

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 ASPASIA A. PAPAVALASSIOU
Deputy Attorney General
4 State Bar No. 196360
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2199
Facsimile: (510) 622-2270
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
PROFESSIONAL FIDUCIARIES BUREAU
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **CHRISTINE M. BACKHOUSE**
13 

14 **Professional Fiduciary License No. PF 263**

15 Respondent.

Case Nos. PF-2011-60, PF-2011-62, PF-
2011-66, PF-2011-67, and PF-2011-82

16 **A C C U S A T I O N**

17 Complainant alleges:

18 **PARTIES**

19 1. Julia Ansel (Complainant) brings this Accusation solely in her official capacity as the
20 Bureau Chief of the Professional Fiduciaries Bureau (Bureau), Department of Consumer Affairs.¹

21 2. On or about December 9, 2008, the Bureau issued Professional Fiduciary License
22 Number PF 263 to Christine M. Backhouse (Respondent). The Professional Fiduciary License
23 was in full force and effect at all times relevant to the charges brought in this Accusation and will
24 expire on December 31, 2013, unless renewed.

25 ///

26 ¹ The Bureau was established in 2007, under authority of Business and Professions Code
27 section 6510, to regulate non-family member professional fiduciaries, including conservators,
28 guardians, trustees, and agents under durable power of attorney, as defined by the Professional
Fiduciaries Act (Bus. & Prof. Code § 6500 *et seq.*).

1 JURISDICTION

2 3. This Accusation is brought before the Bureau, Department of Consumer Affairs. All
3 section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 6501, subdivision (f)(2), provides in pertinent part that the term "professional
5 fiduciary" includes a person who acts as a trustee for more than three unrelated individuals.

6 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Bureau of jurisdiction to proceed with
8 a disciplinary action during the period within which the license may be renewed, restored,
9 reissued or reinstated.

10 STATUTORY AND REGULATORY PROVISIONS

11 6. Code section 6584 states in pertinent part:

12 "A license issued under this chapter may be suspended, revoked, denied, or other
13 disciplinary action may be imposed for one or more of the following causes:

14 ...

15 "(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or
16 incompetence in practice, or unprofessional conduct in, or related to, the practice of a professional
17 fiduciary. For purposes of this section, unprofessional conduct includes, but is not limited to, acts
18 contrary to professional standards concerning any provision of law substantially related to the
19 duties of a professional fiduciary."

20 7. Probate Code section 16012 states in pertinent part:

21 "(a) The trustee has a duty not to delegate to others the performance of acts that the trustee
22 can reasonably be required personally to perform and may not transfer the office of trustee to
23 another person nor delegate the entire administration of the trust to a cotrustee or other person.

24 "(b) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other
25 person, the trustee has a duty to exercise general supervision over the person performing the
26 delegated matter."

27 8. California Code of Regulations, title 16, section 4476, subdivision (c), provides that
28 the licensed professional fiduciary shall protect the rights of the consumer and the estate against

1 infringement by third parties.

2 9. California Code of Regulations, title 16, section 4482, subdivision (a), provides that
3 the licensed professional fiduciary shall protect the assets of the estate.

4 10. California Code of Regulations, title 16, section 4482, subdivision (f), provides that
5 the licensed professional fiduciary shall manage the estate with prudence, care and judgment,
6 maintaining detailed fiduciary records as required by law.

7 COST RECOVERY PROVISION

8 11. Section 125.3 of the Code provides that the Bureau may request an administrative law
9 judge to direct a licentiate found to have committed a violation or violations of the licensing act to
10 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case,
11 with failure of the licentiate to comply subjecting the license to not being renewed or reinstated.
12 If a case settles, recovery of investigation and enforcement costs may be included in a stipulated
13 settlement.

14 FACTUAL BACKGROUND

15 12. Beginning approximately in 2007 and continuing until approximately February 2012,
16 Respondent's longtime live-in boyfriend Leo "Josh" Kennedy, diverted approximately \$16.2
17 million from approximately 37 client accounts that Respondent managed as a trustee and
18 professional fiduciary. Kennedy diverted the funds primarily to start and invest in technology
19 companies and real estate ventures for his own benefit, without any knowledge by, or benefit to,
20 the trust beneficiaries.

21 13. Respondent believes that Kennedy diverted the funds by using Respondent's
22 photocopied signature on facsimile wire transfer requests, using signed blank checks that were
23 only to be used when Respondent was out of the country, using Respondent's signature stamp that
24 was kept in Respondent's office, or, beginning in approximately December 2009, using his own
25 signature on wire transfer requests.

26 14. On or about December 14, 2009, Respondent signed a wire transfer agreement with
27 Heritage Bank of Commerce designating Respondent and Kennedy as "Authorized
28 Representatives (agents)" of Customer "Backhouse Fiduciary Services, Inc.," the company that

1 Respondent operated to manage her client trust accounts and under which she held all her client
2 trust accounts at the bank. The wire transfer agreement listed Respondent as "President/Trustee"
3 and Kennedy as "Controller." Respondent states that the agreement meant that Kennedy could
4 only verify wire transfer requests that she initiated rather than initiate requests on his own.² If
5 there was such a distinction, however, it was not explicit, and the agreement paved the way for
6 Kennedy to begin signing wire transfer requests that were accepted by the bank.³

7 15. Respondent stated to a Bureau investigator that Kennedy served as her "assistant" or
8 "consultant" and that she authorized him to input information on the trusts she managed into her
9 trust accounting computer program, Probate Plus. Kennedy concealed his diversion of funds from
10 Respondent by entering incorrect information into the Probate Plus program.

11 16. The Bureau has received consumer complaints for at least three of the trusts that
12 Respondent managed, indicating that, in at least some cases, Kennedy emptied the accounts that
13 he raided, as described below.

14 [REDACTED] *Complaint Nos. PF-2011-60 and PF-2011-62*

15 A. Respondent became the professional fiduciary for the "[REDACTED]" around 2010.⁴
16 The trust was worth approximately \$2 million: it had approximately \$300,000 in liquid assets
17 when Respondent became the trustee; then, in December 2010, commercial properties belonging
18 to the trust sold for \$1.3 million; and finally, a house belonging to the trust sold in late 2011 for
19 approximately \$500,000. Respondent never provided any disbursement to the beneficiaries, and
20 in March 2012, after the beneficiaries' repeated inquiries regarding the status of their funds,
21 Respondent informed the beneficiaries that the trust had less than \$23,000 remaining.

22 ///

23 ² The agreement states, in part: "Upon receipt of wire transfer request via facsimile or other
24 electronic means, Bank will contact another individual designated as an Authorized
25 Representative on Agreement to verify the authenticity of the request. If a second individual is
not available, confirmation may be made from an originator of the request."

26 ³ Kennedy made liberal use of his apparent authority to sign for wire transfers. For
27 example, from on or about April 29, 2011, to on or about November 28, 2011, he signed
28 approximately 50 wire transfer requests to divert about \$4.5 million from client trust accounts
managed by Respondent.

⁴ What is referred to collectively here as the "[REDACTED]" consisted of three entities
(two trusts and a limited liability corporation) with the same beneficiaries.

1 The [REDACTED] Complaint Nos. PF-2011-66 and PF-2011-67

2 B. Respondent became the professional fiduciary for the "[REDACTED]" in or around
3 January 22, 2010. Approximately two years later, in January 2012, after one of the beneficiaries
4 called Respondent to complain that he had not received a promised disbursement check,
5 Respondent instructed Kennedy to send checks to the beneficiaries. Kennedy sent checks to at
6 least two beneficiaries, with each check in the amount of almost \$330,000, but he subsequently
7 placed a "stop payment" order on the checks. When a third beneficiary called Respondent about
8 disbursement on or around February 7, 2012, Respondent confronted Kennedy, who confessed
9 that "the money was not there" and that it was "all gone."

10 The [REDACTED] Complaint No. PF-2011-82

11 C. Respondent became the professional fiduciary for the "[REDACTED]" in or around
12 2010 or 2011. By late 2011 or early 2012, the approximately \$890,000 deposited for the trust at
13 Heritage Bank of Commerce was gone.

14 FIRST CAUSE FOR DISCIPLINE
15 (Unprofessional Conduct: Violation of Professional Fiduciaries Code of Ethics)
16 (Bus. & Prof. Code § 6584, subd. (d))

17 17. Respondent has subjected her professional fiduciary license to disciplinary action
18 because she engaged in unprofessional conduct by violating the Professional Fiduciaries Code of
19 Ethics. (Bus. & Prof. Code § 6584, subd. (d) and Cal. Code. Regs., tit. 16, §§ 4740, *et seq.*)
20 Respondent violated the Professional Fiduciaries Code of Ethics when she failed to protect an
21 estate against infringement by third parties; failed to protect the assets of an estate; and failed to
22 manage an estate with prudence, care and judgment. (Cal. Code Regs., tit. 16, §§ 4476 subd. (c),
23 and 4482, subds. (a) and (f).) The circumstances, as described in paragraphs 12 through 16 above,
24 are that Respondent gave a third party unfettered access to her client's assets that she was charged
25 with protecting; failed to monitor or review accountings; and failed to adequately supervise the
26 third party, which failure enabled him to abscond with assets entrusted to Respondent in her
27 fiduciary capacity.

28 ///

///

1 SECOND CAUSE FOR DISCIPLINE
2 (Willful Violation of Duty)
(Bus. & Prof. Code § 6584, subd. (d))

3 18. Respondent has subjected her professional fiduciary license to disciplinary action
4 because she failed to engage in a duty that should be performed by a professional fiduciary,
5 specifically, the duty not to delegate to others tasks that Respondent as trustee was reasonably
6 required to perform personally, and, in case of a properly delegated a matter, the duty to exercise
7 general supervision over the person performing the delegated matter. (Bus. & Prof. Code § 6584,
8 subd. (d) and Prob. Code § 16012, subds. (a) and (b).) The circumstances of Respondent's willful
9 violation of duty are, as described in paragraphs 12 through 16, above, that Respondent
10 demonstrated excessive delegation of her responsibilities and failed to exercise supervision over
11 the person performing delegated matters. Respondent entered into a wire transfer agreement that
12 specifically authorized a third party to unilaterally make financial transactions, and she also had
13 that third party enter her clients' account information into her Probate Plus computer program.
14 Respondent failed to adequately supervise the third party regarding either matter.

15 THIRD CAUSE FOR DISCIPLINE
16 (Incompetence)
(Bus. & Prof. Code § 6584, subd. (d))

17 19. Respondent has subjected her professional fiduciary license to disciplinary action
18 because she demonstrated a lack of knowledge or ability in performing professional obligations.
19 (Bus. & Prof. Code § 6584, subd. (d).) The circumstances are, as described in paragraphs 12
20 through 16, above, that Respondent lacked knowledge regarding the importance of reviewing
21 accountings and financial material in her duty to protect her clients (an adequate review of bank
22 statements would have revealed the diversion of funds) and she lacked the ability to understand
23 the ramifications of the wire transfer agreement that she signed designating a third party as an
24 "Authorized Representative."

25 FOURTH CAUSE FOR DISCIPLINE
26 (Gross Negligence)
(Bus. & Prof. Code § 6584, subd. (d))

27 20. Respondent has subjected her professional fiduciary license to disciplinary action
28 because she engaged in an extreme departure from the standard of practice for a professional

1 fiduciary. (Bus. & Prof. Code § 6584, subd. (d).) The circumstances, as described in paragraphs
2 12 through 16, above, are that Respondent failed to adequately review bank statements and
3 compare those statements with accountings generated by her Probate Plus software, and that
4 Respondent authorized a third party to unilaterally arrange for the wire transfer of funds held for
5 the benefit of various trusts for which Respondent was the trustee.

6 PRAYER

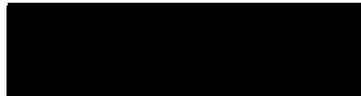
7 WHEREFORE, Complainant requests that a hearing be hold on the matters alleged in this
8 Accusation, and that following the hearing, the Professional Fiduciaries Bureau, Department of
9 Consumer Affairs, issue a decision:

10 1. Revoking or suspending Professional Fiduciary License Number PF 263, issued to
11 Christine M. Backhouse;

12 2. Ordering Christine M. Backhouse to pay the Professional Fiduciaries Bureau the
13 reasonable costs of the investigation and enforcement of this case under Business and Professions
14 Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: December 3, 2013


JULIA ANSEL
Bureau Chief
Professional Fiduciaries Bureau
Department of Consumer Affairs
State of California
Complainant

18
19
20
21
22 SF2013901698
23
24
25
26
27
28