

FILED

COMMONWEALTH OF PENNSYLVANIA  
BANKING AND SECURITIES COMMISSION

2022 MAY 16 AM 8:34

PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

Docket No.: 190099 (SEC-OSC)

v.

BUCHERT RIDGE COMMUNITY, INC.  
JOSEPH WILMER HALLMAN

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

Docket No. 190100 (SEC-OSC)

v.

BRC NEIGHBORHOOD PLANNING, LP  
JOSEPH WILMER HALLMAN

**NOTICE OF RIGHT TO APPEAL**

You are hereby notified that you have the right to appeal the attached Final Order issued by the Commonwealth of Pennsylvania, Banking and Securities Commission.

If you wish to appeal this Final Order you may file a petition for review with the Prothonotary of the Commonwealth Court of Pennsylvania that complies with the format and timing requirements of the applicable Pennsylvania Rules of Appellate Procedure. Pa. R.A.P. 1511-1561. Failure to file a petition for review within 30 days of the mailing date of this Final Order will result in it becoming final and unappealable. You may reach the Commonwealth Court at 717-255-1650.

Please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You may consult an attorney regarding your legal rights including your right to appeal the Final Order or your right to file an application for rehearing or reconsideration under the General Rules of Administrative Practice and Procedure. 1 Pa. Code § 35.241.

FILED

COMMONWEALTH OF PENNSYLVANIA  
BANKING AND SECURITIES COMMISSION

2022 MAY 16 AM 8:34

PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

Docket No.: 190099 (SEC-OSC)

v.

BUCHERT RIDGE COMMUNITY, INC.  
JOSEPH WILMER HALLMAN

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

Docket No. 190100 (SEC-OSC)

v.

BRC NEIGHBORHOOD PLANNING, LP  
JOSEPH WILMER HALLMAN

**FINAL ORDER**

AND NOW, the Pennsylvania Banking and Securities Commission (“Commission”) issues this Final Order in the consolidated matters of *Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Compliance and Examinations v. Buchert Ridge Community, Inc., and Joseph Wilmer Hallman*, Docket No. 190099 (SEC-OSC) and *Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Compliance and Examinations v. BRC Neighborhood Planning, LP, and Joseph Wilmer Hallman*, 190100 (SEC-OSC).

The Commission reviewed the attached proposed report and proposed order of Hearing Officer Debra Sue Rand, which were served upon the parties by letter dated March 10, 2022,

pursuant to 1 Pa. Code § 35.207. No party filed exceptions. The matters are ripe for consideration by the Commission, which discussed them at its regular meeting of May 12, 2022.

Pursuant to the final adjudication authority granted to the Commission under section 1122-A of the Department of Banking and Securities Code, 71 P.S. § 733-1122-A, the Commission issues this Final Order, adopting the hearing officer's proposed report except as stated below:

The Commission deletes the hearing officer's proposed Findings of Fact Nos. 39 and 55, and replaces them with ones that shall read as follows:

39. From January 2010 until April 2011, Buchert Ridge and Hallman offered and sold at least 12 promissory notes to at least 10 investors, 11 of the Buchert Ridge notes being offered and sold to at least nine Pennsylvania residents. (DoBS Exhibit 14)

\*\*\*

55. From on or about April 2011 to January 2015, BRC and Hallman offered and sold at least 102 promissory notes to at least 59 investors, 89 of the BRC notes being offered and sold to at least 53 Pennsylvania residents. (DoBS Exhibit 15)

Additionally, the Commission deletes all but the first two Conclusions of Law in the hearing officer's proposed report and adds the following ones:

3. The Buchert Ridge notes and the BRC notes are securities within the meaning of section 102 (t) of the 1972 Act, 70 P.S. § 1-102 (t).

4. The Buchert Ridge notes and BRC notes were neither exempt from registration under section 202 of the 1972 Act, nor were they federally covered securities, nor were their offer and sale exempt transactions under section 203 of the 1972 Act. 70 P.S. §§ 1-202, 102(f.2), 1-203.

5. Hallman was an "affiliate" of Buchert Ridge and BRC within the meaning of section 102(b) of the 1972 Act, 70 P.S. § 1-102(b).

6. Buchert Ridge and Hallman offered and sold the Buchert Ridge notes in willful violation of section 201 of the 1972 Act, 70 P.S. § 1-201.

7. BRC and Hallman offered and sold the BRC notes in willful violation of section 201 of the 1972 Act, 70 P.S. § 1-201.

8. Buchert Ridge and Hallman, in connection with the offer and sale of the Buchert Ridge notes, willfully violated section 401(b) of the 1972 Act, 70 P.S. § 1-401(b), by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

9. BRC and Hallman, in connection with the offer and sale of the BRC notes, willfully violated section 401(b) of the 1972 Act, 70 P.S. § 1-401(b), by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

10. Buchert Ridge and Hallman, in connection with the offer and sale of the Buchert Ridge notes, committed 12 willful violations of section 401(c) of the 1972 Act, 70 P.S. § 1-401(c), by engaging in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

11. BRC and Hallman, in connection with the offer and sale of the BRC notes, committed 102 willful violations of section 401(c) of the 1972 Act, 70 P.S. § 1-401(c), by engaging in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

Accordingly, the Commission replaces the hearing officer's proposed order with the following one:

FILED

**ORDER**

2022 MAY 16 AM 8:35

AND NOW, this 16<sup>th</sup> day of May, 2022, in accordance with the proposed report of the hearing officer, as amended in this Final Order, it is **ORDERED** that Buchert Ridge Community, Inc., and Joseph Wilmer Hallman shall pay an **ADMINISTRATIVE ASSESSMENT** of **\$20,000** for each of the 12 violations of section 401(c) of the 1972 Act, 10 P.S. § 1-401(c), found in this matter, for a total assessment in the amount of **\$240,000**, pursuant to section 602.1(c) of the 1972 Act, 10 P.S. § 1-602.1(c). Buchert Ridge and Hallman shall be jointly and severally liable for payment of the assessment.

Additionally, it is **ORDERED** that BRC Neighborhood Planning, LP, and Joseph Wilmer Hallman shall pay an **ADMINISTRATIVE ASSESSMENT** of **\$20,000** for each of the 102 violations of section 401(c) of the 1972 Act, 10 P.S. § 1-401(c), for a total assessment in the amount of **\$2,040,000**, pursuant to section 602.1(c) of the 1972 Act, 10 P.S. § 1-602.1(c). BRC and Hallman shall be jointly and severally liable for payment of the assessment.

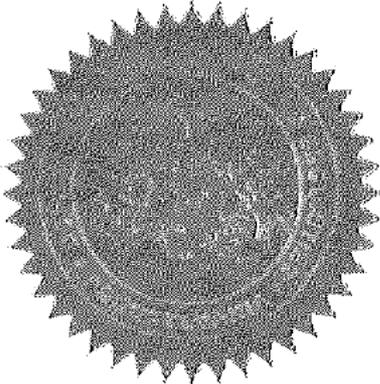
Payment of the administrative assessments shall be by certified check, attorney's check or U.S. Postal Service money order, made payable to "Commonwealth of Pennsylvania," and shall be mailed within thirty (30) days of the effective date of the Commission's Final Order in this matter to the counsel for the Bureau.

This Final Order shall be effective 30 days after the Commission mails it.

**BY ORDER OF THE COMMISSION:**

Redacted

Richard Vague  
 Vice Chair  
 Pennsylvania Banking and Securities Commission



So **ORDERED** this 16<sup>th</sup> day of May, 2022

FILED

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

MAR 10 AM 7:46  
PA DEPARTMENT OF  
BANKING AND SECURITIES

Commonwealth of Pennsylvania, :  
Department of Banking and :  
Securities, Bureau of Securities :  
Compliance and Examinations :

Docket No. 190099 (SEC-OSC)

v. :

Buckert Ridge Community, Inc. :  
Joseph Wilmer Hallman :

Commonwealth of Pennsylvania, :  
Department of Banking and :  
Securities, Bureau of Securities :  
Compliance and Examinations :

Docket No. 190100 (SEC-OSC)

v. :

BRC Neighborhood Planning, LP :  
Joseph Wilmer Hallman :

PROPOSED REPORT

Debra Sue Rand  
Hearing Officer

## PROCEDURAL HISTORY

On December 15, 2019, the Commonwealth of Pennsylvania Department of Banking and Securities (“Department”), Bureau of Securities Compliance and Examinations (“Bureau”) issued an Order to Show Cause (“OSC”) to Buchert Ridge Community, Inc. (“Buchert Ridge”) and Joseph Wilmer Hallman (“Hallman”) pursuant to Section 35.14 of the General Rules of Administrative Practice and Procedure (“GRAAP”) 1 Pa. Code § 35.14, for alleged violations of the Pennsylvania Securities Act of 1972 (“1972 Act”), Act of December 5, 1972, P.L. 1280 No. 284, *as amended*, 70 P.S. §§ 1-101-1-705. The OSC alleged that Buchert Ridge and Hallman offered and sold promissory notes to investors in violation of Sections 201, 401(b) and 401(c) of the Act, 70 P.S. §§ 201, 401(b), 401(c). On December 15, 2019, the Bureau also issued an Order OSC to BRC Neighborhood Planning, LP (“BRC”) and Hallman pursuant to 1 Pa. Code § 35.14 for alleged violations of the 1972 Act. That OSC alleged that BRC and Hallman offered and sold promissory notes to investors in violation of 70 P.S. §§201, 401(b) and 401(c).

On February 26, 2020, Buchert Ridge and BNC, through their then Counsel, Frank A. Mayer, III, Esq., filed an Answer and New Matter to the OSC for each matter. Additionally, on February 26, 2020, Hallman, through his Counsel, Glenn S. Gitomer, Esq., filed an Answer and New Matter to each OSC.

On March 2, 2020, the Bureau filed its Reply to the New Matter and Affirmative Defenses.

On July 28, 2020, the Secretary for the Department, Richard Vague, designated the undersigned, as the hearing officer (“Hearing Officer”) for this proceeding. On July 28, 2020, the Bureau filed a Motion to Consolidate the Proceedings of Buchert Ridge and BRC. By order dated September 1, 2020, the Hearing Officer granted the Motion to Consolidate the Proceedings. By

order dated April 14, 2021, the Hearing Officer scheduled a remote hearing commencing on July 12, 2021.

On July 6, 2021, the parties filed Joint Stipulations that the Hearing Officer admitted into evidence at the administrative hearing.

The hearing convened, as scheduled, on July 12, 13, and 14, 2021 before the Hearing Officer. Carlton Smith, Deputy Chief Counsel, and Chris Giovannis, Assistant Counsel represented the Bureau at the hearing. Buchert Ridge and BRC were unrepresented at the hearing,<sup>1</sup> and Attorney Gitomer represented Hallman.

The Bureau presented its case through the testimony of Loti Boyogueno, Regional Chief; Chris Yother, Securities Accountant; Diana Scott; Redacted ; Steven Hibshman; Redacted ; Redacted ; Redacted ; Redacted ; and Hallman. The Bureau moved seventy-six exhibits into evidence. Hallman testified on his own behalf and moved three exhibits into evidence. Buchert and BNC were not at the hearing through any Counsel and presented no testimony or exhibits.

The Notes of Testimony ("NT") were filed on October 18, 2021. A briefing schedule issued on October 29, 2021. The Bureau filed its brief on December 9, 2021. Respondent Hallman filed his brief on January 18, 2022. The Department filed its reply brief on February 2, 2022. No briefs were filed on behalf of Buchert or BRC. Oral argument was held by videoconference on February 17, 2022 and that transcript was received via email on March 2, 2022. The matter is now ripe for adjudication.

---

<sup>1</sup> On September 16, 2020, Attorney Meyer sought permission to withdraw from the matter on the basis that Buchert and BRC were unable to pay him. By order dated September 25, 202 the undersigned granted the motion and, thereafter, the entities were unrepresented and because they were corporations that could not represent themselves in this type of complex matter. *See Harkness v. Unemployment Compensation Board of Review*, 551 A.2d 162, 167 (Pa. 2007).

### FINDINGS OF FACT

1. Respondent Buchert Ridge is a Pennsylvania corporation with an address at 2461 East High Street, Pottstown, Pennsylvania. NT 42; Department of Banking and Security ("DoBS")-11, Bates 41.
2. On August 25, 2003, Buchert Ridge filed Articles of Incorporation with the Pennsylvania Department of State. DoBS-11, Bates 41.
3. Buchert Ridge's Articles of Incorporation list Hallman as the sole incorporator. NT 42, DoBS-11.
4. From 2003 until the beginning of 2021, Hallman was the president of Buchert Ridge. NT 406.
5. Hallman was a 40% shareholder in Buchert Ridge with a 40% share also being held by its treasurer, a certified accountant, and smaller shares of 10% each by its secretary, an attorney, and an engineer. DoBS-12; NT 569-570, 576-577.
6. The shareholders agreed that any action to be taken would be upon agreement of the majority of the shareholders. NT 569-570, 583.
7. Hallman has a two-year certification from Temple University in architectural design and building construction. NT 401, 559.
8. At the time of the hearing, Hallman was 79 years old. NT 559.
9. Some time prior to 2004, observing that there was a need for moderate income retirement communities, Hallman spent two years studying various types of retirement communities and came up with a novel concept. NT 562.

10. His concept is a hybrid between a continuing care retirement community and an over 55 adult community; it has many of the amenities of a continuing care community, but without the continuing care, itself. NT 403-404.
11. The idea to start selling notes began with the construction of Sanatoga Ridge ("Sanatoga"), Hallman's initial retirement project, and was an idea suggested to him by an attorney. NT 429, 566.
12. That attorney characterized the notes to Hallman as "demand notes" and did not advise Hallman that they could or would be considered securities. NT 567.
13. Hallman did not believe the notes needed to be registered as securities. NT 569.
14. Hallman sold notes for Sanatoga and they were timely paid. NT 572.
15. After Sanatoga had been completed, Hallman began on the Buchert Ridge development. NT 567-569.
16. Buchert Ridge's shareholder agreement designated Hallman to obtain financing from institutions or private individuals for the corporation. DoBS-12, Bates 49-50.
17. Buchert Ridge owns six contiguous parcels of property in Pottstown, Pennsylvania. DoBS-90, Bates 620-622.
18. Buchert Ridge Retirement Community is a hybrid retirement community that has both a continuing care community and an adult community. NT 403.
19. Buchert Ridge Retirement Community consists of 47 townhomes and 3 single-family detached dwellings. DoBS-90, Bates 621.
20. Buchert Ridge is engaged in the business of operating the Buchert Ridge Retirement Community. NT 403-404.

21. Respondents designed the Buchert Ridge Retirement Community to include 100 Residential Units. NT 446.
22. Prior to beginning construction, Respondents' plan was to build the Buchert Ridge Retirement Community incrementally, in phases. NT 446-447.
23. The first phase of construction ("Phase I") at the Buchert Ridge Retirement Community consisted of building the first 49 residential units. NT 585.
24. The second phase of construction ("Phase II") consisted of building an additional 50 residential units at the Buchert Ridge Retirement Community. NT 575.
25. Buchert Ridge sold property occupancy contracts that allowed individuals to live in the townhomes or single-family detached dwellings. Hallman-4.
26. Buchert Ridge entered into a written residential agreement with each resident. Hallman-4.
27. Buchert Ridge entered into the residential agreements exclusively with individuals over age 55. Hallman-4.
28. The residential agreements defined "occupancy right" as the ability of the resident to occupy the residence and to receive defined senior care services from Buchert Ridge, without the resident acquiring an ownership interest in the property. Hallman-4.
29. Under the terms of the residential agreement, Buchert Ridge retained the sole right to resell the occupancy right to the residence. Hallman-4.
30. When Buchert Ridge resells the occupancy right to new residents, the terms of the agreement require Buchert Ridge to refund a percentage of residents' initial purchase price of their occupancy right. Hallman-4.
31. The remaining amount is the profit. NT 405.
32. In 2003, Buchert Ridge began construction of Phase I. NT 446-447.

33. In 2004 or 2005, Respondents submitted applications to Lower Pottsgrove Township ("Township") for the permits necessary to begin Phase II of construction. NT 573-574.
34. Due apparently to political divisiveness within Lower Pottsgrove Township ("Township"), where the real property is located, it took ten years to obtain approval for Phase II of the project. NT 449-451, 574-575, 588-589, 596-597.
35. Between 2005 and 2007, Respondents recognized that they would be unable to timely obtain Township approval to begin Phase II of construction. NT 597.
36. From 2010 until 2014, Respondents were unable to construct any residential units for Phase II because they were unable to obtain the necessary construction permits. NT 416, 585-586.
37. In order to provide funding for the Buchert Ridge Retirement Community, the owners of Buchert Ridge and BRC, including Hallman, discussed offering and selling notes. NT 583.
38. This was the method Hallman had used for Sanatoga. NT 418, 565.
39. In January 2010 through March 2011, well after the delays with the Township had become apparent to them, Buchert Ridge offered and sold Buchert Ridge notes. NT 446-447, DoBS-12, DoBS-14.
40. Respondents knew that they would be unable to repay the noteholders if Buchert Ridge could not complete Phase II of construction. NT 447.
41. In 2011, Buchert Ridge stopped offering and selling Buchert Ridge notes because of changes in the Pennsylvania Department of Revenue loans tax. NT 198, 427-428.
42. On March 25, 2011 Buchert Ridge, Hallman and three other individuals entered into a Limited Partnership Agreement that created Respondent BRC, DoBS-13.

43. BRC is a Pennsylvania limited partnership with a principal office located at 2011 Buchert Road, Pottstown, Pennsylvania. DoBS-13.
44. BRC's partnership agreement gives Buchert Ridge the sole authority to manage BRC's property, and to establish and maintain BRC's bank accounts. DoBS-13.
45. BRC's partnership agreement states its purpose is "to support the development, funding, and construction of a retirement neighborhood in accordance with the Hallman Retirement Neighborhood concept operated under Buchert Ridge Community, Inc." DoBS-13.
46. Buchert Ridge is the sole general partner of BRC; the others are limited partners. NT Hearing 434-435; DoBS-13.
47. Hallman owned a 40% interest in BRC. DoBS-13, Bates 57.
48. Buchert Ridge maintains control of the assets of both Buchert Ridge and BRC. NT 90.
49. In 2011, upon the creation of BRC, Buchert Ridge converted the outstanding Buchert Ridge notes to new BRC notes. N.T. 435-436.
50. The notes for Buchert Ridge, which were at a higher interest rate, were not formally "*transferred* to BRC," whose notes had a lower interest rate, because each noteholder had the option to cash in the note and get the principle back or to reinvest in BRC notes. NT 603-604.
51. Noteholders did not have the option of keeping the Buchert Ridge notes at the higher rate. NT 605.
52. Hallman informed the Buchert Ridge investors that Buchert Ridge would either redeem their existing Buchert Ridge notes or issue the investor BRC notes. NT 117-119, 146-147, 154, 162, 435-436.

53. The notes did state that the borrower reserved the right to repay the notes in full prior to the due date with no prepayment penalty. NT 611-612; DoBS-15.
54. Most, if not all, of the Buchert Ridge noteholders who transferred their Buchert Ridge note(s) to a BRC notes(s) received a lower interest rate on their new BRC notes compared to their existing Buchert Ridge notes. NT 435-436.
55. From on or about April 2011 to January 2015, Respondents offered and sold the BRC notes. DoBS-13, DoBS-15.
56. Respondents offered and sold Buchert Ridge notes and BNC notes to both Pennsylvania residents and non-Pennsylvania residents. DoBS-14, DoBS-15.
57. The Buchert Ridge notes and BNC notes could be purchased by the general public. NT 417.
58. The Buchert Ridge notes and the BNC notes state that the purchase of the note is secured by the Buchert Ridge Property at the 2011 Buchert Road address. DoBS-14, DoBS-15.
59. In the course of selling the notes, Hallman met with potential investors to discuss the offer and sale of the notes. NT 590-591.
60. Hallman signed all the Buchert Ridge notes and the BRC notes. DoBS-14; DoBS-15; NT 423, 438.
61. Hallman also assisted in acquiring construction permits on behalf of Buchert Ridge and BRC. NT 590-591.
62. Many of the Buchert Ridge noteholders were residents of the Buchert Ridge Retirement Community. 602.

63. The Buchert Ridge notes and BRC notes indicated the amount of the investment, the rate of interest, the investors' names and addresses, and provisions for the redemption of the BRC Notes. DoBS-14, DoBS-15.
64. The Buchert Ridge notes and BRC notes were payable upon demand with a ninety-days' notice. DoBS-14, DoBS-15.
65. Buchert Ridge and BRC advertised the sale of the BRC Notes in the May 2014 and May 2015 Buchert Retirement Community Newsletters. NT 53-54, DoBS-18, Bates 300, 310.
66. Respondents did not determine the sophistication or investment experience of the noteholders. NT 417.
67. Respondents never provided the noteholders with a balance sheet or financial statement. NT 421.
68. Respondents failed to disclose to the noteholders the identity of the corporate officers or partners in Buchert Ridge and BRC. NT 422-423.
69. Respondents failed to disclose to the noteholders the on-going construction delays resulting from Respondents' inability to obtain township approval to build Phase II of the Buchert Ridge Retirement Community. NT 589-590.
70. Respondents failed to disclose to the noteholders that Buchert Ridge or BRC would be unable to repay them if Respondents were unable to build Phase II of the Buchert Ridge Retirement Community. NT 428, 446.
71. During the ten-year construction delay, Buchert Ridge was required to pay both its engineering costs and those of the Township. NT 575.
72. The money from the notes was not available to build Phase II because it had gone into engineering and zoning costs due to the delays. NT 599-600.

73. Acuity Advisors and CPAs, LLP (“Acuity”) is an accounting firm. NT 173.
74. Steven Hibshman, a certified public accountant, is the managing partner of Acuity. NT 173.
75. In July 2015, Hallman retained Acuity to evaluate the financial position and “operating results” of the Buchert Ridge Retirement Community. NT 174.<sup>2</sup>
76. Acuity completed extensive work in order to ascertain the financial position and operating results of the Buchert Ridge Retirement Community for the year 2015. NT 179.
77. Acuity estimated the value of all six parcels owned by Buchert Ridge to be \$10,100,000. NT 226-227.
78. Prior to July 2015, Buchert Ridge had received a \$750,000 line of credit from Victory Bank. NT 219-221.
79. As of July 2015, Buchert Ridge failed to pay 2014 real estate taxes and it was in arrears. NT 219.
80. As of July 2015, Buchert Ridge failed to make payments on 2015 real estate taxes. NT 219.
81. As of July 2015, Buchert Ridge owed in excess of \$1,000,000 to creditors. NT 219-220.
82. In September 2015, Acuity advised Buchert Ridge and BRC to stop selling notes because of Buchert Ridge’s and BRC’s poor financial condition. NT 198.
83. On September 28, 2015, Buchert Ridge and BRC stopped making interest payments to the noteholders because there was insufficient cash flow to make those payments while also providing the services required under the terms of the residential agreements. NT 203-204.

---

<sup>2</sup>Hibshman was not qualified as an expert and is not here regarded as one. He could, however, and did, credibly testify as to the documents submitted to him by Respondents and what Respondents’ own assessments showed.

84. During 2016, Sanatoga loaned additional funds to Respondents to provide working capital to fund operations and pay delinquent real estate taxes. DoBS-28, Bates 390.
85. Financial statements for 2015-2016 disclose that the aggregate balance due on the Sanatoga loans was \$451,197 as of December 31, 2016 and was \$117,428 as of December 31, 2015. DoBS-28, Bates 390.
86. Carmody & Associates are Pennsylvania certified general real estate appraisers. DoBS-90.
87. On February 12, 2016, Carmody & Associates, prepared an appraisal of the Buchert Ridge real estate. DoBS-90.
88. Including Buchert Ridge's obligations to repay residents in the residential agreements as a claim against the value of the property, Carmody & Associates appraised net value of the Buchert Ridge Property was \$950,000. NT 224-226, DoBS-90, Bates 695.
89. Carmody & Associates appraised the value of all six parcels of Buchert Ridge's real estate, including the Buchert Ridge Property, as \$1,075,000. DoBS-90, Bates 695.
90. Carmody & Associates' appraised value for Buchert Ridge's real estate of \$1,075,000 is \$9,022,897 less than the current amount of at least \$10,097,897 that is owed to the noteholders. NT 273-274, DoBS-90, 97.
91. On July 11, 2016, Acuity sent a letter to the noteholders stating that Hallman was no longer associated with Buchert Ridge's or BRC's management or operations. NT 131; DoBS-74.
92. In 2016, Buchert Ridge, BRC, and Acuity held a meeting with the noteholders. NT137.
93. At the meeting, Hibshman told the noteholders that any legal action could result in the collapse of the Buchert Ridge Retirement Community. NT 212.
94. Hibshman testified that legal counsel is uncertain as to which interest in the Buchert Ridge Property has priority --- the notes or the residential agreements. NT 211- 212.

95. Acuity is currently operating as if the residential agreements would have priority of payment preference over the notes. NT 211-212.
96. Under Buchert Ridge's and BRC's current operational model, there is very little chance that the noteholders will be able to recover any of their investment. NT 261-262.
97. Prior to November 2017, Hibshman asked Sanatoga to provide additional financial help to Buchert Ridge. NT 220-221.
98. Prior to November 2017, Sanatoga agreed to loan Buchert Ridge \$1.7 million to: pay the Victory Bank debt of \$750,000; pay all then delinquent and currently due real estate taxes; and refinance the debt Buchert Ridge owed to Sanatoga Ridge. NT 220-221, DoBS-9, Bates 36, DoBS-85, Bates 580, 586.
99. In November 2017 Hallman signed for, on behalf of Buchert Ridge, the \$1.7 million loan from Sanatoga to Buchert Ridge. NT 218-221, DoBS-85, 86, 87, 88, 89.
100. The loan was secured by the same realty that secured the notes. *Compare* DoBS-84, Bates 580 *with* DoBS-14, DoBS-15.
101. Hibshman explained that as of December 31, 2020, Buchert Ridge and BRC owe the Investors, without interest, \$7,223,077. NT 204-206, DoBS-49.
102. Buchert Ridge and BRC are in default on the notes. NT 217.
103. In August 2017 the Bureau received a complaint from the Office of Attorney General that caused it to begin the investigation of this matter. NT 29-30.
104. Lori Boyogueno, a regional chief with the Bureau, was the lead investigator. NT Hearing 29-30.
105. Boyogueno calculated that, with interest, Buchert Ridge and BRC owe the Investors between \$10,097,897.78 and \$11,243,689.37. NT 273-274; DoBS-97.

106. Chris Yother, a securities accountant for the Department, was qualified as an expert in accounting, but was not qualified as an expert with respect to solvency evaluations specifically. NT 286-299, 298-299.
107. Yother applies U.S. Generally Accepted Accounting Principles in his work. DoBS-51, Bates 525.
108. Yother was asked to perform a solvency review and was able to conduct his analysis only for the years in which Buchert Ridge and BRC provided financial statements, *i.e.*, for Buchert Ridge 2006-2010, 2015-2020, and for BRC 2012, 2013, 2015, 2018-2020. NT 300-301, 374-375.
109. For each of these years Yother determined to a reasonable degree of professional certainty that the net worth for each entity was a net deficit. NT 313-320, 320-324; DoBS-51.
110. It is customary for persons performing the accounting function that Yother performs, which is a "procedural exercise," to rely on numbers provided to them by professional accounting firms. NT 375; 387.
111. The first definition of insolvency in the Department's regulation is the inability to pay debts as they fall due in the person's usual course of business. 10 Pa Code §102.021; NT 327-328; DoBS-51.
112. To determine whether Buchert Ridge and/or BRC fell within this definition, Yother calculated five different ratios. DoBS-51, Bates 527-530.
113. Yother divided total liabilities by total assets and determined the entities' debt-to-asset ratio. NT 303; DoBS-51, Bates 528.

114. A debt to asset ratio in excess of 100 percent is indicative of potential financial distress. NT 303; DoBS-51, Bates 527.
115. For the years in which financial data was provided to Bureau investigators, the entities' debt to asset ratio indicated financial distress. NT 303-304, 321-324; DoBS-51, Bates 527.
116. Yother divided total equity by total assets to calculate the equity-to-asset ratio. NT 304; DoBS-51, Bates 528.
117. An acceptable range is a number below 50 percent. NT 304; DoBS-51, Bates 528.
118. For the years in which financial data was provided to Bureau investigators, the entities' equity-to asset ratio showed a net deficit position. NT 304, 321; DoBS-51, Bates 528.
119. Yother compared debt to equity to calculate the debt-to equity ratio. NT 305; DoBS-51, Bates 529.
120. Any debt-to-equity ratio below 50% or above 75% is indicative of financial weakness. NT 305; DoBS-51, Bates 529.
121. For the years in which financial data was provided to Bureau investigators, the entities' debt-to equity ratio showed unacceptably low percentages. NT 305, 321; DoBS-51, Bates 529.
122. Yother divided current assets, less inventory and prepaid expenses, by current liabilities to calculate the quick ratio. NT 306; DoBS-51, Bates 529
123. A quick ratio significantly less or greater than 1:1 is considered an indication of financial weakness. NT 306-307; DoBS-51, Bates 529.

124. For the years in which financial data was provided to Bureau investigators, a quick ratio calculation, showed that the entities had an increasing risk that they would not be able to repay, within ninety days, debts coming due. NT 306-307; DoBS-51, Bates 529.

125. Yother divided earnings before interest and tax by interest expense to calculate the interest coverage ratio. DoBS-51, Bates 530.

126. A declining interest coverage ratio is an indication of higher risk of default on debts. NT 307; DoBS-51, Bates 530.

127. For the years in which financial data was provided to Bureau investigators, Yother found that this ratio steadily decreased. NT 307; DoBS-51, Bates 530.

128. The second definition of insolvency is "liabilities in excess of the *fair value* of the person's assets." 10 Pa Code §102.021; NT 328; DoBS-51.

129. Regarding this valuation, Yother stated in his report:

The determination of the fair value of an entity's assets is complex and usually performed by a business valuation expert. US GAAP utilizes many different bases in the recordation of assets for accounting purposes that may not reflect the fair market value of any particular asset or class of assets. I do not have experience in business valuation, nor do I have access to the information that would be required to value Buchert's assets. However, a net worth calculation may be performed utilizing the available financial statement exhibits.

DoBS-51, Bates 530.

130. The Department defines "net worth" under 10 Pa. Code §102.021 as: "The excess of assets over liabilities as determined by generally accepted accounting principles reduced by: ... (ii) deferred charges." NT 308 (judicial notice taken); *see also* DoBS-51, Bates 530-31.

131. A negative net worth indicates a greater likelihood of insolvency. DoBS-51, Bates 531.

132. The Department has historically limited the "deferred charges" referenced in the definition of "net worth" to tax assets and liabilities, but there is no Department regulation or interpretation that states this. NT 341-343.
133. In performing the solvency calculations under 10 Pa. Code 102.021 (ii), Yother treated the notes to the buyers as liabilities of the entities, although they would not come due until the occupancy right was sold by the current occupant and then they would be paid with the funds the new occupancy purchaser provided. NT 352-356, 385-386.
134. For all years for which financial data was provided, Yother calculated a negative net worth. DoBS-51; Bates 532.
135. In performing the solvency calculations under 10 Pa. Code 102.021 (ii), Yother used the *historical* value of the property in valuing the real property, rather than the *fair market value* of the property. NT 329-332, 386.
136. Fair market value is used in doing a business valuation, not a solvency review. NT 365.
137. Although Yother did not consider the fair market value of the real property in performing the solvency review, he did have a total asset value that had undergone scrutiny. NT 339.
138. Yother is not an expert in performing business valuations and was not asked to perform one; he was asked to perform a solvency review based on the way the Department calculates it. NT 375-376.
139. Financial reviews (not audits) compiled by Rakowski & Company, CPA for the Buchert Ridge Board of Directors and supplied to the Department by Respondents included an asset valuation for "property and equipment," but did not specifically reflect if the

property was realty and, if so, whether it was valued at fair market. NT 349, 370-371; DoBS-20 through DoBS-24.

140. Financial reviews (not audits) compiled by Rakowski & Company CPA for Buchert Ridge Board of Directors for the years 2006-2009 and supplied to the Department by Respondents included a liability for "residents deposits." NT 377, 382-383; DoBS-20 through DoBS-24.

141. Yother relied on this data, in doing his analysis. NT 360-361, 363-364, 374-375, 393.

142. Acuity performed compilation reports, notably one for 2015, which Yother reviewed, because he noted that it had discussed the valuation of real estate and, based on his review and comparison with the disclosures in the financial statements, he found no significant variance. NT 394; DoBS-26, DoBS-27.

143. Acuity's review for 2019 contains the following note titled "Development Notes Payable:

Prior to May 2011, BRC, Inc. borrowed funds from various individuals and entities in the approximate amount of \$8,000,000 under terms that paid interest quarterly at annual rates between 6.00% and 8.00%. The notes with the various parties were transferred and rewritten to BRC NP on or about May 2011. Funds borrowed after that date were under note agreements with BRC NP with interest at annual rates between 6.00% and 8.00%. From inception of the notes through December 31, 2014, interest payments were at the stated interest rates in each note. During 2015, it became apparent that BRC, Inc. and BRC NP were not financially viable, and payments to noteholders were discontinued in September 2015. In light of the then emerging information about the financial positions of BRC, Inc. and BRC NP, all payments made to noteholders during 2015, which totaled \$390,508, were reported as a reduction of principal rather than interest expense. No payments have been made to the noteholders since July 2015 and, therefore, BRC NP is in technical and payment default of all loan agreements. Interest has not been calculated or accrued on the Note balances since September 2015. The aggregate balance due without interest accrued on these delinquent note balances is \$7,223,077 at December 31, 2020 and 2019.

NT 198-199, DOBS-92, Bates 725, DOBS-49, Bates 520.

144. This amount does not include interest for the last six years. NT 209, 261.
145. Noteholders have not been paid because Buchert Ridge does not have sufficient cash flow, while providing the services required under the resident contract agreements, to service the debt beyond what is owed to Sanatoga Ridge. NT 210, *see also* NT 262.
146. Redacted is a retired meat cutter with a high school education. NT 113.
147. Redacted was 61 at the time of the hearing. NT 116.
148. Redacted purchased his first note from Sanatoga at a 13% interest rate. NT 116.
149. Later, Redacted was given the option to have the note repaid or to have it transferred to Buchert Ridge. NT 116-118.
150. Redacted elected the transfer option. NT 116-118.
151. Redacted was later given the option to have the earlier notes repaid or transferred to BRC and he chose the latter option. NT 119.
152. He purchased notes while a Pennsylvania resident. NT 116.
153. Notes purchased in 2007 had an 8% rate, which upon subsequent purchases/transfers declined to 7% and then 6%, NT 120-125; DoBS-14, DoBS-15, DoBS-95, DoBS-96; Bates 68, 78, 190, 741, 743.
154. Respondents did not provide Redacted with any financial statements or disclosures regarding Buchert Ridge's business prior to his purchase of the notes. NT 126.
155. Respondents did not provide Redacted with any written information regarding the financial risk of investing in the notes. NT 127.
156. Respondents did not provide Redacted with any information regarding the operating history of Buchert Ridge or BRC. NT 127.

157. Redacted initially learned of Hallman and his investments from Redacted father, who had invested in Sanatoga. NT 114.
158. By letter dated September 28, 2015 Redacted was informed that BRC was having financial difficulties and would not be able to pay the interest on the note due October 1, 2015. DoBS-71, Bates 566.
159. The inability to pay was reiterated again in a letter dated January 8, 2016, signed by Hallman. DoBS-72, Bates 567.
160. By letter dated January 30, 2016 from Acuity, Redacted was informed that there was significant uncertainty regarding BRC's ability to fully repay the notes and advised him that the interest payments he had received prior to October 1, 2015 should be characterized as nontaxable partial return of principle rather than taxable interest. DoBS-73, Bates 568.
161. By letter dated July 11, 2016 Acuity informed Redacted that certain persons, including Hallman, were no longer associated with Buchert Ridge's management and he was invited to attend a meeting to discuss Acuity's current assessment of the financial position of Buchert Ridge. DoBS-74, Bates 569.
162. At such a meeting attendees, including Redacted were cautioned by Hibshman against taking legal action by Acuity through Hibshman "because the money was not there." NT 137, 212.
163. Redacted is still owed approximately \$96,000 for his notes. NT 137-138.
164. Redacted had intended to use the money to help pay for his two daughters' college education. NT 138, 162.
165. Redacted was 88 years old at the time of the hearing. NT 469,
166. Redacted purchased notes from BRC while residing in Pennsylvania. NT 469.

167. For \$30,000 Redacted purchased a note on June 1, 2011 with an interest rate of 6%.  
469, Bates 218.
168. For \$40,000 he purchased a note on June 1, 2012 with an interest rate of 6%. NT  
470-471, 469; DoBS-14, Bates 236.
169. Respondents did not provide Redacted with any financial statements or disclosures  
regarding Buchert Ridge's business prior to his purchase of the notes. NT 471-472.
170. Respondents did not provide Redacted with any written information regarding the  
financial risk of investing in the notes. NT 472.
171. Respondents did not provide Redacted with any information regarding the operating  
history of Buchert Ridge or BRC. NT 472.
172. Redacted stopped receiving interest payments on the notes in August 2015. NT 474.
173. Redacted attended a meeting where he was told by someone from Acuity that if suit  
was brought against Respondents no one would have a chance of getting any money. NT  
474.
174. Losing the \$70,000 investment meant Redacted did not go into a nursing home if he  
needed to. NT 475.
175. Redacted learned about the opportunity purchase the notes from friends at church. NT  
467.
176. Redacted was 79 at the time of the hearing. NT 494.
177. Redacted purchased notes from BRC while residing in Pennsylvania. NT 495.
178. For \$50,000 he purchased a note on May 18, 2011 with an interest rate of 6%. NT  
492-494; DoBS-15, Bates 194.

179. Prior to the purchase, Hallman assured him that he could ask for the principle back any time after one year, although the loan on its face was for three years, and told him, he would "not have to worry because it's good." NT 496. See DoBS-15, Bates, 194.
180. Respondents did not provide Redacted with any financial statements or disclosures regarding Buchert Ridge's business prior to his purchase of the notes. NT 497.
181. Respondents did not provide Redacted with any written information regarding the financial risk of investing in the notes. NT 497.
182. Respondents did not provide Redacted with any information regarding the operating history of BRC. NT 497.
183. Respondents did not inform Redacted whether BNC was insolvent at the time he purchased the note. NT 497-498.
184. When Redacted stopped receiving interest payments and contacted Hallman, Hallman told him, "if you'll you wait you can probably get it all. But if you go to your attorney or sue me, then this going to put everything in litigation and you may not get much of it, if any." NT 499-500.
185. Based on this statement Redacted decided not to sue. NT 500.
186. The money Redacted lost had been earmarked for retirement. NT 501.
187. Redacted is a retired teacher with a post-graduate degree in education. NT 508-509.
188. Redacted was 85 at the time of the hearing. NT 511.
189. Redacted purchased notes from BRC while residing in Pennsylvania. NT 511.
190. For \$50,000 Redacted purchased a note on May 25, 2011 with an interest rate of 6%. NT 509-510; DoBS-15, Bates 205.

191. For \$60,000 she purchased a note on June 1, 2012 with an interest rate of 6%. NT 510; DoBS-15, Bates 234.
192. For \$60,000 she purchased a note on September 1, 2013 with an interest rate of 6%. NT 510; DoBS-15, Bates 274.
193. For \$80,000 she purchased a note on March 1, 2014 with an interest rate of 6%. NT 511; DoBS-15, Bates 282.
194. Respondent has not been able to recover her principle of \$250,000. NT 516.
195. Redacted learned of the investment opportunity when Hallman came to a monthly residents' meeting and told the attendees about it. NT 519.
196. Respondents did not provide Redacted with any financial statements or disclosures regarding Buchert Ridge's business prior to her purchase of the notes. NT 512.
197. Respondents did not provide Redacted with any written information regarding the financial risk of investing in the notes. NT 512-513.
198. Respondents did not provide Redacted with any information regarding the operating history of BRC. NT 513.
199. Respondents did not inform Redacted whether BNC was insolvent at the time she purchased the notes. NT 497-498.
200. By letter dated September 28, 2015 Redacted was informed that BRC was having financial difficulties and would not be able to pay the interest on the note due October 1, 2015. NT 514; DoBS-59, Bates 554.
201. The inability to pay was reiterated again in a letter dated January 8, 2016 signed by Hallman. NT 515; DoBS-60 Bates, 555.

202. By letter dated January 30, 2016 from Acuity, Redacted was informed that there was significant uncertainty regarding BRC's ability to full repay the notes and advising her that the interest payments she had received prior to October 1, 2015 should be characterized as nontaxable partial return of principle rather than taxable interest. NT 516; DoBS-61, Bates 556.
203. Redacted is in a wheelchair and had intended the funds to pay for her home care. NT 517.
204. Redacted is a quality control lab technician. NT 524.
205. Redacted was 63 at the time of the hearing. NT 527.
206. Redacted purchased notes from BRC while residing in Pennsylvania. NT 527.
207. For \$25,000 Redacted purchased a note on October 14, 2010 with an interest rate of 6%. NT 526; DoBS-14, Bates 80.
208. For \$175,000 he purchased a note on May 11, 2011 with an interest rate of 6%. NT 526-527. DoBS-15, Bates 188.
209. Redacted has not been able to recover his principle. NT 530-531.
210. Redacted learned of the investment opportunity through Kolb. NT 525.
211. Respondents did not provide Redacted with any financial statements regarding Buchert Ridge's business prior to his purchase of the notes. NT 528.
212. Respondents did not provide Redacted with any written information regarding the financial risk of investing in the notes. NT 528.
213. Respondents did not provide Redacted with any information regarding the operating history of BRC. NT 529.

214. Respondents did not inform Redacted whether BNC was insolvent at the time he purchased the notes. NT 529.
215. Redacted interest payments stopped in 2015. NT 531.
216. Redacted attended two meeting that Buchert Ridge, BRC and Acuity held for the noteholders. NT 531.
217. At one meeting Redacted was told by "the gentleman from Acuity" (i.e., Hibshman) that it would not be in the best interest of the noteholders to pursue any legal course individually or as a group because it might make it more difficult to recover funds in the future. NT 532.
218. Redacted had intended to use the money for his children's college expenses and because he could not, they have an inordinate amount of debt. NT 533.
219. Hibshman admitted warning noteholders at the meeting that if they brought suit the retirement community might collapse. NT 210-216.
220. While Hibshman did not intend his statement to be any type of threat or coercion, it is apparent that it was received as such by at least some noteholders. *Passim*.
221. Hallman, himself, has lost \$400,000 on his own notes. NT 576-577.
222. Respondents received notice of this proceeding and were afforded an opportunity to be heard in accordance with Section 504 of the Administrative Agency Law. Case file; NT I-621.

### CONCLUSIONS OF LAW

1. The Department has jurisdiction in this matter. 1972 Act, Sections 601(a) and 702, 70 P.S. §§ 1-601 (a) and 1-702.
2. Respondents received notice of this proceeding and were afforded an opportunity to be heard in accordance with Section 504 of the Administrative Agency Law, 2 Pa .C.S. § 504.
3. The Bureau has met its burden to prove Respondents violated Section 201 of the 1972 Act.
4. The Bureau has met its burden to prove Respondents violated Section 401(b) of the 1972 Act.
5. The Bureau has met its burden to prove Respondents violated Section (401(c) of the 1972 Act.

## DISCUSSION<sup>3</sup>

### SECTION 201: REGISTRATION REQUIREMENT

Hallman contends that the notes are not "securities" and, therefore, the Department has no jurisdiction over this matter. He further argues, alternatively, that if they are securities, they are subject to an exemption from registration, and finally, argues that he is not a person with a duty to register because he is not an individual with control.

Section 201 of the 1972 Act provides:

#### **Registration requirement**

It is unlawful for any person to offer or sell any security in this State unless the security is registered under this act, the security or transaction is exempted under section 202 or 203 hereof or the security is a federally covered security.

70 P.S. §2-201.

The following definitions from the 1972 Act are pertinent to a charge under Section 201:

(b) An "affiliate" of, or a person "affiliated" with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

\* \* \*

(l) "Issuer" means any person who issues or proposes to issue any security, ... Members of unincorporated associations, which members have limited liability, and any trustee or member of a trust, committee or other legal entity shall not be deemed to be an "issuer" for the purposes of this act.

\* \* \*

---

<sup>3</sup> The degree of proof required to establish a case before an administrative tribunal in an administrative action is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Courts describe a preponderance of the evidence as evidence that has sufficient weight to "tip the scales on the side of the plaintiff," *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950), and as "such proof as leads the fact-finder... to find that the existence of a contested fact is more probable than its nonexistence," *Sigafoos v. Pa. Bd. of Prob. & Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986).

(n) "Person" means an individual, corporation, partnership, association, joint stock company, syndicate, trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, government, political subdivision of a government, or any other entity.

\* \* \*

(r)(i) "Sale" or "Sell" includes every sale, disposition or exchange, and every contract of sale of, or contract to sell, a security or interest in a security for value of any issuance of securities pursuant to any merger, consolidation, sale of assets or other corporate reorganization, involving the exchange of securities, in whole or in part, for the securities of any other person.

(ii) "Offer" or "Offer to Sell" includes every direct or indirect attempt or offer to sell or dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

\* \* \*

(t) "Security means any note...."

#### A. JURISDICTIONAL REQUIREMENT

First, Hallman asserts that the Department lacks jurisdiction over this matter because the notes in issue are not "securities." As noted above, Section 201(t) of the 1972 Act, defines security to include "any note." Every note is presumed to be a security. *Reves v. Ernst & Young*, 494 U.S. 56 (1990). This presumption may be rebutted, however, if the note bears a strong resemblance to notes that courts have determined are not securities. *Id.*

In *Reves*, the Court determined that the following notes are not the type that come within the definition of a security: (1) "notes delivered in consumer financing"; (2) "notes secured by a mortgage on a home"; (3) "*short-term notes secured by a lien on a small business or some of its assets*"; (4) "notes evidencing a "character" loan to a bank customer"; (5) "short-term notes secured by an assignment of accounts receivable"; (6) and "notes that formalize an open-account debt incurred in the ordinary course of business." *Id.* at 67. Hallman argues that the notes in issue

here are short-term notes that were secured by a lien on the real estate and, hence, come within exception number three. However, the notes here state that they can be redeemed with unpaid principal and any interest due "after three years from the date of issue." Under *Reves* the term of the instrument refers to when payment is due, not when it will be made. *Id.* at 77. (Rehnquist, C.J., concurring in part and dissenting in part). As such the demand could be made far into the future.<sup>4</sup> Hence, the notes are not exempted from the definition of securities under exception three of *Reves*.

Accordingly, the next inquiry is whether the notes are similar to ones the courts have deemed not to be securities.

*Reves* instructs that to make the determination, courts must weigh four factors: (1) the parties' motivations for entering into the transaction; (2) the plan of distribution of the instrument; (3) the reasonable expectations of the investing public; and (4) whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument. *Id.* at 66-67. "Failure to satisfy one of the factors is not dispositive since they are considered as a whole." *Robyn Meredith, Inc. v. Levy*, 440 F. Supp. 2d 378, 384 (D.N.J. 2006) (citing *McNabb v. SEC*, 298 F.3d 1126, 1132-1133 (9th Cir. 2002)).

Under the first *Reves* factor, "[i]f the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a 'security.'" *Reves*, 494 U.S. at 66. Here, both Buchert Ridge and BRC, for-profit endeavors, sold notes to raise money for the development of the Buchert Ridge Retirement Community, which was obviously a substantial

---

<sup>4</sup> While the notes indicate that that borrower has the option to repay them after ninety days, there is scant evidence in the record that that occurred.

investment, and the investors all testified that their basis for investing was the favorable interest rates offered.

Under the second *Reves* factor, a Court must determine whether it is an instrument in which there is “common trading for speculation or investment.” *Reves*, 494 U.S. at 66 (internal citation omitted). “[T]he requisite ‘common trading’ in an instrument is established if the instrument is offered and sold to a broad segment of the public.” *Id.* at 68. Here, the evidence does not support that the notes were offered and sold to a broad segment of the public, although there was no defined group of prospective purchasers. Instead, it appears that news of the opportunity spread by word of mouth, especially through what appears to have been a common church-affiliated connection. While it is true that in a least two instances Buchert Ridge Community newsletters (DoBS-53 and 54) mentioned the investment opportunity, it was without the consent or approval of Hallman (NT 441-442) and upon discovering it, he told them to cease doing so.<sup>5</sup> There is no evidence that based on the lone two advertisements, which were apparently circulated only to residents of the Buchert Retirement Community, any investor made a purchase and it does not appear that the newsletter was directed to a “broad segment” of the public.

Under the third *Reves* factor, a court examines “the reasonable expectations of the investing public” to see if the public would view the notes as securities. *Reves*, 494 U.S. at 66. The evidence is consistent from all parties that Hallman characterized the notes as an investment and that the lenders saw it as such.

Under the fourth *Reves* factor a court examines, “whether some factor such as the existence

---

<sup>5</sup> The record is not clear as to who authorized the article or whether any of the shareholders knew about it ahead of the publication. It may well have been a volunteer group that put the letter together. This information is insufficient to tie this incident to any of the Respondents.

of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary.” *Reves*, 494 U.S. at 67. No other such regulatory scheme exists.

Accordingly, the undersigned concludes that the notes are securities and, consequently, the Department has jurisdiction over the matter.

## **B. APPLICABILITY OF EXEMPTION TO REGISTRATION REQUIREMENT**

Hallman next argues that even if the notes are securities, the requirement to register does not apply here. More specifically he contends that the notes are excepted from registration under Section 203(j) of the 1972 Act, which provides:

Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels if: (i) **the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;** (ii) no public media advertisement is used, mass mailing made or other form of general solicitation is utilized in connection with soliciting the transaction; and (iii) no compensation is paid or given directly or indirectly for soliciting any person in this State in connection with the transaction.

70 P.S. §1-203(j).

Under this provision, for the notes to be exempt from registration set forth in Section 203(j), every note and the property that secures the note must be sold as a unit. Here, Respondents “secured” every note with the property located at 2011 Buchert Road, Pottstown Pennsylvania (“Buchert Ridge Property”). (DoBS-14, 15). But under any reasonable reading of this provision to be eligible for the exemption pursuant to Section 203(j), Respondents needed to secure *each note* with a mortgage on a *distinct property*. Otherwise, the notion that the note is secured is rendered meaningless. Department Regulation 203.101, 10 Pa. Code § 203.101, also provides guidance here.<sup>6</sup> It not only supports the

---

<sup>6</sup> (a) For the purpose of section 203(j) of the act (70 P.S. § 1-203(j)), the exemption is available only if:

idea that each note must be secured on a distinct property, but also states that the outstanding principle cannot exceed the fair value, which the findings show it did at the time notes were sold. Therefore, the exception in Section 203(j) is inapplicable here.

### C. REQUIREMENT OF CONTROL

Hailman asserts that because he was not a majority shareholder in either Buchert Ridge or BRC, he did not have the requisite "control" such as to task him with responsibility for the registration requirement.<sup>7</sup> He maintains that he relied on the advice of the shareholders who were an attorney and a certified public account, as well as on another outside attorney. He also asserts that in 2007, after suffering a heart attack, he retired from active involvement in Buchert Ridge and BRC, although retaining the title of president.

For purposes of the 1972 Act, a person with "actual control" has the "power to direct or cause the direction of the management and policies" of the primary violator. *Byers v. Pennsylvania Dep't of Banking & Sec., Bureau of Sec. Compliance & Examinations*, 259 A.3d 551, 562 (Pa. Commw. Ct. 2021). "[W]here a plaintiff alleges that the directors and officers participated in the alleged primary conduct, that is sufficient to state a claim for control person liability." *Id.* (internal citation omitted). *Byers* held that majority ownership is a not *per se* requisite for control, explaining

---

(1) The entire bond or other evidence of indebtedness, together with the real or chattel mortgage, deed of trust, agreement of sale or other instrument securing the same is offered and sold as one unit.

(3) The outstanding principal amount of all bonds or other evidences of indebtedness that are secured by the real or chattel mortgage, deed of trust or agreement of sale on the same property (including bonds and other evidences of indebtedness issued in the transaction) does not exceed the fair value of the property at the time of the transaction.

<sup>7</sup> The term "control" appears within the definition of "affiliate" in the 1972 Act.

that a minority shareholder can be a person with control if there are indicia of control. In *Byers* such indicia were that minority shareholder served on the board as the chief operating officer and had access to and knew of the corporation's financial performance. Hallman meets those criteria, and more, since *he alone* has the authority to construct and maintain the property (NT 412-413), signed every note, procured loans and, by his own admission, had the sole authority to determine who could purchase them. NT 570-571. In addition, the record does not support his contention that he was not actively involved at the time in question given that he sold every note in issue here. Therefore, Hallman violated the registration requirement in Section 201. Further, given the findings of fact, and because Buchert Ridge and BRC put on no rebutting evidence, they are in violation of this provision, as well.

**SECTION 401(b): MISSTATING OR OMITTING MATERIAL FACTS**

Hallman contends that he did not misstate any material facts and that he did not fail to disclose insolvency to the noteholders because neither Buchert Ridge nor BRC was insolvent.

Section 401(b) of the 1972 Act provides:

**Sales and purchases**

It is unlawful for any person, in connection with the offer, sale or purchase of any security in this State, directly or indirectly:

\* \* \*

(b) To make any untrue statement of a material fact or to *omit to state a material* fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading ....

70 P.S. § 1-401(b) (Emphasis added.)

The United States Supreme Court provided the following test to determine if a fact is "material":

An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. ... It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.

*TSC Industries, Inc., et al. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (emphasis added).

#### A. THE FACT OF INSOLVENCY

Hallman asserts that the Department did not present credible evidence that Buchert Ridge and BRC were insolvent at the time the notes were offered and sold and that, in fact, they were *not*, so there was no need to "disclose" that non-fact.

To assess this issue, it is necessary to discuss the testimony of Yother. This witness was qualified as an expert in financial accounting, but not specifically in the area of valuating the business of an adult community. *See* NT 293, 298. Yother, himself, admitted he was not an expert in performing a *business valuation*. But that was not what he was asked to do; he was asked to do and did do was perform a *solvency review* within the guidelines the Bureau uses in the quoted regulation. In his report he sets forth the Department regulation that governed his analysis. *See* DoBS-51. That regulation provides:

*Insolvency or Insolvency*---Except in the case of entities required under the law or regulation to submit an auditor's report if the auditor's report does not contain going concern disclosure, the term means **either** of the following:

- (i) The inability to pay debts as they fall due in the person's usual course of business.
- (ii) Liabilities in excess of the fair value of the person's assets.

(Emphasis added.) Because the definition is written in the disjunctive, a showing under only one

of the two criterion is necessary. At the outset, the undersigned finds Yother's testimony, as extensively recounted in the findings of fact, to be credible and it is accepted as such.

Yother's calculations support the first definition of insolvency because Respondents were unable to pay their debts in the form of taxes when they were due. As stated by Hibshman, at the time his firm was engaged by Respondents in July of 2017 (NT 174), the 2014 taxes were in arrears and the 2015 taxes were not being paid. NT 219.

Although it is not necessary to reach the second definition of insolvency given the above discussion, it is addressed here for purposes of completeness. Regarding this second definition, the distinction between "fair value" versus "fair market value" (if any) must be addressed because Respondents assert it is the fair market value that should have been calculated to determine solvency.

What is actually being challenged here is whether a solvency review under the second definition in the regulation is performed properly when employing the historical value of the property rather than its fair market value to determine the "fair value" of the asset in question here, which is realty. This constitutes an attack on the interpretation and application of regulation itself, not the mechanical calculations performed under it by Yother.

First, there is no need to even reach the regulatory construction issue of whether Yother's use of the "fair value" rather than the "fair market value" is erroneous. This is because Carmody & Associates, hired by Victory Bank in 2016 to appraise the "subject property's leased fee market value" for of all six parcels of Buchert Ridge's real estate, including the Buchert Ridge Property, actually appraised it at \$1,075,000. DoBS-90, Bates 695. This appraised value is \$9,022,897 less than the current amount owed to the noteholders which is at least \$10,097,897 according to Boyogueno. NT 273-274; DoBS-90, DoBS-97. Respondents presented no countering evidence.

Thus, even under Hallman's proffered theory for performing a solvency review, he would fare no better.

In the alternative and, again, for the sake of completeness, assuming the efficacy and interpretation of the regulation must be decided, the following analysis is proffered. Where, as here, an agency creates a rule pursuant to its interpretative powers, "a court shall only defer to the rule if it is reasonable and 'genuinely tracks the meaning of the underlying statute.'" *Marcellus Shale Coal. v. Dep't of Env't Prot.*, 193 A.3d 447, 462 (Pa. Cmwlth. 2018).<sup>8</sup> As was done in *Marcellus*, it is appropriate to consider the purpose of the underlying statute when examining the attendant regulation.

The 1972 Act, itself, has no stated express public purpose; however, it is clear in Section 1-703, 70 P.S. § 1-703, that its interpretation is to be coordinated with federal law. In construing the federal securities laws, the United States Supreme Court has explained, "[t]he primary purpose of the Acts of 1933 and 1934 was to eliminate serious abuses in a largely unregulated securities market. The focus of the Acts is on the capital market of the enterprise system; the sale of securities to raise capital for profit-making purposes, the exchanges on which securities are traded, and the need for regulation *to prevent fraud and to protect the interest of investors.*" *United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 849 (1975) (emphasis added). Thus, the focus of the protection is on the interest of the investors (here, the noteholders), not the seller of the notes. Considering this purpose, there is nothing in the Department's regulation or in any proffered legal argument to suggest that the regulation does not track the statute or is not rational. Indeed, providing a definition

---

<sup>8</sup> The authority for the Department to promulgate regulations to carry out the 1972 Act is, itself, clear. *See* 70 P.S. § 1-609.

for “insolvency” is helpful to assessing if material facts have been omitted or if fraud or deceit have been committed under Section 401. As such, Hallman’s argument is unavailing.<sup>9</sup>

#### **B. OTHER MATERIAL FACTS**

Hallman is incorrect in his assertion that the merits of the 401 violations rest entirely on an unsupported contention that Buchert Ridge and BRC were insolvent during the times the notes were sold. While the undersigned finds that insolvency was proved, other key facts were also not disclosed, including the risks attendant to the investment, information regarding the construction delays and that those investors who were also residents could possibly lose their homes *and* their investments. Hallman posits that the Bureau did not meet its burden because it did not prove what statements *were made* in connection with the offer, sale or purchase of the notes. However, such proof is not required as the *omission* of material facts is also a violation of this section. *Stas v. Pennsylvania Securities Commission*, 910 A.2d 125, 132 (Pa. Cmwlth. 2006).

In this case the construction delays, unexpected capital outlay and internal financial strain between the rights of noteholders and those of residents and the consequence of default would be facts a reasonable shareholder would be expected to consider as they directly affect risk. The investors who testified were uniform in stating that such information was not provided. Thus, the violation of 401(b) is established.

#### **SECTION 401(e): COMMITTING FRAUD OR DECEIT**

Hallman contends that this provision requires scienter and that that element is unproven here. Section 401(e) of the 1972 Act pertinently states:

##### **Sales and purchases**

---

<sup>9</sup> Research has disclosed no other state securities law regulation within similar language, although there may be other areas, such as bankruptcy law, where a fair market value calculation is used.

It is unlawful for any person, in connection with the offer, sale or purchase of any security in this State, directly or indirectly:

\* \* \*

(c) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

70 P.S. § 1-401(c).

#### A. SCIENTER

There is a sharp legal dispute as to whether a violation of Sections 401(c) requires that the Bureau prove that Hallman *intended* to misstate or omit a material fact or defraud or deceive others to enrich himself at their expense.

In asserting that scienter is not required, the Bureau relies on the definition of “wilful” in Section 201 of the 1972 Act. 70 P.S. § 1-102(w)(1). It provides:

(w) “Willful and Wilfully” mean the following:

(1) As used in all sections of the act except section 511 with respect to a wilful violation of section 401(a) of the act, and notwithstanding any law or statute to the contrary, *wilful means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent to violate the act or knowledge that the person’s conduct violated the act is not required.*

70 P.S. § 1-102. (Emphasis added). The Bureau also contended at oral argument that the phrasing of Section 401(c) should be contrasted with that of Section 401(a), which makes it unlawful “[t]o employ any device scheme or artifice to defraud.” It notes that the subsection 401(a) language focuses on the *action of the offer or seller*, but the subsection 401(c) language (“to engage in any act, practice or course of business ... which operates or would operate as a fraud”) focuses on the *effect on the investor*, not the intent of the offeror seller. In addition, it argues that Section 17(a) the Securities Act of 1933 is the federal equivalent to Section 401(c) and that it does not have a

scienter requirement.

Respondent, countering, cites to cases that support the proposition that the federal equivalent of Section 401 is not Section 17(a) the Securities Act of 1933, but rather, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. *See e.g., Goodman v. Moyer*, 523 F. Supp. 35 (E.D. Pa. 1981), *i.e., Leder v Shinfeld*, 609 F. Supp. 2d 386 (E.D. Pa. 2009).<sup>10</sup> Matters falling under Rule 10(b)-5 and its attendant statute, the 1934 Act, require proof of scienter. *Goodman*, 523 F. Supp. at 38 (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976)).

Faced with a similar dilemma with respect to Hawaii's state version of its securities law, in *Trivectra v. Ushijima*, 144 P.3d 1, 15 (Hi. 2006), the Hawaii Supreme Court looked to (1) legislative intent and (2) other states' decisions for guidance, and ultimately ruled there was no scienter requirement under that state's securities law.<sup>11</sup> This approach is employed here.

As noted above, the 1972 Act's purpose is to prevent fraud and to protect the interest of investors. Thus, the focus of the protection is on the interest of the investors (here, the noteholders), not the seller of the notes.

Further, the difference in phrasing in subsection (a) (focusing on the actions of the offeror or seller) and subsection (c) (focusing of the effect on the purchaser) should be accorded some weight. *Cf. Buchko v. Unemployment Comp. Bd. of Rev.*, 175 A.2d 914, 916 (Pa. Super. 1961) ("A

---

<sup>10</sup> As the *Goodman* court noted, the language of Section 401 of the 1972 Act and Rule 10b-5 are virtually identical except that the rule was expanded to cover the purchase, as well as the sale, of any security. *Id.* at 38 and n. 8.

<sup>11</sup> Specifically, the court held that that state's equivalent federal provision is Section 17(a) of the Securities Act of 1933, not Section 10(b) of the Securities Exchange Act of 1934 and, hence, no proof of scienter is required.

word or phrase, the meaning of which is clear when used in one place, will be construed to mean the same elsewhere in the same section of the statute”) (Internal citation omitted.) Here, the phrasing “to employ any device scheme ... *to defraud*” is *different from* “to engage in any act practice or course of business ... which operates ... as a fraud”). Thus, is it reasonable to presume a different intention. Merriam Webster defines “operates,” as relevant here, as “to produce an appropriate effect.” [www.Merrian Webster.com](http://www.Merrian Webster.com). (Intransitive verb). Thus, the Bureau is correct that the focus in Section 401(c) is on *effect*, not intent. Accordingly, scienter is not required.

Turning now to other jurisdictions, as noted above, in *Trivectra*, the court concluded no proof of scienter is required under Hawaii law. That case also contains a robust survey of other jurisdictions, which shows that, states that have considered this issue including Arizona, Idaho, Kansas, Minnesota, Nevada, New Mexico Utah, Virginia, Washington, Wisconsin have taken the position that is consistent with the Bureau. Only Indiana appears to have somewhat inconsistent view.<sup>12</sup> Given that the majority view is consistent with the 1972 Act’s purpose, the undersigned adopts that view here.<sup>13</sup>

---

<sup>12</sup> Unlike Pennsylvania, the Indiana statute has no definition of willful. It defines fraud as:

“Fraud”, “fraudulent”, “deceit”, and “defraud” mean a misrepresentation of a material fact, a promise, representation, or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of the terms as applied by or defined in courts of law or equity. The terms are not limited to common law deceit.

Ind. Code Ann. § 23-19-1-2.

<sup>13</sup> Because this issue remains undecided in Pennsylvania, out of an abundance of caution, the undersigned states that she found that Hallman did *not* possess scienter, should such a factual determination become necessary.

Based on the foregoing analysis, it is concluded that in addition to violating Section 201, Respondents violated Section 401(b) by failing to advise investors of material facts and Section 401 (c) by committing "fraud or deceit" as defined therein by having sold notes to the investors knowing those notes were secured by real estate that Respondents knew or had reason to know was valued below the outstanding principle.

### SANCTIONS

Section 602.1 of the 1972 Act pertinently states:

#### **Assessments**

(e) ... the department may issue an order... which imposes an administrative assessment in the amounts provided in paragraph (1) ... against any other person if the department determines that the person wilfully violated section... 401....

(1) The department, in issuing an order under this subsection, may impose the administrative assessments set forth below. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

\* \* \*

(ii) In issuing an order against a person for wilful violation of section 401 ... (c)..., the department may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of any of those sections. ...

\* \* \*

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the department shall consider:

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation.

(ii) The scope of the violation, including the number of persons in and out of this Commonwealth affected by the conduct constituting the violation.

(iii) The amount of restitution or compensation that

the violator has made and the number of persons in this Commonwealth to whom the restitution or compensation has been made.

\* \* \*

(v) Any other factor that the department finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act.

(3) An administrative assessment imposed by an order issued under this subsection is not mutually exclusive of any other remedy available under this act.

70 P.S. § 1-602.1(c).<sup>14</sup>

**A. CIRCUMSTANCES, NATURE, FREQUENCY, SERIOUSNESS, MAGNITUDE, PERSISTENCE AND WILLFULNESS**

There were one hundred fourteen separate violations in the sale of notes spanning a period of over five years and none of the noteholders who testified can be characterized as having sophistication in investment matters. Some investors also face the loss of their homes. Of those who testified, all lost significant investment sums and have suffered extremely serious, if not catastrophic, consequences, e.g., money to pay for children's college Redacted inability to afford nursing care Redacted and loss of money for ongoing medical expenses Redacted. Further, notes were sold at a time when Buchert Ridge and BRC were insolvent.

**B. SCOPE**

The number of persons affected was significant, although most seem to be from the same general geographic area.

<sup>14</sup> Remedies to which the Bureau is entitled are limited by Section 602.1, which does not provide for an administrative assessment for a violation of Section 201 at all and does not permit an assessment under Section 401(b) where one is being imposed under Section 401(c). See 70 P.S. § 1-602.1(c)(1)(ii).

### **C. RESTITUTION**

There was little evidence of restitution other than allowing some investors the option to call in their notes and regain unpaid principle.

### **D. OTHER FACTORS**

As ably explained by Hibshman, there is one asset--- use of real estate worth approximately 10.1 million dollars. There are two major creditors, residents and noteholders. There is no clear legal guidance as to which of these two categories of creditors would be afforded priority for payment and there is not enough to pay both. If the noteholders have priority, then the realty would be sold and liquidated, and they would be paid. Under that scenario, the residents would lose their right of occupaney and their percentage of the purchase price payable upon resale of the unit and be left with nothing. This would, in turn result in the collapse of the entire retirement community. Under the path the entities are currently following, they are honoring the resident agreements above those of the noteholders, which results in the noteholders not getting paid, possibly losing their life savings, but the retirement community itself, remains. NT 211-214.

Either result is tragic, and this only emphasizes why it was so critical that noteholders be advised of the risks.

### **CONCLUSION**

Based on the foregoing, having found that the Bureau met its burden, it is recommended that its assessment request be granted, and a proposed order follows.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES**

<b>Commonwealth of Pennsylvania,</b>	:	
<b>Department of Banking and</b>	:	
<b>Securities, Bureau of Securities</b>	:	
<b>Compliance and Examinations</b>	:	
	:	<b>Docket No. 190099 (SEC-OSC)</b>
v.	:	
	:	
<b>Buchert Ridge Community, Inc.</b>	:	
<b>Joseph Wilmer Hallman</b>	:	
	:	
	:	
<b>Commonwealth of Pennsylvania,</b>	:	
<b>Department of Banking and</b>	:	
<b>Securities, Bureau of Securities</b>	:	
<b>Compliance and Examinations</b>	:	
	:	<b>Docket No. 190100 (SEC-OSC)</b>
	:	
v.	:	
	:	
<b>BRC Neighborhood Planning, LP</b>	:	
<b>Joseph Wilmer Hallman</b>	:	

**ORDER**

NOW, March 7, 2022, based on the foregoing findings of fact, conclusions of law and discussion it is hereby **ORDERED** as follows:

Respondents Buchert Ridge and Respondent Hallman shall pay an administrative assessment of \$20,000 for each of the 12 violations of Section 401(c), 70 P.S. § 1-401(c), for a total assessment in the amount of \$240,000 pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. §1-602.1(c). Respondents Buchert Ridge and Hallman shall be jointly and severally liable for payment of this assessment.

Respondent BRC and Respondent Hallman shall pay an administrative assessment of \$20,000 for each of the 102 violations of Section 401(c), 70 P.S. § 1-401(c), for a total assessment

in the amount of \$2,040,000 pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. §1-602.1(c). Respondents BRC and Hallman shall be jointly and severally liable for payment of this assessment.

Payment of the administrative assessment and costs of investigation shall be by certified check, attorney's check or U.S. Postal Service money order, made payable to the "Commonwealth of Pennsylvania," and shall be mailed within thirty (30) days of the effective date of the Commission's Final Order in this matter, unless otherwise directed to:

Gerard Mackarevich, Counsel  
Banking and Securities Commission  
Market Square Plaza  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101

Redacted  
Debra Sue Rand  
Hearing Officer

**For Joseph Wilmer Hollman:**

Glenn S. Gitomer, Esquire  
Jean Bickhart, Esquire  
80 W. Lancaster Ave.  
4<sup>th</sup> Floor  
Devon, PA 19333-1331

**For the Department:**

Carlton Smith, Esquire  
Seamus Dubbs, Esquire  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101

**Docket Clerk:**

Bileen Smith  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101

**Date of mailing:**

5/17/22

FILED

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

PETITIONER,

v.

BUCHERT RIDGE COMMUNITY, INC.  
JOSEPH WILMER HALLMAN

RESPONDENT

Docket No. : 190099 (SEC-OSC)

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

PETITIONER,

v.

BRC NEIGHBORHOOD PLANNING, LP  
JOSEPH WILMER HALLMAN

RESPONDENT

Docket No. : 190100 (SEC-OSC)

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2022, I served a true and correct copy of the attached Letter and Proposed Report in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

**By Hand Delivery Mail:**

Carlton Smith  
Assistant Counsel  
PA Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101

**By United States First Class Mail:**

Glenn S. Gitomer, Esquire  
Jean Bickhart, Esquire  
McCausland Keen and Buckman  
80 W. Lancaster Ave., 4<sup>th</sup> Floor  
Devon, PA 19333-1331

Buchert Ridge Community, Inc.  
c/o Steven Hibshman, CPA  
Acuity Advisors and CPAs  
454 New Holland Ave., Suite 200  
Lancaster, PA 17602-2160

BRC Neighborhood Planning, LP  
c/o Steven Hibshman, CPA  
Acuity Advisors and CPAs  
454 New Holland Ave., Suite 200  
Lancaster, PA 17602-2160

By:

Redacted

---

Eileen Smith, Docket Clerk  
PA Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, Pennsylvania 17101

FILED

COMMONWEALTH OF PENNSYLVANIA  
BANKING AND SECURITIES COMMISSION

2022 MAY 16 AM 8:35

PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

Docket No.: 190099 (SEC-OSC)

v.

BUCHERT RIDGE COMMUNITY, INC.  
JOSEPH WILMER HALLMAN

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
COMPLIANCE AND EXAMINATIONS

Docket No. 190100 (SEC-OSC)

v.

BRC NEIGHBORHOOD PLANNING, LP  
JOSEPH WILMER HALLMAN

CERTIFICATE OF SERVICE

On behalf of the agency, I certify that I have this day caused to be served a copy of the foregoing *Final Order* upon the following persons pursuant to 1 Pa. Code §§ 33.31:

BY CERTIFIED AND FIRST-  
CLASS MAIL:

Glenn S. Gitomer, Esquire  
Jean Bickhart, Esquire  
McCausland Keen and Buckman  
80 W. Lancaster Ave., 4<sup>th</sup> Floor  
Devon, PA 19333-1331  
*Counsel for Respondent,  
Joseph Wilmer Hallman*

BY HAND DELIVERY:

Carlton Smith, Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101  
*Counsel for the Bureau of Securities  
Compliance and Examinations*

Buchert Ridge Community, Inc.  
c/o Steven Hibshman, CPA  
Acuity Advisors and CPAs  
454 New Holland Ave., Suite 200  
Lancaster, PA 17602-2160

BRC Neighborhood Planning, LP  
c/o Steven Hibshman, CPA  
Acuity Advisors and CPAs  
454 New Holland Ave., Suite 200  
Lancaster, PA 17602-2160

Dated this 17<sup>th</sup> day of May, 2022

Redacted

Eileen Smith, Docket Clerk  
PA Banking and Securities Commission  
17 N. 2nd Street, Suite 1300  
Harrisburg, PA 17101  
Telephone: (717) 783-4186