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7 BEFORE THE DEPARTMENT OF CORPORATIONS
8 OF THE STATE OF CALIFORNIA

9
10 In the Matter of the Accusation of) FILE NO. 923-3701
11)
12 THE CALIFORNIA CORPORATIONS)
COMMISSIONER,)
13) **ACCUSATION**
Complainant,)
14)
v.)
15)
16 ROBERT ERIC BARTH,)
Respondent.)
17)

18
19 Jan Lynn Owen, the California Corporations Commissioner (“Commissioner”) of the
20 Department of Corporations (“Department”), alleges and charges as follows:

21 STATEMENT OF FACTS

- 22 1. The Commissioner is authorized to administer and enforce the provisions of the Corporate
23 Securities Law of 1968, Corporations Code Section 25000 et seq., and accompanying regulations at
24 Title 10, California Code of Regulations, section 260.000 et seq.
- 25 2. This action seeks to prevent Robert Eric Barth (“Barth”) from engaging in unlicensed
26 investment adviser activities pursuant to Corporations Code section 25532, and to bar Barth from
27 any position of employment, management or control of any investment adviser, broker-dealer, or
28 commodity adviser pursuant to Corporations Code section 25232.1.

1 3. Prior to March 3, 2006, Barth conducted investment adviser business under a certificate
2 issued to Evergreen Financial Planning, Inc. (“Evergreen”). On March 3, 2006, the Department
3 summarily revoked the certificate of Evergreen based on non-payment of a renewal fee.

4 4. On November 21, 2006, Barth submitted a new investment adviser application under the
5 name of E.F. Planning, LLC (“EFP”). In the EFP application, Barth represented that he had
6 provided investment advisory services for 26 to 100 clients. On February 2, 2007, the Department
7 requested an explanation as to why the applicant did not comply with the certificate requirement of
8 section 25230 prior to conducting investment advisory business. The Department also requested the
9 date upon which the applicant, Barth, commenced his new business. Additionally, the Department
10 requested a list of clients and their addresses, along with a schedule of any complaints filed by
11 clients against the applicant, Barth.

12 5. Barth failed to respond to the requests for information. Therefore, the EFP application was
13 abandoned by the Department on March 15, 2011.

14 6. On August 13, 2009, a default judgment was entered against Barth in the case of *Estate of*
15 *Joan Whaley, by and through its Special Administrator, Shirley Ann Dohrman v. Robert Eric Barth;*
16 *Evergreen Financial Planning, Inc.; and REB Emerald Mortgage, Inc. (Superior Court of*
17 *California, Orange County – Central Justice Center, Case No. 30-2008 00104938)*. Based on the
18 default judgment and the original complaint, there were seven causes of action against Barth based
19 on breach of fiduciary duty, negligence, fraud (concealment), constructive fraud, undue influence,
20 financial abuse of an elderly person, and an accounting. Barth was ordered to pay one million four
21 hundred seventy-one thousand seven hundred eighty-one dollars and forty-six cents (\$1,471,781.46)
22 to the estate. The judgment was based on allegations that Barth transferred Whaley’s money to an
23 investment known as the Bayview Real Estate Deal. The Bayview Real Estate Deal was a scam in
24 that the promissory note was a forgery and there was no evidence of a real estate investment being
25 secured by a deed of trust. Barth also diverted Whaley’s assets from her Fiserv and Ameritrade
26 accounts, and used them for his own benefit.

27 7. On August 27, 2009, a default judgment was entered against Barth in the case of *Howard J.*
28 *Heimstra, an individual, and Valerie Heimstra, and individual v. Robert Eric Barth, an individual;*

1 *Evergreen Financial Planning, Inc., a corporation; REB Emerald Mortgage, Inc., a corporation:*
2 *E.F. Planning LLC, a Limited Liability Company; and Does 1 – 25, inclusive (Superior Court of*
3 *California, Orange County – Central Justice Center, Case No. 30-2008 00110080).* Based on the
4 default judgment and the original complaint, there were five causes of action against Barth based on
5 breach of contract, breach of fiduciary duty, fraud, negligence, and an accounting. Barth was ordered
6 to pay four hundred thirty-nine thousand eight hundred seventy dollars (\$439,870.00) to the
7 Heimstras. Of this amount, punitive damages were awarded in the amount of one hundred thousand
8 dollars (\$100,000.00). The judgment was based on allegations that Barth invested the Heimstras’
9 retirement funds in home mortgage notes when, in fact, Barth wrongfully diverted the retirement
10 funds and used them for his own benefit.

11 8. On December 2, 2009, a default judgment was entered against Barth in the case of *Stephen P.*
12 *Elders, Maria Elders, Manuel Laso, and Maria Laso v. Robert Eric Barth, an individual; Evergreen*
13 *Financial Planning, Inc., a California Corporation; REB Emerald Mortgage, Inc., a California*
14 *corporation; and Does 1 – 100 (Superior Court of California, Orange County – Central Justice*
15 *Center, Case No. 07CC09506).* Based on the default judgment and the First Amended Complaint,
16 on twenty-one causes of action based on breach of fiduciary duty and conversion by Barth, Barth
17 was ordered to pay three hundred forty-six thousand seven hundred sixty-four dollars and 61 cents
18 (\$346,764.61) to the Elders and the Lasos. The judgment was based on allegations that Barth made
19 purported investments in a Nimensky note and a California Home Loans Mortgage note for the
20 Elders; however, these notes were not real investments and were just a cover to convert the Elder’s
21 money for Barth’s own use. Moreover, the judgment was based on allegations that Barth transferred
22 money in the Lasos’ individual retirement account (“IRA”) to a California Home Loans Mortgage
23 note. However, the purported investment was not real and was merely a scam to convert the Lasos’
24 IRA money for Barth’s own use.

25 9. On January 10, 2011, a default judgment was entered against Barth in the case of *Scott*
26 *Faerber and Toni Faerber, individuals, v. Lincoln Trust Company, a Colorado Corporation,*
27 *formerly known as Fiserv, ISS A/K/A Fiserv, Inc., formerly known as First Trust Corporation;*
28 *Robert E. Barth, an individual; REB Emerald Mortgage, Inc., a California Corporation; Evergreen*

1 *Financial Planning, Inc., a California corporation (Superior Court of California, Orange County –*
2 *Central Justice Center, Case No. 30-2010-00379315).* Based on the default judgment and the First
3 Amended Complaint, there were seven causes of action against Barth based on breach of fiduciary
4 duty, negligence, negligent misrepresentation, false promise, misrepresentation, and concealment.
5 Barth was ordered to pay eighty-six thousand nine hundred nineteen dollars and fifty-eight cents
6 (\$86,919.58) to the Faerbers. The judgment was based on allegations that Barth forged the signatures
7 of the Faerbers to transfer their money into an investment known as a California Home Loan
8 Mortgage note. Instead of making investments for the Faerbers, Barth absconded with the Faerbers’
9 money.

10 10. Furthermore, the Faerbers’ complaint indicates that on August 13, 2009, the Certified
11 Financial Planner Board of Standards, Inc. (“CFP”) revoked Barth’s CFP certification as a financial
12 planner. In July 2008, following a hearing by the CFP Board’s Disciplinary and Ethics Commission
13 (“Commission”), the CFP Board issued an Order to Barth to permanently revoke his right to use the
14 CFP certification marks. The Commission specifically found, based on violations of several CFP
15 Code of Ethics and Professional Responsibility, that Barth: (1) failed to secure any information
16 about a client’s needs and objectives, (2) commingled a client’s funds in Barth’s business account,
17 (3) failed to review and recommend changes to a client’s living trust documents, (4) failed to return a
18 client’s documents, (5) charged a client inappropriately, (6) failed to disclose compensation
19 arrangements to a client in writing, and (7) failed to act as a fiduciary on behalf of a client.

20 ORDER TO BAR

21 Corporations Code section 25232.1 provides, in pertinent part:

22 “The commissioner may, after appropriate notice and opportunity for hearing, by order
23 censure, or suspend for a period not exceeding 12 months, or bar from any position of
24 employment, management or control of any investment adviser, broker-dealer or commodity
25 adviser, any officer, director, partner, employee of, or person performing similar functions
26 for, an investment adviser, or any other person, if he or she finds that the censure, suspension
27 or bar is in the public interest and that the person has committed any act or omission
28 enumerated in subdivision...(e)...of section 25232 or has been...held liable in any civil
action specified in subdivision (c) of section 25232...”

Subdivision (c) of section 25232 provides in pertinent part:

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“Has been...held liable in a civil action by final judgment of a court based on conduct showing moral turpitude, and the commissioner finds that the...civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser, (C) involved theft, or (D)...”

Subdivision (e) of section 25232 provides in pertinent part:

Has willfully violated any provision of...Title 4 (commencing with section 25000)...

Based on the foregoing facts, the Commissioner is of the opinion that Robert Eric Barth has been held liable in at least four civil actions, with numerous causes of action showing moral turpitude, and involving the purchase or sale of securities, or arising out of Barth’s investment adviser business, or involving theft, for purposes of section 25232(c). In addition, for purposes of section 25232(e), the Commissioner is of the opinion that Robert Eric Barth has engaged in investment adviser business without having first applied for and secured a license authorizing him to act in that capacity in violation of section 25230. Accordingly, the Commissioner finds that grounds exist and that it is in the public interest to bar Barth from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1.

Dated: July 31, 2012
Sacramento, CA

JAN LYNN OWEN
California Corporations Commissioner

By _____
TIMOTHY L. Le BAS
Senior Corporations Counsel
Enforcement Division