

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
2 ALAN S. WEINGER  
3 Deputy Commissioner  
JOHN R. DREWS (SBN 69595)  
4 Corporations Counsel  
DEPARTMENT OF CORPORATIONS  
5 71 Stevenson Street, Suite 2100  
6 San Francisco, California 94105  
Telephone: (415) 972-8570

7  
8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF CORPORATIONS

10 OF THE STATE OF CALIFORNIA

11		) Case No.: 963-2527
12	In the Matter of the Accusation of	)
13	THE CALIFORNIA CORPORATIONS	) ACCUSATION / STATEMENT OF ISSUES
14	COMMISSIONER,	)
15	Complainant,	) 1. REVOKING ESCROW AGENT'S
16	vs.	) LICENSE OF FIRST SOUTHWESTERN
17	FIRST SOUTHWESTERN ESCROW, INC.,	) ESCROW, INC. PURSUANT TO FINANCIAL
18	MICHAEL MACAPAGAL, THERESITA	) CODE SECTION 17608
19	MACAPAGAL, and KATHERINE	)
20	MACAPAGAL,	) 2. BARRING MICHAEL MACAPAGAL
21	Respondents.	) FROM ANY POSITION OF EMPLOYMENT,
22		) MANAGEMENT OR CONTROL OF ANY
23		) ESCROW AGENT PURSUANT TO
24		) FINANCIAL CODE SECTION 17423
25		)
26		) 3. BARRING THERESITA MACAPAGAL
27		) FROM ANY POSITION OF EMPLOYMENT,
28		) MANAGEMENT OR CONTROL OF ANY
		) ESCROW AGENT PURSUANT TO
		) FINANCIAL CODE SECTION 17423

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- ) 5. DENIAL OF APPLICATIONS FOR
- ) LICENSES FOR BRANCH OFFICES
- ) PURSUANT TO FINANCIAL CODE
- ) SECTION 17209.3
- )
- ) 6. ORDER IMPOSING PENALTIES
- ) PURSUANT TO FINANCIAL CODE
- ) SECTION 17213.2
- )

The Complainant is informed and believes, and based upon such information and belief, alleges and charges Respondents as follows:

**I.**

**INTRODUCTION**

Respondent First Southwestern Escrow, Inc. (hereinafter referred to as “FSE Inc.”) is an escrow agent licensed by the California Corporations Commissioner (hereinafter referred to as “Commissioner” or “Complainant”) pursuant to the Escrow Law of the State of California (California Financial Code sections 17000 et seq.) The escrow license number for FSE Inc. is 963-2527. FSE Inc. has its principal place of business located at 30593 Union City Blvd., Suite 104, Union City, CA 94587.

At all relevant times herein, the President of FSE Inc. was Theresita Macapagal and the Vice-President was Katherine Macapagal. Michael Macapagal identified himself as the “Manager” of FSE Inc. on the Summary of Personnel form provided to the Department examiner.

The Commissioner’s proposed orders seek to: 1) revoke the escrow agent’s license of FSE Inc. pursuant to Section 17608 of the California Escrow Law (California Financial Code sections 17200 et seq.), 2) bar Michael Macapagal, Theresita Macapagal and Katherine Macapagal (“the Macapagals”) pursuant to Section 17423 of the California Escrow Law from any position of employment, management or control of any escrow agent, and 3) deny the issuance of an escrow agent’s branch licenses to FSE Inc. pursuant to Section 17209.3 of the California Escrow Law in that FSE Inc. and the Macapagals (each and all of them) have committed numerous violations of the California Escrow Law, all of which are set out herein. The Commissioner is further ordering the

1 payment of penalties for the operation of unlicensed branch offices pursuant to Financial Code  
2 section 17213.2.

3 **II.**

4 **UNLICENSED ACTIVITY**

5 1. On October 23, 2009 the Commissioner commenced a regulatory examination of FSE  
6 Inc. After visiting offices in Daly City at 455 Hickey Blvd., Suite 205 C, Daly City, CA 94015  
7 (“Daly City office”) and offices in Milpitas at 500 East Calaveras Blvd., Suite 214, Milpitas, CA  
8 95035, (“Milpitas office”) and examining documents from a third location, at 1652 West Texas St.,  
9 Suite 273, Fairfield, CA 94533 (“Fairfield office”), it became clear that FSE Inc. is operating three  
10 unlicensed branch offices in violation of California Financial Code section 17213.2. FSE Inc. filed  
11 applications for branch office licenses for the Daly City office and the Milpitas office on September  
12 24, 2009. No application for a branch office license for the Fairfield office has ever been filed. No  
13 licenses have been issued by the Commissioner for any of the foregoing three offices.

14 2. On October 23, 2009 during a visit to the office of FSE Inc. at the Daly City office, the  
15 following observations were made by a Department examiner:

16 a) The business cards for four (4) escrow officers of FSE Inc. were placed on the front  
17 desk in the reception area of the office.

18 b) An escrow file No. 20085766-882-MS2 was observed. The location of the Daly  
19 City office was disclosed in the following documents in the escrow file: escrow ledger, order sheet,  
20 refinance escrow instructions, final closing statement and final HUD-1.

21 3. A return visit by the Department examiner to the Daly City office on October 26, 2009  
22 determined that the amount of funds in the trial balance for the Daly City office was \$375,438.83.  
23 The closing report from August 1, 2008 to October 22, 2009 showed 332 closed escrows and 38  
24 cancelled escrows for the Daly City office.

25 4. On October 23, 2009 a Department examiner visited the FSE Inc. place of business at  
26 the Milpitas office, and the following observations were made:

27 a) At the front desk was a display of business cards for eight (8) employees of FSE  
28 Inc. including a Vice-President and County Manager.

1                   b) The office manager informed the examiner that the Milpitas office changed its  
2 name to FSE Inc. from First Southwest Title Co. on December 8, 2008.

3                   c) The office staff presented a printed trial balance for the office which as of October  
4 22, 2009 indicated funds in the trial balance of \$1,209,733.50 for the Milpitas office.

5                   d) The closing report from December 8, 2008 to October 23, 2009 disclosed 853  
6 closed escrows and 51 cancelled escrows for the Milpitas office.

7                   e) Documents at the Milpitas office observed in escrow file No. 20084626-884-PA  
8 disclosed the Milpitas office address on the escrow ledger, order sheet, refinance escrow instructions,  
9 final closing statement and final HUD-1.

10           5.       During an October 27, 2009 visit to the FSE Inc.'s main office at 30593 Union City  
11 Blvd., Suite 104, Union City, CA 94587 an examiner for the Department made the following  
12 observations:

13                   a) While reviewing combined escrow activity reports, the department examiner  
14 discovered the existence of a previously undisclosed office, the Fairfield office.

15                   b) The Department examiner discovered a branch office code for an office in Fairfield  
16 on the Impact system used to keep escrow records in FSE Inc. offices. The trial balance in the Union  
17 City office revealed a balance of \$15,307.83 at the Fairfield office. A summary of closed escrows for  
18 each office as of October 26, 2009 showed 11 escrows closed at the Fairfield office.

19                   c) A review of two escrow files chosen from the trial balance for the Fairfield office  
20 indicated that the files were being processed at the unlicensed Fairfield office.

21                   d) The trust account at Wells Fargo Bank (Account No. 2118827340) for the Fairfield  
22 office was not disclosed in the list of bank accounts in violation of Financial Code section 17405.  
23 Copies of paid checks issued from this account were requested by the Department examiner and are  
24 shown to originate from the Fairfield office, specifically escrow No. 20084655. It appears that FSE  
25 Inc. attempted to conceal escrow records and is conducting unlicensed escrow activities at the  
26 Fairfield office in violation of Financial Code sections 17405 and 17200.

27           6.       In April of 2009, the Department discussed with Katherine and Michael Macapagal  
28 allegations that an FSE Inc. office in Milpitas was conducting unlicensed escrow activity. Katherine

1 Macapagal submitted an unsigned and undated letter to the Department unequivocally stating that  
2 “NO escrow work under First Southwestern Escrow is currently being processed in Milpitas for our  
3 company. We have no branch currently operating in Milpitas.” This statement was demonstrably  
4 false and in violation of Financial Code section 17702.

5  
6 Financial Code section 17702 states:

7 It is unlawful for any person to willfully make any untrue statement of  
8 a material fact in any application, notice, or report filed with the  
9 commissioner under this division or the regulations issued thereunder,  
10 or to willfully omit any material fact which is required to be stated in  
11 any application, notice, or report.

12  
13 7. During the examination by the Department of licensee’s Union City office and the  
14 examination of the unlicensed offices in Milpitas and Daly City a number of business cards of  
15 employees of FSE Inc. were collected by the examiner. Upon the request of the examiner, Michael  
16 Macapagal provided a completed Summary of Personnel form, which he filled out in the presence of  
17 the examiner. From a review of business cards obtained at the different offices and a comparison of  
18 the Summary of Personnel form with Department records, the examiner found 17 persons who had  
19 not submitted the required fingerprint applications, and five of these (including Michael Macapagal)  
20 were working at the licensed home office in Union City. Michael Macapagal indicated most  
21 employees were hired in September and October of 2009 but other evidence indicated these same  
22 employees had been employed with FSE Inc. from December of 2008, which is the month the  
23 Milpitas office changed its name from First Southwestern Title to First Southwestern Escrow.

24 The inaccurate preparation of the Summary of Personnel form and the failure to file  
25 fingerprints of employees with the Department was in violation of California Code of Regulations  
26 (hereafter “CCR”), Title 10, section 1726 and Financial Code sections 17414.1(d), 17419 and 17702.

27 8. Escrow instructions reviewed by the Department examiner were opened under the  
28 license of FSE Inc. at the Union City office, and at the unlicensed offices in Milpitas and Daly City  
but the Department escrow license number was not indicated on the escrow instructions in violation  
of Financial Code section 17210.2.

1           9.       The general account of FSE Inc. was in the name of Reliance Penn. Inc., an affiliate of  
2 FSE Inc. and therefore it is not an asset of FSE Inc. The general bank account is not maintained by  
3 FSE Inc. and the liquidity requirements are not met. The general account being operated in the name  
4 of another corporate entity and failure to meet liquidity requirements are a violation of Financial  
5 Code section 17210.

6           10.       As of October 27, 2009 FSE Inc. failed to employ persons with the requisite  
7 experience to be branch managers of the branch offices in violation of Financial Code section  
8 17200.8. This failure is grounds for the Department to refuse to issue licenses to the branch offices  
9 pursuant to Financial Code section 17209.3.

10          11.       During the examination it was also noted that the daily manual control had never been  
11 prepared for any of the unlicensed branch offices operated by FSE Inc. in violation of CCR, Title 10,  
12 section 1732.2. Further, the bank reconciliations were not prepared on a monthly basis and bank  
13 service charges had been debited directly from the respective trust accounts in violation of CCR, Title  
14 10, section 1732.2.

15          12.       Michael Macapagal, the husband of the President of FSE Inc. and the son of the Vice-  
16 President of FSE Inc. is not listed on any application filed with the Department of Corporations to be  
17 an escrow officer or manager, either with FSE Inc. on its original application or on any of the branch  
18 applications that have been filed with the Department. This is in direct conflict with the observations  
19 of the Department examiner who concluded that in fact Michael Macapagal is the de facto manager  
20 of all of the FSE Inc. operations and therefore should have been disclosed as such in the applications  
21 filed with the Department.

22          13.       Michael Macapagal also listed his position with FSE Inc. as a “Manager” on the  
23 Summary of Personnel form. As a manager of FSE Inc. Michael Macapagal should have been  
24 disclosed in the applications filed with the Department. He also should have completed a Statement  
25 and Identity Questionnaire (“SIQ”) and filed his fingerprints with the Department pursuant to  
26 Financial Code section 17212.1.

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**III.**

**ORDER FOR PENALTIES FOR UNLICENSED BRANCH OFFICES**

In view of the foregoing, Complainant finds that Respondents are liable for penalties pursuant to Financial Code section 17213.2 which provides in pertinent part:

The commissioner may order a licensed escrow agent which opens a branch office or changes its business location or locations without first obtaining the approval of the commissioner to forfeit to the people of the state a sum of up to one hundred dollars (\$100) for every day for the first 10 days and ten dollars (\$10) for every day thereafter during which the branch office or changed location is maintained without authority.

NOW, THEREFORE, FIRST SOUTHWESTERN ESCROW, INC. is hereby ordered to pay the Commissioner a total of not less than eleven thousand two hundred dollars (\$11,200) pursuant to Financial Code section 17213.2. This represents the unlicensed operations of the Daly City and Milpitas offices from December 8, 2008 to May 26, 2010 and for the operations of the Fairfield office from the date of the discovery of the existence of that office on October 27, 2009 to May 26, 2010.

**IV.**

**REVOCAION OF LICENSE, BAR FROM EMPLOYMENT AND DENIAL OF BRANCH LICENSE APPLICATIONS**

California Financial Code section 17608 provides in relevant 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.
- (c) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.

California Financial Code section 17423 provides in relevant part:

- (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, ...bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

1 (1) That the ... bar is in the public interest and that the person has  
2 committed or caused a violation of this division or rule or order of the  
3 commissioner, which violation was either known or should have been  
4 known by the person committing or causing it or has caused material  
5 damage to the escrow agent or to the public.

6 California Financial Code section 17209.3 states in pertinent part:

7 The commissioner may refuse to issue any license being applied for,  
8 and shall refuse to issue any license being applied for if upon his  
9 examination and investigation, and after appropriate hearing, he finds  
10 any of the following:

11 (b) That any incorporator, officer, or director of the applicant has,  
12 within the last 10 years, been (1) convicted of or pleaded nolo  
13 contendere to a crime, or (2) committed any act involving dishonesty,  
14 fraud, or deceit, which crime or act is substantially related to the  
15 qualifications, functions, or duties of a person engaged in business in  
16 accordance with the provisions of this division.

17 (c) That there is no officer or manager possessing a minimum of five  
18 years of responsible escrow or joint control experience stationed or to  
19 be stationed at the main office of the corporation and that there is no  
20 officer, manager or employee possessing a minimum of four years of  
21 responsible escrow or joint control experience stationed or to be  
22 stationed at each branch.

23 (d) That the proposed licensee's financial program is unsound.

24 (e) A false statement of a material fact has been made in the application  
25 for license.

26 (f) The applicant, any officer, director, general partner, or incorporator  
27 of the applicant,... has violated any provision of this division or the  
28 rules thereunder or any similar regulatory scheme of the State of  
California or a foreign jurisdiction.

Complainant finds that, by reason of the foregoing, Respondents are in violation of California  
Financial Code sections 17200, 17200.8, 17210, 17210.2, 17212.1, 17213.5, 17405, 17414.1(d),  
17419, 17702 and California Code of Regulations Title 10, sections 1726 and 1732.2.

Further, in view of the foregoing violations, Respondents are liable pursuant to the following  
sections of the Financial Code: 17209.3, 17213.2, 17423 and 17608, and it is in the best interest of  
the public to revoke the escrow agent's license of Respondent First Southwestern Escrow, Inc. and to  
bar Respondents Michael Macapagal, Theresita Macapagal and Katherine Macapagal from any

1 position of employment, management or control of any escrow agent, and deny the issuance of  
2 escrow agent's branch licenses to FSE Inc. for the offices in Daly City and Milpitas.

3 WHEREFORE IT IS PRAYED that the escrow agent's license of Respondent First  
4 Southwestern Escrow, Inc. be revoked, and that Respondents Michael Macapagal, Theresita  
5 Macapagal and Katherine Macapagal be barred from any position of employment, management or  
6 control of any escrow agent, and the applications for escrow agent's branch licenses filed by FSE Inc.  
7 on September 24, 2009 be denied.

8 Dated: June 7, 2010

PRESTON DuFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
JOHN R. DREWS  
Corporations Counsel

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