BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA, Complainant, v. CHRISTIN HARRELL, aka CHRISSY HARRELL, and SUPERIOR ESCROW SOLUTIONS, Respondents.	OAH No. 2015010064

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated April 30, 2015, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on August 20, 2015.

IT IS SO ORDERED this 21st day of July 2015.

/s/
JAN LYNN OWEN
Commissioner of Business Oversight

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Issued to: CHRISTIN HARRELL, aka CHRISSY HARRELL, and SUPERIOR ESCROW SOLUTIONS, Respondents.	Case No. 20252 OAH No. 2015010064

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 9, 2015, in San Diego, California.

Joyce Tsai, Senior Counsel, Department of Business Oversight, represented complainant, Jan Lynn Owen, Commissioner, Department of Business Oversight, State of California.

Christin Harrell, respondent, represented herself.

The matter was submitted on April 9, 2015.

SUMMARY

In order to conduct escrow services in California, a corporation must hold a corporate real estate broker license or be affiliated with a licensed broker who also holds an escrow license.

On March 10, 2014, Christin Harrell, doing business as Superior Escrow Solutions began performing escrow services in connection with a real estate transaction. Ms. Harrell is not licensed to conduct escrows and is not exempt from the licensure requirement. Superior Escrow Solutions has never held a corporate real estate broker license and has never been affiliated with a broker who held both a broker's license and escrow license.

In order to protect the public, cause exists to order Ms. Harrell and Superior Escrow Solutions to desist and refrain from engaging in the business of an escrow agent.

FACTUAL FINDINGS

The Brandon Court Transaction

1. On March 10, 2014, a buyer and seller signed a real estate purchase agreement regarding the sale of a property located at 7261 Brandon Court, Riverside, California ("the Brandon Court transaction"). The escrow company on the purchase agreement is Superior Escrow Solutions ("Superior Escrow").

2. On March 10, 2014, the buyer delivered a $15,000 check to Superior Escrow. Between March 10, 2014, and April 28, 2014, Ms. Harrell provided escrow services under the name Superior Escrow. These services included: accepting the check provided to Superior Escrow on March 10, 2014; issuing supplemental escrow instructions on March 20, 2014; providing copies of the escrow instructions, receipt for deposit of the $15,000 into escrow, and commission instructions to the seller on March 30, 2014; and amending the escrow instructions on May 1, 2014, just prior to the close of escrow.

3. John Spear, the seller's broker, testified at the hearing. According to Mr. Spear, his agents experienced difficulties dealing with Ms. Harrell during the escrow process. Mr. Spear decided to contact the buyer's broker to try and resolve the difficulties. Kyle Boseman is listed as the broker for the buyer on the purchase agreement. Prior to the opening of escrow, Mr. Spear had only spoken over the phone with a male who identified himself as Mr. Boseman two or three times.

Prior to contacting anyone to resolve the escrow difficulties, Mr. Spear ran a query of Mr. Boseman, Ms. Harrell, and Superior Escrow through the online licensing query system maintained by the Bureau of Real Estate. Mr. Spear learned that none of the parties were licensed to perform escrow services in California.

4. Due to his concerns about the lack of licensure, Mr. Spear sent a Notice to Perform and Cancellation instructions to Superior Escrow to cancel escrow on April 28, 2014. Mr. Spear conversed with Ms. Harrell, and only Ms. Harrell, in several e-mail communications subsequent to April 28, 2014, regarding the cancellation. None of the e-mail communications included the name Kyle Boseman.

5. Mr. Spear reported his concerns about Ms. Harrell and Superior Escrow to the governor's office.

The Investigation of Superior Escrow and Ms. Harrell

6. Kathryn Stanbra, a Special investigator with the Bureau of Real Estate, testified at the hearing. Ms. Stanbra received the complaint from Mr. Spear regarding Ms. Harrell and Superior Escrow.

7. According to Ms. Stanbra, in order to conduct escrow services, an entity must be a corporation that holds a corporate real estate broker license, or be affiliated with a licensed broker who has an escrow license attached to their broker license.

Ms. Stanbra conducted research on the bureau's licensing query system. She determined that Ms. Harrell was not a licensed as a real estate broker and did not have an escrow license. Superior Escrow was a fictitious business name only, and it did not hold a corporate real estate broker license. Mr. Boseman was a licensed real estate broker, but did not have an escrow license attached to his broker license. Accordingly, none of the parties were properly licensed to conduct escrow services.

8. Ms. Stanbra learned that the corporation affiliated with Superior Escrow was Maximum Assets, Inc. ("Maximum Assets"). Mr. Boseman was listed in corporate filings as an officer with Maximum Assets. Ms. Stanbra checked Maximum Assets through the bureau's license query system. Maximum Assets did not hold a corporate real estate broker license.

9. On May 6, 2014, Ms. Harrell filed documents with the bureau to affiliate Maximum Assets with Superior Escrow and Mr. Boseman, in order to obtain the corporate real estate broker license.

10. On September 2, 2014, the bureau received a letter from an individual who identified himself as Kyle Boseman indicating that he was resigning as designated officer for Maximum Assets "effective immediately." Accordingly, Maximum Assets is no longer affiliated with a broker.

The November 18, 2014, Desist and Refrain Order

11. Pursuant to Financial Code section 17416, complainant issued an order to desist and refrain on behalf of the bureau against Christin Harrell, aka Chrissy Harrell, and Superior Escrow. In its order, complainant determined that Ms. Harrell, as the control person of Superior Escrow, engaged in escrow services without a license in at least one residential property transaction. This conduct, complainant found, violated Financial Code section 17200.

12. Complainant ordered Ms. Harrell and Superior Escrow to "desist and refrain from engaging in the business of an escrow agent until licensed or exempt on November 18, 2014."

Respondent's Testimony

13. Respondent contends that she should not be the subject of a desist and refrain order because Mr. Boseman was in charge of Superior Escrow and she was merely an employee.

14. Ms. Harrell did not dispute that she handled the escrow services for the Brandon Court transaction from March 10, 2014, to April 28, 2014.

15. Ms. Harrell testified that she went to work for Mr. Boseman in February, 2014, at Superior Escrow. According to Ms. Harrell, when she learned that there were problems with the licensure of Superior Escrow in May 2014, she approached Mr. Boseman about filing the appropriate documents to cure the licensure deficiency.

16. Ms. Harrell testified that when Superior Escrow was audited by the bureau in connection with Ms. Stanbra's investigation, Mr. Boseman "freaked out" and left her to take the blame.

17. Ms. Harrell produced a letter from Zinc Financial in order to prove that Mr. Boseman owned and operated Superior Escrow. The letter bore the signature of Todd Pigott, and stated, "Mr. Boseman called and verified that he is the broker owner of [Maximum Assets] and [Superior Escrow].)" The letter is unauthenticated and Mr. Pigott did not testify. Although the letter was admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d), the letter is insufficient to support a finding that Mr. Boseman was the owner of either Superior Escrow or Maximum Assets because it does not supplement or explain other evidence in the record.

18. Ms. Harrell also submitted a portion of the auditor's report in connection with Ms. Stanbra's investigation. The report indicated that, after learning of unlicensed real estate activity that had occurred under the name of Maximum Assets around April 29, 2014, Mr. Boseman cancelled his status as Maximum's designated officer on September 3, 2014. The auditor's report was admitted as administrative hearsay. The information supplements and explains the testimony of Ms. Stanbra, as well as the certified documents provided by complainant, demonstrating that Mr. Boseman did not have any connection with the activities occurring under the name Maximum Assets or Superior Escrow Solutions.

19. Ms. Harrell currently works out of her home doing taxes. Her home address is the same address listed on all of the documents connected with Superior Escrow.

20. Respondent provided no admissible documentary evidence to support her testimony that Mr. Boseman was connected to the Brandon Court transaction.

21. Ms. Harrell formerly held a real estate agent license in the 1990s. She operated two real estate offices and handled several thousand transactions.

The Department of Real Estate brought an accusation against Ms. Harrell on June 24, 2002 (Case No. H-29527 LA), for misrepresentation involving lender fraud based on her acting as a selling, listing, and escrow agent for a mortgage company.[1] As stated in the

[1] The accusation referred to Ms. Harrell as Christin Bell. Ms. Harrell stated that she is the same person identified in the accusation.

accusation, Ms. Harrell falsely represented to lenders that earnest money deposits had been made, when in fact, they had not.

On November 11, 2003, Ms. Harrell signed an agreement to surrender her real estate agent license. In her stipulation surrendering her license, she admitted that the allegations in the accusation were true and correct. In a decision and order effective December 3, 2003, the Department of Real Estate revoked Ms. Harrell's real estate agent license.

LEGAL CONCLUSIONS

Applicable Law

1. Financial Code section 17200 provides that it is unlawful for any person to engage in business as an escrow agent within this state except by means of a corporation duly organized for that purpose and licensed by the commissioner as an escrow agent.

2. Financial Code Section 17006, subdivision (a)(4), exempts from the corporate licensing requirement any licensed broker "while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required."

3. Financial Code section 17416 authorizes the commissioner to order any person engaged in the business of receiving escrows for deposit or delivery who does not hold an escrow license and is not otherwise exempt from the licensure requirement, to desist and to refrain from engaging in that business.

4. Financial Code section 17006.5 provides that the burden of proving an exemption or an exception from a definition is on the person claiming the exemption or exception.

Evaluation

5. It is undisputed that Ms. Harrell is not licensed to perform escrow services. Ms. Harrell is not a broker, and there is no exemption applicable to her activities.

6. Neither Superior Escrow nor Maximum Assets has ever held a corporate real estate broker license or been affiliated with a broker who held a broker's license and escrow license. Consequently, the corporate broker exemption found in Financial Code section 17006 does not apply to the activities of Superior Escrow or Maximum Assets.

7. Although Mr. Spears spoke with an individual on the phone who referred to himself as Mr. Boseman, he never actually met the person with whom he had the conversations. When the Brandon Court property transaction started to unravel, Mr. Spear

attempted to visit the offices of Superior Escrow. The only person he found in the office was Ms. Harrell. The only person who ever answered the phone at Superior Escrow was Ms. Harrell. The only person who responded to his e-mail communications was Ms. Harrell.

8. Additionally, the document that identified Superior Escrow as a fictitious business was signed by Ms. Harrell, in her capacity as President. The address listed on the fictitious business name statement for Superior Escrow at "3297 Arlington Ave. #208, Riverside, CA 92506", was the same address used on all the documents pertaining to the escrow opened in the Brandon Court transaction. Further, Ms. Harrell is currently self-employed and does taxes out of her *home*. Ms. Harrell identified the Arlington Avenue address as her *home* address. This is also the same address affiliated with Superior Escrow and Maximum Assets.

9. Ms. Harrell's testimony regarding Mr. Boseman's connection with Superior Escrow is not credible, and insufficient evidence was presented to establish that Mr. Boseman had any connection to the Brandon Court transaction.

10. Regardless, even if Mr. Boseman owned and operated Superior Escrow and Maximum Assets as Ms. Harrell contends, he was not properly licensed to conduct escrow activity. Therefore, the broker exemption under Financial Code section 17006 is inapplicable.

Cause Exists to Affirm the Desist and Refrain Order

11. Cause exists to affirm the Commissioner's November 18, 2014, Desist and Refrain Order pursuant to Financial Code section 17416.

ORDER

Superior Escrow Solutions and Christin Harrell, aka Chrissy Harrell, are ordered to desist and refrain from engaging in the business of an escrow agent unless and until licensed or exempt.

DATED: April 30, 2015

/s/
KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings