

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES**

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF
CONSUMER AND BUSINESS SERVICES**

In the Matter of:

S-09-0016-4

John David Thurber,

**ORDER TO CEASE AND DESIST, ORDER
DENYING EXEMPTIONS, ORDER
ASSESSING CIVIL PENALTIES, AND
CONSENT TO ENTRY OF ORDER**

Respondent.

WHEREAS the Director of the Department of Consumer and Business Services (hereinafter, the “Director”) has conducted an investigation into certain business activities of Canyon Creek Development, Inc.; Sunwest Management, Inc.; Canyon Creek Financial, LLC; John David Thurber and others;

WHEREAS the Director has determined that John David Thurber (“Thurber”) engaged in activities constituting violations of provisions of the Oregon Securities Law, ORS 59.005 et seq.; and

WHEREAS Thurber neither admits nor denies the Findings of Fact or Conclusions of Law contained herein, but wishes to resolve and settle this matter with the Director by entering into a Consent to Entry of Order, which is evidenced by the authorized signatures subscribed in the attached Consent to Entry of Order.

NOW THEREFORE, the Director enters the following Findings of Fact, Conclusions of Law, and Orders:

I. FINDINGS OF FACT

The Director FINDS that:

A. The Respondent and Other Parties

1. Canyon Creek Development, Inc. (“Canyon Creek Development”) is an Oregon domestic for-profit corporation (Business Registry Number: 012198-98) formed on or about March 28, 2001 with offices located at 3723 Fairview Industrial Drive SE, Suite 270, Salem, Oregon 97302 (the “Fairview Location”). As of December 31, 2008, Jon M. Harder (“Harder”) was the Vice President, a Director, and 60 percent owner of Canyon Creek Development.

At all times material herein, Canyon Creek Development’s principal business was locating and/or acquiring 1) senior living facilities (a “Facility”) (a “Facility Acquisition” or a “Project”), or 2) empty parcels of land on which a Facility could be built (a “Land Acquisition” or a “Project”).

2. Sunwest Management, Inc. (“Sunwest Management”) is an Oregon domestic for-profit business corporation (Business Registry Number: 284595-84) formed on or about February 27, 1992 with offices located at the Fairview Location. Harder is the founder of Sunwest Management and as of December 31, 2008, was approximately its 75 percent owner. At all times material herein, Harder was the Chief Executive Officer, President, and Director of Sunwest Management.

Sunwest Management’s principal business was marketing, operating, and managing senior living properties, including Facilities that Canyon Creek Development located and/or acquired.

3. Canyon Creek Financial, LLC (“Canyon Creek Financial”) is an Oregon domestic limited liability company (Business Registry Number: 321171-94) formed on or

about November 4, 2005 with offices located at the Fairview Location. As of December 31, 2008, Harder was the 100 percent owner and Sole Member of Canyon Creek Financial.

On June 26, 2006, the Director licensed Canyon Creek Financial to act as a securities broker-dealer in Oregon (CRD Number: 139306; BD Number: 5555).

Beginning in June 2006, Canyon Creek Financial was a captive broker-dealer for Canyon Creek Development that offered or sold only securities interests in Projects sponsored by Canyon Creek Development and managed by Sunwest Management. Canyon Creek Financial stopped selling securities on July 2, 2008.

4. John David Thurber is an Oregon resident and, at all times material herein, was Vice President of Marketing and Sales for Canyon Creek Financial. As Vice President of Marketing and Sales, Thurber was responsible directly or indirectly for the way in which securities offered by Canyon Creek Financial were marketed and sold to investors. Thurber was also involved in marketing securities to investors directly and had supervisory authority over certain broker-dealer salespersons employed internally by Canyon Creek Financial. Thurber passed the Series 22, Series 63, Series 39 (Direct Participation Programs Principal), and Series 82 (Limited Representative – Private Securities Offerings) exams, which are administered by Financial Industry Regulatory Authority (“FINRA”). FINRA licensed Thurber as a broker-dealer salesperson (CRD # 5091017) in February 2006 and the Director licensed Thurber as a broker-dealer salesperson for Canyon Creek Financial the same month. Although his employment with Canyon Creek Financial ended in October 2008, Thurber continued to work with Canyon Creek Development and/or Sunwest Management.

5. Jon M. Harder is an Oregon resident. As of December 31, 2008, Harder had a 20 percent or more controlling interest in more than 490 limited liability companies and corporations including Canyon Creek Development and Sunwest Management and held a 100 percent interest in Canyon Creek Financial. His holdings also included affiliated

companies that provided services to Projects that were sponsored by Canyon Creek Development and/or managed by Sunwest Management, including, but not limited to firms providing construction, interior decorating, pharmacy, advertising, and employee leasing services.

At all times material herein, Harder was registered with FINRA as a broker-dealer salesperson (CRD #5085573) for Canyon Creek Financial. He passed the Series 22 exam on or about December 12, 2006 and the Series 63 exam on or about September 13, 2006. The Director initially licensed him as a broker-dealer salesperson on December 13, 2006.

B. Overview

6. From February 1992 to March 2008, Sunwest Management grew from managing two senior living related properties in Oregon to over 270 properties in 36 different states. From March 2001 to June 2008, Canyon Creek Development entered into over 200 Facility Acquisitions and over 40 Land Acquisitions.

7. Each Project – with the assistance of Canyon Creek Financial, and, at times, Thurber and persons supervised by Thurber – solicited individual investors to raise funds that would be used to locate, acquire, construct, manage and/or operate the Project. From March 2001 to June 2008, Projects solicited over \$250 million in Project investments from over 1,200 investors – including over 500 Oregon investors.

8. Canyon Creek Development structured each Project acquisition in a consistent manner. Canyon Creek Development formed one limited liability company that acquired and maintained a fee interest in the property (the “Co-Owner” or “Property LLC”). Harder and others controlled the Co-Owner.

9. Canyon Creek Development divided the single fee interest in the Property into multiple co-ownership interests, which were sold to outside investors (“TIC Investors”) through a securities offerings conducted by Canyon Creek Financial. The TIC Investors then

owned the property as tenants-in-common with the Co-Owner. In exchange, TIC Investors were guaranteed return equal to a percentage of their investment (the "TIC Rent"), which until approximately January 2008 was usually 10 percent of a TIC Investor's investment but was generally lower for Projects that closed after January 2008. Harder and others generally retained a controlling interest in Facility Acquisition Property LLCs.

10. The Co-Owner then leased the Property and/or Facility to a second limited liability company that was formed by Canyon Creek Development (the "Master Tenant" or "Operator LLC") that would 1) operate, maintain, and manage the Facility with the assistance of Sunwest Management and others or 2) construct a Facility on the property.

11. If necessary, the Master Tenant – with the assistance of Canyon Creek Financial, Thurber and persons supervised by Thurber – solicited membership interests (the "Preferred B Interests") through a securities offering to finance the construction of a Facility. Harder with others, including at times Thurber, always retained a greater than 60 percent controlling interest in the Master Tenant. The Preferred B Interests were entitled to a return, which was typically 10 percent (the "Preferred Return").

12. In the case of a Land Acquisition, Canyon Creek Development managed the Project's finances. According to the terms of the Master Tenant's limited liability company agreement, Canyon Creek Development was not allowed to commingle funds from one Master Tenant with that of another Master Tenant.

13. Upon the completion or acquisition of a Facility, the Master Tenant would hire Sunwest Management to manage, market, and operate the Facility and manage its finances. Sunwest Management was required to account for each Project's funds separately.

14. The TIC Investors and Preferred B Interests relied on the efforts of Harder, Canyon Creek Development, Sunwest Management, and others for the payment of their TIC

Rent and Preferred Return and had no ability to control operations and/or management of the Project.

C. Offer and Sale of Securities

15. Canyon Creek Development, Canyon Creek Financial, Thurber, Harder, internal Canyon Creek Financial representatives supervised by Thurber, and others directly or indirectly marketed the TICs and Preferred B Interests by means of a confidential private placement memorandum (a “Prospectus”) and an executive summary (an “Executive Summary”). As sponsor, Canyon Creek Development issued the Prospectus and Executive Summary using information provided by Sunwest Management, Canyon Creek Development and others. At times, Canyon Creek Financial engaged Third-Party Brokers to market these securities.

16. In particular, Canyon Creek Development hired Canyon Creek Financial marketed securities through Canyon Creek Financial and Third-party Brokers with Canyon Creek Financial acting as managing broker dealer.

17. In addition, certain principals and employees of Canyon Creek Development, Canyon Creek Financial, and Sunwest Management, including Harder, met with potential investors in person at the Fairview Location regarding investment opportunities in Projects.

18. Harder and others, at times, told investors directly or indirectly, either orally or in writing, in connection with the offer or sale of securities that an investor’s funds would only be used towards their particular Project; that payment of their TIC Rent or Preferred Return was based on the successful operation of their particular Project – including the ability to increase the Facility’s occupancy to a specified “stabilized” level; that the risk of losing their investment was solely limited to that particular Project. In addition, Harder and others at times told potential investors that no Project had ever missed a TIC Rent or Preferred Return payment to investors.

19. Canyon Creek Financial and Thurber's supervision of Harder's conduct was not sufficient to identify misleading statements made by Harder or the omission of material information that was necessary to make other statements not misleading.

D. Liquidity Management/Transfer of Project Funds

20. As market and economic conditions turned less favorable, some Land Acquisitions Projects faced difficulty obtaining financing and constructing Facilities on time and on budget (some Land Acquisition Projects were delayed, suspended, or cancelled) and Sunwest Management was not able to improve the operations of some Facilities. As a result, some Projects did not have enough liquid assets or income from operations to meet obligations to creditors and investors. To manage those liquidity issues, Canyon Creek Development, Sunwest Management, and others applied many of the Projects' liquid assets collectively in a manner that satisfied short term capital requirements. At some point it became Canyon Creek Development's, Sunwest Management's, and others' practice to merely review all Project account balances in the morning for overdraft positions, and transfer funds from other Project accounts to cover those shortfalls. As a result, Canyon Creek Development, Sunwest Management, and others operated all Projects as if they were one integrated company.

21. Harder and others did not inform prospective investors in connection with the offer or sale of their securities that their Project funds would be transferred to other Project funds, and were therefore dependent on the success of other Projects; that some existing Facility Projects were not meeting their projections and that some Construction Projects were delayed, suspended or cancelled. Harder and others at times also omitted to state that the reason why other Projects had never missed a TIC Rent or Preferred Return payments was because certain Projects were reliant on other Projects for those payments.

E. Collapse of the Projects

22. On July 8, 2008, Canyon Creek Development informed all TIC Investors and Preferred B Interests by letter that some of their TIC Rent and Preferred Interest payments for July and August would be delayed. Periodically, Canyon Creek Development sent further correspondence to TIC Investors and Preferred B Interests stating that subsequent payments would also be delayed or missed. A small minority of TIC and Preferred B Interests were paid in July 2008 but all TIC Investor and Preferred B Interest payments were stopped by October 2008.

23. In October 2008 some Projects had sufficient net operating income to pay their respective TIC Investors and Preferred B Interests had they been run as a stand alone operation.

24. In or about September 2008, Sunwest Management, and certain equity holders of Sunwest Management and Canyon Creek Development hired Clyde A. Hamstreet & Associates, LLC to provide professional interim management and restructuring assistance to Sunwest Management, Canyon Creek Development, Canyon Creek Financial, the Projects, and others.

25. Beginning on or about October 2008, a number of Facilities began to go into receivership or foreclosure. Canyon Creek Development, Sunwest Management, Harder and others also began placing various Co-Owners into bankruptcy as a way to stem further foreclosures and receiverships.

26. On or about December 31, 2008, Harder filed for personal bankruptcy protection under Chapter 11 of the Bankruptcy Code.

F. DFCS Enforcement Actions

27. Effective October 10, 2008, Canyon Creek Development, Sunwest Management, and others entered into an ORDER SUSPENDING USE OF EXEMPTIONS

TO REGISTRATION REQUIREMENTS AND CONSENT TO ENTRY OF ORDER, (File Number: S-08-0044) with the Director. By the terms of that order, the Director suspended the use of the exemptions from the securities registration requirements under Oregon Securities Law by the Respondents and their successor interests. In conjunction with the issuance of that Order, Thurber signed an affidavit in which he agreed, *inter alia*, not to offer, sell, or solicit the purchase or sale of any security or other interest issued or offered by any Sunwest affiliate under or in reliance of any exemption from the registration requirements of the Oregon Securities Law from the effective date of his affidavit until such time as determined by the Director.

28. On September 21, 2009, the Director issued an administrative ORDER TO CEASE AND DESIST, ORDER DENYING EXEMPTIONS, ORDER ASSESSING CIVIL PENALTIES, AND NOTICE OF RIGHT TO A PUBLIC HEARING, (File Number: S-09-0028-1), against Sunwest Management, Canyon Creek Financial, Canyon Creek Development and other entities for violations of the Oregon Securities Law.

29. On January 22, 2010, Jon Harder and the Director entered into an ORDER TO CEASE AND DESIST, ORDER DENYING EXEMPTIONS, LICENSE APPLICATION BAR, ORDER ASSESSING CIVIL PENALTIES, VOLUNTARY SURRENDER OF LICENSE, AND CONSENT TO ENTRY OF ORDER, (File Number S-09-0028-2), to resolve the Division's findings that Jon Harder engaged in activities that constituted violations of the Oregon Securities Law.

G. SEC Litigation

30. On March 2, 2009, the United States Securities and Exchange Commission (the "SEC") filed a complaint against Sunwest Management, Canyon Creek Development, Canyon Creek Financial, Harder, and others citing securities fraud and sought an emergency court order freezing their assets as well as the assets of others (the "Complaint").

31. On the same day United States District Judge Michael R. Hogan (“Judge Hogan” or the “Court”) denied the relief sought by the SEC in the Complaint except for certain terms read into the record and issued by the Court in a temporary restraining order.

32. On March 10, 2009, Judge Hogan entered a preliminary injunction (the "Preliminary Injunction") against the named parties. The Court also 1) appointed Michael Grassmueck to act as a receiver (the “Receiver”) over Sunwest Management, Canyon Creek Development, Canyon Creek Financial and several other entities that were identified in Exhibit A of the Preliminary Injunction (“Exhibit A”) to, among other things, pursue claims against third parties and to examine the past conduct of the Sunwest Management, Canyon Creek Development, Canyon Creek Financial, Harder, and others, 2) enjoined creditors and claimants from filing lawsuits, liens or encumbrances or bankruptcy cases against any entity under receivership, and 3) gave Clyde A. Hamstreet & Associates, LLC, Clyde Hamstreet, and a Management Committee certain powers with respect to the operations, asset disposition, and restructuring of Sunwest Management, Canyon Creek Development, Canyon Creek Financial and the entities in Exhibit A, as supplemented.

33. On December 9, 2009 the Court entered a FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR PARTIAL SUMMARY JUDGMENT¹ where the Court found that Harder made material misstatements and omissions – including material misstatements and omissions in at least one Prospectus – in connection with the offer and sale of securities in violation of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder.

¹ Case number 09-cv-06056-HO; Document 997.

II. CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

A. ORS 59.015 Definitions

34. The TIC and Preferred B Interests described in this Order that were offered or sold between March 2001 and June 2008 are "securities" under ORS 59.015(19)(a) inasmuch as they were purchased by investors with a sum of money and/or debt, with the expectation that the investment would return a profit. The money raised from investors was pooled with other monies raised in the offering. The investors had little or no control over the operation of the investment and depended solely and exclusively on the efforts of Sunwest Management, Canyon Creek Development, Canyon Creek Financial, and others to generate the expected profits.

35. At all times material herein, Thurber supervised certain registered representatives employed by Canyon Creek Financial, including Harder. ORS 59.015(2).

B. Misstatement and Omissions

36. At all times material herein, Harder and others directly or indirectly in connection with the purchase or sale of securities, made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of ORS 59.135(2) including, but not limited to, the material misstatements and omissions contained in Findings of Fact Section C above.

C. Violations of ORS 59.205(13)

37. Canyon Creek Financial and Thurber did not adequately supervise the activities of Harder and others in violation of ORS 59.205(13).

III. ORDERS

A. Cease and Desist

38. The Director, pursuant to her authority under ORS 59.245, hereby ORDERS that John David Thurber CEASE and DESIST from violating any provision of the Oregon Securities Law.

B. Denial of Exemptions

39. The Director, pursuant to her authority under ORS 59.045, hereby ORDERS that the use by Thurber personally, and/or any current or successor business, its subsidiaries or assigns, in which he would be deemed an owner, officer, director, or control person, of any exemptions to Oregon securities registration requirements authorized by ORS 59.025 and ORS 59.035 are hereby DENIED until further order of the Director, except that any party that is or may be subject to the denial of exemptions may request a "no-action" letter pursuant to ORS 59.285, ORS 183.310, and OAR 441-001-0040 promulgated thereunder.

C. Lapse of License

40. Thurber hereby acknowledges that his Oregon broker-dealer salesperson license lapsed on December 31, 2008.

D. Agreement not to Apply for a Securities, Insurance, and other Financial Services Licenses Without Prior Approval

41. Thurber is hereby agrees that he will not apply hold, or renew any license or registration required by the Director in Oregon, including, but not limited to, securities, mortgage lending and mortgage banking, insurance, consumer finance, or manufactured structure dealer licenses in the State of Oregon without prior approval of the Director. The Director will review and act upon any future application or request for licensing or registration by Thurber according to the then current law. The Director's approval of any such license or registration application or request shall not be unreasonably withheld.

42. Any denial by the Director of a “no-action” letter or a license or registration application is subject to a contested case hearing pursuant to ORS 59.295 and ORS chapter 183.

E. Civil Penalties

The Director pursuant to her authority under ORS 59.995 hereby assesses the following **CIVIL PENALTIES**:

43. Thurber is ordered to pay a CIVIL PENALTY of \$20,000 (twenty thousand dollars) for continuing violations of ORS 59.205(13) as described herein.

44. The Director hereby SUSPENDS payment of \$15,000 (fifteen thousand dollars) of those CIVIL PENALTIES assessed above so long as Thurber is in full compliance with all terms of this Order; PROVIDED HOWEVER, that the suspended portion of the CIVIL PENALTIES will be immediately due and payable upon a determination by the Director, subject to ORS 59.295 that Thurber has committed new, material violations of the Oregon Securities Law as provided below or has violated any term of this Order, including but not limited to, nonpayment of the unsuspended portion of the CIVIL PENALTY.

F. Payment of Penalty to Restitution Fund

45. The Director and Thurber agree that the CIVIL PENALTIES assessed and collected shall be paid to a restitution fund created by the Receiver (the “Restitution Fund”) for the benefit of TIC Investors, Preferred B Interests, and other investors (collectively, the “Investors”) prior to the closing of the Restitution Fund or three years from the effective date of this Order, whichever occurs first.

G. Future Actions of the Director

46. The Director reserves the right to take further action to enforce this Order or to take appropriate action upon discovery of new violations of the Oregon Securities Law that arise from facts and circumstances outside the scope of this Order.

IT IS SO ORDERED.

Dated this 29th day of March, 2010, at Salem, Oregon.

CORY STREISINGER, DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES



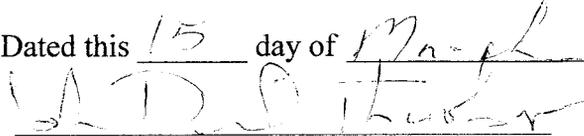
David C. Tatman, Administrator
Division of Finance & Corporate Securities

CONSENT TO ENTRY OF ORDER

I, John David Thurber, state that I have read the foregoing Order and fully understand the contents thereof; that I have been advised of the right to a hearing and of the right to be represented by counsel at any such hearing; that I have been represented by counsel in this matter; that I voluntarily and without any force or duress, consent to the entry of this Order, without admitting or denying the factual allegations and conclusions of law stated herein, expressly waiving any right to a hearing in this matter; that I understand the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Securities Law that are outside the scope of this Order; and that I will fully comply with the terms and conditions stated herein.

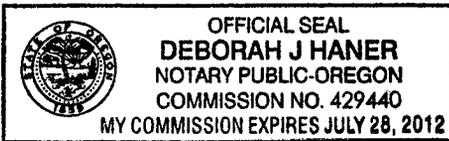
I further assure the Director that I will not effect securities transactions in Oregon unless such activities are in full compliance with the terms of this Order and with the Oregon Securities Law and Chapter 441 of the Oregon Administrative Rules promulgated thereunder.

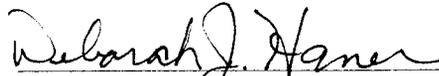
Dated this 15 day of March, 2010.


John David Thurber

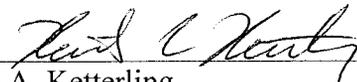
ACKNOWLEDGEMENT

Signed before me this 15th day of March, 2010 by John David Thurber, who was first duly sworn on oath or affirmation.




Signature of Notary Public

Approved as to form:


Keith A. Ketterling
Stoll Stoll Berne Lokting & Shlachter, P.C.
Attorney for John David Thurber