

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

v.

COOPER'S ESCROW,

Respondent.

Case No. 963-1835

OAH No.: L-2008100882

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated December 23, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the technical and minor changes on the attached Errata Sheet pursuant to Government Code Section 11517(c)(2)(C).

This Decision shall become effective on April 3, 2009.

IT IS SO ORDERED this 2nd day of April 2009.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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CALIFORNIA CORPORATIONS
COMMISSIONER,

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vs.

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File No. 963-1835

OAH No. L-2008100882

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles on November 25, 2008. Complainant California Corporations Commissioner was represented by Joyce Tsai, Corporations Counsel. Respondent Cooper's Escrow was represented by its president, Vilma E. Cooper.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. This matter arises under the California Escrow Law, Financial Code section 17000 et seq. The Department of Corporations (hereinafter Department) is the agency of the State of California that has regulatory and licensing authority over licensees under the California Escrow Law.

2. On or about March 3, 1999, the California Corporations Commissioner issued a license to Cooper's Escrow, Inc. (hereinafter also respondent), to engage in the business of an escrow agent under the California Escrow Law. The president of Cooper's Escrow, Inc., is Vilma E. Cooper. Respondent's current business location is 8111 Eastern Avenue in the city of Bell Gardens, California 90203. The license is in

full force and effect and will continue as such unless surrendered, suspended, or revoked as provided by law.

3. (A) On or about November 3, 2007, a senior examiner for the Department sent a letter (Exh. 2) to respondent, reminding the licensee that an escrow agent is required under Financial Code section 17406 to submit an audit report prepared by an independent certified public accountant (CPA) or independent public accountant to the Corporations Commissioner no later than 105 days after the close of its fiscal year. Since the Department's records showed that respondent's fiscal year was to end on December 31, 2007, the senior examiner reminded respondent that its audit report was due no later than April 15, 2008. Respondent received the Department's reminder letter.

(B) In this letter, the senior examiner notified respondent that the failure to file a timely audit report could result in the imposition of penalties, suspension or revocation of its escrow license, or an immediate examination. The senior examiner also enclosed instructions for preparing the audit report and advised respondent that its accountant must be familiar with the requirements of Financial Code section 1740 and California Code of Regulations, title 10, section 1741.5.

4. At no time on or before April 15, 2008, did respondent file its annual audit report for the fiscal year ending December 31, 2007, with the Department as required by Financial Code section 17406.

5. On or about May 7, 2008, an escrow law specialist with the Department's Financial Services Division sent a letter to respondent, stating that the Department had not received its annual audit report that was due on April 15th. The escrow law specialist advised respondent that penalties could be assessed and a special examination performed at the licensee's cost for failing to file a timely audit report. This letter was sent to respondent by certified mail with a return receipt. Respondent received this letter on May 8, 2008.

6. On May 15, 2008, the Department received financial statements for Cooper's Escrow (Exh. A) for its fiscal year ending December 31, 2007, including a balance sheet, profit and loss statement, escrow liability statement, personnel summary, trust account reconciliation, trial balance statement of escrow trust liability, and outstanding checks list. The financial statements were prepared for respondent by Latimer and Massoni, certified public accountants in Huntington Park. In an accompanying letter, the CPA firm wrote that the financial statements presented information provided by the management of Coopers Escrow, did not include cash flows, and were not audited or reviewed. The CPA firm indicated it was not expressing any opinion or other form of assurance on the financial statements.

7. On May 15, 2008, a Corporations Examiner in the Department's Financial Services Division advised respondent's CPA firm by letter that the financial

statements submitted on behalf of Cooper's Escrow were not accepted because they did not constitute a proper annual audit report under Financial Code section 17406. The examiner asked the CPA firm to immediately submit a proper annual audit report that included a CPA's opinion on the financial statements as well as the elements listed in the enclosed instructions for an audit report. A copy of the letter was sent to respondent.

8. On May 19, 2008, the CPA firm informed the Department that it was not hired by Cooper's Escrow to perform a certified audit for the fiscal year ending December 31, 2007.

9. On August 19, 2008, Vilma E. Cooper called the Department and stated that respondent's accountants did not have the time to perform a certified audit and requested additional time to file the audit report for its last fiscal year. Respondent did not file a written request to extend the time for compliance for filing an audit report under Financial Code section 17406, subdivision (f).

10. At no time since the end of its fiscal year ending December 31, 2007, has respondent filed with the Department an annual audit report that meets the requirements of Financial Code section 17406.

11. (A) On September 30, 2008, notice was given to respondent of the intention of Preston DuFauchard, California Corporations Commissioner, to issue an order under Financial Code section 17608 to suspend respondent's escrow agent's license.

(B) The Administrative Law Judge takes official notice that, on September 30, 2008, Accusation, File No. 963-1835, was made and filed on behalf of Preston DuFauchard, California Corporations Commissioner, by Joyce Tsai in her official capacity of Corporations Counsel for the Department.

(C) On October 8, 2008, Vilma E. Cooper on behalf of Cooper's Escrow, Inc., filed a Notice of Defense, acknowledging receipt of the Notice of Intention to Issue Order Suspending Escrow Agent's License and Accusation and requesting a hearing.

(D) On November 3, 2008, the California Corporations Commissioner served a Notice of Hearing upon respondent pursuant to Government Code section 11509.

(E) On November 24, 2008, respondent filed a request to continue the hearing on the grounds that the escrow agent was trying to change accountants. The continuance request was denied and the matter proceeded to hearing. Vilma E. Cooper testified and presented the financial statements filed earlier with the Department and a letter from the CPA firm.

12. (A) As established by her testimony, Vilma E. Cooper thought that an audit report did not have to be submitted because the Department had commenced an examination of the books and records of Cooper's Escrow in or about February 2008. Thereafter, the Internal Revenue Service conducted an audit of Cooper's Escrow and she did not have time to contract with accountants for preparation of the audit report. In addition, Cooper contends that she did not realize that the financial statements submitted by the CPA firm did not constitute a proper audit report.

(B) On October 22, 2008, the CPA firm agreed to conduct an audit of Cooper's Escrow and prepare a certified audit report. However, Cooper did not have the funds to pay the CPA firm's fee for services and the audit was not started. Cooper indicates that the business of Cooper's Escrow is very slow and she is trying to find an accountant to prepare a certified audit report at a lower cost. She requests that the escrow agent's license issued to Cooper's Escrow not be suspended and that she be afforded more time to submit the annual audit report.

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to suspend respondent's escrow agent's license pursuant to Financial Code sections 17602.5 and 17608, subdivision (b), in that respondent failed to file an annual audit report for its fiscal year ending December 31, 2007, that contained audited financial statements in violation of Financial Code section 17406, as set forth in Findings 2 – 10 above.

2. Discussion – Financial Code section 17608 provides that the Corporations Commissioner may, after giving notice and a reasonable opportunity to be heard, suspend a license if the licensee has violated any provision of this division or any rule made by the commissioner. Section 17602.5 further provides, in pertinent part, that the failure of any licensed escrow agent to make any report required by law shall constitute grounds for the suspension of the license.

Section 17406 requires every licensed escrow agent to file an annual audit report containing audited financial statements within 105 days after the close of its fiscal year. The audit report and financial statements must include at least a balance sheet and a statement of income, be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant, and

the audit must be conducted in accordance with generally accepted auditing standards and the rules of the commissioner. (Fin. Code, § 17406, subd. (d).) For good cause and upon written request, the commissioner may extend the time for compliance for filing the annual audit report. (Fin. Code, § 17406, subd. (f).)

California Code of Regulations, title 10, section 1741.5 sets forth the instructions for preparing the independent annual audit report required by Financial Code section 17406. The audit report must include a statement indicating that the individual escrow liability accounts and the controlling account have been reconciled to the escrow trust account as of the balance sheet date. (Cal. Code Regs., tit. 10, § 1741.5, subd. (1).) The opinion or report of the independent accountant must include a statement that the accountant has examined the financial statements and the results of such examination.

In this matter, respondent was required to file its annual audit report on April 15, 2008. The escrow agent belatedly filed financial statements and balance sheets for its fiscal year but did not submit an opinion of its CPA firm that an accountant examined the financial statements or the results of any examination. In fact, the CPA firm declined to express any opinion, indicating that it had not audited the financial statements and had compiled the financial statements only on the basis of information provided by the escrow agent. As such, respondent's audit report did not meet the requirements of Financial Code section 17406 or regulation section 1741.5.

As of the date of the hearing, respondent has not filed an annual audit report that meets the requirements of the California Escrow Law despite having received two notices from the Department and having been served with the Accusation. That respondent underwent an examination earlier this year or cannot afford to hire a certified public accountant to conduct an audit and prepare a certified audit report does not excuse the filing of the audit report or constitute good cause for extending the time for compliance. The annual audit report helps ensure the protection of customers' funds entrusted to an escrow agent and the Department relies upon certified audit reports to determine the integrity of trust accounts and compliance with the laws and regulations of the Escrow Law. Suspension of respondent's license to operate as an escrow agent is necessary not only to protect the public interest and welfare but also to impress upon respondent the importance of complying with the law.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

1. The licenses and licensing rights previously issued by the California Corporations Commissioner to respondent Cooper's Escrow, Inc., Vilma E. Cooper as President, to engage in the business of an escrow agent are hereby suspended, based on Conclusions of Law 1 and 2 above, jointly and for all.

2. The escrow agent's license issued respondent Cooper's Escrow, Inc., shall be suspended until such time that respondent files an annual audit report for its fiscal year ending December 31, 2007, that meets the requirements of Financial Code section 17406 and California Code of Regulations, title 10, section 1741.5, as reasonably determined by the Department of Corporation's Special Administrator of the Escrow Law or her designee.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings