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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of) File No.: 963-2235
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT OF THE STATE OF) ACCUSATION TO ISSUE ORDER BARRING
CALIFORNIA,) FROM ANY POSITION OF EMPLOYMENT,
14) MANAGEMENT OR CONTROL OF ANY
Complainant,) ESCROW AGENT
15)
16 vs.)
17 LORENA Y. MARTINEZ,)
18)
19 Respondent.)
20)

21
22 The Commissioner of Business Oversight (“Commissioner”)¹ is informed and believes and
23 based upon such information and belief, alleges and charges as follows:

24 **I**

25 **Introduction**

26 1. Conquest Escrow, Inc. (“Conquest”) is an escrow agent holding a valid license issued
27 by the Commissioner pursuant to the Escrow Law (Section 17000 et seq. of the California Financial

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¹ As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

1 Code) and has its principal place of business located at 5200 E. Gage Avenue, Bell, California
2 90201.

3 2. Lorena Y. Martinez (“Martinez”) is at all relevant times herein an escrow officer
4 employed by Conquest with a principal place of business located at 5200 E. Gage Avenue, Bell,
5 California 90201.

6 **II**

7 **May 4, 2012 Examination**

8 3. On or about May 4, 2012, the Commissioner commenced a regulatory examination of
9 the books and records of Conquest that disclosed the following:

10 a) In or around March, 2012, Conquest knowingly disbursed or caused the disbursement of
11 escrow funds otherwise than in accordance with escrow instructions, in violation of Financial Code
12 section 17414, subdivision (a)(1) and California Code of Regulations, title 10, section 1738.2.

13 b) In or around March, 2012, Conquest knowingly made or caused to be made a
14 misstatement or omission of material fact in a document pertaining to an escrow or escrow affairs,
15 specifically, the final HUD-1 pertaining to escrow 3826-LYM, in violation of Financial Code section
16 17414, subdivision (a)(2).

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18 **Violations Disclosed in Escrow Numbers 3826-LYM and 3836-LYM**

19 4. On or about December 9, 2011, Conquest opened escrow number 3826-LYM (“Short
20 Sale Escrow”), designating Martinez as the escrow officer, in connection with an all-cash short-sale
21 transaction (“Short Sale”) of residential property located in Los Angeles, California (“Residence”).
22 The escrow instructions dated December 9, 2011 and signed by Buyers and Seller stated in pertinent
23 part:

24 The closing of this escrow is subject to Seller’s lender of record approving
25 of a ‘short payoff’, which means that payoff lender may accept less than
26 the amount due on the Trust Deed of record. Escrow holder is instructed
27 by the Seller(s) to comply with any and all requirements of **1st Payoff** in
28 connection with obtaining the short payoff approval and demand
(emphasis in original).

1 5. Subsequently, on or around January 10, 2012, Conquest opened a second escrow,
2 escrow number 3836-LYM (“Second Escrow”), designating Martinez as the escrow officer, in
3 connection with the Short Sale. The Second Escrow instructions, entitled, “Holding Escrow
4 Instructions” dated January 12, 2012, stated, in pertinent part:

5 My previous instructions in the above numbered escrow are hereby
6 modified – supplemented in the following particulars only. The
7 undersigned Buyer hereby authorizes and instructs Escrow Holder to hold
8 the sum of \$26,000.00 deposited by Buyer. Said funds are to be held until
9 the successful closing of escrow #3826-lym. Furthermore, the
10 undersigned Buyer instructs Escrow Holder to disburse said amount
11 immediately upon closing of said escrow to Seller, without further
12 authorization or instructions of the parties. In the event escrow #3826-lym
13 does not successfully close the said funds to be returned to Buyers. (sic)

11 6. In a letter dated February 27, 2012, Seller’s lender of record (“Lienholder 1”) stated,
12 in pertinent part, the following conditions of approval for the Short Sale:

13 This demand should be used by the closing agent as our formal demand
14 statement . . . [Lienholder 1] will report the debt as ‘settled for less than
15 the amount owed’ and issue a 1099 for the remaining balance . . . The
16 conditions of the approval are as follows: . . . 8. **The sellers will not**
17 **receive any proceeds from this short sale transaction.** If there are any
18 remaining escrow funds or refunds, they will not be returned to the seller;
19 they will be sent to [Lienholder 1] to offset the loss . . .” (emphasis
20 added).

19 7. In a letter dated March 12, 2012, the second lienholder of record for the Residence
20 (“Lienholder 2”) also stated conditions for releasing its lien, including an “Affidavit of ‘Arm’s
21 Length Transaction,” which was executed by Conquest, Buyers, Seller, and the short sale agent. It
22 stated, in pertinent part:

23 2. There are no hidden terms or special understandings between the Seller
24 and the Buyer and/or their respective agents . . . 4. **The Seller shall not**
25 **receive any proceeds from the sale of the Property reflected in the**
26 **Agreement** (emphasis added).

26 8. On or around March 16, 2012, Conquest was notified by the short sale agent that it
27 was “clear to close.”
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1 9. On or around March 19, 2012, Sellers sent a total of \$26,000.00 via wire transfer into
2 Conquest’s escrow trust account pursuant to the Second Escrow instructions, generating a receipt
3 that designated Martinez as the escrow officer. Then, on or around March 20, 2012, Buyers and
4 Seller executed “Amended Escrow Instructions,” which stated in pertinent part:

5 My previous instructions in the above numbered escrow are hereby
6 modified – supplemented in the following particulars only. Escrow
7 Holder is hereby authorized and instructed to issue **Sellers net proceeds**
8 (sic) as follows: [Doe 1] \$8,000.00 // [Doe 2] \$18,000.00 (emphasis
9 added).

10 10. The final HUD-1 prepared by Conquest discloses that the settlement date for the
11 Short Sale of the Residence was March 20, 2012, and the escrow number was 3826-LYM. The final
12 HUD-1 does not mention the Second Escrow, i.e., escrow number 3836-LYM, or the Buyers’
13 \$26,000.00 deposit that occurred on March 19, 2012, to be held on behalf of Seller in connection
14 with the Short Sale of the Residence. An attachment to the final HUD-1 contains an entry for
15 “Relocation Fee For Seller,” but zero funds correspond with that entry.

16 11. On March 20, 2012, Conquest disbursed \$8,000.00 from its escrow trust account to
17 Doe 1, and \$18,000.00 from its escrow trust account to Doe 2, totaling \$26,000.00, pursuant to the
18 Amended Escrow Instructions dated March 20, 2012. The Second Escrow then closed on or around
19 March 20, 2012.

20 12. On or around May 4, 2012, during the Commissioner’s regulatory examination of the
21 books and records of Conquest, the escrow files for the Short Sale Escrow, i.e., escrow number
22 3826-LYM, and the Second Escrow, i.e., 3836-LYM, were reviewed. Conquest disclosed that the
23 Short Sale Escrow and the Second Escrow were related and that the purpose for the Second Escrow
24 was to hold “tenant relocation fees.” However, the final HUD-1 that Conquest prepared and
25 delivered to Lienholder 1 and Lienholder 2 in or around March, 2012, as well as to Buyers and Seller
26 upon closing of the Short Sale Escrow, does not mention \$26,000.00 in “tenant relocation fees.”

27 13. On or around March 20, 2012, Conquest disbursed \$26,000.00 representing “Sellers
28 net proceeds” (sic), contrary to the escrow instructions for the Short Sale Escrow, which stated that
Conquest must comply with any and all requirements of 1st Payoff in connection with obtaining the

1 short payoff approval and demand. An express requirement of the 1st Payoff was that “Seller will
2 not receive any proceeds from this short sale transaction.”

3 **III**

4 **Applicable Law**

5 California Financial Code section 17423 provides in pertinent part:

6 (a) The commissioner may, after appropriate notice and opportunity for
7 hearing, by order, censure or suspend for a period not exceeding 12
8 months, or bar from any position of employment, management, or control
9 any escrow agent, or any other person, if the commissioner finds either of
10 the following:

11 (1) That the censure, suspension, or bar is in the public interest and that
12 the person has committed or caused a violation of this division or rule or
13 order of the commissioner, which violation was either known or should
14 have been known by the person committing or causing it or has caused
15 material damage to the escrow agent or to the public.

16 California Financial Code section 17414 states in pertinent part:

17 (a) It is a violation for any person subject to this division or any director,
18 stockholder, trustee, officer, agent, or employee of any such person to do
19 any of the following:

20 (1) Knowingly or recklessly disburse or cause the disbursement of escrow
21 funds otherwise than in accordance with escrow instructions, or knowingly
22 or recklessly to direct, participate in, or aid or abet in a material way, any
23 activity which constitutes theft or fraud in connection with any escrow
24 transaction.

25 (2) Knowingly or recklessly make or cause to be made any misstatement
26 or omission to state a material fact, orally or in writing, in escrow books,
27 accounts, files, reports, exhibits, statements, or any other document
28 pertaining to an escrow or escrow affairs.

California Code of Regulations, title 10, section 1738.2 states:

An escrow agent shall use documents or other property deposited in
escrow only in accordance with the written escrow instructions of the
principals to the escrow transaction or the escrow instructions transmitted
electronically over the Internet executed by the principals to the escrow
transaction, or if not otherwise directed by written or electronically
executed instructions, in accordance with sound escrow practice, or
pursuant to order of a court of competent jurisdiction.

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IV

Conclusion

The Commissioner finds that, by reason of the foregoing, Lorena Y. Martinez has committed or caused a violation of this division or rule or order of the commissioner, specifically, Financial Code section 17414, subdivision (a), and California Code of Regulations, title 10, section 1738.2, which violation was either known or should have been known by the person committing or causing it, and that pursuant to Financial Code section 17423 it is in the best interests of the public to bar Lorena Y. Martinez from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that pursuant to California Financial Code section 17423 Lorena Y. Martinez be barred from any position of employment, management or control of any escrow agent.

Dated: August 18, 2014
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Sophia C. Kim
Corporations Counsel
Enforcement Division