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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
PASSAIC COUNTY  
DOCKET NO.

ANNE MILGRAM, Attorney General of the  
State of New Jersey and DAVID  
SZUCHMAN, Director of the New Jersey  
Division of Consumer Affairs,  
Plaintiffs,

CIVIL ACTION

VERIFIED COMPLAINT

vs.

CASEY PROPERTIES, LLC; SETH L.  
GENDEL; MARTIN A. GENDEL; LEE ALAN  
LLP; FRANCIS T. MEMMO; KELLY KOTZKER;  
DAMIEN FIGUEROA; EDWARD EVANS;  
NICHOLAS MANZI; and ROBERT B. "BARRY"  
MCBRIAR,  
Defendants.

Plaintiffs Anne Milgram, Attorney General of the State of  
New Jersey ("Attorney General"), with offices at Hughes Justice  
Complex, 25 Market Street, Trenton, New Jersey, and David

Szuchman, Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Newark, New Jersey, allege as follows:

**PRELIMINARY STATEMENT**

Defendants Casey Properties and others formulated and operated a scheme that included, among other things, recruiting individuals to participate in real estate transactions through false promises, submitting fraudulent mortgage applications containing misrepresentations and other false information, and taking unwarranted proceeds from mortgage loans. Defendants Martin and Seth Gendel ("the Gendels"), operating as Casey Properties LLC and/or Lee Alan, LLP, set up a scheme to solicit unsophisticated individuals to purchase investment properties in urban areas. In reality, the Defendants only sought to use the names and credit scores of these "investors" to finance the acquisition of properties at grossly inflated prices to generate unwarranted profits for themselves. The Defendants induced these investors to purchase properties by representing that they would manage the properties, make repairs, locate tenants, collect rents and pay the mortgages. Defendants also promised that the investors would make a profit from the subsequent sale of the property.

Defendants set inflated sales prices for the properties far beyond their actual value, which were supported by fraudulent real estate appraisals solicited by Defendants.

Defendants also obtained mortgage loans to finance these transactions through mortgage applications replete with false information concerning occupancy status, assets, income and other liabilities. The Gendels took unwarranted funds from the inflated loan proceeds at closing, while other defendants took unwarranted fees and commissions from the transactions.

While the Gendels promised the investors that Casey Properties would rent out the properties, collect rents, pay the mortgages from the rents, and maintain the properties, the Gendels failed to maintain the properties or pay the mortgages as agreed, despite collecting and retaining rents in some instances. Consequently, the properties fell into severe disrepair, causing flooding, pest infestations, blight, harm to human health and safety, and public nuisance. In addition, because Defendants failed to pay the mortgages, the properties were foreclosed upon, damaging the investors' credit and harming the surrounding communities.

Defendants' conduct constitutes multiple violations of the Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and a pattern of racketeering within the meaning of New Jersey's Racketeer Influenced and Corrupt Organizations statute ("RICO"), N.J.S.A. 2C:41-1 et seq. In addition, Defendants caused and maintained public nuisances that the State seeks to abate at Defendants' cost.

### JURISDICTION AND THE PARTIES

1. The Attorney General is charged with enforcing the CFA, N.J.S.A. 56:8-1 et seq. The Director is charged with administering the CFA and its attendant regulations on behalf of the Attorney General.
2. The Attorney General is also authorized by N.J.S.A. 2C:41-4(b) to proceed by way of civil action in Superior Court for violations of RICO, N.J.S.A. 2C:41-2.
3. The Attorney General also has the authority, under the common law, to bring civil actions to abate public nuisances.
4. Defendant Casey Properties LLC is a Limited Liability Company registered in New Jersey with its principal place of business at 264 Union Boulevard in Totowa, New Jersey. Defendant Seth Gendel is the President and registered agent of Casey Properties.
5. Upon information and belief, Defendant Seth Gendel resides in New York, New York.
6. Defendant Martin Gendel resides in Montville, New Jersey and is a principal of Casey Properties. Martin Gendel is Seth Gendel's father.
7. Defendant Lee Alan LLP is a company formed under the laws of the State of New Jersey, with offices at 264 Union Boulevard in Totowa, New Jersey. Lee Alan LLP is controlled by Seth and Martin Gendel, who funneled proceeds from Casey Properties transactions through Lee Alan.

8. Defendant Francis T. "Frank" Memmo resides in Medford, New Jersey, and is a mortgage solicitor and licensed lender who originated mortgage loans for the purchase of properties by clients of Casey Properties.

9. Defendant Kelly Kotzker resides in Marlton, New Jersey, and is a mortgage solicitor and loan processor who originated mortgage loans for the purchase of properties by clients of Casey Properties.

10. Defendant Damien Figueroa is an attorney licensed by the State of New Jersey who maintains an office at 12 Cayuga Trail in Oak Ridge, New Jersey. Figueroa functioned as a closing agent for the purchase of properties by clients of Casey Properties.

11. Defendant Edward Evans is an attorney licensed by the State of New Jersey who maintains an office at 8-14 Saddle River Road in Fairlawn, New Jersey. Evans functioned as a closing agent for the purchase of properties by clients of Casey Properties.

12. Defendant Nicholas Manzi is an attorney licensed by the State of New Jersey who maintains an office at 79 Union Boulevard in Totowa, New Jersey. Manzi was retained by Casey properties to purportedly represented clients of Casey Properties in property purchases and functioned as a closing agent for the purchases.

13. Defendant Robert B. "Barry" McBriar was a licensed real estate appraiser in the State of New Jersey until October 2008,

when he surrendered his license to the Board of Real Estate Appraisers.

14. Venue is proper in this county because much of the conduct at issue occurred here and Casey Properties was doing business here.

#### THE SCHEME

15. Casey Properties recruited individuals through word-of-mouth to "invest" in real estate in urban areas of New Jersey, including Newark, Paterson, Irvington and East Orange. Casey Properties located distressed properties, obtained fraudulently inflated appraisals on the properties, procured mortgage loans to purchase the properties in the names of the "investors," and took unwarranted proceeds from the loans.

16. In the course of convincing individuals to participate in this scheme as investors, the Gendels represented to them, both orally and in writing, that Casey Properties would fix up and maintain the properties, rent them out to residential tenants, and pay the mortgages from the rental income.

17. In fact, although Defendants collected rents - including payments from the federal Section 8 housing assistance program - they did not fix up or maintain the properties or pay the mortgages as agreed.

18. As a result, the properties fell into disrepair and were ultimately abandoned.

19. This fraudulent course of conduct has caused injury to the individual "investors" by saddling them with inflated debts, dilapidated properties they cannot sell and severely diminished credit ratings.

20. In addition, the communities of Newark, Paterson, Irvington and East Orange, as well as the State of New Jersey, have incurred costs to abate the nuisances that Defendants caused by creating and maintaining housing that is unsanitary, unsafe, and/or likely to cause damage to adjoining properties, and by causing multiple properties in the communities to become abandoned.

21. When a home goes into foreclosure, the negative effects extend to the surrounding neighborhood and the wider community. The price and/or sale potential of other nearby properties invariably drops, leaving those homeowners with much less housing wealth than they otherwise would have had. Casey Properties exacerbated this negative impact by repeatedly targeting the same streets and communities, causing multiple foreclosures and multiple abandoned properties in these areas.

22. In many instances, properties sold as investments and supposedly managed by Defendants have been neglected, condemned, left vacant, and/or abandoned. Tenants have been left homeless or forced to live in squalor without functioning utilities and an accumulation of trash and debris.

23. Upon information and belief, Casey Properties' neglect of these properties has caused human injury to tenants of the properties, flooding and fire damage to the properties and adjoining properties, gas leaks and evacuation, accumulations of trash and debris, depressed property values, and blight.

24. In addition, Casey Properties engaged in unconscionable conduct, injurious to the community, by falsely inflating the values of the properties they purchased and by failing to pay the mortgages. Defendants caused neighboring properties to lose hundreds of thousands of dollars in equity as multiple foreclosures on the Casey Properties houses depressed neighboring property values.

25. In order to obtain increased payments and commissions from lenders, Frank Memmo and Kelly Kotzker placed borrowers in high-cost, high-risk subprime loans even though the borrowers may have qualified for more favorable mortgages in the prime market.

26. These foreclosures and abandoned properties impose significant direct and indirect costs on municipalities and the State, including the costs associated with cleaning and securing the properties, processing lis pendens and foreclosures, increased policing to prevent vandalism and criminal activity on streets with multiple abandoned buildings, replacing lost affordable rental housing and aiding displaced renters, collecting or losing revenues from unpaid taxes and bills for municipal services, and reducing the tax base as foreclosures



hinder business growth and development and deter legitimate commercial activity. These costs can range up to hundreds of thousands of dollars in direct and indirect costs per property.

27. Defendants engaged in such conduct for dozens of properties and with dozens of "investors." Some illustrations of Defendants' injurious acts include the following:

Barbara Blackman - 335-337 S. 20th Street, Newark and 33 North Bridge Street, Paterson

28. In early 2006, Barbara Blackman, a New York resident and retired public school counselor, met Martin and Seth Gendel, who persuaded her that they had a valuable real estate investment opportunity for her. Ms. Blackman is 66 years old.

29. The Gendels explained that she would purchase properties that they, through Casey Properties, would rehabilitate, rent and then sell for a profit, which they would share with her. The Gendels explained that they would completely manage the properties, including securing tenants, collecting rents, paying the mortgage and fixing up the properties.

30. Defendant Martin Gendel held himself out to Ms. Blackman as a New Jersey attorney. In fact, he is a disbarred attorney.

31. Defendant Seth Gendel is a New Jersey licensed real estate agent, with an inactive license. Seth Gendel represented to Ms. Blackman that he was a licensed real estate agent.

32. The Gendels falsely represented to Ms. Blackman that under New Jersey law individuals may only own a limited number of properties and that they could not purchase the properties themselves. The Gendels explained that she would not have to do anything relating to the properties and that they would arrange for the attorney, appraiser, and all other necessary services for the financing and purchase of the property.

33. The Gendels arranged with Defendants Kelly Kotzker and Frank Memmo of 1st Metropolitan Mortgage for Ms. Blackman to obtain financing for two properties, 335-337 South 20th Street in Newark and 33 North Bridge Street, also known as 118 East Holsman Street, in Paterson.

34. On information and belief, Defendants set a price far above the actual value of the property in order to extract loan money at or after the closings and distribute amongst themselves.

35. Defendant Kelly Kotzker, working as a loan officer for 1st Metropolitan Mortgage, created false loan applications in a coordinated effort to facilitate Ms. Blackman's purchase of both properties.

36. For the Paterson property, Defendants Kotzker and Memmo created loan applications that falsely indicated:

- a. that Ms. Blackman had been renting her home in White Plains, New York, and had been paying Martin Gendel \$1250 per month in rent since 1999, even though Defendants knew

Ms. Blackman owned her home outright and free of any mortgages;

b. that Ms. Blackman was working as a manager for Diversified Funding Group in Fairlawn, New Jersey, earning a salary of over \$70,000 per year, when in fact Ms. Blackman is a retired school counselor living on her pension and Social Security retirement benefits;

c. that Ms. Blackman earned monthly rental income of \$750, when in fact she earned none; and

d. that Ms. Blackman intended to occupy the property as her primary residence.

Other documents in the loan application package contain forgeries of Ms. Blackman's signature.

37. For Ms. Blackman's Newark property, Defendants Kotzker and Memmo created loan applications that falsely indicated:

a. Ms. Blackman's race, for purposes of monitoring compliance with federal and state antidiscrimination laws;

b. that Ms. Blackman had no mortgage liabilities, despite the very large debt she owed on the Paterson property;

c. the only property Ms. Blackman had any ownership interest in over the prior three years was her primary residence; and

d. represented that Ms. Blackman was earning \$3,837.50 each month in rental income and that, in conjunction with other income, she was earning over \$100,000 per year; and

e. that Ms. Blackman intended to occupy the property as her primary residence.

38. Defendants did not discuss different loan products with Ms. Blackman, but merely submitted an application in her name for a subprime loan for 100% financing with a high adjustable rate, despite the fact that Ms. Blackman's credit score, assets and income would have qualified her for more favorable funding in the prime market.

39. Defendants chose Barry McBriar of Sparta, New Jersey, to appraise both properties.

40. The New Jersey State Board of Real Estate Appraisers has determined that Mr. McBriar provided misleading information in appraisal reports for several properties, including the two Ms. Blackman purchased; that he relied on representations from individuals interested in the sale of the property at 335-337 South 20th Street in Newark in appraising the property, instead of appraising the property according to standard industry guidelines and regulations; and that his conduct merited sanctions under New Jersey law. On October 18, 2008, Mr. McBriar consented to surrendering his appraisal license.

41. Based on the representations made in the mortgage applications and in the appraisal reports supplied to the lender, the lenders funded the loans for the purchase of the Newark and Paterson properties. The lenders paid the brokers a

premium for placing Ms. Blackman in the subprime loan she received for the Paterson property.

42. On February 22, 2006, Ms. Blackman attended a closing for two loans to finance the purchase of the property at 33 North Bridge Street in Paterson.

43. At the closing of Ms. Blackman's mortgage loans, Defendants informed Ms. Blackman that Damien Figueroa, a New Jersey attorney, would represent both her and Casey Properties. The lenders provided the loan proceeds to Figueroa to be dispersed at closing.

44. When Ms. Blackman asked questions and expressed confusion about the documents she was signing at the closings, Defendants dismissed her.

45. Upon information and belief, Defendants created separate and different HUD-1 Settlement Statements for the Paterson property's loans. One was disclosed to the seller and the other to Ms. Blackman.

46. According to a HUD-1 Settlement Statement that the seller signed, Casey Properties took \$48,839.23 from loan proceeds as its contracted fee. Ms. Blackman did not sign that statement and was never informed of the fee Casey Properties took from the loans.

47. According to a separate Settlement Statement marked on page one with Ms. Blackman's initials, Casey Properties took no money from the loan proceeds and the seller received \$51,724.41 cash

from the sale. The seller did not sign that page of the settlement statement. Upon information and belief, this Settlement Statement is false and the seller did not take that cash at closing.

48. 1st Metropolitan Mortgage received more than \$8,000 in fees and compensation for closing the loans on Ms. Blackman's Paterson property. Defendants Memmo and Kotzker received significant commissions from this amount.

49. On April 10, 2006, Ms. Blackman attended the closing for the Newark property, where only Defendant Damien Figueroa, the Gendels, Ms. Blackman and her son were present.

50. When Ms. Blackman questioned why the title company, seller, and seller's attorney were not present, Martin Gendel and Damien Figueroa told her that real estate transactions were different in New Jersey than in New York and that their presence was not necessary.

51. When Ms. Blackman tried to examine the closing documents and consult with Damien Figueroa, he told her not to worry about examining the documents and rushed her through the closings.

52. Defendant Kotzker was faxing documents during the Newark closing and Seth Gendel was pulling them off the fax. Defendants gave Ms. Blackman no opportunity to review the documents she was signing.

53. Defendants obtained a \$358,500 appraisal for the Newark property and then obtained a mortgage loan in that full amount.

54. The Newark property had sold approximately seventeen months earlier for \$250,000 and, upon information and belief, no repairs were made to the property in the interim and no other changes to the property or the market genuinely caused such an increase in value to the property.

55. At the April 10, 2006 closing the parties executed a "Property Management Agreement" between Casey Properties and Ms. Blackman. That agreement provided that, in exchange for unenumerated fees collected at closing, Casey Properties would manage Ms. Blackman's property, rent it out, perform all necessary repairs, collect the rents, and timely pay the mortgage. In addition, the Property Management Agreement stated that Casey Properties would collect 50% of the profits from any sale or refinancing of the property.

56. Upon information and belief, Casey Properties and/or the Gendels collected more than \$80,000 from the mortgage loan proceeds at the April 2006 closing as its "fee" for managing the Newark property, but never explained to Ms. Blackman or the lender that it would be doing so. Rather, according to the HUD-1 settlement statement, \$84,505.34 was paid from loan proceeds to "RHD Maintenance & repairs." Upon information and belief, this money was actually paid to Defendants.

57. 1st Metropolitan Mortgage collected more than \$13,000 in points and fees in connection with the Newark property closing.

From this amount, Defendants Memmo and Kotzker received thousands of dollars in commissions.

58. Despite requesting copies of the documents at the closings, Ms. Blackman received none and was instead informed that she would receive them later. Approximately three months after the Newark closing, she received copies of some of the closing documents, but not the HUD-1 settlement statements.

59. At the closing for the Newark property's loan, Ms. Blackman asked Martin Gendel, who she was told was an attorney, whether the transaction was legitimate and he assured her that it was and that he would never participate in anything illegal.

60. At the time, Ms. Blackman was ill from a recurrence of cancer treatment and was later admitted to the hospital for surgery. On April 11, 2006, the day after the closing for the Newark property, Ms. Blackman received a phone call from Martin Gendel informing her that she must come to New Jersey to sign additional documentation. When she informed him that she could not travel to New Jersey, Damien Figueroa, the attorney who purportedly represented Ms. Blackman in connection with this property purchase, came to her home in New York.

61. Once there, Defendant Figueroa convinced Ms. Blackman that all was in order, that she could sell the properties for profit at any time because they were hers, and that she should sign the additional documentation, which she did.



62. Soon Ms. Blackman became aware that the mortgages had not been paid by the Gendels, and contacted Martin Gendel and asked him to sell the properties she had purchased.

63. At that time, Martin Gendel informed Ms. Blackman her Paterson property had flooded some time earlier but that Casey Properties had concealed that information from Ms. Blackman.

64. After recuperating from surgeries related to her cancer diagnosis, Ms. Blackman for the first time visited the properties she had purchased through Casey Properties.

65. Ms. Blackman's Newark property was dilapidated, with debris all around it. The property remains in disrepair to date.

66. A neighbor informed Ms. Blackman that the property been empty for years and had suffered a fire.

67. The neighbor said she had continually complained to public agencies about the condition of the property but had never seen anyone repairing it.

68. The Gendels had failed to inform Ms. Blackman of the condition of the property, the fire, their failure to rent it, or the complaints.

69. At Ms. Blackman's Paterson property, neighbors informed her that the building had flooded and the tenants vacated once mold began to grow.

70. Ms. Blackman confronted the Gendels, who refused to provide her any information about the property insurance on her properties.

71. Ms. Blackman has been unable to sell 335-337 S. 20th St. and has expended time and money cleaning debris from the property and boarding up the house.

72. In addition, upon information and belief, both properties Ms. Blackman purchased have fallen into default or foreclosure, severely injuring Ms. Blackman's credit, the property values of the surrounding Newark and Paterson communities, and requiring the cities of Newark and Paterson to expend money to deal with the foreclosures.

Gerhard Hentschel - 43-45 Godwin Avenue, Paterson and 205 South 11th Street, Newark

73. In late 2005, Gerhard Hentschel, a resident of Weehawken, New Jersey, learned through a coworker, James Reno, of an investment opportunity with Casey Properties. Mr. Hentschel had never purchased property before.

74. Reno arranged for Mr. Hentschel to begin purchasing properties through Casey Properties. Thereafter, in or around January of 2006, Mr. Hentschel met with the Gendels at their office in Totowa, New Jersey, and they offered him the purchase of investment properties with no out-of-pocket costs where he would earn 50% of the profit when they were later sold. In exchange, Defendants promised to maintain and rent the property and pay the mortgages from the rental proceeds.

75. The Gendels informed Mr. Hentschel that the property had been rehabilitated and approved for participation in the Section 8 housing subsidy program. Under the Section 8 program, tenants are provided with a voucher to secure housing in the private market. To participate in the program, the housing unit the tenant selects must be inspected and approved by the governmental entity administering the program. Upon approval, the government pays the amount of the voucher directly to the landlord.

76. At this meeting, the Gendels showed Mr. Hentschel pictures of what they falsely represented to be the proposed investment properties.

77. Based on these representations, Mr. Hentschel agreed to invest in the properties.

78. In December 2005 and January 2006, Defendant Kotzker created false loan applications to facilitate Mr. Hentschel's purchase of both properties.

79. Among other false statements on the loan applications, Defendant Kotzker created loan applications that falsely indicated:

- a. on both applications that Mr. Hentschel intended to occupy each as his primary residence, even though he intended to occupy neither;

b. on the loan application for the Newark property, that he would receive a positive cash flow of over \$2,000 per month in rent;

c. a substantially different monthly salary on each application, with each listed salary being greater than his actual income; and

d. failed to list Mr. Hentschel's ownership and liabilities related to the first purchased property (Paterson) as a liability on the loan application for the second (Newark).

80. In addition, to further conceal the purchase of the first property, Defendant Kotzker submitted an outdated credit report when brokering the second loan, so that the mortgage loans for the Paterson property would not appear anywhere on the Newark loan application.

81. In furtherance of this scheme, Defendant Kotzker submitted the loan applications to different lenders so they would not see the disparities.

82. Defendants did not discuss different loan products with Mr. Hentschel, but merely submitted an application in his name for a subprime loan for 100% financing with a high adjustable rate, despite the fact that Mr. Hentschel's credit score, assets and income would have qualified her for more favorable funding in the prime market.

83. Upon information and belief, Defendants procured false appraisals of the properties.

84. Barry McBriar provided an appraisal report to support the loan application for Mr. Hentschel's Newark property.

85. Shortly thereafter, on January 27, 2006, Mr. Hentschel closed a mortgage loan on property he purchased through Casey Properties at 43-45 Godwin Avenue in Paterson, New Jersey for \$340,000. The property had been sold to Norman Barna three months earlier for \$200,000. Upon information and belief, improvements were not made to the property in the intervening time period that would justify the increase in price.

86. In February 2006, Mr. Hentschel closed mortgage loans to purchase a property located at 205 South 11th Street, Newark, for \$360,000. That property had been listed for sale one month earlier for substantially less.

87. The Paterson property purchase was financed with two mortgage loans from WMC Mortgage Corporation, the first for \$272,000 and the other for \$68,000, both brokered by 1st Metropolitan Mortgage, which earned more than \$8,600 in fees and commissions for the transaction including a premium for placing Mr. Hentschel in the subprime loan he received. Defendants Memmo and Kotzker received commissions from these amounts, as well as other remuneration.

88. Casey Properties and others procured unearned "fees" from the loan proceeds.

89. Contrary to the representations made to Mr. Hentschel, Casey Properties failed to maintain or rent the properties, to perform necessary repairs, or to timely pay the mortgages.

90. As a result, the properties fell into default and foreclosure, severely harming Mr. Hentschel's credit rating.

91. In addition, Casey Properties maintained the properties in uninhabitable conditions, despite collecting rent from tenants.

92. Contrary to the representations of the Gendels, the properties Hentschel purchased had not been approved to be part of the Section 8 housing assistance program, and the Gendels never obtained Section 8 tenants for the properties.

93. One tenant who was living in the Paterson property with her young child reported that there was no heat in the property and had been none for over a year. The Gendels had been promising this tenant for more than a year that they would fix the heat.

94. In addition, Mr. Hentschel's Paterson property was infested with bugs and had electrical problems. Defendants refused to repair any of these conditions.

95. Nor did Defendants properly arrange for garbage collection at the property. The backyard was full of garbage and the front yard was littered with aluminum cans.

96. The structure of the property fell into severe disrepair while Casey Properties was purportedly managing it. Some of the doors on the property were broken, making the building insecure and accessible to squatters.

97. The Housing Inspector for the City of Paterson brought an enforcement action against Martin Gendel and Casey Properties for violating the housing property maintenance code by, among other things, failing to clean or remove garbage from around the property, exterminate for roaches and rodents, or repair the ceiling.

98. Defendants never notified Mr. Hentschel of the condition of the building or the need for repairs.

99. Upon discovering the condition of the properties, Mr. Hentschel tried without success to sell the properties at prices far less than he paid for them.

Devon McKnight - 51 Victoria Avenue and 429 4th Avenue, Newark

100. In September 2006, Devon McKnight and Jennifer Peña, now married, met with the Gendels about investing in real estate in New Jersey. The Gendels offered them an opportunity to invest in rental property. The Gendels indicated that they would manage the property and pay the mortgages from rents collected from Section 8 tenants.

101. Because Mr. McKnight worked 12-hour days, he was concerned about his ability to contribute any time to caring for or managing the properties. The Gendels assured him that they would handle everything, including property maintenance and dealing with tenants.

102. To induce Devon McKnight into participating in this scheme, the Gendels promised that he would receive \$2000 every three months for each property he purchased and that he could sell any property after two years. The Gendels represented that Mr. McKnight would receive 50% of the sale proceeds.

103. Devon McKnight agreed to purchase two properties through Casey Properties.

104. One of the properties Mr. McKnight purchased was 429 4th Avenue in Newark, New Jersey. WMC Mortgage provided 100% financing for the \$330,000 purchase, with loans that 1st Metropolitan Mortgage brokered.

105. In October 2006, Defendants Kotzker and Memmo created a false loan application to secure financing for the purchase of the property at 429 4th Avenue in Newark. Among other false statements, the loan application falsely indicated:

- a. that Mr. McKnight intended to occupy the property as his primary residence;
- b. Mr. McKnight's race;
- c. that he had a 16 year-old dependent child; and
- d. that Mr. McKnight had been interviewed by Frank Memmo in connection with the application.

106. The other property Mr. McKnight purchased through Casey Properties was 51 Victoria Avenue in Newark. The purchase price for that property was \$240,000, also financed 100%. The loan closed on November 10, 2006.



107. In or around late October 2006, Defendants Memmo and Kotzker created a false loan application to secure financing for the purchase of the Victoria Avenue property. Among other false statements, the application falsely:

- a. indicated that Mr. McKnight intended to occupy the property as his primary residence; and
- b. failed to disclose information about the 429 4th Avenue property.

108. Defendant Nicholas Manzi acted as the closing agent for the purchase of the 4<sup>th</sup> Avenue property, purportedly as Mr. McKnight's attorney. Mr. McKnight had never met or spoken with Nicholas Manzi, until Manzi and Seth Gendel showed up at his place of employment with only a few minutes advance notice to complete the closing for the 4<sup>th</sup> Avenue property, which took only a few minutes. The closing for the Victoria Avenue property similarly took place over a few minutes at Mr. McKnight's place of employment, except that only Seth Gendel appeared to conduct the closing, even though Manzi is listed as Mr. McKnight's attorney and Edward Evans is listed as the settlement agent on the HUD-1 settlement statement.

109. Devon McKnight never received any closing documents related to the purchase, at the closing or thereafter, despite repeated requests of the Gendels to provide them.

110. Upon information and belief, the Victoria Avenue property never had tenants and Defendants did not intend to rent it to tenants.

111. Casey Properties did not maintain the properties or pay the mortgage as agreed. When Devon McKnight learned that the mortgage payments were behind, he contacted the Gendels, who were unable to adequately explain what was happening.

112. Devon McKnight insisted that the Gendels sell the properties and designated his wife Jennifer Peña to work with a real estate agent on his behalf. The agent informed Ms. Peña that she was concerned the property values had been inflated for their purchases.

113. After meeting with the realtor, Jennifer Peña became concerned and went to see the properties and talk with the tenants. This was the first time either Mr. McKnight or Ms. Peña saw the properties.

114. Ms. Peña found appalling living conditions at 429 4th Avenue in Newark. The floor was caving in, there were rats and roaches in the house and the house was in overall deplorable condition. A tenant was living there with her sick daughter and said every time she called the Gendels to complain, they were unresponsive.

115. In addition, the tenant said that she paid her rent on time every month and that either Seth or Martin Gendel would come each month to collect it.

116. In addition, unbeknownst to Mr. McKnight and Ms. Peña, the Gendels were paying drug users squatting in a third-floor kitchen \$50 per week to watch the property.

117. Because of her concern for the tenants' welfare, Jennifer Peña alerted authorities, and the fire marshal was called to inspect the property at 429 4th Avenue in Newark. The fire marshal found numerous safety and code violations and forced the tenant to vacate the premises.

118. The tenant had been reluctant to leave because she had lived in the house many years and was uncertain she could find and afford another place to live. Jennifer Peña helped her find another apartment.

119. The property at 429 4th Avenue in Newark is currently boarded up.

120. The condition of the Victoria Avenue property is also uninhabitable.

121. During Casey Properties' management of the Victoria Avenue property, the property experienced a gas leak, which caused the entire neighborhood to be evacuated, and the water pipes had burst, flooding other neighboring homes. In addition, the home had a sewage problem.

122. Contrary to Defendants' representations, the property was a one-family home, not a two-family home.

123. When Jennifer Peña confronted the Gendels about the condition of the properties, they threatened to sue her.

124. Because the Gendels failed to maintain and rent the properties and pay the mortgages as agreed, both properties are in foreclosure and abandoned.

Robert Colontrelle - 37 Princeton St., East Orange

125. In June of 2005, Robert Colontrelle learned that a friend of his, James Reno, was involved in an "investment opportunity" with Michael Eliasof involving the purchase of investment properties. His friend suggested that he get involved, but Colontrelle declined purchasing a property at that time.

126. About a year later, Mr. Reno reported that he was making money off his property investment, and that Michael Eliasof had turned over the management of the property to Casey Properties/ Martin and Seth Gendel. His friend again encouraged Colontrelle to speak with Seth Gendel about investing.

127. Mr. Reno had Seth Gendel call Robert Colontrelle. Seth Gendel explained that he had a real estate investment opportunity for Mr. Colontrelle. Seth Gendel said that he had a property that was located on Princeton Street in East Orange that was part of the "Redevelopment Act." He explained that the Redevelopment Act was going to rehabilitate the whole block and that the property was currently "way undervalued." He explained that Casey Properties would make repairs to the property and rent the property out. He said that it would be a good investment opportunity. He explained that they had a "package

deal" which covered attorney's fees, the costs of closing and any other fees associated with the transaction.

128. In addition, Seth Gendel represented that Casey Properties would pay Mr. Colontrelle \$2000 at the closing, \$2000 six months later, and another \$2000 six months after that. According to Seth Gendel, the house would be put up for sale after approximately one year.

129. Seth Gendel represented that the house was currently being rented and that the tenants had Section 8 housing assistance vouchers, guaranteeing their rental payments from the government.

130. Seth Gendel represented that upon the subsequent sale of the property, Casey Properties would get 50% of the proceeds and Mr. Colontrelle would get 50%.

131. Based on Seth Gendel's representations about how the investment would work, Mr. Colontrelle decided to purchase the Princeton Street property.

132. Soon thereafter, a man telephoned Colontrelle to arrange financing, took his Social Security number, and discussed his financial assets and liabilities. Colontrelle assumed the man was a lender.

133. Frank Memmo and Kelly Kotzker created false loan applications to secure 100% financing from WMC Mortgage for the property purchase by Mr. Colontrelle. Kotzker and Memmo created a loan application that falsely indicated:

- a. that Colontrelle had a rental agreement whereby a tenant would pay \$1500 per month to rent part of the Princeton Street property;
- b. that Colontrelle earned substantial monthly rental income on other property; and
- c. that Colontrelle intended to occupy the property as his primary residence.

134. Defendants did not discuss different loan products with Mr. Colontrelle, but merely submitted an application in his name for a subprime loan for 100% financing with a high adjustable rate, despite the fact that Mr. Colontrelle's credit score, assets and income would have qualified him for more favorable funding in the prime market. WMC paid the brokers a premium for placing Mr. Colontrelle in the subprime loan he received.

135. Defendants procured a \$265,000 appraisal of the property.

136. Defendants arranged for Mr. Colontrelle to purchase the property for \$265,000 and obtain 100% financing for the purchase.

137. Several weeks after their initial conversation, Seth Gendel called Mr. Colontrelle to inform him when and where the closing would take place.

138. The loans closed on July 28, 2006 at the Fairlawn office of Edward Evans, an attorney in Fairlawn, New Jersey, whom the Gendels had instructed Colontrelle to see. When Robert Colontrelle got to the office, Seth Gendel and Edward Evans were

the only other people present. Neither the sellers nor their attorney were present. This was the first time Colontrelle had met, or even spoken with Evans, who was purportedly his attorney.

139. According to an unsigned first page of the HUD-1 settlement Statement for this closing, Lee Alan, LLP took \$31,165.06 from the loan proceeds. Mr. Colontrelle and the sellers only signed the second page of the HUD-1, which does not indicate that Lee Alan was taking any money from the closing.

140. On information and belief, Defendants conspired with one another to conceal that information from Mr. Colontrelle. Mr. Colontrelle received no copies of documents until approximately one month after the closing and did not become aware that Lee Alan took any money until months later, when concerns arose and he visited an attorney.

141. 1st Metropolitan Mortgage earned at least \$5,070 in points and fees for the loans on Mr. Colontrelle's property. Defendants Memmo and Kotzker earned substantial commissions for their work on these loans.

142. One of the documents Colontrelle executed at the closing was the "Property Management Agreement" with Casey Properties, which Seth Gendel signed for Casey Properties. That agreement provided that Casey Properties would manage Mr. Colontrelle's property, rent it out, perform all necessary repairs, collect the rents, timely pay the mortgage, collect fees at the closing,

and collect 50% of the profits from any sale or refinancing of the property.

143. As soon as Mr. Colontrelle closed on the loans, Seth Gendel began pressuring him to purchase another property. Gendel told Colontrelle that he would be missing out on a great opportunity.

144. After closing, Colontrelle learned that Casey Properties failed to pay the mortgage for the Princeton Street property or maintain the property as agreed. In fact, the property was vacant.

145. When Colontrelle confronted Defendants, they indicated that they had been unable to rent the property and that they would terminate the arrangement unless Colontrelle contributed to the mortgage payments.

146. Shortly thereafter, Martin Gendel called Colontrelle to say Defendants needed his help. The parties agreed that if Robert Colontrelle cleaned another property for Casey Properties, the Gendels would pay him for the work and resume paying his mortgages as agreed, to protect his credit.

147. Colontrelle performed the work but never received payment despite Defendants' representations that they had sent it. On July 22, 2007, Colontrelle visited the Casey Properties office and received a check for \$1025 for his work, but the check bounced.

148. Colontrelle returned to the Casey Properties office and insisted on another check, which Defendants wrote from an



account for another of their companies, Quality Funding, and which cleared.

149. Nevertheless, Defendants ceased making any mortgage payments for Colontrelle's property.

150. Shortly thereafter, Robert Colontrelle visited his East Orange property and saw that the property was not rented and was in no condition to be rented. Trash had piled up in the backyard and grass and weeds had grown out of control.

151. Mr. Colontrelle himself cleaned out the trash, mowed the lawn and started to clean up the property.

152. Mr. Colontrelle began making mortgage payments to prevent the house from going into foreclosure.

153. Mr. Colontrelle ultimately consulted with an attorney and discovered that the house had been purchased at a grossly inflated price.

154. In addition, because the property had been empty, vandals had further diminished the value of the property, stealing all the copper and hot water boilers from it.

155. To prevent further vandalism and theft, the City of East Orange boarded up the first floor door and windows in a city-wide effort to prevent squatters and damage to abandoned properties.

156. In early 2008, Mr. Colontrelle unsuccessfully sought to complete a short sale of the property. The property has been scheduled for foreclosure.

157. Defendants have engaged dozens more unsuspecting customers in transactions to generate unwarranted income for Defendants, and have caused other properties in Newark, Paterson, Irvington and East Orange to become dilapidated, unsafe, abandoned and/or foreclosed.

158. On information and belief, Defendants continue to collect rent from residential tenants at properties in Newark, Paterson, Irvington and East Orange without maintaining the residences in habitable condition, including failing to perform necessary repairs and/or supply heat and/or water to residents.

COUNT ONE

VIOLATIONS OF N.J.S.A. 2C:41-1 ET SEQ.

NEW JERSEY CIVIL RICO

159. Plaintiffs repeat and reallege paragraphs 1 through 158 as if fully set forth herein.

160. Casey Properties and Lee Alan LLP, are in the businesses of buying, selling and/or managing real property in New Jersey.

161. Casey Properties and Lee Alan, LLP are enterprises within the meaning of N.J.S.A. 2C:41-1c.

162. At all relevant times, the Casey Properties and Lee Alan, LLP enterprises were engaged in trade or commerce or in activities affecting trade or commerce in connection with the sale, purchase, and management of real property in the State of New Jersey.

163. Defendants Seth Gendel, Martin Gendel, Frank Memmo, Kelly Kotzker, Damien Figueroa, Edward Evans, Nicholas Manzi and Barry McBriar are "persons" within the meaning of N.J.S.A. 2C:41-2(b).

164. Defendants Seth Gendel, Martin Gendel, Kelly Kotzker, and Frank Memmo, Damien Figueroa, Edward Evans, Nicholas Manzi and Barry McBriar, were all either employed by or associated with Casey Properties and Lee Alan LLP enterprises, and conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprises through a pattern of racketeering activity in violation of N.J.S.A. 2C:41-2c by engaging in crimes under Chapter 20 of Title 2C of the New Jersey Statutes, and fraudulent acts and practices under chapter 21 of title 2C of the New Jersey Statutes.

165. The defendants have, among other things, engaged in a pattern of racketeering, including criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

166. The criminal conduct includes (1) theft by deception in violation of N.J.S.A. 2C:20-4; (2) deceptive business practices in violation of N.J.S.A. 2C:21-7h; (3) falsifying records, or uttering any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing; N.J.S.A. 2C:21-4(a); (4)

issuing a false financial statement in violation of N.J.S.A 2C:21-4(b); (5) engaging in bank fraud in violation of 18 U.S.C. § 1344; and (6) engaging in wire fraud in violation of 18 U.S.C. § 1343.

167. The acts undertaken by Defendants in furtherance of the pattern of racketeering activity included, among other things:

- a. Recruiting individuals with good credit ratings to participate in real estate transactions through false promises, and using their identities and credit history to obtain financing for real estate transactions with inflated sales prices;
- b. Submitting false information to lenders regarding income, assets, intent to reside at a property and other outstanding requests for credit on loan applications in order to obtain financing for the real estate transactions;
- c. Obtaining and creating fraudulent and inflated real estate appraisals and submitting those appraisals to lenders to obtain an amount of financing for transactions that lenders would not have otherwise provided;
- d. Accepting commissions on mortgage loans that were approved based on fraudulent information and appraisals;
- e. Falsifying closing documents to disguise the nature of the funds taken by members of the enterprise;

- f. Forging documents in the name of borrowers to facilitate approval of financing for property purchases;
- g. Collecting rental proceeds that were to be directed toward mortgage payments, but then not paying the mortgage payments and retaining the proceeds; and
- h. Taking profits from property sales financed by illicitly-obtained loan proceeds.

168. The Defendants received income and proceeds directly from the pattern of racketeering activity.

169. The Defendants have conspired with and amongst themselves and others to violate the provisions of RICO, in violation N.J.S.A. 2C:41-2d.

COUNT TWO

VIOLATIONS OF NEW JERSEY CONSUMER FRAUD ACT (UNCONSCIONABLE  
COMMERCIAL PRACTICES)

170. Plaintiffs repeat and reallege paragraphs 1 through 169 as if set forth at length herein.

171. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing . . . concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate . . . .

172. In the operation of their business, Defendants Martin Gendel, Seth Gendel, Casey Properties, Lee Alan LLP, Frank Memmo, Kelly Kotzker, and Barry McBriar have engaged in the use of unconscionable commercial practices in connection with the sale of merchandise or real estate, including, but not limited to, the following:

- a. Soliciting unsophisticated investors with promises of owning investment properties when Defendants only sought to use the investors' identities and credit histories to obtain loans to finance their scheme;
- b. Soliciting investors on the premise that all payments related to the property would come from rental payments, when the Defendants knew or should have known that the rental income could not support the mortgage obligations obtained for the properties;
- c. Inflating the sales prices for the properties for investors and supporting those inflated prices by procuring fraudulent appraisals for the purpose of increasing the money available for Defendants to take from loan proceeds; and
- d. Failing to disclose that Defendants would take tens of thousands of dollars from the mortgage loan proceeds at closing as their "fees";

- e. Falsifying loan documents using misrepresentations and false information to obtain financing for transactions, to generate unwarranted profits, fees and commissions;
- f. Promising investors they would earn incentive payments by purchasing properties;
- g. Placing borrowers in high-cost subprime loans when borrowers could have qualified for more financing on more favorable terms in the prime market;
- h. Neglecting investment properties causing them to be unable to garner sufficient rental income to support mortgages and unable to be resold; and
- i. Diminishing the value of purchased properties by failing to maintain them in good repair or habitable condition.

173. Each unconscionable commercial practice by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT THREE

VIOLATIONS OF NEW JERSEY CONSUMER FRAUD ACT (FALSE PROMISES, MISREPRESENTATION, AND KNOWING OMISSIONS OF FACT)

174. Plaintiffs reallege the allegations in paragraphs 1 through 173 above as if more fully set forth herein.

175. In the operation of their business, Defendants Martin Gendel, Seth Gendel, Casey Properties, Lee Alan LLP, Frank Memmo, Kelly Kotzker, and Barry McBriar have made false

promises, misrepresentations and/or knowing omissions of material fact, including, but not limited to:

- a. Promising investors that Defendants would maintain the properties and pay all bills associated with property maintenance, including the mortgages, when they never intended to do so;
- b. Misrepresenting to investors the conditions of the properties they were purchasing and the rent the properties were generating;
- c. Misrepresenting that properties were approved to be part of the Section 8 housing assistance program and that rental income from Section 8 tenants would cover mortgage payments;
- d. Failing to notify parties to the real estate transactions of the existence and amount of seller's concessions and other fees Defendants obtained at the closing;
- e. Failing to disclose interest rates and other loan terms prior to closing;
- f. Providing false information on loan applications to lenders concerning occupancy status, income and other mortgage obligations of borrowers to induce funding of loans;
- g. Soliciting inflated appraisals of properties and providing the inflated appraisals to lenders;



- h. Concealing from property owners damage and insured losses that occurred at the properties;
- i. Falsely representing to investors that the real estate transactions were legal and proper; and
- j. Communicating to investors that the attorneys participating in the closing were representing the investors' interests.

176. Each false promise, misrepresentation and/or knowing omission of material fact by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT FOUR

CREATING AND MAINTAINING A NUISANCE

177. Plaintiffs repeat and reallege paragraphs 1 through 176 as if set forth at length herein.

178. A public nuisance is an interference with a right common to the public.

179. Under New Jersey common law, public entities, including the State of New Jersey, may seek to abate public nuisances, against those who caused or maintained them.

180. Under New Jersey common law, the State of New Jersey may recover money damages to compensate it for the special injury it has suffered as a result of public nuisance.

181. By their conduct, Defendants have caused adverse impacts on the health, safety, welfare, and prosperity of the communities in which they have operated, including Newark, Paterson,

Irvington and East Orange, in the State of New Jersey. Defendants' actions have caused these communities, and the State, to be burdened with dilapidated and uninhabitable housing that adversely affects the entire surrounding area.

182. This conduct constitutes interference with the rights common to the public.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple violations of civil RICO, N.J.S.A. 2C:41-1 et seq.;
- (b) Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq.;
- (c) Finding that Defendants have caused or maintained public nuisances;
- (d) Permanently enjoining Defendants and their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., including, but not

limited to, the acts and practices alleged in this Complaint;

- (e) Freezing all assets of Defendants and preventing Defendants from engaging in any act of disposition of those assets, in accordance with N.J.S.A. 56:8-8;
- (f) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8, and by RICO, N.J.S.A. 2C:41-4(7);
- (g) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13, and for each violation of RICO, N.J.S.A. 2C:41-4(8);
- (h) Directing the assessment of costs and fees, including attorneys' fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19, and as authorized by N.J.S.A. 2C:41-4c; and
- (i) Ordering Defendants to abate the nuisance they caused by repairing and rehabilitating the properties they promised to repair and rehabilitate and/or paying the State the necessary money to repair and rehabilitate the properties

- to safe and decent condition, including all costs associated with repairs or demolition;
- (j) Ordering Defendants to reimburse the Cities of Newark, Paterson, Irvington and East Orange, and the State of New Jersey for the costs associated with the special injuries they suffered to cope with the dilapidation and foreclosure of the Casey Properties houses;
- (k) Ordering Defendants to pay actual reasonable expenses associated with relocating any affected tenants to safe and decent housing; and
- (l) Granting such other relief as the interests of justice may require.

**ANNE MILGRAM**

**ATTORNEY GENERAL OF NEW JERSEY**

Attorney for Plaintiffs

By:

*James R. Michael*

James R. Michael

Lisa D. Kutlin

Deputy Attorneys General

Dated: 3/5/09

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, James R. Michael, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs.

**ANNE MILGRAM**  
**ATTORNEY GENERAL OF NEW JERSEY**  
Attorney for Plaintiffs

By: *James R. Michael*  
James R. Michael  
Lisa D. Kutlin  
Deputy Attorneys General

Dated: 3/5/09

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of any other action between the parties. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I am aware of other actions between some Defendants and some individual investors, but Plaintiffs are not part of those actions. I certify that there is no other party who should be joined in this action.

**ANNE MILGRAM**  
**ATTORNEY GENERAL OF NEW JERSEY**  
Attorney for Plaintiffs

By: *James R. Michael*  
James R. Michael  
Lisa D. Kutlin  
Deputy Attorneys General

Dated: *3/5/09*

VERIFICATION

I, Jennifer Micco, of full age, hereby certifies as follows:

1. I am a Supervising Investigator with the New Jersey Division of Consumer Affairs ("Division"), Office of Consumer Protection.
2. I have read the foregoing complaint and on my own personal knowledge and review of documents in possession of the Division, I know that the facts set forth herein are true and they are incorporated in this certification by reference, except for those alleged upon information and belief.
3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
JENNIFER MICCO

Dated: 3/5/09  
Newark, New Jersey