BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Order to Discontinue Escrow Activities Under Financial Code section 17415: THE COMMISSIONER OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA, Complainant, v. SUNSET ONE ESCROW, INC. Respondent.	OAH No. 2015020143

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated March 11, 2015, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter with technical and minor changes on the attached Errata Sheet pursuant to Government Code Section 11517(c)(2)(C).

This Decision shall become effective on July 19, 2015.

IT IS SO ORDERED this 11th day of June 2015.

/S/
JAN LYNN OWEN
Commissioner of Business Oversight

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Order to Discontinue Escrow Activities Under Financial Code section 17415 Issued to: SUNSET ONE ESCROW, INC., Respondent.	File No. 963-2533 OAH No. 2015020143

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 4, 2015, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Danielle A. Stoumbos, Corporations Counsel, represented Jan Lynn Owen (complainant).

Jennifer Felten, Esq., represented Sunset One Escrow, Inc. (respondent).

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Order to Discontinue Escrow Activities Under Financial Code section 17415 (Order) was issued on complainant's behalf in her official capacity as the Commissioner of Business Oversight (Commissioner). The Order is based on the Commissioner's findings that Respondent, a licensed escrow agent, has failed to maintain liquid assets in excess of current liabilities in violation of Financial Code section 17210. The Order became effective on the date of issuance, which was January 22, 2015.

2. Respondent timely submitted a request for a hearing to challenge the Order. The hearing in this matter was timely scheduled and completed pursuant to law.

3. Respondent is an escrow agent, first licensed with the Department of Business Oversight (Department) on May 5, 2009.[1] Its president is Aaron Lloyd.

Respondent's Liquidity Problems

4. In or about June 2014, during a review of respondent's December 31, 2013 audited financials, the Department discovered that the company had failed to maintain liquid assets in excess of current liabilities of at least $25,000.00, in violation of the California Escrow Law.[2] According to respondent's audited balance sheet as of December 31, 2013, respondent had a liquid asset deficiency of $79,350.00.

5. On July 3, 2014, the Commissioner sent a certified letter to Mr. Lloyd. In the letter, the Commissioner notified respondent that it was in violation of Financial Code section 17210, and required respondent to submit proof of correction of the deficiency and a copy of its most recent financial statements within 30 days. The Commissioner warned that failure to cure the deficiency could result in the suspension of respondent's escrow license, which would prohibit the company from accepting any new business.

6. The Commissioner received respondent's response on July 21, 2014, a letter from Mr. Lloyd in which he explained that the company had fallen victim to the poor economy and that he was looking to obtain a loan. Mr. Lloyd requested a 90-day extension of time to correct the liquid asset deficiency.

7. The Commissioner agreed and refrained from taking any action for 90 days.

8. On November 4, 2014, after more than 105 days passed without any further response from respondent, the Commissioner sent a second certified letter to respondent, again requesting proof of compliance with Financial Code section 17210. The Commissioner again warned that action may be taken to suspend the escrow license.

9. By a letter dated November 12, 2014, respondent's attorney conceded that respondent had been unable to cure the liquid asset deficiency and therefore could not demonstrate compliance with Financial Code section 17210. Respondent's attorney explained that previous attempts to secure a loan had been unsuccessful, but that respondent was in the midst of applying for a loan from a second bank. The company expected that the second bank's decision would be made within one week. Respondent requested an additional extension of time, until December 31st, to cure the liquid asset deficiency.

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[1] As of July 1, 2013, the Department of Corporations and the Department of Finance merged to form the Department of Business Oversight.

[2] Pursuant to Financial Code section 17210, there must be at least $25,000.00 in liquid assets remaining on the balance sheet after current liabilities are subtracted from liquid assets. A liquid asset is an asset that is readily convertible into cash. A current liability is a liability with a final maturity of less than one year. By way of example, a company with $25,000.00 in current liabilities must have at least $50,000.00 in liquid assets. A company failing to satisfy this minimum threshold has a liquid asset deficiency.

10. On November 14, 2014, respondent forwarded to the Department a copy of its October 31, 2014 balance sheet, which revealed that while it had corrected a tangible net worth deficiency, it still had a liquid asset deficiency in the amount of $56,985.76.

11. On November 20, 2014, respondent provided the Commissioner with a letter from a third bank. The letter indicated that Mr. Lloyd had applied for a personal line of credit, but that the bank would need approximately 60 days before making a determination of whether to fund a line of credit.

12. On November 21, 2014, the Commissioner granted respondent's request for an extension through December 31, 2014, but warned that if the liquid asset deficiency was not cured by that date: no further extensions of time would be given; the escrow license would be suspended; and new business would be prohibited. The Commissioner also demanded that respondent file its November 30, 2014 balance sheet with the Commissioner no later than December 15, 2014.

13. Respondent did not respond to the aforementioned demands.

14. As discussed above, on January 22, 2015, the Commissioner issued the Order. After the Order was served, respondent submitted a copy of its unaudited December 31, 2014 balance sheet, which reflected that it a liquid asset deficiency of $43,959.91.

15. Respondent similarly encountered liquid asset deficiencies in 2011 and 2012. After being advised of the problem by the Department, respondent was able to remedy the deficiencies in those years.

16. Mr. Lloyd testified during the hearing. Respondent became licensed in 2009 not long after the financial markets crashed and real estate sales in Southern California dropped. Mr. Lloyd also testified that his company is handicapped because it serves a "hemmed-in" 25 mile area that limits the reach of his business. In addition, his mother, who was a primary part of the company, fell ill and could not work.

17. Mr. Lloyd has diligently tried to correct these problems. His father replaced his mother. He has laid off staff and cut others' salary. Other changes have made the business more efficient. New marketing efforts were practiced. Mr. Lloyd has been unable to get a loan because a partner has not cooperated in those efforts.

18. These actions have resulted in some improvement. As noted above, the company's tangible net worth deficiency has been corrected. Respondent's liquid asset deficiency has been lowered to $43,959.91, a 44 percent decrease. Mr. Lloyd also noted that in fiscal year 2014 the company had gross income over $1 million and had a net profit of approximately $96,000.00.

19. Based on the above, Mr. Lloyd believes an action plan created for 2015 would be successful, and he estimates that by the end of 2015 respondent would be able to cure the liquid asset deficiency. Mr. Lloyd testified that he has exhausted his personal resources and that if the Order remains in effect, respondent will essentially be put out of business.

LEGAL CONCLUSIONS

1. The Commissioner has the authority to order that a licensee discontinue escrow activities in order to administer and enforce the provisions of the California Escrow Law, which is set forth in Financial Code section 17200 et seq.

2. Financial Code section 17210, subdivision (a), requires that "[a]n 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." In this case, respondent's December 31, 2013 audited balance sheet showed that it was conducting business with a liquid asset deficiency of $79,350.00. The Commissioner provided notice to respondent of this deficiency in July 2014, and demanded proof that the deficiency had been corrected. The Commissioner provided two extensions of time spanning approximately five months, but respondent was unable to cure the deficiency despite its best efforts. In fact, respondent's most recent balance sheet still reflected a liquid asset deficiency of $43,959.91. Respondent has been operating for over one year with a liquid asset deficiency.

3. Financial Code section 17415, subdivision (a), provides in relevant part:

> If the commissioner, as a result of any examination or from any report made to him or her, shall find that any person subject to this division is in an insolvent condition, is conducting escrow business in such an unsafe or injurious manner as to render further operations hazardous to the public or to customers, . . . has failed to maintain its liquid assets in excess of current liabilities as set forth in Section 17210 . . . the commissioner may . . . direct discontinuance of the disbursement of trust funds by the parties or any of them, the receipt of trust funds, the delivery or recording of documents received in escrow, or other business operations. . . .

4. In this case, respondent has failed to maintain its liquid assets in excess of current liabilities as required by Financial Code section 17210. The liquid asset requirement imposed by section 17210 protects consumers by ensuring that a licensed escrow agent is at least minimally capitalized in the event of a trust loss. Stated another way, if escrow trust funds are diverted, lost or misappropriated during this time, respondent would be unable to liquidate its assets in a timely manner, if at all, to compensate customers' losses. Furthermore, for over a year, respondent has been unable

to maintain the minimum amount statutorily required, despite its best efforts to do so. Respondent has experienced liquidity problems in prior years. Under these circumstances, respondent has been conducting its escrow business in an unsafe manner, which poses a threat to the public and respondent's customers. The Commissioner has acted within the authority granted under Financial Code section 17415, subdivision (a), by issuing the Order. (Factual Findings 1-19.)

5. Respondent argues that the suspension is too harsh a remedy for this situation. Despite its best efforts, however, respondent has not been able to cure a persistent liquidity problem that has plagued it since at least 2011. While Mr. Lloyd should be lauded for his efforts, even he admits that his company's market area is difficult, the company has struggled since becoming licensed in 2009, and he has exhausted his own personal resources without success. Respondent pins its hopes on a recently created action plan, which perhaps has shown signs of promise. But that plan should have gone into effect years earlier and certainly in 2014 when the Commissioner contacted respondent about its current liquidity crisis. The 2015 action plan, at this stage, is still just a matter of speculation, especially in light of the company's past difficulties. Finally, respondent argues that the Commissioner is acting arbitrarily by issuing the Order as opposed to filing an accusation seeking discipline against its license, including revocation. In granting respondent extensions to comply in the past, the Commissioner has exercised discretion in respondent's favor. Moreover, respondent has been unable to cure its liquid asset deficiency for several months and has not established that it can do so in the interim between now and a hearing on an accusation. There is no compelling reason to continue to subject the public to that danger. In any event, it is hard to conclude that the Commissioner has acted arbitrarily by seeking direct, and interim, relief against respondent, in lieu of failing to address respondent's current situation and seeking revocation of its license later. (Factual Findings 1-19.)

ORDER

The Order to Discontinue Escrow Activities Under Financial Code section 17415, issued to Respondent Sunset One Escrow, Inc., is affirmed.

DATED: March 11, 2015

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings