

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. SF-03390-A

5 SUNWEST MANAGEMENT, INC.)

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10 WITNESS: Darryl E. Fisher

11 PAGES: 1 through 232

12 PLACE: Securities and Exchange Commission

13 Testimony Room D

14 44 Montgomery Street

15 San Francisco, California 94104

16 DATE: Friday, January 9, 2009

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18 The above-entitled matter came on for hearing, pursuant
19 to notice, at 9:15 a.m.

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Diversified Reporting Services, Inc.

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(202) 467-9200

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P R O C E E D I N G S

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MR. LIFTIK: We are on the record at 9:15 on
January 9th, 2009.

Mr. Fisher, please raise your right hand.
Whereupon,

DARRYL EUGENE FISHER

was called as a witness and, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. LIFTIK:

Q Please state your full name and spell it for the
record?

A Darryl, D-a-r-r-y-l, Eugene, E-u-g-e-n-e, Fisher,
F-i-s-h-e-r.

Q Mr. Fisher, we met before, but my name is Michael
Liftik, and with me is Kashya Shei and Michael Fortunato. We
are Officers of the Commission for the purposes of this
proceeding.

This is an investigation by the United States
Securities and Exchange Commission in the matter of Sunwest
Management, SF-3390, to determine whether there have been
violations of certain provisions of the federal securities
laws.

However, the facts developed in this investigation
might constitute violations of other federal or state, civil

1 A Well, we did in fact improve the occupancy in a
2 number of communities. You know, could we have done more?
3 Probably.

4 But I'm just suggesting that that's the -- I'm just
5 suggesting -- that's the framework with which, you know, I
6 was looking at our operations at that point in time.

7 Q So help me, just shifting slightly, help me
8 understand how the ability to secure financing -- the lack of
9 access to the capital markets. How would that affect your
10 ability to pay investors?

11 A Our -- our -- the capital markets -- our interim
12 type of financing is more expansion.

13 So when you finance with permanent-type financing,
14 you lower your interest rate and improve your cash flow.

15 Q What do you mean by your interim financing.

16 A Acquisition financing, Interim financing.

17 Q And what do you mean by your permanent

18 Q It's the longer term. It's -- it's, you know,
19 seven-to-ten-year-type interim financing.

20 A Okay. When you do those longer term financings, my
21 understanding is the goal is to buy out the TIC investors at
22 that time.

23 A That's correct,

24 Q Okay. You're talking about a property that has not
25 been refinanced? That it's under its interim financing? How

1 does the fact that you can't refinance that property affect
2 its ability to pay rent on a monthly basis. What's the
3 connection there?

4 A Well, your cash flow demands are higher because
5 your interest -- the underlying financing is more expensive.
6 And your TIC -- your TIC payments are more expensive. And
7 that has a drain on cash flow.

8 Q But, you -- but as I understand it, once you've
9 secured this permanent financing, you no longer have TIC
10 investors to make payments to.

11 A In that community?

12 A Right.

13 Q So how does it affect the ability to pay the rent?

14 A Because what it -- that frees up cash flow on that
15 community now that's available to Jon or myself or other
16 owners to invest back into the communities that don't have
17 the cash flow cover.

18 A So you're taking money from the property that's
19 been refinanced because it has lower expenses now. Because
20 its rent -- its debt service is less. You're taking that
21 money and using it to help other communities make
22 their -- make their -- meet their obligations.

23 A That's correct.

24 Q When -- when did that practice start?

25 A Excuse me?

1 Q When did the practice of helping properties meet
2 their financial obligations through proceeds from other
3 properties start?

4 A Before I got to Sunwest.

5 Q When did you learn that that's -- was how the
6 operation was working?

7 A When I arrived at Sunwest.

8 Q How did you learn that?

9 How did you become aware that that was how it
10 worked -- how the cash flow worked?

11 A Well, because I had, I mean, I participated in
12 distributions that came out, and -- and they got, you know,
13 they were used to help communities that didn't -- couldn't
14 meet their cash flow obligations or weren't positive cash
15 flow.

16 Q Were you aware -- would you get a distribution and
17 it would actually come to you, and then somebody would come
18 and take it back and say, Mr. Fisher, we need that money
19 back. We've got to send it over here? How'd -- how did that
20 sort of actually work?

21 A In a couple of different ways. There's times when
22 I believe it went entity to entity.

23 Q Just directly?

24 A Correct. And then there's -- there's other times
25 where I actually -- and I furnished you guys copies of

1 this -- I actually had a bank account at Sunwest in my name
2 where at times distributions or proceeds from closings and
3 things like that would come into my account. And then they
4 would be used to fund shortfalls.

5 Q This is a bank account in your name?

6 A Correct.

7 Q Is this the Umpqua bank account?

8 A Yes.

9 Q Who are the signatories on that?

10 A I believe I am.

11 Q Anyone else?

12 A I don't think so. I don't think so.

13 Q Did you run that bank account? Were you in charge
14 of writing checks and --

15 A No, I wasn't.

16 Q Who ran it?

17 A Daniel Fish actually kept track of that account.

18 Q Why was it in your name then?

19 A Because my distributions that were due me were put
20 into that account.

21 Q Whose idea was it to open a bank account for that
22 purpose?

23 A I don't recall who's idea it was.

24 Q Was it yours?

25 A Excuse me?

1 Q You identify as one of the factors the freezing up
2 of the credit markets, the inability to refinance.

3 And I'm trying to figure out and gain an
4 understanding of how the credit markets freezing up which I
5 guess, as I understand you're saying is then you couldn't
6 refinance.

7 Well, how big a part of your business model was
8 that refinancing on a monthly cash flow basis?

9 A It was -- it was a big part. I mean, it's
10 something that we've done a lot of. I mean, if you just do
11 the math, it would -- with 300 transactions, and many of
12 those were single-asset transactions and single financing.

13 And if you do each of those twice, that's 600
14 financings, which is a lot.

15 And so it was clearly a material aspect of our
16 business.

17 Q Is there a way to sort of explain -- help me
18 understand what the -- how much cash it frees up doing these
19 refinancings?

20 A Several million dollars a month would be -- would
21 be --

22 Q So as I understand what you're saying, then, it
23 sounds like your ability to make rent payments to the
24 investors was in part dependent on your ability to refinance
25 other properties to free up cash to make the payments for the

1 pro forma properties?

2 A From my perspective, you know, from my seat, it
3 was -- it was because Jon and myself and other folks that had
4 ownership interests have millions of dollars invested in
5 communities.

6 And upon refinance, not only do -- and Sunwest has
7 deferred management fees.

8 So upon refinance, those dollars would come back to
9 us which would allow us to, you know, allow Jon and myself to
10 contribute our portion of that to other communities that were
11 having shortfalls.

12 And I view that as a material part of our business.
13 And from my perspective, it had always been a material part
14 of our business because I'd seen that work virtually from day
15 one.

16 Q So the credit crunch that materialized, I guess,
17 this past summer, was a significant impediment to your --
18 Sunwest's ability to make its payments to its investors?

19 A We had -- we had -- Yes, in my view we had
20 packages, financing packages, reasonable financing packages
21 before Fannie and Freddy to finance \$1.1 billion of debt that
22 would have created substantial cash flow improvements and
23 gotten millions of dollars back to Jon and myself to have
24 recapitalized different ones of the businesses.

25 But we, you know, and we know what happened to

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2 REPORTER'S CERTIFICATE
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5 I, Richard A. Friant, reporter, hereby verify that the
6 foregoing transcript of 230 pages is a complete, true and
7 accurate transcript of the testimony indicated, held on
8 January 9, 2009, at 44 Montgomery Street, San Francisco,
9 California in the matter of: SUNWEST MANAGEMENT, INC. I
10 further testify that this proceeding was recorded by me, and
11 that the foregoing transcript was prepared by Elena Lara
12 under my direction.

13

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Date: 1/16/09

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Official Reporter: Richard A. Friant

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Diversified Reporting Services, Inc.

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PROOFREADER'S CERTIFICATION1
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In the Matter of: Sunwest Management, Inc.
Witness: Darryl Fisher
File Number: SF-03390-A
Date: January 9, 2009
Location: 44 Montgomery Street
San Francisco, California

This is to certify that, I, Elena Lara, do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been completed to the reporting or recording accomplished at the hearing.

Elena Lara 1/16/09