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6 Attorneys for Complainant

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 ) **ORDER OF PERMANENT BAR FROM**  
Complainant, ) **EMPLOYMENT, MANAGEMENT OR**  
14 ) **CONTROL OF ANY BROKER-DEALER**  
v. ) **OR INVESTMENT ADVISER**  
15 )  
16 ROBERT ERIC BARTH, )  
17 Respondent. )

18  
19 TO: ROBERT ERIC BARTH

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21 1. The Commissioner is authorized to administer and enforce the provisions of the Corporate  
22 Securities Law of 1968, Corporations Code Section 25000 *et seq.*, and accompanying regulations at  
23 Title 10, California Code of Regulations, section 260.000 *et seq.*

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

27 3. On November 21, 2006, Barth submitted a new investment adviser application under the  
28 name of E.F. Planning, LLC (“EFP”). In the EFP application, Barth represented that he had

1 provided investment advisory services for 26 to 100 clients. On February 2, 2007, the Department  
2 issued the following requests for information: an explanation as to why the applicant did not comply  
3 with the certificate requirement of section 25230 prior to conducting investment advisory business;  
4 the date upon which the applicant, Barth, commenced his new business; and a list of clients and their  
5 addresses, along with a schedule of any complaints filed by clients against the applicant, Barth.

6 4. Barth failed to respond to the requests for information. Therefore, the EFP application was  
7 abandoned by the Department of Corporations (“Department”) on March 15, 2011.

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

21 6. On August 27, 2009, a default judgment was entered against Barth in the case of *Howard J.*  
22 *Heimstra, an individual, and Valerie Heimstra, an individual (the “Heimstras”) v. Robert Eric*  
23 *Barth, an individual; Evergreen Financial Planning, Inc., a corporation; REB Emerald Mortgage,*  
24 *Inc., a corporation; E.F. Planning LLC, a Limited Liability Company; and Does 1 – 25, inclusive*  
25 *(Superior Court of California, Orange County – Central Justice Center, Case No. 30-2008*  
26 *00110080)*. Based on the default judgment and the original complaint, there were five causes of  
27 action against Barth based on breach of contract, breach of fiduciary duty, fraud, negligence, and an  
28 accounting. Barth was ordered to pay four hundred thirty-nine thousand eight hundred seventy

1 dollars (\$439,870.00) to the Heimstras. Of this amount, punitive damages were awarded in the  
2 amount of one hundred thousand dollars (\$100,000.00). The judgment was based on allegations that  
3 Barth invested the Heimstras' retirement funds in home mortgage notes when, in fact, Barth  
4 wrongfully diverted the retirement funds and used them for his own benefit.

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

19 8. On January 10, 2011, a default judgment was entered against Barth in the case of *Scott*  
20 *Faerber and Toni Faerber, individual* (the "Faerbers") *v. Lincoln Trust Company, a Colorado*  
21 *Corporation, formerly known as Fiserv, ISS A/K/A Fiserv, Inc., formerly known as First Trust*  
22 *Corporation; Robert E. Barth, an individual; REB Emerald Mortgage, Inc., a California*  
23 *Corporation; Evergreen Financial Planning, Inc., a California Corporation* (Superior Court of  
24 *California, Orange County – Central Justice Center, Case No. 30-2010-00379315*). Based on the  
25 default judgment and the First Amended Complaint, there were seven causes of action against Barth  
26 based on breach of fiduciary duty, negligence, negligent misrepresentation, false promise,  
27 misrepresentation, and concealment. Barth was ordered to pay eighty-six thousand nine hundred  
28 nineteen dollars and fifty-eight cents (\$86,919.58) to the Faerbers. The judgment was based on

1 allegations that Barth forged the signatures of the Faerbers to transfer their money into an investment  
2 known as a California Home Loan Mortgage note. Instead of making investments for the Faerbers,  
3 Barth absconded with the Faerbers’ money.

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

14 ORDER TO BAR

15 Corporations Code section 25232.1 provides, in pertinent part:

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

24 Subdivision (b) of section 25232 provides in pertinent part:

25 “Has been... held liable in a civil action by final judgment of a court based on conduct  
26 showing moral turpitude, and the commissioner finds that the... civil action (A) involved the  
27 purchase or sale of any security, (B) arose out of the conduct of the business of a broker-  
28 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)...

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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(b). 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.

NOW THEREFORE, GOOD CAUSE SHOWING, IT IS HEREBY ORDERED that Robert Eric Barth is barred in the State of California from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1 for acts committed as specified in subdivisions (b) and (e) of Section 25232. This order and bar are effective immediately.

Dated: September 10, 2012  
Sacramento, CA

JAN LYNN OWEN  
California Corporations Commissioner

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division