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9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

<p>11 In the Matter of:</p> <p>12 THE COMMISSIONER OF FINANCIAL 13 PROTECTION AND INNOVATION,</p> <p>14 Complainant,</p> <p>15 v.</p> <p>16 D & G ESCROW CORPORATION,</p> <p>17 Respondent.</p>	<p>) ESCROW LICENSE NO.: 963-0081</p> <p>)</p> <p>) ACCUSATION TO ISSUE ORDERS:</p> <p>)</p> <p>) (1) REVOKING ESCROW AGENT’S LICENSE PURSUANT TO FINANCIAL CODE SECTIONS 17602.5 and 17608; and</p> <p>) (2) IMPOSING PENALTIES PURSUANT TO FINANCIAL CODE SECTION 17408</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>
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20 The Complainant, the Commissioner of Financial Protection and Innovation (Commissioner
21 or Complainant) of the Department of Financial Protection and Innovation (Department), is
22 informed and believes, and based upon such information and belief, alleges and charges D & G
23 Escrow Corporation (D & G) as follows:

24 **I.**

25 **Introduction**

26 1. D & G is an escrow agent licensed by the Commissioner pursuant to Section
27 17005.1 of the Escrow Law of the State of California, commencing at Cal. Fin. Code §§ 17000 –
28 17703 (Escrow Law).

1 2022 Annual Audit Report

2 8. On or around November 17, 2022, the Department sent a bulletin, through
3 GovDelivery.com, to D & G's designated email address on file to remind D & G that its 2022
4 annual audit report was due on April 17, 2023. The Department also warned D & G that failure to
5 file its 2022 annual audit report by the due date would subject it to a penalty under California
6 Financial Code section 17408. D & G was again cautioned that its escrow agent license may be
7 revoked or suspended pursuant to California Financial Code section 17602.5 if it failed to file the
8 required report by the due date. A delivery report generated from GovDelivery.com dated
9 November 17, 2022, indicated the notification was delivered and received by D & G. D & G did
10 not file its 2022 annual audit report on or before the due date of April 17, 2022.

11 9. On or around June 19, 2023, the Department issued a written demand to D & G to
12 file its 2022 annual report within 10 days (2022 10-day demand). Again, the Department warned D
13 & G of the potential penalty assessment and suspension or revocation of its escrow agent's license
14 for its failure to file the required 2022 annual audit report. The 2022 10-day demand was sent by
15 email to D & G's designated email address.

16 10. On or around September 5, 2023, the Department again emailed a copy of the 2022
17 10-day demand to D & G's designated email with Outlook delivery tracking, which indicated the
18 email was delivered and received.

19 11. To date, D & G has not filed its 2022 annual audit report, in violation of California
20 Financial Code section 17406(a).

21 **III.**

22 **Failure to File Annual Escrow Liability Report – Cal. Fin. Code § 17348**

23 12. Pursuant to California Financial Code section 17348 each licensed escrow agent
24 must file its Escrow Annual Liability Report for each licensed location by no later than February 15
25 of each year.

26 13. The Department sent three bulletins, on December 19, 2022, January 13, 2023, and
27 February 3, 2023, to D & G's designated email address to remind it to file its 2022 Escrow Annual
28 Liability Report electronically by the filing deadline of February 15, 2023 via its Portal account

1 registered with the Department. The bulletins also reminded D & G that its 2022 Escrow Annual
2 Liability Report must be filed even if no business was conducted during the year and that failure to
3 file the report would result in a penalty and grounds for license revocation. D & G did not file its
4 2022 Escrow Annual Liability Report by the deadline of February 15, 2023.

5 14. On or around March 30, 2023, the Department issued a written demand to D & G to
6 file its 2022 Escrow Annual Liability Report within 10 days (Liability Report 10-day demand).
7 Again, the Department warned D & G of the potential penalty assessment and revocation of its
8 escrow agent’s license for its failure to file the required 2022 Escrow Annual Liability Report. The
9 Liability Report 10-day demand was sent by certified mail to D & G’s business address on file with
10 the Department.

11 15. To date, D & G has not filed its 2022 Escrow Annual Liability Report, in violation
12 of California Financial Code section 17348.

13 IV.

14 **Failure to Meet Liquid and Tangible Net Worth Requirements – Cal. Fin. Code § 17210**

15 16. Pursuant to California Financial Code section 17210, all escrow agents must
16 maintain a tangible net worth of at least \$50,000, including liquid assets of at least \$25,000 in
17 excess of current liabilities.

18 17. On or around August 3, 2021, the Department commenced a regulatory examination
19 of D & G (Exam), requesting documents required to begin the Exam.

20 18. Review of D & G’s balance sheet as of September 30, 2021 during the Exam
21 disclosed that D & G had a liquid capital deficit of \$248,766.38, indicating a liquid deficiency of
22 \$273,766.38. D & G also had a tangible net worth deficit of \$229,953.90, indicating a tangible net
23 worth deficiency of \$279,953.90, in violation of California Financial Code section 17210.

24 V.

25 **Failure to Maintain Books and Records – Cal. Fin. Code § 17408; 10 C.C.R. § 1737.3(a)**

26 19. Pursuant to California Code of Regulations, title 10, section 1737.3(a), an escrow
27 agent shall preserve for at least five years from the close of escrow: (1) All bank statements of the
28 “trust” or “escrow” account; (2) All canceled checks drawn upon the “trust” or “escrow” account;

1 (3) Copies of bank deposit slips with reference to the “trust” or “escrow” account; (4) All additional
2 records reflecting banking transactions with reference to the “trust” or “escrow” account, including
3 copies of all receipts for funds transferred from interest-bearing accounts into the “trust” or
4 “escrow” account; (5) The Statement of Account; (6) Escrow instructions and amendments thereto;
5 (7) All additional records pertinent to the escrow transaction.

6 20. Moreover, California Financial Code section 17408 requires all licensees under the
7 Escrow Law to make other special reports as the Commissioner may require.

8 21. Starting from the beginning of the Exam on or around August 3, 2021 through on or
9 around February 16, 2023, the Department demanded the following books and records from D & G:

10 a. Copy of buyer and seller’s signed escrow instructions, buyer and seller’s
11 signed estimate closing statements, buyer’s final closing statements, lender’s funding worksheet,
12 title invoice, and title disbursement summary for escrow number 629412;

13 b. Copy of borrower’s signed estimate closing statement, and title invoice for
14 escrow number 628332;

15 c. Copy of borrower’s signed escrow instructions, signed estimate closing
16 statement, lender’s funding worksheet, and title invoice for escrow number 429584;

17 d. Copy of escrow file (complete copy) for escrow number 428314;

18 e. Copies of check numbers 116708 and 123723;

19 f. Copies of initiate wires and approved wires for wire numbers 2330, 2350,
20 2508, 2509, 2575, 2593, and 2602;

21 g. Copies of general account cleared checks (front and back) along with e-
22 deposit slips or bank’s incoming wire confirmations for escrow receipt numbers 85208 and 85210;

23 h. Complete copies of cleared checks (front and back) in relation to escheat
24 report;

25 i. Copy of trust account check or bank’s outgoing wire confirmation to check
26 number 2602 issued on October 29, 2021, for \$250,000.

27 j. Copies of the current trust account and dormant trust account bank
28 statements for September 30, 2020, to February 28, 2021;

- 1 k. Copies of the dormant trust account bank statement for March 31, 2021;
- 2 l. Copy of trial balance for September 2020 to November 30, 2020, January 31,
- 3 2021, March 31, 2021, and October 31, 2021;
- 4 m. Copies of the trial balance reports for September 30, 2020, to January 31,
- 5 2021 and March 31, 2021;
- 6 n. Copies of evidence of corrections to the reconciling items shown on the
- 7 reconciliation report as of July 31, 2021.

8 22. To date, D & G has not provided the aforementioned escrow books and records, in
9 violation of California Financial Code section 17408 and California Code of Regulations, title 10,
10 section 1737.3(a).

11 **VI.**

12 **Unauthorized Bank Fees Causing Trust Account Shortages – 10 C.C.R. §§ 1738.1 and 1738.2**

13 23. Pursuant to California Code of Regulations, title 10, section 1738.1 an escrow agent
14 shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the
15 amount to the credit of such account at the time of such withdrawal, payment, or transfer.

16 24. Pursuant to California Code of Regulations, title 10, section 1738.2 an escrow agent
17 shall use documents or other property deposited in escrow only in accordance with the written
18 escrow instructions of the principals to the escrow transaction or if not otherwise directed by written
19 by electronically executed instructions, in accordance with sound escrow practice, or pursuant to
20 order of a court of competent jurisdiction.

21 25. Review of D & G’s trust account bank reconciliation report dated July 31, 2021
22 showed reconciling items due to bank charges that created a debit balance in the dormant account
23 for \$6,906.09 and a debit balance in the current trust account for \$129.81.

24 26. On or around November 14, 2022, December 14, 2022, and February 16, 2023, D &
25 G was directed to provide evidence of correction of these trust account shortages. To date, D & G
26 has failed to provide evidence of the corrections as directed, in violation of California Code of
27 Regulations, title 10, sections 1738.1 and 1738.2.

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VIII.

Unauthorized Hold Open Fees Causing Escrow Shortages – Cal. Fin. Code § 17421.5(a)

27. Pursuant to California Financial Code section 17421.5(a) a licensee may charge a fee for administering an escrow that has been postponed for at least two months from the most recent closing date agreed upon by the parties in the written instructions or has been canceled if all of the following requirements are met: (1) the postponement or cancellation resulted from the acts or omissions of the parties to the escrow transaction; (2) the fee was disclosed in the written instructions in not less than 8-point bold type on the face or front page of the instructions; and (3) the principal parties to the escrow transaction have executed the written fee instructions by initialing those instructions.

28. Review of escrow file number 433224, which closed on May 24, 2018 showed a disbursement of \$600.00 with a description of “HOF” on December 16, 2020. However, the escrow instructions signed by the principals lacked any instructions regarding any hold open fees resulting in an escrow shortage in the amount of \$600.00. On or around February 16, 2023, D & G was directed to show evidence of curing the escrow shortage in escrow file number 433224. To date, D & G has failed to provide evidence of curing the escrow shortage in file number 433224, in violation of California Financial Code section 17421.5.

IX.

Applicable Law

- 29. California Financial Code section 17406 provides in pertinent part:
 - (a) Each licensee shall submit to the commissioner, at the licensee’s own expense, an audit report containing audited financial statements covering the calendar year or, if the licensee has an established fiscal year, then for that fiscal year, within 105 days after the close of the calendar or fiscal year, as applicable. At that time, each licensee shall also file additional relevant information as the commissioner may require . . .
 - (e) A licensee shall make other special reports to the commissioner as the commissioner may from time to time require
- 30. California Financial Code section 17408 provides:
 - (a) If any person subject to this division fails to make any report required by law or by the commissioner, the commissioner may immediately cause

1 the books, records, papers, and affairs of said person to be thoroughly
2 examined.

3 (b) The commissioner may impose, by order, a penalty on any person who
4 fails, within the time specified in any written demand of the
5 commissioner, (1) to make and file with the commissioner any report
6 required by law or requested by the commissioner, or (2) to furnish any
7 material information required by the commissioner to be included in the
8 report. The amount of the penalty may not exceed one hundred dollars
9 (\$100) for each day for the first five days the report or information is
10 overdue, and thereafter may not exceed five hundred dollars (\$500) for
11 each day the report or information is overdue.

12 (c) If, after an order has been made under subdivision (b), a request for
13 hearing is filed in writing within 30 days of the date of service of the order
14 by the person to whom the order was directed, a hearing shall be held in
15 accordance with the Administrative Procedure Act, Chapter 5
16 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
17 Government Code, and the commissioner shall have all the powers
18 granted under that chapter.

19 (d) If the person fails to file a written request for a hearing within 30 days
20 of the date of service of the order, the order imposing the penalty shall be
21 deemed a final order of the commissioner, and the penalty shall be paid
22 within five business days.

23 (e) If a hearing is requested, the penalty shall be paid within five business
24 days after the effective date of any decision in the case ordering payment
25 to be made.

26 31. California Financial Code section 17348 provides:

27 In order to permit Fidelity Corporation to fulfill its obligation under this
28 chapter, the commissioner shall furnish a list of all persons licensed under
this division as of December 31 of each year and a copy of an escrow
liability schedule filed with the commissioner. Each member on or before
February 15 shall furnish to the commissioner and Fidelity Corporation
the schedule of its escrow liability for each of its licensed locations as of
the last day of each month for the preceding 12 months which ended
December 31. A list of officers, directors, stockholders, trustees, agents,
managers, and employees as of that date shall also be submitted to Fidelity
Corporation, with the schedule. The schedule shall be in the form and
contain such information as the commissioner may require.

32. California Financial Code section 17210 provides in pertinent part:

(a) An escrow agent licensed on or after January 1, 1986, shall maintain at

1 all times a tangible net worth of fifty thousand dollars (\$50,000), including
2 liquid assets of at least twenty-five thousand dollars (\$25,000) in excess of
3 current liabilities

4 33. California Financial Code section 17421.5 provides in pertinent part:

5 (a) Notwithstanding Section 17420, a licensee may charge a fee for
6 administering an escrow that has been postponed for at least two months
7 from the most recent closing date agreed upon by the parties in the written
8 instructions or has been canceled if all of the following requirements are
9 met:

10 (1) The postponement or cancellation resulted from the acts or omissions
11 of the parties to the escrow transaction.

12 (2) The fee was disclosed in the written instructions in not less than 8-
13 point bold type on the face or front page of the instructions.

14 (3) The principal parties to the escrow transaction have executed the
15 written fee instructions by initialing those instructions

16 34. California Code of Regulations, title 10, section 1737.3 provides in pertinent part:

17 (a) An escrow agent shall preserve for at least five years from the close of
18 escrow:

19 (1) All bank statements of the “trust” or “escrow” account;

20 (2) All canceled checks drawn upon the “trust” or “escrow” account;

21 (3) Copies of bank deposit slips with reference to the “trust” or “escrow”
22 account;

23 (4) All additional records reflecting banking transactions with reference to
24 the “trust” or “escrow” account, including copies of all receipts for funds
25 transferred from interest-bearing accounts into the “trust” or “escrow”
26 account;

27 (5) The Statement of Account;

28 (6) Escrow instructions and amendments thereto;

(7) All additional records pertinent to the escrow transaction

35. 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.

36. 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.

37. Financial Code section 17602.5 provides:

If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the day designated for the making of the reports, or within any extension of time granted by the commissioner, or fails to include therein any matter required by law or by the commissioner, such failure shall constitute grounds for the suspension or revocation of the license held by such escrow agent.

38. Financial Code section 17608 provides, in relevant part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that: . . .

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.

X.

Conclusion

39. The Commissioner finds that, by reason of the foregoing, D & G violated California Financial Code sections 17210(a), 17348, 17406(a) and (e), 17408, and 17421.5(a), and California Code of Regulations, title 10, sections 1737.e(a), 1738.1, and 1738.2 of the Escrow Law. Therefore, pursuant to California Financial Code sections 17602.5 and 17608(b) and (c), grounds exist to: (1) revoke the escrow agent’s license of D & G and (2) impose penalties against D & G pursuant to California Financial Code section 17408(b).

XI.

Prayer for Relief

WHEREFORE, IT IS PRAYED that:

Pursuant to California Financial Code sections 17602.5 and 17608(b) and (c), the escrow agent’s license of D & G Escrow Corporation be revoked; and

Pursuant to California Financial Code section 17408(b), a penalty be imposed against D & G Escrow Corporation for failing to file the following reports within the time specified in written

1 demand or by the extended deadline granted by the Commissioner, in the amount of \$100.00 per
2 day for the first five days the report is overdue, and thereafter, \$500.00 per day for each day the
3 report is overdue, accruing until the date of payment by D & G Escrow Corporation, as follows:

4 (1) for the 2021 annual audit report demanded on or around June 1, 2022, a penalty
5 continuing to accrue until the date of submission, currently at least 480 days, of at least
6 \$240,000.00, or according to proof;

7 (2) for the 2022 annual report demanded on or around June 19, 2023, a penalty continuing to
8 accrue until the date of submission, currently at least 96 days, of at least \$48,000.00, or according to
9 proof;

10 (3) for the 2022 Escrow Liability Report demanded on or around March 30, 2023, a penalty
11 continuing to accrue until the date of submission, currently at least 177 days, of at least \$89,000.00,
12 or according to proof;

13 (4) for the books and records required by California Code of Regulations, title 10, section
14 1737.3(a) and California Financial Code section 17408(a), a penalty continuing to accrue until the
15 date of submission, currently at least 220 days, of at least \$110,000.00, or according to proof,

16 For a total amount of penalties of at least \$487,000.00, or according to proof.

17 Dated: November 30, 2023
18 Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



19
20
21 By: _____
22 SOPHIA C. KIM
23 Senior Counsel
24 Enforcement Division
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