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RECEIVED-DISTRICT  
U.S. DISTRICT COURT  
2005 SEP 12 A P 38

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

NJ AFFORDABLE HOMES CORP., and  
WAYNE PUFF, :

Defendants. :  
-----X

05 Civ. 4403 (JLL)

**VERIFIED  
COMPLAINT**

Plaintiff Securities and Exchange Commission, 3 World Financial Center, New  
York, N.Y. 10281, brings this action to halt unregistered and fraudulent offerings of

securities by Defendants NJ Affordable Homes Corp. ("NJ Affordable"), 100 W. Pond Road, Perth Amboy, NJ 08861, and Wayne Puff ("Puff"), 23 Willy Street, Woodbridge, N.J. 07095, and alleges as follows:

**SUMMARY**

1. From at least 1999 to the present, NJ Affordable and Puff (collectively the "Defendants"), through unregistered and fraudulent offerings of securities in the form of notes, investment contracts and other evidence of indebtedness, have raised more than \$40 million from at least 490 investors in New Jersey and other parts of the United States. NJ Affordable, and its president and founder Puff, promise investors that the notes and other instruments provide returns of 15% per annum or greater and that they are guaranteed or safe investments. In many instances, NJ Affordable and Puff represent that various notes sold to investors are secured by first mortgage liens on real property. In other instances, NJ Affordable and Puff represent that the investments are safe and secured by guarantees from NJ Affordable and/or Puff and other entities owned by him. For all investments, NJ Affordable and Puff represent that the per annum returns of 15% and greater, as well as return of the principal investment, are derived from the Defendants' successful business of purchasing, renovating, maintaining and selling real properties.

2. NJ Affordable and Puff misrepresent to investors the prospects of receiving payment of the interest and repayment on the principal investment. Not disclosed to investors, NJ Affordable and Puff (1) overvalue the real properties purportedly securing the notes sold to investors; (2) have liabilities to investors greatly exceeding NJ Affordable's assets; (3) in Ponzi-scheme fashion, are using moneys raised

from new investors to pay the interest and principal to prior investors; (4) cannot economically sustain or obtain returns of 15% or greater per annum; and (5) are transferring substantial funds and assets from NJ Affordable to Puff and his family. The representations by NJ Affordable and Puff to investors that their investments are guaranteed, safe, and/or secure by mortgage liens are materially false and misleading.

3. NJ Affordable and Puff failed to register with the Commission their offerings of securities in the form of notes, investment contracts and other evidence of indebtedness, despite the fact that (a) New Jersey and Pennsylvania securities regulators previously obtained orders against NJ Affordable and Puff, and (b) NJ Affordable and Puff are offering and selling these notes and other investments to the general public through telephone solicitations, radio advertisements, advertisements in investor-related newsletters, and solicitations on investment-related websites, and have raised more than \$40 million from at least 490 investors.

### **VIOLATIONS**

4. By virtue of the conduct alleged herein, NJ Affordable and Puff, directly or indirectly, singly or in concert, have engaged and are engaging in acts, practices and courses of business, that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c) and 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder.

5. Unless temporarily, preliminarily and permanently restrained and enjoined, NJ Affordable and Puff will continue to engage in the acts, practices and courses of business set forth in this Complaint and in acts, practices and courses of

business of similar type and object. By this action, the Commission seeks final judgment and interim orders that, among other things, protect investors by enjoining Defendants from future violations of the securities laws and rules cited above, by providing for an asset freeze to prevent dissipation of assets, by appointing a temporary receiver, and by requiring the Defendants to disgorge their ill-gotten gains and to pay civil penalties.

### **JURISDICTION AND VENUE**

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d)(1) of the Exchange Act, 15 U.S.C. § 78u(d)(1), seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices and courses of business alleged herein.

7. The Commission also seeks, as immediate relief, temporary and preliminary restraining orders against the Defendants, asset freezes against the Defendants and entities affiliated with and/or controlled by NJ Affordable or Puff, the appointment of a receiver over NJ Affordable and entities affiliated with it or Puff, verified accountings from the Defendants and their affiliated entities, expedited discovery, an order directing the Defendants to repatriate assets to the United States, and an order prohibiting the Defendants and their affiliated entities from destroying or altering documents.

8. Finally, the Commission seeks final judgments ordering the Defendants to disgorge ill-gotten gains with 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)(1) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

9. This Court has jurisdiction over this action, and venue lies in this District, 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. §§ 78u(e) and 78aa. Venue is proper in the District of New Jersey as the Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein. A substantial part of the events and omissions giving rise to the Commission's claims occurred in the District of New Jersey; NJ Affordable is a New Jersey corporation headquartered in this District, received investor funds in this District, engaged in numerous real property transactions in this District in connection with the sale of unregistered securities to investors, some of whom reside in this District, and used bank accounts serviced by banks in this District in connection with its business. Defendant Puff also resides in New Jersey.

#### **THE DEFENDANTS**

10. NJ Affordable is a New Jersey corporation with offices in Woodbridge and Perth Amboy, New Jersey. It is a real estate investment company that purports to use investors' monies to purchase residential and commercial real property, renovate the property, and sell the property at a profit. NJ Affordable is not registered pursuant to the Exchange Act and its securities do not trade publicly. NJ Affordable is the subject of two prior state regulatory proceedings and injunctions concerning the unregistered sale of securities.

11. Puff, age 57, is the president and sole owner of NJ Affordable. Puff resides in Woodbridge, New Jersey.

**AFFILIATES OF AFFORDABLE AND PUFF**

12. There are at least 82 entities that are owned or controlled by, related to, associated or affiliated with, NJ Affordable and Puff (“Affiliated Entities”) by NJ Affordable and/or Puff. Attached as Appendix A to this Complaint is a list of the Affiliated Entities. These entities, many of which are limited liability corporations, consist of: (a) entities described by Puff on guarantees given to certain NJ Affordable investors as owned by him; (b) entities for which Puff serves as officer, director, or registered agent according to the records of the NJ Secretary of State; and (c) entities which publicly available property records indicate NJ Affordable used to purchase or sell property owned or controlled by NJ Affordable. As described below at paragraphs 32 through 44, NJ Affordable and Puff inflate the price of real properties that purportedly secure the notes and other securities sold to investors by engaging in sales and purchases with the Affiliated Entities. NJ Affordable and Puff are not disclosing to investors that the sale and purchase of real properties do not involve arms-length market transactions, and, as a consequence, the values assigned to the real properties do not reflect market values.

**FACTS**

**A. The Offerings and Sales of Securities to Investors**

13. Since at least 1999, through the present, NJ Affordable, at the direction and oversight of Puff, has raised more than \$40 million through the offer and sale, to at least 490 investors, of securities in the form of notes, investment contracts and other evidence of indebtedness. In marketing its “secured savings program” to the general public, NJ Affordable and Puff represent to investors that these instruments provide large

profits, 15% or greater per annum, with no risk. The Defendants represent to investors who submit the basic agreement contained in NJ Affordable's offering packet that their investment will be secured by mortgage liens on real property (such investors are referred to below as "Mortgage Investors"). The Defendants represent to other investors that their investment is guaranteed by NJ Affordable, Puff, and/or the assets of "associated corporations" and companies owned by Puff. Such investors execute agreements titled either "Asset Protection Guarantee" or "Joint Venture Agreement."

14. The Defendants represent to investors who purchase each class of note, investment contract, or evidence of indebtedness that the principal from each investment will fund NJ Affordable's purchase, renovation and maintenance of properties. NJ Affordable promises investors that it will repay the principal and interest due on the notes and other evidence of indebtedness by renovating the properties and selling them for a profit.

15. NJ Affordable has used various means to market offerings of notes, investment contracts or other evidence of indebtedness to the general public, including, advertisements on radio and in investment-related newsletters, telephone solicitations, and solicitations on investment-related websites. NJ Affordable has also paid "money finders" a 4% commission for investment dollars they successfully solicit through telephone calls or other marketing means.

16. From January 2004 to the present, NJ Affordable raised at least \$9 million from investors.

17. None of the offerings of securities by NJ Affordable and Puff are registered with the Commission.

**1. Mortgage Investors**

18. NJ Affordable promises Mortgage Investors that their investments are secured by mortgage liens on the properties allegedly bought with investors' funds.

**a. The Terms of Notes Received by Mortgage Investors**

19. NJ Affordable offers two kinds of notes as part of its sale of notes to Mortgage Investors: notes secured by a first mortgage and notes secured by a second mortgage.

20. NJ Affordable guarantees investors in the note secured by a first mortgage that they will receive a 15% annual rate of return, and requires that they invest for periods of between 1 and 5 years. Although some Mortgage Investors are permitted to contract for quarterly interest payments, the form agreement provides that interest will be paid at the end of the term and will accrue on a compounded basis. The fact that interest accrues on a compounded basis while being left in NJ Affordable's hands is one of the selling points of the First Mortgage program, as the offering materials emphasize that investors can "DOUBLE YOUR MONEY IN LESS THAN 5 YEARS."

21. The Defendants represent to investors that after they submit a signed copy of the form agreement together with their investment monies, the Defendants will provide them with a promissory note secured by a first mortgage on property purchased by NJ Affordable. The Defendants further represent that if NJ Affordable sells the property during an investor's investment term, they will provide the investor with another mortgage on a different property. NJ Affordable typically offers First Mortgage Investors no involvement in the selection of the properties on which it issues the mortgages.



22. NJ Affordable represents to investors who purchase notes secured by a second mortgage that they receive the same investment terms as the notes secured by the first mortgage, except (a) they receive second mortgages, instead of first mortgages; and (b) they are offered a higher rate of return. The notes secured by second mortgages promise investors returns of between 16 and 20% interest per annum. As with the investors in notes secured by first mortgages, the Defendants do not offer purchasers of notes secured by second mortgages an opportunity to participate in the selection of the property NJ Affordable buys and mortgages.

23. NJ Affordable represents to investors that they begin accruing interest on their investments as soon as their funds are deposited in an escrow account maintained for NJ Affordable by NJ Affordable's escrow attorney. Thus, regardless of how long it takes NJ Affordable to find and purchase a property with which to secure investor monies, and regardless of whether any profit is ultimately made from the purchase and sale of properties, NJ Affordable guarantees investors a 15 to 20% rate of return for the entire investment term. In that way, the Defendants represent to Mortgage Investors that they are investing in NJ Affordable's overall profitability.

24. NJ Affordable has left some Mortgage Investors unsecured by mortgages. Their internal records reflect eleven Mortgage Investors who have investment amounts that have remained unsecured by any mortgages for periods of more than a year; five additional Mortgage Investors who have investments that have remained unsecured for more than seven months; and four other Mortgage Investors who have investments that have been unsecured for at least three months.

25. Prior to an action commenced by the New Jersey Bureau of Securities (the "NJ Bureau") against NJ Affordable and Puff for, inter alia, the unregistered sale of securities, NJ Affordable routinely secured multiple notes with a percentage of a single mortgage on the same property. However, on November 21, 2002, NJ Affordable, Puff, and the NJ Bureau agreed to a consent judgment entered by the New Jersey Superior Court which ordered NJ Affordable and Puff to offer rescission to any investors whose money was "pooled" and secured by a mortgage on a single property. Notwithstanding the Consent Judgment, NJ Affordable and Puff are still securing multiple notes sold to investors with interest in mortgages on the same property; there are 39 properties for which mortgages on the same property were granted to more than one investor after entry of the consent judgment obtained by the NJ Bureau.

**b. The Offering Materials**

26. The offering materials that NJ Affordable sends out to prospective investors include representations that their investments will be safe and secure. Defendants represent that they are offering this "unique financial alternative" to "serious people" who want "the best deal in income investing." They further represent that investors will "get paid back completely" at the end of their investment term. NJ Affordable's offering materials further emphasize the security that mortgages provide to Mortgage Investors: "A FIRST MORTGAGE LIEN IS EXACTLY THE SAME COLLATERAL THAT A BANK GETS WHEN THEY LOAN YOU MONEY TO BUY A HOME. IT'S THE BEST, SAFEST COLLATERAL THERE IS. IF A BANK COULD DO ANY BETTER, THEY WOULD. BELIEVE THAT! IT'S THAT SIMPLE." Prospective investors are also told that a "key" point of the program is "A

SAFETY NET OF 25% OR MORE BETWEEN THE APPRAISED MARKET VALUE AND THE FIRST MORTGAGE.”

**2. Asset Protection Guarantee Investors, Joint Venture Partners, and Investors Who Have Not Received Documentation for Any Program**

27. The Defendants provide Asset Protection Guarantee investors with agreements similar to the First Mortgage Investors, except that instead of being secured by mortgages, the promissory notes that NJ Affordable issues to them are secured by guarantees issued by Puff on behalf of himself, NJ Affordable, “associated corporations,” and certain NJ Affordable Affiliated Entities. In return, NJ Affordable promises investors higher interest rates, such as 20%. The Asset Protection Guarantee agreements that Defendants provide to investors state that the funds “are to be utilized towards the cost of the purchase, closing costs, repair and marketing of residential homes for resale.” The agreements specify no particular properties and the Defendants provide investors with no involvement in the selection, renovation or sale of the properties that NJ Affordable promises to purchase with the money they invest. The Defendants have raised at least \$299,000 from investors who purchase notes in the Asset Protection Guarantee program.

28. Similar to the Asset Protection Guarantee program, the Defendants provide investors who sign so-called Joint Venture Agreements with agreements containing a guarantee, but no promise of mortgage collateral. The Defendants promise investors who sign Joint Venture Agreements interest rates of between 16 and 20%, with Defendants promising one investor a 25% return. The Defendants represent to the investors that the rates of return are guaranteed by NJ Affordable “and any company owned 100% by Wayne Puff.” The Joint Venture Agreements that the Defendants

provide to investors identify the purpose as “to designate real property to acquire, develop, renovate and sell the Property, and to maintain the Property until sold.” While the terms of the Joint Venture Partnership agreements provide that the “parties will mutually select the property to be covered by the Joint Venture,” responsibility for “all decisions regarding the property, including but not limited to renovation, development, leasing, operating, maintaining and sale of the Property” reside with NJ Affordable, based on “[NJ Affordable]’s experience with similar ventures.” The Defendants have raised at least \$9,396,000 from investors participating in the Joint Venture Partner program.<sup>1</sup>

29. At least two other individuals have invested in NJ Affordable, but their investments do not appear to be documented by any written agreements at all. These two investors contributed a total of \$60,000. One of them was successful in obtaining a refund, but only after she hired an attorney to threaten legal action.

**B. The Defendants’ Discipline by State Securities Regulators**

30. In 2004, the Pennsylvania Securities Commission issued a cease and desist order barring NJ Affordable and Puff from acting on behalf of an issuer offering or selling any securities in Pennsylvania. In re New Jersey Affordable Homes Corp., No. 0006-15, 2004 Pa. Sec. LEXIS 89 (Pa. Sec. Comm’n May 28, 2004). The order, issued on consent, contained findings that NJ Affordable had failed to make material disclosures to investors in its offer and sale of promissory notes backed by mortgages, in willful

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<sup>1</sup> As will be explained below, the Defendants raised \$2.7 million from a single Joint Venture Partner investor and used those funds to repay their other investors pursuant to the consent judgment obtained by the NJ Bureau. (See, infra, ¶ 47.)

violation of Pennsylvania securities law. NJ Affordable and Puff accepted and consented to the issuance of the findings, without admitting or denying the allegations against them.

31. In 2002, a New Jersey state court judge approved a Consent Judgment resulting from an investigation by the NJ Bureau into NJ Affordable's offer and sale of its promissory notes backed by mortgages. The Consent Judgment ordered NJ Affordable and Puff to comply with New Jersey securities laws, and to offer rescission to all Mortgage Investors whose mortgages had been pooled with other investors' on a single property. Farmcr v. N.J. Affordable Homes Corp., No. C-408-99, 2002 N.J. Sec. LEXIS 54 (N.J.B.O.S. Nov. 21, 2002).

**C. Investors in Notes Issued by NJ Affordable Are at Risk Because NJ Affordable Has a Negative Net Worth and Is Operating at a Loss**

32. NJ Affordable's assets are insufficient to meet its obligations on the various notes it has issued because it inflates the values it assigns to its assets and its liabilities greatly exceed its assets. And because NJ Affordable and Puff continue to solicit new investors without disclosing NJ Affordable's precarious financial condition, if not restrained, additional prospective investors will be subject to the same, or increasing, risks.

**1. NJ Affordable's Business Is Not Sustainable Because the Assets Purportedly Securing the Notes Are Based on Inflated Appraisals**

33. Contrary to the assurances provided in the NJ Affordable offering materials provided to investors, purchasers of the notes secured by mortgages do not have a 25% safety net between the amounts they have invested and the value of the property on which they are issued a mortgage. Instead, based on recent resale experience, the

value of their collateral is demonstrably below the amounts they have invested, leaving them unsecured in the case of default.

34. NJ Affordable's assets consist of the properties it buys to renovate and resell at a profit. NJ Affordable secures the notes issued to Mortgage Investors with mortgage liens on those properties -- mortgages it assigns based on valuations it obtains from a single appraiser. The appraisal obtained by NJ Affordable is routinely well in excess of the purchase price, generally based on a purported assessment of how much a property will be worth after renovation or construction. However, the appraisals are inaccurate; the resale prices NJ Affordable has been able to realize on its properties have historically fallen far short of 100% of the appraised values it places on them. Moreover, nearly all of NJ Affordable's recent sales have not been in arms-length transactions, but rather consist of sales to NJ Affordable insiders, investors and nominees. Therefore, these recent sales and prices likely do not accurately reflect market prices.

35. From July 30, 1993 through May 1, 2005, NJ Affordable's own property sales data show that NJ Affordable has only been able to realize approximately 82% of the appraised value used to secure investors' money. And in the more recent period of January 1, 2004, through May 1, 2005, NJ Affordable's sales data shows that in 109 sales totaling \$29,485,300, NJ Affordable recovered only 72% of the properties' appraised values.

36. Moreover, the shortfall between the value of the property and the investor's interest is even greater than at first appears. Mortgage Investors' mortgages purport to collateralize only their principal investment, and do not account for the amount of interest that accrues to them, compounded on an annual basis. At the end of each

Mortgage Investor's investment period, NJ Affordable owes the investor both principal and that accrued, compounded interest. If NJ Affordable cannot realize the values it assigns to its properties when it sells them, the Mortgage Investor's principal and interest are at risk.

37. Finally, with its failure to realize the inflated values assigned to its properties, NJ Affordable is also unable to fund the various costs it incurs to carry the properties on its books pending sale. While it holds the property, NJ Affordable is incurring property taxes, insurance, overhead, construction costs and other expenses that all must be recovered on the sale of the property. If NJ Affordable cannot sell the property for the appraised value, its inability to make up those expenses impairs to an even greater degree its ability to meet its obligations to its investors.

**2. NJ Affordable's Sales "Revenues" Are Fictitious Because NJ Affordable Is Churning the Properties in Sales and Re-sales to and from Its Own Investors, Insiders and Nominees**

38. Moreover, the true market value of NJ Affordable's property inventory may be even less than 72% of the appraised value assigned by the Defendants because many of the sales of properties were made to insiders and at prices that do not appear to have been negotiated at arms-length.

39. Out of the \$33.8 million in real property sales that NJ Affordable recorded between January 1, 2004, and May 1, 2005, at least 90% (\$30.4 million) was generated from sales to people closely connected to NJ Affordable, such as its investors, employees, insiders, affiliates, or nominees who had previously bought a property from NJ Affordable or one of its Affiliated Entities and transferred it to NJ Affordable Affiliated Entity. The Defendants generated 56% of NJ Affordable's sales proceeds (\$19 million)

during that period by sales to persons whose names appear on NJ Affordable Mortgage Investor spreadsheets, with another 21% (\$6.9 million) coming from sales to individuals who subsequently transferred the property to another Affiliated Entity.

40. By selling to investors, insiders and nominees, NJ Affordable has generated “revenues” while maintaining control over “sold” properties. NJ Affordable has sold and resold the same property to different investors, and has also used a series of sales (or “flips”) to escalate a property’s sales price. The revenues that NJ Affordable reports -- almost all of which were derived from sales to insiders, investors and nominees -- are fictitious and/or inflated.

**3. NJ Affordable Has a Negative Net Worth of at Least \$16 Million**

**a. NJ Affordable’s Real Property Assets Are Worth \$19 Million Less Than What NJ Affordable Claims**

41. While NJ Affordable’s internal records list real property assets of \$59 million, discounting it by the 72% it historically has realized on the sale of those properties, NJ Affordable’s assets are worth at best only \$40,421,664 or \$19 million less than stated by NJ Affordable.<sup>2</sup>

42. The actual value of NJ Affordable’s property is even less than \$40 million, given that the sales prices NJ Affordable reports are in less than arms-length transactions. Second, NJ Affordable’s remaining inventory of property includes parcels for which it would be difficult for NJ Affordable to obtain even 72% of the appraised value in the

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<sup>2</sup> NJ Affordable’s unaudited statement of assets is as of September 30, 2004. The value calculated above is current as of May 2, 2005, because it is based on a list of properties as of May 2005.



near future. In several instances, appraised value exceeds the price at which the property was purchased by 900%. Some examples of overvalued properties are:

- UpperLake f/k/a 14 Municipal, Wantage, is vacant land.  
Purchase price in February 2004: \$7,500.  
Appraised value: \$750,000  
NJ Affordable has held the property for a year and a half, it remains vacant and zoning regulations prohibit building on this lot.
- 5 Borman Ave., Woodbridge, is vacant land  
Purchase price in 1999: \$60,000.  
Appraised value: \$2,085,000.  
NJ Affordable has held the property for six years and it remains vacant.
- 58 Buckhorn Drive, Belvidere, is vacant land.  
Purchase price in 2003: \$10,000.  
Appraised value: \$505,000.  
NJ Affordable has held the property for two years.
- 425 New Road, South Brunswick, is vacant land.  
Purchase price in 2002: \$75,000.  
Appraised value: \$715,000.  
NJ Affordable has held the property for two-and-a-half years and it remains vacant.
- 58 Race Street, North Plainfield.  
Purchase price in 1999: \$85,000.  
Appraised value: \$3,900,000.  
NJ Affordable has held the property for six years.
- 254 Ruth Lane, Aberdeen is vacant land.  
Purchase price in 1998: \$1.00.  
Appraised value: \$165,000, but NJ Affordable has issued \$261,068.03 in mortgages to Mortgage Investors on it.  
The property has been held by NJ Affordable for six-and-a-half years.
- 620 E. Saddle River Road, Ho-Ho-Kus, is vacant land.  
Purchase price in 2004: \$12,500.  
Appraised value: \$730,000.

43. The age of NJ Affordable's inventory also indicates the inflated nature of the appraisals. As NJ Affordable assures investors in its offering materials, quick

turnover is important to its business plan; once it uses investor monies to acquire properties, it quickly renovates and resells them, and it can quickly resell them because available government and bank financing programs maximize the number of potential buyers for NJ Affordable homes.

44. In practice, however, NJ Affordable has held close to 1/3 of its inventory for longer than three years. Of 147 properties, NJ Affordable has held 60% for more than one year; 41% have been held for more than two years; 32% have been held for more than three years; 29% have been held more than four years; and 18% have been held for more than 5 years.

**b. NJ Affordable Understated Its Liabilities by at Least \$16.7 Million**

45. Just as NJ Affordable's balance sheet significantly overstates its assets, it also significantly understates its liabilities. While NJ Affordable includes the principal amounts outstanding to investors, it does not include the liabilities associated with accrued *interest* owed to Mortgage Investors. Using a conservative calculation of accrued interest, NJ Affordable owes \$16,742,780 in accrued interest payable to the Mortgage Investors.

**c. A Restatement of NJ Affordable's Unaudited Balance Sheet Shows That Its Liabilities Exceed Its Assets by at Least \$16 Million**

46. When NJ Affordable's balance sheet is adjusted to lower the value of its property assets by the historic percentage of appraised value it has been able to realize on their sale, and to increase its liabilities to reflect the outstanding accrued interest amounts it owes, NJ Affordable's liabilities exceed its assets by \$16.6 million.

47. Furthermore, NJ Affordable's balance sheet only includes principal owed to investors whose investments are secured by first or second mortgages. Principal owed to Asset Protection Guarantee investors and to Joint Venture Partners is not included. When the liabilities of these "Off-Balance Sheet Investors" are added to NJ Affordable's balance sheet, its negative net worth increases yet again. At least \$299,000 invested by Asset Protection Guarantee Investors is unaccounted for on NJ Affordable's balance sheet as of September 30, 2004. In addition, at least \$6,696,000 in Joint Venture Partner investments is not reflected on NJ Affordable's balance sheet as of September 30, 2004.<sup>3</sup> Because NJ Affordable does not reflect all of the Off-Balance Sheet Investors' investments on its books, and because almost none of the Off-Balance Sheet Investors are individually secured by mortgages on NJ Affordable property, there may be additional liabilities owing to Asset Protection Guarantee Investors and Joint Venture Partners as yet unknown.

**d. NJ Affordable's Balance Sheet Should Include Loans from Insiders**

48. NJ Affordable has received loans from insiders. At least \$455,000 was deposited by Puff's wife, Kyu Nam Park, and other Puff-related entities into NJ Affordable bank accounts that representatives of NJ Affordable call "short-term loans."

**4. NJ Affordable's Income Statement Is Inflated**

49. On its unaudited income statement, NJ Affordable reported a net income of \$4,550,501 for the first three quarters of 2004. However, that number includes proceeds from sales of properties that occurred both before January 1, 2004, and after

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<sup>3</sup> At least \$9,396,000 in Joint Venture Partner money has been invested. However, the \$2.7 million loan referred to in fn. 1 above is accounted for.

September 30, 2004. If NJ Affordable had not included property sales outside the reporting period in its income statement, NJ Affordable's income statement would have reflected a net operating loss of \$1,410,759.

50. Moreover, as described above, the amounts realized on the sales properly reported during that period are either fictitious or inflated because NJ Affordable was selling many of those properties to and from investors and insiders.

51. That NJ Affordable does not have the actual revenues that are reflected on its income statement is also evidenced by the inability it has demonstrated to comply with its rescission obligations under the NJ Bureau Consent Judgment. On November 21, 2002, NJ Affordable and the NJ Bureau entered into a Consent Judgment that required NJ Affordable to offer rescission to all investors whose investments were pooled on the same property. Pursuant to that offer, investors demanded rescission payments of approximately \$2.5 million. The terms of the Consent Judgment required NJ Affordable to make those payments to investors by August 18, 2004.

52. In April 2005, the NJ Bureau sought to reopen the Consent Judgment because investors who had accepted rescission had complained to NJ Bureau that they had still not received their rescission payments, even though NJ Affordable was obligated to deliver the payments in August 2004. NJ Affordable still owed these investors slightly more than \$275,000, as of April 2005. As demonstrated in the declarations the NJ Bureau filed in support of its petition to reopen the Consent Judgment, the Defendants either ignored these investors or Puff or his associates offered them payment plans.<sup>4</sup>

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<sup>4</sup> The matter presented to the court in April 2005 by the NJ Bureau was resolved by an addendum to the original Consent Judgment. Rather than providing for immediate payment to the unpaid investors, the agreed upon addendum provides for a payment plan.

53. The experiences of these investors comport with the experiences of other investors. NJ Affordable has been sued by several of its investors to recover monies currently due them. In many instances NJ Affordable either explicitly acknowledged that sums were due and owing, agreed to the entry of consent judgments providing for a payment schedule, or otherwise settled or had judgments entered against it.

54. Investors who have not sued have encountered similar stonewalling by NJ Affordable when they have sought repayment. Even when the investors' notes have come due, and they have sought repayment, NJ Affordable has ignored their demands and Puff has refused to return their phone calls.

**5. NJ Affordable Is Using New Investor Money to Fund Payments to Old Investors**

55. NJ Affordable is funding those obligations it cannot ignore with money solicited from new investors. In connection with the Consent Judgment, the NJ Bureau sought information about the source of funds NJ Affordable would use to satisfy its obligations to the investors who sought rescission. After several months, NJ Affordable finally revealed that it was financing the obligation through a loan from Quality Homes aRe Us, Inc.—a company owned by Kenneth Lagonia, the in-house counsel for NJ Affordable. Later, the Defendants revealed that Quality Homes was in turn obtaining its money from a lender, Herman Gross, a person NJ Affordable's attorney described to the Commission's staff as someone who "previously has lent funds to NJ Affordable on an unsecured basis through one of his investment vehicles, H&W Properties, Inc. ('H&W')." In fact, as indicated by NJ Affordable's records, Herman Gross, through

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Under this plan, the two largest creditors (\$129,785.60 and \$93,979.34) will not receive their final installments until June 2006 and March 2006, respectively.

H&W, is a Joint Venture Partner Investor of NJ Affordable. And the money NJ Affordable received from Gross was secured by mortgages on NJ Affordable properties.

56. NJ Affordable is also funding Mortgage Investor interest payments and principal repayments with new money solicited from Joint Venture Partners. NJ Affordable records indicate that the account it uses to pay interest or to repay principal to Mortgage Investors is the same one into which it has deposited over \$1,285,000 of new investments by Joint Venture Partners.

57. NJ Affordable representatives have also advised at least one investor that it can only repay him when it locates a new investor to "refinance" his investment.

**D. The Defendants Have Made Material Misrepresentations, and Omitted to Disclose Material Facts, to Investors**

58. Through the conduct described above, and in the course of offering and selling notes, investment contracts and other evidence of indebtedness to investors, NJ Affordable and Puff knowingly, or with reckless disregard, have made the following material misrepresentations and false statements:

- The investments in the notes, investment contracts, and other evidences of indebtedness issued by NJ Affordable are safe, secure or guaranteed;
- Purchasers of notes secured by mortgages will be provided with a "safety net" of 25% or more between the value of the property and the mortgage;
- NJ Affordable can and does pay investors all principal plus 15% or more accrued interest by renovating and reselling properties, particularly to first time home buyers;
- NJ Affordable has never missed an interest payment to an investor.

59. In the course of offering and selling notes, investment contracts and other evidence of indebtedness to investors, NJ Affordable and Puff knowingly, or with reckless disregard, omitted to disclose the following material facts:

- The notes, investment contracts and other evidence of indebtedness offered and sold by NJ Affordable carry risk;
- The purported collateral securing the notes, investment contracts and other evidence of indebtedness do not fully protect investors;
- The appraisal values that NJ Affordable reports are inflated and do not reflect NJ Affordable's historic inability to realize the values assigned when the properties are sold;
- NJ Affordable bases the value of any mortgage collateral it grants to investors solely on investor principal, so that any amount of accrued and unpaid interest is unsecured;
- In order to repay prior investors principal and interest owed, NJ Affordable and Puff are using new funds received from new or other investors;
- NJ Affordable routinely generates fictitious or inflated revenues and sales prices for real property from sales to and from insiders, investors and nominees, rather than from arms-length transactions with the public;
- NJ Affordable's liabilities exceed its assets;
- NJ Affordable is unable to make quick, profitable, resales of properties in arms-length transactions and instead has an aging inventory of properties;
- The Defendants have a history of (a) missing payments to investors of interest and principal, (b) investor complaints, (c) judgments against them;
- Some investors have been left without mortgage collateral for significant periods of time;
- NJ Affordable and Puff, its President, have been sanctioned by two state securities regulatory agencies, and have been barred from selling securities in the State of Pennsylvania;
- NJ Affordable pays commissions to money finders for the new investments it attracts.

**E. NJ Affordable Has Transferred Significant Amounts of Money to Company Insiders**

60. Puff and NJ Affordable also do not disclose to investors that NJ Affordable has transferred investor monies to Puff's wife and to a personal bank account held in the name of one of Puff's brothers. From November 2004 to the present, at least \$128,000 has been transferred from a NJ Affordable bank account (into which investor funds are deposited) into the account of Puff's wife, Kyu Nam Park. During the same period, approximately \$1.5 million was transferred from a NJ Affordable bank account (into which investor funds were also deposited) to a personal bank account of Puff's brother, Gary Puff. Records from Gary Puff's personal account show that, during the same period, monies were transferred from the Gary Puff account to an account owned by FHP Corp., an affiliate of NJ Affordable, as well as to an account of NJ Affordable.

61. In addition, Currency Transaction Reports filed by check cashing facilities during the period 2002-2004 demonstrate that in 19 transactions, Puff used check cashing facilities, rather than any of the various banks in which he and NJ Affordable have accounts, to convert \$311,789 in checks payable to NJ Affordable to cash. These instances include company checks drawn on a NJ Affordable account and made payable (in handwriting) to NJ Affordable, and checks from third parties that were made payable to NJ Affordable.

62. None of these insider transactions have been disclosed to NJ Affordable investors.



**FIRST CLAIM FOR RELIEF**

**Violations of Sections 5(a) and 5(c) of the Securities Act**

63. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 62.

64. The notes that the Defendants have offered and sold to the general public constitute securities as defined in the Securities Act and the Exchange Act.

65. The Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, to offer and sell securities through the use or medium of a prospectus or otherwise when no registration statement has been filed or was in effect as to such securities and when no exemption from registration was available.

66. By reason of the foregoing, the Defendants have violated, are violating, and unless enjoined will again violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

**SECOND CLAIM FOR RELIEF**

**Violations of Section 17(a) of the Securities Act**

67. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs paragraphs 1 through 62.

68. The Defendants, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities issued by NJ Affordable, knowingly or recklessly, have, (a) employed, are employing or are about to employ, devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or have omitted to

state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged, are engaging and are about to engage in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities issued by NJ Affordable, including in marketing material, notes, investment contracts, other evidence of indebtedness, and other public statements issued and made by the Defendants.

69. By reason of foregoing, the Defendants, singly or in concert, directly or indirectly, have violated, are violating, and unless enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

### **THIRD CLAIM FOR RELIEF**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

70. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 62.

71. The Defendants, directly or indirectly, singly or in concert, 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 or sale of securities issued by NJ Affordable, knowingly or recklessly, have: (a) employed, are employing or are about to employ, devices, schemes and artifices to defraud; (b) made, are making or are about to make untrue statements of material fact, or have omitted, are omitting, or are about to omit to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged, are engaging and are about to engage in transactions, acts, practices and courses of

business which operated or would have operated as a fraud or deceit upon purchasers of securities issued by NJ Affordable, including in marketing material, notes, investment contracts, other evidence of indebtedness, and other public statements issued and made by the Defendants.

72. By reason of foregoing, the Defendants, singly or in concert, directly or indirectly, 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, promulgated thereunder.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that the Court grant the following relief:

**I.**

An Order temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining NJ Affordable and Puff, 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 violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) and 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder.

**II.**

An Order directing NJ Affordable and Puff, and each of their respective agents, banks, debtors, bailees, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with the them who receive actual notice of said Order by personal service, facsimile, or otherwise, to hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of any of NJ Affordable's or Puff's assets, funds or other properties of any kind wherever situated, and assets over which Affordable and Puff have control by signatory authority or otherwise.

**III.**

An Order directing NJ Affordable and Puff to file with this Court and serve upon the Commission, within three (3) business days, or within such extension of time as the Commission staff agrees to, a verified written accounting, signed by each defendant under penalty of perjury, setting forth:

- (1) All assets, liabilities and property currently held directly or indirectly by or for the benefit of such Defendant or any individuals or entities who have invested money with the Defendants, including but not limited to bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;
- (2) All money, property, assets, and other income received by such Defendant, or for their direct or indirect benefit, in or at any time from

1999 to the date of the accounting, describing the source, amount, disposition and current location of each of the items listed;

- (3) All assets, funds, securities, real or personal property transferred to or for the benefit of the Defendants, or any individuals or entities who have invested money with the Defendants, in or at any time from 1999 to the date of the accounting, and the source, amount, disposition and current location of such assets, funds, securities, real or personal property;
- (4) All money, property, assets and other income transferred from such Defendant, including transfers to any bank account, brokerage account or other account, or to any individual, or entity, in or at any time from 1999 to the date of the accounting; and
- (5) The names and last known addresses of all bailees, debtors, and other individuals and entities which are currently holding the assets, funds or property of such Defendant.

#### IV.

An Order requiring the Defendants to repatriate assets held outside the United States by the Defendants.

#### V.

Orders appointing temporary and preliminary receivers over NJ Affordable.

#### VI.

An Order permitting expedited discovery.

**VII.**

An Order enjoining and restraining each of the Defendants and any person or entity acting at their direction or on their behalf, from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

**VIII.**

A Final Judgment ordering the Defendants to disgorge their ill-gotten gains, plus prejudgment interest, and such other and further amount as the Court may find appropriate.

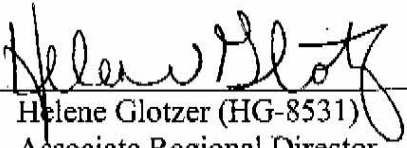
**IX.**

A Final Judgment ordering each of 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)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

X.

Such other and further relief as to this Court deems just and proper.

Dated: New York, New York  
September 12, 2005

By:   
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Alexander M. Vasilcsu  
Nancy A. Brown  
Adam Grace

**VERIFICATION**

I, TERRENCE P. BOHAN, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as a Branch Chief at the Northeast Regional Office of the Securities and Exchange Commission ("Commission").
2. I have read the foregoing Complaint and know the contents thereof, and the same is true to the best of my knowledge except as to matters therein stated to be alleged upon information and belief and, as to those matters, I believe them to be true. The grounds for my belief as to all matters therein are the interviews I and other Commission staff conducted of Kenneth R. Lagonia, NJ Affordable's corporate counsel, and other NJ Affordable employees, interviews I conducted of NJ Affordable investors, and documents obtained from NJ Affordable and other sources and reviewed by me and other members of the Commission staff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 9, 2005  
New York, New York




Terrence P. Bohan



Certification

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged in the foregoing Verified Complaint is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding. In New Jersey State Superior Court, the New Jersey Bureau of Securities did file an action against the Defendants encaptioned, Harvey v. N.J. Affordable Homes Corp., No. C-408-99 (N.J. Superior Ct.), but it does not involve the federal securities laws and the Commission is not a party to it.

Dated: September 9, 2005  
New York, NY

  
Nancy A. Brown (NB-1129)

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