BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, v. TAMARYN FINAZZO and JOANNE FINAZZO, Respondents.	)	Case No. 963-2058 OAH No. L2004070645

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated September 17, 2004, is hereby adopted by the Department of Corporations ("Department") as its Decision in the above-entitled matter with the following technical and minor changes pursuant to Government Code Section 11517(c)(2)(C).

(1) In the fifth sentence of paragraph 2 of the Legal Conclusions, on page 9 of the Proposed Decision, the number "20" is substituted for the number "21."

This Decision shall become effective on OCT 14 2004.

IT IS SO ORDERED OCT 14 2004.

WILLIAM P. WOOD
California Corporations Commissioner

BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of **THE CALIFORNIA CORPORATIONS COMMISSIONER,** **Complainant,** **v.** **TAMARYN FINAZZO and JOANNE FINAZZO,** **Respondents.**	**Case No. 963-2058** **OAH No. L2004070645**

PROPOSED DECISION

This matter came on regularly for hearing on August 23 and 24, 2004, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Complainant, William P. Wood, the California Corporations Commissioner, ("Complainant" or "Commissioner"), was represented by Judy L. Hartley, Senior Corporations Counsel.

Respondents, Tamaryn Finazzo and Joanne Finazzo, were present and were represented by Marvin Jones, Jr., Attorney at Law.

Oral and documentary evidence was received. On August 24, 2004, the record was closed, and the matter was submitted for decision.

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FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. In September 2003, Caliber Escrow, Inc. ("Caliber") filed an application with the Department of Corporations ("the Department") for an escrow agent's license ("application"), pursuant to Financial Code section 17209[1]. Caliber had chosen Tamaryn Finazzo as its Escrow Manager.

2. In July 2003, Caliber retained the services of R. Mares and Associates ("R. Mares") to assist in the license application process. R. Mares has been in business for the past 16½ years, performing accounting and consulting services for escrow companies.

3. Among the services R. Mares provided to Caliber were obtaining information from Caliber's personnel necessary to complete the application, and transcribing that information onto the Department's forms. To that end, R. Mares had a blank Statement of Identity and Questionnaire ("SIQ") and a blank Escrow Agent Manager Questionnaire ("EAMQ No. 1") forwarded to Tamaryn Finazzo for her completion. Tamaryn Finazzo filled in the blanks on the forms. She indicated on the SIQ that she had been employed by Escrow Cheque from August 1991 to "present." She indicated on EAMQ No. 1 that she had been employed by Escrow Cheque Corporation[2] ("Escrow Cheque") as an escrow officer from August 1991 to October 2003, a date some 2½-3½ months in the future. She indicated on both forms that she had been employed by South Coast Escrow[3] as an escrow officer from July 1989 to August 1991. She dated the EAMQ July 19, 2003, signed it under penalty of perjury, and returned both the SIQ and EAMQ No. 1 to Caliber for submission to R. Mares, and ultimately, to the Department. According to Tamaryn Finazzo's representations on the SIQ and EAMQ No. 1, she had sufficient experience in the escrow industry to meet the qualifications of an escrow manager pursuant to section 17200.8[4]. The SIQ was forwarded to the Department. R. Mares was not responsible for checking the veracity of any of the representations Tamaryn Finazzo made on the forms, especially since Tamaryn Finazzo was to sign under penalty of perjury most, if not all, of the forms she completed.

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[1] All statutory references are to the California Financial Code unless otherwise specified.

[2] Escrow Cheque was, and still is, a California licensed escrow agent.

[3] The name of South Coast Escrow was subsequently changed to Diversified Title & Escrow Services Company.

[4] Section 17200.8, subdivision (a) requires an escrow manager who will be stationed at a corporation's main office to possess "a minimum of five years of responsible escrow or joint control experience . . ." Experience as an escrow officer is considered responsible escrow experience. Experience as an escrow secretary or escrow assistant is not.

4. R. Mares personnel typed the information provided by Tamaryn Finazzo onto a blank SIQ and forwarded it to Tamaryn Finazzo for her signature. Tamaryn Finazzo signed the document under penalty of perjury on July 19, 2003, had it notarized, and returned it.

5. The information Tamaryn Finazzo provided on the SIQ and EAMQ No. 1, concerning her employment experience in the escrow industry, was not accurate. The true facts are that she had been employed at Escrow Cheque as an escrow officer from July 2001 through April 9, 2004, and at Diversified Title (South Coast Escrow) as an escrow officer from February 2000 to June 2001. She had also been employed by Escrow Cheque from April 1998 through 1999 as an escrow secretary. Since, pursuant to section 17200.8, an escrow manager must possess "a minimum of five years of responsible escrow or joint control experience," and since experience as an escrow secretary does not qualify as responsible escrow or joint control experience, Tamaryn Finazzo's escrow experience did not qualify her to hold the position of an escrow manager.

6. At the administrative hearing, Tamaryn Finazzo testified that she believed the SIQ she signed was going to be held at R. Mares as a working document, and would not be forwarded to the Department. She therefore could correct the inaccuracies in her employment history at a later date. That testimony was not credible. Had she truly so believed, there would be no reason for her to sign the document under penalty of perjury, or to have the document notarized. Further, she failed to offer any competent reason why she would have intentionally provided R. Mares with inaccurate information only to later retrace her steps to correct the inaccuracies.

7. At the administrative hearing, Tamaryn Finazzo testified that, in July 2003, she was unaware of the five-year responsible escrow experience requirement necessary to qualify as an escrow manager. However, on July 19, 2003, the same day she signed the SIQ under penalty of perjury, she also signed an affidavit under penalty of perjury, stating that she had read and understood the provisions of the California escrow law. She explained the discrepancy between that averment and her lack of knowledge concerning the experience requirement by testifying that she had apparently failed to read the escrow law very carefully.

8. After Tamaryn Finazzo submitted the SIQ and EAMQ No. 1, Caliber delayed in capitalizing the corporation in order to observe changes in the market. In February 2004, Caliber's owner notified R. Mares that he wanted to quickly move forward with the application. R. Mares then viewed Caliber's application as an urgent matter.

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9. As part of the license application process, Tamaryn Finazzo was required to disclose the name of an individual at her place of employment who could verify her inclusive employment dates. This presented a problem for her because of an apparent custom in the escrow industry, according to which an individual was immediately discharged from employment if his/her employer learned that he/she was contemplating a job change. Since she was not yet ready to leave Escrow Cheque to go to Caliber, she was reluctant to have her employment verified by Escrow Cheque's owner, Marcia Bouie. Tamaryn Finazzo discussed the problem with personnel from R. Mares, who informed her that her employment could be verified by anyone at the company with authority to do so, and that employment was frequently verified by a company's Human Resources Manager. At that time, no one at R. Mares knew whether Escrow Cheque had either a Human Resources Department or a Human Resources Manager; nor did anyone at R. Mares know the name of any individual at Escrow Cheque authorized to verify Tamaryn Finazzo's employment, except for "Linda Moreau," the name Tamaryn Finazzo provided on her handwritten EAMQ No. 1. For reasons not disclosed by the evidence, that name was later changed to Chereen Thompson on the EAMQ.

10. Joanne Finazzo is Tamaryn Finazzo's mother. At all relevant times, Joanne Finazzo worked as an escrow secretary at Escrow Cheque. She recently resigned from that position, having held it for almost 20 years. Joanne Finazzo occasionally goes by the surname of "Allen," the name of a man with whom she has had a romantic relationship, and with whom she has shared her home for 24 years. However, except for the incident referenced below, Joanne Finazzo has never used the name "Allen" professionally, or in any manner relating to her work at Escrow Cheque.

11. Joanne Finazzo was never authorized to verify the employment of anyone at Escrow Cheque.

12. During the course of the license application process, Tamaryn and Joanne Finazzo planned that Joanne Finazzo would join and work with Tamaryn Finazzo at Caliber when Tamaryn Finazzo became Caliber's escrow manager.

13. On March 16, 2004, Catalina Figueroa, Operations Manager for R. Mares, faxed a printed version of the EAMQ ("EAMQ No. 2") to Tamaryn Finazzo for her signature. The document was to be signed under penalty of perjury. EAMQ No. 2 reflected all of the employment history provided to R. Mares by Tamaryn Finazzo, and it contained the name, Chereen Thompson, as the individual who could verify her employment. A brief paragraph on the fax cover sheet instructed Tamaryn Finazzo to sign the document, fax a copy back to R. Mares, and forward the original via same day or overnight courier service to R. Mares. R. Mares did not receive any response to that facsimile transmission.

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14. On March 31, 2004, Ms. Figueroa again faxed EAMQ No. 2 and the instructions to Tamaryn Finazzo. Tamaryn Finazzo decided to alter the form by changing an employment date and the name of the individual who could verify her employment. Using correction fluid, she changed her starting date as an escrow officer at Escrow Cheque from "8/1991" to "4/1998," and changed the name of the individual who could verify her employment to "Joanne Allen." Her corrections appeared in a font disparate from that used by R. Mares. She signed EAMQ No. 2 under penalty of perjury.

15. Tamaryn Finazzo then changed her mind and telephoned Ms. Figueroa. She asked Ms. Figueroa to change her starting date with Escrow Cheque as an escrow officer to "7/19/2001," her starting date at Diversified Title (formerly South Coast Escrow, and referenced on EAMQ No. 2 as South Coast Title) from "7/1989" to "2/2000," her termination date at Diversified Title from "8/1991" to "6/2001," and the individual who could verify her employment to "Joanne Allen."

16. Ms. Figueroa made the changes requested by Tamaryn Finazzo, printed a corrected EAMQ ("EAMQ No. 3") and faxed it back to Tamaryn Finazzo with instructions for her to send EAMQ No. 3 to the Department via overnight courier with tracking service for 10:00 a.m. delivery. It was important to Ms. Figueroa to have the document delivered to the Department the next day because the individual at the Department who would review it would be out of the office the following week.

17. Tamaryn Finazzo received EAMQ No. 3, signed it under penalty of perjury, and faxed it back to Ms. Figueroa. She then took EAMQ No. 2, containing her alterations, to her mother, with instructions to immediately have the document sent to the Department via overnight courier.

18. Upon its receipt, Ms. Figueroa faxed EAMQ No. 3 to the Department. Thus, by the following day, the Department was in possession of both EAMQ No. 2 and EAMQ No. 3, containing inconsistent facts, and signed by the same individual under penalty of perjury.

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19. The same day, March 31, 2004, Ms. Figueroa faxed an employment verification for Tamaryn Finazzo to "Joanne Allen" at Escrow Cheque. At the administrative hearing, Joanne Finazzo testified she thought it odd that she was being referred to professionally as "Allen" but, because Tamaryn Finazzo told her that Ms. Figueroa had instructed her to use "Joanne Allen," and because she had seen her name as "Allen" on a fax cover sheet, she chose not to question it. That testimony was not credible. Joanne Finazzo had worked for almost 20 years as an escrow secretary and was extremely well regarded by her employer as extraordinarily conscientious and trustworthy. It is illogical that Joanne Finazzo would blindly, and without complicity, accept instructions to her, addressed to her in a name she never used professionally, to perform a task she was unauthorized to perform, on behalf of her own daughter.

20. Tamaryn Finazzo completed the employment verification for her mother's signature. She indicated on the form that her dates of employment at Escrow Cheque were "4/1998 to 10/1999" and "7/2001 to PRESENT." Under the heading "Position title(s)," she wrote "ESCROW OFFICER." Upon Tamaryn Finazzo's instruction, Joanne Finazzo signed the employment verification as "Joanne Allen." Joanne Finazzo designated her own title as "Escrow Officer," a title she was not authorized to use. After Joanne Finazzo signed the employment verification, Tamaryn Finazzo faxed it to the Department.

21. On April 1, 2004, Joanne Finazzo faxed the executed employment verification to Ms. Figueroa.

22. On the same day, the Department wrote to "Joanne Allen" requesting her completion of a questionnaire on behalf of Tamaryn Finazzo. That letter was received by Escrow Cheque's owner, Marcia Bouie. On April 9, 2004, Ms. Bouie responded to the Department's request, indicating that Tamaryn Finazzo had been rehired from July 23, 2001 to April 9, 2004[5] as an escrow officer, and that she had previously worked for Escrow Cheque as an escrow secretary from April 29, 1998 to October 25, 1999. Ms Bouie forwarded the questionnaire to the Department, together with a letter, which stated in part:

> The letter addressed to the Escrow Cheque Corp. was to the attention of a Joanne Allen. Please be advised that this corporation has never, nor does this corporation employee [sic] a Joanne Allen. However, we do have a Joanne Finazzo which [sic] is Tammy Finazzo's mother.
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> I have been the only corporate officer of this company since we opened our doors in February of 1984, and cannot imagine why Tammy or her mother felt they would be able to respond to your request.

[5] Ms. Bouie fired Tamaryn Finazzo when she learned of her intended transfer to another escrow agent. However, Ms. Bouie allowed Tamaryn Finazzo to remain employed until April 9, 2004

23. At the administrative hearing, Tamaryn Finazzo testified that she made a mistake in having EAMQ No. 2 sent to the Department, that she meant to send EAMQ No. 3 instead, but mislaid it or confused it with the inaccurate EAMQ (EAMQ No. 2). That testimony was not credible. Tamaryn Finazzo herself faxed EAMQ No. 3 to Ms. Figueroa. It is most unlikely that, upon doing so, she would immediately either put it down or leave it in the fax machine[6] and pick up a different document to take to her mother, in the same building, to send to the Department.

24. Tamaryn Finazzo also testified that she made her error because she was in a hurry to leave the office to keep an appointment with a client. That testimony was not persuasive. She had enough time to review EAMQ No. 2 and to correct a few of its inaccuracies herself, sign it under penalty of perjury, telephone Ms. Figueroa, advise Ms. Figueroa of the changes she wanted made, wait for Ms. Figueroa to make the changes and fax EAMQ No. 3 to her, review EAMQ No. 3 and sign it under penalty of perjury, fax EAMQ No. 3 to Ms. Figueroa, fill out the employment verification, take EAMQ No. 2 and the employment verification to Joanne Finazzo, and give Joanne Finazzo handling instructions for those documents. Tamaryn Finazzo was aware, at the time she signed and faxed EAMQ No. 3, that she was in possession of two EAMQs containing disparate information, and had signed both of them under penalty of perjury. If she had sufficient time to accomplish all of the above tasks, she surely had sufficient time to ensure against confusing two similar, signed and sworn documents, the accuracy of which she knew the Department would rely upon, based on her declaration made under penalty of perjury.

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[6] Tamaryn Finazzo testified she might have left EAMQ No. 3 in the fax machine. She also testified that she does not know where that document is today, but that it may be at home or on her desk. Such a lack of attention to detail by an escrow officer, much less an escrow manager, is an extremely troubling characteristic for an individual in as detail-oriented and document-intensive business as is the escrow industry.

25. At the administrative hearing, Tamaryn Finazzo testified that (1) during the application process, Ms. Figueroa was aware of the mother/daughter relationship of Joanne and Tamaryn Finazzo, (2) that, when Tamaryn Finazzo expressed concern about being discharged if her employer learned she was seeking other employment, Ms. Figueroa asked whether Joanne Finazzo used any other names, and (3) that, upon learning that Joanne Finazzo also used the name "Allen," Ms. Figueroa suggested that Tamaryn Finazzo have Joanne Finazzo verify her employment using the name "Joanne Allen." That testimony was not credible. Not only were those allegations denied by Ms. Figueroa at the administrative hearing, they lack both logic and reason. First, had Tamaryn Finazzo's testimony been accurate, no need would have existed to list the names Linda Moreau or Chereen Thompson on any of the SIQ's. "Joanne Allen" could have been listed initially, thereby obviating any problem Tamaryn Finazzo faced with respect to the employment verification. Secondly, it was R. Mares's policy to not make recommendations of individuals for employment verification purposes and, in most cases, its personnel were unaware of the identities of a corporation's employees who were authorized to verify employment. Third, R. Mares had nothing to gain by assisting in the falsification of an escrow agent license application. Lastly, the applicant, Caliber Escrow, was R. Mares's client. It would have been against Caliber's interest to use an incorrect name to verify employment or to misrepresent the experience of its escrow manager, since doing so would place Caliber in a position of facing departmental discipline once the Department became aware of the misrepresentation(s).

26. The only corroborating evidence to the claim that Ms. Figueroa knew Joanne Finazzo was Tamaryn Finazzo's mother, came from Joanne Finazzo. Joanne Finazzo spoke with Ms. Figueroa by telephone on two occasions, and identified herself as Tamaryn Finazzo's mother. However, those conversations took place in April or May, well after the misrepresentations were made.

27. At the administrative hearing, Tamaryn Finazzo testified that her failure to disclose on the employment verification that she had worked as an escrow secretary during her first course of employment with Escrow Cheque had been a "mistake." That testimony was not credible in light of the many other misrepresentations Tamaryn Finazzo made in connection with the Caliber application, and her lack of credibility while testifying at the administrative hearing.

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LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to bar Respondent, Tamaryn Finazzo, from any position of employment by, management of, or control of any escrow agent, pursuant to Financial Code section 17702, for willfully making an untrue statement of a material fact in an application, and willfully omitting a material fact which is required to be stated in an application, as set forth in Findings 3 through 6, 9 through 23, and 24 through 27.

2. Cause exists to bar Respondent, Joanne Finazzo, from any position of employment by, management of, or control of any escrow agent, pursuant to Financial Code section 17702, for willfully making an untrue statement of a material fact in an application, and willfully omitting a material fact which is required to be stated in an application, as set forth in Findings 9 through 12, 14, 15, and 21 through 26.

Financial Code section 17702 states:

> It is unlawful for any person to willfully make any 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.

It cannot be denied that, even in an industry as detail-oriented as the escrow industry, human beings occasionally make innocent errors and unintentional misrepresentations. But innocent errors and unintentional misrepresentations did not occur in this case. This was not a situation in which a date or a name on a document was overlooked. This case involved a scheme by two related individuals, both employed in the same escrow agency, to mislead the Department into believing one of them qualified to hold the position of an escrow manager.

Respondents argued that, intent being an essential element in establishing a violation of Financial Code section 17702, they could not have violated section 17702 because they lacked any intent to misrepresent the facts regarding Tamaryn Finazzo's employment experience, or Joanne Finazzo's position with Escrow Cheque. To the extent that, by "intent" they meant willful conduct, they correctly stated the law but reached the wrong conclusion.

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Section 17702 requires that a misrepresentation of material fact in an application be willful in order to be deemed unlawful. The word "willfully," as used in section 17702, is not defined in the Financial Code. However, in *Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 554, the Court permitted the use of Penal Code section 7 to define terms in other codes when such terms were otherwise undefined. Penal Code section 7 defines "willfully" as follows:

> The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

Had this matter involved an inaccuracy on a single document, Respondents' argument may have been more persuasive. However, far more than an inaccuracy on a single document was involved in this case. Tamaryn Finazzo's misrepresentations began as early as July 2003, when she submitted her sworn and notarized SIQ, containing material misrepresentations relating to her escrow employment history. Her misrepresentations continued in March 2004 with her falsifications on the EAMQs, both with respect to her employment history and the identification of the individual authorized to verify her employment. Even EAMQ No. 3, which accurately reflected her employment history, still contained the name "Joanne Allen" as the individual authorized to verify employment at Escrow Cheque. Thus, Tamaryn Finazzo willfully made material misrepresentations on all three EAMQs she submitted. The number of misrepresentations she made, the number of documents on which she made the misrepresentations, and her lack of credibility at the administrative hearing, evince Tamaryn Finazzo's willingness to make misrepresentations of material facts to the Department, in her attempt to further Caliber's license application, and to become Caliber's escrow manager.

Joanne Finazzo's conduct also meets the definition of willful. She made no attempt to correct the name by which she was referenced on the employment verification. She signed that name to the verification even though she never used the name in her professional capacity. She identified herself as an escrow officer without authorization to do so. Finally, she misrepresented to the Department that she was an individual at Escrow Cheque authorized to provide employment verifications.

Respondents argued that they are innocent of any wrongdoing because they relied on the instructions of R. Mares to name "Joanne Allen" as the individual at Escrow Cheque authorized to provide employment verifications, and to have Joanne Finazzo provide the employment verification, using the name "Joanne Allen." That argument fails on three grounds.

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First, Respondents failed to prove that R. Mares personnel instructed either Tamaryn Finazzo or Joanne Finazzo in the manner they assert. On the contrary, R. Mares did not know whether Escrow Cheque had either a Human Resources Department or a Human Resources Manager, and, except for those provided by Tamaryn Finazzo, it did not know the identity of the authorized individual(s) for employment verifications. Even if R. Mares did have that information, its recommendation of a specific individual would have violated its policy, and no such violation occurred.

Secondly, Respondents failed to offer any authority for the proposition that following the instructions of a private entity such as R. Mares relieves them of liability pursuant to section 17702.

Third, even if R. Mares instructed Tamaryn Finazzo as claimed, given their experience in the escrow business, both Tamaryn Finazzo and Joanne Finazzo knew or should have known that what was being asked of them was dishonest and improper under the escrow law. To violate the law simply because they were told to do so demonstrates a lack of integrity, a characteristic antithetical to those required of individuals who maintain employment in the escrow industry. Such characteristics are the same or similar to those required of a real estate broker. As the court stated in *Golde v. Fox* (1979) 98 Cal.App.3d 167, 177-178:

> A real estate broker often acts in a confidential and fiduciary capacity for his clientele. The term "honesty" as used in section 10152 is to be given the broadest possible meaning. (Rhoades v. Savage, supra, 219 Cal.App.2d 294, 299) The real estate profession has, over a period of years, excluded unfit persons and as a result thereof an appreciable amount of public trust and confidence has been built up. The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license.

Respondents also argued that they are innocent of any wrongdoing because Tamaryn Finazzo made a simple error in faxing EAMQ No. 3 to R. Mares and overnighting EAMQ No. 2 to the Department. Tamaryn Finazzo's lack of credibility in that regard is addressed at length above, and need not be repeated here. Suffice it to say that her lack of credibility precludes any finding that her conduct was unintentional. In fact, to make such a finding, the Administrative Law Judge would have to conclude that Tamaryn Finazzo accidentally made the same or similar misrepresentations on at least one SIQ, at least one employment verification, at least one affidavit regarding her knowledge of the escrow law, and three EAMQs.

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Even if such a finding could be made, that degree of negligence and/or lack of knowledge could not be tolerated in a regulated industry such as escrow. For example, in *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518, the Court stated:

> Disciplinary procedures provided for in the Business and Professions Code, such as section 10177, subdivision (d), are to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.

Tamaryn Finazzo and Joanne Finazzo willfully violated section 17702 in several different respects. The public cannot be adequately protected should they be permitted to maintain any position of employment by, management of, or control of an escrow agent.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Respondent, Tamaryn Finazzo, is barred from any position of employment by, management of, or control of any escrow agent.

2. Respondent, Joanne Finazzo, is barred from any position of employment by, management of, or control of any escrow agent.

DATED: September 17, 2004

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings