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7

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA
10

11 In the Matter of the Accusation of THE)
CALIFORNIA COMMISSIONER OF)
12 BUSINESS OVERSIGHT,)

13 Complainant,)

14 vs.)

15)
16 23/7 ESCROW, INC.,)

17 Respondent.)
18)
19)

OAH Case No.: L-2014040665

) File No.: 963-2640

) **FIRST AMENDED ACCUSATION**

) Hearing Date: August 13-14, 2014

) Hearing Time: 9:00 a.m.

) Assigned: Unassigned

20 In the Matter of the Order Imposing Penalties of)
21 THE CALIFORNIA COMMISSIONER OF)
BUSINESS OVERSIGHT,)

22)
23 Complainant,)

24 vs.)

25)
26 23/7 ESCROW, INC.,)

27 Respondent.)
28)

1 The Complainant is informed and believes, and based upon such information and belief,
2 alleges and charges Respondent as follows:

3 **I.**

4 **INTRODUCTION**

5 The California Commissioner of Business Oversight ("Commissioner") seeks to revoke the
6 escrow agent's license issued to 23/7 Escrow, Inc. ("23/7" or "Respondent") based upon its violations
7 of the California Escrow Law (Fin. Code, § 17000 et seq.)¹ ("Escrow Law"), including failure to file
8 annual audit reports, submit books and records for inspection by the Commissioner, and maintain its
9 books and records in conformity with the Escrow Law, and as set forth more fully below.

10 23/7 has timely requested a hearing in connection with the Commissioner's accusation and
11 this matter has been set for a two-day hearing to commence on August 13, 2014, before the Office of
12 Administrative Hearings, Los Angeles.

13 **II.**

14 **FACTUAL BACKGROUND**

15 23/7 is an escrow agent licensed by the Commissioner under the Escrow Law. Respondent
16 received its escrow agent's license from the Commissioner on October 21, 2011.

17 23/7 is a California corporation with its place of business located at 111 South Illinois Street,
18 Anaheim, California.

19 Theresa Davies ("Davies") is 23/7's president and sole shareholder.

20 **III.**

21 **VIOLATIONS OF THE ESCROW LAW**

22 **A. Failure to File August 31, 2012 Audit Report**

23 Under section 17406 of the Escrow Law, all licensees are required to file an annual audit
24 report containing audited financial statements ("audit report") within 105 days after the close of their
25 fiscal year. Respondent's fiscal year-end is August 31st. Therefore, 23/7 was required to file its audit
26 report for the fiscal year ended August 31, 2012, on or before December 15, 2012.

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28 ¹ All further statutory references are to the Financial Code, unless otherwise indicated.

1 On or about July 9, 2012, the Commissioner notified 23/7 in writing that its audit report
2 would be due by December 15, 2012. In her reminder letter, the Commissioner further notified
3 Respondent of the fact that its failure to file an audit report by December 15 could result in the
4 suspension or revocation of its license under section 17602.5 of the Escrow Law.

5 23/7 failed to submit its audit report on December 15, 2012.

6 On or about January 23, 2013, the Commissioner issued a 10-day demand letter to
7 Respondent concerning the audit report that was due on December 15, 2012. According to the
8 Commissioner's demand letter, if the audit report was not received within ten days, the business'
9 license could be suspended or revoked under section 17602.5 of the Escrow Law.

10 Respondent has yet to file its 2012 audit report as required under section 17406. Since the
11 February 7, 2013 filing deadline imposed by the 10-day demand letter, 23/7's audit report is at least
12 494 days late.²

13 **B. Failure to File August 31, 2013 Audit Report**

14 Respondent's 2013 audit report was due to be filed with the Commissioner on or before
15 December 15, 2013. On or about July 29, 2013, the Commissioner notified Respondent in writing
16 that its 2013 audit report was due by December 15, 2013. In her reminder letter, the Commissioner
17 further notified Respondent of the fact that its failure to file an audit report by December 15 could
18 result in the suspension or revocation of the business' license under section 17602.5 of the Escrow
19 Law.

20 On December 15, 2013, Respondent failed to submit its audit report to the Commissioner.

21 The Commissioner issued a 10-day demand letter to 23/7 on or about December 18, 2013,
22 concerning the audit report that was due on December 15. According to the Commissioner's demand
23 letter, if the audit report was not received within ten days, the business' license could be suspended or
24 revoked under section 17602.5 of the Escrow Law.

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28 ² As of the date of the Accusation.

1 Respondent has yet to file its 2013 audit report as required under section 17406. Since the
2 January 2, 2014 filing deadline imposed by the 10-day demand letter, 23/7's audit report is at least
3 166 days late.

4 **C. Failure to Produce Books and Records**

5 23/7 is not maintaining its books and records in a manner that allows the Commissioner to
6 determine compliance with the Escrow Law in violation of section 17404 and California Code of
7 Regulations, title 10, section 1730.³

8 Respondent has not properly reconciled its trust account since first having received its escrow
9 agent's license on October 21, 2011. Corporations Examiner Kevin Nguyen ("Nguyen") attempted to
10 perform a regulatory examination of the business commencing on or about November 5, 2012, but
11 found that 23/7 had not reconciled its trust account and did not maintain an escrow trial balance or
12 escrow ledgers as required by the Escrow Law. While 23/7 did maintain a manual control during that
13 period, the accountant hired by Respondent to reconcile the trust account failed to perform the
14 reconciliation.

15 The Commissioner made multiple demands on Davies, Respondent's owner, to produce the
16 business' books and records but Davies failed to provide the requested records despite having
17 received multiple extensions of time to comply with the Commissioner's demands.

18 Specifically, on or about November 19, 2012, Nguyen contacted Davies to follow up on the
19 examination but was informed by Davies that there was a "power outage" at Respondent's offices
20 and that Davies was not able to prepare any of the licensee's books and records for inspection. Again
21 on December 10, 2012, Nguyen contacted Davies concerning the exam and Davies informed him that
22 she had not yet corrected computer problems stemming from the power outage. Davies further
23 indicated that she was unable to provide any computer-generated documentation concerning the
24 escrow trust account. The examiner asked Davies if she could provide the month-end bank
25 reconciliation for the trust account and he was told that 23/7's accountant was "working on it." The
26 Commissioner granted Respondent an additional two weeks to rectify the computer and record-

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28 ³ Hereinafter "CCR."

1 keeping problems. On January 3, 2013, Nguyen called Davies to follow up on his examination.
2 Davies again requested additional time to correct the problems with 23/7's books and records. From
3 the period November 5, 2012 through February 19, 2013, the licensee was granted multiple
4 opportunities to provide its books and records for inspection and numerous demands were made on
5 23/7 to produce the requested records but the licensee was unable to provide them.

6 On or about December 10, 2013, Nguyen made another call to Davies to determine the status
7 of 23/7's books and records. Davies informed Nguyen that she could not get her computer software to
8 match with 23/7's daily manual report for the reconciliation cut-off date of November 2, 2012.
9 Nguyen asked Davies if her accountant was able to reconcile Respondent's month-end trust account
10 bank reconciliation reports for the periods of June 2012 through November 2012. Davies stated that
11 she would "work on it." As of January 7, 2014, the Commissioner had heard nothing further from
12 Davies.

13 Concerned about the status of the trust account and the absence of audit reports for the past
14 two fiscal years, on or about January 10, 2014, the Commissioner again attempted to conduct a
15 special examination of the licensee's books and records. On January 14, Nguyen arrived at the
16 licensed location and asked to speak with Davies. Davies was provided with a list of requested items
17 which were necessary to conduct his exam. The list included month-end bank reconciliation reports
18 for the period January 2013 through December 2013, month-end reports for January 2013 through
19 December 2013, and financial statements as of December 2013. Davies agreed to provide the
20 requested items within two weeks.

21 Two weeks later, on or about February 6, Nguyen called Davies to follow up on the special
22 examination and enquire about the requested items. Davies told the examiner that she had not heard
23 back from her accountant and that she would call Nguyen back the next day. Davies did not call the
24 examiner back the next day. On February 24, Nguyen again called Davies about the requested items
25 but was told by Davies' assistant, Tracy Gomez, that Davies was unavailable and that Davies would
26 have to call him back. On February 25, the examiner received an e-mail from Davies requesting the
27 audit continue the following week. Nguyen confirmed that his special exam would re-commence on
28 March 4.

1 On March 3, Davies sent an e-mail asking the examiner to postpone the audit due to her
2 accountant not being able to reconcile the month-end trust account bank reconciliations. Davies told
3 Nguyen that she was working with a new accountant Rosie Mares, and that she was confident Mares
4 would be able to reconcile the trust account within a week. Nguyen requested a specific date when
5 Davies would be able to provide the items he had requested back on January 14 and Davies told him
6 that she would let him know within a week.

7 On or about March 12, Nguyen arrived at the licensed location and requested Davies
8 acknowledge receipt of a formal demand letter to provide the Commissioner with the escrow books
9 and records by March 17 at 9 a.m. Davies signed the demand letter but requested additional time to
10 respond. The Commissioner agreed to give Davies until March 19 to provide the requested books and
11 records.

12 On or about March 19, Nguyen arrived at 23/7's offices to meet with Davies and obtain the
13 books and records requested in the demand letter. Escrow officer Tammy Slotterbeck informed the
14 examiner that Davies was out sick for the day and that 23/7's books and records would not be
15 produced for inspection.

16 In light of 23/7's inability to provide the records and because 23/7 was conducting its escrow
17 business in such an unsafe and injurious manner as to render further operations hazardous to the
18 public or to its customers, on or about March 24, the Commissioner issued an Order to Discontinue
19 Escrow Activities under Financial Code section 17415. The order prohibits 23/7 from accepting new
20 escrow business unless and until its records are brought current. Davies did not request a hearing in
21 connection with that order and the order is now final.

22 **D. Failure to Maintain Books and Records**

23 Given the disarray of 23/7's books and records, on or about March 24, 2014, the
24 Commissioner dispatched Nguyen and another examiner to the licensed location to reconcile the trust
25 account and bring the books current. On or about April 30, the examiners completed their
26 reconciliation of 23/7's trust account for the period January 2012 through February 28, 2014. The
27 exam failed to disclose trust shortages or debit balances but 23/7 has yet to file its annual audit
28 reports for 2012 and 2013.

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IV.
LAW

Section 17404 provides:

Every person subject to this division shall keep and use in its business, books, accounts, and records which will properly enable the commissioner to determine whether the escrow functions performed by such person comply with the provisions of this division and with all rules made by the commissioner under this division.

Section 17406 provides in pertinent part:

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

Section 17602.5 provides in pertinent part:

If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the date designated for the making of the reports, or within any extension of time granted by the commissioner, . . . such failure shall constitute grounds for the suspension or revocation of the license held by such escrow agent.

Section 17608 provides in pertinent part:

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

...

(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.

CCR section 1730 provides:

(a) An escrow agent who is engaged in the business of receiving escrows specified in subdivision (c) of Section 17312 of the Financial Code and is required to be a member of Escrow Agents' Fidelity Corporation shall have its business offices located in the State of California and shall maintain its books, records and accounts in the State of California. An escrow agent who is not engaged in the business

1 of receiving escrows specified in subdivision (c) of Section 17312 of
2 the Financial Code and is not required to be a member of Escrow
3 Agents' Fidelity Corporation shall maintain its books, records and
4 accounts in the State of California or in the state the escrow agent is
5 located in.

6 (b) An escrow agent shall notify the Commissioner in writing of the
7 location of its books, records and accounts. Such books, records and
8 accounts shall be maintained at such location unless the escrow agent
9 notifies the commissioner in writing at least 15 days prior to changing
10 the location of such books.

11 **V.**

12 **PRAYER FOR ORDER REVOKING 23/7 ESCROW, INC.'S ESCROW AGENT'S LICENSE**

13 The Commissioner finds that, by reason of the foregoing, 23/7 Escrow, Inc. has violated
14 Financial Code sections 17404, 17406, and CCR section 1730, which constitute grounds for the
15 revocation of its escrow agent's license under sections 17602.5 and 17608 of the Escrow Law.

16 WHEREFORE, IT IS PRAYED under sections 17602.5 and 17608, that the escrow agent's
17 license of 23/7 Escrow, Inc. be revoked.

18 Dated: June 16, 2014
19 Los Angeles, California

20 JAN LYNN OWEN
21 Commissioner of Business Oversight

22 By: _____
23 Blaine A. Noblett
24 Senior Corporations Counsel
25 Enforcement Division
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