BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. DII ESCROW CORP., Respondent.	File No. 963-1967 OAH No. L-2003090685

FINAL DECISION

On May 18, 2004 Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Judy L. Hartley, Senior Trial Counsel, represented complainant, the Commissioner of the Department of Corporations (hereinafter the "Department").

Steven G. Lee, Attorney at Law, represented DII Escrow Corp. (hereinafter "Respondent," or "DII").

The Department moved to amend the Accusation to delete lines 3 through 6 at Page 3 thereof. The motion, which was not opposed by Respondent, was granted and the amendment to Exhibit 1 was made by interlineation.

The matter was submitted on May 18, 2004. On May 25, 2004, Judge Thomas issued his proposed decision to revoke Respondent's license but staying the revocation subject to specified terms and conditions of probation.

On August 12, 2004, the Commissioner rejected Judge Thomas' proposed decision pursuant to Government Code Section 11517(c)(1)(E) and invited further written argument to be filed by September 3, 2004.

The Department received the Complainant's brief on August 30, 2004 and received Respondent's brief on September 3, 2004.

The following constitutes the Decision of the California Corporations Commissioner.

FACTUAL FINDINGS

1. The California Corporations Commissioner filed the Accusation in his official capacity.

2. Henry Melendez is the president, CEO and sole shareholder of DII, which was organized as a California corporation on May 16, 2002, and licensed by the Department as an escrow agency to conduct business as such at 1050 Lakes Drive, West Covina, on September 24, 2002. At that time, Melendez was also the owner and president of Dynamic Investments, Inc., which was and is in the business of making mortgage loans, and the general manager of Dynamic Realty, a real estate brokerage business. Dynamic Investments and Dynamic Realty each contained an in-house escrow division at the time of the formation of DII. The intention was to consolidate the escrow activities of the pre-existing companies and a potential new business, the building and sale of new tract homes, into DII. At some point after the formation of DII, Dynamic Realty ceased doing business, although its escrow division remained in existence for the purpose of disbursing the funds remaining in its escrow division's trust account.

3. In late 2002 or early 2003, Melendez hired Tania Altamirano as a DII escrow officer. Ms. Altamirano had previously been associated with a company known as Q Escrow, and, unknown to Melendez, was being investigated by the Department for irregularities found to exist in certain escrow files at Q Escrow. Sometime in April 2003 Altamirano left DII. Following her departure, Melendez and his escrow manager, Marlene Baltzer, discovered escrow file "discrepancies" that appeared to Melendez to represent intentional misconduct on the part of Altamirano. DII reported the discrepancies to the Department and requested its assistance in how to deal with the problem.

4. In response to the call from DII, the Department assigned examiner Justin Sam to conduct an audit of DII. (Sam had begun a routine preliminary audit of DII in December 2002 but apparently had not completed his report when the information concerning Altamirano's activities was reported.) On May 20, 2003 Sam visited DII offices and confirmed that four wire receipts totaling $96,734.20 had been posted by Altamirano to four different escrow accounts without evidence that the funds had actually been received. Therefore, debit balances had been created when outgoing wires were sent and checks issued against the non-existent receipts. DII was ordered to deposit sufficient funds to cover the shortages, and Melendez immediately complied. DII (Melendez) eventually recovered most of the shortages from lenders and title companies involved in the individual transactions. Altamirano was ultimately barred from employment in the California escrow industry by administrative action of the Department

5. In the course of Sam's audit of May 20, 2003 he also discovered that seven wire transfers involving DII escrows were made from title companies to the Dynamic Realty or

Dynamic Investments trust accounts instead of to DII's trust account. The transfers and amounts are summarized as follows:

Item Number	Amount	Date Wired to Dynamic Realty	Date Wired to Dynamic Invest.	Date Transferred Back to DII
1	$ 53,477.20	2/26/03		5/28/03
2	195,915.29	3/5/03		5/28/03
3	208,069.89		3/10/03	5/28/03
4	4,411.44	4/1/03		5/12/03
5	7,871.16	4/10/03		5/27/03
6	15,093.86	4/10/03		5/12/03
7	29,385.41	4/18/03		5/12/03
Total	514,224.25			

6. Sam next analyzed the monthly bank statements for Dynamic Realty and Dynamic Investments trust accounts for the relevant time period. He found that the bank balance for Dynamic Realty, when adjusted downward in the amount of the trust funds mistakenly deposited there, fell below zero by $2,208.71 on March 18, 2003 and decreased to a negative $4,136.38 on May 6, 2003. A large deposit into that account on May 7, 2003 cured the theoretical overdraft balance. At no relevant time did the Dynamic Investments trust account fall below zero after adjusting for the improper deposit on March 10, 2003. Sam therefore concluded that Dynamic Realty improperly "used" up to $4,136.38 of trust funds that should have been deposited in the DII trust account between March 18 and May 6, 2003. Sam could not determine from his investigation whether any individual at DII, Dynamic Investments or Dynamic Realty acted intentionally in bringing about the improper commingling of funds between the three companies. With respect to four of the transfers that came from the same title company, Sam confirmed by telephone that the title company's file system had an account number for "Dynamic Escrow" that was actually Dynamic Realty's account number. The DII files for the same escrows did not contain copies of written wire instructions to the title company.

7. The parties agree that former escrow officer Altamirano had nothing to do with the problem transfers to Dynamic Realty or Dynamic Investments.

8. Between February 2003 and the end of May 2003 approximately 100 to 150 wire transfer deposits were made by title companies or others into the trust account of DII, or were intended for that account. Melendez estimates that during that time period 20 to 25 wire transfers were sent to the wrong account, either to Dynamic Realty or Dynamic Investments, and all but the seven listed above (see Finding 5) were discovered and immediately corrected so that the funds were transferred to DII. Melendez testified that attempts had been made when DII commenced business to advise the title companies and other sources of funds of the DII trust account number. But due to the confusion generated

by the new entity replacing Dynamic Realty as the companies' primary escrow center, some funding sources were slow to adjust their records.

9. The seven deposits in question were not discovered in a timely fashion, despite the fact that bank account reconciliations that were produced by an outside bookkeeping firm, FINIS, and sent to DII monthly reflected the mistakes. During the period February through May 2003 neither Altamirano nor escrow manager Marlene Baltzer nor Melendez were reviewing the reconciliations with appropriate care. For example, the deposit of $53,477.20 that was mistakenly wired to Dynamic Realty on February 26, 2003 showed up on the March 13, 2003 DII trust account reconciliation report as "Incoming wire not posted at bank," (see Exhibit 7, Page 1) and should have alerted DII that a wire transfer that was expected had not been received. Similar entries for that "missing" wire appeared in the April 29 ("Outstanding incoming wire," Exhibit 8, Page 8) and May 21, 2003 ("Incoming wire posted in the system, not in bank," Exhibit 9, Page 4) reconciliations as well. Likewise, the reconciliations statements for Dynamic Realty reflected receipt of the funds (e.g., "Incoming wire @ bank. Not posted to system." See Exhibit15, Page 7.), but neither Melendez nor Balzter, who was also an employee of Dynamic Realty and assigned to supervise the closing of its trust account, recognized that Dynamic Realty had received a wire transfer of $53,477.20 on February 26, 2003 that did not correspond to any Dynamic Realty transaction, nor did they appreciate for three months that the bank statements and bank reconciliations of Dynamic Realty continued to show a substantial surplus balance.

10. Based upon the investigation and findings of the Department's examiner (and as summarized in the chart at Finding 5, above), it is apparent that three of the seven wire transfers mistakenly deposited with DII affiliates were returned to the DII trust account before Sam arrived at DII to conduct his audit. The remaining funds were transferred to DII within eight days of Sam's visit. Those facts, combined with the fact that Melendez and Baltzer initiated the contact with the Department when Altamirano's suspicious activities were discovered, tend to establish that there was no intent by Melendez or DII to misuse DII trust funds for the benefit of Dynamic Realty or Dynamic Investments. Were the principals involved in a scheme to "borrow" or use the DII trust monies to keep its affiliates afloat, it is unlikely they would have alerted the Department to other accounting irregularities that would surely have led to an audit.

11. In July 2003 escrow manager Baltzer instructed escrow assistant Christina Munoz to fax the DII wiring instructions to all title companies with which DII did business so that the mistaken wire transfers to DII affiliates would not reoccur. The process was repeated by new escrow manager Jill Prentice in April 2004 because DII changed banks.

12. DII has instituted other procedures designed to prevent the accounting problems uncovered by the Department. Escrow assistant Elizabeth Montoya testified that it is her responsibility to compile daily and monthly reports reflecting the trust fund status, and to specifically check on a daily basis for confirmations of wire transfers into the trust fund. The monthly reports are sent to an outside company (referred to in the record as "Finese") and include explanations where wire transfers are expected but not received. Baltzer was

replaced as escrow manager in December 2003 by Jill Prentice, who has 12 years of experience as an escrow officer. She is responsible for supervising the DII staff and the trust accounting. Trust accounting is done daily and includes reviews of the daily and monthly reports by Prentice. When the bank reconciliation report is received from Finese, Prentice reviews and signs off on it, then gives it to Melendez, who now, by policy, reviews the report and also signs off on it. Finally, the Dynamic Realty and Dynamic Investments escrow trust fund accounts have been closed, thereby assuring that the same mistakes cannot be repeated.

13. No client of DII, nor any third party, suffered a monetary loss as a result of the mistaken transfers of funds to the DII affiliate companies.

LEGAL CONCLUSIONS

1. The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that the licensee has violated any provision of the escrow law or any rule of the commissioner. (Financial Code section 17608.)

2. All moneys deposited into escrow to be delivered upon the close of escrow or upon any other contingency, shall be deposited and maintained in a bank, and designated as "trust funds," "escrow accounts," or some other appropriate name indicating that the funds are not the funds of the escrow agent. (Financial Code section 17409.)

3. It is a violation of the escrow law for any licensee to "Knowingly or recklessly disburse or cause the disbursal 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." (Financial Code section 17414(a)(1).)

4. All money received by an escrow agent as part of an escrow transaction shall on or before the close of the next full working day after such receipt be deposited in a bank in an account designated "trust" or "escrow" account, and shall not be commingled with any funds other than escrow money. (Title 10 California Code of Regulations section 1737(a).)

5. Cause exists to discipline the escrow license of Respondent DII Escrow Corp. pursuant to Financial Code section 17608, in that it allowed monies to be deposited with DII affiliates rather than Respondent's escrow accounts, recklessly caused the disbursal of escrow funds otherwise than in accordance with escrow instructions, and thereby permitted the commingling of the funds with non-DII escrow funds, based on Factual Findings 2 through 10.

6. Respondent concedes that its principal officers negligently failed to provide sufficient oversight of the accounting practices of DII, and failed to detect in a timely fashion the mistaken transfer of funds by title companies to DII affiliates during the months of March, April and May 2003. But the evidence did not establish that Respondent intentionally instructed any title company to wire funds to Dynamic Realty or Dynamic

Investments for the purpose of commingling funds or using DII trust funds for the benefits of either affiliated company. Moreover, no person or entity suffered any loss as a result of the mistaken transfers of funds.

ORDER

The escrow license issued to Respondent DII Escrow Corp. is hereby suspended for a period of fifteen (15) consecutive calendar days commencing on the effective date of this Decision. During this 15-day suspension period, Respondent shall not accept any new escrows, but may continue to service prior and existing escrows, in accordance with Financial Code Section 17609. Immediately following the effective date of this Decision, Respondent shall provide the Department of Corporations with a listing of all open escrows at the time of the effective date of this Decision and shall submit, at the same time, a plan to service those existing accounts so that no consumer is adversely affected.

Respondent shall also submit a one-time separate written report with its next annual audited financial statements filed under Financial Code Section 17406. This written report shall fully describe and explain the policies and procedures, including procedures specified in Factual Finding 12 of this Decision, to prevent violations of Financial Code Sections 17409 and 17414(a)(1) and Title 10, California Code of Regulations, Section 1737(a). The written report shall include a written statement by the Respondent's Chief Executive Officer that the Respondent will continue to implement and maintain, at a minimum, these policies and procedures to prevent violations of the Escrow Law on a continuous basis. The written report shall be signed by the Respondent's Chief Executive Officer and verified in accordance with Code of Civil Procedure Section 2015.5.

This Decision shall become effective on OCT 2 1 2004.

IT IS SO ORDERED:

Dated: SEP 2 3 2004

WILLIAM P. WOOD
California Corporations Commissioner