

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SOPHIA C. KIM (CA BAR NO. 265649)
Corporations Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of the Accusation of) File No.: 963-2235
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT OF THE STATE OF) SETTLEMENT AGREEMENT
CALIFORNIA,)
14)
Complainant,)
15)
16 vs.)
17 LORENA Y. MARTINEZ,)
18)
19 Respondent.)
_____)

20
21
22
23
24
25 This Settlement Agreement is entered into between Respondent Lorena Y. Martinez,
26 (“Martinez”) and Complainant the Commissioner of Business Oversight (“Commissioner”),¹ and is
27 made with respect to the following facts:

28 _____
¹ As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECITALS

A. Conquest Escrow, Inc. (“Conquest”) is an escrow agent holding a valid license issued by the Commissioner pursuant to the Escrow Law (Section 17000 et seq. of the California Financial Code) and has its principal place of business located at 5200 E. Gage Avenue, Bell, California 90201.

B. Lorena Y. Martinez (“Martinez”) is at all relevant times herein an escrow officer employed by Conquest with a principal place of business located at 5200 E. Gage Avenue, Bell, California 90201.

C. On or around August 18, 2014, the Commissioner issued to Martinez the following: Notice of Intent to Issue Order Barring From Any Position of Employment, Management or Control of Any Escrow Agent; Statement to Respondent; Accusation to Issue Order Barring From Any Position of Employment, Management or Control of Any Escrow Agent; blank Notice of Defense; and Government Code Sections 11507.5, 11507.6 and 11507.7 relating to discovery (“Accusation”).

D. On or around August 22, 2014, Martinez was personally served by the Commissioner with the Accusation.

E. On or around September 5, 2014, Martinez timely filed a Notice of Defense with the Commissioner in the matter regarding the Accusation.

It is the intention and desire of the parties to resolve these matters without the necessity of a hearing and/or other litigation.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the parties agree as follows:

TERMS AND CONDITIONS

1. Purpose. This Settlement Agreement is entered into for the purpose of judicial economy and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

2. Admission. Martinez hereby admits to the allegations contained in the Accusation. The admissions of Martinez herein are solely for the limited purposes of this proceeding and any

1 future proceedings that may be initiated by or brought before the Commissioner against Martinez.
2 It is the intent and understanding between the parties that this Settlement Agreement, and
3 particularly the admissions of Martinez herein, shall not be binding or admissible against Martinez
4 in any action(s) brought against Martinez by any third party.

5 3. Order Suspending. Martinez hereby agrees to the immediate issuance by the
6 Commissioner of an order suspending Martinez from any position of employment by an escrow
7 agent for a period of one year. The suspension shall be served from November 3, 2014 through
8 close of business on November 3, 2015. A copy of the Order Suspending Lorena Y. Martinez From
9 Any Position Of Employment, Management Or Control Of Any Escrow Agent is attached and
10 incorporated herein as **Exhibit A**.

11 4. Waiver of Hearing Rights. Martinez acknowledges her right to an administrative
12 hearing under Financial Code section 17423 in connection with the Accusation and the suspension
13 and hereby waives her right to a hearing, and to any reconsideration, appeal, or other rights which
14 may be afforded pursuant to the Escrow Law, the Administrative Procedure Act, the Code of Civil
15 Procedure, or any other provision of law in connection with this matter.

16 5. Duration of Suspension. The parties hereby agree that Martinez, once she has
17 completed the suspension set forth in paragraph 3 above, shall not be prohibited from employment
18 as an escrow officer by reason of the one-year suspension or the acts set forth in the Accusation
19 whether such employment is with Conquest or another licensed escrow agent so long as Martinez
20 has complied with the requirements of the Escrow Law.

21 6. Full and Final Settlement. The parties hereby acknowledge and agree that this
22 Settlement Agreement is intended to constitute a full, final and complete resolution of the
23 Accusation and that no further proceedings or actions will be brought by the Commissioner in
24 connection with these matters either under the Escrow Law or any other provision of law, excepting
25 therefrom any proceeding or action if such proceeding or action is based upon facts not presently
26 known to the Commissioner or which were knowingly concealed from the Commissioner by
27 Martinez or is based upon failure to abide by any of the terms in this Settlement Agreement.
28

1 7. Commissioner’s Duties. The parties acknowledge and agree that nothing contained
2 in this Settlement Agreement shall operate to limit the Commissioner’s ability to assist any other
3 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,
4 brought by any such agency against Martinez or any other person based upon any of the activities
5 alleged in these matters or otherwise.

6 8. Binding. This Settlement Agreement is binding on all heirs, assigns and/or
7 successors in interest.

8 9. Future Actions By Commissioner. This Settlement Agreement may be revoked and
9 the Commissioner may pursue any and all remedies available under law against Martinez if the
10 Commissioner later discovers that Martinez knowingly or willfully withheld information used and
11 relied upon in this Settlement Agreement.

12 10. Independent Legal Advice. Each of the parties represents, warrants, and agrees that
13 it has received independent advice from its attorney(s) and/or representatives with respect to the
14 advisability of executing this Settlement Agreement.

15 11. Full Integration. Each of the parties represents, warrants, and agrees that in
16 executing this Settlement Agreement it has relied solely on the statements set forth herein and the
17 advice of its own counsel. Each of the parties further represents, warrants, and agrees that in
18 executing this Settlement Agreement it has placed no reliance on any statement, representation, or
19 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
20 failure of any party or any other person or entity to make any statement, representation or disclosure
21 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
22 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to
23 preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of
24 this Settlement Agreement.

25 12. Presumption from Drafting. In that the parties have had the opportunity to draft,
26 review and edit the language of this Settlement Agreement, no presumption for or against any party
27 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
28 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive

1 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
2 of uncertainty, language of a contract should be interpreted most strongly against the party who
3 caused the uncertainty to exist.

4 13. Voluntary Agreement. Martinez enters into this Settlement Agreement voluntarily
5 and without coercion and acknowledges that no promises, threats or assurances have been made by
6 the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

7 14. Waiver, Modification, and Qualified Integration. The waiver of any provision of
8 this Settlement Agreement shall not operate to waive any other provision set forth herein, and any
9 waiver, amendment and/or change to the terms of this Settlement Agreement must be in writing and
10 signed by the parties.

11 15. Counterparts. The parties agree that this Settlement Agreement may be executed in
12 one or more separate counterparts, each of which when so executed, shall be deemed an original. A
13 fax signature shall be deemed the same as an original signature. Such counterparts shall together
14 constitute and be one and the same instrument.

15 16. Headings and Governing Law. The headings to the paragraphs of this Settlement
16 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
17 construction or interpretation of the provisions hereof. This Settlement Agreement shall be
18 construed and enforced in accordance with and governed by California law.

19 17. Effective Date. This Settlement Agreement shall not become effective until signed
20 and delivered by all parties.

21 18. Notice. Any notice required under this Settlement Agreement shall be addressed as
22 follows:

23 To Martinez: Kenneth Gaugh, Esq.
24 The Law Offices of Kenneth Gaugh
25 3142 Pacific Coast Highway
Torrance, California 90505

26 To the Commissioner: Sophia C. Kim
27 Corporations Counsel
28 Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

19. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

Dated: 11/3/14

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 11/3/14

By _____
LORENA Y. MARTINEZ
An Individual

APPROVED AS TO FORM AND CONTENT:

KENNETH GAUGH, ESQ.
The Law Offices of Kenneth Gaugh,
Counsel for Lorena Y. Martinez