

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 SUNWEST MANAGEMENT, INC. ) FILE NO. SF-3390

5

6 WITNESS: Shain Pearse

7 PAGES: 1 through 232

8 PLACE: Securities and Exchange Commission

9 44 Montgomery Street, Suite 2600

10 San Francisco, CA

11 DATE: Friday, February 6, 2009

12

13 The above-entitled matter came on for hearing, pursuant

14 to notice, at 9:10 a.m.

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Diversified Reporting Services, Inc.

25

(202) 467-9200

## P R O C E E D I N G S

1  
2 MS. SHEI: We're on the record. It is 9:10  
3 February 6, 2009.

4 Sir, could you raise your right hand.  
5 Whereupon,

## SHAIN LEE PEARSE

6  
7 was called as a witness herein and, after having been first  
8 duly sworn, was examined and testified as follows:

9 MS. SHEI: Please state your full name and spell  
10 your name for the record?

11 THE WITNESS: Shain Lee Pearse, spelled S-h-a-i-n,  
12 L-e-e, P-e-a-r-s-e.

13 MS. SHEI: Mr. Pearse, I'm Kashya Shei and with me  
14 is Michael Fortunato. We are officers of the Commission for  
15 the purposes of these proceedings.

16 This is an investigation by the United States  
17 Securities and Exchange Commission, in the matter of Sunwest  
18 Management, Inc., SF-3390, to determine whether there have  
19 been violations of certain provisions of the Federal  
20 Securities Laws. However, the facts developed in this  
21 investigation may constitute violations of other federal,  
22 state civil or criminal laws.

23 Prior to the opening of the record, you were  
24 provided with a copy of the Formal Order of Investigation in  
25 this matter. It will be available for your examination

1           A     Every day.

2           Q     What was the reason for this exercise?

3           A     We did not have the systems in place to control the  
4 operational spending, so we'd have to take a look at where we  
5 were on a daily basis to keep from bouncing power checks and  
6 other things.

7           Q     And so can you kind of follow that through, what  
8 would happen next after you would get the queries?

9           A     It happens on a daily basis now, I get that report.  
10 I confirm that the accounts are positive. We have  
11 discussions about what's being spent. And then we make sure  
12 we have the money where we need it to spend it.

13          Q     So, you would effectively be able to take cash from  
14 one facility and move it to another one, is that right?

15          A     Yes.

16          Q     And you say you do that currently, when did that  
17 practice start?

18          A     The practice started long before I started in  
19 Treasury.

20                   BY MS. SHEI:

21          Q     And how do you know that?

22          A     I used to have to account for the transactions when  
23 I was a Financial Accountant.

24          Q     Meaning you would have to enter the transactions  
25 and make actual journal entries?

1 A Correct.

2 Q So, in 2004, you knew this practice of transferring  
3 between facilities was taking place?

4 A Yes. For me, in 2004, it meant recording a loan,  
5 starting to record interest.

6 Q And do you know if this practice was in place  
7 before you got there?

8 A No.

9 Q But the day, the first time you had to account for  
10 this, these inter-facility transfers, was it a new procedure  
11 that was put in place?

12 A It did not appear to be.

13 Q Did you ask any questions about the procedure, why  
14 the procedures were the way they were?

15 A No.

16 Q And who was giving you instructions on accounting  
17 for these inter-facility transfers, when you first started  
18 there?

19 A That would have been Megan King.

20 Q And who is Megan King?

21 A She was a Senior Financial Accountant at that time.

22 Q Do you know how long she was with Sunwest prior to  
23 you joining Senenet?

24 A I'm not sure but I think two years.

25 Q Is she still there?

1 Q You would have the Treasury on the lefthand bottom?

2 A Yeah.

3 Q And the Corporate Accounting --

4 A I don't do -- I don't do Corporate Accounting.

5 Q Oh, I'm sorry, the Financial Accounting?

6 A Yeah, just looking at the structure. I mean  
7 Treasury, if I have to deal with people on a daily basis,  
8 it's generally going to be Financial Accounting or Corporate  
9 Accounting, not the Financial Analysts, or above that level.

10 Q Okay. Now, when you said you had daily contact  
11 with Mr. Harder, for what purpose would you have these  
12 contacts?

13 A Talking about cash cycles and cash shortfalls.

14 Q Can you give me an idea of what that means?

15 A Going into -- at the beginning of the month we  
16 collect most of our revenue. We cover the corporate office  
17 expenses, we cover most of the debt, payments for the  
18 facilities, and we would cover the first facility payroll.  
19 And at that point in time we'd have to start focusing on the  
20 second facility payroll, which comes before our cash cycle  
21 comes back.

22 Q And those are the details that you would discuss  
23 with Mr. Harder?

24 A If it looked like we were going to end up in a  
25 shortfall, or surplus.

1 Q So, on a -- and is this a discussion you would have  
2 on a daily basis?

3 A Not daily. Not this particular discussion daily  
4 but, towards the end of that month that one would be daily.

5 Q And why did Mr. Harder need to know about this?

6 A So that when the corporation needed liquidity  
7 infusion, he could come up with some way of helping it.

8 Q And do you know what Mr. Harder would typically do  
9 to help the corporate?

10 A It depended on the situation.

11 Q And what do you mean by that?

12 A With the various entities, sometimes it was as  
13 simple as picking up the phone. Actually, I know he picked  
14 up the phone, the question was where he would call. When the  
15 dollars were over a million, I don't know where he was  
16 calling.

17 Q Okay. So, let me break that down a little bit.  
18 Okay. When you say that with the various entities he would  
19 pick up the phone?

20 A Yeah.

21 Q Are you talking about when a particular facility is  
22 short on money?

23 A We would be able to use affiliated entities as a  
24 line of credit to cover our payroll.

25 Q Can you -- I'm not sure what that means, can you

1 or if he had to find someplace else.

2 Q And when you say it's over a million dollars, do  
3 you have an idea of what Mr. Harder would do if the shortfall  
4 was over a million?

5 A Generally then he'd have to call people outside the  
6 company.

7 Q And what type of people would he call, do you know?

8 A No.

9 Q Do you have an idea of where those cash infusions  
10 would come from when it's over a million?

11 A I can recall one offhand where it was Dr. Faulk.

12 Q Who is Dr. Faulk?

13 A It's an old friend that Jon grew up with.

14 BY MR. FORTUNATO:

15 Q Do you know generally when this occurred?

16 A Say early 2008.

17 BY MS. SHEI:

18 Q This meaning the call to Dr. Faulk?

19 A Yes.

20 Q But this process that's in place, where if there's  
21 a cash shortfall, was that something that was --

22 A It was in place when I got there and was just  
23 getting progressively worse through my time.

24 Q So, this cash shortfall was in place in 2004 when  
25 you first got there?

1 A Yes.

2 Q Okay. And were there specific -- did you  
3 participate in all of these types of transactions?

4 A Not all of them, no.

5 Q Now with respect to the TIC money that came in,  
6 would that money then stay with the facility that was just  
7 purchased?

8 A (No response.)

9 Q Do you understand my question?

10 A If the deal was close, I mean close on dollars,  
11 there should be no money from close. Generally speaking,  
12 there's either money, there's more money or there's less  
13 money. And when there was less money, we'd have to find the  
14 money to contribute it to close the deal. And when there was  
15 more money, it would generally come out of the deal.

16 Q And when you say it would generally come out of the  
17 deal, what do you mean by that?

18 A It had just become part of the rest of the  
19 inter-company loans.

20 Q So, there would be an inter-company loan  
21 established between the facility that was just purchased and  
22 some other entity?

23 A Yes.

24 Q And would there be a general -- would it be Canyon  
25 Creek Development?



1 A In some cases.

2 Q Were there other entities?

3 A Yeah.

4 Q So, can you kind of walk me through an example of  
5 that?

6 A Project closes, we've got a month where basically  
7 all we've got to put up is some deposits, utility deposits,  
8 that kind of stuff on utilities, and they have their first  
9 month's rent. So, we've already got their first month's  
10 collection and we don't really have any expenses because it's  
11 grow based accounting. So, that money would then become a  
12 source of funds to support the rest of the portfolio.

13 If they had some extra cash from close, then that  
14 could become a part of the portfolio as well.

15 Q And you used the term "portfolio", do you mean  
16 other senior living facilities?

17 A No, I mean portfolio as in entities under the Jon  
18 Harder umbrella.

19 BY MS. SHEI:

20 Q Entities under the Jon Harder umbrella, can you  
21 tell me what that means?

22 A It could have gone to Canyon Creek Development, it  
23 could have gone to KDA Construction, it could have gone to  
24 almost any of the affiliated companies.

25 BY MR. FORTUNATO:

1 Q And just so I'm clear, all the TIC investors are  
2 paid out of the SDA account, is that right?

3 A After a certain point in time we tried to get all  
4 of them paid out that account, yes.

5 Q Okay. And what point in time was that,  
6 approximately?

7 A I want to once again say 2006.

8 Q 2006. And is it fair that then prior to the  
9 implementation of that SDA account, that each facility was  
10 paying its own TIC investors?

11 A Yes.

12 MR. FORTUNATO: Just to let the record reflect,  
13 Ms. Shei has now rejoined us.

14 BY MS. SHEI:

15 Q How would each facility pay the TIC investors if  
16 that facility wasn't generating the revenue necessary to pay  
17 the TIC investors?

18 A In a lot of cases they would use reserves.

19 Q And what happened when there are no reserves?

20 A Then other entities would support them.

21 Q Other retirement facilities?

22 A Generally speaking, yes.

23 Q When you say support them, meaning money would be  
24 borrowed from other facilities?

25 A Yes.

1 Q When was this practice in place, now I'm talking  
2 before the SDA account, before the SDA account, if there's  
3 not money to pay TIC investors from a particular facility and  
4 they had to borrow from a different facility, when was that  
5 practice in place?

6 A As long as I can remember.

7 Q So, that practice was in place when you first  
8 joined Sunwest?

9 A To the best of my knowledge, yes.

10 Q And was that practice in place prior to your  
11 joining of Sunwest?

12 A To the best of my knowledge, yes.

13 Q And is that knowledge based on review of documents,  
14 how did you get that knowledge?

15 A The same way as funding payroll, there were loans  
16 on the books when I started there and there were more loans  
17 on the books as we continued.

18 BY MR. FORTUNATO:

19 Q So, would you say that the loans had grown overtime  
20 since the time you started, inter-facility loans?

21 A Yes.

22 Q So, your assumption that the practice was in place  
23 prior to your starting, was based in part on the fact that  
24 there were loans on the facilities books?

25 A Yes.

1 Q Do you know if Mr. Harder ever -- let me ask it  
2 another way. Do you know if any transfers out of this  
3 account were made to Mr. Harder's personal account?

4 A Yes.

5 Q And how did that process happen?

6 A I don't know the process for that.

7 Q And how did you know the transfers out of this  
8 business account into Mr. Harder's personal account were  
9 happening?

10 A Someone would tell me that they needed to take some  
11 money out of Jon's account to move it into the personal  
12 account, so when I was looking at the account balances in the  
13 morning, subtract some money from that.

14 Q And who would tell you that?

15 A Johnny Dinh.

16 Q And do you know how Mr. Dinh was notified to move  
17 cash out of this business account into Mr. Harder's personal  
18 account?

19 A No, I don't.

20 Q He would just advise you that he knows he has to do  
21 it today?

22 A Correct.

23 Q Or some day. Okay. Was there any other person at  
24 Sunwest who advised you the he or she had to move cash?

25 A No.

1 Q It was always just Mr. Dinh?

2 A Yes.

3 BY MS. SHEI:

4 Q Have you ever observed -- do you know who Kristin  
5 Harder is?

6 A Yes.

7 Q Who is she?

8 A Jon Harder's wife.

9 Q Have you ever observed her coming into the  
10 Sunwest's offices and asking that, for money?

11 A Yes.

12 Q And who would she ask that from?

13 A Currently she asks that of me now.

14 Q And prior to you, who would she asking money from?

15 A Prior to me there was Hamstreet and --

16 Q And prior to Hamstreet?

17 A Johnny Dinh.

18 Q And you've observed her asking for money?

19 A I've observed her in his office.

20 Q But not actually saying to Mr. Dinh, I need money?

21 A Correct.

22 Q Then how do you know she would ask Mr. Dinh for  
23 money?

24 A I guess I don't.

25 Q Did Mr. Dinh mention it to you?

1           A     That Mr. Dinh would then tell me that I needed to  
2 take into consideration the money was leaving that account,  
3 yes.

4           Q     And why would Mrs. Harder have the ability to ask  
5 for money from Sunwest?

6           A     I don't know the answer to that.

7           Q     To your knowledge, has she ever been refused money  
8 when she asked for money?

9           A     Yes.

10          Q     Can you tell us those occasions?

11          A     As things continued to get tighter, Johnny would  
12 come to me and say I'm taking this money out of the account  
13 and I would have to go to Jon and ask him to wait, due to  
14 current circumstances.

15          Q     So, you would go to -- so let me make sure I  
16 understand that. So, Mr. Dinh would say, I need to write  
17 money to Mrs. Harder?

18          A     Yes.

19          Q     And then you would then go to Mr. Harder, Jon  
20 Harder and say --

21          A     Yes.

22          Q     -- Jon, you need to wait, because we don't have the  
23 money?

24          A     Yes.

25          Q     And when you say due to when things got tighter,

1 what time frame are we looking at?

2 A Most of 2008.

3 Q Now, had Mr. Harder ever said, well, I need the  
4 money now, write the check?

5 A To me, no. I left it at that. What transpired  
6 from there was between Jon and Johnny and Kristin.

7 Q And why would Mr. Harder be entitled to access  
8 money from Sunwest?

9 A I can't answer that question.

10 Q Was the assumption that, to the extent he needed  
11 money, Sunwest would give them money?

12 A Yes.

13 Q When -- let me get a sense of how Sunwest was run.  
14 So, you guys are all sitting in the Sunwest offices?

15 A Yes.

16 Q Okay. Who's the boss, the ultimate boss at  
17 Sunwest?

18 A Jon.

19 Q So, whatever Jon says, goes?

20 A For the most part, yes.

21 Q Now, did anyone have the ability, the authority to  
22 say, Jon, we can't do this?

23 A No. We could advise.

24 Q You could say, we shouldn't do this?

25 A Yes.

1 Q But not that you must not do this?

2 A Correct.

3 BY MR. FORTUNATO:

4 Q When transfers of cash would come out of the  
5 business account, how is that accounted for. I mean was it  
6 in a payroll expense or was it a loan?

7 A For?

8 Q With respect to Sunwest, from Sunwest's viewpoint,  
9 was it a loan that was expected to be paid back?

10 A What account were you --

11 Q I'm referring to the business, the Harder business  
12 account?

13 A The Harder business account. If Harder gave money  
14 to Sunwest, then Sunwest would have recorded it as a due to,  
15 due from.

16 Q Right. So, now if cash is being transferred out of  
17 that business account to his personal account, is that  
18 offsetting another Sunwest entity's payable to Mr. Harder,  
19 how is the other side of that transaction reported?

20 A Any, to the best of my knowledge, any transfers  
21 from Sunwest to Jon Harder would have been recorded as a due  
22 to, due from.

23 Q So, it would have shown up as a due from  
24 Mr. Harder?

25 A Correct.



1 common payment on the 5th of the month, but we don't have  
2 access to those reserves, we have to pay the people and then  
3 get reimbursed for it. And so about this time, ten days down  
4 the road, you get the reimbursement from the bank, the  
5 facility can then make its obligation and it can pay back,  
6 just from the date.

7 Q So, was it most common that TIC investors would get  
8 paid out of -- was it the most common scenario that you would  
9 pay out TIC investors and then seek reimbursement from a TIC  
10 reserve fund?

11 A When reserve funds existed, yes.

12 Q And can you give me a sense for how -- I know it's  
13 kind of hard without looking at a listing of properties but,  
14 was it most common that a TIC reserve fund would exist?

15 A The more recent we are to the transaction, the more  
16 likelihood there is a TIC reserve, meaning if you go way back  
17 to '04 when they started, they were very, very rare.

18 Q I see.

19 A But, by the time you get into the last deals we  
20 were closing, they were almost on every single one.

21 Q So, the more recent the deal, the more likely the  
22 TIC reserve?

23 A Correct.

24 Q And I think you said earlier that in some cases the  
25 lender would maintain a TIC reserve or reserves in general?

1 A The majority of the time, yes.

2 Q So, the process is then you would pay -- not you  
3 but Sunwest would pay the TIC investors their payment, then  
4 seek reimbursement from the lender for making the payment, is  
5 that fair?

6 A Correct.

7 Q And how would that -- what information would you  
8 provide to the lender to seek reimbursement?

9 A Generally a copy of the check report.

10 Q So, something similar to what we were looking at in  
11 Exhibit 22?

12 A Correct. And -- yeah.

13 Q And would you have to -- would it just be specific  
14 to that property?

15 A Yes.

16 Q So, you would sort out, so the lender wasn't  
17 reimbursing for other TIC investors, is that fair?

18 A Yeah. I want to say the unique vendor number here  
19 is going to correspond to what they would hold, but I'm not  
20 positive on that.

21 Q So like for example, on the first page, Wyndmoor  
22 may have a company code of say W19 and then the individual  
23 TIC investor may be the next four digits in the vendor  
24 number, is that fair?

25 A Correct.

1 Q Do you know if this type of financial statements,  
2 besides being provided to lenders, were used for other  
3 purposes?

4 A Not that I'm aware of but, I don't know.

5 Q And if you look again at the first page of Exhibit  
6 40, if you notice the notations after net worth, there's the  
7 valuation of partnership and limited liability companies, and  
8 then there's an M&I and an FMV?

9 A Um-hum.

10 Q And it says, "Entities valued using FMV (Fair  
11 Market Value) were determined by officers of Sunwest  
12 Management, Inc." To your knowledge, the only officers  
13 involved was Mr. Harder?

14 A To my knowledge, yes.

15 BY MR. FORTUNATO:

16 Q With respect to the notation above it, it says MAI?

17 A Yes.

18 Q Did Mr. Harder provide -- this says, "Entities  
19 designated MAI (Member of Appraisal Institute) were valued  
20 using the most recent appraisal, etcetera", do you see that?

21 A Yes.

22 Q Did Mr. Harder provide you with an appraisal for  
23 those entities?

24 A Mr. Harder did not, however, if I knew there was a  
25 recent transaction, I could go to the development company and

1 50 percent of the time get one.

2 Q So, for example, on page Bates No. 483, Alpine  
3 Court and Cottages appears to have a valuation methodology of  
4 MAI, do you see that?

5 A Um-hum.

6 Q Is this -- would this have been a situation where  
7 you could have gone and received an appraisal from the  
8 development company?

9 A Yes.

10 Q And were these valuation methodologies updated, I  
11 think you said you did a couple quarters, three or four  
12 quarters?

13 A Yeah.

14 Q Would those valuation methodologies change over  
15 each quarter, in other words Alpine Court in Q2 may have had  
16 a valuation methodology of MAI but then the next quarter  
17 would Mr. Harder replace it with FMV?

18 A At some point in time, yes, they would change.

19 Q And just so I'm clear, the debt/purchase option  
20 column?

21 A Yes.

22 Q Were those derived directly from the general  
23 ledgers at each facility?

24 A General ledger plus off balance sheet financing.

25 Q Okay. So, that would have included the TIC

1 obligation?

2 A Yes.

3 BY MS. SHEI:

4 Q If I could trouble you to turn your attention to  
5 Bates number ending 528, and if you see the Canyon Creek  
6 Development, Inc. - Development Company?

7 A Um-hum.

8 Q There is a current mortgage debt of \$16,415,948, do  
9 you see that?

10 A Um-hum.

11 Q Do you have any idea why Canyon Creek Development  
12 Inc., would have that level of mortgage and debt?

13 A No, I don't know what is making that number.

14 Q But, you would have been able to retrieve that  
15 number from the financial documentation somewhere?

16 A Yes, I should have been able to. The companies  
17 that are non-senior housing, we'd go to them to get their  
18 information.

19 Q So, you could go to someone at CCD and say hey, can  
20 you tell me what your current debt is?

21 A Yes.

22 Q And who would that person be at CCD?

23 A At CCD it was Deniel Fish.

24 Q And I think you said that this was a -- this was  
25 not the full statement, like there could be additional

1 (SEC Exhibit No. 47 was  
2 marked for identification.)

3 A Yes.

4 Q Do you recognize Exhibit 47?

5 A Yes.

6 Q And what is Exhibit 47?

7 A It's an email from Curtis Brody to Johnny and  
8 myself, telling us to stop lending from another project.

9 Q Is he, is the project Callahan Village?

10 A Yes, it is.

11 Q Mr. Brody writes, "Two hundred fifty thousand  
12 borrowed, including interest in the last 60 days. Why didn't  
13 we distribute and why do we keep going back to this project?"  
14 Do you see that?

15 A Yes.

16 Q Where is the \$250,000 being sent?

17 A I couldn't tell you from this.

18 Q Would it be to another facility?

19 A Another facility probably.

20 Q Or it could be any number of facilities?

21 A Correct.

22 Q Who is -- he writes, "I'm on the phone with Faulk,  
23 who is complaining about this". Who is Faulk?

24 A Dr. Greg Faulk.

25 Q Is he an investor?

1 A Yes.

2 Q He was also, I think, a personal friend of  
3 Mr. Harder, you said earlier?

4 A Yes.

5 Q Do you know how much money Mr. Faulk has invested,  
6 Dr. Faulk, excuse me?

7 A I want to say around this time he was probably at  
8 2.5 million.

9 Q 2.5 million, is that right?

10 A Around there, yes.

11 Q That's fine, I won't hold you to it, just  
12 approximate. So, he was a TIC investor?

13 A No.

14 Q He was just loaning money?

15 A He was an LLC member and he had personal notes to  
16 Jon Harder.

17 BY MS. SHEI:

18 Q When you say LLC member, are you talking about  
19 ownership in the operating entities?

20 A In the case of Faulk, it would be basically the  
21 same as Sellwood where it's more (indiscernible).

22 BY MR. FORTUNATO:

23 Q And as a result of this email, were the loans that  
24 had been previously made by Callahan Village paid?

25 A In this particular instance, I don't know.

1 Q Were any additional loans made?

2 A Yes.

3 Q When were additional loans made?

4 A Probably up until last month when we sold the  
5 project.

6 Q Okay. This is one of the projects that was sold?

7 A Yes.

8 Q You've just been handed Exhibit 48, it's a one page  
9 document Bates numbered SMI-SEC0095689. If you can just take  
10 a minute and review it, and let me know when you're finished.

11 (SEC Exhibit No. 48 was  
12 marked for identification.)

13 It's an email from Kyle Hibler to, it looks like an  
14 email distribution list, Account Fin-Kristy's Group.

15 A Um-hum.

16 Q Are you finished reviewing it?

17 A Yeah.

18 Q Okay. First let me just ask you, are you part of  
19 the email distribution group AcctFin-Kristy'sGroup?

20 A At this point in time I believe I still was.

21 Q Okay. And do you have a recollection of receiving  
22 this email?

23 A This particular one, no.

24 Q Okay. Mr. Hibler writes, "Hello All, I finished  
25 the transfer account for March last night and it is being



UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
REPORTER'S CERTIFICATE

I Richard Friant, reporter, hereby verify that the foregoing transcript of 230 pages is a complete, true and accurate transcript of the testimony indicated, held on Friday, February 6, 2009, at 44 Montgomery Street, Suite 2600, San Francisco, California, in the matter of: Sunwest Management, Inc. I further certify that this proceeding was recorded by me and that the foregoing transcript was prepared by Maryann Loverro under my direction.

Date: 2/12/09  
Official Reporter: Richard A. Friant  
Diversified Reporting Services, Inc.

Diversified Reporting Services, Inc.  
Phone: (202)467-9200 Fax: (202)296-9220

## PROOFREADER'S CERTIFICATE

In the Matter of: Sunwest Management, Inc.

Witness: Shain Pearse

File Number: SF-3390

Date: Friday, February 6, 2009

Location: San Francisco, California

This is to certify that I, Maryann Loverro, 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 compared to the reporting or recording accomplished at the hearing.

Maryann Loverro

2/12/09