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

| | | | |
|----|------------------------------|---|---------------------------------|
| 11 | In the Matter of: |) | ESCROW LICENSE NO.: 963-1915 |
| 12 | |) | |
| 13 | THE COMMISSIONER OF BUSINESS |) | |
| 14 | OVERSIGHT, |) | |
| 15 | |) | |
| 16 | Complainant, |) | ACCUSATION IN SUPPORT OF ORDER |
| 17 | |) | SUSPENDING TOWER ESCROW, INC.’S |
| 18 | v. |) | ESCROW AGENT’S LICENSE |
| 19 | |) | |
| 20 | TOWER ESCROW, INC., |) | |
| 21 | |) | |
| 22 | Respondent. |) | |
| 23 | |) | |
| 24 | |) | |

20 The Commissioner of Business Oversight (Commissioner) is informed and believes and
21 based upon such information and belief, alleges and charges as follows:

22 **I.**

23 **Introduction**

24 1. Tower Escrow, Inc. (Tower) is an escrow agent licensed by the Commissioner
25 pursuant to the Escrow Law (Fin. Code § 17000 et seq.). Tower has its principal place of business
26 located at 3600 Wilshire Boulevard, Suite #426, Los Angeles, CA 90010.

27 2. On or about June 7, 2017, the Commissioner learned about two separate incidents of
28 Tower making unauthorized disbursements of trust funds in violation of Financial Code section

ACCUSATION IN SUPPORT OF ORDER SUSPENDING TOWER ESCROW, INC.’S ESCROW
AGENT’S LICENSE

1 17414 and California Code of Regulations, title 10, sections 1738 and 1738.2. In both instances in
2 2017, Tower recklessly followed the instructions of an imposter who had assumed the identity of the
3 actual principals of the escrow transaction and emailed Tower requesting that the trust funds be
4 disbursed to accounts that did not belong to the actual principals. Tower failed to exercise due
5 diligence and contact the actual principals in both instances to confirm the new disbursement
6 instructions, despite indications that the instructions may not have come from the actual principals.
7 Based upon Tower’s violations of the Escrow Law, the Commissioner, on February 8, 2018, issued
8 an Order to Discontinue Violations Pursuant to California Financial Code Section 17602 (2018
9 Order) against Tower and directed Tower to immediately discontinue violations of Financial Code
10 section 17414 and California Code of Regulations, title 10, sections 1738, 1738.1 and 1738.2.

11 3. As detailed below, Tower has again failed to exercise due diligence and disbursed
12 trust funds to an imposter who assumed the identity of the actual principals of the escrow transaction
13 and emailed instructions to Tower to disburse funds to bank accounts that did not belong to the
14 actual principals.

15 **II.**

16 **Statement of Facts**

17 4. On May 23, 2018, Tower opened Escrow #L-036456-NY for a purchase transaction.
18 The joint escrow instructions in Escrow #L-036456-NY stated that, “[E]lectronic signatures cannot
19 be accepted for any instructions concerning the release or disbursement of funds from escrow, for
20 any items requiring acknowledgement by a Notary Public, or any other document (s) at Escrow
21 Holder’s discretion.” Subsequently that same day, a third-party deposit in the amount of \$16,950.00
22 was made for the buyer in Escrow #L-036456-NY. The third-party deposit instructions stated that,
23 “In the event the escrow is not consummated, it is understood that all funds deposited in this
24 escrow... shall be disbursed ONLY in accordance with mutually signed disbursement / cancellation
25 instructions of the principals ...”

26 5. On or about May 30, 2018, both the buyer and seller in Escrow #L-036456-NY
27 executed joint instructions to cancel the escrow and disburse buyer’s deposit back to the buyer. On
28 May 31, 2018, the buyer’s real estate agent forwarded an email from the buyer to Tower with the

1 buyer's mailing address for the refund check. Subsequently that day, Tower issued a trust check in
2 the amount of \$16,950.00 to the buyer and mailed the trust check to buyer's mailing address.

3 6. On or about June 5, 2018, an imposter, assuming the identity of the buyer's real estate
4 agent and using a different email address than the buyer's real estate agent's actual email address,
5 emailed Tower requesting that the refund of the buyer's deposit be sent through wire transfer. The
6 fake email address used by the imposter contained an email signature with the actual email address.
7 Tower did not raise any issue with the fact that the imposter's email address was inconsistent with
8 the actual email address in the email signature. In response to the imposter's email, Tower notified
9 the imposter that the buyer would need to return the \$16,950.00 trust check that was already mailed
10 to the buyer. The imposter informed Tower that the buyer would mail the check back to Tower and
11 subsequently continued to inquire about whether or not Tower received the buyer's refund check and
12 whether or not Tower would wire the buyer's refund to the bank account provided by the non-
13 principal.

14 7. On or about June 7, 2018, the imposter requested that Tower cancel the trust check
15 previously issued on May 31, 2018 and instead have the buyer's refund wired to a bank account
16 provided by the imposter. Subsequently, that same day, Tower disbursed \$16,950.00 of the buyer's
17 trust funds to the bank account provided by the imposter, despite: 1) not receiving instructions from
18 the actual buyer to disburse the buyer's trust funds to the account provided by the non-principal; 2)
19 not making any attempt to contact the actual buyer or the buyer's real estate agent by telephone to
20 confirm that the buyer had changed their instruction about how they wanted the buyer's refund to be
21 disbursed; and 3) not following the escrow instructions which contained a prohibition against the
22 acceptance of electronic signatures for instructions concerning the disbursement of funds, in
23 violation of Financial Code section 17414, California Code of Regulations, title 10, section 1738 and
24 1738.2, and the 2018 Order.

25 8. Subsequently that day, the imposter emailed Tower and stated that they provided
26 Tower with the incorrect bank account information and requested that Tower recall the wire and
27 disburse the buyer's refund to another bank account provided by the imposter. Despite the second
28 change in disbursement instructions, Tower again failed to contact the actual buyer or the buyer's

1 real estate agent by telephone to confirm the change in disbursement instructions and Tower, instead,
2 informed the imposter that they would attempt to recall the wire.

3 9. Subsequently, on June 7, 2018, the buyer’s actual real estate agent contacted Tower
4 about the status of the refund and Tower subsequently learned that neither the buyer or the buyer’s
5 actual real estate agent requested that Tower cancel the trust check issued on May 31, 2018 and
6 disburse the buyer’s refund through wire. Furthermore, the buyer also informed Tower that the bank
7 account provided by the imposter did not belong to the buyer.

8 10. As a result of Tower’s unauthorized disbursement of the buyer’s trust funds to the
9 non-principal, a debit balance of \$16,950.00 was created in Escrow #L-036456-NY, in violation of
10 California Code of Regulations, title 10, section 1738.1 and the 2018 Order, from June 7, 2018 until
11 June 12, 2018, when Tower fully replaced the debit balance.

12 11. Tower violated the 2018 Order by continuing to make unauthorized disbursement of
13 trust funds and create debit balances in violation of Financial Code section 17414 and California
14 Code of Regulations, title 10, sections 1738, 1738.1 and 1738.2, despite being ordered by the
15 Commissioner in the 2018 Order to immediately discontinue those violations.

16 **III.**

17 **Applicable Law**

18 12. Financial Code section 17414 provides, in pertinent part:

19 (a) It is a violation for any person subject to this division or any
20 director, stockholder, trustee, officer, agent, or employee of any
21 such person to do any of the following:

22 (1) Knowingly or recklessly disburse or cause the disbursal of
23 escrow funds otherwise than in accordance with escrow
24 instructions, or knowingly or recklessly to direct, participate in, or
25 aid or abet in a material way, any activity which constitutes theft or
26 fraud in connection with any escrow transaction.

27 ...

28 13. Financial Code section 17602 provides:

If it appears to the commissioner that any licensed escrow agent has
violated its articles of incorporation, or any law or rule binding upon
it, the commissioner shall, by written order addressed to the agent

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direct the discontinuance of such violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 17604.

14. Financial Code section 17604 provides, in pertinent part:

...
If no hearing is requested within 30 days after the mailing of such notice and none is ordered by the commissioner, the order may become final without hearing and the licensed escrow agent shall immediately discontinue the practices named in the order.

15. Financial Code 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.

16. California Code of Regulations, title 10, section 1738, provides in pertinent part:

(a) All money deposited in such “trust” or “escrow” account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.

17. California Code of Regulations, title 10, section 1738.1 provides:

An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

18. California Code of Regulations, title 10, section 1738.2 provides:

An escrow agent shall use documents or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by

1 the principals to the escrow transaction, or if not otherwise directed
2 by written or electronically executed instructions, in accordance
3 with sound escrow practice, or pursuant to order of a court of
competent jurisdiction.

4 **IV.**

5 **Prayer**

6 19. Based on the foregoing, the Commissioner finds that Tower has violated Financial
7 Code sections 17414 and 17604 and California Code of Regulations, title 10, sections 1738, 1738.1
8 and 1738.2.

9 20. The Commissioner further finds that Tower violated the Commissioner’s 2018 Order
10 by continuing to make unauthorized disbursement of trust funds and creating debit balances.
11 Tower’s violations of the Commissioner’s 2018 Order were due to their failure to implement
12 sufficient controls to ensure due diligence is exercised when reviewing disbursement instructions,
13 as evidenced by the fact that the imposter in Escrow #L-036456-NY obtained trust funds from
14 Tower with instructions sent through a fake email address and assuming the identity of the actual
15 principal to the transaction, the same method used by the imposters in the other two incidents which
16 led to the issuance of the Commissioner’s 2018 Order.

17 21. Based upon Tower’s repeated violations of the Escrow Law, including making
18 unauthorized disbursement of trust funds, creating debit balances, violation of the Commissioner’s
19 2018 Order and Tower’s demonstrated inability to implement sufficient controls to ensure
20 compliance with the Commissioner’s 2018 Order and the Escrow Law, it is in the best interests of
21 the public to suspend Tower Escrow, Inc.’s escrow agent’s license pursuant to Financial Code
22 section 17608.

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WHEREFORE, IT IS PRAYED THAT Tower Escrow, Inc.’s escrow agent’s license be suspended for a period of up to 12 months.

Dated: November 26, 2018
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Johnny Vuong
Senior Counsel
Enforcement Division