

1 Julie L. To (SBN 219482)  
2 Department of Real Estate  
3 320 West 4th Street, Suite. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6916 (direct)  
6 -or- (213) 576-6982 (office)

**FILED**

DEC 30 2019

DEPT. OF REAL ESTATE

By *Zhu*

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of

No. H-41568 LA

12  
13 DANA COSETTE BARNES,

ACCUSATION

14 Respondent.  
15

16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
17 State of California, for cause of Accusation against DANA COSETTE BARNES alleges as  
18 follows:

19 1.

20 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
21 State of California, makes this Accusation in her official capacity.

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26  
27 DRE Accusation - DANA COSETTE BARNES

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

**DEPARTMENT OF REAL ESTATE LICENSE HISTORY**

3.

A. Respondent DANA COSETTE BARNES ("BARNES") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker ("REB") (corporation), California Department of Real Estate ("DRE" or "Department") license ID 01780725.

B. BARNES was originally licensed by the DRE as a real estate salesperson ("RES") on or about November 3, 2006 and as a REB on or about November 14, 2011.

C. According to the DRE's records, BARNES' mailing and main office address of record are the same: 1300 W. Florida Ave., Suite D, Hemet, CA 92543.

D. According to the DRE's records, BARNES has one (1) DBA for Signature Group Realty and Property Management, active as of January 5, 2012.

E. According to the DRE's records, BARNES has two RES licensed under DRE license ID 01780725: Nathaniel Jacob Barnes (DRE license ID 02042268) and Kathleen Anne Jutoy Evangelista (DRE license ID 02050334).

F. BARNES' DRE license will expire on November 13, 2023.

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1 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

2 Trust Fund Handling

3 Code Section 10145 and Regulations 2831, 2831.1, 2831.2, 2832, and 2832.1

4 4.

5 Pursuant to Code Section 10145 *Handling of Trust Funds* (selected portions):

6 “(a)(1): A real estate broker who accepts funds belonging to others in connection  
7 with a transaction subject to this part shall deposit all those funds that are not immediately  
8 placed into a neutral escrow depository or into the hands of the broker’s principal, into a trust  
9 fund account maintained by the broker in a bank or recognized depository in this state. All  
10 funds deposited by the broker in a trust account shall be maintained there until disbursed by the  
11 broker in accordance with instructions from the person entitled to the funds.

12 (2) Withdrawals may be made from a trust fund account of an individual  
13 broker only upon the signature of that broker, or in the case of a corporate broker, only upon the  
14 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or  
15 10211, or one, or more, of the following persons if specifically authorized in writing by the  
16 individual broker or officer:

17 (A) A real estate salesperson licensed to the broker.

18 (B) Another broker acting pursuant to a written agreement with the  
19 individual broker that conforms to the requirements of this part and any  
20 regulations promulgated pursuant to this part.

21 (C) An unlicensed employee of the individual broker, if the broker has  
22 fidelity bond coverage equal to at least the maximum amount of the trust  
23 funds to which the unlicensed employee has access at any time. For  
24 purposes of this section, bonds providing coverage may be written with a  
25 deductible of up to 5 percent of the coverage amount. For bonds with a  
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deductible, the employing broker shall have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

Evidence of financial responsibility shall include one or more of the following:

- (i) Separate fidelity bond coverage adequate to cover the amount of the fidelity bond deductible.
- (ii) A cash deposit held in a separate account, apart from other funds of the broker, the broker's employees, or the broker's principals, in a bank or recognized depository in this state adequate to cover the amount of the fidelity bond deductible and held exclusively and solely for the purpose of paying the fidelity bond deductible amount.
- (iii) Any other evidence of financial responsibility approved by the commissioner.

(3) An arrangement under which a person enumerated in subparagraph (A),(B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

(b) A real estate broker acting as a principal pursuant to Section 10131.1<sup>1</sup> shall place all funds received from others for the purchase of real property sales contracts or

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<sup>1</sup> Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property..."

1 promissory notes secured directly or collaterally by liens on real property in a neutral escrow  
2 depository unless delivery of the contract or notes is made simultaneously with the receipt of  
3 the purchase funds.

4 ...  
5 (g) The broker shall maintain a separate record of the receipt and disposition of  
6 all funds described in subdivisions (a) and (b), including any interest earned on the funds..."

7 5.

8 Pursuant to Regulation 2831 *Trust Fund Records To Be Maintained:*

9 "(a) Every broker shall keep a record of all trust funds received, including  
10 uncashed checks held pursuant to instructions of his or her principal. This record, including  
11 records maintained under an automated data processing system, shall set forth in chronological  
12 sequence the following information in columnar form:

13 (1) Date trust funds received.

14 (2) From whom trust funds received.

15 (3) Amount received.

16 (4) With respect to funds deposited in an account, date of said deposit.

17 (5) With respect to trust funds previously deposited to an account, check  
18 number and date of related disbursement.

19 (6) With respect to trust funds not deposited in an account, identity of other  
20 depository and date funds were forwarded.

21 (7) Daily balance of said account.

22 (b) For each bank account which contains trust funds, a record of all trust funds  
23 received and disbursed shall be maintained in accordance with subdivision (a) or (c).

24 (c) Maintenance of journals of account cash receipts and disbursements, or  
25 similar records, or automated data processing systems, including computer systems and  
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1 electronic storage and manipulation of information and documents, in accordance with  
2 generally accepted accounting principles, shall constitute compliance with subdivision (a)  
3 provided that such journals, records, or systems contain the elements required by subdivision  
4 (a) and that such elements are maintained in a format that will readily enable tracing and  
5 reconciliation in accordance with Section 2831.2.

6 (d) Nothing in this section shall be construed to permit a violation of Section  
7 10145 of the Code.

8 (e) A broker is not required to keep records pursuant to this section of checks  
9 which are written by a principal, given to the broker and made payable to third parties for the  
10 provision of services, including but not limited to escrow, credit and appraisal services, when  
11 the total amount of such checks for any transaction from that principal does not exceed \$1,000.  
12 Upon request of the Department or the maker of such checks, a broker shall account for the  
13 receipt and distribution of such checks. A broker shall retain for three years copies of receipts  
14 issued or obtained in connection with the receipt and distribution of such checks.”

15 6.

16 Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*  
17 *Transaction:*

18 “(a) A broker shall keep a separate record for each beneficiary or transaction,  
19 accounting for all funds which have been deposited to the broker’s trust bank account and  
20 interest, if any, earned on the funds on deposit. The record shall include information sufficient  
21 to identify the transaction and the parties to the transaction. Each record shall set forth in  
22 chronological sequence the following information in columnar form:

- 23 (1) Date of deposit.  
24 (2) Amount of deposit.  
25 (3) Date of each related disbursement.  
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(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.”

7.

Pursuant to Regulation 2831.2 *Trust Account Reconciliation*:

“The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.”

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Pursuant to Regulation 2832 *Trust Fund Handling*:

“(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker’s salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(d) In these circumstances if the offeror’s check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.



1 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate  
2 broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial  
3 Code) when acting in the capacity of an escrow holder in a real estate purchase and sale,  
4 exchange or loan transaction in which the broker is performing acts for which a real estate  
5 license is required shall place all funds accepted on behalf of another into the hands of the  
6 owner of the funds, into a neutral escrow depository or into a trust fund account in the name of  
7 the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious  
8 name, as trustee at a bank or other financial institution not later than the next business day  
9 following receipt of the funds by the broker or by the broker's salesperson."

10 9.

11 Pursuant to Regulation 2832.1 *Trust Fund Handling for Multiple Beneficiaries:*

12 "The written consent of every principal who is an owner of the funds in the account shall be  
13 obtained by a real estate broker prior to each disbursement if such a disbursement will reduce  
14 the balance of the funds in the account to an amount less than the existing aggregate trust fund  
15 liability of the broker to all owners of the funds."

16 Broker Supervision

17 10.

18 Pursuant to Regulation 2725 *Broker Supervision:*

19 "A broker shall exercise reasonable supervision over the activities of his or her  
20 salespersons. Reasonable supervision includes, as appropriate, the establishment of policies,  
21 rules, procedures and systems to review, oversee, inspect and manage:

22 (a) Transactions requiring a real estate license.

23 (b) Documents which may have a material effect upon the rights or obligations  
24 of a party to the transaction.

25 (c) Filing, storage and maintenance of such documents.

1 (d) The handling of trust funds.

2 (e) Advertising of any service for which a license is required.

3 (f) Familiarizing salespersons with the requirements of federal and state laws  
4 relating to the prohibition of discrimination.

5 (g) Regular and consistent reports of licensed activities of salespersons.

6 The form and extent of such policies, rules, procedures and systems shall take  
7 into consideration the number of salespersons employed and the number and location of branch  
8 offices.

9 A broker shall establish a system for monitoring compliance with such policies,  
10 rules, procedures and systems. A broker may use the services of brokers and salespersons to  
11 assist in administering the provisions of this section so long as the broker does not relinquish  
12 overall responsibility for supervision of the acts of salespersons licensed to the broker.”

13 **Further Grounds for Disciplinary Action**

14 **Code Section 10177**

15 11.

16 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the  
17 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny  
18 the issuance of a license to an applicant, who has done any of the following:

19 ...

20 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
21 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
22 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
23 and Chapter 1 (commencing with Section 11000) of Part 2.”

24 ...

1 (g) Demonstrated negligence or incompetence in performing an act for which he  
2 or she is required to hold a license.

3 (h) As a broker licensee, failed to exercise reasonable supervision over the  
4 activities of his or her salesperson, or, as the officer designated by a corporate broker licensee,  
5 failed to exercise reasonable supervision and control of the activities of the corporation for  
6 which a real estate license is required.

7 ...

8 (j) Engaged in any other conduct, whether of the same or of a different character  
9 than specified in this section, that constitutes fraud or dishonest dealing...”

10 **DRE AUDIT SD 180001: DANA COSETTE BARNES**

11 12.

12 On September 27, 2018, the DRE completed its audit examination of the books  
13 and records of Respondent BARNES pertaining to her real estate sales and property  
14 management activities (SD 180001), which require a real estate license, pursuant to Code  
15 Section 10131. The audit examination covered a period of time beginning on January 1, 2017  
16 and ending on May 31, 2018 (“audit examination period” or “audit period”), and was performed  
17 between July 24, 2018 and August 22, 2018. The final report of September 27, 2018 revealed  
18 violations of the Code and the Regulations as set forth in the following paragraphs, and more  
19 fully discussed in the Audit Report for SD 180001.

20 13.

21 Corporate Structure

22 At the time of the audit, BARNES had three (3) licensed employees, one (1)  
23 fictitious business name (“FBN”), and no branch offices or affiliated corporations.

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Business Activities

3 A. According to BARNES and the records examined for the DRE audit  
 4 examination, BARNES managed about 123 properties (about 136 units) for about 91 owners  
 5 and collected about \$1.9 million in trust funds in connection with her property management  
 6 activity. BARNES charged a management fee of 7% to 10% of monthly scheduled or collected  
 7 rents, depending on the property management agreement with the property owners; however,  
 8 the majority (about 85%) of the management fees were based on the monthly scheduled rents.  
 9 BARNES maintained one (1) bank account for handling the receipts and disbursements of trust  
 10 funds in connection with her property management activity.

11 B. According to BARNES, during the last twelve (12) months of the audit  
 12 period (June 1, 2017 to May 31, 2018), she closed nineteen (19) real estate sales transactions  
 13 and did not collect any Earnest Money Deposits (EMDs) during the audit period. BARNES did  
 14 not maintain a trust account and did not maintain a columnar record of trust funds received not  
 15 placed in broker's trust in connection with her sales activity. According to BARNES, EMDs  
 16 were held and delivered directly to escrow by the buyers in connection with the sales activity.

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Bank Accounts

According to BARNES, she maintained one (1) bank account for the handling of trust funds related to her property management activity during the audit period:

Bank Account #####2541 ("B/A 1")

\* Bank: Citibank, 1745 W. Florida Ave., Hemet, CA 92545

\* Date Opened: 4/4/07 (according to Citibank)

\* Name: Signature Group Realty & Property Management

\* Signatories: DANA C BARNES

Elena C. Cotarta (REB; DRE license ID 01350456)

\* Signatures Required: One (1)

B/A 1 was maintained for handling the receipts and disbursements of trust funds in connection with her property management activity for multiple beneficiaries. (Elena C. Cotarta is BARNES' mother and is the former REB of the business. According to BARNES, Cotarta gave, or gifted, her the business in January 2012, and has remained inactive and uninvolved in the business since that time.) The DRE auditor prepared the bank reconciliation for B/A 1 with the cutoff date of May 31, 2018. The accountability was determined by the separate records provided by BARNES. The adjusted bank balance was compared to the accountability.

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**AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW BY BARNES**

16.

In the course of the real estate activities described above in Paragraph 14 during the subject audit examination period described above in Paragraph 12, Respondent BARNES violated the Code and the Regulations, as described below:

17.

**Trust Fund Handling for Multiple Beneficiaries**

**(Code Section 10145 & Regulation 2832.1)**

A. As of May 31, 2018, there was a shortage of <\$183,526.66> in B/A 1 due to:

Negative balance of property accounts totaling	<\$ 11,214.56>
Bank service charges totaling	<\$ 2,048.28>
<u>Unidentified shortage totaling</u>	<u>&lt;\$ 170,263.82&gt;</u>
Total:	<\$ 183,526.66>

In addition, there was \$175.00 in B/A 1 comprised of BARNES' funds.

B. As of May 31, 2017, there was a shortage of <\$182,269.23> in B/A 1 due to:

Negative balance of property accounts totaling	<\$ 12,586.48>
Bank service charges totaling	<\$ 722.15>
<u>Unidentified shortage totaling</u>	<u>&lt;\$ 168,960.60&gt;</u>
Total:	<\$ 182,269.23>

C. BARNES provided no evidence that the owners of the trust funds had given their written consent to allow BARNES to reduce the balance funds of all funds in B/A to an amount les than the existing aggregate trust fund liabilities to all owners of the funds, in violation of **Code Section 10145 and Regulation 2832.1.**

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18.

**Trust Fund Records To Be Maintained**

**(Code Section 10145 and Regulation 2831)**

During the audit period, the control record maintained for B/A 1, which was used for handling the receipts and disbursements of trust funds in connection with BARNES' property management activity, was inaccurate. Some of the receipts were recorded on the control record of B/A 1 but were not deposited into B/A 1, and in some instances, dates of trust funds deposited into B/A 1 were inaccurately recorded on the control record of B/A 1. BARNES' failure to maintain an accurate control record for trust funds received and disbursed for B/A 1 is a violation of **Code Section 10145 and Regulation 2831**.

19.

**Separate Record for Each Beneficiary or Transaction**

**(Code Section 10145 and Regulation 2831.1)**

During the audit period, the separate records maintained for B/A 1, which was used for handling the receipts and disbursements of trust funds in connection with BARNES' property management activity, were inaccurate. Some of the receipts were recorded on the separate records but were not deposited into B/A 1, and in some instances, dates of trust funds deposited into B/A 1 were inaccurately recorded on the separate records of B/A 1. BARNES' failure to maintain accurate separate records for trust funds received and disbursed for B/A 1 is a violation of **Code Section 10145 and Regulation 2831.1**.

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1 20.

2 **Trust Account Reconciliation**

3 **(Code Section 10145 and Regulation 2831.2)**

4 During the audit period, BARNES did not maintain a monthly reconciliation  
5 comparing the balance of all the separate records to the control record of all trust funds received  
6 and disbursed in connection with her property management activity, in violation of **Code**  
7 **Section 10145 and Regulation 2831.2.**

8 21.

9 **Trust Fund Handling/Commingling Funds**

10 **(Code Section 10145 and Regulation 2832)**

11 A. According to the bank signature card maintained at Citibank for B/A 1, which  
12 was used for handling trust funds received and disbursed in connection with BARNES'  
13 property management activity, the bank account B/A 1 was not designated as a trust account, in  
14 violation of **Code Section 10145 and Regulation 2832.**

15 B. On July 31, 2018, the account title on the bank signature card for B/A 1 was  
16 updated to "Signature Group Realty & Property Management as Trust Agent."

17 22.

18 **Broker Supervision**

19 **(Code Section 10177(h) and Regulation 2725)**

20 BARNES did not exercise adequate supervision and control over her property  
21 management activity conducted by her licensees and employees to ensure compliance with the  
22 Real Estate Laws and Regulations. BARNES' failure to supervise and control her licensees  
23 and/or employees is in violation of **Code Section 10177(h) and Regulation 2725.**

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1 23.

2 **Additional Violations of the Real Estate Law**

3 **(Code Section 10177)**

4 The overall conduct of Respondent BARNES is violative of the Real Estate Law  
5 and constitutes cause for the suspension or revocation of her real estate licenses and license  
6 rights under the provisions of **Code Section 10177(g)** for negligence and **Code Section**  
7 **10177(d)** for willful disregard of the Real Estate Law.

8 **COSTS**

9 **Investigation and Enforcement Costs**

10 24.

11 **Code Section 10106** provides, in pertinent part, that in any order issued in  
12 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner  
13 may request the administrative law judge to direct a licensee found to have committed a  
14 violation of this part to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case.

16 **Audit Costs**

17 25.

18 **Code Section 10148(b)** provides, in pertinent part, the Commissioner shall  
19 charge a real estate broker for the cost of any audit, if the Commissioner has found in a final  
20 decision following a disciplinary hearing that the broker has violated Code section 10145 or a  
21 regulation or rule of the Commissioner interpreting said section.

22 WHEREFORE, Complainant prays that a hearing be conducted on the  
23 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
24 disciplinary action against the license and license rights of Respondent DANA COSETTE  
25 BARNES under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code),  
26

1 for the cost of investigation and enforcement as permitted by law, and for such other and further  
2 relief as may be proper under other provisions of law, and for costs of audit.

3 Dated at San Diego, California

4 this 24 day of December, 2019.

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6 \_\_\_\_\_  
7 Veronica Kilpatrick  
8 Supervising Special Investigator

9  
10 cc: DANA COSETTE BARNES  
11 Audits – Z. Wanis, J. Lin  
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