BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	Case No. 963-1820
GEORGE MICHAEL SALAZAR,	)	
	)	OAH No. L2003100573
Respondent.	)	
	)	
	)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter, with the following technical and minor change pursuant to Government Code Section 11517(c)(2)(C):

(1) On page 1 of the Proposed Decision, in the second paragraph where the Complainant is identified, the name "Demetrios" is substituted for "Demetrious."

(2) On page 2 of the Proposed Decision, at the end of the second sentence of footnote 2, the word "petition" is substituted for "motion."

(3) On page 4 of the Proposed Decision, footnote 3, the document citation is changed to "Memorandum of Respondent," making it consistent with footnote 4 and the document itself.

This Decision shall become effective January 30, 2004.

IT IS SO ORDERED January 30, 2004.

WILLIAM P. WOOD
California Corporations Commissioner

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In the Matter of the Accusation Against:	File No. 963-1820
GEORGE MICHAEL SALAZAR,	OAH No. L2003100573
Respondent.	

PROPOSED DECISION

On November 20, 2003 Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Michelle Lipton, Corporations Counsel, represented Demetrious A. Boutris, California Corporations Commissioner (hereinafter complainant).

M. Stephen Davis, Attorney at Law, represented George Michael Salazar (hereinafter respondent).

The matter was submitted on November 20, 2003.

FACTUAL FINDINGS

1. The Commissioner brings this action to bar respondent from any position of employment, management, or control of any escrow agent on the basis that he has been convicted of a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a person engaged in the escrow business. Complainant filed the Accusation in his official capacity.

2. Action Escrow, Inc. is a California corporation engaged in the escrow agency business in Downey, California. In the year 2000 Action hired respondent as an "escrow assistant." His direct supervisor was president and office manager Edward Navarro. Action submitted respondent's employment application to the Department of Corporations as required by law.[1] Due to a shortage of work later in 2000 Navarro and Action were forced to lay respondent off from his duties with the company. In January 2001respondent was hired as an administrative aide for the Los Angeles County Office of Education in Cerritos to develop a computer program to enable the Office of Education to track supplies purchased by it and distributed to schools and other locations. Apparently, there were no inventory

[1] Financial Code section 17419.

controls in place when respondent was hired, and respondent's first task was to manually count every item in storage, from pencils to computers, in order to establish an inventory baseline.

3. On October 18, 2001 Alejandro Padilla, one of respondent's co-employees with the County Office of Education, called the Sheriff's Department and reported that respondent had sold him a Dell computer for $60 that had been stolen from their employer. After purchasing the computer from respondent Padilla had asked another employee, Frank Huynh, to help him set it up at Padilla's home. It happened that Huynh was missing a computer from a storage room near his work area and immediately determined that the serial number on Padilla's new computer matched that of the missing computer. The Sheriff's Department's investigator contacted respondent, who admitted taking the computer from the storeroom, placing it in a trash dumpster and later retrieving it before selling it to Padilla. The computer was actually worth more than $1,300.

4. Respondent was criminally charged with violating Penal Code section 487(a), grand theft, a felony. On December 19, 2001 respondent, acting without an attorney, pleaded nolo contendere to 487(a) as a misdemeanor. The conviction is substantially related to the qualifications, functions or duties of an escrow agent or escrow agent's employee. Respondent was sentenced to three years of probation on condition that he pay fines and fees in the amount of $937, perform 4 days of Cal Trans work and serve one day in jail. For the jail time, respondent was given credit for the time served at the time of his arrest. Respondent paid his fine, performed the Cal Trans work and otherwise completed all terms of his probation. He made a motion to terminate his probation, which was granted by the court on July 29, 2002. On the same date, respondent filed a petition to expunge his conviction pursuant to Penal Code section 1203.4. The petition was granted on August 20, 2002.

5. In his defense, respondent testified that shortly after he began to work for the County Office of Education he became aware that computers and other supplies were being stolen because the system lacked security and controls. He felt the thieves were probably warehouse and other employees. He testified that he did not report his suspicions because he was a mere probationary employee and the suspected thieves were tenured workers. Respondent contends he was made a scapegoat for the larceny of others when he was arrested and prosecuted. With regard to his apparent confession to police, he takes the position that the arresting officer falsified the police report.

6. Respondent left the employ of the County Office of Education in November 2001. In December 2001 he was re-hired by Action Escrow, Inc. as an escrow assistant.[2] Mr. Navarro, who is respondent's uncle, appeared at the hearing and testified on respondent's

[2] The Accusation asserts and the evidence confirmed that Action Escrow failed to timely notify the Department of Corporations of respondent's rehire. However, Action Escrow and respondent did take steps necessary to satisfy the Escrow Agents' Fidelity Corporation, which withdrew its denial and revocation of respondent's certificate card upon the granting of respondent's motion to expunge his conviction.

behalf to the effect that respondent is a good employee, professional and polite. Navarro was made aware of respondent's criminal conviction prior to re-employing his nephew, but believes in his innocence and is willing to keep respondent on the payroll as long as respondent desires to work for him. Navarro is respondent's supervisor and monitors his work on a daily basis. Respondent does not have access to client trust funds under current working arrangements.

7. Respondent is 22 years of age and single. He attended college at Cal Poly Pomona for three years but did not earn a degree. He has no record of any criminal convictions other than the one at issue here.

LEGAL CONCLUSIONS

1. Any person who has, within the past 10 years, been convicted of or pleaded nolo contendere to any crime specified in subdivision (b) of section 17414.1 of the Financial Code shall not serve in any capacity as an officer, director, stockholder, trustee, agent or employee of an escrow agent, or in any position involving any duties with an escrow agent, in this state. (Financial Code section 17414.1(a).) Subsection (b) includes "offenses involving ... theft."

2. For the purposes of section 17414.1, the automatic bar from employment in the escrow industry due to a conviction for theft (or other enumerated crimes) does not apply if the defendant/respondent has obtained a certificate of rehabilitation from a court of competent jurisdiction under section 1203.4 of the Penal Code. (Financial Code section 17414.1(b).) However, while the granting of a petition pursuant to Penal Code section 1203.4 takes respondent out of the automatic and mandatory language of 17414.1(b), the certificate of rehabilitation shall nevertheless not prohibit the commissioner from bringing an action, such as the Accusation at issue, to bar respondent from employment with an escrow agent if the facts of the case justify such action. (Financial Code section 17423(g).)

3. A conviction for theft can hardly be more relevant to the qualifications, functions or duties of an escrow agent who is, by definition, entrusted with the funds of his clients and third parties in the daily conduct of his business. One might consider the action leading to respondent's conviction as the product of youthful indiscretion. But youthful or not, the act was committed only two years ago and the conviction occurred less than two years ago. Moreover, though a lack of remorse is not an aggravating factor when based upon an honest belief in one's innocence (see Calaway v. State Bar, 41 Cal. 3d 743, 744-745 (1986)), a finding of sincerity in this respondent's claim of innocence is predicated upon a belief in the bare assertion that the police officer intentionally falsified his report and essentially made up the confession attributed to respondent. The record herein does not support such a conclusion.

4. Respondent offers two special defenses. First, he claims that complainant is guilty of laches, in that the Accusation was not filed until October 7, 2003, "more than one year"

from some unspecified event.[3] Laches may be used as a defense in an administrative action. (Brown v. State Personnel Board, 166 Cal. App. 3d 1151 (1985).) The court is called upon to weigh the competing equities. In this matter, the delay, to the extent it may have prejudiced or inconvenienced respondent, is out-weighed by the state's interest in protecting the consuming public from persons convicted of theft. In addition, it is a well-known fact that virtually all state agencies have been working under difficult fiscal restraints and are generally understaffed with respect to their investigative and enforcement functions. But in any event, respondent must show prejudice from the delay, and he has not done so on this record. (See Lam v. Bureau of Security & Investigative Services, 34 Cal. App. 4th 29 (1995), where a delay of three years in a license revocation matter was deemed not prejudicial.)

Secondly, respondent claims that complainant has engaged in selective enforcement by singling out respondent and not pursuing "all person(s) who make application for employment in the escrow industry who may have had a misdemeanor conviction."[4] In order to successfully assert a defense for selective enforcement, respondent must demonstrate that he has been deliberately singled out for prosecution on the basis of some invidious criterion. (Margia v. Municipal Court, 15 Cal. 3d 286 (1975).) The only evidence on the subject of selective enforcement here was elicited from Steven Thompson, a Special Administrator for the Department of Corporations who oversees the licensing of escrow agents. He testified that not all convictions result in the filing of an Accusation, but that each case is reviewed and determined on its own merits. The numbers of cases reviewed and/or filed were not elicited. Respondent cites no authority, and none is found, to the effect that because not all cases that are investigated result in disciplinary action, or that because subjective analysis is involved in the process, every Accusation based upon a misdemeanor conviction that is filed somehow represents "selective enforcement." Such a practice would in fact result in arbitrariness and capriciousness in enforcement practices. Respondent offers no substantial evidence to support this conclusion and has not sustained his burden of proof with regard to the defense.

5. Cause exists to bar respondent from any position of employment, management or control of any escrow agent pursuant to Financial Code section 17423, in that he was convicted of a crime substantially related to the qualifications, functions or duties of a person engaged in the escrow business, based on Factual Findings 2 through 7.

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[3] See "Respondent's Memorandum," page 4, Exhibit 9.
[4] See Memorandum of Respondent, page 4, Exhibit 9.

ORDER

Respondent shall be barred from any position of employment, management or control of any escrow agent in the State of California.

DATED: December 10, 2003

TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings