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8

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of the Accusation THE) Case No.: 963-1934
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) ACCUSATION
14)
Complainant,)
15)
16 vs.)
17 ASSET ESCROW SERVICES, INC., TESSA)
M.A. SIMS and RAYNA HILL,)
18)
19 Respondents.)

20 The Complainant is informed and believes, and based upon such information and belief,
21 alleges and charges Respondents as follows:

22 I

23 Respondent Asset Escrow Services, Inc. ("Asset Escrow") is an escrow agent licensed by the
24 California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the Escrow
25 Law of the State of California (California Financial Code Section 17000 et seq.). Asset Escrow has
26 its principal place of business located at 707 Escondido Avenue, Suite 206, Vista, California 92084.
27 Asset Escrow also has two branch locations situated at 2725 Jefferson Street, Suite 12, Carlsbad,
28 California 92008 and 41593 Winchester Road, Suite 202, Temecula, California 92590.

1 Respondent Tessa M.A. Sims ("Sims") is, and was at all times relevant herein, the president
2 and sole shareholder of Asset Escrow.

3 Respondent Rayna Hill ("Hill") is, and was at all times relevant herein, the administrative
4 assistant for Asset Escrow at its Vista location.

5 II

6 On or about May 12, 2006, the Commissioner commenced a regulatory examination of the
7 books and records of Asset Escrow. The regulatory examination revealed among other violations,
8 that trust funds in the amount of \$278,707.17 had been wrongfully transferred from the trust account
9 of Asset Escrow into the general account of Asset Escrow in violation of California Financial Code
10 section 17409. At least \$248,707.17 of the Asset Escrow trust funds wrongfully transferred to the
11 Asset Escrow general account ("general account") were allowed to remain in the general account for
12 anywhere from 1 to 54 days. During this time, certain of these trust funds were used for the general
13 operations of Asset Escrow, and at least \$60,000.00 of these trust funds were transferred to the
14 personal account of Sims during the time period in which she was purchasing the commercial
15 building where the main office of Asset Escrow is located. The commingling of trust funds is
16 prohibited because of the serious risk of misuse and loss. The commingling of trust funds by Asset
17 Escrow resulted in a trust account shortage and numerous ongoing debit balances in violation of
18 California Code of Regulations, title 10, section 1738.1. Asset Escrow has corrected the trust
19 account shortage caused by the unlawful transfers of trust funds.

20 A. Unlawful Transfers:

21 The unlawful transfers discovered during the regulatory examination of Asset Escrow are
22 described as follows:

23 1. On or about January 19, 2006, Respondents issued, and/or caused to be issued, wire
24 number 934 to transfer earned escrow fees from the Carlsbad trust account to the general account.
25 The amount transferred from the Carlsbad trust fund to the general account was \$41,784.78, when
26 earned escrow fees only totaled \$1,784.78. This transfer was in violation of California Financial
27 Code section 17409, which prohibits commingling of trust funds with non-trust funds. The trust
28 funds were not returned to the Carlsbad trust account or any other Asset Escrow trust fund until

1 February 21, 2006, causing a \$40,000.00 shortage (debit balance) in the Carlsbad trust account from
2 January 19, 2006 until February 21, 2006.

3 2. On or about January 31, 2006, Respondents issued, and/or caused to be issued, wire
4 number 952 to transfer earned escrow fees from the Carlsbad trust account to the general account.
5 The amount transferred from the Carlsbad trust fund to the general account was \$9,673.38, however
6 these escrow fees had already been paid. This transfer was in violation of California Financial Code
7 section 17409, which prohibits commingling of trust funds with non-trust funds. The trust funds
8 were not returned to the Carlsbad trust account or any other Asset Escrow trust fund until
9 February 1, 2006, causing a further shortage of \$9,673.38 in the Carlsbad trust account from January
10 31, 2006 until February 1, 2006.

11 3. On or about February 2, 2006, Respondents issued, and/or caused to be issued, wire
12 number 582 to transfer earned escrow fees from the Temecula trust account to the general account.
13 The amount transferred from the Temecula trust fund to the general account was \$2,995.00, however
14 these earned escrow fees had already been paid. This transfer was in violation of California
15 Financial Code section 17409, which prohibits commingling of trust funds with non-trust funds. The
16 trust funds were not returned to the Temecula trust account or any other Asset Escrow trust fund
17 until March 29, 2006, causing a shortage of \$2,995.00 in the Temecula trust account from February
18 2, 2006 until March 29, 2006.

19 4. On or about February 21, 2006, Respondents issued, and/or caused to be issued, wire
20 number 989 transferring \$2,277.00 from the Carlsbad trust account to the general account. There
21 were no earned escrow fees involved with this transfer. This transfer was in violation of California
22 Financial Code section 17409, which prohibits commingling of trust funds with non-trust funds. The
23 trust funds were not returned to the Carlsbad trust account or any other Asset Escrow trust fund until
24 March 28, 2006, causing a shortage of \$2,277.00 in the Carlsbad trust account from February 21,
25 2006 until March 28, 2006.

26 5. On or about February 28, 2006, Respondents issued, and/or caused to be issued, wire
27 number 1009 transferring \$6,040.00 from the Carlsbad trust account to the general account. There
28 were no earned escrow fees involved with this transfer. This transfer was in violation of California

1 Financial Code section 17409, which prohibits commingling of trust funds with non-trust funds. The
2 trust funds were not returned to the Carlsbad trust account or any other Asset Escrow trust fund until
3 March 10, 2006, causing a further shortage of \$6,040.00 in the Carlsbad trust account from February
4 28, 2006 until March 10, 2006.

5 6. On or about March 15, 2006, Respondents issued, and/or caused to be issued, wire
6 number 1147 to transfer earned escrow fees from the Vista trust account to the general account. The
7 amount transferred from the Vista trust fund to the general account was \$37,721.79, when earned
8 escrow fees only totaled \$3,721.79. This transfer was in violation of California Financial Code
9 section 17409, which prohibits commingling of trust funds with non-trust funds. The trust funds
10 were not returned to the Vista trust account or any other Asset Escrow trust fund until March 21,
11 2006, causing a shortage of \$34,000.00 in the Vista trust account from March 15, 2006 until March
12 21, 2006.

13 7. On or about March 15, 2006, Respondents issued, and/or caused to be issued, wire
14 number 1029 to transfer earned escrow fees from the Carlsbad trust account to the general account.
15 The amount transferred from the Carlsbad trust fund to the general account was \$44,410.00, when
16 earned escrow fees only totaled \$4,410.00. This transfer was in violation of California Financial
17 Code section 17409, which prohibits commingling of trust funds with non-trust funds. The trust
18 funds were not returned to the Carlsbad trust account or any other Asset Escrow trust fund until
19 March 22, 2006, causing a further shortage of \$40,000.00 in the Carlsbad trust account from March
20 15, 2006 until March 22, 2006.

21 8. On or about March 15, 2006, Respondents issued, and/or caused to be issued, wire
22 number 653 to transfer earned escrow fees from the Temecula trust account to the general account.
23 The amount transferred from the Temecula trust fund to the general account was \$33,710.00, when
24 earned escrow fees only totaled \$3,710.00. This transfer was in violation of California Financial
25 Code section 17409, which prohibits commingling of trust funds with non-trust funds. The trust
26 funds were not returned to the Temecula trust account or any other Asset Escrow trust fund until
27 March 21, 2006, causing a further shortage of \$30,000.00 in the Temecula trust account from March
28 15, 2006 until March 21, 2006.

1 9. On or about March 20, 2006, Respondents, in what appears to be an attempt to return
2 the trust funds wrongfully transferred via wire number 653 described in paragraph 8 above,
3 transferred \$33,710.00 from the general account to the Vista trust account. However, the unlawful
4 transfer of trust funds had occurred between the Temecula trust account and the general account.
5 This transfer was in violation of California Financial Code section 17409, which prohibits
6 commingling of trust funds with non-trust funds. The general funds were returned to the general
7 account from the Vista trust account on March 21, 2006 at the same time the unlawful transfer of
8 trust funds from the Temecula trust account to the general account was corrected. See paragraph 8
9 above.

10 10. On or about March 21, 2006, Respondents transferred, and/or caused to be
11 transferred, \$3,721.79 in earned escrow fees from the Vista trust account to the general account,
12 however, these earned escrow fees had already been paid. This transfer was in violation of
13 California Financial Code section 17409, which prohibits commingling of trust funds with non-trust
14 funds. The trust funds were not returned to the Vista trust account or any other Asset Escrow trust
15 fund until April 24, 2006, causing a further shortage of \$3,721.79 in the Vista trust account from
16 March 21, 2006 until April 24, 2006.

17 11. On or about April 14, 2006, Respondents issued, and/or caused to be issued, wire
18 number 1199 to transfer earned escrow fees from the Vista trust account to the general account. The
19 amount transferred from the Vista trust fund to the general account was \$82,100.00, when earned
20 escrow fees only totaled \$2,100.00. This transfer was in violation of California Financial Code
21 section 17409, which prohibits commingling of trust funds with non-trust funds. The trust funds
22 were not returned to the Vista trust account or any other Asset Escrow trust fund until May 26, 2006,
23 causing a shortage of \$80,000.00 in the Vista trust account from April 14, 2006 until May 26, 2006.

24 B. Misuse of Trust Funds:

25 A review of the bank account records of Asset Escrow for the period of January 1, 2006
26 through May 31, 2006 disclosed that a significant portion of the Asset Escrow trust funds unlawfully
27 transferred to the general account were used for the general operations of Asset Escrow and the
28 personal use of Sims in violation of California Financial Code section 17414(a)(1) as described in

1 more detail below.

2 1. During January 2006, the amount of trust funds on deposit in the general account was
3 \$40,000.00 beginning on or about January 19, 2006 and increased to \$49,673.38 on or about January
4 31, 2006. The balance in the general account was a negative \$30,135.72 just prior to the transfer of
5 \$40,000.00 in trust funds and a negative \$15,593.89 just prior to the transfer of a further \$9,673.38
6 in trust funds. The balance in the general account was only \$6,879.58 on January 31, 2006 when
7 trust funds on deposit in the general account totaled \$49,673.38 indicating that Asset Escrow was
8 using at least \$42,793.80 in trust funds for general operations in January 2006.

9 2. During February 2006, the amount of trust funds on deposit in the general account
10 fluctuated from \$49,673.38 on or about February 1, 2006, when the general account balance was
11 only \$10,159.63 and ended with \$11,312.00 on or about February 28, 2006, when the general
12 account balance was \$12,282.20. On or about February 15, 2006, the balance in the general account
13 fell to a negative \$21,115.23 when \$42,995.00 in trust funds were on deposit in the general account
14 indicating that Asset Escrow used at least \$21,879.77 in trust funds for general operations in
15 February 2006.

16 3. As of March 1, 2006, the amount of trust funds on deposit in the general account was
17 \$11,312.00 until on or about March 10, 2006 when \$6,040.00 was returned to the Carlsbad trust
18 account. The amount of trust funds on deposit in the general account increased to \$109,272.00 on or
19 about March 15, 2006 when a further \$104,000.00 was wrongfully transferred into the general
20 account. The balance in the general account was only \$16,677.89 after the transfer of the
21 \$104,000.00 in trust funds indicating that Asset Escrow was using trust funds of at least \$92,594.11
22 for general and other operations in March 2006.

23 Additionally, on or about March 8, 2006 and March 15, 2006, the sum of \$26,000.00 and
24 \$34,000.00, respectively, were transferred from the general account to the personal account of Sims.
25 Thereafter, on or about March 15, 2006, the sum of \$68,148.45 was transferred from Sims personal
26 account to an escrow for deposit on behalf of Sims for her purchase of the office building where
27 Asset Escrow was located indicating that trust funds were at least temporarily used to help Sims
28 purchase the office building.

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V

California Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

(c) Any fact or condition now exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.

California Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, . . . bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

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

VI

Complainant finds that, by reason of the foregoing, Respondents have violated California Financial Code sections 17210, 17404, 17409 and 17414 subsection (a)(1) and California Code of Regulations, title 10, sections 1732.2, 1732.3 and 1738.1, and it is in the best interests of the public to revoke the escrow agent’s license of Respondent Asset Escrow and to bar Respondents Sims and Hill from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that the escrow agent’s license of Respondent Asset Escrow be revoked, and that Respondents Sims and Hill be barred from any position of employment, management or control of any escrow agent.

Dated: November 14, 2006
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley, Senior Corporations Counsel