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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA
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11 In the Matter of the Statement of) File No.: 963-2542
Issues/Accusation of THE CALIFORNIA)
12 CORPORATIONS COMMISSIONER,) STATEMENT OF ISSUES/ACCUSATION
13)
Complainant,)
14)
vs.)
15)
16 DESTINY ESCROW, INC., OSCAR)
ROLANDO PORTILLO aka OSCAR)
17 ROLANDO PORTILLO ARRIAGA, and)
IMELDA JIMENEZ,)
18)
19 Respondents.)

20 The Complainant is informed and believes, and based upon such information and belief,
21 alleges and charges Respondents as follows:
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23 I
24 INTRODUCTION

25 The proposed orders seek to deny the application for change of ownership of Destiny
26 Escrow, Inc. ("Destiny") pursuant to Financial Code section 17209.3, revoke the escrow agent's
27 license of Destiny pursuant to Financial Code section 17608, and to bar Oscar Rolando Portillo also
28 known as Oscar Rolando Portillo Arriaga ("Portillo") and Imelda Jimenez ("Jimenez") from any

1 position of employment, management or control of any escrow agent pursuant to Financial Code
2 section 17423 in that Destiny, Portillo and Jimenez have committed numerous violations of the
3 Escrow Law.

4 **II**

5 **LICENSEE**

6 Destiny holds an escrow agent’s license issued by the California Corporations Commissioner
7 (“Commissioner”) on or about June 30, 2008 under the California Escrow Law (California Financial
8 Code Section 17000 et seq.). Destiny has its principal place of business located at 9653 Lakewood
9 Boulevard, Downey, California 90240.

10 Portillo is the president of Destiny and has been the president since on or about April 1,
11 2011. Portillo is also the son-in-law of Sergia Marina Cardona (“Cardona”), the president and sole
12 shareholder of MS Escrow Services (“MS Escrow”), a former escrow agent licensee of the
13 Commissioner.

14 Jimenez was an escrow officer and the proposed manager for Destiny until on or about May
15 24, 2012. Jimenez was an escrow officer at MS Escrow Services immediately prior to her
16 employment with Destiny.

17 Susan Robison (“Robison”) is the sole shareholder of Destiny and was the president of
18 Destiny from at least its licensure under the Escrow L until on or about April 1, 2011.

19 **III**

20 **THE PENDING APPLICATION**

21 On or about August 5, 2011, Destiny filed an application for change of ownership
22 (hereinafter "application") with the Commissioner pursuant to the Escrow Law, in particular,
23 Financial Code Section 17213. The application identified Portillo as the new president, secretary,
24 treasurer, and sole shareholder and director of Destiny. Portillo had never previously been employed
25 in the independent escrow industry.

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IV

ESCROW VIOLATIONS AT DESTINY

A. Preliminary Examination:

On or about November 16, 2011, the Commissioner, by and through staff, commenced a preliminary regulatory examination of Destiny. The preliminary examination was commenced after Destiny's audited financials for the period ended December 31, 2010 disclosed that Destiny did not meet the tangible net worth and liquid asset requirements of Financial Code section 17210 and Destiny failed to respond to the Commissioner's demands that it submit evidence that it had come into compliance with the financial requirements of Financial Code section 17210.

The preliminary examination disclosed that Destiny was operating without an approved manager in violation of Financial Code section 17200.8. The preliminary examination also disclosed that Destiny still did not meet the financial requirements of Financial Code section 17210. Destiny, according to its unaudited balance sheet of December 31, 2011, had a tangible net worth deficiency of \$19,761.30 and a liquid asset deficiency of \$63,947.55. The deficiencies on December 31, 2010 were \$14,892.00 in tangible net worth and \$25,000.00 in liquid assets. On or about March 28, 2012, Destiny was requested to submit evidence that it had corrected its tangible net worth and liquid asset deficiencies by April 28, 2012. Destiny did not submit anything further on the issue until on or about November 13, 2012 when Destiny submitted its December 31, 2011 audit report. The 2011 audit report disclosed that Destiny still had a tangible net worth deficiency of \$4,319.00 and a liquid asset deficiency of \$36,605.00. A further letter demanding a copy of Destiny's October 31, 2012 balance sheet and income statement has gone unanswered. As such, Destiny has failed to submit any evidence that it meets the tangible net worth and liquid asset requirements of Financial Code section 17210.

B. Audit Report:

Pursuant to Financial Code section 17406, all licensees under the Escrow Law are required to file an annual audit report containing audited financial statements ("audit report") within one hundred and five (105) days after the close of their fiscal year. Destiny's fiscal year end is December 31. Accordingly, Destiny was required to file its 2011 audit report on or before April 15,

1 2012.

2 On or about November 2, 2011, the Commissioner notified Destiny in writing that its audit
3 report was due April 15, 2012. Destiny failed to file the audit report by April 15, 2012.

4 On or about April 23, 2012, a follow up letter was sent to Destiny concerning its failure to
5 file the audit report. Destiny was notified in the letter that failure to file to the audit report within
6 ten days of the date of the letter could result in assessment of penalties, a special examination and/or
7 administrative action.

8 Destiny finally filed its December 31, 2011 audit report on or about November 13, 2012,
9 which was two-hundred and eleven (211) days late in violation of Financial Code section 17406.

10 **C. Special Examination:**

11 On or about May 14, 2012, the Commissioner, by and through staff, commenced a special
12 examination of the books and records of Destiny. The special examination was commenced after the
13 Department of Corporation's ("Department") investigation of MS Escrow disclosed unusual activity
14 at Destiny, and the Department discovered the persons operating Destiny were involved in the
15 activities at MS Escrow, for which the Commissioner had brought a bar action against Cardona. The
16 special examination disclosed that Destiny was operating without an approved manager in violation
17 of Financial Code section 17200.8 and had an unreported employee in violation of Financial Code
18 sections 17414.1(d) and 17419. The special examination further disclosed the following violations:

19 **1. Escrow Number 10035-IJ:**

20 (a) On or about February 7, 2012, Destiny, by and through Portillo and Jimenez,
21 disbursed \$100,000.00 to Portillo, by and through his company known as RMS Remodeling, prior to
22 close of escrow without authorization from all escrow parties in violation of Financial Code section
23 17421.

24 (b) On or about February 7, 2012, Respondents violated Financial Code section
25 17414(a)(2) by misrepresenting the \$100,000.00 disbursement to Portillo as a refund to the buyer on
26 the escrow ledger.

27 (c) On or about February 7, 2012, Respondents violated Financial Code section
28 17414(a)(2) by preparing, or causing to be prepared, a wire transfer request that misrepresented the

1 wire transfer of \$100,000.00 to Portillo as going to the buyer.

2 (d) On or about May 31, 2012, Respondents violated Financial Code section 17414(a)(2)
3 again by deleting and/or otherwise altering the escrow file in that (i) the conversation log
4 documenting the buyer’s request to have his deposit refunded had been removed; (ii) the copy of the
5 buyer’s deposit check had been removed; (iii) the outgoing wire transfer request to disburse the
6 buyer’s \$100,000.00 deposit to the buyer, which never occurred, had been removed, and an
7 outgoing wire transfer request to disburse \$100,000.00 to Portillo through RMS remodeling had
8 been substituted in its place; and (iv) an instruction dated February 2, 2012 authorizing payment of
9 \$100,000.00 to Portillo through RMS Remodeling and an invoice from RMS Remodeling had been
10 inserted into the file.

11 **2. Escrow Number 10065-IJ:**

12 (a) On or about April 4, 2012, Destiny, by and through Portillo and Jimenez, disbursed
13 \$25,000.00 to Portillo, by and through his company RMS Remodeling, without authorization in
14 violation of Financial Code sections 17414(a)(1) and 17421.

15 (b) The unauthorized disbursement described in paragraph (a) above also violated
16 California Code of Regulations, title 10, section 1738.1 in that it caused a shortage to exist in the
17 trust account in the amount of \$25,000.00 from on or about April 4, 2012 until on or about May 18,
18 2012 when Destiny cured the shortage after written demand by the Commissioner.

19 **V**

20 **ESCROW VIOLATIONS AT MS ESCROW**

21 It was discovered during the special examination of MS Escrow commenced on or about
22 January 3, 2012, that Portillo repeatedly violated Financial Code section 17414(a)(1) when Portillo,
23 by and through his company RMS Remodeling, accepted at least twenty-seven (27) unauthorized
24 disbursements of trust funds from MS Escrow totaling \$101,293.23. These unauthorized
25 disbursements, which commenced on or about March 14, 2011 and continued through at least
26 January 19, 2012, are described as follows:

27 **A. Cancellation of Outstanding Trust Checks:**

28 On or about October 12, 2011 and December 12, 2011, Portillo received at least fifteen (15)

1 unauthorized disbursements of trust funds from thirteen (13) escrows at MS Escrow totaling
2 \$6,599.08. These unauthorized disbursements represented funds from outstanding trust checks that
3 were canceled and reissued to Portillo’s company.

4 **B. Misappropriating Escrow Balances:**

5 On or about December 8, 2011 and January 5, 2012, Portillo received at least five (5)
6 unauthorized disbursements of dormant trust funds from five (5) escrows at MS Escrow totaling
7 \$5,204.00. These unauthorized disbursements represented the balances remaining in the escrows.

8 **C. Additional Unauthorized Disbursements:**

9 In addition to the above, Portillo received at least a further seven (7) unauthorized
10 disbursements from four (4) escrows at MS Escrow totaling \$89,490.15 in violation of Financial
11 Code section 17414(a)(1). The additional unauthorized disbursements are described as follows:

12 (i) On or about March 14, 2011, Portillo received an unauthorized disbursement of
13 \$45,562.32 in MS Escrow number 1488. Jimenez was the signator on the unauthorized
14 disbursement to Portillo.

15 (ii) On or about June 3, 2011, Portillo received an unauthorized disbursement of trust
16 funds in the amount of \$5,000.00 in MS Escrow number 1891. The \$5,000.00 received by Portillo
17 was part of the \$290,000.00 in deposits made by the buyer on or about May 31, 2011 and June 2,
18 2011 in that escrow.

19 (iii) On or about June 13, 2011, Portillo received an unauthorized disbursement of trust
20 funds in the amount of \$8,000.00 in MS Escrow number 1891. The \$8,000.00 received by Portillo
21 was part of the \$290,000.00 in deposits made by the buyer on or about May 31, 2011 and June 2,
22 2011 in that escrow.

23 (iv) On or about November 17, 2011, Portillo received an unauthorized disbursement of
24 trust funds in the amount of \$5,000.00 in MS Escrow number 1891. The \$5,000.00 received by
25 Portillo was part of the \$293,000.00 deposited back into escrow by the buyer on or about November
26 17, 2011. Prior to this disbursement, the buyer and seller in MS Escrow number 1891 had executed
27 instructions to release \$270,000.00 of the \$290,000.00 deposit back to the buyer due to the inactivity
28 of the escrow, with an agreement that the buyer would re-deposit the funds once the escrow became

1 active again.

2 (v) On or about November 23, 2011, Portillo received an unauthorized disbursement of
3 trust funds in the amount of \$11,500.00 in MS Escrow number 1891. The \$11,500.00 received by
4 Portillo was part of the \$293,000.00 deposited back into escrow by the buyer on or about November
5 17, 2011.

6 (vi) On or about September 20, 2011, Portillo received an unauthorized disbursement of
7 trust funds in the amount of \$8,720.71 in MS Escrow number 1907.

8 (vii) On or about January 19, 2012, Portillo received an unauthorized disbursement of trust
9 funds in the amount of \$5,707.12 in MS Escrow number 1919. The \$5,707.12 received by Portillo
10 was, according to the closing statement, monies due the listing agent on the property.

11 **VI**

12 **CONCLUSION**

13 Complainant finds, by reason of the foregoing, that:

14 (1) Respondents Destiny Escrow and Portillo have violated Financial Code sections
15 17200.8, 17210, 17406, 17414(a)(1), 17414(a)(2), 17414.1(d), 17419, and 17421 and California
16 Code of Regulations, title 10, section 1738.1.

17 (2) Respondent Jimenez has violated Financial Code sections 17414(a)(1), 17414(a)(2),
18 and 17421 and California Code of Regulations, title 10, section 1738.1.

19 (3) Destiny is Escrow is incapable of operating its escrow business in compliance with
20 the Escrow Law as demonstrated by its continuing violations.

21 (4) Respondents have caused damage to the public.

22 (5) It is in the best interests of the public to (i) deny the change of ownership application
23 of Destiny, (ii) revoke the escrow agent's license of Destiny, and (iii) bar Portillo and Jimenez from
24 any position of employment, management or control of any escrow agent.

25 California Financial Code section 17209.3 provides in pertinent part:

26 The commissioner may refuse to issue any license being applied for
27 if upon his examination and investigation, and after appropriate notice
28 and hearing, he finds any of the following:

...

1 (b) That any incorporator, officer, or director of applicant has, within
2 The last 10 years, (2) committed any act involving dishonesty, fraud or deceit,
3 which crime or act, is substantially elated to the qualifications, functions, or
4 duties of a person engaged in business in accordance with the provisions of this
5 division.

6 (f) The applicant or any officer, director, general partner, or incorporator
7 of the applicant, or any person owning or controlling, directly or indirectly, 10
8 percent or more of the outstanding equity securities of the applicant has violated
9 any provision of this division or the rules thereunder or any similar regulatory
10 scheme of the State of California or of a foreign jurisdiction.

11 California Financial Code section 17608 provides in pertinent part:

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

14 (b) The licensee has violated any provision of this division or any
15 rule made by the commissioner under and within the authority of this
16 division.

17 (c) Any fact or condition now exists which, if it had existed at the
18 time of the original application for such license, reasonably would have
19 warranted the commissioner in refusing originally to issue such license.

20 California Financial Code section 17423 provides in pertinent part:

21 (a) The commissioner may, after appropriate notice and opportunity
22 for hearing, by order, . . . bar from any position of employment,
23 management, or control any escrow agent, or any other person, if the
24 commissioner finds either of the following:

25 (1) That the . . . bar is in the public interest and that the person has
26 committed or caused a violation of this division or rule or order of
27 the commissioner, which violation was either known or should have
28 been known by the person committing or causing it or has caused material
29 damage to the escrow agent or to the public.

30 THEREFORE, Complainant asserts that she is justified under Financial Code sections
31 17209.3, 17423 and 17608 in (i) denying the change of ownership application of Destiny, (ii)
32 revoking the escrow agent’s license of Destiny, and (iii) barring Portillo and Jimenez from any
33 position of employment, management or control of any escrow agent.

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WHEREFORE IT IS PRAYED that (i) the change of ownership application of Destiny filed on August 5, 2011 be denied, the escrow agent’s license of Destiny be revoked, and (iii) Portillo and Jimenez be barred from any position of employment, management or control of any escrow agent.

Dated: January 2, 2013
Los Angeles, CA

JAN LYNN OWEN
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel