

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Escrow Agent License of:

No. 07F-BD083-BNK

3 **QUALITY LOAN SERVICE CORPORATION**
4 **AND KEVIN R. MCCARTHY, PRESIDENT**
5 319 Elm Street, 2nd Floor
6 San Diego, CA 92101

CONSENT ORDER

Petitioners.

7 On June 5, 2007, the Arizona Department of Financial Institutions (“Department”) issued a
8 Notice of Hearing, alleging that Petitioners had violated Arizona law. Wishing to resolve this matter
9 in lieu of an administrative hearing, and without admitting liability, Petitioners consent to the
10 following Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

11 **FINDINGS OF FACT**

12 1. Petitioner Quality Loan Service Corporation (“Quality Loan”) is a California
13 corporation authorized to transact business in Arizona as an escrow agent, license number
14 EA-0009501, within the meaning of A.R.S. §§ 6-801, *et seq.* The nature of Quality Loan’s business
15 is that of engaging in or carrying on of escrow business or acting in the capacity of an escrow agent
16 within the meaning of A.R.S. § 6-801(6).

17 2. Petitioner Kevin R. McCarthy (“Mr. McCarthy”) is the President of Quality Loan,
18 and, as such, is authorized to transact business in Arizona as an escrow agent, within the meaning of
19 A.R.S. §§ 6-801, *et seq.*

20 3. On or around October 2, 2006, the Department conducted an examination of Quality
21 Loan’s business affairs. As a result of the examination, the Department discovered that Quality
22 Loan and Mr. McCarthy:

- 23 a. Failed to make application for license renewal as prescribed by the Superintendent
24 and failed to pay the renewal fee not later than September 30, 2006, as prescribed in
25 A.R.S. § 6-126;

26 ...

- 1 i. During the examination, the Examiner brought this to the attention of
2 Petitioners; and
- 3 ii. Petitioners submitted a renewal application, and the licensee was reinstated
4 and renewed;
- 5 b. Failed to maintain a systematic internal control structure as prescribed by A.R.S.
6 § 6-841; failed to to deposit and maintain all escrow monies separate from corporate
7 operating funds, specifically:
- 8 i. An examination of Petitioners' Wells Fargo Bank, N.A. ("Wells Fargo")
9 escrow depository bank account #xxxx310, revealed that funds were initially
10 deposited and partially disbursed from the escrow checking account, and then
11 undisbursed escrow balances were transferred to the Operating or Income
12 accounts until time of disbursement. The remaining escrow monies were
13 disbursed at a later date from Petitioners' accounts payable checking account
14 with Wells Fargo, #xxxx619, which was designated as an escrow or fiduciary
15 account and also contained corporate operating funds, however all funds were
16 distributed to the proper parties;
- 17 c. Received earned interest or other benefit from a depository institution from monies
18 deposited with an escrow agent in connection with an escrow, and paid service
19 charges from said escrow account, specifically:
- 20 i. Petitioners' Wells Fargo escrow depository checking account #xxxx310 is
21 labeled "Trustee Trust Account" but is also noted on the statement as a
22 Business Dividend Checking Account. Interest dividends are paid monthly
23 into the account and service charges are deducted;
- 24 ii. During the examination, the Examiner brought this to the attention of
25 Petitioners. On October 23, 2006, a letter was received from Wells Fargo,
26 stating that this account was converted to a non-dividend or interest bearing

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checking account and that no fees would be assessed as of November 2006;

d. Failed to maintain a systematic internal control structure; and failed to adequately maintain and accurately reconcile their escrow deposit bank accounts with the escrow trial balance listings, specifically:

- i. An examination of Petitioners' escrow depository bank account revealed the failure of Petitioners to properly reconcile the fiduciary bank account balance with an accurate and adequate, aged escrow trial balance report;
- ii. A trial balance report was provided but was inaccurate and inadequate as it did not list each file number, escrow balance, open date, close date (funding date) and date of last transaction, with the total of all files equal to the total of the adjusted reconciled ending balance of the bank statement for July 31, 2006;
- iii. The trial balance report provided to the Examiner showed an ending balance as of June 30, 2006 and a balance sheet added in July, but did not supply any detail as to escrow files with balances;
- iv. The Outstanding Items Listing that was provided as backup to the reconciliation showed a deposit in transit and outstanding checks but did not supply the detail necessary to accurately age the balances in the account listing. When cross-referenced to the bank statement for August 31, 2006, the listing reflected checks that were issued after the ending date of the statement of July 31, 2006;

e. Failed to maintain a systematic internal control structure; and failed to maintain records to enable the Superintendent to reconstruct the details of each escrow transaction specifically:

- i. Petitioners failed to maintain escrow trial balance listings for each file/transaction that provide detailed individual trust account information to

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- support escrow funds deposited and disbursed from the escrow trust depository accounts;
 - ii. Petitioners' escrow trial balance listings do not provide the date of the close of the escrow and the date of the last transaction, necessary for accurate aging of undisbursed escrow balances and management of each account balance;
 - iii. The escrow trial balance listings do not consistently include date of deposit or check, payee or payor, type of deposit (wire or check), if the deposit was a check, the type of check deposited, and the amount of deposit or check; and
 - iv. The check amounts do not always reflect the same amounts as the stated amounts deposited or checks issued per the balance statement, or cleared item listing;
- f. Failed to have all monthly escrow bank account reconciliations dated and signed/initialed by both the preparer and the person responsible for their review; specifically:
- i. Petitioners' reconciliation worksheets of Wells Fargo escrow checking account #xxx310 did not provide for or include both the preparer's signature/initials and date the document was prepared; and the reviewer's signature/initials and date the worksheet document was reviewed and certified by the reviewer;
 - ii. During the examination, the Examiner brought this to the attention of Petitioners. The Reconciliation Register Summary was resubmitted improperly with the signature of Mr. Valkus as both Preparer and Reviewer, and was undated;
 - iii. Petitioners informed the Examiner that "this situation has been rectified . . . all future bank reconciliations will bear two different individual's signatures going forward.";

- 1 g. Failed to file with the Superintendent a true and correct audit report by submitting an
2 inaccurate balance sheet, specifically:
- 3 i. Petitioners' "Semi-annual Financial and Escrow Report," submitted to the
4 Superintendent for the period ending June 30, 2006, included Arizona and
5 other states' escrow trust cash balances totaling \$11,471,088.46 in the total
6 current assets of the balance sheet. These escrow balances were offset under
7 other current liabilities and inflated Petitioners' assets and liabilities;
- 8 ii. An examination of Petitioners' internally prepared balance sheet, submitted
9 for the examination, for the period ending July 31, 2006, revealed that the
10 balance reported as Total Current Assets also included all other states' escrow
11 trust cash balances in the total current assets reported. In current liabilities,
12 those escrow trust cash balances were offset by other current liabilities labeled
13 as "Clearing Account," "Foreclosure Payable," "Fcl Pay," "Pass Thru," and
14 "Trust Funds Owed." A corrected balance sheet was requested;
- 15 iii. On November 7, 2006, a corrected balance sheet was received, showing the
16 original balance sheet submitted to the Superintendent was inflated in the
17 amount of \$19,835,309.72, by inadvertent inclusion of escrow trust monies;
- 18 h. Failed to maintain a systematic internal control structure; and failed to provide
19 follow-up procedures on inactive stale-dated outstanding checks, thereby
20 commingling escrow monies with corporate monies, specifically:
- 21 i. The Examiner's review of the CPA's Report to Petitioners' Board of
22 Directors, dated April 18, 2006, revealed that several internal control
23 problems were outlined, including significant amounts of outstanding checks
24 aged in excess of six months;
- 25 i. Prematurely disbursed escrow funds in excess of five hundred dollars (\$500.00)
26 which were not available for withdrawal from Petitioners' escrow account,

1 specifically:

- 2 i. Four (4) checks, totaling \$125,607.07 were disbursed by Petitioners in July
3 2006, on the same date the funds were deposited in four escrow accounts,
4 which funds were not yet available for disbursements as provided by law.

5 4. Based upon the above findings, the Department issued and served upon Quality Loan
6 and Mr. McCarthy an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to
7 Entry of Order ("Cease and Desist Order") on April 18, 2007.

8 5. On May 14, 2007, Petitioners filed a Request for Hearing to appeal the Cease and
9 Desist Order.

10 **CONCLUSIONS OF LAW**

11 1. Pursuant to A.R.S. Title 6, Chapter 7, the Superintendent has the authority and duty to
12 regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules,
13 and regulations relating to escrow agents.

14 2. By the conduct set forth above in the Findings of Fact, Quality Loan and Mr.
15 McCarthy violated the following:

- 16 a. A.R.S. § 6-815 by failing to make application for license renewal as prescribed by the
17 Superintendent and failing to pay the renewal fee not later than September 30, 2006,
18 as prescribed in A.R.S. § 6-126;
- 19 b. A.R.S. §§ 6-834(A) and 6-841(A) by failing to maintain a systematic internal control
20 structure; and failing to deposit and maintain all escrow monies separate from
21 corporate operating funds;
- 22 c. A.R.S. § 6-834(E) by receiving earned interest or other benefit from a depository
23 institution from monies deposited with an escrow agent in connection with an escrow,
24 and by paying service charges from said escrow account;
- 25 d. A.R.S. §§ 6-841(A), 6-841(B), A.A.C. R20-4-702 and A.A.C. R20-4-704 by failing
26 to maintain a systematic internal control structure; and failing to adequately maintain

1 and accurately reconcile their escrow deposit bank accounts with the escrow trial
2 balance listings;

- 3 e. A.R.S. §§ 6-841(A), 6-841(B), A.A.C. R20-4-702 and A.A.C. r20-4-704 by failing to
4 maintain a systematic internal control structure; and failing to maintain records to
5 enable the Superintendent to reconstruct the details of each escrow transaction;
- 6 f. A.R.S. §§ 6-834(A) and 6-841(B) and A.A.C. R20-4-702 by failing to have all
7 monthly escrow bank account reconciliations dated and signed/initialed by both the
8 preparer and the person responsible for their review;
- 9 g. A.R.S. §§ 6-832(B), 6-832(C), 6-841(B)(2), and 6-841.01(A) by failing to file with
10 the Superintendent a true and correct audit report;
- 11 h. A.R.S. §§ 6-834(A), 6-834(B), 6-841(B), and 6-843 by failing to maintain a
12 systematic internal control structure; failing to provide follow-up procedures on
13 inactive stale-dated outstanding checks; and
- 14 i. A.R.S. §§ 6-843(A) and 6-843(B) by prematurely disbursing escrow funds in excess
15 of five hundred dollars (\$500.00) which were not available for withdrawal from
16 Petitioners' escrow account.

17 3. Petitioners have not conducted business in accordance with the law and violated
18 Title 6, Chapter 7 and the rules relating to this chapter, which are grounds for license denial,
19 suspension, or revocation pursuant to A.R.S. § 6-817(A)(2).

20 4. Petitioners failed to account properly for escrow property, which is grounds for
21 license denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(7).

22 5. Petitioners have failed to maintain an adequate control structure, which is grounds for
23 license denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(12).

24 6. During the course of the examination, Quality Loan was under a major software
25 conversion for its financial data. Many of the issues raised by the Examination were a direct result
26 of the conversion.

- 1 g. Shall file with the Superintendent a true and correct audit report by submitting an
2 accurate balance sheet;
- 3 h. Shall maintain a systematic internal control structure; shall provide follow-up
4 procedures on inactive stale-dated outstanding checks; and
- 5 i. Shall not prematurely disburse escrow funds in excess of five hundred dollars
6 (\$500.00) which are not available for withdrawal from Petitioners' escrow account,

7 2. Quality Loan and Mr. McCarthy shall immediately pay to the Department a civil
8 money penalty in the amount of **twelve thousand five hundred dollars (\$12,500.00)**. Quality Loan
9 and Mr. McCarthy are jointly and severally liable for payment of the civil money penalty.

10 3. The provisions of this Order shall be binding upon Petitioners, their employees,
11 agents, and other persons participating in the conduct of the affairs of Petitioners.

12 4. This Order shall become effective upon service, and shall remain effective and
13 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
14 or set aside.

15 SO ORDERED this 23rd day of August, 2007.

16
17 By: Felecia A. Rotellini
18 Felecia A. Rotellini
19 Superintendent of Financial Institutions

20 **CONSENT TO ENTRY OF ORDER**

21 1. Petitioners acknowledge that they have been served with a copy of the foregoing
22 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
23 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

24 2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the
25 foregoing Findings of Fact, Conclusions of Law, and Order.

26 3. Petitioners state that no promise of any kind or nature has been made to induce them
to consent to the entry of this Order, and that they have done so voluntarily.

1 Craig A. Raby, Assistant Attorney General
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4 Robert D. Charlton, Assistant Superintendent
Mary Beth Gittings, Senior Examiner
Arizona Department of Financial Institutions
5 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
6

7 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

8 Kevin R. McCarthy, President
Quality Loan Service Corporation
9 319 Elm Street, 2nd Floor
San Diego, CA 92101
10 Petitioners

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PHX-#15680; CPA07-042

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