BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant vs. LINDA MORROW, Respondent.	)))))))))))	File No. 963-1767 OAH No. L-2001090207

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Corporations Commissioner as his Decision in the above-entitled matter.

This Decision shall become effective 2-13-02.

IT IS SO ORDERED 2-13-02.

CALIFORNIA CORPORATIONS COMMISSIONER

By

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STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER,	)	File No. 963-1767
	)	OAH No. L-2001090207
Complainant,	)	
vs.	)	
LINDA MORROW,	)	
Respondent.	)	

PROPOSED DECISION

The above-captioned matter was heard by Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, on December 12, 2001. Ms. Judy L. Hartley, Senior Trial Counsel, Department of Corporations, represented Complainant. There was no appearance by Respondent, despite notice and an opportunity to be heard.

During the course of the hearing Complainant made motions to amend the accusation, which were granted. As a result, the following amendments were made:

At page 4, line 27, "$340.00" was deleted and the sum "$317.00" inserted in its place.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The administrative law judge hereby makes his factual findings, legal conclusions, and orders, as follows:

FACTUAL FINDINGS

1. Complainant Demetrios A. Boutris, the California Corporations Commissioner, filed the accusation in the above-captioned matter while acting in his official capacity. The accusation was executed on August 20, 2001 by the Commissioner, and it was filed with the Office of Administrative Hearings on September 10, 2001.

2. Respondent Linda Morrow was, at all times relevant hereto, the president, owner, manager, and escrow officer of Magellan Escrow, Inc. (hereafter "Magellan" or "MEI"). Magellan was an escrow agent licensed by the California Corporations Commissioner pursuant to the Escrow Law of California, California Financial Code section 17000, *et seq.*

3. The Commissioner also issued a Notice of Intention to Issue Order Pursuant to California Financial Code Section 17423 (Bar From Employment, Management or Control of Any Escrow Agent) on August 20, 2001, and it was also filed with the Office of Administrative Hearings on September 10, 2001.

4. Respondent Morrow filed a notice of defense to the accusation and requested a hearing. She acted through an attorney, Mr. Fred S. Pardes, who executed the notice of defense on September 10, 2001. The matter was set for hearing on December 12 and 13, 2001, and Complainant gave written notice of that hearing date to Respondent in a timely manner, on September 26, 2001.

5. On December 4, 2001, Mr. Pardes, on behalf of Respondent Morrow, filed a written Notice of Withdrawal of Defense and Request for Hearing and Notice of Resignation of License and Approval. A copy of that document was forwarded to Complainant's attorney.

6. In a letter that accompanied the Notice of Withdrawal of Defense, Respondent's attorney stated his belief that because of the withdrawal of defense the Department lacked authority to proceed in the matter on the hearing date. On December 5, 2001, the undersigned wrote both parties, stating his conclusion that the Department could conduct the hearing, citing Government Code sections 11506 and 11520. The December 5, 2001 letter was served on both attorneys by telephone facsimile transmission.

7. As noted in the preamble above, there was no appearance by Respondent or her attorney. At the outset of the hearing further authority to proceed after the withdrawal of defense was noted on the record. Such authority includes Financial Code sections 17423 and 17609.2.

8. On or about March 8, 2001, the Commissioner, acting through his staff, commenced a special examination of the books and records of Magellan. The decision to perform a special examination was triggered by the Commissioner's receipt of information from Respondent and Magellan, which information was generated during and after Magellan's closure, and the winding up of its affairs. According to the information provided by Magellan, it was escheating a substantial amount of money to the state, and it held a substantial balance due to unpaid checks.

9. Ms. Carol A. Stokes, a Department examiner, was assigned the task of examining Magellan's books and records. She commenced her work in March 2001.

10. Ms. Stokes found that Magellan's trust account had not been reconciled since August 31, 2000. She was therefore obligated to perform that task. The Department's regulations, as well as the Escrow Law, require monthly reconciliation of the trust account.

11. Ms. Stokes further discovered, and it is hereby found, that during the period from January 2000, through at least August 2000, Morrow disbursed trust funds totaling no less than $36,724.14 to Magellan's general accounts. The monies were disbursed from some 727 escrow accounts. These disbursals were in the form of unauthorized fees or other unauthorized disbursements.

12. In many instances monies were left in escrow accounts because checks previously issued had not been cashed, although initially issued. Respondent then cancelled the checks and reissued them, less a fee for reissuing those checks. Thus, for example, in escrow number 18185 Magellan had issued a check to Bon Marche in the amount of $419.00. The check was dated January 19, 2000, but never cashed. So, on August 31 of that year Morrow caused a stop-payment to be issued on that check and she issued two new checks in its place. One was to Bon Marche in the amount of $369.00, dated September 6, 2000, and the other was for $50.00, payable to Magellan.

13. (A) When questioned by the Department's examiner about this, and similar transactions, Ms. Morrow cited a provision in the escrow instructions, to the effect that if Magellan was required to reissue checks, it could charge a thirty-five dollar fee to do so. No viable explanation was available as to why, if she relied on that provision, fifty, rather than thirty-five dollars, had been charged.

(B) The check in question was not payable to one of the parties to the escrow, who had apparently agreed to such a charge. Instead, the check was payable to a third party, who had not agreed to pay such a reissuance charge. Thus, the charge was not an authorized disbursement.

(C) As found above, Respondent engaged in this practice in numerous other situations, such as in Magellan Escrow numbers 16333 and 17901. For example, in escrow number 17901, Magellan was holding $674.92 that was to be paid out for fire insurance on the property that was the subject of the escrow. Ms. Morrow instead issued a check for $639.92 to the borrower, and another check for $35.00 to Magellan.

(D) In no case was some other authorization made to issue the checks, less some fee, to Magellan.

14. (A) In numerous other transactions Respondent did not simply deduct the $35.00 "reissuance fee" ostensibly authorized in the escrow agreement. Instead, she caused Magellan to take substantially larger portions of the monies remaining in the escrow accounts, that is, monies held in trust. This often constituted the entire amount held.

(B) For example, in Escrow number 17901, Respondent stopped payment on a check issued to Fidelity National Title in the amount of $899.54. The check was dated December 3, 1999, and the stop-payment occurred on October 10, 2000. Ms. Morrow then issued another check to Fidelity National Title, on October 11, 2000, but this check was only for $441.41. She issued a check for $105.13 to the borrower, and she issued Magellan a check in the amount of $350.00, or ten times the "reissuance" fee set forth in her company's escrow agreement, an agreement not executed by Fidelity National Title.

(C) As another example, in the case of Escrow number 18755, Respondent cancelled three long-outstanding checks, that had been dated in May 1998 and January 1999; the cancellations occurred on February 24, 2000. The earlier check was for $8.00, and payable to Sears; the other two checks were for $75.00 and $550.00, and both payable to the Coastal Group. Ms. Morrow caused a new check for $5.50 to be paid to Sears. The entire remaining amount, $627.50, was paid to Magellan in three checks for $2.50, $75.00, and $350.00. No authorization for such payment was made, and Respondent told Ms. Stokes, the examiner, that she was owed the money.

(D) In yet another example of wholesale misappropriation, Respondent caused the cancellation of two checks issued in connection with Magellan's escrow number 18554, dated September 2, 1998. The checks, for $50.63 and $491.88, were originally payable to Four Corners Abstract. The cancellation occurred on August 23, 2000, and on that same date Respondent caused two new checks to be issued, in the same amounts, to Magellan. There were no written authorizations for these disbursements, and Morrow later told the Department's examiner that she was owed these monies by the Four Corners firm. No evidence of indebtedness was ever produced by Respondent or Magellan.

(E) Respondent played a similar game with escrow number 3125, where she cancelled a check payable to Capital Direct Funding in the amount of $3,648.99, and replaced it with a check for the same amount, only payable to Magellan. Again, no authorization for such a disbursement existed, and there was no evidence of indebtedness either.

15. (A) In several other instances Respondent and Magellan took monies that were otherwise payable to First Consumer Mortgage Corporation ("First Consumers"). Thus, for example, in Magellan's escrow number 14067 Respondent cancelled an old check payable to First Consumer, in the amount of $1,035.60.

The check had been issued March 28, 1999, and was cancelled on August 18, 2000. A check in the amount of $1,035.60 was issued to Magellan on August 16, 2000. And, in the case of escrow number 19309, she cancelled a check payable to First Consumers in the sum of $3,537.50, dated April 1, 1999, and replaced it on August 23, 2000 with a check in that amount, but payable to Magellan. Other similar transactions were established.

(B) To be sure, First Consumers was indebted to Magellan, for fees advanced by Magellan on behalf of First Consumers. At some point, that indebtedness rose to over $81,000.00.

(C) However, First Consumers filed for protection under the Bankruptcy laws in March 1999. Thus, funds such as those referred to in Finding 15(A), above, would have been assets of the bankruptcy estate.

16. (A) Respondent's largest single act of malfeasance pertained to her unauthorized disbursement of over $70,000.00 to her corporation. This occurred in connection with a transaction that may be labeled the "Khan escrow." In that matter a Mr. and Mrs. Khan agreed to borrow $69,000.00 from Independent Mortgage, in part so they could consolidate some debts. An escrow was opened at Magellan to facilitate the transaction.

(B) Meanwhile, Independent took steps to resell the loan, at a premium, to a firm known as Pioneer Home Funding. Respondent and Magellan were to act as the intermediary in that transaction as well.

(C) Independent used its own monies to fund the loan of $69,000.00 to the Khans, causing the net loan proceeds of approximately $64,000 to be placed in trust with Respondent, on or about May 21, 1999. The monies were disbursed to the borrowers and certain creditors of the borrowers on or about that same day. Thereafter, Pioneer caused $70,906.97 to be wired to Magellan's bank account, so that it could purchase the Khan loan.

(D) That money was never sent to Independent Mortgage, which somehow lost track of the obligation. Instead, the monies languished in Magellan's trust accounts for more than two years. Then, on November 3, 2000, Respondent caused those monies to be paid over to Magellan.

17. When questioned about this transaction by the Department, Respondent took the position that the monies were actually First Consumers', and that she was entitled to those monies since First Consumers' owed her substantial funds. However, none of Magellan's records indicate that First Consumers ever deposited such funds with that firm, and the president of First Consumers denies ever wiring

such funds to Magellan. Instead, the documents and testimony establish that the aforementioned $70,906.97 was wired to Magellan for the benefit of Pioneer and Independent Mortgage.

18. The allegations set forth in paragraphs II(a) through (e), and III(1) through III(13) of the accusation were established as true, based upon Respondent's withdrawal of her notice of defense, as well as by the documentary and testimonial evidence received in this proceeding.

19. In total, Magellan received $107,631.11 in funds improperly disbursed to it's general account from its trust accounts. Respondent Morrow was at all times aware of and responsible for such improper and unauthorized disbursements.

20. There is no evidence that any of the monies have been reimbursed to the proper payees or beneficiaries. No evidence in mitigation was offered, and no evidence of rehabilitation was presented. Such claims of right or justification previously made by Respondent and communicated to the Department were not substantiated factually or legally.

21. Respondent's actions constitute breaches of trust and fiduciary duty to the clients of Magellan and to third persons and other members of the public. Her actions clearly constitute violations of the Escrow Law, and her actions were knowing and intentional, and have caused material damage to the public.

LEGAL CONCLUSIONS

1. The Department has jurisdiction to proceed in this matter against Respondent Linda Morrow, pursuant to Financial Code sections 17423 and 17609.2, based on Factual Findings 1 through 7.

2. Respondent Linda Morrow violated Code section 17414(a)(1), and Title 10, California Code of Regulations sections 1738 and 1738.2, by making unauthorized disbursements, based on Factual Findings 8 through 19, inclusive.

3. Respondent Linda Morrow violated Code section 17404 and CCR section 1732.2 by failing to reconcile Magellan's trust accounts, based on Factual Finding 10.

4. It is in the public interest to bar Respondent from further employment with, or management or control of any escrow agent based upon Factual Findings 8 through 21, inclusive, and Legal Conclusions 1 through 3. Therefore, Respondent should be barred from further employment, management, or control, pursuant to Code section 17423(a)(1).

Discussion and Rationale:[1]

Complainant provided detailed evidence that clearly established a pattern of misconduct by the Respondent. In the context of this case Respondent's failure to reconcile her trust accounts, at a time when her firm was closed and winding up, appears somewhat venal. At the heart of the matter is her plain misappropriation of tens of thousands of dollars, the most egregious transaction being the theft of over $70,000 due the Independent Mortgage firm in the Khan transaction.

Respondent's attempts to justify her misconduct in that case reveal a rather corrupt way of thinking. Even if the monies were the property of First Consumers, rather than Independent Mortgage, such monies would be the property of First Consumers' bankruptcy estate. Further, the two versions of the promissory note provided to the Department are plainly suspect.

The purpose of proceedings of this type are to protect the public, and not to punish the Respondent. (Code section 17423(a)(1); *see, e.g., Camacho v. Youde* (1979) 95 Cal. App. 3rd 161, 164.) Complainant established, by clear and convincing evidence, that to allow Respondent to continue in any aspect of the escrow business, one rife with fiduciary obligations, would be against the public interest, and would threaten the public welfare.[2]

ORDER

Respondent Linda Morrow is hereby barred from any position of employment, management, or control of any escrow agent.

January 11, 2002

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

[1] The section that follows is within the ambit of Government Code section 11425.50(d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.
[2] This should not be construed as a conclusion that Complainant was obligated to meet that standard of proof, as opposed to the standard of preponderance of the evidence. It is simply an observation that in this case Complainant's proof was clear and convincing, to a substantial certainty, and thus exceeding the latter standard.