State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-303

Complainant: No. 1350010428A

Judge: No. 1350010428B

ORDER

The commission reviewed the complaint filed in this matter and concluded that the judge did not engage in conduct that violated the Code of Judicial Conduct. The matter was dismissed with a private comment to the judge pursuant to Rules 16(a) and 23.

Dated: October 9, 2009.

FOR THE COMMISSION

\s\ J. William Brammer, Jr.

Commission Chair

Copies of this order were mailed to the complainant and the judge on October 9, 2009.

This order may not be used as a basis for disqualification of a judge.

CJC -08-303

November 19, 2008

E. Keith Stott, Jr., Executive Director
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

Re: Complaint regarding Judge

Dear Mr. Stott:

My name is and I own located in , Colorado. From early 2004 through January 1, 2007 I was the majority owner (50.1%) in a partnership, Apartments LLC, which owned Apartments, an apartment complex in Arizona. It was a HUD backed mortgaged property. The complex was comprised of 15 buildings equaling 234 units.

I was initially approached by Judge in 2003 about investing in a partnership to purchase Apartments. I first met through my cousin, approximately 25 years ago. is brother-in-law.

During our initial discussions about investing in the partnership told me that his investors had always made a significant return on their money. He told me he had experience in the area of multi-family properties because he'd put together over 30 of these deals in Arizona. Since he was a judge, and a family friend, and had experience in putting together these deals, I was confident that my investment would be protected and that any dealings with him would be lawful. Unfortunately that's not the way it turned out.

I learned in my dealings with that he falsified documents filed with HUD; that although his employer told him to resign as the managing agent he continued to manage the property even after the property sold in violation of the Arizona Code of Judicial Conduct; that he took a management fee he certified to HUD he wouldn't take and in violation of the Operating Agreement and Regulatory Agreement filed with HUD, and state and federal laws, and without the authority of the members; that he took a substantial commission when the property sold in violation of state laws, documents filed with HUD, and without the authority of the members; that he withheld critical information about the operation of the property from the majority owner; that he added members to the partnership in violation of the Operating Agreement filed with HUD and in violation of state law; that he failed to identify identities-of-interest with HUD including and his company all minority owners in the property which was a violation of HUD rules and regulations and federal law; that he paid these identities-of-interest above the market rate for their services in violation of the Operating Agreement, Regulatory Agreement, and HUD rules and regulations; and that he hired an unlicensed contractor to do roof work in violation of HUD rules and regulations and state law.

Below is a summary of the actions taken by which violated the various rules and regulations, state and federal laws, and documents executed with HUD.

HUD DOCUMENTS:

As a condition of participation in this HUD program, the property owner executed a series of legal agreements with HUD. The agreements contain provisions that allowed HUD to exercise control over certain aspects of a participant's operations. In early 2004, began executing the required HUD documents in order to gain HUD approval for the loan to The documents files on behalf of the partnership included resumes, financial statements, Certificate of Previous Participation, a Management Entity Profile, a Project Owner's/Management Agent's Certification and a Regulatory Agreement. Violations by of these various documents and HUD and rules and regulations are discussed below.

1. **Project Owner's/Management Agent's Certification**("PO/MAC"): This required HUD filing was executed by on April 7, 2004. In this document, certified a number of items including the taking of a management fee, maximizing project income, the existence of a fidelity bond, and the disclosure of identities-of-interest. As you will see violated this certification in various ways. (See Attachment 1)

Fees: In this document at paragraph 1.b. certified that there would be no special fees. Paragraph 14 states that the calculation of estimated yields from proposed management fees are attached. The attachment reflects that HUD approved "no management fees." HUD approved the assumption of the loan subject to the condition that NO (0%) fees would be paid, but took a healthy fee anyway. See below under the heading Management Fees for a more detailed discussion regarding the actions taken by in spite of what he certified to HUD.

Market rates for services: certified that he'd "exert reasonable effort to maximize project income and to take advantage of discounts, rebates and similar money-saving techniques." (at paragraph 4.b). The PO/MAC, HUD Guidelines, Rules and Regulations (p. 28) (Attachment 2), provisions of the Operating Agreement (Attachment 3) and provisions of the Regulatory Agreement (paragraph 9(b)), (Attachment 4) were each violated because the amounts paid for services by identities of interest were above market/reasonable rates.

Fees to : In 2005 , the maintenance manager at the property and a friend of was paid $47,424 as an independent contractor when the prevailing wage according to HUD was $32,000/yr. In 2006 was paid a whopping $71,000 as a maintenance fee again over market/reasonable rates. In addition, in 2006 his company was awarded a contract for roof repairs at the property by without first acquiring 3 other bids for the work in accordance with HUD requirements. In fact, did not acquire any bids for the work he merely gave the work to his friend In addition to the $71,000 earned that year by his company was also paid $37,223.22 for roof repairs and was paid

separately as a laborer for his work on the roofs. The payment of any fees to either or in excess of market rates from the funds of the project was a violation of the agreements between HUD and the LLC, including the PO/MAC, the Regulatory Agreement and the Operating Agreement.

Fees to : paid himself $44,000 during his first six weeks as the manager of the property. Over the course of our ownership of the property was paid approximately $3,500/mo, or almost $90,000 for his management of the property even though the accounting firm hired by was preparing the audits; was doing payroll; and there was an on site leasing manager and maintenance manager and had resigned as the manager in March of 2005 at the request of his employer. In the last nine months that we owned the property took over all financial work which had been done by on the project and charged the partnership only $400.00/mo. If had paid to do the work all along, the savings to the partnership would have been approximately $80,000. Additionally was not preparing the accounting documents correctly and accordance with HUD guidelines. It wasn't until took over the books that the records were done correctly.

Even though he paid well over the prevailing wage and had paid himself a $44,000 fee for six weeks as manager, wrote to the members on April 27, 2005 and stated that he had "canceled many prior vendors substituting better less expensive vendors instead and have offered employees rent free units in exchange for reductions in hourly wages." Regardless what he told the members, violated HUD rules and agreements by paying himself and for services at much higher than market rates and without market bids.

In addition violated HUD rules and regulations by paying operating and other property expenses without appropriate supporting documentation including the payment of contract labor without written contracts or invoices and providing contractors rent free employee apartments and not including the value of the apartment in the reported compensation to the contractors in their 1099s.

Fidelity Bond: certified to HUD that a Fidelity Bond (or employee dishonesty coverage) was "in force for all principals and agents and all persons who participated directly or indirectly in the management and maintenance of the project and its assets, accounts and records;" that there was "hazard insurance coverage in an amount required by the project's Mortgage;" and that there was "public liability coverage with the agent designated as one of the insured,"(at paragraph 5), when in fact that was never the case.

According to The HUD Management Agent Handbook (Attachment 5), section 2.14, all management agents must certify that they carry fidelity bond coverage and that minimum fidelity bond requirements cannot be waived. In a 1998 HUD decision the manager's certification that fidelity bond coverage existed was false and that failure to obtain fidelity bond coverage constituted a breach of its contractual obligations and a violation of its management agreement. HUD Guidelines also require that the managing agent

obtain a fidelity bond in an amount at least equal to two months potential collections. "All principals of the management entity and all persons who participate directly or indirectly in the management and maintenance of the project and its assets, accounts and records must be covered." (See Guidelines, p. 27; Attachment 2)

Although it was my belief that we always had a Fidelity Bond, on April 6, 2007, I learned from at that although certified that we had a Fidelity Bond in place, that they had no record of us ever having a fidelity bond for had breached the PO/MAC by not maintaining either employee theft insurance or a fidelity bond as represented by the PO/MAC.

Identities-of-interest: At paragraph 12 of the PO/MAC certified that he had read and understoodd HUD's definition of "identities-of-interest" and that the statement(s) checked and information entered was true. checked box b stating "Only individuals and companies listed in Section 11a of the Management Entity Profile have an identity-of-interest with the Agent." Under Section 11A of the Management Entity Profile, listed no identities of interest. HUD Guidelines state that the management certification must disclose the existence of any identity of interest in its Management Entity Profile.

Later in April of 2004, wrote to the Director, Multifamily Housing, HUD, and stated that " intends to manage the project through an identity of interest agent, the manager of this entity." At that time identified only himself as an identity of interest to HUD, but did not identify any other entities or individuals. He did not however amend his PO/MAC with HUD to include himself as an identity of interest.

It was not until , a HUD consultant I hired to review the financial records around the time of the closing of the sale of the property, became involved that many of violations and lies came to light. In March 2007, learned from the HUD Project Manager involved with the review and approval of the purchase of the Project and assumption of the related HUD insured loan by Apartments, LLC, that there were no Entities of Interest identified in any of the statements/certifications filed with HUD. Barnes told him at that time that there was no list of insiders presented to her for her approval and if a list had been given to her she would have required the completion of the Identity of Interest statement as required by HUD rules and agreements.

On March 15, 2007, brought his concerns to the attention of the minority members and the accountant. Included among those concerns was the apparent non-disclosure to HUD managing agent of certain entities of interest providing financial management services (GJP Financial, LLC); brokerage services (Realty and); maintenance services ( ); construction repairs (LLC) and payroll services (Technical Solutions). Simon also told the members that it was a violation of HUD regulations by to retain and pay the entities of interest listed above. was concerned about the insider transactions with entities which had not

filed the required Identification of Interest Statements. He also informed the minority members and that there was no disclosure of these transactions with related parties to the 2005 Annual HUD audit firm other than the disclosure of and as entities of interest.

In an April 12, 2007 letter to from based on conversations with her, he confirmed that her HUD file did not have any updates or additional disclosures, approvals or other information regarding the use of and payment of fees to entities of interest (HUD Form 9832); that there are no disclosures by or of entities of interest including using and paying for services of as a maintenance supervisor or LLC to do roof work; that there was no approval of for providing services for the LLC and that there was no disclosure by pursuant to entities of interest which included a company owned by a 1% minority member. He also confirmed that there had been no disclosure by or approval by HUD of any entities of interest to provide services to the project by Realty, Financial, and Real Estate.

The PO/MAC also warns of fines and imprisonment $10,000/5years for anyone who makes false, fictitious, or fraudulent statements or entries in any matter within the jurisdiction of the Federal Government 18 U.S.C. 1001. The 199 HUD decision found that "A false certification in connection with any HUD program is a serious offense because HUD must rely upon the truthfulness of the representations made by those who participate in its program and who certify to the accuracy of their representations. A failure to do so, notwithstanding any intent to mislead, undermines the integrity of the HUD program and is indicative that HUD is not doing business with a responsible person. "

2. **Management Entity Profile** - (See Attachment 6) The Management Entity Profile is another document filed with HUD by on April 17, 2004. certified that the individuals and companies listed in Section 11a had an identity-of-interest with the Agent. The question asks "list any companies which regularly supply goods or services to your HUD related projects and have an Identity-of-interest with the management entity or its principals. Porter responded "NA."

also certified in this document that he visits the property once or twice a week, conducts the on-site reviews, speaks to the leasing manager daily and works with her on issues, handles all financial requirements and all civil rights and fair housing requirements. certified that the statements provided were true and correct. The document warns that HUD will prosecute false claims and statements and conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 38020). In the Management Fees section I will discuss false statement on this document.

I have not yet filed a complaint with HUD. I do not know if they would pursue any legal or punitive action against since all of the violations and falsifications were discovered after the closing of the sale of the property in January 2007. Fortunately they

lost no money on their investment, but if they had, I believe they would have come down hard on and the other members.

MANAGING PARTNER CHANGE FROM TO :

On March 5, 2005, resigned as Manager of the LLC after telling me his employer had requested he resign. He also circulated an Action of Members in Lieu of Meeting consenting to the appointment of the maintenance manager, as the new manager.

The original Operating Agreement did not include language regarding the substitution of the manager, but the Modified Operating Agreement which was executed sometime in late 2004 or early 2005 did. an attorney who specialized in HUD acquisitions was hired to facilitate the acquisition of the property and modified the agreement per HUD regulations. He reviewed the Operating Agreement and added Article 12 to the agreement as the language regarding the substitution of the Managing Member was required by HUD. Article 12.4.3 states "any new or substitute Managing Member, or any new or substitute Limited Member with a 25% or greater financial interest in the Company must meet the applicable requirements for HUD previous participation clearance prior to the transfer of such interest of assumption of such position in the Company." This article states that no change of the manager of the LLC can be made without the written approval by HUD and HUD guidelines and rules require any new manager of the LLC to complete and execute the HUD disclosure of Previous Participation, PO/MAC, Manager's Identification of Entities of Interest, and other information deemed appropriate by HUD. Further, the new Manager/Official Representative is to be submitted in writing to HUD for approval within (3) business days of the appointment of any other person to serve as official representative. A person is eligible to become the Manager only if he meets the HUD requirements listed above prior to assuming the position. Article 6.6 of the Operating Agreement also states that "any vacancy occurring in the Manager shall be filled by the Vote of the Members." I didn't see this Modified Operating Agreement until March of 2007, since I was never provided a copy by I also didn't sign off on it, my signature from the original Operating Agreement executed in May 2004 was attached to this version without my knowledge.

On June 25, 2005, three and a half months after his resignation, forwarded his quarterly financial statement to the members and attached an Action of Members in Lieu of Meeting consenting to the appointment of as the new manager. Even though had resigned, he informed the partners that it would "not change the operation of the building; however my position in the county court system is requiring this change." As you will see below I later learned that the consent was never effective. According to HUD, they never approved Streit as the manager as was required by their rules and regulations, so in their eyes, he never became the manager.

On August 31, 2005, circulated the Articles of Amendment to the Articles of Organization of Apartments, LLC which were executed by "Manager" Apartments, LLC. Article V lists as the Manager of the Company as of March 5, 2005. Although the documents were prepared in

March of 2005, they were not circulated by until the end of August. So, six months after being asked by his employer to resign as manager, was officially still the manager.

In the days, weeks, and months after the closing of the sale of the property (January 2007), had numerous conversations with at HUD, he even wrote her a letter confirming the information she had given him during their conversations on April 12, 2007. She told him that HUD policies required the Project Owner and the Management Agent to enter into and sign HUD Form 9839-B (the PO/MAC). She told him that the PO/MAC in her file was for which stipulated no (0% of income) fees would be paid for property management and no miscellaneous or special fees were to be paid to She informed him that she never received a request to change the Managing Member; or a request to change the person performing Property Management duties from or a request to change the managing member from to or a previous participation certification or any of the other HUD documentation (including a resume, financial statement, Certificate of Previous Participation, Management Entity Profile or Owner's/Managing Agent's Certification) or information from Streit required by HUD to even consider as a substitute or replacement manager. Those documents would have been reviewed and approved by her in her position. She told him that HUD does not approve or grant approval by ratification through silence of any act requiring written approval by HUD. In fact, she told him she'd "gone through every piece of paper in my file and can not find anything approving the fees or the change in management." (See Attachment 7) Upon learning of this, I immediately informed the other members that had become the manager in violation of the Operating Agreement and HUD requirements and that according to HUD he wasn't even qualified to be the manager. It was at that time I revoked my previous vote and approval for as a replacement/substitute Managing Member. knew HUD required all of these documents to be filed for HUD approval of the manager because just one year prior to his resignation he'd filed all of the above on his own behalf.

In early September 2007, I notified the other members of Apartments of a Special Meeting of the Members on September 28, 2007. In my notice I informed them that the LLC didn't currently have a manager because wasn't qualified in accordance with the Operating Agreement to become the Manager; failed to attain HUD approval as required in the Operating Agreement; and that hadn't provided HUD with a resume, Certificate of Previous Participation, Financial Statement, etc. for HUD to consider AND approve him to be the Manager of the LLC. I also informed them that the Articles of Organization Amended stipulated that the Manager would be a Member of the LLC. wasn't a Member of the LLC he was the Trustee of the and Trust which was a member of the LLC.

On Friday September 28, 2007 at 11:01 a.m. the special meeting of the members took place via a telephone conference call. At the beginning of the call I informed all parties that the call was being recorded and began with "Let's see who's here." I identified myself and identified himself. I then specifically asked "Are any other

members present?" to which there was no response. I asked about the proxy votes by the other members at which time he began reading from a prepared document. I had just asked him a basic question, and he had to read from a document prepared for him. He said little else and we concluded the call. After the call I reviewed the phone records from the conference call company and determined that, low and behold, the call was placed from the home of who didn't identify himself when I asked if there were any other members present. It's a farce that held out as the manger of the property. He wouldn't even allow to have a conversation with the majority member without being present and without preparing a statement for to read.

SUMMARY:

In every action I took with regard to removing as the manager I was seeking to protect myself from exposure to personal liability to HUD. The exposure existed because the individual members agreed to be liable in their individual capacity to HUD with respect to "their own acts, or the acts of others that they have authorized," which violate the HUD Regulatory Agreement (Operating Agreement article 12.7 and Regulatory agreement Article 17). It was never disputed by that didn't meet the requirements and wasn't even eligible to become manager. Pursuant to the Operating Agreement as long as HUD held the note secured by the deed of trust on the LLC real property, any action to change the Manager of the LLC had no "force or effect without the prior written consent of the HUD secretary." HUD never gave its written consent to appointment as the LLC's Managing Member. It is my belief that never filed the required documents with HUD because he had no intention of letting go of the management of the property, because with it went his access to the checkbook and all of his power.

VIOLATIONS:

Violation of Articles 6.6, 12.4.3, 12.5d 12.5e, 12.6, and 12.7 of the Operating Agreement.

Violation of Article 17 of the Regulatory Agreement.

Violation of HUD rules and regulations regarding the filing of required documents and failure to obtain approval by HUD to change the manager.

CONTINUING MANAGEMENT BY AFTER RESIGNATION:

As you will see from the correspondence below, although "resigned" as manager of in March of 2005, he continued to act as manager through the sale of the property in January 2007. The following are excerpts of correspondence (in chronological order) from regarding management of the property:

February 29, 2004: During the process of obtaining HUD approval for the loan, wrote to HUD Project Manager, stating he was the managing partner for Apartments LLC which was formed to purchase the property located at

, Phoenix, AZ. He enclosed his property management resume as "I will be managing this property." His resume states that he is an attorney engaged in the ownership, management and sale of multi-family apartment buildings, that he is the in Maricopa County Superior Court, and that he is a realtor with Realty. As of the purchase of in February 2004 also had an ownership interest in and managed Apartments purchased in October 2001 and Apartments purchased in July 2003. (See Attachment 8)

April 17, 2004: The Management Entity Profile filed with HUD by asks the question "How frequently do company executives or supervisory staff visit the projects the company manages?" response was "I visit once or twice a week." (4a). Question 14b asks "Who conducts the on-site visits or reviews." responds "I do." He additionally certified that he would be handling all civil-rights and fair-housing issues concerning the apartment project.

March 5, 2005: resigns as Manager of the LLC because his employer requested he resign.

January 16, 2006: provides a letter to investors and attaches a 4th quarter financial report and 2005 year report. He states "**I contacted** you in October concerning the potential sale of the property for $12 million, but that deal fell through." (It wasn't who contacted me, it was). He also states " and will continue to market the building and **I** will do what **I** can to build a better pro-forma for sale. I had projected revenue of $115,999 by year-end."(never projected revenue for the property, did). "**I had to pull our maintenance staff off unit turns.**" This language is what said to me verbatim in an email to me the following day. This letter was clearly written by for signature.

January 17, 2006: emails me to tell me that the potential sale of the property has fallen through. His email is in response to my request for QuickBooks for 2004 and 2005, a copy of the proposed contract which I hadn't seen, copies of correspondence, and a request for a meeting to talk about issues and to set goals. Also in response to my request he snaps back "if you are not happy with the way **I run this building** then feel free to get a property management company. **I won't be second guessed on management decisions. There is nobody that puts more effort into these buildings than me.** I am already sensitive to being micro-managed given HUD. **I had to pull maintenance off turns** to do non-critical repairs as our operating money was not released at COE."

February 8, 2006: writes to me and attaches a HUD Monthly Report. He informs me that they are having roof inspection this week. "**I plan on redoing** some of the roofs." "**I expect to cut our vacancy** to less than 15 units over the next two months."

June 6, 2006: I informed that while at the property dealing with the books and the aesthetics I was approached by 3 different people (one employee; two tenants) about the office manager exposing them to sexually inappropriate material. After receiving the

complaints I found inappropriate pictures on the office manager's computer that I was told she shares with tenants and office staff. I told the manager was a liability and I wanted her terminated. I also told him I'd heard that she'd fired a Hispanic employee for taking the day off to attend the illegal alien march.

June 6, 2006: responded that the information I had received on a Hispanic employee was incorrect. "**I authorized to fire him** for failing to show to work and for failing to do his job." He added that he'd been to the property on several occasions and no one had ever mentioned anything about the office manager to him. "**I also asked to have speak to the other employees. I cannot do more from here.**" (was in Europe at the time).

June 15, 2006: tells me that has spoken with the office staff and their only problem was with me. He accuses me of creating a Spanish inquisition atmosphere and says he is aware of the office manager's side job which is acceptable at five-star resorts in Phoenix and that if anyone should be upset, it should be her. He adds, that if she quits I can kiss off a portion of my investment. (See photos from manager's computer, Attachment 9) then barks at me "To write me and tell me about the law is ridiculous. Putting aside the fact that these cases are tried to me every week, **I have managed** 21 buildings, 11 years and not one lawsuit. **I will not have anything to do with the management of this building when I get back under these circumstances. He says promotes the building at schools and colleges and talks with me on some occasions several times daily.** I feel bad for the other partners who have invested in this project because of their trust in me." In previous correspondence it was 30 buildings, not 21. In April 2004 he certified to HUD that he visited the property once or twice a week. He told me on June 2, 2006 that he'd visited the property on several occasions. On June 15th he told me he talks with the leasing manager, on some occasions several times daily, yet in a pleading filed in the lawsuit (information below) he directly contradicts himself by arguing "Mr. did not engage in any property management activities and visited the property no more than five times during the ownership period."

July 2, 2006: informs me in a letter attached to a HUD Monthly Report that "**I have spoken to about management** going forward. **I will deal with all the personnel problems** (if any) on the property from this point on. In addition, because we have serious morale issues, and because we have divided loyalties, people not trusting one another and not wanting to work with one another, **I have directed** to assign employees to specific tasks both on the leasing side and maintenance side. **I plan on using for roofs** and landscaping needs per the sale addendum. **I will be using and to handle air handlers.** and others will work turns as needed. **I am going to put together performance incentives** to try and motivate the employees. **I will do this for all of them.** I will have something by Tuesday. **I have paid all outstanding bills and updated all financials.** I will see you at my office at noon tomorrow. He tells me they have a tenant, who has been telling other tenants that (the Hispanic who was terminated by the leasing agent) will be starting on Wednesday and that is being fired. This has created some obvious tension since **I had not spoken to or about any definitive decision.**" By the way,

even though I insisted that she be terminated, decided to keep the leasing manager and never terminated her. All of this coming from someone who's not a manager?

July 12, 2006: informs me in an email that he's talked with (an employee involved in the inappropriate material matter) twice and she has told him that at no time did she witness sexual harassment. He adds "We have counseled all employees to leave their private lives at home."

July 28, 2006: makes a submission to the HUD inspector summarizing the work completed at over the last two years. He includes a list of items that need to be completed prior to COE and tells the inspector that if he has any questions about maintenance to call him or Now can't even handle maintenance questions on his own?

October 12, 2006: emails me to tell me the major maintenance items are done. He states "**I was at the property again two days ago and spoke with the employees** and things seemed really good."

SUMMARY:

All of my conversations with regard to the property were with At no time during those exchanges did he direct me to who was supposedly the manager. In fact the only conversation I ever had with was about the sexually inappropriate materials/hostile work environment issue when was on his honeymoon and even then the email from indicated he'd called to assist Why did have a minority owner (.9 %), and a real estate broker, come in to assist the person who'd been managing the property for over a year, with a personnel issue? Could it be that wasn't capable of handling it himself? Talk to he'll tell you he never managed the property. Ask him about whether he wrote the letters to the members or whether he just signed work. Ask him about his conversations with HUD, and the auditors, and he'll confess that he did not deal with them, did. was a contract laborer/maintenance manager who worked on the property full time and whose company was hired to do repair work on the roofs because the regular maintenance crew didn't have time. How was it that found time to maintain the property, manage the property, and do major roof work all at the same time? The answer is that never managed the property. The Operating Agreement gave the manager certain powers he wasn't willing to give up by relinquishing management to someone else.

VIOLATIONS:

Code of Judicial Conduct Canons 2 and 4.

MANAGEMENT FEE:

On April 5, 2004, sent me the Project Owner's/Managing Agent's Certification he had filed with HUD. The certification he provided me reflected at paragraph 1.b. a 5% fee for management and/or other services to told he had to modify the PO/MAC to specify 0% in management fees because he couldn't submit for fees until he was a licensed broker in Arizona. I later learned that GJP Financial, LLC (the entity that took the management fee) never held a broker's license in Arizona, and therefore, was never entitled to a fee.

The certification that was ultimately filed with HUD on April 7, 2004 stated that there would be 0% fee for management and/or other services to Paragraph 14 also states that the calculation of estimated yields from proposed management fees is attached. The attachment reflected that HUD had approved "no management fees." In essence, HUD had approved the assumption of our loan subject to the condition that NO (0%) fees would be paid. The PO/MAC signed by warns of fines and imprisonment $10,000/5years for anyone who makes false, fictitious, or fraudulent statements or entries in any matter within the jurisdiction of the Federal Government 18 U.S.C. 1001.

In a January 25, 2005 Letter to Investors, informed us that the building had been poorly managed and closings in the area for buildings of the same vintage and class had closed at a higher rate. He states there is "much work to be done" and "the project will take a year to fully turn and they will lose money during that time." This becomes important when we look at surplus cash in relation to the fee ultimately taken by

On April 12, 2006, two years after the PO/MAC was filed, emailed me responding to some of my questions about the finances at the property. In his response, he told me that he and had not been paid anything other than a commission from for listing the property. He also told me he had earned $75,000 for his work but had only taken $44,000 because he "preferred to wait until they sold the property to eliminate having to deal with HUD on management." (See Attachment 10) I believe at this point he clearly understood that taking a management fee would get him into serious trouble with HUD. The property became ours on January 16, 2005. resigned his position as managing partner on March 5, 2005, so if you believe his argument that he was not the manager after his resignation, he was only the manager from the middle of January 2005 through the beginning March 2005, or six weeks. Based on a fee of $44,000 for that time period, his fee averaged out to approximately $7,300/week. No invoice exists for this fee and it was never discussed with or approved by myself or any of the minority partners. I didn't even know he'd taken the fee (in March 2005) until this email, almost a year after he'd cut himself a check. So in addition to taking a management fee in violation of HUD certification, took a management fee without any prior approval of the members. He had the checkbook in his possession, determined what he was worth, and wrote himself a check.

In early 2007 after the property had been sold, but during my consultant's investigation, he learned from that the only PO/MAC in her file was for

which stipulated no (0% of income) fees would be paid for property management and no miscellaneous or special fees were to be paid to She also confirmed that there was no request for approval to change the management fees or pay compensation of any form to or filed after the initial certification. She told that she'd gone through every piece of paper in her file and couldn't find anything approving the fees. She also told him that the PO/MAC allows no fees of any kind be taken (p.4, attachment 1) and that any "financial management fees" or other "special fees" should be listed there. told that the 'fee" arrangement as described to by requires to be licensed as a Real Estate Broker in Arizona.

During that time also had numerous conversations with In an email in March of 2007 tells "it is correct that signed away his right to an approved management fee which could be paid out of monthly operating cash from the Project when he accepted the HUD agreement. That HUD agreement standing alone did not negate any agreement that might exist at the LLC level which could be paid from surplus cash." He told that in the 2005 audit they disclosed that and as related parties, had been paid fees for accounting and maintenance services and that at that time it was unclear if a regulatory violation had occurred since there was suppose to be a HUD approved document stating that they were allowed to be paid for those services. He told that signed copies of that document had not been found. He also told that the possibility existed that there were HUD violations in 2005 and that during 2006 he informed about the possible violation and suggested that he suspend payments to himself and pay for his services at the end of the year once surplus cash had been determined. There was no agreement between and the LLC for the payment of fees and at NO time during the ownership of the property was there surplus cash.

also tells that the Operating Agreement, and HUD agreements and rules stipulate that monies taken outside (or in violation) of the Agreements are deemed to be held in trust and are to be returned upon demand. informs that according to HUD documents, taking fees is likely a federal crime. He informs that the other members are not on board with demanding the return of monies taken in violation of the Agreement because they felt had earned the fee. Because of they had received a "tremendous" return on their investment. informed the other members that there was personal liability by not demanding the return of funds, but they didn't seem to care.

In his response to states that HUD regulations and agreements pertain mostly but not exclusively to the safe guarding of Project assets and that HUD doesn't care what the owning entity does with its cash. "If surplus cash is distributed from the Project the entity can dispose of that cash anyway it wants to." then confirms with that had told that as part of the 2005 HUD Audit his entity had "approval from HUD" for a "financial management fee" and was legally qualified to take one. He also tells that invoice (which was produced for the first time in 2007 as part of the lawsuit) for "financial management services" was

calculated and owing based on a formula of 4% of Total Revenue Collections and had interpreted the percentage of Total Revenue Collections as a "management fee formula" instead of "wages." (See invoice, attachment 11) tells that he knows of no party which classifies such a fee arrangement as anything but a "management fee." adds that told him HUD "REQUIRED" review of the management fee. Neither HUD nor the partnership's own accountant were ever provided with an invoice for the proposed management fee and the first time I saw in invoice was when one was created for the lawsuit.

On April 12, 2007 writes a letter to confirming their conversations of the last few months. He confirms that there is no approval by HUD for payment to of any management fees or any type of fees, including, but not limited to, a "Financial Management Fee" from the income of the project and that pursuant to the PO/MAC (HUD form 9839-B), as executed by he certified under penalty of Federal Law that there was no agreement for the payment of any fees for management of any kind to him. He confirms there is a restriction regarding any payments of fees to from the funds of the Project and that payment of fees would be a violation of agreements between HUD and the LLC including the PO/MAC and the Regulatory Agreement.

In the Motion by Plaintiff's for Approval of Disbursement of Remaining Funds to Creditors and for Entry of Judicial Decree of Dissolution filed in the court case in November 2007, plaintiffs state that there were two outstanding creditors when the property was sold in January. They state contracted to provide financial services on a percentage basis 4% of the total revenue collected from the apartments," but no such contract ever existed and no one, including the members, approved this fee. knew that taking a fee was a violation of the certification he filed with HUD in 2004 and wanted to wait until the property sold before taking anymore monies to avoid dealing with HUD.

HUD is very clear on its position regarding the taking of funds when there is no surplus cash. HUD's Management Agent Handbook, which provides guidance on monitoring management agent activities to ensure program requirements and procedures are followed, states in section 6.49 that "Loan/Asset Management staff must make sure that owners are not receiving unauthorized distributions from the project. To ensure that no unauthorized distributions have been made, also referred to as equity skimming, Loan/Asset Management staff should compare the amount of distributions paid during the period covered by the annual statement to the amount of surplus cash available." HUD does not allow owners to receive management fees as it can be construed as equity skimming.

On January 12, 2005 A Regulatory Agreement for Multifamily Housing Projects for Apartments, LLC was executed by the Secretary of HUD and Managing Member. That agreement states at paragraph 6(b) that the "owners shall not, without the prior written approval of the Secretary, assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds

except from surplus cash, except for reasonable operating expenses and necessary repairs."

In the quarterly letters to the members from providing a financial overview he repeatedly informed the members that the property was breaking even. On April 27, 2005, he states "the building is breaking even and may show a profit (month to month) by August if the trend continues," and on October 15, 2005, he states "the property is now breaking even and will show a profit soon." On January 13, 2006 he told me in an email "I get the sense that you believe there is cash being generated by the property. In fact the property is breaking even." On January 17, 2006 he told me via email "I have never done a building deal where cash is paid during ownership," and yet he took his fee "during ownership." tells me "This building will not generate positive cash-flow for at least two more years. As I said from the beginning, the profit will come from the sale of the building."

In addition to falsifying HUD documents, and taking a management fee without authority and at a time when there was no surplus cash, there was no disclosure to the members by that property expenses had been paid for on personal credit card. The office manager and the maintenance manager, in addition to all used credit cards in name to pay for significant operating and repair expenses. received a personal benefit in the form of credit card reward points due to the substantial purchases put on his cards. Those reward points were in excess of 760,000 by early February 2007. The equivalent to approximately $9,500 in account credits (cash) or approximately 30 round trip airfares up to $500.00 each. Management personnel also paid for utility bills with a credit card in the name of GJP Financial, which is a violation of HUD Certifications, rules and regulations. The use of credit cards to pay these bills required the payment of an additional surcharge, but that didn't matter to he was racking up points.

After learning of these numerous violations and actions taken by LLC members including the wrongful distribution of monies (rental income of the Project) in violation of the provisions of the Regulatory Agreement and distributions made to other members of the LLC when the project had no surplus cash. I notified the other members and demanded that as owners, the LLC members should demand repayment of disbursements made. Instead of joining me to correct the violations, the other LLC members filed suit against ACS and requested the court approve the additional disbursement of funds to and

Plaintiffs in the lawsuit insisted that sought additional payment for managing the LLC not for managing the apartment project. This is refuted by the LLC's final audited financial statements filed in the lawsuit which say that in 2006 the LLC paid GJP $54,989 "for managing the project."

SUMMARY: **CJC -08 - 303**

Even though there had been no discussion with the members of a management fee to he told me in his April 2006 email that he'd already taken $44,000 in a management fee and that his total management fee would be $75,000; on December 26, 2006 he told me his management fee was estimated at $85,000; and according to his invoice attached to the motion filed in the lawsuit against me seeking the balance of his "financial management fee" his total fee was $98,988.59. By the way, the court filing was the first time anyone (including the partnership's own accountant) had seen an invoice from for fees. His invoice states that there is a balance owing "per agreement," but no such agreement exists. He also now calls his fee a "financial" management fee. Adding the word "financial" to his management fee doesn't change the fact that he was invoicing the partnership for managing the project and according to HUD he could take NO fee, financial management or otherwise.

In addition, the $44,000 he paid himself in 2005 was taken at a time when there was no surplus cash. Disbursement of funds to violated Arizona law and Regulatory Agreement with HUD and could have subjected the remaining members to liability under federal equity-skimming statutes 12 U.S.C. §§ 1715 and 1735 which govern HUD projects. Because of greed, the LLC and all its members were subjected to personal liability, including double damages for the violation.

The judge in the case filed against me by the minority members ultimately ordered the partnership to pay $37,019.14 in "financial management fees." After taking this fee out of the company account there was a remaining balance of $4,753.25. Those additional monies were transferred by to his personal account in March of 2008, again without any approval of the members and in violation of the court's order. So again decided he was running the show and gave himself another $4,753.25 he was not entitled. See letter to Judge dated August 29, 2008 (Attachment 12).

I believe Judge should be ordered to give back the $81,000 he took in management fees to the partnership and also the $4,753.25 he basically stole from the company account. In addition I believe should pay back the $9,500 he received from paying for company expenses with his personal credit card.

VIOLATIONS:

Falsifying or making fraudulent statements or entries on the PO/MAC. Making false statements within the jurisdiction of the Federal Government 18 U.S.C. 1001.

Violation of ARS 32-212.A.9 - payment of financial management fees to GJP which was outside the agreements and guidelines with HUD and were for services which required a real estate broker's license in Arizona.

Violation of 12 U.S.C. §§ 1715 and 1735 - distribution of a management fee at times when there was insufficient surplus cash in violation of equity-skimming statutes. The distribution of fees at times when there was no surplus cash also violates the Regulatory Agreement and the Operating Agreement.

DEPARTMENT OF REAL ESTATE:

The following is taken directly from the complaint filed with the Arizona Department of Real Estate in early November 2008. (See attachment 13)

Soon after agreeing to invest in a partnership with Judge I was told that a friend of Judge was the real estate agent who would be handling the purchase of the property. Mr. has held a real estate license in the state of Arizona since September of 1995. From September 1995 through May 31, 2002 under and from May 31, 2002 to present under Investment Group, Inc. Investment Group, Inc. has been run out of home. Judge was also involved in the purchase of the property. He held a real estate license in the state of Arizona from March 5, 1997 through March 31, 2007.

From the inception of the partnership, Judge was the manager of the apartment complex. In early 2005, he was approached by his employer and asked to resign from his position as the manager. I later learned after the property sold in January 2007, that his participation in the partnership was a violation of the Arizona Code of Judicial Conduct. Judge resigned as the manager in March of 2005 but never filed the appropriate documents with HUD identifying a new manager. Therefore it is my contention that he continued to manage the property until it was sold. After the property sold he let his real estate license expire. I believe this was not because he no longer wanted to be involved in real estate dealings, but because continuing to hold a real estate license would attract the attention of his employer who had previously told him to resign from management of his real estate dealings. Within a month after his license expired, his wife, obtained her real estate license. It was originally held under Realty, Inc., but is now under Investment Group, Inc. It is apparent that any real estate dealings Judge is currently involved in are done using his wife's name as the real estate agent instead of his own.

Purchasing a property with a HUD backed mortgage is a lengthy process. Although we were under contact to purchase the property for almost nine months, we did not close escrow until we gained HUD approval in January of 2005. We paid $10,000,000 for the At COE we paid a real estate commission in an amount equal to three hundred thousand dollars or 3%, per the contract. $100,000 was paid to Investment Group, Inc (1%); $100,000 to Judge (1%); and $100,000 to Realty Services agent as a referral fee (1%). In other words, 2% was paid to our agents and 1% to the seller's agent.

After we purchased the property we were under contract to sell it several times. Late 2005 is an example of one of the times we were under contract. On November 11, 2005,

a Listing Agreement was executed on behalf of Apartments LLC which stated that Apartments LLC had agreed to pay Investment Group Inc. (Broker) a commission of 3%. It states that any commission splits paid to other agents/brokers would be at the direction of and would be paid out of the 3% commission per the listing agreement. This arrangement was identical to the arrangement we had in January of 2005 when we initially purchased the property. Although I understood from Judge that the property was under contract on at least four other occasions, he never provided me with copies of any of those contracts or the Listing Agreements associated with them.

In the early summer of 2006, I learned that the property was under contract once again. Judge told me what the final sale price was, however, I wasn't informed on the commissions nor was I provided a copy of the contract. Since I was being kept in the dark once again, I demanded a conference call on June 15, 2006 with Judge and to talk about the "deal." The purpose of the call was for Judge and to provide me with the final sale price and the commissions and concessions numbers for my approval. I was told by Judge in that conversation that the total commissions and concessions would be between $500,000-$600,000. By my calculations based on a 3% commission (2% to and and 1% to the buyer) they should have received $378,750.00 for selling the property. I also knew that the buyer would be given $180,000 in concessions for a total of $558,750 commissions and concessions which was in line with what Judge had just told me it would be. I was comfortable with those numbers and conveyed my approval of the deal. At no time during that conversation did Judge or tell me that the Real Estate Purchase Contract had already been fully executed by both parties and the "deal" was already done.

On June 23, 2006 called me to tell me that would finally be emailing me a copy of the contract. I received a copy of the fully executed contract sometime in late June or early July. It reflected a purchase price of $12,625,000 and that the buyer's agent, was to receive a real estate commission of 1%, (which is the same percentage we paid the seller's agent when we purchased the property in January 2005). However, there was no commission language in the contract with regard to the commissions to be paid to or I have never seen the commissions the two were planning on taking in writing. It didn't raise any red flags for me at the time because it was my understanding that the commissions and concessions were between $500,000 and $600,000 since Judge had told me that on our June 15th conference call.

In late December 2006, after almost 6 months waiting for the completion of HUD inspections and approval, and as we approached the closing, I once again began discussions with Judge about the sale. It was then that I became infuriated with Judge deliberate failure to give me a complete financial picture. This is something he'd done not only during the sale process, but during the length of my entire dealing with him. It was then that I hired an expert in HUD matters to review what was happening and to protect my interests because it was evident that Judge was

keeping crucial information from me. My consultant told me that since I was not provided the numbers regarding the sale of the property from Judge who was handling the sale that I should contact the title company directly. We contacted at , the title company involved in the sale, because I wanted to know what my return on investment was going to be.

On December 26, 2006, upon learning of my contact with the title company, Judge began emailing me some of the financial information I'd been asking for, for the past months. I reviewed the information he had given me and replied to him that I found it interesting that after REPEATED requests for information regarding the final sale price, the return on my investment and the concessions and commissions, that he'd finally sent me something the next business day after learning that I'd received a draft settlement statement from the title company.

From the information I received from both the title company and Judge I learned that the brokerage fee to and Investment was 4.5% or $568,125. I informed Judge that I was extremely upset with the brokerage fee to which was now, somehow and without any discussion among the partnership, 3.5% to and or $441,875 when the brokerage fee paid to and when we purchased the property was 2%. It had ALWAYS been my understanding that the commission that and would be paid would be the same as it was when we purchased the property, 2%.

At that time he also explained to me that there were two outstanding invoices that had not been paid. $24,000 to for roofs and a financial management fee to himself (which according to HUD documents he executed, he was not to receive) estimated at $85,000 for two years. It was then I discovered that the total return on my investment was substantially less than the amounts previously promised to me by Judge even before joining the partnership. I then informed Judge that I'd hired a consultant to review the financial records provided, to tie out numbers and review closing documents. I explained that the consultant would review the numbers Judge had provided me with since they were substantially less than the amount previously promised with regard to the return on my investment and substantially higher than the amount I had discussed with Judge regarding commissions.

After receiving the financial information on December 26th, I discovered that when Judge gave me the figure of $500,000-$600,000 commissions and concessions on June 15, 2006 that the Commercial Real Estate Purchase Contract had already been inked on June 12, 2006. Much to my dismay the concessions and commissions were not $500,000-$600,000 but instead totaled nearly $750,000. I concluded in our conversation on June 15th, that Judge flat out LIED to me about the amount of money he and would pocket at closing. Judge and Howard , both licensed real estate agent's in the state of Arizona at that time, decided between themselves that instead of the 1% commission they each earned when we purchased the property and in subsequent sales contracts that never went to closing that they were worth more than 1% each. They wrote themselves two checks for $220,938 which was a 1.75% commission

each and without any approval of the partners. So instead of receiving $126,250 each (or 1% commission each) they each walked with an additional $94,688 for a total between the two of an additional $187,376. So at the end of the day, the additional $187,376 that should have been split among the partners was now in the pockets of Judge

In addition, the language in the Operating Agreement signed by the partners of when we purchased the property required that the manager (Judge) "shall use its best efforts to consult with the Members in advance of any significant action that the manager proposed to take on behalf of the Company and shall keep the Members apprised of significant developments in the Company's business and affairs." I consider taking an additional 1.5% commission, which should have been discussed among the partners, but wasn't, a "significant action," and a violation of the Operating Agreement, Article 6.9 at p. 16.

I also learned after the closing of the sale of the property that because Judge took a financial management fee (although he wanted almost $99,000, he was actually paid $81,000), he violated HUD and Arizona Department of Real Estate rules and regulations. Judge calculated his management fee based on 4% of the total revenue collected at the property. was not licensed in AZ as a real estate broker. Given the duties and manner the management fee was calculated AZ requires a brokers license. Payment of the management fee to GJP Financial, LLC or any unlicensed party/entity, by was a violation of AZ statute ARS 32-2155B. The statute states that the payment of any kind of valuable consideration to any parties not licensed as a real estate broker for acts and/or services that require the party to have a license as a real estate broker is a violation of Arizona statutes. ARS 32-212.A.9 allows for a natural person performing book keeping services for a property and performing no other duties which would require a real estate broker's license is exempt from the license requirement. Department of Real Estate rules 32-2111. HUD rules require charging a fee calculated on the actual time and cost of providing the book-keeping services.

It has to be a conflict of interest to manage a property, maintain control of the checkbook, decide you are worth X amount, and without any authority of the partnership, and in violation of the Operating Agreement, to just cut yourself a check for whatever you think you're worth. This must also be a violation of Arizona Real Estate Laws and a breach of Judge fiduciary responsibilities as a broker to his partners. Since he is a judge and according to the Code of Judicial Conduct, Canon 2 "a judge must avoid all impropriety and appearance of impropriety" in all the judge's activities. Canon 4 (D) (3), states "a judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity" except a business closely held by the judge or members of the judge's family. Judge actions in this matter are clearly an example of impropriety and violation of the Code of Judicial Conduct.

If you are wondering why I waited until now to file a complaint when this occurred in January of 2007, I was sued by Judge immediately after the property sold. The lawsuit occurred even before a required audit had been conducted and before the

partnership was dissolved so that Judge could get paid the balance of his "management fee" which according to HUD documents he could not legally take. My consultant advised me to wait to file any complaint until the lawsuit had been fully resolved which was not until September 30, 2008.

In addition, sought almost $99,000 in fees. He violated HUD and Arizona Department of Real Estate rules and regulations because was not licensed in AZ as a real estate broker, therefore I believe he should be required to return the fees he took for "financial management" of the property.

SUMMARY:

The actions taken by with regard to the taking of commissions without the approval of the members is perhaps the most egregious thing he did. should not hold a real estate license in the State of Arizona which is just a sham for the real estate dealings of The additional 1.5% ($187,376) that and took at closing should be returned to the partnership and divided among the remaining partners. breached his fiduciary duty to his partners when he took additional commissions without any discussion of the partners and again by taking a management fee. His 1.1% investment was not where he made his money hand over fist, he made it in the purchase and sale of the property. He did not share the financial details of the closing with me because he was afraid I would pull the plug on the sale of the property and he wouldn't receive his substantial management fee or his significant commission for selling the property. He looked out for no one's interest but his own and put all of the partners at personal liability for his numerous violations of rules, regulations and the law. He lied to get me to invest in this deal; he lied to me on numerous occasions during our ownership of the property; and he lied to me when we sold the property.

VIOLATIONS:

Violation of the Operating Agreement p. 16, Article 6.9 which require that the manager ( ) "shall use its best efforts to consult with the Members in advance of any significant action that the manager proposed to take on behalf of the Company and shall keep the Members apprised of significant developments in the Company's business and affairs."

Violations of HUD and Arizona Department of Real estate rules and regulations because took a management fee, which was calculated based on 4% of the total revenue collected at the property.

Violation of ARS 32-2155B because was not licensed in Arizona as a real estate broker and payment of the management fee to or any unlicensed party/entity, by was a violation of this statute. The statute states that the payment of any kind of valuable consideration to any parties not licensed as a real estate broker for acts and/or services that require the party to have a license as a real estate broker is a violation of Arizona statutes.

FAILURE BY TO PROVIDE INFORMATION REQUESTED AND/OR INCONSISTANT INFORMATION RECEIVED FROM PORTER:

An integral part of making a large investment in a property out of state is having a complete financial picture both before you invest, during your investment, and at the conclusion of your investment. I told at the onset that I was a "hands-on" investor and wanted to be kept informed. Although my desire was made perfectly clear up front and although assured me that he would keep me informed, he was anything but forthcoming with information. The only financial information I received were quarterly letters from one page summaries with attached Income/Expense spreadsheets and reports he'd provided to HUD. These documents were merely snapshots and did not paint a full financial picture. I did not receive any other financial information without having to repeatedly ask for it and even then sometimes I never got what I'd asked for.

One of the early situations that sent up red flags was in November of 2005 when we agreed that my accountant would perform the required 2005 HUD annual audit of Apartments, LLC. has extensive experience with HUD and is licensed in Arizona so we agreed he would travel to Arizona to conduct the required audit. I also wanted Mr. to do the audit because had not been forthcoming with financial information (i.e. it took 2 requests and eight months to get the 2004 tax return from him) and I wanted my own accountant to look at the books firsthand to put some of my concerns at ease. When arrived at gated subdivision at the agreed upon time (9 a.m.), wasn't home. finally arrived home at 3:00 p.m. and gave access to his computer but didn't give him bank statements, paid vendor invoices or tenant records. discovered that the accounting file containing records for Apartments also contained documents for other properties. The following day caught at his house as he was leaving for work. let him in, pointed to where the paid files were kept and left. By that afternoon determined that he would not be able to complete the audit and called He explained to that the accounting records were not complete enough to comply with HUD regulations, bills for other properties were intermingled with documents, and the files he found could not support an audit. didn't offer to assist in developing a complete, auditable set of books because had assisted he'd have been disqualified from conducting the audit. He couldn't audit the same books he just reconciled. wasn't willing to book another trip in hopes that the records would be in better condition when he returned so he concluded his work and returned to (See attachment 14 letter from). This situation only added to my anxiety about the handling of my 1.36 million dollar investment by

On January 13, 2006 finally provided me with a copy of the 2004 tax return that I'd asked for eight months prior. In an email that same day he told me that the leasing agent had told him I'd visited the property on my way back from California and that I had stopped in the office to talk to her. We talked about mundane things such as the lights in the parking areas and broken sprinklers. knew I was going to stop for a visit. In fact during my visit I'd been told by an employee that prior to my visit had

instructed the employees not to talk to me or answer any of my questions. In the email on January 13th said "Please ask me for information concerning the property. She (the leasing agent) does not prepare the reports that are sent to HUD nor is she in possession of any of the financial information. I am not clear what information you would like." He told me in a telephone conversation shortly after the email that although I was the majority owner I was viewed as simply a stockholder and as such I didn't have the right to ask employees questions regarding finances, direct any of the employees in any way, and I didn't even have the right to visit the property. So now, not only was I not given any information on the status of the project by I was also not allowed to visit the property or ask questions of the employees.

During that same visit in January even though they were told not to talk to me, the leasing agent told me during our brief conversation that the partnership had been sued by someone who had fallen from a balcony. He was now claiming that the property wasn't safe. never mentioned anything about the lawsuit to me and according to the Operating Agreement it is something he absolutely should have told about (Article 6.9).

On January 16, 2006 frustrated that I was not being given much information I asked for his Quickbooks for 2004 and 2005 and a copy of the proposed contract for sale (he had told me that the property was under contract) which he hadn't provided me, as well as a status report regarding the numbers for the potential sale. I also requested copies of all correspondence generated or received by and to and told him I wanted to know what was going on in Arizona since I had not seen any income from operations. I didn't understand why a property that was in good condition when it was purchased now needed so much work. I also told him that if the property didn't sell I wanted to visit with him in February to talk about issues that needed to be resolved. responded that the potential sale of the property had fallen through and that the tax returns were prepared by and if I wanted a copy I could contact him myself. He then snapped at me and said "if you are not happy with the way I run this building then feel free to get a property management company. I won't be second guessed on management decisions. There is nobody that puts more effort into these buildings than me. I am already sensitive to being micro-managed given HUD." It was now clear to me that was becoming increasingly more hostile each time I asked for information.

An example of the inconsistent financial information received from had to do with the revenue being generated at the property. On January 7, 2006 I received an email from regarding revenue. He stated "This building generated $91,000 one year ago (January 2005) and will generate $108,000 this month." The Income Report from the same period stated rents collected in January 2005 were $112,251.70. Then in emails generated around Christmas of 2005 from he stated the "building generated $81,000 in January 2005." So was it $81,000, $91,000, or $112,251.70?

My second visit to the property was the end of May/early June 2006. I wanted to look at the books and to get a handle on the financial status of the property and also handle some maintenance issues I'd discovered during my January stop. I met with briefly and then he left the country for his honeymoon. I was at the property for a total of 10 days.

After returning to Denver I sent an email to with my thoughts about the three complaints about sexually inappropriate materials I'd received during my visit. He responded by blaming me for the tension in the office. On June 23, 2006, I emailed and told him I was aggravated as hell for being blamed by him for all of the problems in Arizona when I simply made a trip to lend a helping hand with maintenance. I told him that I felt like anytime I needed information I had to ask again and again and that I had 1.4 million invested in the project and expected answers. I told him that as the owner I wouldn't allow him to treat me with disrespect anymore and requested a meeting on July 3rd. I also requested control of the checkbook in order to better understand where the money was going. On July 2, 2006 realizing I was about to go through the finances with a fine-toothed comb, forwarded to me the last two months HUD financial statements, and the YTD income and expenses he'd provided to HUD for the potential sale. In anticipation of my visit he paid all outstanding bills and updated all financials even though he understood that I was hoping that was something we could do together so I'd have a better understanding of how it was done. I found it odd that after a year and a half of asking for information that suddenly provided me with financial information and was willing to turn over the checkbook to me. I got the impression that he felt that if he provided me with some of the information I'd been requesting, that I might cancel my trip to Arizona, but I did not do that.

During that visit I spent an hour with We grabbed a quick lunch and went to the bank to obtain authorization for me to be a signing member on the checkbook. He then turned the checkbook over to me but I quickly learned that he never intended to allow me to get a clearer financial picture. On July 8, 2006 he emailed me requesting that I cut certain checks. He provided me with no invoices or back up documentation. On July 13, 2006 he requested three checks for roof work, but again he provided me with no invoices, statements, or back up documentation. Disgusted with this situation, I cut myself a check for the expenses I'd incurred during my May visit and shipped the checkbook back to Porter which I'm sure was exactly what he wanted.

On July 24, 2006 completely disgusted with the situation I wrote to and told him I wasn't going to battle with him anymore. I told him I was exhausted, frustrated, and aggravated and with the situation. I told him he'd been disrespectful and had ignored comments, suggestions and requests. I told him that if I'd known that to be a majority owner would be meaningless and that a 1% owner ( ) would call all the shots, I never would have invested with him. I had made it clear up front that I wanted a controlling interest and revenue information, and that I hadn't just invested for capital appreciation. He knew all along that I would never make even one decision with regard to this deal. If he wanted control over all management and financial decisions he should have invested his own 1.4 million. I was frustrated that he completely controlled the purse strings of my money and there was nothing he would allow me to do about it. I stated "All I've asked from you was to help me understand the financial side of things, but you've decided that was none of my business." I mentioned his June 15, 2006 email to me in which he said I was the problem in the office and that if I fired the leasing agent he would take and other key employees with him and run to the other investors and tell them I had interfered with their profits. He'd set it up so that I didn't have any choice

but to stay away from my own property. He also told me that if I did anything, he'd sabotage the pending sale of the property by taking all the key people away and blaming the situation on me with the other members. It was at that point that I demanded the contact information for the other members since I had never been provided with it. only response was to email me the member's contact information which was outdated. I had to track down the members on my own.

In an August 1, 2006 letter, who had compiled a balance sheet of Apartments, LLC dba Apartments as of 1/31/06 stated "management ( ) has elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations and cash flows," so our own accountant didn't have what they needed from to even prepare an accurate balance sheet, and they were hired to work on our behalf.

Shortly after the property sold in January 2007 I became concerned about some of the comments being made by the other members based on what had told them about my consultant and I seeking information so I held a conference call with them. On January 30, 2007 I spoke with and was also on the call. I explained to them that I'd asked repeatedly for financial documents but couldn't get them which made me nervous. I told them about the situation with and that I believed had done it deliberately, which made me even more nervous. I explained that had told me the property was under contract several times, but I'd never seen the contracts even though I asked for them and even though the Operating Agreement p. 16, Article 6.9, states that I'd be consulted about any significant actions the Manager proposed to take on behalf of the Company. These actions, coupled with the fact that I couldn't get financial information from put up "red flags." I told them I'd invested 1.4 million and was being treated in an appalling and disrespectful manner, by someone who was evasive, arrogant and who had become belligerent with me when I'd asked for very basic information. I told them I'd gone to the property in May of 2006 to look at the books and that I'd spent money on supplies and equipment for the property. I told them that after taking over the books I'd written myself a check to reimburse myself for the purchase of equipment for the property including a chainsaw, drills, a power washer, etc., which the property should have had, but didn't. I told them that even though my intention at the property was to work on maintenance issues that I also wanted to take over the checkbook to see where the money was going. had told the other members prior to this conversation that my writing checks from the company account was a violation of equity skimming statutes.

In January 2007, asked me he asked me for a copy of the 2005 HUD Audit during a review of my files. I told him I didn't know one existed because I'd never seen it. Later discovered that an audit had been prepared by I was never told was preparing an audit and it was my belief that had just been hired to ensure that generally accepted accounting rules were followed when the tax returns were completed. We also learned that

had sent 10 copies of 2005 HUD Audit for distribution to the members, but he had never distributed them to the members.

In February 2007, wrote to regarding the Operating Agreement. He told that we had received some documents from HUD but had also requested certain documents from who told us to "find our answers elsewhere." He requested any record of having sent the "complete" Operating Agreement to ACS after he modified its provisions (added Article 12) to be in accordance with the requirements, rules and regulations of HUD, as I had never received it from also told him he'd checked with the title company and they didn't have the modified version either. Shortly after that, sent us a copy of the Modified Operating Agreement.

In March 2007 informed that the monthly reports to HUD lacked records to support most operating expenses. He also told that his request to to make available for review copies of bank statements for the first three months of 2005 was denied because didn't know where they were.

In a March 20, 2007 email from he stated that it was his understanding that had told that personal property (including the items I'd purchased in June) were taken from Apartments to house for safekeeping. Wes responded that he seriously doubted any inventory of tools or materials had been compiled. requested that if or didn't have time to do an inventory of those items, that he could get someone to go to house and do it. So now we have $3,500 in inventory that has been taken to house for "safekeeping." The locked storage sheds and other locked apartments used for storage weren't safe enough?

The LLC's final audit filed in 2008 doesn't contain the signatures of or (i.e. it doesn't contain their certifications that the financials are accurate and complete). and I tried for two months to get an executed copy of the audit but and claimed they didn't have a copy (even though they had allegedly signed it pursuant to the court's order). They were also unwilling to sign a copy and provide it to us. Just another game played by

With regard to the topic of lack of operating income, in April of 2004 when we were just going down the path to purchasing the property when wrote to the Director of Multifamily Housing, HUD and explained that there was no deferred maintenance on the property and it was in "very good physical condition at this time." This is also what I understood when we purchased the property, yet on October 12, 2006 emailed me and told me HUD had performed the physical inspection of the property and "believes the building to be in significantly better repair than it was when we took over." He also told me that the major maintenance items were now done. A bit surprised I responded by asking him what major maintenance items there were that needed to be done. He responded that the property was dilapidated when we purchased it and all operating income had been put back into the property for repairs. When he approached me about investing, he never mentioned that the property was in need of any repairs, in fact I was

under the impression that it was in "very good physical condition," just as he'd told HUD. This is yet another example of telling people what they needed to hear.

VIOLATIONS:

Violation of fiduciary duty to the owners.

Violation of the Operating Agreement.

MEMBERS OF THE PARTNERSHIP:

In 2003 I was approached by about joining Apartments LLC. At the time the partnership was formed there were SEVEN investors/members of Apartments LLC. I was the only partner who came up with the $100,000 to hold the property in escrow and therefore if it hadn't been for my investment, the purchase of Apartments never would have taken place.

SEVEN MEMBERS: In taking steps towards HUD approval in February of 2004, the Managing Partner, informed the Project Manager for HUD in Arizona, that the partnership had raised $2.6 million dollars from SEVEN individuals who had formed Apartments LLC. At that time I did not know who the other 5 members were.

EIGHT MEMBERS: On May 7, 2004, the Operating Agreement for the partnership was adopted and executed by the partners of Apartments LLC. At that time there were EIGHT investors. Since I didn't know who the other original five investors were, I do not know who was added as the eighth investor between February and May. The investors who executed the Operating Agreement included 1- myself; 2-

Exhibit C to the Agreement, the Membership Interest list, listed the members of the partnership and percentages invested, but the percentages were not filled in. In fact I never saw a copy with the percentages filled in.

NINE MEMBERS: On June 22, 2004, 6 weeks after the Operating Agreement was executed by the members prepared a new version of Exhibit "C" to the Operating Agreement. This new Membership Interest, Exhibit "C" prepared by had NINE investors listed. So without a vote or even a discussion among the members (and in violation of state laws and the Operating Agreement), added Trust as a member. This Exhibit C was never sent to me in the normal course of business. The first time I saw this version of Exhibit C was on May 3, 2007, after had requested documents directly from HUD because refused to provide them to us. What was odd was that there was no reason to prepare this document on June 22nd because the Operating Agreement had been fully executed on May 7, 2004. According to this new Exhibit C I owned 50.3%; owned 30.03%;

owned 1.04%; LLC owned 8.05%; owned 7.05%; owned 1.04%; owned 1.04%; 1.04% and and owned .41%.

On September 8, 2004, communicated to me that the partnership needed $2.7 million to close because of debt reduction and reserve requirements. He said that he'd like cash on hand of at least $100,000 and even asked "Do you want me to get another investor to put up $200,000? I replied "that's not a problem on my end. If others can't come up with the additional, then I may be able to come up with more. Let me know." I did come up with the entire $200,000 myself. At that point I understood that I was in business with seven other members and it would have been clear to that I wasn't interested in being in business with anyone other than those seven members. I never realized was diluting my interest by adding members to the partnership until brought it to my attention in early 2007.

In early November 2004 a new version of the Operating Agreement was circulated by This new version added Article 12, language regarding the substitution of the Managing Member. I did not see this version of the Modified Operating Agreement in the normal course of business because did not send it to me. Instead he attached my signature from the original Operating Agreement filed in May to the new version. At that time I still did not know that had been given an ownership interest by

On November 8, 2004, an Amended Articles of Incorporation was circulated by with some HUD required changes. I signed the documents on that day. My signature page contained signature lines for myself, LLC, I, LLC, and Trust. I was not provided with the second signature page which contained signature lines for all original partners in Apartments. That signature page also contained a signature line for Again, since I wasn't provided with the new version of Exhibit C to the Operating Agreement, I still had no idea that had added him as a member. This is the first time name appears on any partnership documents and frankly, I didn't even notice he was provided with a signature line.

TEN MEMBERS: On January 21, 2005, prepared a quarterly letter to the Investors. tells the investors "I will send quarterly reports, one page summaries with the financial summary. Please do not hesitate to call if you want more information or would like to see the property." Attached to this financial summary was a list of investors. requests that "if the investor information is wrong, let me know." The page shows that owns 1.1%, a $30,000 investment; owns .9%, a $25,000 investment; owns .9%, a $25,000 investment; owns .4%, a $10,000 investment; Family Ltd Partnership owns .9%, a $25,000 investment; owns 1.1%, a $30,000 investment; Trust owns 7.2%, a $195,000 investment; ACS Investments LLC owns 50.1%, a $1,360,000 investment; LLC owns 30%, a $815,000 investment; and LLC owns 7.4%, a $200,000 investment. The total investment is now $2,715.00. As of December

2004, I was told by that the total investment was roughly $2,640,000. According to this document it was now $75,000 more. This is also the first time that name appears as an investor. So for the second time, without a vote or even a discussion among the members (as required by state law and the Operating Agreement), added Family Ltd Partnership as a member. slipped extremely pertinent investor information onto the back of a routine quarterly financial statement. This brought the total number of investors to TEN.

SUMMARY:

Trust and Trust were not initial members in Apartments, LLC nor were they admitted as Members of in accordance with the requirements of the Operating Agreement or related Arizona rules, regulations and laws. According to the Operating Agreement executed in February 2004, at Article 6 (b)(3) "The manager ( ) may not cause the company to do any of the following without a vote of the members: Issue a membership interest in the company to any person." Also according to ARS 29-681(c) (2), "except as provided in an operating agreement, the affirmative vote, approval or consent of all members is required to: issue an interest in the limited liability company to any person," ARS 29-731(b) (1). That gave his friends and a membership interest at any point after the original Operating Agreement was executed is a direct violation of the agreement and state law. This is just another example of doing as he wished in spite of laws, rules, regulations, and in violation of written documents he himself prepared. could not find any document (including the Operating Agreement) of the LLC which identified or included an execution by and searches were conducted in the files of (the closing company), the files of and the files of HUD. Further the grant of additional LLC members by was a direct contradiction of an agreement between and (See email dated September 8, 2004; Attachment 15)

Also I find it interesting that after being adamant about wanting controlling interest in the property, that ended up giving me 50.1%, which, according to the Operating Agreement, did not allow me to remove the manager. The agreement states that a manager can be removed, "either with or without cause by a vote of members holding fifty-one percent of the Membership Interests of Members" (Article 6.5). Could it be that he made sure I alone could not remove him by deliberately giving me 50.1% instead of controlling interest (51%)? He's a judge and an attorney, this was no mistake.

VIOLATIONS:

The membership was expanded by without a meeting or a vote by the initial LLC members which is a violation of both the Operating Agreement, Article 6.1(b)(3) and ARS 29-731. Further the grant of additional LLC members by was a direct contradiction of an agreement between and

also violated SEC rules and regulations by adding investors without permission of the partners and by not registering it as a security which should have been done for investments over $1,000,000 which are over state lines.

REGISTRAR OF CONTRACTORS:

See the attached complaint filed with the Arizona Registrar of Contractors on November 6, 2008 (Attachment 16). In addition to the language in that complaint violated HUD rules and regulations by failing to solicit written estimates from at least three contractors.

On June 15, 2006, told me during a telephone call that he had received roof bids between $58,000 and $189,000. On October 12, 2006 told me in an email that they "had bids over $160,000 to do the eight roofs," but that they'd done the eight roofs for under $50,000. On July 25, 2007 HUD, emailed telling him she'd asked if there were any bids taken for the roof work (as required by HUD), and he responded "No." According to the HUD Management Agent Handbook "when an owner/agent is contracting for goods or services involving project income, an agent is expected to solicit written cost estimates from at least three contractors or suppliers for any contract, ongoing supply or service which is expected to exceed $10,000 per year or the threshold established by the HUD area office with jurisdiction over the project. Documentation of all bids should be retained as part of the project records for three years following the completion of the work." (Handbook, Section 6.50). So although told me on at least two occasions that he'd received roof bids for the work, he had not. Instead he just gave the work to his friend. an unidentified entity of interest, and our maintenance manager, In addition, although told me had been contracted to do the major part of the roof work, he never told me that had was LLC. I learned that owned during investigation in early 2007.

VIOLATIONS:

Violation of ARS 32-1154.A.10 and A.14. - "knowingly entering into a contract with a contractor for work to be performed for which a license is required with a person not duly licensed in the required classification and paying an unregistered and unlicensed entity for construction work requiring a license" is a violation of Arizona statues, as is "aiding and abetting a licensed or unlicensed person to evade this chapter.... resulting in the successful avoidance of the license requirements for construction services/work."

Violation of HUD requirements by relative to retaining contract labor (i.e. not soliciting written cost estimates from at least three contractors and failing to execute a written agreement with the contractor). Although requested copies of contracts for the work from his requests were ignored.

ETHICS VIOLATIONS:

was appointed a Court Commissioner of the Superior Court of Arizona in Maricopa County on July 29, 2003 with the working title Associate Presiding Judge for Limited Jurisdiction Courts.

According to The Arizona Code of Judicial Conduct of 1993, Canon 2 (B), "a judge shall not lend the prestige of the judicial office to advance the private interests of the judge or others." The public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. "A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny." Canon 4(D) (1) states "a judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position." Canon 4(D) (3) states that a judge "shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this code, manage and participate in a business closely held by the judge or members of the judge's family, or a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family."

The fact that is a judge was a major factor when considering whether or not to invest in After all, I was essentially giving him our life savings. But when discussing whether or not to invest my wife and I kept saying to each other "he's a judge." We believed that if we couldn't trust a judge, we couldn't trust anyone. We had the utmost belief that everything would be lawful but once he got our money, everything changed. He was intimidating, arrogant and hostile and withheld important financial information from us.

On June 25, 2005, six weeks after resigning as the manager of the Company wrote to the members of Apartments informing them that many of the partners in Apartments (another deal he was involved in) were looking to roll their money into another building when it sold in September. He identifies two possible transactions that would be similar, one requiring 7 million down, the other requiring 4 million down. He states he should know more in the next 10 days and asks the members to let him know if they are interested in investing in another property or if they know of others interested in investing in either of the properties. So, even after he clearly understood that managing a property which was not closely held by his family was a violation of the Code of Judicial Conduct he was looking to manage/invest in another property as soon as possible.

On June 15, 2006 when discussing the potential hostile environment claim at the property told me that the office manager (the one creating the hostile environment) should be upset with me and that if she quit I could "kiss off a portion" of my investment. He added "To write me and tell me about the law is ridiculous. Putting aside the fact that these cases are tried to me every week, I have managed 21 buildings (he'd previously told me 30), 11 years and not one lawsuit. I feel bad for the other partners who have invested in this project because of their trust in me."

During a conversation with in July of 2006, regarding the hostile environment matter, I told that my wife (who'd spent her entire career as a paralegal in two major law firms in Denver working on sexual harassment cases) had told me she thought our potential exposure in the matter could be in the 6 figure range screamed into the phone "She's a fucking paralegal, I'm a judge." My wife also heard this comment as she was in the other room and was on speaker.

In an email on June 21, 2006, told me "I look forward to the day when you get your money and this miserable deal is done with. I know the partners (all friends of mine) will feel the same way. I don't care what you do I just don't want additional economic waste on this deal and I don't want this transaction jeopardized." I'm not exactly sure what he meant by "this miserable deal." All I had done all along was to ask questions, which I had every right to do as the majority owner. I guess didn't like answering to anyone. After all this was his property, right?

SUMMARY:

used his position as a judge to entice, intimidate, and threaten me. Anytime I'd ask what was going on (i.e. asking for tax returns and other financial information), or gave my input and recommendations on the sexually inappropriate materials on the leasing agent's computer that she shared with tenants and other employees, he responded with hostility.

VIOLATIONS:

Violation of Canons 2 and 4 of the Arizona Code of Judicial Conduct.

LAWSUIT:

After the closing and the sale of the property, but before an audit (as required by HUD) had been conducted, and before the partnership had been dissolved, and the other members of Shadow Tree Apartments LLC sued ACS in Superior Court in Maricopa County seeking to close the partnership, but more importantly to make sure received an additional $54,000 in fees. Now for the first time he was calling his management fee a "financial management fee." The lawsuit also sought to have paid the additional $24,000 for roof repairs which had not yet been paid. I was sickened by the lawsuit considering the fact that a required audit had not even been conducted and that considering everything above, was now suing ME for even more money. Given my history with him I was not surprised. The other partners in this deal didn't care what laws or rules and regulations broke because they were all grateful for their return. exposed each of the members to direct liability in substantial amounts to HUD, but when I brought this to the attention of the next largest investor I was told to "let sleeping dogs lye."

This lawsuit was resolved in February 2007, when Judge issued an order granting his request to take the additional funds in an effort to get everyone "moving down the road." After the funds were disbursed from the checking account per Judge order, there remained $4,753.27 in the Company account. Being a judge I would have thought would have followed another judge's order to the letter and only taken exactly what the court had ordered, but believe it or not, took that money too. See attached letter to Judge

CONCLUSION:

looked out for no one's interest but his own and put all of the partners at personal liability so he could make money hand over fist. He made approximately $411,438.00 not including the return he received on his investment. He used me and my money to make a fortune for himself. He lied to get me to invest in this deal; he lied to me on numerous occasions during our ownership of the property; and he lied to me when we sold the property. He continually violated his fiduciary responsibilities as a broker to his partners and his actions in this matter are clearly a violation of the Code of Judicial Conduct. I would think that his first responsibility would be to the bench yet a majority of the emails/correspondence I received from were sent during normal business hours. Being a judge is not where he makes his money, doing these real estate deals is where he makes the real money. He took and took from this deal and when it was all done, he sued me for even more money, money, by law he wasn't even entitled to. He's like the Grinch who Stole Christmas. Just when you think there's nothing left to take he comes back for the very last helping of who hash.

So why may you ask am I writing to you when we all made good money and the deal is done. It's because lied and withheld information from me and used me for my money. He withheld critical information from me so that I would never have a clear understanding of what was going on and therefore couldn't question it; he lied to HUD; he broke the law; he was arrogant, hostile, threatening and intimidating; he exposed me and the other members to personal liability for his disregard for the rules and regulations of HUD; he falsified documents; he took fees he was not to take; he took fees when there was no surplus cash; he violated the Code of Judicial Conduct; and the list goes on. The only reason was in this deal was to line his pockets and self deal, and it's wrong.

should not be dispensing justice to others when he has a complete disregard for the law himself.

Sincerely,

cc w/attachments: Terry Goddard, Attorney General of Arizona