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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. RAQUEL BAUER and ROBERT BAUER, Respondents.	Case No.: 963-1931 ORDER BARRING RAQUEL BAUER AND ROBERT BAUER FROM EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY ESCROW AGENT (CALIFORNIA FINANCIAL CODE SECTION 17423)

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

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1. Respondent Robert Bauer was at all times relevant herein, the President of First National Escrow ("First National").

2. Respondent Raquel Bauer was at all times relevant herein, the escrow manager at First National.

State of California – Department of Corporations

3. First National is an escrow agent, licensed by the California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the Escrow Law of the State of California, California Financial Code Section 17000 et seq. (“Escrow Law”).

4. First National has its principal place of business located at 3579 Arlington Avenue, #600, Riverside, California 92506.

5. First National employed as an escrow officer Karen Gardner (“Gardner”).

6. The Commissioner commenced a special examination of the books and records of First National after receiving a complaint on or about March 23, 2010, related to an escrow arranged by Gardner.

7. The Commissioner’s Examiner found several violations of the Escrow Law during the examination, involving multiple transactions handled by Gardner, including misuse of funds, failure to follow escrow instructions, and favoring one party over another in escrows.

8. The Commissioner took enforcement action against Gardner for these violations. The Commissioner issued an Accusation to Bar Gardner from any position of employment, management, or control of any escrow agent, pursuant to Section 17423 of the Escrow Law, for violations of Sections 17414(a)(1) and 17414(a)(2) of that law, as well Sections 1738 and 1738.2 of Title 10 of the California Code of Regulations.

9. Gardner was involved with “lapping” transactions, where she used money from escrows to cover shortages in unrelated escrows, without authorization from the parties whose money she was using. She repeatedly misrepresented to clients what was happening with their money. In the end, Gardner’s unauthorized and illegal use of escrow funds left First National with escrow trust fund shortages of over one million dollars ($1,000,000).

10. Respondent Raquel Bauer was the escrow manager at First National at the time the losses took place. Not only was Raquel Bauer Gardner’s manager, she was also involved in the daily operation of the escrow agent, First National, and as escrow manager, was responsible for escrow officer Gardner’s compliance with the escrow agent’s procedures and compliance with the Escrow Law. As such, she either did know or should have known of Gardner’s illegal activities.

11. Furthermore, Raquel Bauer personally involved herself in at least one of these lapping

transactions. A client to a particular escrow repeatedly spoke to Bauer, and informed Bauer that Gardner had not followed the escrow instructions, and had not returned the client's money as agreed. Bauer made misrepresentations to this client about where the client's money was and when it would be returned. After this, the client threatened legal action via letter sent directly to Raquel Bauer. Only then did the client's money get returned. The Commissioner's Examiner discovered that the money that was used to refund this client came from an unrelated escrow account, without authorization from the parties to that unrelated escrow.

12. Respondent Robert Bauer was the President of First National at the same time these illegal activities took place. As President of a licensed escrow agent under the California Escrow Law, Robert Bauer is responsible for complying with the law and ensuring the escrow agent and its employees comply with the Escrow Law. As such, Robert Bauer had a duty to know what was happening at the escrow agent and to address it promptly. In addition, he has a responsibility to work with the Commissioner to provide information and assistance to address the client losses at First National.

13. First National has declared bankruptcy. However, First National still holds an escrow agent license from the Commissioner, and therefore must still comply with the California Escrow Law and regulations.

14. In order to investigate these losses and violations further, and to attempt to obtain replacement funds for customers of First National, the Commissioner required information and records from First National.

15. On June 23, 2011, the Commissioner sent a letter to Robert Bauer, as President of First National, that requested business records of First National, pursuant to section 17405 of the California Financial Code and section 1730, Title 10, of the California Code of Regulations. It was sent certified mail, return receipt requested, and was returned by the Post Office as unclaimed.

16. On July 15, 2011, the Commissioner sent a follow up letter to Robert Bauer, via regular mail, requesting the same business records, and enclosing the June 23rd letter. The Commissioner sent a copy of these letters, via regular mail, to First National's bankruptcy attorney, Walter Scott. The letters both requested a response within fifteen (15) days.

State of California – Department of Corporations

17. The Commissioner also contacted Raquel Bauer via phone and requested access to the records.

18. To date, the Commissioner has not received the requested information and records.

II

California Financial Code section 17405 provides in pertinent part:

> (a) The business, accounts and records of every person performing as an escrow agent, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice….
>
> (b) Any person subject to this 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 Code of Regulations, title 10, section 1730(b) provides:

> An escrow agent shall notify the Commissioner in writing of the location of its books, records and accounts. Such books, records and accounts shall be maintained at such location unless the escrow agent notifies the Commissioner in writing at least 15 days prior to changing the location of such books.

California Code of Regulations, title 10, section 1738 provides:

> (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.
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> (b) The escrow agent shall comply with, at a minimum, the following procedures for wire transfers (also known as "electronic fund transfers"):
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> (1) The instructions of the principals authorizing the wire transfer must contain, at a minimum, the amount of the funds to be wire transferred, the name of the financial institution, the account number and the account name, receiving the funds.
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> (2) The escrow agent shall retain confirmation of the wire transfer from the financial institution that contains, at a minimum, the amount of the funds wire transferred and the account number and name of the account the funds were wire transferred to.
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> (3) If necessary, the escrow books shall be properly adjusted to reflect the wire transfer of funds from the escrow account.
>
> (4) The escrow agent shall maintain a proper audit trail and adequate controls and safeguards for funds disbursed by wire transfer. All money deposited in such "trust"

State of California – Department of Corporations

> 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 pursuant to order of a court of competent jurisdiction.

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.

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:
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> (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.

III

On November 8, 2011, the Commissioner issued a Notice of Intention to Issue an Order Pursuant to California Financial Code Section 17423 (Bar from Employment, Management or Control of Any Escrow Agent), Accusation and accompanying documents against Raquel Bauer and Robert Bauer, and both were personally served with those documents on November 20, 2011.

There has been no request for a hearing received by the Commissioner.

The above-described violations constitute grounds under California Financial Code § 17423 to bar a person from any position of employment, management or control of any escrow agent.

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THEREFORE, it is hereby ordered that Respondents Robert Bauer and Raquel Bauer are barred from any position of employment, management or control of any escrow agent. This Order is effective as of the date hereof.

Dated: December 14, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner

State of California – Department of Corporations