BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Accusation Against: LIANA MUNDEN, Respondent.	Case No. 963-1760 OAH No. 2015060534

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated December 1, 2015, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on April 13, 2016.

IT IS SO ORDERED this 14th day of March, 2016.

/s/
JAN LYNN OWEN
Commissioner of Business Oversight

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, v. LIANA MUNDEN, Respondent.	Case No. 963 1760 OAH No. 2015060534

PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on November 23, 2015, in Los Angeles, California.

Marlou de Luna, Senior Corporations Counsel, and Vanessa Lu, Corporations Counsel, represented complainant.

Respondent did not appear and was not represented at the hearing, despite proper notice.

Evidence was received, and the matter was submitted for decision on November 23, 2015.

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FACTUAL FINDINGS

1. Complainant Jan Lynn Owen, Commissioner of Business Oversight for the State of California (Commissioner), filed the Accusation in her official capacity.[1] Respondent filed a Notice of Defense requesting a hearing. This proceeding followed.

2. On January 27, 1995, the Commissioner licensed Mid-Cities Escrow (Mid-Cities), a California corporation located in Downey, California, to engage in the business of an escrow agent. Respondent was and is Mid-Cities' owner, president, and escrow manager.

3. Mid-Cities' certified public accountant reported concerns regarding trust account shortages in Mid-Cities' annual report for the year ending September 30, 2009. As a result of this report, on March 24, 2010, the Commissioner instituted a special examination of Mid-Cities. The special examination revealed the following.

4. (a) In 2007, Mid-Cities handled the escrow for a real property transaction in which respondent's brother was the seller (escrow number 9961-L). Respondent's brother instructed Mid-Cities to place his sales proceeds into an interest-bearing account, which Mid-Cities did.

(b) In February 2008, respondent's brother agreed to loan respondent $25,000, and instructed her to take the money out of his sale proceeds, which were still being held in an interest-bearing account in connection with escrow number 9961-L. Respondent transferred the $25,000 from the interest-bearing account directly into Mid-Cities' general operating account (general account).

(c) On May 6, 2009, respondent took $25,000 out of Mid-Cities' trust account to repay the loan. No corresponding transfer was made from Mid-Cities' general account (or any other source) to the trust account to cover the $25,000 payment. Accordingly, respondent effectively used other depositors' money to repay her brother, and the trust account was left with a $25,000 shortage. Inaccurate ledger entries were made in Mid-Cities' books to cover the $25,000 disbursement.

5. On May 6, May 11, and June 16, 2010, September 2, 2011, and January 17, 2012, the Commissioner issued demands to respondent to cure the $25,000 shortage in Mid-Cities' trust account. Respondent did not cure the shortage. Instead, respondent issued false receipts for the general account and personal checks, purporting to cover a portion of the trust account shortage, but the funds were not actually deposited into the trust account.

6. In correspondence dating from May 12, 2010 to September 26, 2012, between respondent and the special examiner, and later, between respondent and the conservator (see

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[1] Service of the Accusation was accompanied by the Commissioner's Notice of Intention to Bar Liana Munden from Any Position of Employment, Management, or Control of Any Escrow Agent. (Ex. 1.)

Factual Findings 12-15), respondent indicated her willingness to cure the $25,000 trust account shortage. Nevertheless, the shortage was never cured. Moreover, respondent never acknowledged the true reason for the shortage, instead blaming Mid-Cities' accountant. (Ex. 9.)

7. In addition to the unrepaid $25,000 trust account shortage described above, there was an additional shortage of $5,000 in connection with escrow number 9961-L, reflecting money paid to respondent's brother from the trust account on December 17, 2009, and not replaced until March 31, 2010.

8. Additional shortages in the trust account appeared in connection with other escrows.

(a) In connection with escrow number 11682-L, there was a shortage of $1,090, reflecting disbursement of an unauthorized escrow fee on October 13, 2009. The funds were not replaced until March 25, 2010.

(b) In connection with escrow number 11871-L, there was a shortage of $675 due to Mid-Cities' taking an escrow fee twice, on October 21 and 22, 2009. The funds were not replaced until May 1, 2010.

9. As of September 30, 2010, Mid-Cities' current liabilities exceeded its liquid assets by $2,795. As of the same date, Mid-Cities' overall liabilities exceeded its total assets by $7,825, so that its tangible net worth was negative $7,825.

10. Throughout the period covered by the special examination, the examiner found numerous instances in which Mid-Cities failed to properly and accurately post receipts and checks. In particular, the special examiner found that transactions would be posted long after they occurred.

11. On January 17, 2012, the Commissioner issued and served upon Mid-Cities an Order to Discontinue Escrow Activities Pursuant to Financial Code Section 17415 (ex. 13), due to the ongoing shortage of $25,000 from the trust account.

12. On February 2, 2012, the Commissioner issued, and served on respondent the next day (ex. 15), the following documents:

(a) Notice and Summary of Findings Pursuant to Financial Code Section 17621 (Summary of Findings) (ex. 11);

(b) Demand For and Order Taking Possession of the Trust Funds and Escrow Records of Mid-Cities Escrow Pursuant to Financial Code Section 17621 (Order Taking Possession) (ex. 12); and

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(c) Order Appointing Peter A. Davidson Conservator Pursuant to Financial Code Section 17630 (ex. 14).

13. The Summary of Findings included the matters revealed by the special examination, as set forth above. The Order Taking Possession noted as justification for the Commissioner's action Mid-Cities' inability to remedy the conditions set forth in the Summary of Findings.

14. The conservator's review of Mid-Cities' books and records initially showed a total trust account shortage of $85,497.37. After adjustments and corrections were made, the actual loss was approximately $61,000. (Testimony of Peter A. Davidson.)

15. On February 6, 2013, the conservator was appointed as receiver to liquidate and wind up Mid-Cities' trust account affairs (ex. 21). On April 2, 2013, the receiver once again requested, via correspondence, that respondent replace the $25,000 trust account shortage (ex. 22). Respondent did not respond to the receiver's letter. In the end, those who were due payment from Mid-Cities' trust account received approximately 75 percent of what they were owed. (Testimony of Peter A. Davidson.)

16. Respondent knew or should have known that the foregoing conduct violated the Escrow Law. The foregoing conduct caused material damage to Mid-Cities, since it led the company to cease business, and to the public, since it caused principals to lose approximately 25 percent of their money on deposit with Mid-Cities.

17. The Accusation (¶ 7(d)) alleges that on unspecified date(s), respondent falsified a signature on at least one escrow, by using "cut and paste." The only evidence presented to support this allegation was the special examiner's statements, in a July 8, 2010 memorandum (ex. 9), of her suspicion that this had occurred on one or more occasions. The examiner's suspicion did not constitute proof that respondent more likely than not altered document(s).

18. The Accusation (¶ 7(f)) also alleges that on unspecified date(s), respondent failed to perform timely reconciliations of Mid-Cities' general account. Evidence substantiating this allegation was not presented.

19. On two occasions, one in 2010 and the other in 2011, the Commissioner ordered Mid-Cities to discontinue all escrow activities due to the cancellation of its bond. (Exs. 9, 10, and 13.) Mid-Cities nevertheless continued to accept new escrows and conduct escrow activities before its bond was reinstated, and before the Commissioner's orders were set aside.

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LEGAL CONCLUSIONS

1. Complainant established that respondent should be barred from employment, management, or control of any escrow agent. Financial Code[2] section 17423 provides, in pertinent part:

> (a) The commissioner may, after appropriate notice and opportunity for hearing, . . . bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds . . . :
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> (1) That the . . . bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

2. As the owner, president, and manager of escrow agent Mid-Cities, respondent committed and/or caused several violations of the Escrow Law (§§ 17000 et seq.), as follows.

3. Section 17414, subdivision (a)(1), prohibits the knowing or reckless disbursement of escrow funds "otherwise than in accordance with escrow instructions" or participation in "activity which constitutes theft or fraud in connection with any escrow transaction."

4. California Code of Regulations, title 10 (Regulation), section 1738, subdivision (a), likewise mandates that money deposited in a trust or escrow account be withdrawn "only in accordance with the written escrow instructions of the principals to the transaction[.]" Regulation section 1738.1 prohibits an escrow agent from paying out more from an escrow account than has been deposited into it at the time of the payment. Regulation section 1738.2 requires escrow agents to use the money or property deposited into escrow only as provided by the escrow instructions, or in the absence of a specific instruction or a court order, "in accordance with sound escrow practice."

5. Respondent's use of $25,000 from Mid-Cities' trust account to repay a loan from her brother violated these provisions. (Factual Findings 4-6.) The additional shortages in Mid-Cities' trust account of $5,000, $1,090, and $675, also violated these provisions. (Factual Findings 7 and 8.) Although the latter amounts were eventually replaced, the $25,000 never was. (Factual Findings 4-8.)

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[2] Further statutory references are to the Financial Code, unless otherwise indicated.

6. Section 17414, subdivision (a)(2), prohibits an escrow agent from knowingly or recklessly making any misstatement of material fact in, or omitting any material fact from, escrow books and records "or any other document pertaining to an escrow or escrow affairs." Respondent's inaccurate ledger entries regarding the $25,000 disbursement in connection with escrow 9961-L violated this provision (Factual Finding 4), as did respondent's issuance of receipts and checks falsely purporting to replace part of the $25,000 trust account shortage. (Factual Finding 5.)

7. Regulation sections 1732.1 and 1732.2 require all transactions to be posted in the escrow ledger as of the transaction date, and that accurate ledgers be timely maintained. Respondent's inaccurate posting of receipts and checks violated those provisions. (Factual Findings 4 and 10.)

8. Section 17210, subdivision (a), requires that an escrow agent maintain liquid assets of at least $25,000 in excess of current liabilities. As of September 30, 2010, Mid-Cities failed to maintain liquid assets in the required amount. (Factual Finding 9.)

9. Section 17210, subdivision (a), also requires that an escrow agent maintain a tangible net worth of at least $50,000. As of September 30, 2010, Mid-Cities failed to maintain the required tangible net worth. (Factual Finding 9.)

10. Respondent failed to appear at the hearing, or otherwise present any mitigating evidence or explanation for her conduct. The foregoing violations of the Escrow Law were or should have been known to respondent; they also caused material damage to both escrow agent Mid-Cities and the public. (Factual Findings 2 and 4-16.) Accordingly, it is in the public interest to bar respondent from employment, management, or control of any escrow agent, pursuant to section 17423, subdivision (a)(1).[3]

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[3] The remaining violations alleged in the Accusation (i.e., falsifying signature(s) in violation of section 17403.2, subdivision (a); and failure to reconcile the general account monthly in violation of Regulation section 1732.3, subdivision (b)) were not proven (Factual Findings 17 and 18) and/or constituted surplusage. The evidence of Mid-Cities' violation of the Commissioner's 2010 and 2011 orders to discontinue escrow activities due to the cancellation of its bond (Factual Finding 19) was likewise surplusage, because these violations were not alleged in the Accusation.

ORDER

Respondent Liana Munden is barred from any position of employment, management, or control of any escrow agent.

Dated: December 1, 2015

/s/

ANGELA VILLEGAS
Administrative Law Judge
Office of Administrative Hearings