

Judge Berman

09 CIV 4150

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION



Plaintiff,

-against-

MICHAEL STRAUSS,
STEPHEN HOZIE, and
ROBERT BERNSTEIN

Defendants.

09 Civ. ()

COMPLAINT

Plaintiff Securities and Exchange Commission, for its Complaint against defendants Michael Strauss ("Strauss"), Stephen Hozie ("Hozie") and Robert Bernstein ("Bernstein") (collectively the "Defendants"), alleges:

SUMMARY

1. This case arises from an accounting fraud by senior officers of one of the nation's largest mortgage companies, American Home Mortgage Investment Corp. ("AHM" or the "Company"). Under the leadership of Strauss, the chairman, chief executive officer and president, Hozie, the chief financial officer, and Bernstein, the controller, AHM enjoyed a reputation as a successful and fast-growing company before

filing for bankruptcy in August 2007. In addition to originating, selling and holding loans, AHM also held mortgage backed securities (“MBS”) as interest generating investments.

2. For seven years following its initial public offering in 1999, AHM reported a profit every quarter. AHM increased profits by maximizing its production of new mortgages. By 2006, AHM was originating billions of dollars of mortgages without verifying the income of the borrower. This highly risky practice exposed AHM to serious liquidity problems when the pace of defaults on these loans accelerated in early 2007. Rather than report the devastating impact these defaults would have on AHM, Strauss and Hozie set materially understated reserves that transformed what should have been AHM’s first-ever quarterly loss into a profit.

3. Strauss and Hozie also made or caused AHM to make misleading public statements and omitted material information from public statements, including:

- concealing the fact that the majority of AHM’s loans were originated without income verification;
- failing to disclose that AHM had sold a majority of its \$7.6 billion MBS portfolio held at March 31, 2007 during the first eighteen days of April 2007 in order to meet its pressing undisclosed liquidity needs; and
- overstating AHM’s available cash and liquidity in an April 30, 2007 earnings press release (“April 30, 2007 Release”) and conference call (“April 30, 2007 Earnings Call”) and in AHM’s Form 10-Q for the period ended March 31, 2007 and filed with the Commission on May 10, 2007 (“Form 10-Q”).

4. On the basis of these and other materially misleading statements and omissions, AHM also raised approximately \$90 million through a May 4, 2007 offering (“May 4, 2007 Offering”) of shares to Citigroup Global Markets Inc. (“Citigroup”).

5. In order to hide the truth, Strauss, Hozie and Bernstein, misled AHM’s Auditor (the “Auditor”) during AHM’s quarterly review for the period ending March 31, 2007 (“Quarterly Review”) about the Company’s financial condition by misrepresenting the adequacy of the reserves and concealing the existence of approximately \$20 million in aged receivables that should have been written off by the end of the first quarter of 2007.

6. AHM is now in the process of liquidating pursuant to an Amended Chapter 11 Plan of Liquidation, which was confirmed by the Bankruptcy Court on February 23, 2009.

VIOLATIONS

7. Based on the conduct alleged in this Complaint:
- a. Defendants Strauss and Hozie are liable for violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1, 13b2-2 and 13a-14 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2 and 240.13a-14].
 - b. Defendant Bernstein is liable for violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2].

- c. Defendants Strauss and Hozie aided and abetted violations by AHM of Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rules 10b-5 and 13a-11 of the Exchange Act [17 C.F.R. §§ 240.10b-5 and 240.13a-11].
- d. Defendants Strauss, Hozie and Bernstein aided and abetted violations by AHM of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12.b-20 and 240.13a-13].

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to the authority conferred by Section 20 of the Securities Act [15 U.S.C. § 77t], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking permanent injunctions against Strauss, Hozie and Bernstein and officer-and-director bars against Strauss and Hozie.

9. The Commission also seeks final judgments requiring the Defendants to disgorge any ill-gotten gains and to pay prejudgment interest thereon and ordering the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

10. This Court has jurisdiction pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 77u(e) and 78aa].

11. The Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails, or of any facility of any

national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein.

12. Venue lies in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the alleged transactions, acts, practices, and courses of business occurred in the Southern District of New York. Specifically, during the relevant period, shares of AHM were traded on the New York Stock Exchange, which is located in the Southern District of New York.

THE DEFENDANTS

13. **Strauss**, age 50, is a resident of Southampton, New York, and was the chairman, chief executive officer and president of AHM. In 2006, Strauss received about \$3.5 million in compensation including salary and bonus. On June 26, 2007, Strauss drew a \$3 million margin loan from an existing credit line that was collateralized by AHM shares and wired these funds to a personal bank account at another financial institution. On August 1, 2007, after the value of AHM's shares had dropped precipitously, the brokerage firm that held the collateral liquidated Strauss's AHM shares to satisfy his outstanding loan. Based on the residual value of the shares, Strauss's loan resulted in a profit of approximately \$2 million.

14. **Hozie**, age 50, is a resident of Columbia, South Carolina, and was an executive vice president and chief financial officer of AHM. In 2006, Hozie received about \$1.3 million in compensation including salary and bonus.

15. **Bernstein**, age 43, is a resident of West Islip, New York, and was an executive vice president and controller of AHM. Bernstein received about \$700,000 in compensation in 2006.

OTHER RELEVANT ENTITIES

16. **American Home Mortgage Investment Corp.** was a Maryland corporation headquartered in Melville, New York. The Company was founded by Michael Strauss and held its public offering in 1999. AHM earned income from, among other things, originating mortgage loans, selling loans, servicing loans and earning interest from holding its portfolios of MBS and loans held for investment. On August 6, 2007, the Company filed for bankruptcy and is now in the process of liquidating. AHM's common and preferred stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until it was delisted on September 6, 2007.

FACTS

I. Strauss and Hozie Materially Understated AHM's Reserves.

A. Strauss, Hozie and Bernstein Knew that Losses Had Risen Dramatically During the First Quarter of 2007.

17. By 2006, AHM had become one of the largest mortgage originators in the United States. AHM originated, sold and held for investment first and second lien mortgages.

18. AHM grew by originating an escalating number of mortgages. For example, the Company increased its loan originations from \$45.3 billion in 2005 to \$58.9 billion in 2006. In the first quarter of 2007, AHM originated \$16.7 billion in loans, which represented a 27.2% increase over the same period in the prior year.

19. AHM's growth was achieved, at least in part, by originating riskier loans.

For example, AHM gave mortgages to borrowers based on "stated income," which means that AHM did not verify the borrowers' income. As of December 31, 2006, over 60% of AHM's loans were originated without income verification. Over 70% of AHM's loans held for investment and nearly half of its loans held for sale were stated income loans. This information was not adequately disclosed to investors.

20. Some of these stated income mortgages were high loan-to-value loans originated as "piggyback loans." These loans were particularly risky to the Company because AHM allowed a piggyback borrower to obtain a first lien and a second lien at the same time for all, or nearly all, of the purchase price of a home without verifying the borrower's income.

21. By the end of March 2007, because of weak market conditions, AHM had not sold a significant number of its loans and thus had an increasingly large portfolio of loans for sale on its books. The dollar amount of the loans that the Company held for sale tripled from about \$1.5 billion at December 31, 2006 to about \$4.8 billion at March 31, 2007. Carrying this large balance of loans created significant problems for AHM, requiring the Company to fund the costs associated with holding these loans and exposing it to the risk that these loans could default and result in losses to AHM.

22. By early April 2007, Strauss, Hozie and Bernstein learned that AHM was experiencing significant losses on delinquent second liens that the Company had liquidated. In other words, they knew that AHM expected to lose a significant amount of money on each delinquent second lien that went through the foreclosure process. In fact, in an email dated April 4, 2007, an AHM employee informed them that in March 2007 losses on second liens and home equity lines of credit were approaching 100%, meaning

that by the end of the first quarter, AHM's delinquent second liens were expected to be nearly worthless.

B. Strauss and Hozie Knew Substantial Reserve Increases Were Needed.

23. In order to reflect expected loan losses in its April 30, 2007 Release and Form 10-Q as well as to comply with U.S. Generally Accepted Accounting Principles ("GAAP"), AHM needed to record adequate reserves for its loans held for investment ("LHI") and loans held for sale ("LHS") portfolios to cover these losses. For example, AHM needed to record adequate reserves to account for the fact that during the first quarter of 2007, delinquencies on AHM's \$1.5 billion in loans held for sale accounted for at the lower of cost or market had nearly doubled from about \$124.3 million at December 31, 2006 to about \$242.9 million at March 31, 2007.

24. AHM was also required to report in its financials a reserve amount for loans that had been sold with recourse for early payment default ("EPD") and other recourse provisions that could obligate AHM to repurchase the loans ("repurchase reserve"). These recourse provisions were included in loans that AHM sold, and they essentially allowed the loan buyer to require AHM to repurchase the loan in the event of a default, generally within the first three months. Despite this exposure, AHM had no policy for setting a repurchase reserve and did not have a repurchase reserve until 2006, when the Company recorded one as a result of an acquisition of another company.

25. Strauss and Hozie knew that repurchase requests had increased significantly during the first quarter of 2007.

26. To analyze how much reserves for LHI, LHS and for repurchases (collectively, the "Reserves") needed to be increased in the first quarter of 2007, AHM

calculated a range of rates of loss that it had experienced on delinquent first and second liens that it had liquidated. AHM referred to its rates of loss on liquidated liens as its "loss severity rates." AHM's loss severity rates for first liens ranged from 8.68% up to 22.5%. AHM's loss severity rates for second liens were alarmingly high, ranging from 72.62% up to 103.8%.

27. Thus, by March 31, 2007, for every \$100.00 in delinquent second liens that AHM held, using the 72.62% loss severity rate, the Company expected to lose \$72.62 out of \$100.00 on these liens upon liquidation.

28. AHM applied its loss severity rates to its delinquent first and second liens and to the repurchases it expected to make based on repurchase requests it had received. The result of this calculation showed the amount by which the Company needed to increase its reserves. AHM's loss severity rates represented the best information AHM had available about the losses the Company would experience based on delinquent LHI and LHS in its loan portfolios and expected repurchases at March 31, 2007. Thus, for the first quarter of 2007, Strauss and Hozie were obligated by GAAP to set the reserves based on the loss severity rate ranges that AHM had calculated.

29. On April 16, 2007, Bernstein sent Hozie three analyses of AHM's first quarter 2007 reserves using AHM's loss severity rates. Hozie forwarded these analyses to Strauss on the same day.

30. The first analysis applied the loss severity rate of 8.84% that AHM had calculated for the twelve month period ended March 31, 2007 to AHM's delinquent first liens in its LHS and LHI portfolios and to expected repurchases of delinquent first liens. The analysis applied a loss severity rate of 72.62% that AHM had calculated for its

second liens during this period to AHM's delinquent second liens in its LHS and LHI portfolios and to expected repurchases of delinquent second liens. As this analysis showed, when combined, the average loss severity rate based on these first and second lien loss severity rates was 26.6%. Based on this analysis, AHM needed to increase its reserves from about \$43.1 million at December 31, 2006 to \$126.1 million at March 31, 2007 – an increase of about \$83 million.

31. A second analysis Bernstein sent Hozie applied the loss severity rate of 8.68% that AHM had calculated for the three month period ended March 31, 2007 to AHM's delinquent first liens in its LHS and LHI portfolios and to expected repurchases of delinquent first liens. The analysis applied the second lien loss severity rate of 88.6% that AHM had calculated for its second liens during this period to AHM's delinquent second liens in its LHS and LHI portfolios and to expected repurchases of delinquent second liens. As this second analysis showed, when combined, the average loss severity rate based on these first and second lien loss severity rates was 30.94%. Under this analysis, total reserves needed to be increased to approximately \$146.6 million at March 31, 2007 – an increase over the 2006 year-end reserve of more than \$103 million.

32. In addition to the substantial reserves that this analysis indicated were needed, the three month analysis also highlighted that AHM's second lien loss rates had increased in the first quarter of 2007.

33. The third analysis that Bernstein sent to Hozie applied a projected first lien loss severity rate of 22.5% to AHM's delinquent first liens in the LHS and LHI portfolios and to first liens that the Company expected to repurchase and a projected second lien loss severity rate of 103.8% to AHM's delinquent second liens in the LHS and LHI

portfolios and to second liens that the Company expected to repurchase. Thus, the loss severity rate for second liens in this analysis assumed that AHM would lose 100% of the value of the liens and incur additional costs related to liquidating the liens when these properties went through foreclosure. As this projected analysis showed, when combined, the average loss severity rate based on these first and second lien loss severity rates was 45.11%. This projected loss severity rate showed that reserves should have been increased to approximately \$214 million at March 31, 2007. When Hozie forwarded this analysis to Strauss, he characterized this increase as “scary large.”

C. Strauss and Hozie Reported Materially Understated Reserves in Both the April 30, 2007 Release and the Company’s Form 10-Q.

34. Despite the detailed reserve analyses by lien type that Bernstein had provided, Strauss and Hozie increased AHM’s reserves for the first quarter of 2007 by an inadequate amount. The reserves were increased to about \$87.8 million, which was about \$38 million less than the first analysis, \$58 million less than the second analysis and \$126 million less than the third analysis showed were required for the first quarter of 2007. Strauss and Hozie did not set the first quarter 2007 reserves in accordance with GAAP. By recording inadequate first quarter 2007 reserves on AHM’s books, Strauss, Hozie and Bernstein knowingly or recklessly falsified AHM’s books and records.

35. The reserves that Strauss and Hozie knowingly or recklessly reported in the Form 10-Q and that were reflected in the Company’s April 30, 2007 Release were woefully and materially understated. Recording adequate reserves for the first quarter of 2007 would have resulted in the Company reporting its first ever quarterly loss.

D. Hozie Expressed Concerns to Strauss about the Company’s Reserves.

36. By the time Hozie was assessing the adequacy of the reserves for the first

quarter of 2007, he believed that the repurchase reserve for the period ended December 31, 2006 had been inadequate. In an April 10, 2007 email discussing the period ended December 31, 2006, Hozie acknowledged that for certain types of repurchases, “in hindsight, we did not reserve enough[.]”

37. Hozie also documented his concerns about first quarter reserve levels. For example, in a draft, undated email he gave to Strauss, Hozie wrote that by “setting reserves without factoring in the first versus second lien split, we are potentially setting ourselves up for much larger reserve provisions later.”

38. Also, on April 17, 2007, Hozie emailed Strauss that he was “nervous” about the reserve for LHS given the concentration of non-performing (delinquent) second liens in this portfolio and expressed a “similar concern” about the reserve for LHI. In a Sunday morning email to Strauss dated April 29, 2007, the day before the Company’s earnings announcement, Hozie again raised his concern about loss severity rates AHM had calculated and specifically noted the disparity between first and second lien loss severity rates, commenting that “the severity [rates] are much higher for the LHFS [LHS] than the LHF1 [LHI] or residuals due mainly to the higher concentration of second liens.”

E. Strauss and Hozie Did Not Set Reserves in Accordance with Applicable Accounting Provisions.

39. Strauss and Hozie knowingly or recklessly did not report AHM’s reserves for LHI, LHS or repurchases in accordance with GAAP in the Company’s Form 10-Q and did not reflect these reserves in accordance with GAAP in the Company’s April 30, 2007 Release.

40. GAAP requires that a reserve for LHI be established for estimated probable incurred credit losses, *i.e.*, scheduled loan payments that are not expected to be

received based on existing events and conditions, using all available information to estimate these losses. *See* Statement of Financial Accounting Standards No. 5.

41. Strauss and Hozie disregarded AHM's own calculations of the range of its expected losses based on its loss severity rates, which showed that at a minimum the reserve for LHI needed to be increased to about \$25.6 million. Under AHM's two other analyses, the reserve would need to be increased to over \$29 million or \$43 million. Instead, Strauss and Hozie reported a reserve for LHI of only \$16.6 million in the Company's Form 10-Q.

42. GAAP requires that for a loan held for sale, accounted for using a lower of cost or market treatment, a reserve be recognized for declines in the fair value of the loan below the cost of that loan. For a loan held for sale, accounted for using fair value accounting, changes in fair value (such as a decline in fair value as a result of delinquency) are reflected as changes in the carrying amount of the loan (these loans do not need a separate reserve). *See* Statement of Financial Accounting Standards No. 159.

43. Strauss and Hozie disregarded AHM's calculations of its expected losses based on its loss severity rates, which showed that at a minimum the reserves for LHS needed to be increased to about \$64.6 million. Under AHM's two other analyses, the reserve would need to be increased to over \$75 million or \$109 million. Instead, Strauss and Hozie reported a reserve for LHS of about \$52.8 million in AHM's Form 10-Q.

44. Strauss and Hozie increased the reserve for LHS only after they had an unrelated gain to use as an off-set for part of the increase. In an April 22, 2007 email to another AHM employee, Hozie noted that increasing loss reserves by the amount of the unrelated gain would "make our pre-tax income neutral."

45. GAAP requires that a repurchase reserve be recognized for loans sold with recourse at the time of sale in an amount equal to the fair value of the recourse obligation. Thus, AHM was required to record a reserve for every loan that it sold with recourse. See Statement of Financial Accounting Standards No. 140.

46. AHM did not reserve for all loans that it sold with recourse. Rather, it reserved only for loans that it expected to repurchase based on having received an actual repurchase request from a loan purchaser. Thus, AHM's repurchase reserve did not comply with applicable GAAP.

47. Strauss and Hozie disregarded AHM's calculations of its expected losses based on its loss severity rates, which showed that at a minimum the repurchase reserve needed to be increased to about \$35.9 million. Under AHM's two other analyses, the reserve would need to be increased to over \$41 million or \$60 million. Instead, Strauss and Hozie reported that AHM's repurchase reserve was about \$18.4 million in the Company's Form 10-Q.

48. Strauss and Hozie certified the false and misleading quarterly report in AHM's Form 10-Q.

II. Strauss and Hozie Concealed AHM's Liquidity Issues and the Characteristics of the Company's Loans.

49. In order to further mislead investors about the Company's prospects in the spring of 2007, Strauss and Hozie also made misrepresentations and omissions that were designed to mislead investors into believing that the Company was much more liquid than it actually was, including the following:

- the Company's March 6, 2007 Release misled investors about its stated income loans in order to conceal the Company's true exposure to these

products as they became delinquent or required repurchase;

- the Company's April 30, 2007 Release and Form 10-Q concealed the fact that the Company actually had much less cash available than it was reporting by concealing that much of its cash position was restricted; and
- the Company concealed the fact that it was generating cash by selling billions of dollars of securities from its MBS investment portfolio.

Had AHM disclosed complete and accurate information, investors would have known that AHM needed cash and was confronting liquidity issues.

A. Strauss and Hozie Made Misleading Disclosures about the Characteristics of AHM's Loans, Which Concealed AHM's Exposure on These Loans.

50. In furtherance of their fraud, Strauss and Hozie knowingly or recklessly issued false and misleading disclosures about the quality of the loans that AHM originated and held at a time when an increasing number of riskier loans that AHM had been originating, such as stated income, high loan-to-value loans, were becoming delinquent.

51. Specifically, AHM's March 6, 2007 Release ("March 6, 2007 Release"), which was filed as an exhibit to the Company's March 7, 2007 Form 8-K and signed by Hozie, misled investors about the riskiness of AHM's loans. The March 6, 2007 Release disclosed that the Company held only between 8% and 10% of a riskier type of non-prime loan called Alternate A or "Alt A." This disclosure was materially misleading because the percentage was in fact much higher.

52. The March 6, 2007 Release minimized AHM's Alt A loan holdings by excluding from the percentage disclosed certain types of loans that the Company had described as Alt A in its Form 10-K for the period ended December 31, 2006 ("Form 10-

K”), filed just 5 days earlier. The Form 10-K, which Strauss and Hozie signed, described Alternate A first lien mortgage loans as those which “entail special underwriting considerations, such as a higher loan-to-value ratio or limited income or asset verification.”

53. Had AHM used this definition, AHM’s March 6, 2007 Release would have disclosed that about 67% of the loans that AHM held were Alternate A. As Hozie acknowledged in a March 1, 2007 email:

You can see that about 60% of our total originations were less than full doc. By many industry standards, that means that about 60% of our originations are ALT-A and that is only including the pay option arms that have less than full doc. If you include all pay option arms and other loan types with less than full doc, our percentage of Alt-A in Q4 [2006] would be 65%. Thus, we need to be careful when we disclose how much of our originations are Alt-A.

54. Hozie had prepared a draft of the March 6, 2007 press release that included a column that disclosed the percentage of loans in each category that were originated without verifying the borrower’s income. Strauss deleted that column before issuing the press release. Had that information been included, investors would have known that at December 31, 2006, 49.9% of the loans held for sale and 70.3% of the loans held for investment by AHM were originated without verifying the borrower’s income.

B. Strauss and Hozie Failed to Disclose that AHM Sold a Majority of its Mortgage-Backed Securities in April 2007.

55. While the Company touted its liquidity to the market, AHM through Strauss and Hozie knowingly or recklessly failed to disclose that it had sold a majority of its \$7.6 billion MBS investment portfolio in the first eighteen days of April 2007 in order to generate liquidity.

56. Because the MBS sales constituted a material disposition of assets, AHM was required to inform its investors about the sale in a Form 8-K filing by at the latest on or about April 24, 2007. AHM, through Strauss and Hozie, failed to disclose these sales.

57. Failing to disclose these sales helped to conceal AHM's severe liquidity problems, which were caused in part by margin calls, requests from loan purchasers that AHM repurchase delinquent loans pursuant to EPD provisions and requests for additional collateral from lenders.

C. Through AHM's April 30, 2007 Release, its Earnings Conference Call and its Quarterly Filing, Strauss and Hozie Misled Investors About AHM's Cash Position.

58. To hide liquidity problems, Strauss and Hozie, knowingly or recklessly misrepresented the Company's cash position in AHM's April 30, 2007 Release, which was filed as an exhibit to the Form 8-K/A on the same date and signed by Hozie.

59. The financials included in that Release reflected that AHM had about \$837 million in cash at March 31, 2007, which was more cash than the Company had reported at year-end 2006. However, the April 30, 2007 Release did not disclose that about \$632 million of its \$837 million in cash and cash equivalents was restricted, meaning that it was limited as to use or withdrawal. In other words, actual cash on hand was substantially less than the amount described as "cash and cash equivalents" and, therefore, unavailable to address liquidity problems.

60. Strauss and Hozie knew that a majority of the Company's cash was restricted before April 30, 2007. In an email to Strauss on Sunday, April 22, 2007, Hozie advised Strauss that the Company's cash was "very large and most is restricted."

61. In an email from Hozie to Strauss, dated April 30, 2007 and sent just

before the April 30, 2007 Earnings Call, Hozie wrote that he wanted to discuss with Strauss how to handle possible analyst questions that he hoped to avoid, including that \$632 million of the Company's \$837 million in cash was restricted.

62. Despite AHM's severe liquidity issues, when Strauss was asked for an update on liquidity on the April 30, 2007 Earnings Call, he responded, "Well, we have a fair amount of liquidity, especially including our cash reserve. We took in some repo, of [sic] because we had some extra liquidity at the end of the quarter. We also are fortunate to have highly supportive warehouse lenders."

63. Strauss and Hozie also knowingly or recklessly under reported restricted cash in AHM's Form 10-Q by \$300 million, which was improper under applicable GAAP. In order to understate restricted cash, Bernstein instructed an AHM employee to reclassify two accounts totaling nearly \$300 million from restricted to unrestricted, with no apparent justification. This allowed Strauss and Hozie to make it appear that AHM had access to about \$300 million more in cash than the Company in fact had access to at March 31, 2007. (Restricted cash is cash and cash items which are restricted as to withdrawal or usage. *See* Regulation S-X, Article 5, Rule 5-02, 1, Cash and Cash Items.)

64. As a result, AHM's Form 10-Q disclosed that only about \$310 million of its cash was "reserved" or restricted when in fact, about \$632 million of AHM's cash was restricted at March 31, 2007.

65. In the second quarter, the two accounts that had been reclassified internally as unrestricted for the purpose of calculating AHM's cash as reflected in its first quarter Form 10-Q, were again classified as restricted.

66. Hozie knew that there was no justification for excluding these accounts from restricted cash, and Strauss and Hozie knew or recklessly disregarded that the amount of restricted cash AHM reported was significantly understated.

**III. AHM Raised Approximately \$90 Million
Based on Its Misleading Statements and Omissions.**

67. On April 30, 2007, after the market closed, AHM announced that it would be engaging in an offering of 4 million shares of common stock to Citigroup by way of a block sale at \$23.10 per share for proceeds of approximately \$90 million before expenses. The offering occurred on May 4, 2007, following the misleading disclosures and omissions.

68. This offering incorporated by reference the April 30, 2007 Release including its misrepresentations about AHM's reserves and available cash.

69. Investors who purchased these shares did not know about the riskiness of the loans AHM originated and held or about the fact that the Company had sold about half of its mortgage-backed securities portfolio earlier in April.

70. After purchasing AHM's shares, Citigroup promptly sold them to its customers, including retail customers, who could only have believed that AHM had about \$837 million in cash and approximately \$7.6 billion in mortgage-backed securities based on the Company's misleading disclosures.

**IV. The Defendants Mised AHM's Auditor
in Connection with the Quarterly Review.**

71. Hozie and Bernstein knowingly or recklessly misled AHM's Auditor about the adequacy of the Company's reserves for the first quarter of 2007. At Hozie's

direction, Bernstein provided the Auditor with a misleading schedule that showed that AHM's reserves were adequate for the period ended March 31, 2007 based on a loss severity rate of about 18.5%. In fact, AHM's own calculations (see paras. 30, 31 and 33) showed an actual average loss severity rate of at least 26.6%, and possibly 30.94%, or even 45.11%. Hozie and Bernstein both knew that the Company's internal reserve calculations showed that, in order to be adequately reserved, it needed to report significantly more reserves than resulted from applying an 18.5% loss severity rate to AHM's delinquent first and second liens. However, they did not disclose these calculations to the Auditor.

72. Strauss knew that the reserves were materially understated. He also knew that the Auditor would be reviewing the adequacy of the reserves in connection with the Quarterly Review of first quarter 2007 results and that Hozie and Bernstein would need to provide the Auditor with support for the reserve number. Strauss knew or recklessly disregarded that the supporting information that Hozie and Bernstein would provide to the Auditor would be designed to mislead the Auditor so that it would accept the materially understated reserve figure.

73. Strauss and Hozie knowingly or recklessly signed the materially misstated Form 10-Q implicitly representing to the Auditor that the financials were accurate when they knew that they were not because of misstatements and omissions, including the materially understated reserves.

74. In addition, in connection with the Auditor's Quarterly Review, Strauss, Hozie and Bernstein knew and concealed from the Auditor that the Company had approximately \$20 - \$25 million of aged receivables on its books that had to be written-

off by, at the latest, March 31, 2007. A write-off of this magnitude would have had a material impact on AHM's first quarter of 2007 financials.

75. It appears that a large, aged receivable balance of potentially \$15 million or more had existed well before the first quarter of 2007. For example, for the period ended December 31, 2006, in order to hide the size of the receivable balance from the Auditor, Bernstein instructed an AHM employee to reclassify approximately \$20 million in liabilities from other accounts to the account containing these receivables. This made the account appear to have a liability balance, instead of a large receivable balance, on the documents provided to the Auditor.

76. Because some of the liabilities that were reclassified to this account were satisfied during the first quarter, the account again reflected a large receivable balance, which would have been apparent to the Auditor during the Quarterly Review. In addition, the accounts from which liability balances had been reclassified also now reflected receivable balances. To avoid detection by the Auditor, Bernstein instructed the same employee to reclassify additional liabilities of approximately \$20 million from other accounts to hide these receivable balances in connection with Auditor's first quarter of 2007 review.

77. The Auditor did not learn of these receivables until July 2007 and the issue was not resolved before AHM declared bankruptcy.

78. AHM filed no quarterly or annual reports after the March 31, 2007 Form 10-Q.

**V. Strauss, Hozie and Bernstein Falsified Records
And Failed to Implement or Circumvented Internal Controls.**

79. Strauss, Hozie and Bernstein falsified AHM's books, records or accounts for the first quarter of 2007 in order to understate the reserves and restricted cash and to conceal the approximately \$20 million in aged receivables on AHM's books. Strauss, Hozie and Bernstein also failed to implement or circumvented AHM's internal controls in order to understate the reserves and restricted cash and to conceal the approximately \$20 million in aged receivables on AHM's books.

FIRST CLAIM FOR RELIEF

**Violations of and Aiding and Abetting Violations of
Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Defendants Strauss and Hozie)**

80. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

81. Strauss and Hozie, directly or indirectly, singly or in concert, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase and sale of securities: (a) have employed devices, schemes and artifices to defraud; (b) have made untrue statements of material fact, and have omitted state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or (c) have engaged in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

82. As described in the paragraphs above, Strauss and Hozie, directly or

indirectly, singly or in concert, have violated, are violating, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5].

83. By reason of the activities herein described, Strauss and Hozie knowingly or recklessly aided and abetted AHM's violations of Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

SECOND CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act (Defendants Strauss and Hozie)

84. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

85. Strauss and Hozie, directly and indirectly, singly and in concert, knowingly or recklessly, by the use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or by the use of the mails, in the offer or sale of securities: (a) have employed devices, schemes or artifices to defraud; (b) have obtained money or property by means of untrue statements of material fact, or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) have engaged in transactions, acts, practices and courses of business which operated or would operate as a fraud or deceit upon purchasers of securities or other persons.

86. As described in the paragraphs above, Strauss and Hozie have violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM FOR RELIEF

Violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 Thereunder (All Defendants)

87. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

88. As described above, Strauss, Hozie and Bernstein knowingly circumvented or knowingly failed to implement a system of internal accounting controls and knowingly falsified, directly or indirectly, or caused to be falsified books, records and accounts of AHM that were subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

89. By reason of the foregoing, the Defendants, singly or in concert, directly or indirectly, violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

FOURTH CLAIM FOR RELIEF

Aiding and Abetting AHM's Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 Thereunder (All Defendants Rules 12b-20 and 13a-13; Defendants Strauss and Hozie Rule 13a-11)

90. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

91. AHM failed to make required reports and to include in the Company's financial reports accurate information or in addition to the information expressly required to be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11

and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13].

92. By reason of the foregoing, Strauss and Hozie aided and abetted AHM's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a.13].

93. By reason of the foregoing, Bernstein aided and abetted AHM's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 [17 C.F.R. §§ 240.12b-20 and 240.13a.13].

FIFTH CLAIM FOR RELIEF

Aiding and Abetting AHM's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act (All Defendants)

94. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

95. Through their actions described above, Strauss, Hozie and Bernstein aided and abetted AHM's failure to:

a. make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; or

b. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

i. transactions were executed in accordance with management's general or specific authorization;

- ii. transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or any other criteria applicable to such statements, and to maintain accountability for assets;
- iii. access to assets was permitted only in accordance with management's general or specific authorization; and
- iv. the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

96. Strauss, Hozie and Bernstein knowingly or recklessly circumvented or failed to implement a system of internal accounting controls and knowingly or recklessly falsified books, records and accounts as described above.

97. By reason of the foregoing, Strauss, Hozie and Bernstein aided and abetted AHM's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A) and § 78m(b)(2)(B)].

SIXTH CLAIM FOR RELIEF

Violations of Rule 13a-14 of the Exchange Act (Defendants Strauss and Hozie)

98. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

99. As described above, Strauss and Hozie in their former capacities as chief executive officer and chief financial officer of AHM, directly or indirectly, each signed a required certification of AHM's Form 10-Q for the period ended March 31, 2007 and filed with the Commission on May 10, 2007, which each knew was false or misleading when made.

100. By reason of the foregoing, Strauss and Hozie violated Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14].

SEVENTH CLAIM FOR RELIEF

Violations of Rule 13b2-2 of the Exchange Act

(All Defendants)

101. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

102. As described above, Strauss, Hozie and Bernstein, directly or indirectly, singly or in concert, made or caused to be made materially false or misleading statements, or omitted to state or caused another person to omit to state material facts necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading to an accountant, in connection with a review of AHM's Form 10-Q.

103. By reason of the foregoing, Strauss, Hozie and Bernstein singly or in concert, directly or indirectly, violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests a Final Judgment:

I.

Permanently enjoining Strauss and Hozie, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future direct or indirect violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) [15 U.S.C. § 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1, 13b2-2 and 13a-14 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2 and 240.13a-14] of the Exchange Act and seeking a final judgment permanently enjoining Strauss and Hozie from aiding and abetting violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12.b-20, 240.13a-11 and 240.13a-13].

II.

Permanently enjoining Bernstein, his agents, servants, employees and attorneys and all persons in active concern or participation with him who receives actual notice of the injunction by personal service or otherwise, and each of the them, from future direct and indirect violations of Section 13b(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2] and seeking a final judgment permanently enjoining Bernstein from aiding and abetting violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20 and 13a-13 thereunder [17 C.F.R. §§ 240.12.b-20 and 240.13a-13].

III.

Ordering Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon.

IV.

Ordering the Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

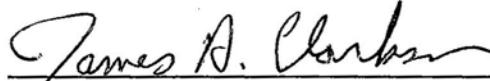
V.

Permanently prohibiting Strauss and Hozie pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

Such other and further relief as the Court deems appropriate.

Dated: New York, New York
April 28, 2009



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