

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

v.

NORTHERN CALIFORNIA ESCROW
SERVICES, INC.,

Respondent.

License No. 963-2552

OAH No. 2014040336

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated August 28, 2014, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on January 10, 2015.

IT IS SO ORDERED this 11th day of December, 2014.

COMMISSONER OF BUSINESS OVERSIGHT

/s/

Jan Lynn Owen

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, Office of Administrative Hearings, State of California, heard this matter on August 25, 2014, in Oakland, California.

Johnny Vuong, Corporations Counsel, represented complainant Jan Lynn Owen, Commissioner of Business Oversight.

Jennifer Felten, Attorney at Law, represented Northern California Escrow Services, Inc., and its president, Carol Signor, who was present throughout the administrative hearing.

The matter was submitted for decision on August 25, 2014.

FACTUAL FINDINGS

1. The Department of Business Oversight (department) is the agency responsible for enforcement of the Escrow Law of California (Financial Code section 17000 et seq.).
2. Respondent Northern California Escrow Services, Inc. (NCES), is an escrow agent licensed by the Commissioner. NCES has a principal place of business located at 5540 Almaden Expressway, Suite A, San Jose, California.

3. On February 4, 2014, the Commissioner filed a notice of intention to issue an order suspending NCES's escrow agent license. On the same date, the Commissioner issued an accusation and order imposing penalties pursuant to Financial Code section 17409. NCES timely filed a notice of defense and this hearing followed.

Annual Report Filings

4. Pursuant to Financial Code section 17406, all licensees under the Escrow Law are required to file an annual audit report containing audited financial statements prepared by certified public accountants (Annual Report) within 105 days after the close of the licensee's fiscal year. Escrow agents have fiduciary responsibilities to the members of the public, and Annual Reports are critical to the department's ability to monitor and assure that capital requirements are met in order to protect the public.

2012 ANNUAL REPORT

5. NCES's 2012 fiscal year end was June 30, 2012. NCES was therefore required to file its 2012 Annual Report on or before October 15, 2012.

6. On May 8, 2012, the Commissioner provided advance notice to NCES, in a letter from Escrow Specialist Richard Malme, that its 2012 Annual Report would be due on October 15, 2012. Malme notified NCES in the May 8, 2012 letter that failure to file the Annual Report by the deadline could result in assessment of penalties, a special examination and/or administrative action. NCES failed to file the 2012 Annual Report by October 15, 2012.

7. On October 22, 2012, Malme sent a letter served on NCES by certified mail demanding that its 2012 Annual Report be filed within 10 days of October 22, 2012, or the Commissioner would assess penalties for each day the report was late, in addition to possibly conducting a special examination and/or taking administrative action. Following the receipt of the letter, NCES's president, Carol Signor, contacted Malme and requested an extension. Malme denied the extension request because of NCES's history of filing late reports. NCES filed its 2009 Annual Report on November 23, 2009 (39 days late) and its 2010 Annual Report on December 29, 2010 (72 days late).

8. On December 19, 2012, Malme contacted Signor by telephone concerning the overdue 2012 Annual Report. Signor advised Malme that the report would be filed in January 2013. The report was not filed in January 2013. On February 15, 2013, Malme again contacted Signor to inquire about the status of the 2012 Annual Report. Signor advised Malme that the 2012 report would be filed in March 2013. The report was not filed in March 2013, prompting Malme to contact Signor on April 2, 2013. Signor advised Malme on April 2, 2013, that the accountants had not yet begun the audit process, but that the report would be filed soon. NCES's 2012 Annual Report was received by the Commissioner on June 19, 2013, 247 days late.

2013 ANNUAL REPORT

9. NCES's 2013 fiscal year end was June 30, 2013. Accordingly, NCES was required to file its 2013 Annual Report by October 15, 2013. As of the date of hearing, NCES had not filed its 2013 Annual Report. It is now over 300 days late.

PENALTIES ORDERED ON FEBRUARY 4, 2014

10. In her order, the Commissioner imposed \$56,000 for NCES's failure to timely file its 2012 Annual Report. The Commissioner ordered the assessment of penalties against NCES for its failure to file its 2013 Annual Report in the amount of \$50 per day for the first five days that the 2013 Annual Report was late, and \$250 per day thereafter until the 2013 Annual Report is filed.

Net Worth and Liquid Asset Requirements

11. Pursuant to Financial Code section 17210, all licensees under the Escrow Law are required at all times to maintain a tangible net worth of \$50,000, including liquid assets of at least \$25,000 in excess of current liabilities.

12. A regulatory examination of NCES was commenced in June 2012. During the examination, the examiner reviewed NCES's financial statements for the period ending May 31, 2012, for compliance with Financial Code section 17210. The examination revealed that NCES was deficient in meeting the tangible net worth requirements by \$49,364.51, and the liquid asset requirements by \$36,106.60.

13. On December 21, 2012, Malme sent a letter to NCES requesting that NCES correct its tangible net worth and liquid asset deficiencies and send proof of the correction, including a corporate resolution acknowledging any capital contributions, within 30 days. NCES did not respond to the letter.

14. NCES's 2012 Annual Report was received by the Commissioner on June 19, 2013. A review of the report revealed that NCES was deficient in meeting the liquid asset requirement of the Escrow Law by \$63,929. On June 25, 2013, Malme sent a letter to NCES requiring it to correct the deficiency and provide proof to the Commissioner within 30 days of the letter. On October 14, 2013, the Commissioner received a compilation report completed on June 30, 2013. Malme's review of the documentation provided revealed a \$23,222 deficiency in liquid assets. Malme communicated the finding to Signor by telephone and requested that she correct the deficiency.

15. On August 31, 2013, Malme received a copy of a \$25,000 cashier's check made out to NCES, and a deposit slip indicating that the check had been deposited in the NCES account. The \$25,000 deposit did not correct the liquid asset deficiency however. In order to correct the deficiency, NCES needs to submit an updated compilation report documenting the current liabilities and a resolution from the NCES Board of Directors

acknowledging that the \$25,000 deposit constituted a capital contribution rather than a loan. Malme sent an email message to Signor requesting the additional information. Neither an updated financial statement nor a board resolution was received from NCES.

Examination Costs

16. Pursuant to Financial Code section 17405.1, costs associated with examinations conducted by the Commissioner on a license are borne by the licensee. In January 2013, the Commissioner sent an invoice to NCES in the amount of \$22,302.83 (January 2013 Invoice) for an examination conducted in 2012. To date, NCES has not paid the costs associated with the January 2013 Invoice.

17. In August 2013, an examination bill in the amount of \$19,298.58 was sent to NCES (August 2013 Invoice) for a separate examination conducted on NCES's license. On November 21, 2013, the Commissioner received a \$300 payment from NCES toward the August 2013 Invoice. The balance on the August 2013 Invoice is outstanding.

Respondent's Evidence

18. NCES presented no evidence at hearing.

LEGAL CONCLUSIONS

Cause to Suspend NCES's License

1. Financial Code section 17608, subdivision (b), provides that the Commissioner may suspend or revoke a license upon finding that the licensee has violated any provision of the Escrow Law or any rule promulgated thereunder.

2. Financial Code section 17210 provides that a licensed escrow agent shall at all times maintain a tangible net worth of \$50,000, including liquid assets of at least \$25,000 in excess of current liabilities.

As set forth in Factual Findings 11 through 15, NCES failed to maintain a tangible net worth of \$50,000, and liquid assets of at least \$25,000 in excess of liabilities.

3. Financial Code section 17405.1 provides in pertinent part:

The cost of every inspection and examination of a licensee or other person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction.

The Commissioner instituted regulatory examinations of NCES in 2012 and 2013. NCES was billed \$22,302.83 in January 2013 for the 2012 examination, and \$19,298.58 in August 2013 for the 2013 examination. NCES did not pay the January 2013 Invoice, and paid only \$300 toward the August 2013 Invoice. (Factual Findings 16 and 17.)

4. Financial Code section 17406, subdivision (a), provides:

Each licensee shall submit to the commissioner, at the licensee's own expense, an audit report containing audited financial statements covering the calendar year or, if the licensee has established a fiscal year, then for that fiscal year, within 105 days after the close of the calendar or fiscal year, as applicable. At that time, each licensee shall also file additional relevant information as the commissioner may require.

5. Financial Code section 17602.5 provides in pertinent part:

If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the date designated for the making of the reports, or within any extension of time granted by the commissioner, . . . such failure shall constitute grounds for the suspension or revocation of the license held by the escrow agent.

NCES failed to timely file its 2012 and 2013 Annual Reports. (Factual Findings 4 through 9.)

6. Pursuant to Financial Code sections 17210, 17405.1, 17406, subdivision (a), 17602.5, and 17608, subdivision (b), cause exists to suspend or revoke NCES's license. The Commissioner seeks to suspend NCES's license until the following three conditions are met: 1) the 2013 Annual Report is filed pursuant to Financial Code section 17406; 2) the examination bills issued to NCES in January and August 2013 are paid in full pursuant to Financial Code section 17405.1; and, 3) NCES submits sufficient proof to the Commissioner that it meets the liquid asset requirement pursuant to Financial Code section 17210. Suspension of NCES's license until these conditions are met is reasonable and will be ordered.

Cause to Issue Order Imposing Penalties

7. Financial Code section 17408, subdivision (b), provides:

The commissioner may impose by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the

commissioner, or (2) to furnish any material information required by the commissioner to be included in any report. The amount of the penalty may not exceed one hundred dollars (\$100) for each day of the first five days the report or information is overdue and, thereafter, may not exceed five hundred dollars (\$500) for each day the report or information is overdue.

8. NCES has failed to timely file its 2012 and 2013 annual reports, and to furnish material information requested by the Commissioner. (Factual Findings 4 through 15.) The maximum penalty for filing its 2012 Annual Report 247 days late is \$500 (for the first five days) plus \$121,000 (242 days at \$500 per day). The Commissioner has ordered the imposition of penalties in the amount of \$56,000 for the late filing of NCES's 2012 Annual Report. The order is reasonable and will be affirmed.

In addition, the Commissioner has ordered \$50 in penalties for the first five days that the 2013 Annual Report was overdue and \$250 per day thereafter until the 2013 Annual Report is filed. The order is reasonable and will be affirmed.

ORDER

1. The escrow agent license of Northern California Escrow Services, Inc. (No. 963-2552) is suspended pursuant to Financial Code section 17602.5 and 17608, until the following three conditions are met:

- a) The 2013 Annual Report is filed pursuant to Financial Code section 17406;
- b) The examination bills issued to Northern California Escrow Services, Inc., in January and August 2013 are paid in full pursuant to Financial Code section 17405.1; and,
- c) Northern California Escrow Services, Inc., submits sufficient proof to the Commissioner that it meets the liquid asset requirement pursuant to Financial Code section 17210.

2. The Order imposing penalties pursuant to Financial Code section 17408 is affirmed:

- a) Northern California Escrow Services, Inc., shall pay to the Commissioner \$56,000 in penalties for the late filing of the 2012 Annual Report; and,
- b) Northern California Escrow Services, Inc., shall pay to the Commissioner \$50 in penalties for the first five days that the 2013 Annual Report was not

submitted by the demand date and \$250 per day thereafter until the 2013 Annual Report is filed.

DATED: August 28, 2014

JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

