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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. NEWPORT BEACH ESCROW CORP. and DAMIAN ROBERT KUTZNER, Respondents.	File No.: 963-2077 ORDER BARRING DAMIAN ROBERT KUTZNER FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY ESCROW AGENT

Pursuant to the Settlement Agreement entered into between Newport Beach Escrow Corp. ("Newport"), Damian Robert Kutzner ("Kutzner") and the California Corporations Commissioner ("Commissioner") on May 1, 2007, Kutzner is hereby barred from any position of employment, management or control of any escrow agent for a period of ten (10) years. This Order shall be effective July 2, 2007.

Pursuant to the terms of the Settlement Agreement, Kutzner stipulates to the following facts as alleged in the Accusation for purposes of this action and any future proceedings initiated by or brought before the California Corporations Commissioner only:

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1. Newport is an escrow agent licensed by the Commissioner pursuant to the Escrow Law of the State of California (California Financial Code Section 17000 et seq.). Newport has its principal place of business located at 660 Newport Center Drive, Suite 250, Newport Beach, California 92660. Kutzner is, and was at all times relevant, the owner and president of Newport.

2. On August 3, 2006, the Commissioner commenced a regulatory examination of the books and records of Newport. The August 2, 2006 Escrow Trial Balance obtained at the commencement of the examination disclosed that three escrows, including the fee account, had debit balances totaling $18,557.73. Additionally, a review of the most recent trust account reconciliation dated June 30, 2006 revealed thirty-five (35) adjusting items, some dating back to September 2005, resulting in an adjusted bank balance of negative $392,134.26. Further review into the debit balances disclosed on the August 2, 2006 Escrow Trial Balance revealed that the debit balances totaled $25,244.73 and were caused by overdrafts on the fee account in violation of California Financial Code section 17409 and unauthorized disbursements of trust funds from two escrows in violation of California Financial Code section 17414(a)(1) and California Code of Regulations, title 10, section 1738.

3. The debit balances disclosed on the August 2, 2006 Trial Balance consisted of (i) an overdraft of $4,175.00 in the fee account, (ii) unauthorized disbursements of $11,889.19 made against a phantom deposit of funds in the same amount in escrow number 3871, (iii) an unauthorized disbursement of $2,180.54 in escrow number 3954, and (iv) an overdraft of $313.00 in escrow number 4572. A review of the ledger for the fee account disclosed that the fee account had been continuously overdrawn since March 17, 2006 in violation of California Financial Code section 17409, which prohibits the deposit of escrow trust funds into accounts other than those specifically designated as escrow funds.

4. A review of the escrow files for escrow numbers 3871, 3954 and 4572 revealed that (i) the debit balance of $11,889.19 in escrow number 3871 was caused by one unauthorized disbursement on March 18, 2006 of $2,195.00 to Newport and two unauthorized disbursements on March 18, 2006 of $2,750.00 and $6944.19, respectively, to Newport's former unreported escrow manager, Danielle Steffani ("Steffani"), (ii) the debit balance in escrow number 3954 was actually

$9,180.54 and consisted of one unauthorized disbursement on March 18, 2006 of $2,180.54 to Newport and two unauthorized disbursements on April 7, 2006 of $3,500.00 each to Steffani, and (iii) that the $313.00 debit balance in escrow number 4572 had been corrected by a title refund on August 3, 2006.

5. The regulatory examination also disclosed that Newport (i) did not have a person stationed at its business location that met the experience requirements of California Financial Code section 17200.8, (ii) had failed to report at least two escrow managers in violation of California Financial Code sections 17209(g) and 17212.1 and California Code of Regulations, title 10, section 1726, (iii) had failed to report trust fund misappropriations as required by California Financial Code section 17414(c) as more fully discussed below, and (iv) had failed to provide books and records to the Commissioner in violation of California Financial Code section 17404 and California Code of Regulations, title 10, sections 1732.2, 1732.3, and 1737.3 as follows:

a. Month End Reports, including checks issued/adjusted, receipts issued/adjusted, wires issued/adjusted, trial balance and "current status" reports and trust reconciliation "top sheets" and outstanding checks, for the months of July 2005 through January 2006.

b. Receipts and bank deposit tickets for the period of March 1, 2006 through August 3, 2006.

c. Financial statements (balance sheet, income statement and general ledger as of July 31, 2006).

d. General bank account reconciliation as of July 31, 2006;

e. List of bank accounts and affiliates; and

f. Cleared checks that paid the current surety bond premium.

6. On September 26, 2006, Newport provided the Commissioner with a copy of the July 31, 2006 and August 31, 2006 trust account reconciliations and trial balances. The August 31, 2006 trust account reconciliation contained amended top sheets dated September 18, 2006 and September 25, 2006. A review of the most recent top sheet for the August 31, 2006 trust account reconciliation disclosed that adjustment number 13 is listed as a book adjustment, but is actually a bank

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adjustment. When properly applied to the book and bank balances, it transforms the balance from a positive $110,433.13 to a negative $47,760.87.

7. Newport discovered the misappropriation of trust funds by Steffani on April 24, 2006, but never reported it to the Commissioner as required by California Financial Code section 17414(c). Instead, the Commissioner learned that trust funds had possibly been misappropriated during the course of the August 2, 2006 regulatory examination. California Financial Code section 17414, subsection (c), requires that any person having knowledge of any abstraction or misappropriation of trust funds must immediately report it in writing to the Commissioner.

8. On October 31, 2006, Newport provided the Commissioner with a copy of the September 30, 2006 trust account reconciliation and trial balance. Demands were made for the general account bank statements and reconciliations for the months of July, August and September 2006, but were not provided. The September 30, 2006 trust account reconciliation disclosed a trust account shortage of $25,624.22 that when added to the escrows showing a positive balance for which no funds exist ($760.10), results in a trust account shortage of at least $26,384.32.

9. Based upon the condition of the books and records, the Commissioner was unable to determine the exact extent of the shortage in the trust account beyond the $26,384.32 found through September 30, 2006. The Commissioner made demands upon Newport to cure the trust account shortage found through September 30, 2006, but Newport failed to cure the trust account shortage until November 9, 2006.

10. Pursuant to California Financial Code section 17406, Newport was required to submit its audited financial statement for its fiscal year ended December 31, 2005 ("2005 audit report") to the Commissioner by April 15, 2006. On November 7, 2005, the Commissioner notified Newport in writing that its 2005 audit report was due April 15, 2006. Newport failed to submit the 2005 audit report by April 15, 2006. On June 2, 2006, Newport was sent a further letter demanding that the 2005 audit report be filed and notifying Newport that California Financial Code section 17408 authorizes penalties for failure to file the report at $100.00 per day for the first five days and $500.00 per day thereafter. Newport was also notified in the letter that failure to file the 2005 audit report

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could result in an administrative action. Newport has yet to file the 2005 audit report as required by California Financial Code section 17406.

11. Pursuant to California Financial Code section 17209(g), an application for an escrow agent's license is required to contain a completed statement of identity and questionnaire ("SIQ") for all individual stockholders, directors, officers, trustees, managers, and other persons participating in the escrow business. Two separate SIQs for Kutzner were filed in connection with the Newport application. Kutzner's SIQs, dated December 18, 2003 and April 8, 2004, respectively, stated that Kutzner had never been a defendant in any civil action other than a divorce, condemnation or personal injury action. Kutzner executed the SIQs under penalty of perjury that all of the information submitted in his SIQs was true and correct. The issuance of the escrow agent's license was based upon all the information submitted with the application, including Kutzner SIQs.

12. Subsequent to the August 2, 2006 regulatory examination, the Commissioner learned that Kutzner had been a defendant in an action brought by the Federal Trade Commission ("FTC") in November 2002 wherein Kutzner was alleged to have engaged in numerous false and deceptive practices in violation of Section 5(a) of the FTC Act and Section 521(a) of the Gramm-Leach-Bliley Act. The civil action resulted in a Stipulated Judgment and Order for Permanent Injunction against Kutzner on or about May 5, 2003. Accordingly, the SIQs submitted by Kutzner in connection with the Newport application were false as Kutzner failed to disclose the FTC action, which had resulted in a final judgment against him only months prior to the first SIQ filed with the Commissioner.

Dated: May 3, 2007
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By_____
Alan S. Weinger
Lead Corporations Counsel

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