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California Corporations Commissioner
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

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| In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER,<br><br>Complainant,<br><br>vs.<br><br>BEACHWOOD ESCROW (Formerly Advance Express Escrow),<br><br>Respondent. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | File No.: 963-2199<br><br>ACCUSATION IN SUPPORT OF:<br><br>1) ORDER REVOKING ESCROW AGENT'S LICENSE PURSUANT TO FINANCIAL CODE SECTION 17608<br><br>2) ORDER IMPOSING PENALTIES PURSUANT TO FINANCIAL CODE SECTION 17408<br><br>3) ORDER ASSESSING COSTS PURSUANT TO FINANCIAL CODE SECTION 17405.1 |

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

I

Beachwood Escrow (formerly Advance Express Escrow) ("Respondent" or "Beachwood") 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.).

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II

Pursuant to Financial Code section 17406, every licensee under the Escrow Law is required to file an annual report containing audited financial statements ("audit report") within 105 days after the close of its fiscal year. Respondent's fiscal year end is December 31.

On or about June 14, 2006, the Commissioner notified Respondent in writing that its 2006 audit report for the year ending December 31, 2006 was due on April 15, 2007. Respondent was notified in the letter that failure to file to the 2006 audit report could result in assessment of penalties, a special examination, and/or administrative action. Respondent did not file the audit report required by Financial Code section 17406 until February 14, 2008, which was 304 days after it was due.

On or about March 27, 2008, the Commissioner filed an Accusation in Support of Suspension of Respondent's escrow license due to failure to timely file its 2006 audit report in compliance with Financial Code section 17406.

On or about July 8, 2008, Respondent entered into an agreement with the Commissioner whereby Respondent agreed to pay $10,000 in penalties and stipulate to a 14-day license suspension during the period of July 27, 2008 through August 3, 2008 and from August 24, 2008 through August 31, 2008

On or about November 17, 2008, the Commissioner notified Respondent in writing that its annual audit report for the year ending December 31, 2008 was due on April 15, 2009, in accordance with Financial Code section 17406. On June 26, 2009, a 10-Day Demand Letter was sent to Respondent via certified mail informing that failure to file to the 2008 audit report could result in assessment of penalties, a special examination, and/or administrative action. To date, Respondent has failed to file its 2008 audit report, as required by Financial Code section 17406. Pursuant to the filing requirement set forth in Financial Code section 17408, a penalty of $50 shall be assessed for each of the first five days that Respondent's 2008 audit report was overdue and a penalty of $250 for each day thereafter, totaling $204,000.00 to date, and continuing to accrue until received.

On or about November 2, 2009, the Commissioner notified Respondent in writing that its annual audit report for the year ending December 31, 2009 was due on April 15, 2010, in accordance



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with Financial Code section 17406. On May 18, 2010, a 10-Day Demand Letter was sent to Respondent via certified mail informing that failure to file to the 2009 audit report could result in assessment of penalties, a special examination, and/or administrative action. To date, Respondent has failed to file the 2009 audit report, as required by Financial Code section 17406. Pursuant to the filing requirement set forth in Financial Code section 17408, a penalty of $50 shall be assessed for each of the first five days that Respondent's 2009 audit report was overdue and a penalty of $250 for each day thereafter, totaling $112,750.00 to date, and continuing to accrue until received.

On or about November 15, 2010, the Commissioner notified Respondent in writing that its annual audit report for the year ending December 31, 2010 was due on April 15, 2010, in accordance with Financial Code section 17406. To date, Respondent has failed to file the 2010 audit report, as required by Financial Code section 17406. Pursuant to the filing requirement set forth in Financial Code section 17408, a penalty of $50 shall be assessed for each of the first five days that Respondent's 2010 audit report was overdue and a penalty of $250 for each day thereafter, totaling $21,500.00 to date, and continuing to accrue until received.

On or about January 14, 2011, the Respondent submitted to the Commissioner an application to surrender its escrow agent's license.

On January 28, 2011, the Commissioner sent a certified letter to Respondent, which was received on January 29, 2011. This letter notified Respondent that, as a condition of license surrender pursuant to Financial Code section 17600, subdivision (b), the licensee is required to engage a certified public account to conduct a closing audit of the licensee's records ("closing audit report") and report findings of compliance with the Escrow Law to the Commissioner within 105 days from the date of the application to surrender the license.

Pursuant to Financial Code section 17600, subdivision (b), the Respondent's closing audit report was due 105 days from the date of the January 14, 2011 application to surrender, which was April 29, 2011. To date, the closing audit report has not been received by the Commissioner.

Additionally, Respondent owes a balance of $8,672.02 to the Commissioner for unpaid costs incurred in connection with the regulatory inspection and examination of the licensee conducted by



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the Commissioner's examiner on April 17, 2009 (invoice number 48351) pursuant to Financial Code section 17405.1.

III

Financial Code Section 17408, subdivisions (b) through (e), provides as follows:

> (b) The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the commissioner.. . . The amount of the penalty shall be one hundred dollars ($100) for each day for the first five days the report or information is overdue and, thereafter, five hundred dollars ($500) for each day the report or information is overdue.
>
> (c) If, after an order has been made under subdivision (b), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted under that chapter.
>
> (d) If the person fails to file a written request for a hearing within 30 days of the date of service of the order, the order imposing the penalty shall be deemed a final order of the commissioner, and the penalty shall be paid within five business days.
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> (e) If a hearing is requested, the penalty shall be paid within five business days after the effective date of any decision in the case ordering payment to be paid.

Financial Code section 17602.5 provides in pertinent part as follows:

> If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the date designated for the making of the reports, or within any extension of time granted by the commissioner, . . . such failure shall constitute grounds for the suspension or revocation of the license held by such escrow agent.

Financial Code section 17600, subdivision (b), provides as follows:

> A licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall notify the commissioner in writing and, at that time, tender the license and all other indicia of licensure to the commissioner. Within 105 days of the written notice to the commissioner, the licensee shall submit to the commissioner, at its own expense, a closing audit report as of the date the license is tendered to the commissioner for surrender, or for another period as the commissioner may specify, to be performed by an independent certified public accountant. The



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> closing audit shall include, but not be limited to, information required by the commissioner, a bank reconciliation of the trust account, and a verified statement from a certified public accountant confirming lawful disbursement of funds. A license is not surrendered until the commissioner has reviewed and accepted the closing audit report, a determination has been made by the commissioner that acceptance of the surrender is in the public interest, and tender of the license is accepted in writing by the commissioner.

Financial Code section 17405.1 provides in pertinent part as follows:

> The cost of every inspection and examination of a licensee or other person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. . . .

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.

IV

Complainant finds that, by reason of the foregoing, Respondent Beachwood Escrow (formerly Advance Express Escrow) has failed to comply with Financial Code sections 17405.1., 17406 and 17600, and it is in the best interests of the public to revoke the escrow agent's license of Respondent pursuant to Financial Code sections 17602.5 and 17608.

WHEREFORE, IT IS PRAYED that the Respondent's escrow agent's license be revoked.

Additionally, IT IS HEREBY ORDERED that Respondent pay the following penalties and costs to the Commissioner as follows:

(1) A penalty in the sum of $204,000.00 for the 819 days the 2008 audit report is late pursuant to Financial Code section 17408;

(2) A penalty in the sum of $112,750.00 for the 454 days the 2009 audit report is late pursuant to Financial Code section 17408;

(3) A penalty in the sum of $21,500.00 for the 89 days the 2010 audit report is late pursuant to Financial Code section 17408;

(4) Additional penalties of $250.00 per day accruing hereafter for each report that remains unfiled pursuant to Financial Code section 17408; and,

(5) Costs in the amount of $8,672.02 incurred in connection with the April 17, 2009 regulatory examination of Respondent pursuant to Financial Code section 17405.1.

Dated: July 14, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By_____
ALAN S. WEINGER
Deputy Commissioner

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