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**FILED**

JUL 27 2012

DEPARTMENT OF REAL ESTATE  
BY:                     

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

SHARON LYNN BARNES,

Respondent.

No. H-37598 LA

OAH No. 2012010008

NOTICE

TO: SHARON LYNN BARNES, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 6, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 6, 2012, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on June 6, 2012, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of June 6, 2012, at the

1 Los Angeles office of the Department of Real Estate unless an extension of the time is granted  
2 for good cause shown.

3 Written argument of Complainant to be considered by me must be submitted  
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the  
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 7/23/2012

7 Real Estate Commissioner

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11 By WAYNE S. BELL  
12 Chief Counsel  
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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Sharon Lynn Barnes,

Respondent.

Case No. H-37598 LA

OAH No. 2012010008

**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on June 6, 2012.

Lisette Garcia, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Respondent Sharon Lynn Barnes represented herself.

Oral and documentary evidence was received and the matter was submitted June 6, 2012.

The Department of Real Estate brings this Accusation to revoke Respondent's real estate broker license. For the reasons set out below, Respondent's broker's license is revoked, but she is granted a restricted real estate salesperson license.

**FACTUAL FINDINGS**

*Jurisdiction and Background*

1. Complainant issued this Accusation in her official capacity.
2. Respondent has been a licensed real estate broker since July 10, 2006. Her license was renewed in 2010 and expires July 9, 2014. The Department brought this Accusation to revoke her license on October 19, 2011, and Respondent timely requested a hearing.

*State Bar Discipline*

3. Respondent is an attorney, admitted to the State Bar of California in June 1989. On June 25, 2010, in State Bar Court case number 04-O-13151 (Supreme Court case number S181718), the California Supreme Court entered an order placing respondent on

probation for five years and suspending her from the practice of law for at least the first two years of that suspension. The suspension will last until she makes restitution to the State Bar's Client Security Fund and shows proof of rehabilitation and fitness to practice law.

4. Respondent's State Bar discipline arose out of her debt collection business. On July 30, 2003, Eagle Credit Resources employed Respondent and her office to collect money on its accounts receivable. Respondent would keep 30% of the amounts collected and remit Eagle's share of each month's proceeds within 15 days after the end of that month. In October 2003 her large volume of business from Eagle Credit and others caused respondent to expand her operation. She opened a second office and had 35 employees, including 20 debt collectors, an accounts payable clerk and an accounts receivable clerk. Her company's January 2004 disbursement check to Eagle Credit bounced, as did her February check. In February 2004 respondent "realized the numbers weren't adding up" and called in a forensic accountant, who told her there were "holes in the data." Respondent testified that the "agreed opinion" between her and the accountant was that her business had grown too fast and was undercapitalized. Respondent cut back by not replacing employees who left, and took out \$100,000 in SBA loans to cover expenses, including making the January and February payments to Eagle. But on April 5, 2004, Eagle conducted an unannounced audit in respondent's office, inspected its books, identified accounting errors in earlier months' accountings, and told respondent that she owed an additional \$6,868.23. Respondent gave Eagle a cashier's check for that amount, but her business continued to lose money, and respondent never sent Eagle a check for the March 2004 collections. On April 20, 2004, Eagle Credit sent a letter demanding that respondent cease collecting for Eagle Credit, and stating that respondent owed it \$48,521.40 for March 2004. When the matter was tried before the State Bar Court in 2009, that court found that Eagle Credit was owed \$52,628.27. The State Bar Client Security Fund reimbursed Eagle Credit in that amount.

5. The State Bar Court decision found that respondent failed to pay client funds promptly, in violation of Rule 4-100(B)(4) of the Rules Professional Conduct, and failed to deposit and maintain client funds in trust account, in violation of Rule 4-100(A) of the Rules of Professional Conduct. It also found that not paying over the collected funds to the client constituted misappropriation, which amounted to "moral turpitude" under Business and Professions Code section 6106, as did issuing checks without sufficient funds on deposit.

6. Respondent told the State Bar, and testified at the hearing of this Accusation, that she found out only in May 2005, a year after she had closed her collection business that she was the victim of embezzlement by one of her employees, the only other person who had access to her company's bank accounts.<sup>1</sup> The State Bar Court decision apparently found this to be true, but found that respondent was grossly negligent in allowing that employee to remain in a position where he could write company checks, as the State Bar Court wrote on page five of its decision:

Respondent opined during the trial that this diversion of funds

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<sup>1</sup> There was also hearsay evidence that the embezzling employee was acting in concert with an Eagle Credit employee.

was not by her, but was instead done by Cambric. There is adequate evidence in the documents placed in evidence by the State Bar for this court to agree with her in that conclusion. Nonetheless, Respondent is responsible for allowing Cambric to continue in a position of responsibility well after she was on notice of questionable transactions by him with funds held by Respondent for the benefit of her client. He was also allowed to have access to the client funds even after prior checks had bounced and after people close to Respondent had expressed concerns to her about his integrity.

The State Bar Court's findings of moral turpitude were also based on her failure to supervise adequately:

It is clear that substantial funds belonging to Eagle were collected by Respondent's office and then misappropriated. While Respondent testified at length that her employee Cambric was guilty of embezzling the funds, such a fact does not exonerate her from culpability of an act of [sic] moral turpitude [citation]. Her supervision of the firm's bank account and disbursements was unacceptably lax; she did not have adequate or reasonable office procedural safeguards in place; she was aware in October 2003 of issues of Cambric mishandling the bank accounts; and she nonetheless continued to allow him to have access to the funds in those accounts and she failed to exercise increased diligence to verify no future mishandling occurred. (*Id.* at p. 6.)

The State Bar Court did not explain whether it meant that respondent was guilty of moral turpitude for failing to supervise her employee adequately or was vicariously liable for the employee's moral turpitude.<sup>2</sup> The State Bar Court also did not explain what, if any, evidence, supported its conclusion that respondent was on notice as early as October 2003 that Cambric was mishandling the bank accounts. Respondent testified at hearing that she first suspected Cambric of embezzlement in 2005, after Eagle Credit sued her and demanded documents in discovery, and respondent had the requested documents examined by accountants. This does not affect the State Bar

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<sup>2</sup> Either interpretation is possible from the quoted wording, though neither interpretation is consistent with the meaning normally given to "moral turpitude," which typically involves intentional wrongdoing. "'Moral turpitude' is an elusive concept incapable of precise general definition. One dramatic exposition of the term was rendered by this court in 1938, and has since been consistently followed: 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man [citation].'" (*In re Higbie* (1972) 6 Cal.3d 562, 565.)

Court's finding that she was on notice early enough to prevent much of the loss, and was grossly negligent<sup>3</sup> in not doing more to prevent the embezzlement.

*Mitigation, Aggravation and Rehabilitation*

7. Respondent closed her collection business in May 2004. She has not worked in debt collection since then. Nor has she practiced law since 2005, although the State Bar did not file its Notice of Disciplinary Charges until June 19, 2008. Respondent has submitted quarterly probation reports to the State Bar, completed a required ethics course, and complied with the other provisions of her probation except repayment of the money paid by the Client Security Fund and the State Bar Court's costs of investigation and prosecution,<sup>4</sup> which she must do before she will be eligible to practice law again. She has been financially unable to repay any of the money (see Factual Finding 9), and has been in personal and business bankruptcy.

8. Respondent has worked at MGR Real Estate in Upland since 2006. Although she works as an independent contractor, she participates in the company's training and its mentorship program, which includes regular training sessions and completing nine transactions under the guidance of an assigned mentor. While respondent has been a licensed broker all that time, she has worked as an agent, supervised by a broker. Outside of MGR, respondent has completed a one-year course in foreclosure ("real estate owned") practice and shorter courses in short sales and properties in foreclosure. She has no record of real estate license discipline.

9. Respondent's most lucrative year as a real estate licensee was 2010, in which she made about \$17,000. Since 2006, she has participated in about 15 sale or lease transactions, including transactions in which she has collaborated with other agents. She has also done about 30 "broker price opinions," a quick price estimate (some are called "drive-by" broker price opinions) used in situations where an appraisal is not called for. She makes about \$45 for a broker price opinion.

10. Respondent has been married 28 years. Her husband became blind, and thus disabled, from diabetes in 2004. Her daughter died in 1998.

11. Respondent is active in community work through the African Methodist Episcopal Church's Allen Chapel, which helps at-risk youth with nutrition, job training and health. She was chairman of its board in 2011. In 2012 she completed "Aspire Academy Training" a program sponsored by the San Bernardino County Department of Behavioral Health to (in the words of her completion certificate) increase the "capacity of grass-roots, faith and community-based non profits to deliver culturally appropriate and effective services

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<sup>3</sup> See State Bar Court Decision, pages, 5-7.

<sup>4</sup> The Supreme Court Order and the State Bar Court decision mentioned a cost award, as did respondent in her testimony at hearing. Neither the Supreme Court, the State Bar Court nor respondent mentioned the amount of that award.

throughout the County.” She is also active in a foundation called C.O.I.N. (Communities Operating in Networking), a group of business owners who raise funds for Ronald McDonald House at Loma Linda University Hospital (which provides support and lodging near the hospital for families of hospitalized children), the Juvenile Diabetes Association, Arrowhead Medical Center of San Bernardino, and a scholarship fund. She has been involved in a charitable project in Pike County, Kentucky.

12. Respondent introduced seven letters of reference, all written as declarations under penalty of perjury. All the writers said they were aware of the charges brought by the State Bar and by the Department of Real Estate, and described respondent as ethical, capable and caring. Four of them are salespersons or brokers at MGR Realty (including her mentor in the MGR mentoring program), and attest to her expertise, honesty, and helpfulness in her work at MGR, her completion of professional education, her professional conscientiousness and thoroughness, and her involvement in charitable work. One letter is from an insurance broker who is the founder and president of C.O.I.N., who attested both to respondent’s value to the foundation and, on the occasions when he worked with her to provide insurance to her real estate clients, her professionalism and ethics. A title officer wrote of respondent’s skill and professionalism in their business dealings, as did the founder and president of another charitable organization who used respondent’s professional services.

#### LEGAL CONCLUSIONS

1. Cause exists to discipline respondent’s license under Business and Professions Code section 10177, subdivision (f),<sup>5</sup> as alleged in Paragraph 5 of the Accusation. Section 10177, subdivision (f) allows the Department to suspend or revoke a real estate license if the licensee has acted in a manner that would have warranted the denial of her application for a real estate license, or has had a license from another California agency revoked or suspended for acts that, if done by a real estate licensee, would be grounds to suspend or revoke a real estate license, and the agency that disciplined the license gave the licensee fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to those in the Administrative Procedure Act. Paragraph 4 of the Accusation alleges that respondent’s acts, “if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license under [sections] 10145, 10177 (d) and/or 10177 (g) and [California Code of Regulations, title 10, section] 2830.1, et. seq.”<sup>6</sup> In failing to

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<sup>5</sup> Further references to the Business and Professions Code are cited as sections.

<sup>6</sup> The Department did not allege any specific provision in or following California Code of Regulations title 10, section 2830.1 that would be a ground for discipline. Section 10177, subdivision (d) provides for license discipline or denial if the licensee or applicant has “[w]illfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2. Respondent did not violate any part of the Real Estate Law.

supervise handling of funds received on behalf of a client (Factual Findings 4 and 5), respondent demonstrated negligence or incompetence in performing an act for which she is required to hold a license,<sup>7</sup> which is a ground for discipline under section 10177, subdivision (g). She was disciplined for failing to place money received on behalf of a client into a trust account, which would be a violation of section 10145. The Rules of Procedure of the State Bar of California contain detailed provisions (in Title II, Rules 50 through 321) for giving notice of disciplinary charges, allowing responses, and affording hearings, constituting due process comparable to the Administrative Procedure Act's provisions for notice and hearing, which are set out in Government Code sections 11425.10 through 11529.

2. Respondent has the burden of showing rehabilitation and fitness to maintain her license. She has left the business which led to her State Bar discipline and left the practice of law (Factual Finding 7), and established new relationships in a new field. (Factual Findings 8 and 9.) She is the principal provider in a household with a disabled spouse. (Factual Finding 10.) She has pursued professional education for self-improvement (Factual Finding 8), and her professional associates remark on her expertise. (Factual Finding 12.) She is deeply involved with community and charitable activities. (Factual Finding 11.) Respondent has not repaid the Client Security Fund because has been financially unable to do so (Factual Finding 7), but has fulfilled the other conditions of her probation (Factual Finding 9.) The events for which she was disciplined took place more than eight years ago. (Factual Finding 4.) She has an unblemished record in six years as a real estate licensee (Factual Finding 7) and her competence and ethics in her dealings as a real estate licensee have not been called into question. Respondent has thus done nearly everything she could do to show rehabilitation except actually repay the Client Security Fund, which is impossible to do unless she increases her income, which is what she is trying to do in the real estate business.

4. The State Bar's decision found that respondent's gross negligence amounted to moral turpitude, but more importantly for present purposes is that she did not intend to defraud her client. Respondent was disciplined by the State Bar because her failure to manage her firm's bank accounts allowed her client to be robbed, but she also allowed herself to be robbed along with the client. (Factual Findings 4 through 6.) And although the State Bar was no doubt correct in finding that she should have discovered the embezzlement sooner and stopped it, it is also true that in early 2004 she engaged an accountant who did not discover the embezzlement, indicating that the source of trouble was not entirely obvious.

5. The totality of the circumstances surrounding respondent's State Bar discipline indicates that there is cause to keep her from being in a position in which she can supervise

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<sup>7</sup> Debt collection as such does not require a license, but only a licensed attorney may represent a creditor in a lawsuit. Although much of what respondent's company did for Eagle Credit did not involve litigation, the State Bar Court decision characterized all respondent's activities on behalf of Eagle Credit as "collection litigation services." This may have been because the agreement between respondent and Eagle Credit so characterized those services; the State Bar Court decision was not clear on the point.



client funds, but not to prevent her from working as a real estate licensee in situations where she does not have to oversee an employee's management of client funds. The public interest will be protected if she has a restricted real estate salesperson license and continues to be supervised by a broker. In addition to the standard restricted license terms, it is also in the public interest to maintain the period of restriction until she has repaid the State Bar Client Security Fund. To do otherwise would be to give respondent a disincentive to make that reimbursement if she has no desire to practice law again.

#### ORDER

All licenses and licensing rights of respondent Sharon Lynn Barnes under the Real Estate Law are revoked; but a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent applies for and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended before hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended before hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years after the effective date of this Decision, and until she demonstrates that she has repaid the State Bar Client Security Fund.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Not Adopted

5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: July 6, 2012



HOWARD POSNER

Administrative Law Judge

Office of Administrative Hearings