

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Removal and the Prohibition of:

3 **CINDY O. PETERSON**
4 37625 North 20th Street
5 Phoenix, AZ 85086

6 Respondent.

No. 08F-BD066-BNK

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
8 record in this matter, including the Administrative Law Judge Decision attached and incorporated
9 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of Law
10 and Order.

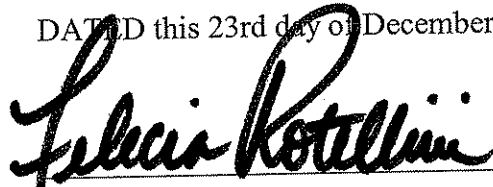
11 ORDER

12 **IT IS ORDERED** that Respondent is removed and prohibited from further participation
13 in any manner as a director, officer, employee, agent or other person in the conduct of the affairs
14 of any financial institution or enterprise in the State of Arizona pursuant to A.R.S. §6-161.

15 NOTICE

16 The parties are advised that this Order becomes effective immediately and the provisions of this
17 Order shall remain effective and enforceable except to the extent that, and until such time as, any
18 provision of this Order shall have been modified, terminated, suspended, or set aside by the
19 Superintendent or a court of competent jurisdiction.

20
21 DATED this 23rd day of December, 2008.

22 

23 Felecia Rotellini
24 Superintendent of Financial Institutions

25
26
27 ...
28 ...

1 ORIGINAL filed this 23rd day of
DECEMBER 2008, in the office of:

2 Felecia Rotellini
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: June Beckwith
6 2910 North 44th Street, Suite 310
7 Phoenix, Arizona 85018

8 COPY of the foregoing mailed/hand delivered
9 This same date to:

10 Lewis D. Kowal, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Erin Gallagher, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent
19 Arizona Department of Financial Institutions
20 2910 N. 44th Street, Suite 310
21 Phoenix, AZ 85018

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

24 Jess A. Lorona, Esq.
25 Lorona, Steiner, Ducar, Coughlin, & Horowitz, PLLC
26 Phoenix Corporate Center
27 3003 North Central Avenue, Suite 1800
28 Phoenix, AZ 85012-3909

BY: June Beckwith

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Removal and
Prohibition of :

CINDY O. PETERSON
37625 North 20th Street
Phoenix, AZ 85086

Respondent.

No. 08F-BD066-BNK

ADMINISTRATIVE
LAW JUDGE DECISION

HEARING: July 31, 2008 and October 6, 2008. Record closed on November 7,
2008.

APPEARANCES: Assistant Attorney General Erin Gallagher for the Arizona
Department of Financial Institutions; Jess Larona, Esq. for Cindy O. Peterson

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

Department's Case In General

1. During the hearing, the Department presented testimony concerning certain exhibits relating to First American and Premier files that involved: (1) alleged improper disbursements to David Hilditch (Cindy O. Peterson's husband) Kevin Hilditch (her brother-in-law), Hugh Hilditch (her father-in-law), and Daniel Martine (her son), and (2) insufficient and inaccurate documentation that was the responsibility of Cindy O. Peterson ("Ms. Peterson") as the escrow officer. The Department represented that the exhibits that were specifically referenced during the hearing, which are separately addressed below, are representative of the remaining exhibits that were admitted without objection from Ms. Peterson. Based upon an examination of the exhibits specifically addressed below, the Administrative Law Judge finds that there is no need to address the other exhibits that the Department submitted into evidence for the reason that they are considered to be cumulative under A.R.S. § 41-1092.02(b).

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 2. The Department relied upon the audits performed by Nancy Salazar ("Ms.
2 Salazar"), a former auditor of First American and Melissa Bushnell ("Ms. Bushnell") a
3 vice-president and escrow manager of Magnus Title Agency, a division of Title Security
4 Agency of which Premier Title was a division and supporting documents relating to the
5 transactions subject to audit.

6 First American Title Insurance Company

7 3. From January 1999 through November 2005, Cindy O. Peterson ("Ms.
8 Peterson") was an escrow officer with First American, Lenders Advantage Division
9 ("First American"). At all times material to this matter, First American was licensed as
10 an escrow agent by the Arizona Department of Financial Institutions ("Department").

11 4. Ms. Salazar testified that she conducted an audit of transactions involving Ms.
12 Peterson at the request of Tim Anderson, Administrative Division Manager, because
13 there were anomalies in Ms. Peterson's closed files.

14 5. For her audit, Ms. Salazar reviewed First American's automated system and
15 looked at certain documents to see if there were any inconsistencies with the HUD
16 Settlement Statements. If there was money left over or inconsistency, then she would
17 pull the file records and physically look at the file documents.

18 6. During her investigation, Ms. Salazar looked at every file Ms. Peterson worked
19 on. The audit results showed that Ms. Peterson had payments made from escrow
20 accounts to David Hilditch, Kevin Hilditch, Daniel Martinez, and Hugh Hilditch.

21 7. Ms. Salazar's testimony and the documentary evidence presented by the
22 Department, including the summary of Ms. Salazar's audit and documentation obtained
23 from the escrow files handled by Ms. Peterson, showed that Ms. Peterson authorized
24 and had issued payment from escrow funds to the above-mentioned family members
25 for certain services that were not appropriately authorized by First American or were not
26 shown to have any written instructions in the escrow files that authorized such
27 payments.

28 8. Ms. Salazar testified that escrow officers have a fiduciary duty to ensure that
29 monies disbursed from escrow accounts are disbursed to the appropriate persons
30 pursuant to written instructions.

1 9. Ms. Salazar testified that the Department's Exhibits 4, 5, 6, 12, 24, 26 and 40
2 reflect that disbursements were made to David Hilditch for documentation preparation
3 fees that were not authorized. The payments were made by Ms. Peterson to David
4 Hilditch and there were no instructions in the escrow files authorizing such payments.
5 The total of unauthorized disbursements in the escrow files handled by Ms. Peterson
6 totaled \$20,124.53. See Exhibit 3.

7 10. Ms. Salazar testified that none of Ms. Peterson's family members were full time
8 employees of First American.

9 11. Ms. Salazar testified as to her belief that Hugh Hilditch and Kevin Hilditch were
10 contractually employed by First American as courtesy signers but acknowledged that
11 she did not research First American's human resources' records. Ms. Salazar
12 explained that a courtesy signer is someone who is a notary who, during the course of
13 business, if escrow office hours were not conducive to a client coming in, as a courtesy
14 service First American would arrange to have a courtesy signer meet with a client.

15 12. Ms. Salazar testified that courtesy signers were used continuously by First
16 American during the time period at issue and were not an unusual event. Ms. Salazar
17 did not know whether notaries are paid for cancellations.

18 13. During the course of her investigation, Ms. Salazar would pull an actual file and
19 also go on-line to MaricopaCounty.gov and view recorded documents to see who
20 notarized particular documents. If the notary was an employee of First American then
21 payments made to Kevin Hilditch or Hugh Hilditch for notary services were considered
22 to be improper payments of a notary fee.

23 Premier Title Company

24 14. In November 2005, Ms. Peterson became employed as an escrow officer with
25 Premier, Lenders Advantage Division ("Premier"). At all times material to this matter,
26 Premier was licensed as an escrow agent by the Department.

27 15. Ms. Bushnell testified that Title Security Agency was the name of Magnus Title
28 Agency when it opened in Maricopa County. The name of Title Security Agency was
29 subsequently changed to Magnus Title Agency.

30 16. Ms. Bushnell testified that in April 2007, she was requested by Tom Sullivan, Jr.
owner of Title Security Agency to conduct an audit of transactions involving large

1 defalcations regarding another employee. In the process, Ms. Bushnell noted
2 suspicious activity in Ms. Peterson's file with the common denominator being the
3 number of names. Ms. Bushnell looked at a sampling of 120 files that Ms. Peterson
4 worked on from 300 to 400 files selected from an inventory report for everyone at the
5 branch office.

6 17. Ms. Bushnell's audit review revealed that funds were paid from escrow accounts
7 to David Hilditch for document preparation fees, Daniel Martinez for document
8 preparation fees, and Hugh Hilditch for notary fees. Although unusual disbursements
9 were noted, not all of them resulted in losses. For a loss to occur, a branch office had to
10 contact the main office and apply for a loss.

11 18. Ms. Bushnell testified that her review showed 384 checks were issued to Hugh
12 Hilditch Signing Service, HFH Escrow Support for signing service and 82 checks were
13 issued to Hugh Hilditch. The number of checks written to Maricopa County Treasurer
14 during the time frame at issue was one half that amount. HFH Escrow Services was not
15 on the Magnus Title Agency's payroll. However, she acknowledged that Magnus Title
16 Agency used courtesy signers during that time period and she presumed that
17 cancellation fees would have been paid.

18 19 Ms. Bushnell testified that in her 22 years of experience Magnus Title Agency
19 has never utilized outside document preparers under her direction. The only files that
20 outside document preparers were utilized were those involving Ms. Peterson and those
21 involving Lisa Gorney ("Ms. Gorney"). Although Ms. Peterson informed her that Ms.
22 Gorney was Ms. Peterson's manager, the personnel files reviewed gave no indication of
23 that. However, Ms. Bushnell acknowledged that Magnus Title Agency was not involved
24 in the hiring of employees that worked at the branch office where Ms. Peterson and Ms.
25 Gorney worked. Her understanding is that Richard Freeman ("Mr. Freeman") was the
26 manager of that branch office and that Ms. Gorney and Ms. Peterson were escrow
27 officers.

28 20. Ms. Bushnell testified that an escrow officer's duties are to act as a fiduciary and
29 follow instructions in writing from a buyer, seller, and lender as to disbursing funds from
30 an escrow account.

1 21. Ms. Bushnell testified that outside document preparers were not used by Premier
2 and that it is the duty of the escrow officer to prepare documents.

3 Ms. Peterson's Defense In General

4 22. Ms. Peterson testified that she is currently not employed as an escrow agent.
5 Ms. Peterson testified that one of her managers, Mr. Freeman, provided the word
6 format for the documents so that Notes, Lender's Instructions and Deeds of Trust could
7 be produced by David Hilditch at his home. She testified that the documents prepared
8 by David Hilditch were in the proper format and contained her initials and escrow
9 number at the top of each page of a document.

10 23. David Hilditch testified he did not receive any payment when he did not perform
11 work. He did not have any contract with First American or Premier.

12 24. Kevin Hilditch testified that he did not have a contract with First American.

13 25. Hugh Hilditch testified that he performed notary services exclusively during the
14 second half of 2004, 2005, and 2006. He formed an LLC and may have billed using the
15 names HFH Escrow Support LLC, HFH Escrow Support Services, HFH Support or HFH
16 Escrow Fee.

17 26. At First American, Hugh Hilditch performed notary services for 8-12 escrow
18 officers in addition to Ms. Peterson, including Tim Anderson. He did not submit
19 invoices at First American and the only record of the transactions was his book of
20 notarial transactions.

21 27. At Premier, Hugh Hilditch would not receive payment unless he submitted an
22 invoice. At Premier and First American, everyone knew that he was Ms. Peterson's
23 father-in-law. He received a \$50.00 cancellation fee. Hugh Hilditch usually charged
24 about \$25.00 per HUD but also charged depending on the time and day and also
25 charged a mobile fee.

26 First American Title Insurance Company Audit (First Complaint)

27 Exhibit 4

28 28. According to Ms. Salazar one way of determining whether Ms. Peterson
29 prepared a document was to look at the bottom of the document for the initials
30 "COP", which indicates that Ms. Peterson had prepared the document. Ms. Salazar
testified that First American's computer system reflects that for documents produced by

1 a First American employee such as in the case of Ms. Peterson, embedded in the
2 document would be her initials COP.

3 29. With respect to the escrow transaction reflected in Exhibit 4, Ms. Salazar testified
4 that Ms. Peterson produced the Warranty Deed and Deed of Trust. There is no notation
5 on the bottom of the Warranty Deed showing that Ms. Peterson produced that
6 document. The Note was not presented into evidence.

7 30. The HUD Settlement Statement indicates that \$100.00 drafting fee was to be
8 paid to the lender. However, the payment did not go to the lender t but went to David
9 Hilditch.

10 31. Ms. Peterson testified that David Hilditch prepared the Note and Deed of Trust
11 and that she prepared the Lender's Instructions (escrow instructions). Ms. Peterson
12 testified that she obtained permission from her managers, Mr. Freeman and Ms.
13 Gorney, for David Hilditch to prepare the documents.

14 32. Ms. Peterson testified that the Note was not in First American's computer system
15 (the FAST system) because David Hilditch prepared the Note and Warranty Deed from
16 his home.

17 33. The Lender's Instructions in Exhibit 4 does not indicate that Ms. Peterson
18 produced that document. However, the Special Warranty Deed was produced by Ms.
19 Peterson because embedded in the documents is a notation COP.

20 34. The weight of the credible evidence of record established that David Hilditch
21 prepared the Special Warranty Deed and Note and that Ms. Peterson prepared the
22 Lender's Instructions.

23 35. The disbursement details entered into First American's computer system by Ms.
24 Peterson show a disbursement of \$100.00 to David Hilditch for preparation of the Note,
25 Deed of Trust and Lender's Instructions. That is inaccurate because Ms. Peterson
26 represented that she prepared the Lender's Instructions.

26 Exhibit 5

27 36. With respect to the escrow transaction reflected in Exhibit 5, Ms. Salazar testified
28 that David Hilditch received a \$100.00 check from escrow funds issued by Ms.
29 Peterson. There was no charge detail on First American's computer system that
30 explained the issuance of the check.

1 37. The bottom of Deed of Trust and Assignment of Rent has embedded in the
2 documents the initials COP indicating that they were prepared by Ms. Peterson.

3 38. The HUD Settlement Statement indicates payment of \$100.00 to Dave Hilditch
4 with the notation Note Deed of Trust to Dave E. Hilditch \$100.00.

5 39. Ms. Peterson testified that Mr. Freeman and Ms. Gorney approved payment of
6 the \$100.00 to her husband to prepare the Note and Lender's Instructions.

7 40. The weight of the evidence of record established that David Hilditch prepared the
8 Note and Lender's Instructions and the Deed of Trust was prepared by Ms. Peterson.

9 Exhibit 6

10 41. Ms. Salazar testified that with respect to an escrow transaction reflected in
11 Exhibit 6, a check was issued in the amount of \$100.00 from escrow funds to Dave
12 Hilditch by Ms. Peterson for document fee preparation.

13 42. Ms. Salazar testified that copies of two Special Warranty Deeds indicate that
14 they were produced by Ms. Peterson because on top of page is the escrow number and
15 the initials COP.

16 43. Ms. Salazar testified that the Deed of Trust and Assignment of Rents were
17 produced by Ms. Peterson as evidenced by the notation COP on the bottom of the
18 page.

19 44. According to Ms. Salazar, there was no document in the file that authorized
20 David Hilditch to be paid for drafting documents.

21 45. The HUD Settlement Statement indicates a document preparation fee of
22 \$100.00 was to be paid to David Hilditch.

23 46. Ms. Peterson testified that David Hilditch prepared the Note and Lender's
24 Instructions, which is why those documents do not exist in First American's computer
25 system. The weight of the evidence of record established that the Note, Lender's
26 Instructions were prepared by David Hilditch and that the two Special Warranty Deed
27 and Deed of Trust were prepared by Ms. Peterson.

28 Exhibit 11

29 47. With respect to the escrow transaction reflected in Exhibit 11, Ms. Salazar
30 testified that a \$2,000.00 check was made payable to Dave Hilditch from escrow funds

1 that was caused to be issued by Ms. Peterson. Ms. Salazar testified that she does not
2 know why the check was issued.

3 48. The disbursement detail on First American's computer system indicates that the
4 check was issued as advanced cash to seller. According to Ms. Salazar there should
5 not be an advance of cash to a seller because in a closing, escrow does not pay funds
6 to a seller until the closing occurs after the documents are recorded.

7 49. Ms. Salazar testified that there were no instructions in the file that indicated Dave
8 Hilditch should be paid \$2,000.00. The HUD Settlement Statement does not reflect that
9 \$2,000.00 charge. The last page of that document shows that the seller was to receive
10 \$45,584.12 but she did not receive that sum. After preparation of the HUD Settlement
11 Statement, added to line 1305 in the supplemental sheet to the Settlement Statement
12 was the note advanced cash to seller to David Hilditch. However, there is nothing in the
13 file to explain why David Hilditch was paid \$2,000.00.

14 50. Ms. Peterson testified that this transaction involved HomePro, a client of hers,
15 whose manager is Terry Lewis.

16 51. Ms. Peterson was asked to act as a notary. When she arrived to notarize
17 documents, the seller was packed and expecting a sum of money. The seller would not
18 execute the documents without receiving funds. Ms. Peterson contacted Terry Lewis,
19 who authorized her to pay the seller \$2,000.00 and represented to Ms. Peterson that
20 she would be reimbursed from the escrow account.

21 52. Ms. Peterson testified that she contacted Ms. Gorney who gave her approval for
22 Ms. Peterson to provide the money to the seller. Ms. Peterson testified that she just
23 happened to have \$2,000.00 cash with her from collecting rent on her rental properties
24 and gave that to the seller. Upon receipt of the \$2,000.00 the seller proceeded to
25 execute the closing documents.

26 53. According to Ms. Peterson, the \$2,000.00 was an issue that did not exist when
27 the HUD Settlement Statement had been prepared. Therefore, a supplemental page
28 was added to reflect the \$2,000.00. Ms. Gorney refused to put Ms. Peterson's name on
29 the HUD Statement with respect to the \$2,000.00, which is why her husband's name
30 appears on the final HUD Statement. Consequently, the HUD Settlement Statement
contains inaccurate information.

Exhibit 12

1 54. Ms. Salazar testified that the escrow transaction reflected in Exhibit 12 shows a
2 check in the amount of \$110.00 was issued to David Hilditch from escrow funds that
3 were caused to be issued by Ms. Peterson for private party lending documents. The file
4 was cancelled and there were no documents.

5 55. A deposit receipt in the amount of \$10.00 shows that a fee was paid by Selective
6 Marketing & Investment Inc. that was deposited prior to cancellation. A check in the
7 amount of \$100.00 was received from Frank Bobelick which was handled by Ms.
8 Peterson. The file was opened on October 27, 2004, funds disbursed on November 22,
9 2004.

10 56. Ms. Salazar testified that in the event of a cancellation, funds are disbursed
11 pursuant to written instructions which usually provide for the funds to be returned to the
12 party that provided the funds or that First American keeps the funds as a cancellation
13 fee. According to Ms. Salazar, there were no written instructions in who this file.

14 57. Ms. Peterson testified that Frank Bobelick was an investor who agreed to pay
15 David Hilditch for preparation of the Note and Deed of Trust, which occurred prior to
16 cancellation of the file.

Exhibit 18

17
18 58. With respect to the escrow transaction reflected in Exhibit 18, Ms. Salazar
19 testified that the documents show that a check was issued to Dave Hilditch in the
20 amount of \$100.00 from escrow funds that were caused to be issued by Ms. Peterson
21 for loan document preparation-private beneficiary.

22 59. Ms. Salazar testified that the Note and Deed of Trust appears to have been
23 produced by Ms. Peterson because on the top of the document there is a notation with
24 the escrow number and notation "COP". The HUD Settlement Statement shows that
25 \$100.00 document fee payable to First American Title. However at final disbursement,
26 instead a \$100.00 check was issued to David Hilditch and not to First American.

27 60. Ms. Peterson testified that her initials do not appear on the bottom of the Note
28 and Deed of Trust. According to Ms. Peterson, if she had prepared the documents, her
29 initials would be at the bottom of the documents. She also testified that the Note and
30

1 Deed of Trust were prepared by David Hilditch in a format provided and approved by
2 Mr. Freeman.

3 61. With respect to the HUD Settlement Statement, Ms. Peterson testified that Ms.
4 Gorney did not know where to disclose it and the computer program defaulted to line
5 item 1105 and defaulted to document preparation fee.

6 62. Ms. Peterson acknowledged that David Hilditch's name should have replaced
7 First American's name on the HUD Settlement Statement because he was the
8 document preparer. Consequently, the HUD Settlement Statement is not correct.

9 Exhibit 24

10 63. With respect to the escrow transaction reflected in Exhibit 24, Ms. Salazar
11 testified that a check was issued to David Hilditch in the amount of \$5,000.00 and
12 another check was issued to him in the amount of \$100.00. There was also a check in
13 the amount of \$50.00 issued to Hugh Hilditch. The charge detail in First American's
14 computer system for the \$5,000.00 shows it was issued for a service fee and was
15 produced by Ms. Peterson.

16 64. Ms. Salazar testified that the charge detail is non-descriptive and she has no
17 idea what the services were.

18 65. Ms. Peterson posted the \$100.00 check for document preparation and the check
19 for \$50.00 was produced by Ms. Peterson for Hugh Hilditch as a notary. According to
20 Ms. Salazar, the Warranty Deed was produced by Ms. Peterson as evidenced by Ms.
21 Peterson's initials listed on the top of the document. The Warranty Deed was notarized
22 by Lana Nelson, who was an employee of First American at that time. Ms. Salazar also
23 testified that a copy of the Deed of Trust was produced by Ms. Peterson and notarized
24 by Ms. Peterson.

25 66. Ms. Salazar testified that there are no documents in the escrow file that David
26 Hilditch would have prepared or that Hugh Hilditch could have notarized. Ms. Salazar
27 also represented that she also researched the documents on line and did not find any
28 documents that David Hilditch would have prepared or that Hugh Hilditch notarized.

29 667 Ms. Peterson testified that Torston Coulson and David Hilditch worked on
30 rehabilitating homes together. Mr. Coulson was the seller who authorized David
Hilditch to be paid \$5,000.00 for work performed in rehabilitating the home which was

1 the subject of the transaction. \$100.00 was paid to David Hilditch for document
2 preparation and \$50.00 was paid to Hugh Hilditch for a cancellation fee because when
3 Hugh Hilditch came to do the signing of documents, no one showed.

4 68. Mr. Coulson testified that he authorized David Hilditch to be paid \$5,000.00 from
5 escrow for work he performed in relation to the subject property.

6 69. David Hilditch testified that Mr. Colson authorized him to receive \$5,000.00 for
7 work performed rehabilitating a home.

8 Exhibit 26

9 70. With respect to the escrow transaction reflected in Exhibit 26, Ms. Salazar
10 testified that a check was issued to David Hilditch in the amount of \$50.00 to David
11 Hilditch out of escrow funds caused to be issued by Ms. Peterson for a Warranty Deed
12 Preparation (courtesy). The escrow file shows that the \$50.00 check transaction
13 related to a re-finance. She further testified that because the transaction was a re-
14 finance, no warranty deed was required so there should not have been a charge for
15 preparation of a warranty deed.

16 71. Ms. Peterson testified that her client wanted a Warranty Deed prepared to
17 change ownership of the property from him individually to a limited liability company.

18 Exhibit 40

19 72. With respect to the escrow transaction reflected in Exhibit 40, two checks were
20 caused to be issued by Ms. Peterson from escrow funds in the amount of \$50.00 and
21 \$200.00 to David Hilditch. The \$50.00 check was issued for a notary fee and the
22 \$200.00 check was issued for document preparation.

23 73. Ms. Salazar testified that the Note was produced by Ms. Peterson as evidenced
24 by her initials at the top of the document. She also testified that the Deed of Trust and
25 Assignment of Rents was produced by Ms. Peterson as evidenced by her initials
26 located at the top of the page. Ms. Salazar could not find any documents that were
27 prepared or notarized by David Hilditch.

28 74. Ms. Salazar investigated if David Hilditch was a notary with the Secretary of
29 State's Office and found no record he was a notary.
30

1 75. According to Ms. Peterson, David Hilditch prepared the Note, Deed of Trust and
2 Lender's Instruction. Ms. Peterson testified that those documents do not contain a
3 notation on the bottom indicating they were prepared by her.

4 76. Ms. Peterson testified that David Hilditch was paid \$200.00 for document
5 preparation and she does not know what the \$50.00 payment was for. She
6 represented that David Hilditch was not a notary and that any written statement to that
7 effect was a misprint.

8 Exhibit 64

9 77. With respect to the escrow transaction reflected in Exhibit 64, Kevin Hilditch was
10 paid a check in the amount of \$300.00 from escrow funds caused to be issued by Ms.
11 Peterson. The details of the check voucher showed escrow fees of \$200.00 and
12 courier/messenger/special delivery fee \$100.00.

13 78. Ms. Salazar testified that there was the possibility that Kevin Hilditch could have
14 performed legitimate courier/messenger/delivery services. However, nothing in file
15 indicates that Kevin Hilditch performed any duties like that.

16 79. The HUD Settlement Statement indicates a \$100.00 courier services/messenger/
17 delivery fee was due to First American. Instead, \$100.00 was paid to Kevin Hilditch.
18 There is no \$300.00 entry on the HUD Settlement Statement. However, the HUD
19 Settlement Statement indicates that a closing (escrow) fee was due to First American in
20 the amount of \$275.00.

21 80. Ms. Peterson testified that Kevin Hilditch had to make a packet delivery to
22 Tucson because First American missed the overnight pickup. Because the buyer only
23 agreed to pay \$100.00 for delivery fee, First American had to take a loss and incur
24 200.00 for delivery of the documents. According to Ms. Peterson, Ms. Gorney
25 instructed Ms. Peterson to indicate \$100.00 courier fee on line item 1112 and list the
26 \$200.00 as a loss.

27 81. Kevin Hilditch testified that Ms. Peterson requested that he performed the courier
28 service to Tucson and informed him that he would be paid \$300.00 for such service.
29 The \$300.00 courier fee was set by Ms. Peterson and it was the first time he had to
30 deliver documents to Tucson.

1
2 Exhibit 67

3 82. With respect to the escrow transaction reflected in Exhibit 67 shows that a
4 \$1,000.00 was paid to David Hilditch from escrow funds that were caused to be issued
5 by Ms. Peterson for sale proceeds. No written indication in the file that David Hilditch
6 should receive sale proceeds. Ms. Salazar testified that this transaction was not a sale
7 but a loan transaction.

8 83. The HUD Settlement Statement indicates settlement closing fees and recording
9 fees payable to First American. It also indicates that sales proceeds were provided to
10 John Plaxco in the amount of \$44,156.43.

11 84. Ms. Salazar testified that the wire instructions in the file used the term "sales
12 proceeds" even though the transaction was not a sale. John Plaxco was wired
13 \$43,156.43 and \$1,000.00 was paid to David Hilditch.

14 85. Ms. Peterson testified that this was a sales transaction involving Wells Fargo as
15 the seller and that First American's computer program automatically defaults to sales
16 proceeds. She also testified that John Plaxco borrowed money from David Hilditch to
17 close escrow and the money was not for sales proceeds but to pay back David Hilditch
18 \$1,000.00 that was borrowed.

19 86. The weight of the evidence of record established that the HUD Settlement
20 Statement contained inaccurate information as to the distribution of sales proceeds.

21 Exhibit 70

22 87. With respect to the escrow transaction reflected in Exhibit 70, an \$800.00 check
23 was made payable to Daniel Martinez from escrow funds that was caused to be issued
24 by Ms. Peterson for a documentation preparation fee for lender Dan Hayes.

25 88. Ms. Salazar testified that a copy of the Deed of Trust and Assignment of Rent
26 that Ms. Salazar obtained from Pinal County Recorder's Office indicates that it was
27 produced by Ms. Peterson as evidenced by her initials located on the top of the
28 document. Ms. Salazar also testified that there were no other documents in the file that
29 could have been prepared by Daniel Martinez.

30 89. The HUD Settlement Statement showed a document preparation fee by Kayes
Development LLC in the amount of \$300.00 was to be paid by the borrower and a

1 \$500.00 documentation preparation fee to be paid by the seller. Kayes Development
2 LLC was the lender. Kayes Development was not paid for document preparation and,
3 instead, Daniel Martinez was paid.

4 90. Ms. Peterson initially testified that Dan Hayes, the owner of Kayes Development,
5 LLC, hired Daniel Martinez to perform document preparation. Daniel Martinez was 18
6 years old at the time. Subsequently, Ms. Peterson testified that Mr. Hayes authorized
7 her to perform the document preparation and because she was busy, she hired her
8 son. However, the evidence of record shows that Mr. Hayes approved the hiring of
9 Daniel Martinez as a document preparer as evidenced by the Affidavit of Mr. Hayes
10 (Exhibit C).

11 **Premier Title Company Audit (Second Complaint)**

12 Exhibit 73

13 91. With respect to the escrow transaction reflected in Exhibit 73, a check was made
14 payable to Anchor 2 Investments, LLC in amount of \$25.00 from Premier Title indicating
15 it was issued as a refund of notary fee. A notary fee was charged on the HUD
16 Settlement Statement. A loss was requested on February 14, 2008. A Final
17 Disbursement report was printed February 14, 2008 and the file was closed on
18 November 18, 2005. The file was handled by Ms. Peterson as escrow officer.

19 92. Ms. Bushnell testified that Hugh Hilditch was not employed by Premier at any
20 time. She further testified that the HUD Settlement Statement showed that notary fees
21 paid to Hugh Hilditch \$25.00 and refund of the fee was provided to the buyer in the
22 amount of \$25.00.

23 93. According to Ms. Bushnell's review, Hugh Hilditch did not notarize any
24 documents in the file and there was no invoice in the file from Hugh Hilditch and that
25 notary fees were only paid provided an invoice was presented.

26 94. Ms. Bushnell testified that there could not have been a cancellation fee because
27 Premier disbursed funds on the file. She qualified that testimony by stating that without
28 reviewing the actual file, she was surmising what had occurred.

29 95. The HUD Settlement Statement does not reflect a payment for document
30 preparation fee although \$150.00 was paid to David Hilditch for document preparation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Exhibit 94

96. With respect to the escrow transaction reflected in Exhibit 94, File number 01005458-781, Ms. Bushnell testified that the escrow officer was Lisa Gorney. The seller of the property was Jimmy Davis and the buyer was Hilditch Properties, which was owned by Ms. Peterson.

97. When the property was purchased, Mr. Davis' loan was not paid off. Funds were inappropriately diverted to other parties associated with Ms. Peterson and for her benefit. The funds were paid to Ms. Peterson for property owned by Ms. Peterson or one of her companies that had no relation to Mr. Davis.

98. Ms. Peterson testified that the first transaction involved an agreement for sale of Mr. Davis' home with Ms. Peterson taking over the obligations of Mr. Davis' loan. The second transaction was the consummation of the purchase with "hard money". The third transaction was a refinance of the property. There is currently a lawsuit pending between Mr. Davis and Ms. Peterson. She never acted as an escrow officer in any of the above-mentioned three transactions involving Mr. Davis' property. Mr. Davis selected Ms. Gorney to be the escrow officer regarding this property.

Exhibit 98

99. With respect to the escrow transaction reflected in Exhibit 98, the escrow officer was Ms. Peterson. Ms. Bushnell testified that the Disbursement Report in the file indicates \$65.00 was paid Hugh Hilditch. However, the HUD Settlement Statement indicates \$25.00 was due him but there was no bill in the file.

100. On cross-examination, Ms. Bushnell testified that on the HUD Statement, line 1114 shows an amount of \$25.00 was for the notary and on line 1111, \$40.00 was for overnight courier, for a total disbursement of \$65.00. Although Ms. Bushnell testified that Premier would not pay an overnight fee to Hugh Hilditch, she acknowledged that the HUD Settlement Statement accounts for the \$65.00 listed in the Disbursement Report.

The Department's Concerns

101. Robert Charlton ("Mr. Charlton"), Assistant Director of the Department, testified:

- 1 a. The Department proceeds against a person under A.R.S. § 6-161 when
2 the public or the industry licensed by the Department are at risk.
- 3 b. In this particular case, there is a risk that Ms. Peterson could be
4 employed by companies licensed by the Department and Ms. Peterson
5 could be placed in a position of trust that would afford her an opportunity
6 to act in a manner as she has previously done. Ms. Peterson has shown
7 that she has made inappropriate decisions during her employment at two
8 licensed escrow agents in her function as an escrow officer and that Ms.
9 Peterson did not realize that inappropriate fees were paid to various family
10 members.
- 11 c. Because of the exposure to future harm, it is necessary to ensure that Ms.
12 Peterson is not able to be employed within the licensed industry without
13 first obtaining permission from the Superintendent of the Department.

14 CONCLUSIONS OF LAW

- 15 1. Pursuant to A.R.S., Title 6, Chapter 7, the Superintendent of the Department is
16 authorized and has the duty to regulate all persons engaged in the escrow agent
17 business and is to enforce the statutes, rules and regulations applicable to escrow
18 agents.
- 19 2. The weight of the evidence of record established that Ms. Peterson violated the
20 provisions of A.R.S. § 6-834(A) by "failing to deposit and maintain all monies deposited
21 in escrow to be delivered on the close of escrow or on any other contingency... ."
- 22 3. The weight of the evidence of record established that Ms. Peterson violated the
23 provisions of A.R.S. § 6-841.01(A) by breaching a fiduciary duty as a trustee of the
24 owner of all monies received or collected and held in escrow.
- 25 4. The Administrative Law Judge concludes that the Department proved by a
26 preponderance of the evidence that disbursements made by Ms. Peterson in the
27 above-mentioned escrow files were improper because there were no written
28 authorizations in the files providing for such disbursements. Additionally, the inaccurate
29 and incomplete reporting of such disbursements reflects poorly on Ms. Peterson's
30 character and reflects dishonesty.

1 5. Ms. Peterson's reliance upon her manager's approval for completing and signing
2 inaccurate documents, as asserted, does not provide a complete defense or excuse the
3 fact that Ms. Peterson prepared and executed documents pertaining to escrow
4 accounts, such as HUD Settlement Statements, knowing that, as set forth above, they
5 contained inaccurate information.

6 6. The weight of the evidence of record, as set forth above, shows that Ms.
7 Peterson failed to accurately document disbursements to the above-mentioned family
8 members, failed to appropriately obtain and document authorization for such
9 disbursements, and signed inaccurate HUD Settlement Statements and other
10 documents, notes and data entries made in the escrow agents' computer records
11 regarding the above-mentioned escrow files.

12 7. The weight of the evidence of record established that Ms. Peterson's conduct, as
13 set forth above, constitutes acts, omissions, and practices which demonstrate personal
14 dishonesty and unfitness to continue in office or to participate in the conduct of the
15 affairs of any financial institution or enterprise within the meaning of A.R.S. § 6-
16 161(A)(1) . Such conduct constitutes grounds for the prohibition of Ms. Peterson from
17 participating in any manner in the conduct of the affairs of any financial institution or
18 enterprise within the meaning of A.R.S. § 6-161(A)(1).

19 8. Ms. Peterson's violation of the above-mentioned statute constitutes grounds for
20 the prohibition of Ms. Peterson from participating in any manner in the conduct of the
21 affairs of any financial institution or enterprise pursuant to A.R.S. § 6-161(A)(6).

22 9. The Superintendent of the Department has the authority to order prohibition of
23 Ms. Peterson from further participation in any manner as a director, officer, employee,
24 agent or other person in the conduct of the affairs of any financial institution or
25 enterprise pursuant to A.R.S. § 6-161.

26 . . .

27 . . .

28 . . .

1
2 ORDER

3 On the effective date of the Order entered in this matter, Ms. Peterson shall be
4 prohibited from further participation in any manner as a director, officer, employee,
5 agent or other person in the conduct of the affairs of any financial institution or
6 enterprise pursuant to A.R.S. § 6-161.

7 Done this day, November 25, 2008.

8
9
10 

11 Lewis D. Kowal
12 Administrative Law Judge

13
14 Original transmitted by mail this
15 26 day of November, 2008, to:

16
17 Arizona Department of Financial Institutions
18 Felecia A. Rotellini, Superintendent
19 ATTN: Susan Longo
20 2910 N. 44th Street, Suite 310
21 Phoenix, AZ 85018

22
23
24 By 