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Texas State Securities Board

208 E. 10th Street. 5th Floor
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IN THE MATTER OF
NCL DEVELOPMENT LLC;
ANDREW W. WEST AKA ANDY WEST;
AND ERIC WILLIAM KELLER AKA ERIC KELLER

§
§
§
§

Order No. ENF-07-CDO-1628

TO: NCL Development LLC
2602 Kings Road
Dallas, Texas 75214

Andrew W. West aka Andy West
2602 Kings Road
Dallas, Texas 75214

Eric William Keller aka Eric Keller
2602 Kings Road
Dallas, Texas 75214

EMERGENCY CEASE AND DESIST ORDER

This is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas ("Commissioner") of an EMERGENCY CEASE AND DESIST ORDER pursuant to Section 23-2 of The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et **seq.** (Vernon 1964 & Supp. 2006) ("Texas Securities Act").

The Staff of the Enforcement Division of the Texas State Securities Board has presented evidence sufficient for the Commissioner to find that:

FINDINGS OF FACT

1. NCL Development LLC ("Respondent NCL"), previously known as NewCenturyLiving, LLC, maintains a last known address at 2602 Kings Road, Dallas, Texas 75214.
2. Andrew W. West aka Andy West ("Respondent West") maintains a last known address at 2602 Kings Road, Dallas, Texas 75214.

3. Eric W. Keller aka Eric Keller ("Respondent Keller") maintains a last known address at 2602 Kings Road, Dallas, Texas 75214.
4. Respondents are offering and selling bridge loans and promissory notes with an annual interest rate of 12%, secured by membership interests in Respondent NCL, with an option to convert said note and any interest to LLC units in NewCenturyAssociates, LLC (sometimes called an LLP), and a cumulative percentage membership in NewCenturyHighrise, LLC, in certain instances containing the personal guaranty of Respondent West (hereinafter called "convertible notes").
5. The convertible notes have not been registered by qualification, notification or coordination and no permit has been granted for their sale in Texas.
6. Respondents have not been registered with the Securities Commissioner as dealers or agents at any time material hereto.
7. In connection with the offer for sale and sale of the convertible notes, Respondents West and NCL are intentionally failing to disclose the following material facts:
 - a. During and about 1988, Respondent West controlled and operated a real estate development-related company called Triad West, Inc. and Triad West, Inc. previously issued promissory notes guaranteed by Respondent West, as well as stock in Triad West, Inc., and neither Triad West, Inc. nor Respondent West repaid said notes or repaid funds pursuant to the guaranty;
 - b. During and about 1991, Triad West, Inc. and Respondent West were sued by Angelo Della Ripa, in a matter captioned *Angelo Della Ripa v. Triad West, Inc., et al.*, (Case Number CV 90 0384917S, Superior Court, Hartford/New Britain JD), in connection with the non-repayment of notes and guarantees and alleging that Respondent West conducted other businesses on the premises of Triad West, Inc. and used Triad West, Inc. funds for such other businesses without reimbursing Triad West, Inc. and Respondent West and Triad West were subject to a judgment of over \$100,000, in connection with said law suit;
 - c. In connection with the judgment against Respondent West and Triad West, Inc., said judgment was never satisfied by repayment to the Plaintiff;
 - d. During and about 1999, Respondent West controlled and operated a real estate development-related company called Sojourn Development Group, L.L.C. and Sojourn Development Group, L.L.C. issued notes and equity to investors and failed to repay said notes;
 - e. During and about 2000, Respondent West was sued in a matter known as *New Horizons Investments vs. Andrew W. West, Individually and d/b/a Sojourn Development Group, L.L.C.* (Case Number GN002115, District

Court, Travis County, Texas) and judgment was rendered in an amount exceeding \$100,000, in connection with allegations of breach of contract and fraud;

- f. During and about 1999, Respondent West and Sojourn Development Group were evicted from their business premises and judgment rendered against Respondent West in the matter captioned *Szilagyi, Pete v. West, Andrew* (Cause Number 182381, Justice Court, Precinct 5, Travis County, Texas); Respondent West was also evicted and judgment rendered against Respondent West, during 1999, from the premises at 1106 W. 29th Street, Travis County, Texas in the matter captioned *Tervelt, Paul vs. West, Andrew* (Cause Number 180135, Justice Court, Precinct 5, Travis County, Texas); and in or about March, 2006, Respondent was also evicted from the business premises of Respondent NCL, in the matter captioned *Francis Property Mgmt DBA 404 Rio Grande v. West, Andrew* (Cause No. 204434, Justice Court, Precinct 5, Travis County, Texas);
- g. In connection with Respondent West's eviction, relating to the matter of *Szilagyi, Pete v. West, Andrew*, Plaintiff Szilagyi alleged that Respondent West procured a lease from him by fraud by representing to Szilagyi that his income was \$148,000 and concealing that Respondent West, on or about the same date, represented he was a pauper in an unrelated eviction proceeding;
- h. Whether or not there existed any signed contracts among NewCentury Associates, LLC; NewCentury Highrise, LLC; and Respondent NCL relating to the transfers of units and percentage memberships, as set forth in the convertible notes;
- i. The intended uses of convertible note investor funds and the uses of prior Respondent NCL investor funds;
- j. The specific assets securing the guaranty made to convertible note investors and/or offerees by Respondent West;
- k. The specific business history of Respondent West's casino development business, including the loss of approximately \$1 million in connection with that business;
- l. The amount of money owed by Respondent NCL to Respondent West, Respondent Keller and other staff of Respondent NCL pursuant to compensation agreements;
- m. Whether or not any options had actually been acquired on the property that was to be the location of Respondent NCL's first building in Dallas, known as SKYe;

- n. The indebtedness of Respondent West to Gilbane Building Company or any affiliate;
 - o. The total percentage of equity Respondent NCL transferred to prior NCL investors, prior and current Respondent NCL staff and/or employees or agents, or third parties;
 - p. That from in or about 2004 until 2007, the following corporations for which Respondent West is listed as a principal and/or Director, forfeited their charters or certificates of authority, pursuant to the Texas Tax Code: Early Stage Forum, a Texas company, and Early Stage Network, Inc.; Emerald City Development, Inc.; Freedom: One Technology Inc.; AWEquities, Inc.; and Respondent NCL;
 - q. The amount of funds invested by Respondent West and prior Respondent NCL investors with Respondent NCL; and
 - r. During and about 1990, a judgment was rendered against Respondent West, in a Connecticut lawsuit known as *Hunt v. West* (cited as *21 Conn. App. 819, 576 A.2d 593*), for indemnification for monies owed pursuant to a guaranty.
8. In connection with the offer for sale and sale of said convertible notes, Respondents NCL and West are misrepresenting the following relevant facts: the amount of funds Respondent West invested in Respondent NCL; the amount of funds invested with Respondent NCL and the existence of a guaranteed maximum price contract with Gilbane Building Company, or any affiliate, the purported construction company to be involved in the construction of a high rise condominium.
9. In connection with the offer for sale and sale of the convertible notes, Respondents represent that Respondent West, in the past, has participated in real estate and casino development, which is materially misleading or otherwise likely to deceive the public, in light of the above-referenced alleged undisclosed facts.
10. In connection with the offer for sale and sale of the convertible notes, Respondents represent that Respondent NCL is a Texas limited liability company, which is materially misleading or otherwise likely to deceive the public, in light of the fact that it had forfeited its charter with the Texas Secretary of State.
11. In connection with the offer for sale and sale of the convertible notes, Respondents represent that Respondent Keller is a highly motivated entrepreneur with a background in real estate, which is materially misleading or otherwise likely to deceive the public, in light of the fact that Respondent Keller was previously affiliated with Sojourn Texas Development, Inc., a Texas corporation, with no disclosure of the existence of this venture in the instant offering; the fact that it accepted funds from investors and is now defunct; and has forfeited its corporate charter.

12. In connection with the offer for sale and sale of the convertible notes, Respondents represent that Respondent NCL treats its innovations as provisional patents, which is materially misleading or otherwise likely to deceive the public, in light of the fact that no patents had been applied for by Respondent NCL.
13. In connection with the offer for sale and sale of the convertible notes, Respondents represent that construction costs have been guaranteed, or that there was a guaranteed maximum price contract, which is materially misleading or otherwise likely to deceive the public, in light of the non-existence of any such guarantees by the purported construction company.
14. In connection with the offer for sale of the convertible notes, Respondent Keller is intentionally failing to disclose the following material facts:
 - a. Respondent Keller's compensation and the terms of his deferred compensation arrangement with Respondent NCL, as well as the compensation/deferred compensation of other prior or current staff of Respondent NCL;
 - b. The total percentage of equity Respondent NCL transferred to prior NCL investors, prior and current Respondent NCL staff and/or employees or agents, or third parties;
 - c. The intended use of Respondent NCL investor funds; the uses of prior Respondent NCL's investor funds and the amount of funds invested with Respondent NCL;
 - d. The prior eviction of Respondent West from a location at which Respondent NCL conducted business;
 - e. During and about 1999 until 2003, Respondent Keller was affiliated with Sojourn Texas Development, Inc., a Texas corporation, with no disclosure of the existence of this venture in the instant offering; the fact that it accepted funds from investors and is now defunct; has forfeited its corporate charter and the business failed, as well as the fact that Respondent Keller was previously associated with Respondent West and Sojourn Development Group, L.L.C. in connection with this venture;
 - f. That from in or about 2002 until 2007, the following corporations, for which Respondent Keller is listed as a principal and/or Director, forfeited their charters or certificates of authority pursuant to the Texas Tax Code: Kablars, LLC.; Roly Poly, LLC; Emerald City Development, Inc.; and Sojourn Texas Development, Inc.; and
 - g. Whether or not there existed any signed contracts among NewCenturyAssociates, LLC; NewCenturyHighrise, LLC; and Respondent

NCL relating to the transfers of units and percentage memberships, as set forth in the convertible notes.

CONCLUSIONS OF LAW

1. The above-described convertible notes offered for sale or sold are "securities" as that term is defined by Section 4.A of the Texas Securities Act.
2. Respondents are violating Section 7 of the Texas Securities Act by offering and selling securities in Texas at a time when the securities are not registered with the Securities Commissioner.
3. Respondents are violating Section 12 of the Texas Securities Act by offering and selling securities in Texas without being registered pursuant to the provisions of Section 12 of the Texas Securities Act.
4. Respondents are engaging in fraud in connection with the offer for sale and sale of securities.
5. Respondents have made an offer containing a statement that is materially misleading or otherwise likely to deceive the public.
6. Respondents' conduct, acts, and practices threaten immediate and irreparable public harm.
7. The foregoing violations constitute bases for the issuance of an Emergency Cease and Desist Order pursuant to Section 23-2 of the Texas Securities Act.

ORDER

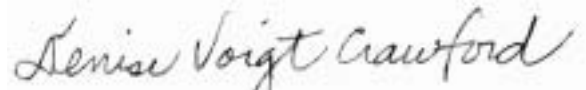
1. It is therefore ORDERED that Respondents immediately CEASE AND DESIST from offering for sale and selling any security in Texas until the security is registered with the Securities Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act.
2. It is further ORDERED that Respondents immediately CEASE AND DESIST from acting as securities dealers or agents in Texas until Respondents are registered with the Securities Commissioner or are acting pursuant to an exemption from registration under the Texas Securities Act.
3. It is further ORDERED that Respondents immediately CEASE AND DESIST from engaging in any fraud in connection with the offer for sale and sale of any security in Texas.
4. It is further ORDERED that Respondents immediately CEASE AND DESIST from offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.

NOTICE

Pursuant to Section 23-2 of the Texas Securities Act, you may request a hearing before the 31st day after the date you were served with this Order. The request for a hearing must be in writing, directed to the Securities Commissioner, and state the grounds for the request to set aside or modify the Order. Failure to request a hearing will result in the Order becoming final and non-appealable.

You are advised under Section 29.D of the Texas Securities Act that any knowing violation of an order issued by the Securities Commissioner under the authority of Section 23-2 of the Texas Securities Act is a criminal offense punishable by a fine of not more than \$5,000, or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

SIGNED AND ENTERED by the Securities Commissioner this 2nd day of May, 2007.



DENISE VOIGT CRAWFORD
Securities Commissioner