BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the California Corporations Commissioner, Complainant. vs. Gramercy Escrow Corp., Respondent.	Case No: 963-0667 OAH No.: L2002090743

FINAL DECISION

This matter came on regularly for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, on February 25, 2004, in Los Angeles, California.

Dyan S. Farr, Counsel, represented the California Corporations Commissioner (Complainant or Commissioner).

Gramercy Escrow Corp. (Respondent) appeared by and through Ted Hicks, President, and was represented by Heather Appleton, Attorney at Law.

Evidence was received at the hearing, and all exhibits proffered by the parties have been admitted into evidence. The record was left open for submission of written closing briefs and argument. The briefs were filed and received on March 17, 2004. Thereafter, the record was closed, and the matter submitted.

On April 14, 2004, Judge Lopez issued a proposed decision upholding the portion of the August 22, 2002 Order to Discontinue Violations directing Respondent to discontinue the taking of unauthorized fees, but overruling the portion of the order requiring the replacement of fees. The proposed decision further revoked Respondent's escrow agent license and assessed a penalty of $8,000.

By letter dated June 11, 2004, Respondent petitioned for reconsideration pursuant to Government Code Section 11521.

On July 21 2004, the Commissioner rejected the proposed decision pursuant to Government Code Section 11517(c)(1)(E) and invited further written argument to be filed by September 20, 2004.

The Department of Corporations (Department) received the Complainant's brief on September 17, 2004 and received further written argument from Respondent on September 20, 2004. Respondent requested a 60-day extension of the September 20, 2004 deadline to submit further written argument. By letter dated September 22, 2004, the Department advised Respondent that pursuant to Government Code Section 11517(c)(2)(E)(iv), if the Department finds that a further delay is required by special circumstance, the Department shall delay the decision for no more than 30 days. The Department requested notification from Respondent within 5 days if Respondent had a special circumstance requiring further delay. The Department did not receive a response.

The following constitutes the Final Decision of the California Corporations Commissioner.

FACTUAL FINDINGS

1

Demetrios A. Boutris, the California Corporations Commissioner brought the following order and pleadings in his official capacity.

(A) An Order to Discontinue Violations dated August 22, 2002.

(B) A Notice of Intent to Make Order Final and Statement of Facts in support of said Order (Pleading 1) dated August 22, 2002 and filed September 26, 2002.

(C) First Supplemental Pleading (Re) Order to Discontinue Violation (Pleading 2) dated December 2, 2002 and filed December 3, 2002.

2

Respondent, a California Corporation, is an escrow agent holding a valid license issued by the Commissioner pursuant to the Escrow Law (Section 17000 et seq., of the Financial Code). Respondent has its principal place of business located at 3407 West Sixth Street (Suite 711), Los Angeles, California 90020.

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The Order to Discontinue Violations found and ordered as follows:

> The California Corporations Commissioner finds that:
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> Gramercy Escrow Corp., has taken unauthorized hold open fees from funds on deposit with escrow accounts that had closed, canceled or completed in violation of *Financial Code sections 7414(a)(1) and 17420* and *California Code of Regulations, title 10, sections 1738.1 and 1738.5.*
>
> Gramercy Escrow Corp., took unauthorized partial or incremental escrow fees from escrow accounts which either had not closed or subsequently closed, but had not been completed in violation of *Financial Code section 17420* and *California Code of Regulations, title 10, section 1738.5.*
>
> Gramercy Escrow Corp., has taken hold open fees on the basis of an instruction that is neither in the main body of the escrow instructions, nor specific as to the amount of the hold open fee allowed in violation of *California Code of Regulations, title 10, section 1738.5.*
>
> Now, based on the foregoing, and good cause appearing, it is hereby ordered under the provisions of *sections 17602 and 17604 of the Financial Code,* that Gramercy Escrow Corp. immediately discontinue the violations set forth above, and replace all unauthorized fees.

4

On July 3, 2001 the Commissioner commenced a regulatory examination (2001 exam) of respondent. The last regulatory examination dated back to October, 1999 (1999 exam). The 2001 examination disclosed that during the period commencing on or about October 14, 1999 and continuing through July 3, 2001, Respondent had consistently and routinely taken hold open fees and partial or incremental escrow fees from numerous bulk sale and liquor license escrows. Hold open fees taken since the 1999 exam were approximately $75 typically taken on a quarterly basis. With regard to the specific escrows which follow wherein hold open fees or partial/incremental fees were taken:

- Hold open fee instructions were not in the main body of the escrow
- The hold open fee instruction was not specific as to the amount
- Certain hold open fees were taken after the close of escrow
- Partial/incremental fees were taken from escrows that were closed but not complete.

Such hold open fees and partial or incremental escrow fees were discovered during the 2001 regulatory examination in at least the following escrows:

Escrow Number	Approximate Hold Open Fees Taken Since Last Exam	Approximate Partial Escrow/Cancellation Fees Taken
19612	1,800.00	900.00
19262	1,800.00	2,150.00
19278	1,800.00	800.00
19315	1,800.00	800.00
19408	2,189.50	800.00
19611	1,800.00	1,100.00
19750	1,800.00	850.00
19815	1,800.00	1,500.00
19890	2,575.00	12,600.00
19910	1,350.00	2,200.00
19933	450.00	3,450.00
19945	225.00	-
19949	225.00	7,900.00
19961	-	-
Total	$23,214.50	$37,550.00

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Overall to date, Respondent has received approximately $23,214.50 in hold open fees and $37,550.00 in partial or incremental escrow fees since the last regulatory examination conducted by the Complainant in October of 1999. Respondent has not complied with a request by Complainant to replace said fees.

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On September 3, 2002, the Commissioner commenced a review of Respondent's financial statements from July 31, 2001 through June 30, 2002. The review disclosed that Respondent did not meet the liquid assets and/or tangible net worth requirements from July 31, 2001 to June 30, 2002 in that Respondent failed to maintain liquid assets of at least $25,000 and a tangible net worth of $50,000 at all times.

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Respondent did not have their general ledger posted as of July 31, 2002.

8

On May 2, 2002, the Complainant notified the Respondent to file its annual audited report for the fiscal year ending June 30, 2002. On October 21, 2002, the Complainant provided the Respondent with a courtesy call to inquire about the audited report and reminded Respondent of the penalty for filing late. The Complainant received the Respondent's untimely audit report for fiscal year ending June 30, 2002 on November 5, 2002. As of November 4, 2002, the Respondent had incurred a total of eight thousand dollars ($8,000.00) in fines for filing late. The $8,000 is calculated as follows:

October 16, 2002 through October 20, 2002:	5 days @ $100/day = $500
October 21, 2002 through November 4, 2002:	15 days @ $500/day = 7500

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After the August 22, 2002 order issued Respondent did timely discontinue taking hold open fees and partial or incremental escrow fees. Thereafter, Respondent offered the surrender of his license in that Respondent is no longer active in the escrow business. Complainant has not accepted the proffered surrender.

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Respondent has been a long time licensee of the Commissioner with no record of discipline. However, Respondent did not demonstrate that, at present, he can conduct an escrow business without the occurrence of like conduct to that set forth in Factual Findings 4, 6, 7 and 8.

CONCLUSIONS OF LAW

1

Escrow Agents are governed by the *California Escrow Law, California Financial Code (CFC) §17000, et seq.* Consistent with that law the Commissioner has promulgated a regulatory scheme found in *California Code of Regulations (CCR), Title 10.*

2

CFC §17602 provides:

If it appears to the commissioner that any licensed escrow agent has violated its articles of incorporation, or any law or rule binding upon it, the commissioner shall, by written order addressed to the agent direct the discontinuance of such violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of *Section 17604.*

CFC §17604 provides:

No order issued pursuant to Sections *17602 or 17603* may become final except after notice to any licensed escrow agent affected thereby of the intention of the commissioner to make such order final and of the reasons therefor and that upon receipt of a request the matter will be set down for hearing to commence within 15 business days after such receipt unless the licensed agent affected consents to a later date. If no hearing is requested within 30 days after the mailing of such notice and none is ordered by the commissioner, the order may become final without hearing and the licensed escrow agent shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of 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 thereunder. If upon the hearing, it appears to the commissioner that the licensed agent is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensed escrow agent shall immediately discontinue the practices named in the order.

3

(A) *CFC §17414(a)(1)* provides:

(a) 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.

(B) *CFC §17420* provides:

Except for the normal compensation of his own employees, it shall be a violation of this division for any person subject to this division to pay over to any other person any commission, fee, or other consideration as compensation for referring, soliciting, handling, or servicing escrow customers or accounts.

It shall also be a violation for any person to enter into an arrangement, either of his own making or of a subsidiary nature, or through any other person having a dual capacity, or through any person having a direct or indirect interest in the escrow, or other device permitting any fee, commission, or compensation which is contingent upon the performance of any act, condition, or instruction set forth in an escrow to be drawn or paid, either in whole or in part, or in kind or its equivalent, prior to the actual closing and completion of the escrow.

4

(A) *California Code of Regulations (CCR) Title 10, §1738(a)* provides:

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 pursuant to order of a court of competent jurisdiction.

(B) *CCR Title 10, §1738.5(3)* provides:

> The following shall be contained on the face or first page of the escrow instructions, or attached as a separate amendment to the escrow instructions, but only in the case where the escrow agent proposes to act accordingly to the following, enumerated instructions:
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> - - -
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> (3) An instruction authorizing disbursements in payment of services, or other items of expense, not including, however, commissions payable to brokers or agents.

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Respondent has violated *CFC §§17420 and 17414(a)(1)* as those sections interact with *California Code of Regulations, Title 10, §§1738 and 1738.5,* by reason of Factual Finding 4. Cause therefore exists to affirm the August 22, 2003 order as to discontinuance. That part of the order directing repayment of $23,214.50 in hold open fees and $37,550.00 in partial escrow/cancellation fees is inappropriate under the facts and circumstances of this case, and therefore cause does not exist to affirm that part of the order.

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CFC §17210(b) provides in part:

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(b) An escrow agent licensed prior to January 1, 1986, shall maintain at all times a tangible net worth according to the following schedule:

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(9) Fifty thousand dollars ($50,000) as of July 1, 1993, and thereafter, including

liquid assets of at least twenty-five dollars ($25,000) in excess of current liabilities.

7

Cause exists for discipline of respondent's license for violation of *CFC §17210(b)* by reason of Factual Finding 6.

8

CCR, Title 10, §1732.3 provides in part:

An escrow agent shall establish and maintain currently the following books with reference 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;

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Cause exists for discipline of respondent's license for violation of *10 CCR §1732.3* by reason of Factual Finding 7.

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CFC §17406(a) provides:

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(a) Each licensee shall submit to the commissioner, at such licensee's own expense, an audit report containing audited financial statements covering the calendar year or, if such licensee has an established fiscal year, then for such fiscal year, within 105 days after the close of each such calendar or fiscal year. At such time, each licensee shall also file such additional relevant information as the commissioner may require.

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Cause exists for discipline of respondent's license for violation of *CFC §17406(a)* by reason of Factual Finding 8.

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CFC §17408 provides:

(a) If any person subject to this division fails to make any report required by law or by the commissioner, the commissioner may immediately cause the books, records, papers, and affairs of said person to be thoroughly examined.

(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, or (2) to furnish any material information required by the commissioner to be included in the report. 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.

(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 made.

13

Cause exists for a fine in the amount of $8000 pursuant to *CFC §17408(a) and (b)* by reason of Factual Finding 8 combined with Conclusion of Law 11.

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CFC §17608(b) provides:

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

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(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.

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Cause exists for revocation of the license by reason of the number of violations set forth in Conclusions of Law 5, 7, 9 and 11.

ORDER

1

Complainant's order issued on August 22, 2002 directing Respondent to immediately discontinue taking unauthorized hold open fees and partial or incremental escrow fees from escrow accounts is sustained and, therefore, affirmed. That part of the Order directing repayment of $23,214.50 in hold open fees and $37,550.00 in partial escrow/cancellation fees is inappropriate under the facts and circumstances of this case. Therefore, that portion of the order is rescinded.

2

The escrow agent license, previously issued by the Commissioner to Respondent, is hereby revoked.

3

Respondent shall pay to the Commissioner, at the Commissioner's Los Angeles office, the sum of $8,000 in assessed penalties within five (5) business days of the effective date of this decision.

This Final Decision shall become effective on NOV 1 5 2004.

IT IS SO ORDERED.

Dated: OCT 1 5 2004

WILLIAM P. WOOD
California Corporations Commissioner