JAN LYNN OWEN
Commissioner of Corporations
MARY ANN SMITH
Deputy Commissioner
JOANNE J. ROSS (CA BAR NO. 202338)
Senior Corporations Counsel
Department of Corporations
1515 K Street, Ste. 200
Sacramento, California 95814
Telephone: (916) 324-9687
Facsimile: (916) 445-6985
Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, Complainant, vs. FIRST NATIONAL ESCROW, Respondent.	)	File No.: 963-1931 ACCUSATION FOR REVOCATION

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

I.

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

/ / /

/ / /

State of California - Department of Corporations

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

3. At all relevant times, Robert Bauer was the President of First National.

4. At all relevant times, Raquel Bauer was the escrow manager at First National.

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. 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).

9. As a result, on February 2, 2012, the Commissioner barred Gardner from any position of employment, management, or control of any escrow agent, pursuant to section 17423 of the Financial Code, 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.

10. Raquel Bauer was the escrow manager at First National at the time the losses took place. She was involved in the daily operation of 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.

11. Robert Bauer was the President of First National at the same time the illegal activities took place. As President of a licensed escrow agent under the California Escrow Law, Robert Bauer was responsible for complying with the law and ensuring the escrow agent and its employees comply with the Escrow Law.

State of California - Department of Corporations

12. First National declared bankruptcy in 2011. However, First National is still a licensed escrow agent, and therefore must still comply with the California Escrow Law and regulations.

13. 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.

14. In 2011, the Commissioner requested First National business records from both Robert and Raquel Bauer. Financial Code section 17405 and Code of Regulations, title 10, section 1730(b) state that business records of an escrow agent must be provided to the Commissioner upon request, and the location of those records must be made known to the Commissioner. The Bauers did not provide the records as requested.

15. As a result of the foregoing, the Commissioner issued an order on December 14, 2011, barring Robert Bauer and Raquel Bauer from any position of employment, management, or control of any escrow agent, pursuant to section 17423 of the Financial Code.

16. In light of the losses incurred by First National's clients, the Commissioner kept First National's license in effect so that a claim could be made with the Escrow Agents' Fidelity Corporation ("EAFC") for the trust fund losses. (Financial Code section 17314 states that EAFC shall pay a "member" for loss of trust obligations, pursuant to certain requirements. Financial Code section 17312 defines "member" as a licensee.)

17. After filing a proof of loss claim with EAFC, the Chapter 7 Bankruptcy Trustee for First National, Karl T. Anderson ("Trustee"), entered into a Settlement Agreement with EAFC. Under the Settlement Agreement, EAFC agreed to pay one million dollars ($1,000,000) for trust fund losses of First National customers.

18. On December 19, 2012, the U.S. Bankruptcy Court, Central District of California, issued an order approving this Settlement Agreement.

19. As of February 13, 2013, the Trustee had received the one million dollars ($1,000,000) from EAFC for the trust fund losses.

/ / /

/ / /

State of California - Department of Corporations

II.

20. Pursuant to Financial Code section 17406(a), all licensees under the Escrow Law are required to file an annual audit report containing audited financial statements ("Annual Report") within one hundred and five (105) days after the close of their fiscal year. First National failed to file its Annual Reports as required under the Escrow Law.

21. In addition, First National has been deficient in meeting the net worth requirements of Financial Code section 17210(a). First National has also failed to maintain its Surety Bond, as required under Financial Code section 17202, and failed to pay assessments due under section 17207(e) of the Escrow Law.

22. As described above, First National is also in Bankruptcy, has suffered significant trust fund losses as a result of Escrow Law violations (Financial Code Sections 17405 and 17414(a)), and its owner and manager have been barred from the industry.

III.

23. Financial Code section 17202 states, in pertinent part:

> At the time of filing an application for an escrow agent's license, the applicant shall deposit with the commissioner a bond satisfactory to the commissioner in the amount of at least twenty-five thousand dollars ($25,000). Thereafter, a licensee shall maintain a bond satisfactory to the commissioner in the amount of: (1) twenty-five thousand dollars ($25,000) if 150 percent of the previous year's average annual trust fund obligations, as calculated under Section 17348, equals two hundred fifty thousand dollars ($250,000) or less; . . . .

24. Financial Code section 17207(e) provides, in pertinent part:

> (1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee not to exceed two thousand eight hundred dollars ($2,800) for each office or location.
>
> (2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.
>
> (3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

(4) If an escrow agent fails to pay the amount due on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

25. Financial Code section 17210(a) provides:

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

26. Financial Code section 17405 states, 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. The provisions of this section shall not apply to persons specified in Section 17006.

(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.

27. Financial Code section 17406(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 an established 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.

28. Financial Code section 17414(a) states:

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

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

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts,

State of California - Department of Corporations

files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

29. Financial Code section 17608 provides:

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

(a) The licensee has failed to maintain in effect a bond required under the provisions of this division.

(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 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.

IV.

Complainant finds that, by reason of the foregoing, First National Escrow has violated Financial Code sections 17202, 17207(e), 17210(a), 17405, 17406(a), and 17414(a), which constitutes grounds for the revocation of its escrow agent's license under Financial Code section 17608.

WHEREFORE, IT IS PRAYED that FIRST NATIONAL ESCROW's escrow agent's license be revoked pursuant to Financial Code section 17608.

Dated: March 18, 2013
Sacramento, CA

JAN LYNN OWEN
Commissioner of Corporations

By_____
Joanne Ross
Senior Corporations Counsel

State of California - Department of Corporations