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STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: Robert Eric Barth
Evergreen Financial Planning, Inc.
6 Agia
Laguna Niguel, CA 92677

DESIST AND REFRAIN ORDER
(For violations of section 25230 of the Corporations Code)

The California Corporations Commissioner (“Commissioner”) finds that:

1. Prior to March 3, 2006, Robert Eric Barth (“Barth”) conducted investment adviser business under a certificate issued to Evergreen Financial Planning, Inc. (“Evergreen”). On March 3, 2006, the Department summarily revoked the certificate of Evergreen based on non-payment of a renewal fee.
2. On November 21, 2006, Barth submitted a new investment adviser application under the name of E.F. Planning, LLC (“EFP”). In the EFP application, Barth represented that he had provided investment advisory services for 26 to 100 clients. On February 2, 2007, the Department requested an explanation as to why the applicant did not comply with the certificate requirement of section 25230 prior to conducting investment advisory business. The Department also requested the date upon which the applicant, Barth, commenced his new business. Additionally, the Department requested a list of clients and their addresses, along with a schedule of any complaints filed by clients against the applicant, Barth.
3. Barth failed to respond to the requests for information. Therefore, the EFP application was abandoned by the Department on March 15, 2011.
4. Despite his certificate being revoked on March 2, 2006, several lawsuits filed against Barth

1 disclose that he continued to engage in investment adviser activity without a certificate.

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

15 6. On August 27, 2009, a default judgment was entered against Barth in the case of *Howard J.*
16 *Heimstra, an individual, and Valerie Heimstra, and individual v. Robert Eric Barth, an individual;*
17 *Evergreen Financial Planning, Inc., a corporation; REB Emerald Mortgage, Inc., a corporation;*
18 *E.F. Planning LLC, a Limited Liability Company; and Does 1 – 25, inclusive (Superior Court of*
19 *California, Orange County – Central Justice Center, Case No. 30-2008 00110080)*. Based on the
20 default judgment and the original complaint, there were five causes of action against Barth based on
21 breach of contract, breach of fiduciary duty, fraud, negligence, and an accounting. Barth was ordered
22 to pay four hundred thirty-nine thousand eight hundred seventy dollars (\$439,870.00) to the
23 Heimstras. Of this amount, punitive damages were awarded in the amount of one hundred thousand
24 dollars (\$100,000.00). The judgment was based on allegations that Barth invested the Heimstras’
25 retirement funds in home mortgage notes when, in fact, Barth wrongfully diverted the retirement
26 funds and used them for his own benefit.

27 7. On December 2, 2009, a default judgment was entered against Barth in the case of *Stephen P.*
28 *Elders, Maria Elders, Manuel Laso, and Maria Laso v. Robert Eric Barth, an individual; Evergreen*

1 *Financial Planning, Inc., a California Corporation; REB Emerald Mortgage, Inc., a California*
2 *corporation: and Does 1 – 100 (Superior Court of California, Orange County – Central Justice*
3 *Center, Case No. 07CC09506).* Based on the default judgment and the First Amended Complaint,
4 on twenty-one causes of action based on breach of fiduciary duty and conversion by Barth, Barth
5 was ordered to pay three hundred forty-six thousand seven hundred sixty-four dollars and 61 cents
6 (\$346,764.61) to the Elders and the Lasos. The judgment was based on allegations that Barth made
7 purported investments in a Nimensky note and a California Home Loans Mortgage note for the
8 Elders; however, these notes were not real investments and were just a cover to convert the Elder’s
9 money for Barth’s own use. Moreover, the judgment was based on allegations that Barth transferred
10 money in the Lasos’ individual retirement account (“IRA”) to a California Home Loans Mortgage
11 note. However, the purported investment was not real and was merely a scam to convert the Lasos’
12 IRA money for Barth’s own use.

13 8. On January 10, 2011, a default judgment was entered against Barth in the case of *Scott*
14 *Faerber and Toni Faerber, individuals, v. Lincoln Trust Company, a Colorado Corporation,*
15 *formerly known as Fiserv, ISS A/K/A Fiserv, Inc., formerly known as First Trust Corporation;*
16 *Robert E. Barth, an individual; REB Emerald Mortgage, Inc., a California Corporation; Evergreen*
17 *Financial Planning, Inc., a California corporation (Superior Court of California, Orange County –*
18 *Central Justice Center, Case No. 30-2010-00379315).* Based on the default judgment and the First
19 Amended Complaint, there were seven causes of action against Barth based on breach of fiduciary
20 duty, negligence, negligent misrepresentation, false promise, misrepresentation, and concealment.
21 Barth was ordered to pay eighty-six thousand nine hundred nineteen dollars and fifty-eight cents
22 (\$86,919.58) to the Faerbers. The judgment was based on allegations that Barth forged the signatures
23 of the Faerbers to transfer their money into an investment known as a California Home Loan
24 Mortgage note. Instead of making investments for the Faerbers, Barth absconded with the Faerbers’
25 money.

26 9. Furthermore, the Faerbers’ complaint indicates that on August 13, 2009, the Certified
27 Financial Planner Board of Standards, Inc. (“CFP”) revoked Barth’s CFP certification as a financial
28 planner. In July 2008, following a hearing by the CFP Board’s Disciplinary and Ethics Commission

1 (“Commission”), the CFP Board issued an Order to Barth to permanently revoke his right to use the
2 CFP certification marks. The Commission specifically found, based on violations of several CFP
3 Code of Ethics and Professional Responsibility, that Barth: (1) failed to secure any information
4 about a client’s needs and objectives, (2) commingled a client’s funds in Barth’s business account,
5 (3) failed to review and recommend changes to a client’s living trust documents, (4) failed to return a
6 client’s documents, (5) charged a client inappropriately, (6) failed to disclose compensation
7 arrangements to a client in writing, and (7) failed to act as a fiduciary on behalf of a client.

8
9 Corporations Code section 25532, subdivision (b) provides:

10 “If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or
11 investment adviser, or has been or is engaging in broker-dealer or investment adviser
12 activities, in violation of section 25210, 25230, or 25230.1, the commissioner may order that
13 person to desist and refrain from the activity until the person has been appropriately licensed
14 or the required filing has been made under this law.”

15 Based on the foregoing facts, Robert Eric Barth and Evergreen Financial Planning,, Inc. have
16 engaged in investment adviser business without having first applied for and secured a license
17 authorizing them to act in that capacity, in violation of section 25230. Pursuant to section 25532,
18 Barth and Evergreen are ordered to desist and refrain from engaging in any investment adviser
19 activity in this state, unless and until they have applied for and secured from the Commissioner a
20 license, then in effect, authorizing them to act in that capacity, or unless exempt.

21 This order is necessary, in the public interest, for the protection of consumers, and is
22 consistent with the purposes, policies, and provisions of the Corporate Securities Law of 1968. This
23 order shall remain in effect until further order of the Commissioner.

24 Dated: July 30, 2012
25 Los Angeles, CA

JAN LYNN OWEN
California Corporations Commissioner

26 By _____
27 ALAN S. WEINGER
28 Deputy Commissioner
Enforcement Division