BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of: THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. SHIRAZ ESCROW, INC. and JAMSHID SARAJ, Respondent.	File No.: 963-2122 OAH No. L2006110258
In the Matter of the Order to Discontinue Escrow Activities issued by THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. SHIRAZ ESCROW, INC., Respondent.	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commissioner of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on March 14, 2007.

IT IS SO ORDERED this 13th day of March 2007.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on December 1, 2006, in Los Angeles, California. Complainant was represented by Judy L. Hartley, Senior Corporations Counsel. No appearance was made on behalf of Shiraz Escrow, Inc., or Jamshid Saraj (collectively Respondents).

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on December 1, 2006.

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FACTUAL FINDINGS

1. On October 17, 2006, Complainant, Preston DuFauchard, filed the Accusation against Respondents in his official capacity as the California Corporations Commissioner (Commissioner), Department of Corporations (Department), State of California. On that same date, the Commissioner issued to Respondent Shiraz Escrow, Inc. (Shiraz), an Order to Discontinue Escrow Activities Pursuant to California Financial Code Section 17415 (Order to Discontinue). On October 30, 2006, Respondent Jamshid Saraj (Saraj) filed a written request for hearing on behalf of Respondents.

2. On November 14, 2006, a Notice of Hearing, setting forth the date, time and place of hearing, was served by United States mail on Respondents.

3. Service of the Notice of Hearing conformed to the requirements of Government Code sections 11505 and 11509.

4. Respondents did not appear at the December 1, 2006 hearing.[1] At Complainant's request, the matter proceeded as a default, pursuant to Government Code section 11520.

5. Respondent Shiraz is now and was, at all relevant times, an escrow agent licensed by the Commissioner pursuant to the Escrow Law of the State of California (Financial Code section 17000, et seq.). Shiraz's current principal place of business, on record with the Department, is 6520 Platt Avenue, Suite 836, West Hills, California 91307.[2]

6. Respondent Saraj was, at all relevant times, the owner and president of Shiraz.

7. (a) On January 26, 2005, when the escrow agent license was issued to Shiraz, its address of record with the Department was 13455 Ventura Boulevard, Suite 216, Sherman Oaks, California.

(b) On March 23, 2005, the Commissioner consented to Shiraz's change of address to 6740 Fallbrook Avenue, Suite 106, West Hills, California.

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[1] A few days prior to the hearing, Saraj sent a letter to Complainant's counsel, stating that he would not be appearing at the hearing. He requested that Complainant's counsel submit, on his behalf, his typewritten statement explaining his version of the facts in this case. The letter was marked for identification as Exhibit A, but on Complainant's objection, was not admitted, based on Respondents' failure to comply with Government Code section 11514.

[2] The Commissioner consented to Shiraz's change of address to 6250 Platt Avenue, #836, West Hills, California, on August 22, 2006.

8. On July 5, 2006, the Commissioner commenced a regulatory examination of the books and records of Shiraz.

9. On July 5, 2006, the Department's examiner met Saraj when she arrived at the then address of record, 6740 Fallbrook Avenue, Suite 106 in West Hills. The examiner noted no other workers on the premises, and Saraj informed her that the company's records were at another location. The examiner followed him to 19318 Ventura Boulevard, Suites 106 and 108, in Tarzana, California. Saraj told the examiner that that this was a temporary location until he purchased another building. There were two workers at this location, along with escrow files. However, there was no manager on the premises and no license or sign indicating the name or nature of the business.

10. Shiraz did not provide notice to, or obtain approval of, the Commissioner prior to moving its business to its "temporary" location. [3] This is a violation of California Financial Code section 17213.1.

11. According to Department records, Gwendolyn Jacobs (Jacobs) was the approved manager for Shiraz on July 5, 2006. On that date, the examiner asked Saraj when Jacobs was expected to return, and he replied that Jacobs was on vacation and that he did not know whether she would return later in the week or the next week. Per the examiner's instruction, Saraj filled out and signed a Summary of Personnel. He listed Jacobs as the manager of Shiraz.

12. However, during a telephone conversation on July 11, 2006, Saraj admitted to the examiner that Jacobs had not been with Shiraz for "some time." The examiner obtained corroborating information from another Shiraz employee that the employee had not seen Jacobs since October 2005.

13. Given Jacobs' absence, Shiraz did not have a qualified manager stationed at its business location on July 5, 2006. This is a violation of California Financial Code section 17200.8.

14. On July 5, 2005, Saraj filed a false Summary of Personnel indicating that Jacobs was still employed by Shiraz, when Jacobs had not been employed with Shiraz for several months. Through this false filing, Respondents committed an act involving dishonesty and deceit which was substantially related to the qualifications, function and duties of an escrow agent. This constitutes grounds for denial of an escrow agent's license under California Financial Code section 17209.3, subdivision (b)(2).

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[3] On July 5, 2006, after the examiner's visit, Respondents filed with the Department a letter informing it that Shiraz had "temporarily changed" its location to 19318 Ventura Boulevard, Suite 108, Tarzana, California from its prior location of 6740 Fallbrook Avenue until its "new facility is fully operational." The Commissioner did not consent to this change of address.

15. On July 5, 2006, the examiner requested that Shiraz provide her with its books and records so that she could begin the examination. After the examiner's repeated requests for bank trust account reconciliation reports for the past one-year period, month-end escrow liability reports, trial balance, and the most recent manual control records, Saraj finally admitted that the records were not available. However, he stated that the Certified Public Accountant, Ken Borhani (CPA), had the bank trust account reconciliation reports.

16. The examiner contacted the CPA by telephone, so that she could request the bank trust account reconciliation reports. The CPA told her that the company's only bank trust account reconciliation report had been prepared as a result of the recent annual report. When the examiner later spoke with Saraj, he admitted that this was true. He additionally admitted that no other bank trust account reconciliation reports had been prepared since he received his license in January 2005.

17. On July 11, 2006, the examiner was able to obtain two bank statements from a Shiraz employee. One statement was for a general checking account that had a zero ending balance on June 30, 2006. The other statement was for a trust account with an ending balance of $1,284,002.76 on June 30, 2006. These were the only two accounts that were disclosed.

18. On July 11, 2006, the examiner met with the CPA in person. At the meeting, she determined that the CPA did not know what constituted compliance with the Department's books and records requirements, so she spent time explaining the basic components of the bank reconciliation, escrow liability and manual control reports. The CPA also informed her that Saraj did not keep deposit slips and that monies went indiscriminately into both the general and trust accounts.

19. Respondents never answered the examiner's question of whether Shiraz had any certificates of deposits.

20. Despite her repeated requests, the examiner was never provided with a copy of a trial balance.

21. Due to the condition of Shiraz's books and records, the examiner could not complete her examination and, consequently, could not determine whether a shortage existed in the trust account of Shiraz or whether Shiraz met the tangible net worth and liquid asset requirements of Financial Code section 17210.

22. The examination revealed that Shiraz had failed to maintain books and records in accordance with the Escrow Law as follows:

(a) Shiraz had not reconciled its trust account since its licensure on January 26, 2005. This is a violation of Financial Code section 17404 and California Code of Regulations, title 10, sections 1732 and 1732.2.

(b) Shiraz had failed to prepare monthly escrow liability reports since its licensure on January 26, 2005. This is a violation of Financial Code section 17404 and California Code of Regulations, title 10, sections 1732 and 1732.2.

(c) Shiraz had failed to prepare a manual control since its licensure on January 26, 2005. This is a violation of Financial Code section 17404 and California Code of Regulations, title 10, sections 1732 and 1732.2.

23. As a result of the above-described violations in Factual Finding 22, the Commissioner issued the Order to Discontinue and filed and served the Accusation in this matter.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend the escrow agent's license of Respondent Shiraz, pursuant to Financial Code sections 17608, subdivision (b), and 17213.1, for moving its business from the licensed address without providing notice to, or obtaining approval of, the Commissioner, as set forth in Factual Findings 7, 8, 9 and 10.

2. Cause exists to revoke or suspend the escrow agent's license of Respondent Shiraz, pursuant to Financial Code sections 17608, subdivision (b), and 17200.8, for failure to have a qualified manager stationed on duty at its business location on July 5, 2006, as set forth in Factual Findings 9, 11, 12 and 13.

3. Cause exists to revoke or suspend the escrow agent's license of Respondent Shiraz, pursuant to Financial Code sections 17608, subdivision (c), and 17209.3, subdivision (b)(2), for Saraj's commission of an act of dishonesty and deceit, which, if it had existed at the time of the original application for licensure, would have warranted denial of Shiraz's escrow agent license, as set forth in Factual Findings 6, 9, 11, 12, and 14.

4. Cause exists to revoke or suspend the escrow agent's license of Respondent Shiraz, pursuant to Financial Code sections 17608, subdivision (b), and 17404, for failure to keep and use its business, books, accounts and records in a manner which would properly enable the commissioner to determine whether the escrow functions performed by Shiraz complied with the Financial Code and rules of the Commissioner, as set forth in Factual Findings 15, 16, 17, 18, 19, 20, 21 and 22.

5. Cause exists to revoke or suspend the escrow agent's license of Respondent Shiraz, pursuant to Financial Code section 17608, subdivision (b), and California Code of Regulations, title 10, section 1732, for failure to maintain its books, records and accounts in accordance with generally accepted accounting principles and good business practice, as set forth in Factual Findings 15, 16, 17, 18, 19, 20, 21 and 22.

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6. Cause exists to revoke or suspend the escrow agent's license of Respondent Shiraz, pursuant to Financial Code section 17608, subdivision (b), and California Code of Regulations, title 10, section 1732.2, for failure to maintain cash receipts or escrow liability reports or monthly trust account reconciliations, as set forth in Factual Findings 15, 16, 17, 18, 19, 20, 21 and 22.

7. Cause exists to bar Respondent Saraj from any position of employment, management, or control of any escrow agent, pursuant to Financial Code section 17423, subdivision (a)(1), in that Saraj has committed and caused violations of the Financial Code and rules of the Commission, which violations were either known or should have been known by him, as set forth in Factual Findings 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.

8. The preponderance of the evidence established good cause to affirm the Order to Discontinue Escrow Activities issued to Shiraz, as set forth in Factual Findings 6 through 22.

ORDERS

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. The Order to Discontinue Escrow Activities issued to Shiraz Escrow, Inc., on October 17, 2006, is hereby affirmed.

2. The escrow agent's license issued to Shiraz Escrow, Inc., is hereby revoked.

3. Respondent Saraj is hereby barred from any position of employment, management, or control of any escrow agent.

DATED: December 21, 2006

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings