



BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS

In the Matter of:

MICHAEL ELZUFON,
DAVID LUNDBERG,
REAL DEVELOPMENT CORP.,
SUTTON MN, LLC,

Docket No. 14 E 013
KSC No. 2014-6136

And their representatives and agents,

Respondents.

_____/
Pursuant to K.S.A. 17-12a604

**PETITION FOR ORDER TO CEASE AND DESIST AND REQUEST THAT
ADMINISTRATIVE SANCTIONS BE IMPOSED**

The Staff of the Office of the Kansas Securities Commissioner (“KSC Staff”), by and through Senior Staff Attorney, Nathan J. Soendker, requests the Commissioner issue an order to cease and desist and further requests that administrative sanctions be imposed against the above-named Respondents based upon the following. The KSC Staff further states that the issuance of an Order to cease and desist and the imposition of administrative sanctions against Respondents are in the public interest.

ALLEGATIONS OF FACT

1. Respondent Michael Elzufon (“Elzufon”) is an individual residing at [REDACTED]
[REDACTED]
2. Respondent David Lundberg (“Lundberg”) is an individual residing at [REDACTED]
[REDACTED]

3. Respondent Real Development Corp. (“Real Development”) is a Minnesota corporation incorporated on January 20, 2005. On May 6, 2008, Real Development filed a Foreign Corporation Application in Kansas. The corporation’s status is currently forfeited due to failure to file the required annual report. Real Development is controlled by Elzufon and Lundberg.
4. Respondent Sutton MN, LLC, (“Sutton MN”) is a Kansas limited liability company organized on December 12, 2005 and is currently in forfeited status as of July 15, 2011. Elzufon and Lundberg are members of Sutton MN.
5. Respondent Wichita 19, LLC, (“Wichita 19”) is a Kansas limited liability company organized on April 17, 2006 and is currently in forfeited status as of July 15, 2011. Elzufon and Lundberg are members of Wichita 19.
6. Beginning sometime in or around 2005, Elzufon, Lundberg and Real Development entered into the downtown Wichita real estate market, developing residential loft condominiums and acquiring and restoring functionally obsolete office buildings.
7. The downtown real estate development projects were funded through the personal assets of Elzufon and Lundberg, bank financing, a City of Wichita sponsored program known as the Façade Improvement Program, as well as through the issuance of promissory notes to individual investors.
8. When acquiring a property, Elzufon and Lundberg would organize a separate Kansas limited liability company with the intent of conducting business relating to a single property through that limited liability company.
9. Sutton MN and Wichita 19 were two such limited liability companies and organized for the purpose of conducting business associated with downtown Wichita real estate;

Sutton MN was associated with the Sutton Place Building, located at 209 E. William St., Wichita, KS, while Wichita 19 was associated with the Wichita Executive Center located at 125 N. Market, Wichita, KS.

Note 1

10. Dennis Miller (“Miller”) is a Kansas resident who was first introduced to Lundberg in 2006 through Miller’s business associate, Kent C. Steiner, Jr. (“Steiner”). Both Miller and Steiner had considerable experience in residential property management.
11. Steiner had previously invested with Elzufon and Lundberg and was involved in the Sutton Place project. Miller had a particular interest in the Sutton Place Building.
12. Lundberg informed Miller that capital was needed to implement a plan to renovate the building, improve the occupancy rate, and then potentially sell the building for a profit.
13. On June 1, 2006, Elzufon, Lundberg, Sutton MN, Steiner, and Pine Creek Apartments, LLC, a limited liability company controlled by Steiner, issued a promissory note to Miller (“Note 1”).
14. Under the terms of Note 1, Miller was to receive 25% per year on a \$200,000 investment, with at least six months of minimum monthly payments of \$4,166.67, with the entire unpaid principal and interest due and payable on June 1, 2007. Additionally, Note 1 was “secured by a collateral assignment of LLC interest in Sutton MN, LLC and Pine Creek Apartments, LLC.”
15. A check of the records maintained by the Office of the Kansas Securities Commissioner indicates there was no registration, granted exemption, or notice filing indicating status as a federal covered security for Note 1.

16. Prior to the issuance of Note 1, Lundberg, Elzufon and Sutton MN failed to provide material information to Miller regarding the investment including but not limited to:
 - a. That the security was not registered
 - b. how the proceeds of the investment would specifically be used;
 - c. The risks associated with the investment; and
 - d. The financial statements of Lundberg, Elzufon, and Sutton MN evidencing their financial condition.
17. Beginning in July 2006, Miller received monthly installments per the terms of the promissory note dated June 1, 2006. By July 2007, Miller agreed to extend the due date for the principal repayment while he continued to receive monthly payments. No specific date was set for the principal payoff.

Note 2

18. In May 2007, Miller was contacted by Lundberg who requested \$50,000 in additional capital. Lundberg represented to Miller that the additional capital was related to the refinancing of the Wichita Executive Center office building located at 125 N. Market, Wichita, KS.
19. On May 17, 2007, Wichita 19 and Real Development issued a promissory note to Miller in exchange for a \$50,000 investment ("Note 2"). Under the terms of the note, Miller was to receive \$52,000 payable on July 17, 2007. Note 2 was executed by Lundberg on behalf of Wichita 19 and Real Development.
20. A check of the records maintained by the Office of the Kansas Securities Commissioner indicates there was no registration, granted exemption, or notice filing indicating status as a federal covered security for Note 2.

21. Lundberg, Elzufon, Wichita 19 and Real Development failed to satisfy the terms of the promissory note dated May 17, 2007. Lundberg represented to Miller that the failure to repay the promissory note was due to unforeseen circumstances associated with the refinance of the Wichita Executive Center.
22. On November 12, 2007, Miller agreed to amend the terms of Note 2 extending the due date to May 17, 2008. The amended note dated November 17, 2007, included an annual interest rate of 20% and \$1000 monthly payments. Miller received periodic payments, although not on time, and a final satisfactory payment of \$51,250 on April 25, 2008 that fulfilled the terms of Note 2.
23. Prior to Miller agreeing to amend the terms of Note 2, Lundberg, Elzufon, Wichita 19 and Real Development failed to provided material information to Miller regarding the investment including but not limited to:
 - a. That the security was not registered
 - b. The risks associated with the investment; and
 - c. The financial statements of Lundberg, Elzufon, Wichita 19 and Real Development evidencing their financial condition.
24. On April 25, 2008, Miller agreed to release Steiner and Pine Creek Apartments, LLC from Note 1. At that time, Steiner was seeking to extract himself from his dealings with Elzufon, Lundberg, and Sutton MN after a dispute between Steiner and Elzufon, Lundberg and Sutton MN. Miller agreed to the release based on his friendship with Steiner.

Note 3

25. By March 2009, Elzufon, Lundberg and Sutton MN were three months in arrears in payments on Note 1. At that time, Lundberg contacted Miller requesting an additional \$100,000 to continue the renovation of Sutton Place and other office buildings owned by Respondent Lundberg. Lundberg proposed to include an assignment of rent from a tenant in Broadway Plaza, and mortgages on condominiums at Broadway Plaza, Petroleum Building
26. At the time of the solicitation, Elzufon, Lundberg and Sutton MN still owed Miller approximately \$139,000 on Note 1. Fearing the loss of his earlier investment, Miller agreed to invest the additional \$100,000.
27. Additionally, Respondents were in arrears on certain accounts and obligations owed to contractors, including, but not limited to:
 - a. Approximately \$187,000 at least 26 months past due
 - b. Approximately \$8,100 at least 15 months past due
 - c. \$306,000 in debt less than 6 months old
28. On March 9, 2009, Lundberg, Elzufon and Real Development issued a promissory note to Miller in the amount of \$110,871.56 in exchange for Miller's \$100,000 investment ("Note 3"), with the \$10,871.56 representing interest in arrears on Note 1. Under the terms of Note 3, Lundberg, Elzufon and Real Development agreed to an annual interest rate of 20%, monthly payments of \$3,112.17, with the balance on Note 3 due on March 9, 2010.
29. A check of the records maintained by the Office of the Kansas Securities Commissioner indicates there was no registration, granted exemption, or notice filing indicating status as a federal covered security for Note 3.

30. Prior to the issuance of Note 3, Lundberg, Elzufon and Real Development failed to provided material information to Miller regarding the investment including but not limited to:
- a. That the security was not registered;
 - b. how the proceeds of the investment would specifically be used;
 - c. The risks associated with the investment;
 - d. The financial statements of Lundberg, Elzufon, and Real Development evidencing their financial condition; and
 - e. That Respondents had at least \$500,000 in existing past due debt.
31. In September 2009, Lundberg, Elzufon, Real Development and Sutton MN had failed to meet their obligations on the outstanding notes, namely Note 1 and Note 3. By that time Miller had invested approximately \$250,000 with the Lundberg, Elzufon and Real Development and/or Sutton MN.

Note 4

32. In December 2009, Lundberg solicited Miller for an additional investment. Lundberg told Miller that the funds were needed to assist in the refinance of the Wichita Executive Center office building and that as soon as the refinance was accomplished, Miller would receive the return on his entire investment. Miller, fearing the loss of the approximately \$250,000 already invested, agreed to provide the additional \$50,000 in capital.
33. On December 3, 2009, Miller issued a check for \$50,000 payable to Real Development for which he received a promissory note issued by Lundberg, Elzufon, and Sutton MN (“Note 4”). Under the terms of Note 4, Miller was to receive a return of 25% per annum

and was payable in full within 60 days. To date, Sutton MN, Lundberg and Elzufon have not met their obligations under the terms of Note 4.

34. A check of the records maintained by the Office of the Kansas Securities Commissioner indicates there was no registration, granted exemption, or notice filing indicating status as a federal covered security for Note 4.
35. Prior to the issuance of Note 4, Lundberg, Elzufon, Sutton MN and Real Development failed to provide material information to Miller regarding the investment including but not limited to:
 - a. That the security was not registered;
 - b. how the proceeds of the investment would specifically be used;
 - c. The risks associated with the investment;
 - d. The financial statements of Lundberg, Elzufon, Sutton MN and Real Development evidencing their financial condition; and
 - e. That certain past due construction debt, including that discussed *supra*, was consolidated in on November 17, 2009 in a note for \$935,647.00 issued by Wichita 19 and personally guaranteed by Lundberg and Elzufon (“Wichita 19 Note”).

Note 5

36. In January 2010, Lundberg and Elzufon both spoke with Miller regarding the status of the Respondents’ business plan. Lundberg and Elzufon told Miller that they needed an additional \$51,000 to repay the City of Wichita, which was holding up the approval of \$1 million in façade improvement funds. Lundberg and Elzufon stated that once they could get the façade work done on Sutton Place, the Respondents would be in a position to

repay Miller from the refinance or sale of the building. Miller, fearing the loss of his over \$300,000 investments, agreed to provide additional \$51,000 of capital.

37. On February 10, 2010, Lundberg, Elzufon, and Sutton MN issued a promissory note to Miller in the amount of \$57,000, which was to pay Miller a return of 24% ("Note 5").
38. In exchange for Note 5, Miller wrote a check for \$6,220 payable to Real Development on January 27, 2010 and a \$51,000 check payable to Sutton MN on February 10, 2010.
39. Within a week of purchasing Note 5, Miller became aware that Lundberg and Elzufon had paid the City of Wichita only approximately \$24,000 of the \$51,000 Miller had provided. Miller learned that instead of using the proceeds solely to pay the City of Wichita, Lundberg and Elzufon had used the remainder of the funds to pay investors associated with the office building at 150 N. Main, Wichita, KS, and for other expenses.
40. Miller confronted Lundberg about the misrepresentations concerning the use of the investment proceeds, and inquired as to why Lundberg and Elzufon had stated \$51,000 was needed to clear the way for façade financing through the City of Wichita when only about \$24,000 was needed. Lundberg did not provide an explanation.
41. A check of the records maintained by the Office of the Kansas Securities Commissioner indicates there was no registration, granted exemption, or notice filing indicating status as a federal covered security for Note 5.
42. Prior to the issuance of Note 5, Lundberg, Elzufon, Sutton MN and Real Development failed to provided material information to Miller regarding the investment including but not limited to:
 - a. That the security was not registered;
 - b. The risks associated with the investment;

- c. The existence of the Wichita 19 Note;
 - d. That a portion of the funds were going to be used to pay investors in another venture, namely 150 Main;
 - e. That a portion of the funds were going to be used to pay expenses associated with Real Development; and
 - f. The financial statements of Lundberg, Elzufon, Sutton MN and Real Development evidencing their financial condition.
43. Prior to the issuance of Note 5, Elzufon, Lundberg, Sutton MN and Real Development made the following untrue statements of material fact:
- a. That \$51,000 was needed to repay the City of Wichita, when only approximately \$24,000 was needed; and
 - b. That the proceeds were going to be used to repay the City of Wichita, when in fact a portion of the proceeds were going to be used to pay other investors and used for other expenses unrelated to Sutton Place.

CONCLUSIONS OF LAW
AS TO RESPONDENTS ELZUFON AND LUNDBERG

Multiple Violations of Offering and Selling an Unregistered, Non-Exempt Security

44. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
45. In violation of K.S.A. 17-12a301, Respondents Elzufon and Lundberg offered and sold a security, to wit: Note 3, without the security being registered with the Office of the Kansas Securities Commissioner, exempt from registration, or a federal covered security.
46. In violation of K.S.A. 17-12a301, Respondents Elzufon and Lundberg offered and sold a security, to wit: Note 4, without the security being registered with the Office of the

Kansas Securities Commissioner, exempt from registration, or a federal covered security.

47. In violation of K.S.A. 17-12a301, Respondents Elzufon and Lundberg offered and sold a security, to wit: Note 5, without the security being registered with the Office of the Kansas Securities Commissioner, exempt from registration, or a federal covered security.

***Multiple Violations of Making an Untrue Statement of Material Fact
in Connection with the Offer and Sale of a Security***

48. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
49. In connection with the offer and sale of a security, to wit: Note 5, Respondents Elzufon and Lundberg made to the following untrue statements of material fact:
- a. That \$51,000 was needed to repay City of Wichita, when only approximately \$24,000 was needed; and
 - b. That the proceeds were going to be used to repay the City of Wichita, when in fact a portion of the proceeds were going to be used to pay other investors and used for other expenses unrelated to Sutton Place.

50. Respondents Elzufon and Lundberg's conduct in making untrue statements of material fact in connection with the offer and sale of Note 5 constitute violations of K.S.A. 17-12a501(2).

Multiple Violations of Omitting to State Material Facts

51. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
52. In connection with the offer, sale or purchase of a security, to wit: Note 3, Respondents Elzufon and Lundberg omitted to state material facts necessary in order to make

statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:

- a. that the security was not registered;
- b. how the proceeds of the investment would be specifically used;
- c. the risk associated with the investment;
- d. the financial statements of Lundberg, Elzufon, and Real Development evidencing their financial condition; and
- e. the Respondents had at least \$500,000 in existing past due debt;

53. In connection with the offer, sale or purchase of a security, to wit: Note 4, Respondents Elzufon and Lundberg omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:

- a. that the security was not registered;
- b. how the proceeds of the investment would be specifically used;
- c. the risk associated with the investment;
- d. the financial statements of Lundberg, Elzufon, Sutton MN, and Real Development evidencing their financial condition; and
- e. the existence of the Wichita 19 Note for \$935,647.00 issued by Wichita 19 and personally guaranteed by Lundberg and Elzufon.

54. In connection with the offer, sale or purchase of a security, to wit: Note 5, Respondents Elzufon and Lundberg omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:

- a. That the security was not registered;
 - b. The risks associated with the investment;
 - c. The existence of the Wichita 19 Note;
 - d. That a portion of the funds were going to be used to pay investors invested in another venture, namely 150 Main;
 - e. That a portion of the funds were going to be used to pay expenses associated with Real Development; and
 - f. The financial statements of Lundberg, Elzufon, Sutton MN and Real Development evidencing their financial condition.
55. Respondents Elzufon and Lundberg's conduct in omitting to state material facts in connection with the offer and sale of Notes 3, 4, and 5, constitute violations of K.S.A. 17-12a501(2).

CONCLUSIONS OF LAW
AS TO RESPONDENT REAL DEVELOPMENT

Multiple Violations of Offering and Selling an Unregistered, Non-Exempt Security

56. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
57. In violation of K.S.A. 17-12a301, Respondent Real Development offered and sold a security, to wit: Note 3, without the security being registered with the Office of the Kansas Securities Commissioner, exempt from registration, or a federal covered security.
58. In violation of K.S.A. 17-12a301, Respondent Real Development offered and sold a security, to wit: Note 4, without the security being registered with the Office of the

Kansas Securities Commissioner, exempt from registration, or a federal covered security.

***Multiple Violations of Making an Untrue Statement of Material Fact
in Connection with the Offer and Sale of a Security***

59. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
60. In connection with the offer and sale of a security, to wit: Note 5, Respondent Real Development made to the following untrue statements of material fact:
- a. That \$51,000 was needed to repay City of Wichita, when only approximately \$24,000 was needed; and
 - b. That the proceeds were going to be used to repay the City of Wichita, when in fact a portion of the proceeds were used to pay other investors and used for other expenses unrelated to Sutton Place.
61. Respondent Real Development's conduct in making untrue statements of material fact in connection with the offer and sale of Note 5 constitute violations of K.S.A. 17-12a501(2).

Multiple Violations of Omitting to State Material Facts

62. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
63. In connection with the offer, sale or purchase of a security, to wit: Note 3, Respondent Real Development omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. that the security was not registered;
 - b. how the proceeds of the investment would be specifically used;
 - c. the risk associated with the investment;

- d. the financial statements of Lundberg, Elzufon, and Real Development evidencing their financial condition; and
 - e. the Respondents had at least \$500,000 in existing past due debt;
64. In connection with the offer, sale or purchase of a security, to wit: Note 4, Respondent Real Development omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. that the security was not registered;
 - b. how the proceeds of the investment would be specifically used;
 - c. the risk associated with the investment;
 - d. the financial statements of Lundberg, Elzufon, Sutton MN, and Real Development evidencing their financial condition; and
 - e. the existence of the Wichita 19 Note for \$935,647.00 issued by Wichita 19 and personally guaranteed by Lundberg and Elzufon.
65. In connection with the offer, sale or purchase of a security, to wit: Note 5, Respondent Real Development omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. That the security was not registered;
 - b. The risks associated with the investment;
 - c. The existence of the Wichita 19 Note;
 - d. That a portion of the funds were going to be used to pay investors invested in another venture, namely 150 Main;

- e. That a portion of the funds were going to be used to pay expenses associated with Real Development; and
 - f. The financial statements of Lundberg, Elzufon, Sutton MN and Real Development evidencing their financial condition.
66. Respondent Real Development's conduct in omitting to state material facts in connection with the offer and sale of Notes 3, 4, and 5, constitute violations of K.S.A. 17-12a501(2).

CONCLUSIONS OF LAW
AS TO RESPONDENT SUTTON MN

Multiple Violations of Offering and Selling an Unregistered, Non-Exempt Security

67. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
68. In violation of K.S.A. 17-12a301, Respondent Sutton MN offered and sold a security, to wit: Note 4, without the security being registered with the Office of the Kansas Securities Commissioner, exempt from registration, or a federal covered security.
69. In violation of K.S.A. 17-12a301, Respondent Sutton MN offered and sold a security, to wit: Note 5, without the security being registered with the Office of the Kansas Securities Commissioner, exempt from registration, or a federal covered security.

*Multiple Violations of Making an Untrue Statement of Material Fact
in Connection with the Offer and Sale of a Security*

70. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
71. In connection with the offer and sale of a security, to wit: Note 5, Respondent Sutton MN made to the following untrue statements of material fact:
- a. That \$51,000 was needed to repay City of Wichita, when only approximately \$24,000 was needed; and

- b. That the proceeds were going to be used to repay the City of Wichita, when in fact a portion of the proceeds were used to pay other investors and used for other expenses unrelated to Sutton Place.
72. Respondent Sutton MN's conduct in making untrue statements of material fact in connection with the offer and sale of Note 5 constitute violations of K.S.A. 17-12a501(2).

Multiple Violations of Omitting to State Material Facts

73. Paragraphs 1 through 43 are incorporated by reference as though fully set forth herein.
74. In connection with the offer, sale or purchase of a security, to wit: Note 4, Respondent Sutton MN omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. that the security was not registered;
 - b. how the proceeds of the investment would be specifically used;
 - c. the risk associated with the investment;
 - d. the financial statements of Lundberg, Elzufon, Sutton MN, and Real Development evidencing their financial condition; and
 - e. the existence of the Wichita 19 Note for \$935,647.00 issued by Wichita 19 and personally guaranteed by Lundberg and Elzufon.
75. In connection with the offer, sale or purchase of a security, to wit: Note 5, Respondent Sutton MN omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:

- a. That the security was not registered;
 - b. The risks associated with the investment;
 - c. The existence of the Wichita 19 Note;
 - d. That a portion of the funds were going to be used to pay investors invested in another venture, namely 150 Main;
 - e. That a portion of the funds were going to be used to pay expenses associated with Real Development; and
 - f. The financial statements of Lundberg, Elzufon, Sutton MN and Real Development evidencing their financial condition.
76. Respondent Sutton MN's conduct in omitting to state material facts in connection with the offer and sale of Notes 4 and 5 constitute violations of K.S.A. 17-12a501(2).

REQUESTED RELIEF

WHEREFORE, the KSC Staff requests that the Commissioner order Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order be prohibited from:

- A. violating or materially aiding in any violation of K.S.A. 17-12a301 by offering or selling any securities as defined by K.S.A. 17-12a-102(28), in the State of Kansas unless those securities are registered in accordance with the provisions of K.S.A. 17-12a301;
- B. violating or materially aiding in any violation of K.S.A. 17-12a501, by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not

misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IT IS FURTHER REQUESTED that the Commissioner, pursuant to K.S.A. 17-12a604(b), impose against each Respondent, in a Final Order, a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of K.S.A. 17-12a301, not to exceed one million dollars (\$1,000,000) unless Respondents request a hearing within thirty (30) days after service of this Order.

IT IS FURTHER REQUESTED that the Commissioner, pursuant to K.S.A. 17-12a604(b), impose against each Respondent, in a Final Order, a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of K.S.A. 17-12a501, not to exceed one million dollars (\$1,000,000) unless Respondents request a hearing within thirty (30) days after service of this Order.

IT IS FURTHER REQUESTED that the Commissioner provide such other relief as he deems just.

Respectfully submitted this 24th day of December, 2013.



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