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8 Attorneys for Complainant

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

12 In the Matter of the Accusation of THE) File Nos.: 963-2115
13 CALIFORNIA CORPORATIONS)
14 COMMISSIONER,)
15) ACCUSATION
Complainant,)
16 vs.)
17)
ORANGE COUNTY ESCROW, INC.,)
18 ARMANDO MIRANDA,)
19 Respondents.)

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

22 I

23 Respondent Armando Miranda (“Miranda”) was at all times relevant herein, the owner and
24 president of Orange County Escrow, Inc. (“Orange County”), an escrow agent licensed by the
25 California Corporations Commissioner (“Commissioner” or “Complainant”) pursuant to the Escrow
26 Law of the State of California, California Financial Code Section 17000 *et seq.* Orange County’s
27 principal place of business is located at 2100 North Broadway, Suite 103, Santa Ana, California
28 92705.

II

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2 On or about April 3, 2007, the Commissioner, by and through his staff, commenced a
3 regulatory examination of the books and records of Orange County. The regulatory examination
4 revealed a number of violations, including debit balances due to unauthorized fees and
5 disbursements in violation of California Financial Code sections 17414(a)(1) and 17420¹ and
6 California Code of Regulations, title 10 (“C.C.R.”) sections 1738, 1738.1 and 1738.2. The debit
7 balances from unauthorized fees totaled \$10,025.00 and overdrew the trust account by this amount; a
8 debit balance of \$2,160.39 created by an over disbursement unrelated to escrow fees further
9 overdrew the trust account. The unauthorized fee transfers were purposely taken to cover general
10 account disbursements at the month end.

11 The eight (8) debit balances discovered during the examination of Orange County are
12 described as follows:

13 1. On or about February 2, 2007, in escrow number 10641, Respondents disbursed
14 \$175.00 to Spectrum Community for transfer fees and \$1,985.39 to Team Property Management for
15 homeowner association fees in violation of sections 17414(a)(1) and 17420 and C.C.R. sections
16 1738 and 1738.2, and further resulting in a debit balance of \$2160.39 in violation of C.C.R. section
17 1738.1. The unauthorized fees were replaced on April 4, 2007.

18 2. On or about March 29, 2007, in escrow number 40010, Respondents took
19 unauthorized escrow fees in the amount of \$1225.00 in violation of sections 17414(a)(1) and 17420
20 and C.C.R. sections 1738 and 1738.2, and further resulting in a debit balance in that amount, in
21 violation of C.C.R. section 1738.1. This escrow was a cancelled file with no funds deposited. The
22 unauthorized fees were replaced on April 4, 2007.

23 3. On or about March 28, 2007, in escrow number 40056, Respondents took
24 unauthorized escrow fees in the amount of \$1225.00 in violation of sections 17414(a)(1) and 17420
25 and C.C.R. sections 1738 and 1738.2, and further resulting in a debit balance in that amount, in
26 violation of C.C.R. section 1738.1. This escrow was a cancelled file with no funds deposited. The
27 unauthorized fees were replaced on April 4, 2007.

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¹ All references are to the California Financial Code unless otherwise stated.

1 The old items that had not been adjusted are as follows:

2 1. On or about December 7, 2005, in escrow number 20878, a shortage of \$2,117.34
3 was created in the trust account through a failure to post an outgoing wire to a title company. On
4 August 16, 2007, the shortage was replaced by general account check number 2025; however, on
5 August 20, 2007, the check was returned non-sufficient. The trust funds were finally replaced on
6 September 20, 2007.

7 2. In 2005 escrow fees were taken from fee account numbers 7777, 8888, and 9999 but
8 not posted to the ledger, resulting in a shortage to the trust account of \$2904.41. The shortage was
9 replaced by general account check number 2045 on September 27, 2007.

10 3. Since on or about September 19, 2006, in escrow account number 30357, a shortage
11 of \$1335.34 was created by a duplicate payment. The trust funds were replaced on May 10, 2007.

12 4. Since on or about January 29, 2007, in escrow account number 40153, a shortage of
13 \$935.31 was created by a duplicate payment. The trust funds were replaced on May 10, 2007.

14 5. On or about June 6, 2006, in escrow account number 10059, an over-disbursement of
15 \$100.00 was created due to a failure to pose check number 1687 dated May 11, 2005 and paid on
16 May 19, 2005 for homeowner association fees, in violation of C.C.R. 1738.1. The shortage was
17 replaced by general account check number 2026 on August 16, 2007.

18 IV

19 The regulatory examination also disclosed that Orange County had failed to post and
20 reconcile its general account records in a timely manner, in violation of C.C.R. section 1732.3. On
21 or about September 25, 2007, a demand was made to Miranda to provide the general account bank
22 reconciliation and financial statements. The requested statements were not provided until October
23 16, 2007.

24 V

25 Orange County did not meet the liquidity and tangible net worth requirements from March
26 to September of 2007, in violation of section 17210. The financial statements and general account
27 ledgers disclosed a liquid asset deficiency of \$63,140.00 and a tangible net worth deficiency of
28 \$30,528.00 as of September 30, 2007. Section 17210 requires all escrow agent licensees to

1 maintain liquid assets of at least \$25,000.00 in excess of current liabilities and a tangible net worth
2 of at least \$50,000.00.

3 VI

4 In addition, Orange County was in violation of section 17200.8 for being without an
5 approved Escrow Manager; C.C.R. section 1732 for not having a back-up system to secure the data
6 and information of the trust account; and sections 17405 and 17409 for failure to cooperate with the
7 regulatory examination. On a number of occasions the examiner requested documents needed to
8 complete her examination, and such documents were never provided.

9 VII

10 California Financial Code section 17200.8 provides in pertinent part:

11 (a) Within the organization of each escrow agent corporation, either as
12 an owner, officer, or employee, there shall be one or more persons
13 possessing a minimum of five years of responsible escrow or joint
14 control experience to be stationed at the main office of the
15 corporations and one or more persons possessing a minimum of four
16 years of responsible escrow or joint control experience to be stationed
17 at each branch. At least one such qualified person shall be stationed
18 on duty at each business locations licensed by this division during the
19 time the location is open for business . . .

20 California Financial Code section 17210 provides in pertinent part:

21 (a) An escrow agent licensed on or after January 1, 1986, shall
22 maintain at all times a tangible net worth of fifty thousand dollars
23 (\$50,000), including liquid assets of at least twenty-five thousand
24 dollars (\$25,000) in excess of current liabilities . . .

25 California Financial Code section 17405 provides in pertinent part:

26 (a) The business, accounts and records of every person performing as
27 an escrow agent, whether required to be licensed under this division or
28 not, are subject to inspection and examination by the commissioner at
any time without prior notice . . .

(b) Any person subject to the division shall, upon request, exhibit and
allow inspection and copying of any books and records by the
commissioner or his or her authorized representative . . .

California Financial Code section 17409 provides in pertinent part:

1 Upon request of the commissioner, a licensee shall furnish to the
2 commissioner an authorization for examination of financial records of
3 any trust funds or escrow accounts, maintained in a financial
4 institution, in accordance with the procedures set forth in Section 7473
5 of the Government Code. . .

6 California Financial Code section 17414, subsection (a)(1) provides:

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

10 (1) Knowingly or recklessly disburse or cause the disbursement of
11 escrow funds otherwise than in accordance with escrow instructions,
12 or knowingly or recklessly to direct, participate in, or aid or abet in a
13 material way, any activity which constitutes theft or fraud in
14 connection with any escrow transaction.

15 California Financial Code section 17420 provides in pertinent part:

16 It shall also be a violation for any person to enter into any arrangement
17 . . . or other device permitting any fee, commission, or compensation
18 which is contingent upon the performance of any act, condition, or
19 instruction set forth in an escrow to be drawn or paid, either in whole
20 or in part, or in kind or its equivalent, prior to the actual closing and
21 completion of the escrow.

22 California Code of Regulations, title 10, section 1732 provides:

23 An escrow agent shall maintain its books, records and accounts in
24 accordance with generally accepted accounting principles and good
25 business practice.

26 California Code of Regulations, title 10, section 1732.2 provides in pertinent part:

27 (a) An escrow agent shall establish and maintain currently the
28 following books and records with respect to its escrow accounts:

 (1) Escrow ledger containing a separate ledger sheet for each escrow;

 (2) Escrow liability controlling account;

 (3) Cash receipts and disbursement journal or a file containing copies
 of all receipts and checks and/or check stubs of checks issued by
 the escrow agent . . . The records referred to in subsections (1) and
 (2) shall be reconciled at least once each month with the bank
 statements of the “trust” or “escrow” account. The records
 referred to in subsection (1) shall be reconciled at least once each

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week with the escrow liability controlling account referred to in subsection (2) . . .

California Code of Regulations, title 10, section 1732.3 provides:

An escrow agent shall establish and currently the following books and records with respect to its general accounts:

(a) General ledger reflecting the assets, liabilities, capital, income and expense of the business, in accordance with generally accepted accounting principles;

(b) Cash receipts and disbursements journal.

The bank accounts contained in the general ledger shall be reconciled at least once each month with the bank statements of the general accounts.

California Code of Regulations, title 10, section 1738 provides in pertinent part:

(a) All money deposited in such "trust" or "escrow" account shall be withdrawn, paid out, or transferred to other accounts 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 pursuant to order of a court of competent jurisdiction . . .

California Code of Regulations, title 10, section 1738.1 provides:

An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

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

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.

VIII

California Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity

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for hearing . . . 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 . . .

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.

IX

Complainant finds that, by reason of the foregoing, Respondents Armando Miranda and Respondent Orange County Escrow, Inc. have violated Financial Code sections 17200.8, 17210, 174-5, 17409, 17414(a)(1) and 17420 and California Code of Regulations, title 10, sections 1732, 1732.2, 1732.3, 1738, 1738.1 and 1738.2, and it is in the best interests of the public to revoke the escrow agent’s license of Respondent Orange County Escrow, Inc. and to bar Respondent Armando Miranda from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that the escrow agent’s license of Respondent Orange County Escrow, Inc. be revoked and that Respondent Armando Miranda be barred from any position of employment, management or control of any escrow agent.

Dated: May 16, 2008
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Jennifer A. Granat
Corporations Counsel