in her criminal case is conclusive evidence of guilt upon which the ALJ must rely. "Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged. To hold otherwise would impose upon administrative boards extensive, time-consuming hearings aimed at relitigating criminal charges which had culminated in final judgments of conviction." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

2017, and for ensuring that all transactions were in accordance with the escrow instructions.

26. Finally, respondent contended that Casa Bella's management operated its business in a manner that violated other, unspecified provisions of Escrow Law, and conducted escrow business at another business office in addition to the address listed on its license. Respondent also testified that she was not given full control of Casa Bella's bank account, which caused problems in terms of her management of various escrow accounts. No findings shall be made regarding these contentions as they are not relevant to the specific legal and factual issues raised by the Accusation in this case.

LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this case. As no other statute or law specifically applies to this case, the standard of proof is preponderance of the evidence. (See Evid. Code, § 115.)

2. 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

(2) That the person has been convicted of or pleaded nolo contendere to any crime, . . . if that crime . . . 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.

Willful Omission of Material Facts

3. Financial Code section 17702 provides:

It is unlawful for any person to willfully make an untrue statement of a material fact in any application, notice, or report filed with the commissioner under this division or the regulations issued thereunder, or to willfully omit any material fact which is required to be stated in any application, notice, or report.

4. According to the Department of Corporations² precedential decision of *In Re: Stacy Ann Maspero* (2003) OAH # L2002090534 (*Maspero*), the term "willfully" as

² As of July 1, 2013, the Department of Corporations and the Department of Finance merged to form the Department of Business Oversight.

used in Financial Code section 17702 does not mean an intent to violate the law, but simply is "... a purpose or willingness to commit the act, or make the omission referred to."

5. Cause exists, pursuant to Financial Code section 17423, subdivision (a)(1), to bar respondent from any position of employment, management or control of any escrow agent, in that such bar is in the public interest because respondent willfully made an untrue statement and willfully omitted material facts required to be stated in an application filed with the Commissioner, in violation of Financial Code section 17702, based on Factual Findings 5-10.

6. Respondent's explanation that she omitted the information due to filling out the application too quickly demonstrates an unfitness to be employed as a manager or assistant in the escrow business. As stated in *Maspero, supra*, in response to a similar excuse: "Those who work in the escrow industry must not only possess and exercise the highest degree of honesty and integrity, they must also be extraordinarily vigilant about the details of their work. As with many of the service-related industries, negligence and ignorance are unacceptable characteristics in their representatives."

Criminal Conviction

7. Financial Code section 17414.1, provides in pertinent part:

(a) Any person who has been convicted of or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years, . . . or any of the provisions specified in subdivision (b), shall not serve in any capacity as an officer, director, stockholder, trustee, agent or employee of an escrow agent, . . .

(b) Subdivision (a) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for offenses including the following: [[¶ . . . ¶] (7) Offenses involving . . . fraud.

8. The crime committed by respondent – violation of Welfare and Institutions Code section 10980, subdivision (c)(2) (fraud in obtaining aid) – is a crime specified in Financial Code section 17414.1, subdivision (b)(7), and a crime that is reasonably related to the qualifications, functions and duties of an escrow assistant or escrow manager. A crime involving fraud reflects poorly on respondent's character and demonstrates a lack of honesty and integrity; therefore, it is reasonably related to respondent's fitness to practice in the escrow business.

9. Cause exists to bar respondent from any position of employment, management, or control of an escrow agent, pursuant to Financial Code section 17423, subdivision (a)(1), in that such bar is in the public interest because respondent violated Financial Code section 17414.1 by serving as an employee of an escrow agent in 2016 and 2017 when she had a conviction involving fraud in 2013, based on Factual Findings 5, 7, and 9.

10. Cause exists to bar respondent from any position of employment, management or control of an escrow agent, pursuant to Financial Code section 17423, subdivision (a)(2), because respondent has been convicted of a crime specified in Financial Code section 17414.1, subdivision (b)(7), and which is reasonably related to the qualifications, functions, or duties of a person engaged in the escrow business, based on Factual Findings 7 and 24 and Legal Conclusion 8.

Mismanagement of Escrow Account

11. Financial Code section 17414, subdivision (a)(1), provides that it is a violation for an escrow agent to "knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in accordance with escrow instructions, or 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."

12. California Code of Regulations, title 10, section 1738.1 provides: "An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment or transfer."

13. 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 of 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."

14. Cause exists, pursuant to Financial Code section 17423, subdivision (a)(1), to bar respondent from any position of employment, management or control of any escrow agent, in that such bar is in the public interest because respondent disbursed escrow funds in violation of Financial Code section 17414, subdivision (a)(1), and California Code of Regulations, title 10, sections 1738.1 and 1738.2, based on Factual Findings 11 through 21.

15. In this case, the preponderance of the evidence established that respondent, as escrow manager and the escrow officer of the Escrow Account, disbursed funds after the final disbursements of the Escrow Account had been effectuated and the escrow had been closed. Respondent then falsified transactions and issued bogus receipts in a manner that resulted in a \$1,000 debit balance in the Escrow Account. Respondent's conduct violated Financial Code section 17414, subdivision (a)(1), in that respondent "knowingly or recklessly disburse[d] or cause[d] the disbursal of escrow funds otherwise than in accordance with escrow instructions."

16. It was not established that respondent engaged in this deceptive escrow account activity as a means of committing theft or fraud. Rather, respondent sought to make a legitimate payment to a vendor, which debt was presumably within the scope of the escrow instructions. The problem was one of timing. The Escrow Account had closed and disbursements had already been made. Respondent made the situation worse by willfully falsifying escrow account records to correct the late disbursal of funds after escrow had closed.

17. The evidence established that respondent created a trust account shortage in the Escrow Account in violation of California Code of Regulations, title 10, section 1738.1. The debit balance occurred because respondent issued a bogus receipt for a \$1,000 wire transfer from the seller, but no actual wire transfer from the seller was received or credited to the Escrow Account.

18. The evidence further established that respondent's conduct in falsifying receipts constituted unsound escrow practice in violation of California Code of Regulations, title 10, section 1738.2.

Disposition

19. The preponderance of the evidence established that grounds exist for the requested bar based on respondent's multiple violations of the Escrow Law, as set forth in Factual Findings 1 to 26 and Legal Conclusions 1 to 18. Respondent failed to present evidence of mitigating facts to show that the public would be protected if respondent were given a lesser penalty, such as censure or suspension. Accordingly, the appropriate penalty is to bar respondent from employment, management or control of any escrow agent.

ORDER

Respondent Lorena Carrillo is barred from any position of employment, management or control of any escrow agent.

DATE: December 10, 2019

DocuSigned by:


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JEREMY CODY

Administrative Law Judge

Office of Administrative Hearings