BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	File No. 963-1930
	)	
	)	
SUSAN D. DAVIS	)	OAH No. L2002090150
	)	
Respondent.	)	
	)	
	)	

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on Jan. 7, 2003

IT IS SO ORDERED this 7th day of January 2003

COMMISSIONER OF CORPORATIONS

By _____

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STATE OF CALIFORNIA

In the Matter of the Accusation Against:	File No. 963-1930
SUSAN D. DAVIS,	OAH No. L2002090150
Respondent.	

PROPOSED DECISION

On December 3, 2002 Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Judy L. Hartley, Senior Trial Counsel, represented the Department of Corporations (hereinafter the department).

Susan D. Davis (hereinafter respondent, or Davis) did not appear. Notice of the hearing was mailed to Davis on September 10, 2002 at the address she provided in her Notice of Defense to the Accusation. On the morning of the hearing, counsel for the department heard a recorded telephone message left by respondent at 7:00 PM the night before the hearing was to commence. The message was to the effect that Davis had scheduled a doctor's appointment for December 3, 2002. There was no indication that the appointment involved an emergency. The Office of Administrative Hearings did not receive, by telephone, facsimile or letter, a request for continuance. The department opposed any delay. Counsel for the department, a departmental representative and six witnesses appeared at the scheduled time prepared to proceed. Pursuant to the authority of Government Code section 11520 the hearing commenced as scheduled.

The matter was submitted on December 3, 2002.

FACTUAL FINDINGS

1. Demetrios A. Boutris, California Corporations Commissioner, filed the Accusation in his official capacity. The Commissioner brings this action to bar respondent from any position of employment, management, or control of any escrow agent on the basis that while

a managing employee for NLCS Escrow Services, Inc. (NLCS) Davis violated escrow licensing laws and regulations.[1]

2. Respondent has been employed as an escrow officer or escrow manager since at least 1992. Since that time, she has worked for nine different escrow businesses. From March 1999 through November 1999 respondent was an escrow officer and office manager for NLCS. NLCS was incorporated in 1998 and hired Davis to be its manager and, initially, its sole escrow officer. When Davis was hired NLCS was not yet licensed by the department to conduct escrow business, and Davis was aware of that fact. She nevertheless told its president, Kerry Granzella, that escrow rules and regulations permitted the company to conduct business so long as funds were not disbursed prior to licensure. Granzella, whose role was and is to generate business for the company and was not trained as an escrow officer, accepted the representation and authorized Davis to process various escrows prior to licensure. NLCS was licensed on July 7, 1999.

3. One particular lender was involved in between 45 and 60 files opened and processed by respondent at NLCS. In many of them, the escrows were closed without Davis ever recording the deeds of trust that were generated and signed. When Davis left the employ of NLCS her successor-manager, Joanna Belanger, found the original documents in some of the files, or determined the documents were missing in others. In other instances, files were missing in their entirety, or were in such a state of disarray that they had to be completely reconstructed from computer databases or from the files of the lender and/or title company involved. The management of NLCS was so concerned about its former manager's performance that when it was learned that respondent was starting her own company, the facts were reported to the department. An examiner was dispatched to NLCS' offices to conduct an audit of a sampling of files that had been processed by Davis.

4. An audit on February 25, 2002 confirmed the existence of four files processed by respondent that were "closed short," that is, the balance of funds remaining in the account at closing was less than the amounts still owed the various payees on the account. In all cases, however, the shortage was less than the fees payable to NLCS and did not result in a loss to any other payee.[2]

5. On March 4, 2002 the department's examiner returned to the NLCS office and reviewed seven files. In each case it was confirmed that Davis had failed to record the deed of trust in a timely fashion.

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[1] The operative pleading was originally styled "Statement of Issues/Accusation" and also sought to deny an application filed by Ultra Escrow, Inc. for licensure. In that application Davis was identified as the president, vice-president, director, stockholder, owner and office manager of Ultra. Subsequent to the Commissioner's filing of the Statement of Issues/Accusation, Ultra amended its application to exclude Davis as a principal. The Commissioner then dismissed the allegations as against Ultra and proceeds against Davis only.

[2] Two additional files evidenced a debit balance at the close of escrow, although the examiner determined that posting errors accounted for the debit balances.

(a.) In escrow number 1306SD, personally handled by respondent, the reconstructed file disclosed that the loan proceeds of $97,283.89 were disbursed on June 23, 1999 (prior to NLCS licensure), and that no recording of the deed of trust took place until March 7, 2000, more than three months after Davis left the company. The lender's instructions to NLCS were to record the deed prior to July 5, 1999.

(b.) In escrow number 1413SD, personally handled by respondent, the reconstructed file disclosed that loan proceeds of $146,601.08 were disbursed on June 24, 1999. The deed was recorded on March 20, 2000. The lender had instructed NLCS to record prior to July 5, 1999.

(c.) In escrow number 1476SD, personally handled by respondent, the reconstructed file disclosed that loan proceeds of $106,005.40 were disbursed on June 24, 1999. The deed was recorded on February 22, 2000, in violation of the lender's instructions to record prior to July 5, 1999.

(d.) In escrow number 1158SD, personally handled by respondent, the reconstructed file disclosed that escrow closed on June 4, 1999, per the closing statement. However, the deed of trust was not recorded until February 18, 2000, in violation of the lender's instructions to record prior to July 5, 1999.

(e.) In escrow number 1228SD, personally handled by respondent, the reconstructed file disclosed that loan proceeds of $195,795.75 were disbursed on May 28, 1999. The deed of trust was recorded on February 18, 2000, in violation of the lender's instructions to record prior to June 5, 1999.

(f.) In escrow number 1459SD, personally handled by respondent, the file disclosed that escrow opened June 29, 1999 and closed on July 6, 1999. The deed of trust was not recorded until July 29, 1999, although the borrowers had signed the deed on June 30, 1999.

(g.) In escrow number 1542SD, personally handled by respondent, the file disclosed that escrow opened on July 8, 1999 and closed on July 15, 1999. The deed of trust was not recorded until February 17, 2000, in violation of the lender's instructions to record prior to August 5, 1999.

6. Thus, in six of the seven files reviewed by the examiner on March 4, 2002 respondent conducted business prior to the issuance of a license to NLCS. In all of the cases the deeds of trust were recorded in an untimely manner and in all but one instance well after the dates established by the instructions of the lender. In five of the cases the files were either missing or in such poor condition that successor management had to reconstruct them from other available information.

7. Although respondent hired two assistants during her tenure as manager at NLCS, neither person had check-writing authority, and neither was responsible for the overall handling of the files. All escrows mentioned herein were the responsibility of Davis.

8. Respondent knew or should have known that: (1) by law NLCS could not legally conduct business prior to being licensed; and (2) by law an escrow officer is bound to use documents or other property deposited in escrow only in accordance with the written instructions of the principals to the transaction and in accordance with sound escrow practice.

9. Sound escrow practice requires that deeds of trust be recorded at the time of closing. Based upon the findings herein, it is in the public's interest to deny respondent the opportunity to be employed as an escrow agent or manager.

LEGAL CONCLUSIONS

1. It is unlawful for any person to engage in business as an escrow agent except by means of a corporation licensed by the Commissioner. (Financial Code section 17200.)

2. An escrow agent shall use documents or other property deposited in escrow only in accordance with the written instructions of the principals to the escrow transaction, or if not otherwise directed by written instructions, in accordance with sound escrow practice. (Title 10 California Code of Regulations section 1738.2.)

3. The commissioner may, following notice and opportunity for hearing, bar from any position of employment, management, or control of any escrow agent, if it is found that the bar is in the public interest and that the person has committed or caused a violation of escrow law or rule, which violation was either known or should have been known by the person committing or causing it. (Financial Code section 17423.)

4. Cause exists to bar respondent from any position of employment, management, or control of any escrow agent, in that it is in the public interest and she has committed or caused violations of Financial Code section 17200 and Title 10 California Code of Regulations section 1738.2, based on Factual Findings 2 through 9.

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ORDER

From the effective date of this Decision, respondent Susan D. Davis is barred from any position of employment, management, or control of any escrow agent in the escrow business in this State.

DATED: December 4, 2002

TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings