

STATE OF OHIO  
DEPARTMENT OF COMMERCE  
**DIVISION OF SECURITIES**  
COLUMBUS, OHIO 43215-6131

Order No. 12-002

**IN THE MATTER OF: APEX REALTY ENTERPRISES, LLC;  
RAJESH R. LAHOTI;  
RAYMOND M. BROWN;  
MICHAEL G. COUNCIL;  
WILBUR N. ISCHIE**

**NOTICE OF OPPORTUNITY FOR HEARING**

**NOTICE OF INTENT TO ISSUE  
CEASE AND DESIST ORDER**

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**DIVISION ORDER**

WHEREAS, the Ohio Division of Securities ("the Division") is charged with the responsibility of protecting investors and finds that this Order is necessary or appropriate in the public interest or for the protection of investors, and is consistent with the purposes of the Ohio Securities Act, Chapter 1707 of the Ohio Revised Code ("R.C."); and

WHEREAS, the Division has conducted an investigation into the activities of Apex Realty Enterprises, LLC, Rajesh R. Lahoti, Raymond M. Brown, Michael G. Council and Wilbur N. Ischie (collectively "Respondents"). Respondents' primary business address is 772 North High Street, Suite 200, Columbus, Ohio 43215; and

WHEREAS, as a result of said investigation, the Division alleges the following:

- (1) Respondent Apex Realty Enterprises, LLC ("Apex Realty") is a limited liability company incorporated under the laws of the State of Ohio who conducted business in the state of Ohio during all time periods relevant to this Order;
- (2) Respondents Rajesh R. Lahoti, Raymond M. Brown, Michael G. Council and Wilbur N. Ischie are principals of Apex Realty;
- (3) Respondents originated a plan to acquire and develop a 1.334 acre parcel of land located in the Short North district of downtown Columbus Ohio into a 179 unit luxury residential condominium project with parking;

- (4) The condo project was marketed to the public under the name IBIZA, A Metropolitan Oasis ("IBIZA project"), which was a trade name registered by Apex Realty with the Ohio Secretary of State on January 7, 2008;
- (5) In order partially to fund the IBIZA project, the Respondents agreed to solicit funds from individual investors through the sale of unit subscriptions ("Investment Units") issued by Apex Realty;
- (6) To assist in the solicitation efforts, the Respondents assisted in the creation of and approved a Confidential Private Placement Memorandum describing the Investment Unit offering ("PPM");
- (7) The Respondents did not file for registration or exemption any documents with the Ohio Division of Securities related to the solicitation of Investment Units for the IBIZA project;
- (8) The PPM states that the offering was being made under Rule 506, Regulation D, promulgated under the Securities Act of 1933 as amended;
- (9) The PPM further states that the IBIZA project would be managed by RMRW Ltd, an Ohio limited liability company dba ARMS Properties ("ARMS properties") and that ARMS would receive a 1% non-accountable expense allowance in order to cover legal, accounting and printing costs associated with the IBIZA project as well as an additional 2% of all Capital Contributions annually to cover administrative services provided over the life of the project;
- (10) The PPM states the following in the Use of Proceeds paragraph:

"The following will be paid for out of the proceeds of the Offering:

  - Up to 1% to ARMS as a non-accountable expense allowance to cover legal accounting and printing costs associated with the offering and the organization of the Company;
  - The balance of the proceeds will be used to purchase interests in land development";
- (11) The PPM includes Appendix C titled "Financial Proforma of Apex Realty Enterprises, LLC an Ohio Limited Liability Company dba IBIZA" which provides sales by month figures for the IBIZA project showing 120 residential and commercial units (collectively "Condo Units") had been sold between March 2006 and November, 2006 for an aggregate sale price of \$68,683,105.00;
- (12) The PPM states the following:

"The project returns an IRR of 42.4% pre-tax (Appendix C-Investment Summary) with returns spread from 2008-2010. This is based on a conservative 4 year absorption period. The risk is low since if the market were to decline 15% in price, the project would still return an IRR of 25% (Appendix C-Risk Analysis). Most of the units sell within the first 18 months of being available with a few unit types selling over a long period (Appendix C-Sales by Unit).";

- (13) As of November, 2006, the Respondents had actually not sold any Condo Units;
- (14) Appendix C was prepared by Respondent Rajesh R. Lahoti and approved by each of the individual Respondents;
- (15) The PPM was approved by each of the individual Respondents for distribution to the investors;
- (16) Between January 16, 2007 and January 29, 2007, the Respondents sold Investment Units to 8 separate investors for an aggregate amount of \$1,852,000.00, which funds were deposited into an Apex Realty account at Huntington National Bank ("Apex Bank Account");
- (17) Each investor executed a Unit Subscription Agreement and Purchaser Questionnaire;
- (18) The Respondents provided a copy of the PPM to each investor prior to their investment with Apex Realty for the IBIZA project;
- (19) On January 12, 2007, prior to receipt of the investor funds, the balance in the Apex Bank Account was \$3565.40;
- (20) Between January 15 and January 21, 2007, Respondent Raymond M. Brown received two checks written from the Apex Bank Account, specifically check number 1106 for \$3,000 and check number 1121 for \$78,250.00;
- (21) Between January 15, 2007 and January 22, 2007 Respondent Rajesh R. Lahoti received 4 checks written from the Apex Bank Account, specifically check number 1107 for \$3,000, check number 1124 for \$78,250.00, check number 1129 for \$600.00 and check number 1120 for \$14,690.25;
- (22) On or about January 21, 2007, Respondent Michael G. Council received check number 1122 for \$78,250.00 written from the Apex Bank Account;
- (23) On or about January 21, 2007, Respondent Wilbur N. Ischie received check number 1123 for \$78,250.00 written from the Apex Bank Account;

- (24) Prior to January 1, 2007, Respondents Michael G. Council and Wilbur N. Ischie had personally invested not more than \$78,250.00 each into the IBIZA project;
- (25) Prior to January 1, 2007, Respondents Raymond M. Brown and Rajesh R. Lahoti had personally invested not more than \$81,250.00 each into the IBIZA project;
- (26) Two of the investors in the IBIZA project, namely the principals of Carcar Investments and the principals of B&B Partners of Ohio, LLC, were told prior to their investment with Apex Realty that Respondents had personal money invested with Apex Realty into the IBIZA project ;
- (27) Respondents Rajesh R. Lahoti, Raymond M. Brown, Wilbur N. Ischie and Michael G. Council agreed, prior to January 15, 2007, that funds from the investors would be used, in part, to pay themselves back their full principal investment;
- (28) The Respondents did not inform the investors that their money would be used to repay the Respondents and effectively cash out the principals from their investment in the IBIZA project;
- (29) On or about April 17, 2007, Respondent Michael G. Council received check number 1238 written on the Apex Bank Account for \$80,000 representing a loan or an advance on a development fee from Apex Realty;
- (30) The PPM does not state that a portion of the investor proceeds would be used to provide loans or advances on development fees to the principals;
- (31) On or about April 27, 2011, Apex Realty filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code in case number 2:11-bk-54512 in the United States Bankruptcy Court for the Southern District of Ohio ("Bankruptcy Petition");
- (32) Schedule A of the Bankruptcy Petition shows two parcels of real property for an aggregate value of \$ 4,817,600.00, which were subject to secured mortgage interests in an aggregate amount of \$7,391,166.52;
- (33) Schedule B of the Bankruptcy Petition shows personal property assets consisting solely of \$362.49 in a Huntington National Bank checking account and accounts receivable of \$52,724.93, representing in part, the disbursement made to Respondent Michael G. Council on April 17, 2007;

- (34) The Investment Units described in paragraphs (5), (6), (7), (16), (17) and (18) are securities as defined by Ohio Revised Code 1707.01(B);
- (35) The transactions described in paragraphs (5) through (34), inclusive, were sales of securities as defined by Ohio Revised Code 1707.01(C)(1);
- (36) Ohio Revised Code 1707.44(C)(1) states in relevant part, "[n]o person shall knowingly sell, cause to be sold, offer for sale, or cause to be offered for sale any security which...[i]s not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in section 1707.03, 1707.04 or 1707.34 of the Revised Code...";
- (37) Ohio Revised Code 1707.03(X) provides an exemption for any offer or sale of securities made in reliance on the exemption provided in Rule 506 of Regulation D under the Securities Act of 1933, provided in part, that the issuer makes a notice filing with the Division on Form D promulgated by the Securities and Exchange Commission;
- (38) The Respondents did not file any record with the Division for the Investment Unit offering;
- (39) As set forth in paragraphs (5), (6), (7), (16), (17), (18), (34), (35), (36), (37) and (38), Respondents violated Ohio Revised Code 1707.44(C)(1);
- (40) Ohio Revised Code 1707.44(B)(4) states, "[n]o person shall knowingly make or cause to be made any false representation concerning a material and relevant fact in any oral statement or in any prospectus, circular, description, application or written statement, for any of the following purposes: (4) [s]elling any securities in the state."
- (41) The use of proceeds, the number of units pre-sold, the personal investment of the principals, and the legal compliance with applicable federal and state laws governing the registration of the offering were material and relevant facts;
- (42) As set forth in paragraph (5) through (41) inclusive, the Respondents violated R.C. 1707.44(B)(4);
- (43) Ohio Revised Code 1707.44(G) states "[n]o person in purchasing or selling securities shall knowingly engage in any act or practice that is, in this chapter, declared illegal, defined as fraudulent, or prohibited";
- (44) As set forth in paragraphs (1) through (43) inclusive, Respondents violated R.C. 1707.44(G);

**WHEREAS**, based on Paragraphs (1) through (44) above, the Division alleges that Respondents violated Revised Code sections 1707.44(B)(4), 1707.44(C)(1) and 1707.44(G);

**THEREFORE, IT IS ORDERED THAT**, pursuant to Ohio Revised Code Chapter 119, Respondents are hereby notified that thirty (30) days from the date of mailing of this Notice, the Division, pursuant to Revised Code section 1707.23(G), intends to issue a FINAL ORDER TO CEASE AND DESIST from the activities set forth in paragraphs (1) through (44), including any further violations of Ohio Revised Code Chapter 1707.

**FURTHER, IT IS ORDERED THAT**, pursuant to Revised Code Chapter 119, Respondents are hereby notified that Respondents are entitled to an adjudicative hearing. If Respondents wish to request such hearing, the request must be made in writing and must be received in the offices of the Division within thirty (30) days from the date of mailing of this Notice. At the hearing, Respondents and the Division may appear in person, by their attorneys, or together with their attorneys, or they may present their position, arguments, or contentions in writing, and that at the hearing they may present evidence and examine witnesses appearing for and against them.

**FURTHER, IT IS ORDERED THAT**, if no hearing is timely requested, a FINAL ORDER TO CEASE AND DESIST may be issued.

BTP/cn

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION at  
Columbus, Ohio this 13<sup>th</sup> day of January, 2012.



Andrea L. Seidt, Commissioner of Securities