STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

PUBLIC HEARING

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IN THE MATTER OF:
NEW-HOME CONSTRUCTION
ISSUES FR#9-4

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State House Annex
West State Street
Trenton, New Jersey  08608
November 19, 2003

BEFORE:
FRANCIS E. SCHILLER, Chair
KATHRYN FLICKER, Commissioner
JOSEPH R. MARINIELLO, JR., Commissioner
W. CARY EDWARDS, Commissioner

APPEARANCES:
ROBERT J. CLARK,
Chief Counsel to the Commission

CHARLOTTE K. GAAL, ESQ.
Counsel to the Commission

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Counsel to the Commission

Reported by:
SEAN M. FALLON,
Certified Shorthand Reporter

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COMMISSIONER MARINIHELLO: Good morning. The Commission's investigation of abuses in new home construction and inspections is not only statewide in scope, but we have taken pains to ensure that it is fair and comprehensive from a socio-economic standpoint, as well. In other words, we were not limited to the suburbs.

As testimony this morning will show, we took this inquiry into New Jersey's largest city, Newark, to examine the sorry history of an affordable-housing development known as Society Hill. Thanks to builder negligence and the abject failure of responsible authorities at all levels of government, code and construction deficiencies have transformed this urban community into a costly millstone for many of its residents. You will also hear how Essex County arson investigators have revealed widespread disregard of fire code enforcement in Newark as it relates to multi-family dwellings.

As to the broader issue of what has occurred to so thoroughly undermine the integrity and credibility of home construction inspections in many areas of our state, testimony will reveal a system rife with graft, favors and quid pro
quos. Witnesses will describe the close
relationships between municipal officials and
housing industry representatives; the receipt of
gifts, meals, outings and other freebies by
inspectors; and the peddling of influence by
builders and developers.

We will also examine a particularly
cruel twist in the victimization of unsuspecting
home-buyers, those left high and dry when builders
go bankrupt. In some instances, as you will hear,
it is not at all unusual for these types of
problem builders to simply reorganize under a
different name and to continue to spread their
abuse throughout New Jersey.

With that said, Deputy Director
Gaal, would you please call the first witness.

MS. GAAL: We are going to go
slightly out of turn. We are going to take James
Conroy first.

EXAMINATION

BY MS. GAAL:

Q. Would you state your name, please.
A. James P. Conroy.

Q. And by whom are you employed?
A. I'm employed by the State Commission
PUBLIC HEARING

Q. What position do you hold?
A. I'm a special agent.

Q. And how long have you been with the SCI?
A. I've been with the SCI for three years. Since October, 2000.

Q. Where did you work before you joined the Commission?
A. Prior to joining the Commission I was a senior investigator in the State Internal Affairs Unit of the State Inspector General's office in New York.

Q. Among your assignments, were you assigned a task to investigate several complaints and deficiencies in a development called Society Hill at University Heights in Newark?
A. Yes, I was.

Q. And we hope to hear from one of the homeowners today, but, did you have occasion, as well as other Commission members, to speak with Society Hill homeowners concerning construction deficiencies in their properties?
A. Yes, several homeowners.

Q. Do you recall how far back the
problems date?
A. The problems dated back to 1989.
Q. Can you give us maybe one example of one of the problems that one of the homeowners told us about?
A. Yes. A homeowner by the name of Beatrice Black experienced several problems with her home: Water infiltration problems caused by poor grading, mold issues, et cetera. Ms. Black communicated her concerns to various officials and had a very, very vast amount of problems, mainly concerning water infiltration and structural problems.
Q. She had such things happening as the ceiling sagging?
A. She had problems with her ceiling and she had other problems that concerned mold problems, mushrooms that were growing in her house due to the water infiltration in the ceiling and through the walls.
Q. She actually had mushrooms growing in the house?
A. Yes, that's correct.
Q. As far as you know, does she still have those kind of problems?
Ms. Black has communicated that she still experiences several problems concerning these mold defects.

Q. Did she have any fire safety -- or fire safety issues?
A. Yes, she did.

Q. What was it?
A. Ms. Black has a problem with her home associated with the lack of a second means of egress.

Q. She only has one means of egress?
A. That's correct.

Q. And what problems does she experience that she's concerned about in the event of a fire?
A. One of the problems and life safety issues that she experiences is when the ice that forms outside her front door in the winter -- she's an elderly woman -- she's not able to be able to open the door herself. She actually had to have neighbors come and assist her. In the event of a fire, that could be a very life-threatening safety issue.

Q. So, what you are saying is ice blocks her door and she has to get people from the
outside to push it open?

A. That's correct.

Q. And that's in the winter months?

A. Yes.

Q. Now, did the Commission find anything out about whether Society Hill was registered with the Bureau of Housing?

A. Yes. Ms. Black communicated her concerns to the DCA and, when she learned from DCA that her home was not registered with the Bureau of Housing Inspection -- when she learned that she spoke to an investigator by the name of Michael J. Moticha of the BHI, who informed her that her home and other Society Hill homes were not registered.

Q. Now, who was supposed to register these developments?

A. The Newark construction office is supposed to register developments. If they don't register them, they are, at the minimum, supposed to require -- file for an extension -- exception, excuse me.

Q. Have they since been registered?

A. Moticha informed the Commission that his office began an investigation and is reviewing the development for fire, maintenance and security.
compliance, per the regulations for maintenance of hotels and multiple dwellings. An inspector from the DCA did visit her upon her inquiry.

Q. How long ago was the complex built, do you recall?
A. The complex was constructed in 1986 and completed construction in 1996.

Q. Do you recall learning about an incident in July of 2000 when the ceiling collapsed on one of the homeowners?
A. Yes. A Mr. John Smith, who is a homeowner in Society Hill, was in his bedroom on his bed and the ceiling literally collapsed on top of him. He escaped serious injury, but he did receive medical injuries and had to go to the hospital.

Q. Did anyone look into what had happened there?
A. The property management company at that time was called Amherst Management Realty Company. They attempted to persuade the builder, who was K. Hovnanian, to fix the problems. The builder refused, saying it was outside of warranty. They then contacted the DCA. They received no assistance there. They were forced to
pay for the -- to remedy the problems through
their insurance company. Investigation revealed
that the Sheetrock was not properly attached to
the beams, which caused the ceiling to fall.

Q. Did the company also learn about
some other problems in some of the homes at that
point?

A. Yes, the company also learned of
sewage backup in several of the units.

Q. Now, did there reach a point when
electrical contractors actually refused to work in
the development because there were so many
flagrant electrical code violations?

A. Yes. Inspector -- CEO, actually, of
Sheffield Electrical, Mr. Malik Akhar, he refused
to work on a certain location since there were
Notices of Violations pending. However,
Certificates of Occupancies were issued. He was
one of the individuals who refused to work on
these homes.

Q. Now, what have the homeowners done
over these years to try to get their problems
addressed?

A. The homeowners have contacted
several officials. First at the local level
between the construction office and several
officials in the City of Newark, such as the
mayor's office. They also contacted DCA and have
written letters to various other officials.

Q. At one point did the city withhold a
significant amount of money in federal funds owed
to the builder?

A. Unfortunately, the Commission is not
in possession of that knowledge at this time, due
to the fact that the City of Newark was unable to
provide us with records pertaining to these funds.

Q. But how much money was involved, do
you recall?

A. I recall it was over $316,000 in
federal funds withheld.

Q. So you believe the Commission has
asked the City of Newark to give us some follow-up
on that?

A. Yes, we have.

Q. And they can't provide it?

A. That's correct.

Q. Now, did this Commission subpoena
records from the Newark construction office
regarding that specific development?

A. Yes, we have. We subpoenaed several
records and documents from the Newark construction office, as well as the corporation counsel, and we received minimum records that we have asked for. We asked for certifications of same and we were not provided with those as of this time, either.

Q. Slow down your speaking.

With respect to our contact at the Newark construction code office, would you agree with me that we've had multiple requests made to them over the months?

A. Yes.

Q. And you probably personally have made several requests and as have other Commission staff?

A. Yes, we have.

Q. And, just so we are clear, we haven't gotten any records from them, is that right?

A. That's correct, minimal records after repeated requests.

Q. Is it your understanding from the Newark office that they don't have records to give us?

A. That is correct.

Q. Okay, and we've asked for a
certification of that?
   A. That's also correct.
   Q. And we haven't gotten that, either?
   A. As of this date we have not, despite numerous requests.
   Q. Did you give them a deadline around the beginning of this hearing when we wanted that certification?
   A. Yes, I did.
   Q. What was the date that you asked for?
   A. After several attempts, I personally requested the records and was told that they'd be here by this time last week and, as of this date, they still have not come, nor have any phone calls been returned.
   Q. Now, with respect to the Newark construction office, were they at one time cited for deficiencies?
   A. Yes, back in 1993. They were cited.
   Q. And who cited them, do you recall?
   A. The Department of Community Affairs.
   Q. Can you tell us a little bit about what the problem was at that point?
   A. Yes. In 1993 it was learned by DCA
that the Newark office was deficient with respect to inspection records concerning the Newark co-generation bay project. At that time they noticed that there was only a final inspection report for this project. There were no inspection reports throughout the whole project that were able to be provided.

Q. So did they shut down that office?
A. They shut down the office in 1996.
Q. And it was subsequently re-opened?
A. Yes, it was re-opened following a two-day shutdown. It was closed in 1996 for failure to appoint a permanent construction official.

Q. Did the DCA ever conduct a staffing analysis of the Newark construction office?
A. Yes, they did, in October of 2001.
Q. And what did they conclude, do you know?
A. I spoke to an individual by the name of Mr. Henry Riccobene who conducted the analysis for the year, as it was requested by the Newark office, and I learned that there were several positions that still needed to be filled. Two building inspector positions and another inspector
And one of the issues that's of interest with respect to that particular development is a life safety issue that has to do with firewalls, is that right?

A. That's correct.

And did you speak with the current construction official in Newark concerning firewall deficiencies in Society Hill?

A. Yes, I did.

Who did you speak with?

A. I spoke to the current construction official, John Anstiss.

And what did he tell you?

A. Mr. Anstiss told me that he was aware of the firewall issue/problem throughout Society Hill. I asked him what he knew of the problem and he informed me that he became aware that there are several problems with the firewalls, either not properly constructed or installed or missing altogether.

And did he indicate anything to you about whether he thinks those homes were inspected, whether the firewalls were inspected or not inspected, or what happened?
A. Unfortunately, he was unable to provide any inspection records due to the problem with the record maintenance in there -- in Newark. However, he did tell me that he would like to believe that they were done correctly, which would have meant a physical inspection of the firewalls.

Q. Now, when you say, "Unfortunately, he wasn't able to provide records," was that because he doesn't have any to provide?

A. That is correct. He said they probably don't exist or they probably never existed to begin with.

Q. So he's suggesting that he hopes the homes were inspected?

A. That's correct.

Q. What would the alternative have been? Just looking at the blueprints?

A. That's correct.

Q. I would assume that looking at the blueprint is not the preferred method of inspecting a firewall?

A. That's correct. According to Mr. Anstiss, looking at blueprints should not be done in lieu of physically examining the firewalls. Blueprints merely show that there is an intention
or acknowledgment by the builder to install a
firewall, but it doesn't show if it was corrected
and installed properly.

Q. Do you recall approximately when you
talked to Mr. Anstiss?
A. I spoke to Mr. Anstiss approximately
a month ago.

Q. Now, he's indicated to you, as I
understand it, that they are aware of deficiencies
in the firewalls, is that right?
A. That's correct.

Q. Has anything been done about it in
his capacity as the construction official?
A. Mr. Anstiss told me there was
nothing he could do at this time because the
Society Hill has already been constructed.

Q. And in our examination were we able
to find any records of inspections relating to
those firewalls?
A. No.

Q. Have you gotten any explanation from
anyone in Newark as to whether there ever were
records of inspections with respect to Society
Hill?
A. I spoke with people in Newark in the
construction official office, and I also spoke with corporation counsel, and unfortunately at that time there were no records to be provided and as of today there are none.

Q. They don't know whether there ever were records or they haven't been able to address that?

A. They said that they weren't able to provide them because they probably never existed.

MS. GAAL: Okay, that's what I have that I wanted to cover with the witness.

COMMISSIONER FLICKER: Agent Conroy, I realize we took you out of turn, but maybe a little bit of background would be helpful. Where is Society Hill located in Newark?

THE WITNESS: Society Hill is located at University Heights, the center of Newark.

COMMISSIONER FLICKER: And how big is it?

THE WITNESS: It's comprised of approximately 801 units. It's developed into three separate phases.

COMMISSIONER FLICKER: So approximately how many people live in Society...
Hill?

THE WITNESS: I would say at least 2,000 or more.

COMMISSIONER FLICKER: What type of construction is it? What do these buildings look like?

THE WITNESS: They are condominium units.

COMMISSIONER FLICKER: One story, two story, three story?

THE WITNESS: Two stories. They are small -- some are small units, some are larger. It spans a great portion of the area of University Heights.

COMMISSIONER FLICKER: And can you give us an idea of the approximate cost of a unit in Society Hill?

THE WITNESS: Some of the units were not as expensive as in other areas, but I believe they were costing somewhere around 200,000 or so, but I don't have exact numbers on that.

COMMISSIONER FLICKER: And who was the builder?


COMMISSIONER FLICKER: And you told
us that it was built between '86 and '96?

THE WITNESS: That's correct.

COMMISSIONER FLICKER: Why did we choose Society Hill?

THE WITNESS: A lot of the residents in Society Hill feel that their problems are downplayed because of the fact that Society Hill represents a rejuvenation in that area in the center of Newark. We also looked at it for several reasons, including the firewall, which is a real safety issue, and the fact that it affects many -- a large amount of people up in that area.

COMMISSIONER FLICKER: Thank you very much.

THE WITNESS: You're welcome.

COMMISSIONER SCHILLER: The management -- you said there was a homeowners management corporation there or who was the one who notified Hovnanian to correct these things?

THE WITNESS: The homeowners -- Phase 1, 2 and 3 of the condominium associations. We spoke with Phase 3, an individual by the name of Ricardo Cardona, who is the treasurer.

COMMISSIONER SCHILLER: And they had gotten in touch with the contractor or the
developer and --

THE WITNESS: They attempted to contact K. Hovnanian and they received little or no assistance. They were forced to go to their own funds -- to their treasury -- association.

COMMISSIONER SCHILLER: You mentioned that the construction official recognized that there were certainly the possibility, if not the probability, of not having firewalls. Is that correct?

THE WITNESS: That's correct, sir.

COMMISSIONER SCHILLER: And what did he offer as a remedy for that, if anything?

THE WITNESS: Mr. Anstiss informed me, when I asked him that question, that there is nothing he can do in his capacity as construction official because the homes were already built.

COMMISSIONER SCHILLER: And was there any notice to the fire department or fire code officials?

THE WITNESS: No, sir, we have no records of anyone being notified.

COMMISSIONER SCHILLER: So, basically, you would have to have a disaster here
before anybody pays attention?

THE WITNESS: That's correct, unfortunately.

COMMISSIONER SCHILLER: I have no further questions.

Thank you very much, agent.

THE WITNESS: Thank you.

MS. GAAL: The next witness is Ricardo Cardona.

Could we just have a minute? We have a little technical problem.

COMMISSIONER SCHILLER: Sure. Just take a couple minutes to set up.

MS. GAAL: The next witness, as I said, is Ricardo Cardona.

Mr. Cardona, would you please stand and be sworn by the reporter.

RICARDO CARDONA, after having been first duly sworn, was examined and testified as follows:

MS. GAAL: Thank you. You may be seated.

Counsel, would you please enter your appearance or indicate whom you are with for the record.

MR. BYRNE: Sure. My name is Dave Byrne. I'm an attorney, and I represent the Society Hill University Heights III Condominium,
with respect to which Mr. Cardona is here today.

MS. GAAL: Are you with a firm?

MR. BYRNE: Yes. The firm is Stark & Stark in Lawrenceville. Thank you.

EXAMINATION

BY MS. GAAL:

Q. Okay. Mr. Cardona, may we have your name and address, please, for the record.

A. My name is Ricardo Cardona. I reside at 101 Perez Drive, Newark, New Jersey.

Q. Let me just ask a technical question. Can you hear him, because we are having -- can you hear him back there? Okay. Just bring the mic a little closer.

Q. Do you live in Society Hill at University Heights in Newark?

A. Yes, I do.

Q. And are you a homeowner there?

A. Yes, I am.

Q. How long have you lived there?

A. Approximately five years.

Q. And did you purchase the home new?

A. No. I purchased it from a previous owner.

Q. Is it a condominium complex?
-PUBLIC HEARING-

1. A. Yes, it is.
2. Q. And who built it?
4. Q. Are there -- or were there several phases to that development?
5. A. Yes, there are. There are three phases to the development.
6. Q. Can you tell us the approximate or the range of the age of the homes?
7. A. They range between 13 and seven years.
8. Q. So, seven to 13 years old?
9. A. Yes.
10. Q. Approximately. And in which phase do you reside?
12. Q. Can you tell us anything about the -- if you know -- the price range of the homes?
13. A. Currently or when they were first built?
14. Q. When they were first built.
15. A. They ranged between 80 and 135.
16. Q. And can you describe, in general terms, the make-up of the residents?
A. The community is comprised of, I'd say, 35 percent retired, 35 percent just younger professionals, and the balance are either -- students who are attending the local universities.

Q. Now, are you self-employed?

A. Yes, I am.

Q. And what is the nature of your business?

A. Prototype engineering.

Q. So you are -- what does a prototype engineer do, just so we all know?

A. Builds research instrumentation.

Q. Do you work out of your home?

A. Yes.

Q. So that enables you to be in the area of the development a substantial part of the time?

A. Yes.

Q. And in Society Hill does the homeowners association have a responsibility to take over certain aspects of the development from the builder?

A. Yes. The homeowners association takes over responsibility for the complex once, I believe, two-thirds of the homes -- or, actually,
transitions in phases, but usually when two-thirds of the homes are sold, then the bulk -- or the governing body is actually transferred to the homeowners.

Q. And what responsibilities -- just generally, what responsibilities would the homeowners association then take over?

A. General maintenance, supervision of the property.

Q. Such as?

A. Snow removal, garbage removal.

Q. How about, anything with the roadways or the storm drains?

A. Yes.

Q. Landscape?

A. Landscaping.

Q. Okay. Has that transfer taken place as of today?

A. Yes, it has.

Q. So the homeowners have taken over the responsibility for the complex?

A. Yes.

Q. Now, has the development experienced any drainage problems?

A. Yes, it has. Substantial.
Q. Substantial?
A. Um-hum.
Q. Does it continue to experience drainage problems?
A. Yes, it does.
Q. Can you tell the Commission what type of drainage problems you are experiencing there? If you could just describe it for us.
A. Well, the storm drainage system has proven to be inadequate, poorly designed, or it's just, in some cases, not built as provided in the specification or in the blueprint.
Q. And, so, what happens?
A. When the storm system fails, water backs up. Many of the units are below grade. In other words, you have to step down to get into them, and they have flooded. Over the years we've had several units flood. Floods to such an extent that the refrigerators actually float inside the units.
Q. And have there been problems with a collapsing of manholes or anything along that line?
A. Yes. The water back-up causes the soil to erode around structural members, such as
manholes, stairways and things of the sort, and
causing them to shift and eventually to collapse.

Q. Are people experiencing or have
people experienced damage in their homes from this
water?

A. Yes, substantial damage. Some are
total losses.

Q. Some are total losses?
A. Yes.

Q. And this is a continuing problem?
A. It is a continuing problem and an
ongoing problem.

Q. Now, are there serious life safety
issues in Society Hill regarding firewalls?
A. Yes.

Q. And is that something that really
plagues the community?
A. Yes.

Q. Can you describe that to us?
A. In investigating roof leaks, we've
gone into crawl spaces, attic crawl spaces, and in
our inspection we found severe deficiencies in the
firewalls. Some firewalls are deficient, some
nonexistent.

Q. So you started out looking at roof
leaks and you discovered firewall problems?

A. Correct, amongst other things.

Q. And I know it may sound basic, but what is the purpose of a firewall, particularly when you have an interconnected or connected family dwelling?

A. The purpose of a firewall, in maintenance terms, is to retard the spread of flames, smoke and heat from one area to the next. In a situation where you have multi-family dwellings where all the units are interconnected, its purpose is to keep the fire that occurs in one unit from spreading into the other.

Without them you can have one fire in one unit take out an entire building, which has approximately 24 units in it.

Q. Now, I assume you've been in some of the attics in the course of your, you know, sort of working as a volunteer for the homeowners association. Have you been in a number of different attics?

A. I've been in many, many attics.

Q. Can you give us an idea of what percentage of -- or in what percentage of the spaces that you've been in or the homes you've
been in you think there are firewall deficiencies or missing firewalls?

A. Approximately 85 percent of the units that I visited have deficiencies between their firewalls, and I want you to understand that, if you find a deficiency on one side of the firewall, well, the other side of the firewall is also deficient, so the other unit is also compromised, as well as the adjacent units. So finding one deficiency means you have four units that are compromised.

Q. Now, when you say "deficiencies," give us an idea of the range of the kinds of deficiencies you've seen in the firewalls.

A. Everything from a hole being punched through a firewall in order to allow for a vent to be installed, to firewall rated material not extending the full length of the area where it's supposed to protect, to sections that just don't have firewalls, to other sections where the roof of the adjacent building actually comes up over the firewall and into the attic space of the next unit.

Q. I'm going to ask you to take a look at four previously marked photographs that you, in
fact, have provided to us, to the Commission,
beginning with Number 194, and it should be up on
the screen, too. Give you both a hard copy of it
and it should be up on the screen to your left.

Do you see that, 194?

A. Yes.

Q. And what is it?

A. That is a firewall in Building 1.

Society Hill Building 1 is on Wickliffe and West
Market. That is the northeast corner of the
firewall.

Q. And what are you trying -- what does
the picture depict for us?

A. This section here in green, that is
the firewall material, itself. It's about one
inch thick -- actually, two pieces of one inch
thick -- would almost say it's plasterboard, but
it's not. It's like a plasterboard material. The
item to the right, here, that is the structural
member for the truss.

Q. Right.

A. In between is a gap. The light
there is just a flashlight that we were shining on
it. The black area there is just a piece of
tarpaper and behind that is the exterior facade.
After questioning I'll show you the videotape that was taken --

Q. Okay.

A. -- of that particular unit.

Q. I'd like to then just take a look at Picture 195. And what does that depict?

A. This is, again, in that space. The green section is the firewall, the cross members are temporary structures that are put there to hold the truss members during construction and, as you can see, one of those members penetrates the firewall and goes to the other side.

Also on the top you can notice that there is -- there was a gap in which they put a piece of 2x4 and they stuffed it with some insulation. I'm told that this may or may not be fire rated insulation, but, if you put it to a lighter, it will burn.

Q. So the structural member that appears in the firewall is, in fact -- it destroys the integrity of the wall?

A. Yes, it does. You also might notice a gap in the sheathing on the side of the house.

Q. Right. And, if you take a look at Picture 196 --
A. Okay.

Q. -- what's that?

A. This is an example of the firewall where -- or an attic space where the roof to the adjacent building comes up over the firewall and into the attic space of the other. This section here, this piece of sheathing there, that is the actual roof of the other unit.

The shiny metal you see there is the flashing that's supposed to keep the -- seal the roof -- the edge of the roof. This part here is actually the siding of this unit.

Q. And finally Picture Number 197.

A. This is, again, in an attic space, again where one unit meets the other. You can see where the firewall comes up to a certain point and it's kind of cut short. You also notice where the roof of the other unit actually penetrates the attic space of the one next to it, and there is actually a bit of a gap there where there is no roof material on the adjacent unit. It's just shingles on top of nothing.

Q. So, are these examples of some of the firewall problems you've seen?

A. These are typical.
Q. These are typical.
A. You'll find these throughout the entire community.

Q. Now, turning to another subject -- we are going to try to touch on some of the things you found there -- did some of the homes have what, for lack of a better term, I'm going to call bowed windows?
A. Yes, they do.

Q. And what are they due to? What can you attribute them to?
A. Statistically you would expect that, in a large development, some of the windows would fail. However, when you have a large number of windows failing and the problem is persistent and prevalent throughout the entire community, and it is the same type of defect, one must come to the conclusion that the window itself was defective to begin with.

Q. And are there a lot of bowed windows?
A. Yes, ma'am.

Q. Do you have any in your home?
A. I have one.

Q. I'd like you to take a look at
Picture Number 215. Is this a picture of one of
the bowed windows?

A. Yes, it is. This is a unit on
Matthews Drive. If you notice on the bottom, the
window itself is actually -- the windowpane
itself, the section that comes up and down, is
actually square. The window frame itself, the
bottom portion of the window, has bowed.

What happens is that the window
can't close completely, so, when it rains, water
will come in underneath the window, and on the
dge of the windowsill there is a little bit of a
gap, so water will come from the outside, down the
windowsill and into the walls and usually cause a
leak on the floor below it.

Q. Now, are part of the facades of
these homes brick?

A. Yes. Approximately a quarter.

Q. A quarter. And are some of the
homes showing the separation of the exterior brick
walls?

A. Yes, they are.

Q. And what's happening there? Is it
coming apart, coming off the framing or what? Do
you know what's going on? Have you been able to
figure that out?

A. I guess one could say it's coming off, but to say that would imply that they were on to begin with, which they weren't. Usually, the side is tied into the structure via brick ties, approximately every two to four feet, more or less. Galvanized brick ties.

We discovered, in just addressing water leaks, that these ties are nonexistent, so, in some cases the sheathing behind the facade, as you saw in the other picture, is nonexistent there, either.

Q. Let me ask you to take a look at what's been marked Photograph Number 216, and does this show an exterior brick facade which is separated from the building?

A. Yes, it does.

Q. And what are these pieces of wood we see there? Something to hold it up?

A. Yes, the bracing was put in place by our management company for fear that the facade would come off and hurt someone. Whenever vehicles would drive in front of the unit, homeowners would complain that they feel the wall kind of wobble or shake and, when it was looked
into, they noticed the gap between the windows and
the facade and, after further investigation,
through use of inspections, they found that it
wasn't tied in properly.

Q. Let me ask you to take a look at
Picture 215, also on the same subject. Is that
another picture of the same thing?
A. Yes.

Q. Now, did you and/or other members or
homeowners of Society Hill at University Heights
take these issues and other issues besides what we
just talked about to the City of Newark?
A. Yes, we did.

Q. And what happened?
A. I would say over the span of ten
years, from the very beginning, homeowners tell
stories of when they first bought their unit they
had problems with X, Y and Z and plumbing and this
and that. Some of it could get fixed, most of it
couldn't. They would complain to the city, but
the city really had no role in that, in terms of
correcting the problem. The homeowners were
turned away.

Q. Approximately how many homes are
there total? Do you know the total number of
homes?

A. There is a total of 802, I believe.

Q. Do you have any idea -- I'm sorry.

A. 471 in Phase 3, 163 in Phase 2, and

164 in Phase 1.

Q. Do you have any idea, even

approximately, how many homeowners have

significant issues in their homes?

A. It's hard to say because many

homeowners, once they discover that there is a

major problem, they quickly move out. Of course,

whether or not they disclose that to the new

homeowner is kind of difficult to comment on, but

I would say you could knock on any door and you

would find that maybe two out of three, three out

of four have a major complaint with their unit.

Q. What major problems do you have in

your home?

A. I'm fortunate in that my unit is one

of the last to be built and one of the newer

units, and it's also a very, very different design

than all of the other models, but I've had

problems with, of course, the bowed window, I've

had water infiltration problems, I've had

questions about my own firewall, whether it's
adequate. Of course, I've had plumbing that doesn't seem to behave properly.

Q. Now, did you talk to anyone in the local construction office, either you or the other homeowners, as to what their position was on this or whether they can do anything for the homeowners or whether they are able to come out and do any re-inspections, anything along that line over the years?

A. Yes. Over the past three years I've had extensive communication and meetings with the City of Newark, Department of Engineering. More recently, in the last six to eight months, I've had extensive communications with the mayor's office through Senator Ron Rice's office, who is also deputy mayor of the City of Newark. I've had meetings with all of the city commissioners, legal counsel, office of economic development, director of water and sewer, director of engineering, of course, Mr. Anstiss, which is the building official.

Q. If you can, summarize for us the gist of what you have learned from him -- from all the people you've talked to.

A. I've learned that they -- one, they
are genuine about the concern about wanting to bring this to a resolution, but, two, I've also learned that there is very little that they can do, from what I've been told, with regards to this problem, other than to increase the level of awareness.

They cannot, by just a function of their office, go out and re-inspect the units because they don't have a directive. It was suggested to me by the building official, Mr. Adams, that I approach the office of economic development to see if I can get the attention of the mayor's office to bring somebody to bear on the situation, see what can be done, because he has his hands tied at this point.

Q. Have you or someone on behalf of the homeowners association tried to get the builder to get involved or to maybe execute some sort of a tolling agreement or something?

A. Yes. On many occasions, ourselves, local representatives, there have been various attempts, all with various outcomes, but none of them satisfactory.

Q. What has the builder asked you to do or asked the homeowners association to do?
At one point they didn't mind fixing some problems and actually met with -- I believe his name is Lawrence Murphy from K. Hovnanian. We discussed the list of complaints. Many of the repairs were either cosmetic or inadequate. After that they kind of faded away.

Q. Have they asked you to do any inspections or to point out to them exactly where the problems are?

A. In some cases, especially with regards to our firewall issue, which is an item in contention, we are basically told, "We'll fix it if you find it. You show us where it's at."

Q. Do you hold a position with the homeowners association?

A. Yes, I do. I am the treasurer for the homeowners association.

Q. And is the homeowners association in a position to do that kind of inspection?

A. No, we are not, nor is our management company, and also there is an issue of practicality. If we had to go and show -- go through the process of showing every single unit, it's cost prohibitive. It's cheaper, in a sense, to fix it than the sense of wanting to put
together an inspection report to submit to K. Hovnanian only to have to go back and revisit the same site. Logically it's almost impossible because of the number of units and the coordination with homeowners.

And also in our Section 3, which is the section that I'm the treasurer for, we are in the process of going through a transition. We have gone -- or entered into an agreement on behalf of the development, which makes about 199 units out of 471, so right now we really don't have much of an option. We either go to litigation, which, according to the agreement that we entered into, is through arbitration, which is what we are in now, or just bite the bullet.

Q. Now, did you attempt to find out what had occurred concerning the initial inspections of that development, either construction code inspections or engineering inspections? Did you or some of the other homeowners try to find out what had happened?

A. Yes. There was a group of homeowners, who have since moved out, who had gone to City Hall and requested the actual records -- the inspection records for the units. It's my
understanding that they went through a lot of red
tape to get what they got, and what they came up
with were the actual inspection records, which in
some cases showed that not all the inspections
were signed off on.

For instance, there will be an
inspection record for Unit 123 where plumbing and
electrical is not signed off on and framing was,
but that's -- you would have to go through each
and every record for each and every building,
which doesn't exist.

Q. Did you try to get the file on your
home?

A. Yes, I did.

Q. What did you find out?

A. Actually, it was very interesting.

This is when I first met Mr. Anstiss,
approximately three years ago, and I was looking
for the blueprints for my home because I was
curious as to why the attic space was so tall and
it almost seemed as if it was meant to be another
room. So when I visited the city, of course there
were no records, no as-built plans for my unit.

After many, many, many visits, actually the city
allowed me to go in and search the records room
myself and I did find one roll, it was a blueprint
for my section, which showed the building where I
live in, except that the wood for the building --
the building right now that I live in has 11
units. The blueprint showed ten, which I found
somewhat curious.

When I looked at it I also noticed
that the attic space was actually meant to be
another room and I said at some point someone
changed their mind and they added another unit and
made it a little bit narrower. Originally it was
designed to be 18 feet wide, but was actually
built to be 15 feet wide.

The thing that kind of caught my eye
was the stamp on the drawing. The stamp on the
drawing from when it received its approval to the
point which my unit, which actually was not built
according to that blueprint, received a C of O was
about ten weeks, so it was very curious to me that
an original drawing which was abandoned was
approved and then ten weeks later something else
was built. Similar but not the same.

Q. So ten weeks after the stamp of
approval the C of O was issued?
A. Approximately, yes.
Q. Approximately, okay.

To your knowledge, is there any separate inspection done for firewalls in the UCC form or New Jersey?

A. To my knowledge, it is not. I inquired about that and was told that essentially the firewalls are reviewed in the initial approval of the blueprint itself and, if anything, it's checked over during the framing inspection.

Q. Now, did the homeowners seek assistance from the Department of Community Affairs in Trenton?

A. Yes, over the years, many, many homeowners have written many letters.

Q. And can you tell us whether they've gotten any help there?

A. Not to my knowledge. Not directly.

Q. Did DCA come down and do some type of inspection -- or come up, excuse me? You are north.

A. Not to my knowledge. The only DCA inspection that I know of is when the state sent over an inspector to check for carbon monoxide detectors and -- supposedly every five years condo associations have to go through an inspection, and
that was done this past year. They were, in some cases, over ten years old, but that was the first time it was ever inspected. The only other official that I've ever seen at Society Hill will be Senator Ron Rice.

Q. Has he been supportive of the homeowners?

A. Actually -- he's been very supportive. Actually, the way that I first met him was in another homeowner's living room. She called me up and she said, "Ricardo, come on over, I have Senator Rice in my living room looking at my mushrooms growing on the wall.

Q. Now, as a result of that DCA inspection, by the way, did the homeowners have to spend some money to put in the carbon monoxide detectors after all those years?

A. Yes.

Q. What about the firewall? Did anybody come from DCA to look at the firewall?

A. No, not to my knowledge.

Q. Did you try or did anyone try to get the builder to address the firewall issue specifically during the transition or after the transition?
A. Yes. Actually, I came on to the board toward the tail end of the negotiation for the transition and I made the point that they include the firewall issue in the agreement, and that was kind of vetted on as a, I guess you can call it, a final line item.

Q. But has it been corrected?

A. No. It's an issue of contention. As I said before, it's kind of like "Show us and we'll fix it."

Q. Did you speak to anyone in the Newark department of engineering concerning the firewall?

A. Yes. Had extensive conversations with them on that. We even tried to have a sit-down with K. Hovnanian representatives where the city would mediate a discussion. We attempted to do that through the deputy mayor's office, Ron Rice. That didn't get anywhere. Our counsel suggested to us that we get a touring agreement. That is to keep the -- I guess the clock from ticking.

Q. A touring agreement.

A. A touring agreement to protect our interest in the event that nothing came out of the
-PUBLIC HEARING-
discussion. K. Hovnanian constantly refused to
give us a tolling agreement.

Q. Now, you mentioned earlier that
there have been some repairs, so I gather that in
some instances the builder has come in and done
some repairs?

A. Yes.

Q. And how have you found that to work
out? How does that work out when they come in and
do repairs?

A. It doesn't work out.

Q. Why?

A. It's usually one contractor. I
believe the name of the contractor that I've seen
around the most is Dunbar Construction. They'll
come out and do mostly cosmetic, kind of putting
oil on a squeaky wheel type of work.

There is one instance, Mrs. Moore up
on Vaughan Drive would complain about water
infiltration in her unit and she complained to K.
Hovnanian and they sent out Dunbar Construction on
many, many occasions, but the leak still
continued. She came to one of our board meetings
and just broke out in tears and she said she
couldn't take it anymore, that every time it rains
there was water coming into her unit. She said

she's gone through all of the channels. She's
spoken to K. Hovnanian and nothing became of it.

I went to visit her unit, went into

the attic space and I found some pretty amazing

things that I think any layperson could have
captured immediately. Things such as -- actually, I
have a photo, if you care to see. You can enter
it into evidence, if you like.

What's interesting about her case is

that she actually has photos of Dunbar on her roof
looking at the unit.

MS. GAAL: Why don't you hand that

up to the Commissioners. Why don't we have Sean
mark that the next one.

(Exhibits NCI-223 through 226 are

marked for identification.)

BY MS. GAAL:

Q. All right. What did you find when

you went up and looked at her attic?

THE WITNESS: We found vent pipes

that were cracked, we found vent pipes that were
laid over HVAC vents. In other words, ventilation
ducts that are flexible, the pipe was laid over

them and basically crushes them so that it
obstructs the flow of heat, which was one of her complaints, was that one room wasn't getting heat. We found truss members that were warped. It's pretty evident from looking at the truss member that it was installed warped. We found roof sheathing that wasn't screwed on to the trusses. We found vents that didn't reach all the way up to the exhaust vents from the hot water heater and furnace that vent out -- directly outdoors. All sorts of very serious things.

And at that moment I came to realize that, even though they are sending out these contractors, that the contractors don't know what they are doing, they don't know what to look for.

Q. I'm going to ask you to take a look at Exhibit 198. Is 198 up?

A. This is a column to a dumpster area and this column was to be repaired according to our transition agreement that we entered into with K. Hovnanian. This is a dumpster area and the side wall has kind of collapsed and it needed to be repaired, but -- this is one column, a picture of it when it was being repaired, and essentially they built the brick around the column and then
the debris that was left over they kind of threw
in there to fill it in.

Q. So, is this an example of the kind
of repair work you are getting up there?
A. Yes.

Q. You've gotten over the years?
A. Um-hum.

Q. Let's take a look at 199.
A. That's the same column.

Q. And 200.
A. That is what's left over when they
do their work. As a matter of fact, about a third
of that we had to remove ourselves because it was
left -- when they finished the work they basically
left all these chunks of concrete that occupied
three visitors parking spaces and we had gotten
several complaints from homeowners that children
were climbing over these big, giant pieces of
cement.

We called K. Hovnanian several times
on the issue, our management company did, but it
was never resolved. It got to a point where we
took it upon ourselves to remove the concrete, so
we had to pay to have it removed. Approximately
three tons.
Q. Have you had problems -- and I don't mean you personally, but the homeowners there -- with sidewalks?

A. Yes.

Q. What type of problems, generally, are you having with the sidewalks?

A. There is a lot of settling going on. Sidewalks will settle, there is sidewalks that don't have expansion joints, so, when it's hot, the sidewalk will expand and it has no place to move so it cracks and, of course, cracks start to heave up, which has resulted in dozens and dozens of trip hazards throughout the entire property.

Q. And I guess you did have youngsters as well as seniors walking around?

A. Yes.

Q. Could be a danger, particularly for them, I assume?

A. It is dangerous. We have homeowners who have fallen. We do have a loss that is phenomenal. Our insurance is up through the roof. We had some stairways, some sidewalks that were to be repaired, according to our transition agreement and, when they were repaired, it was the same shoddy work. There was stone underneath the
sidewalks, so approximately four months after the sidewalks were poured -- the concrete was poured, they all cracked again.

Q. Let me ask you to take a look at Picture 201. What is that?
A. That's the debris that was left over there from when they did the repair.

Q. Of the sidewalks?
A. Sidewalks, dumpster areas. That's one of the parking spaces that was --

Q. Just dumped in the parking space?
A. Yes.

Q. And Picture Number 202?
A. That's the sidewalk that was repaired approximately four to five months before that picture was taken.

Q. So, on the slab of concrete on the extreme left you can see a crack right almost diagonal to the middle?
A. Yes.

Q. You are saying that four months after it's repaired you've got cracks again?
A. Correct.

Q. I think you touched on it a moment ago, but, have you been able to determine why you
are having this problem with the -- with the
sidewalks? Is it because the base material isn't
appropriate?

A. That's correct. We observed the --
when they were pouring the cement and taking out
the old cement and there wasn't enough base
material there. We also brought out a consultant,
Dr. Shypula.

Q. Can you spell it?
A. S-h-y-p-u-l-a.

And we did a walk-through with
herself, myself, the vice-president of operations
for our management company, and she pointed out
many, many deficiencies, lack of expansion gap
material. We also had other construction
companies come in -- Tony Gold's construction
company came in and pointed out a lot of
deficiencies in the concrete, in the way it was
poured originally.

Q. Let me ask you to take a look at
Picture 218.

A. This is a picture of Mrs. Moore's
unit. That is the woman that came to our board
meeting and kind of broke down in tears. She is a
retired elder. And they are pictures of the truss
that is warped that was installed. That is in the
northeast corner of her attic space. And, if you
look here, you can see where their roof sheathing
doesn't meet up with the other. It just kind of
lifts off.

Q. Was there any actual repairs done on
this?

A. Actually we -- the association fixed
the problem. K. Hovnanian has sent out Dunbar
Construction, one of their contractors, to repair
this. The actual truss itself was not repaired.
It is still warped. Just too expensive for us to
take on ourselves to rip off a truss member, which
is a structural member, and to replace it. Our
main focus was to stop the water infiltration.

Q. And Photo 219, would you take a look
at that.

A. That is an example of a vent -- an
exhaust vent that is supposed to vent outside, but
it actually just draws up to the hole, the roof
vent. It pretty much comes up to the vent and
ends there.

Q. And Number 220?

A. That's an example of Mrs. Moore's
unit where there was a -- what they call a riser
vent, and that riser vent is actually pinching one of the air conditioning/heating ducts. That's the room where she didn't get any heat.

Q. Now, this is the lady that you just talked about, right, that didn't have any heat in her room and was having other problems?

A. Yes.

Q. And, as I understood what you said, she came to one of your meetings, she was in tears, she called the builder and they sent people out more than once?

A. Yes.

Q. And you went out yourself to the attic to take a look at it?

A. Yes.

Q. Am I right?

A. Yes. I personally went up into her attic space and observed the water defects.

Q. And this is one of the things that you found up there?

A. Yes, that's one of the many.

Q. Were there problems, in general, with cracked and broken steps? We talked about sidewalks. I just want to touch on the steps.

A. Yes. We have -- it's hard to really
believe it until you actually see it. Some things just defy reason. Some steps are cracked. That happens, but the sheer number of steps that have cracked are phenomenal.

When we looked into it we discovered that the problem really wasn't the step itself, it was the actual structure that held the steps. The structure is crumbling from within, and in some cases you can actually stick your finger and dig out the mortar material that basically holds up the structure.

Q. Put up 214.

What's depicted in that picture?

A. That's actually 203.

Q. 203.

A. 203 actually depicts a section of the roof --

Q. We'll get to that one, too. You don't have 214, then. You have a hard copy in front of you?

A. Yes, I do.

Q. And what does it show?

A. It shows a step.

Q. It's up there now, I think.

A. Um-hum. That's the natural step.
It doesn't have the limestone risers on it, it's a different kind of step, but what you see is typical, in that the inside of the step is actually pouring out like sand. What is actually holding the step together, in many cases, is the paint. If you chip away the paint, the inside starts to pour out. That's why, in many cases, you have to look at it and say, wow, this is incredible. How can they lead us to think -- you know, a person's weight. But it is what it is.

Q. Now, on any remedial work that's being done or has been done in Society Hill in Newark, are they taking out permits?

A. No.

Q. No permits?

A. No.

Q. So, if there is no permits, then there would be no inspections by the local code office, in terms of any of the remedial work?

A. Correct. I spoke with the building official, Mr. Anstiss, and asked him -- inquired, "Hey, why did you guys allow this to happen?" And their response is, "Allow what to happen?"

When I showed him those pictures, they said, "We don't have any records of any work
being done up there," so he was kind of at a loss. He said, "I can't help you -- I can't inspect something that doesn't have a permit pulled for it. I can only issue a violation, but, after it's done there is nothing they can do."

Q. You mentioned a moment ago, or a couple of times now, roofs, and you can put up Picture 203, if you'd like.

There are, I understand, significant problems with the roofs at Society Hill?

A. Yes.

Q. And do those problems include roofs that are not connected, roofs that have gaps and so forth?

A. Some roofs are -- have significant gaps, and I would consider a significant gap to be anything over a quarter inch. Some roofs are not attached to the trusses. They basically are just sitting there by the weight of the shingles and their own weight. In some cases we've had homeowners complain that they hear a thumping noise coming from their attic, and it's a very difficult thing to identify, but, once you go up there on a windy day, you'll notice that the roof actually lifts up and it drops, and that's where
the thumping noise is coming from.

This is an example of a building on Richmond Street.

Q. You are looking at 203?
A. Yes, 203. That is the south corner of the -- the southern edge of the attic space where the roof is actually lifted up. You can see the daylight coming in through it.

Q. Let's take a look at 204.
A. That is the roof that was being repaired. This is -- when it was being repaired I climbed up on the roof as the roofer was removing the shingles, and that's what they found whey they removed the shingles.

What we see here is actually a couple different elements. This is one unit here, this is the other unit behind it, this is the firewall here. This is a gap in the firewall here. This is where the roof basically ends on one unit and ends up there and above this there is a crown shingle.

Now, this, I'm told, would be somewhat okay, if that crown shingle were actually a mold -- what they call a ridge mold -- a ridge vent, but it's not. There is just nothing
underneath the shingle.

Q. So, when you say "somewhat okay," you mean meeting code?

A. No. If there is a ridge vent, there has to be a gap in the sheathing material to allow the air to go out, but, in this case, there isn't. There is just a hole.

Q. Number 205.

A. This is the -- on the same roof. These are the -- the step flashing that was removed. One thing you notice, right in the center of the photo where I'm pointing -- I'm not sure if you can see that, but there is about a two and a half inch gap between the roof of this roof -- of this unit and the next. That's where all of the water was coming in infiltrating that unit, pouring down, causing water leaks in three of the units.

The other interesting thing about this is that this roof actually extends into the attic space of the next roof. The firewall is actually right where -- approximately where that ruler is underneath that.

Q. So there is a gap or a break in the firewall?
A. Yes.

Q. Next photo, Number 206.

A. That is the -- once the shingles were removed and the step flashing was removed, that's what was discovered. What you see there is the tarpaper. The tarpaper never reached the edge of the roof. You also notice on the edge, certain sections, which is here, gaps along the roofline and the next unit. That gap actually leads into the attic space of the adjacent unit.

Q. And Picture Number 207.

A. That, again, is the peak of the roof. That's the -- I believe it was 203. That's another angle of Picture 204. That shows a little closer up where the firewall actually is and where the other unit ends and where the hole is.

Q. And Number 208?

A. That is a -- the torn up piece of timber that you see there, that is how it was built.

Q. It was built that way?

A. Yes. When they pulled back the shingles, that's what they found. It wasn't a clean cut. It was just basically ripped off somehow. There is also a gap over here where this
sheathing -- it just kind of goes up to about right here. It looks like an attempt was made to make up for the gap with some step flashing, but it just never made it.

Q. Now, these photographs were taken by you, sir?

A. Yes.

Q. And, so, am I right that -- in understanding that, when work was being done, you were up there crawling around on roofs --

A. Yes.

Q. -- trying to get pictures?

A. Two stories up on the roof on a windy day in cold Newark. Very interesting experience.

Q. Now, I notice -- or I note that you've indicated that there weren't a lot of problems in your home, but it's clear that you've spent a lot of time trying to help others. Am I right?

A. Yes. A lot of the homeowners in our community -- or they speak to each other quite frequently and, once you help one, you know, the other gets word of it and they'll call me and I just can't say no. I can't say no to someone who
bought into the idea that this was part of a renaissance, a new beginning for Newark. These are residents who have been life-long residents of the City of Newark and seen it through its worst times and bought into the idea that things were getting better and, when they come up to you and they say, you know, "I've put basically my retirement plan, my savings, into this place, and it's falling apart," you just can't turn your back on them.

Q. Now, do you remember telling us, when we spoke with you last, about a homeowner who complained about some very foul-smelling water coming down on him when he went out of his door?

A. Um-hum. One Vaughan Drive, Mr. and Mrs. Hughes. Mr. and Mrs. Hughes are -- they are kind of -- we give them special attention only because they've been through so much. This is the unit which had flooded. Talking about two, two and a half feet of water in their unit. This is the unit in which the refrigerator was floating inside. Every time it rained their unit would get flooded.

One of his complaints was that whenever he came out and it was raining, that the
water -- there was a foul smell in front of his unit and he couldn't understand why. But, of course, no one really knows how to address that sort of complaint. And then recently, in the past six months or so, I had made a visit and said, "Where is the smell coming from?" He said, "From the front." I said, "When does this happen?" He said, "It happens whenever it rains." I said, "That's curious. Maybe it's the water that smells bad." So he says, "Yes, the water comes up over the gutter and falls on my head."

So we went up there to look at the gutter and we discovered a couple of things. One thing we discovered first off was that the gutter was filled with soot, filled with this -- I called it the Society Hill blob and, as we started to inspect the other units, we found the same thing on many of the other gutters.

What happens is that the gutter is not pitched properly, so over the years you have a lot of sludge building up. This is what we found in there.

Q. You call it the Society Hill blob?
A. Yes. It's a very foul-smelling substance that accumulates in the gutters. It's
approximately -- in his gutter -- we weighed it --
about 25 pounds of it. In it we found mosquito
larvae, little swimming things, we weren't quite
sure what they were. Put some bleach in there and
hit it with the power washer.

We actually -- the weight of the
sludge itself was so great that it was actually
cauing the gutter to deflect in the middle, so
when it rained the water would go to the middle
and flow over and right in front of his unit -- or
right in front of the entrance to his unit.
That's where the smell was coming from. It was
the sludge water that was just coming down over.

Something that could have been
prevented, had the gutter been pitched properly.
It's actually pitched in the opposite direction.
It should have been pitched in the other direction
so it could flow down. You would get that sort of
build-up in any gutter over ten years.

Q. Can we put up Picture Number 209 and
can you tell us what is depicted here?
A. I can attempt to tell you. That's
the -- underneath someone's sink. That is an
electrical outlet that's supposed to be, I guess,
servicing a garbage compactor -- I'm sorry, a
garbage disposal unit. The garbage disposal unit was never really installed, but the outlet was there and the actual electrical wiring kind of wraps around the pipe, the water pipe.

Q. Now, we talked a little bit about a -- prior to your testifying -- with Special Agent Conroy that some of the residents in Society Hill experienced ice damming in the winter. Can you tell us about that.

A. Yes. In the wintertime we have icicles that are approximately 24 inches in diameter, about six feet tall, hanging off the side of the buildings right over the entrances of the units. Usually when we tell people this, they don't quite believe it because they can't imagine a piece of ice that large forming or hanging over a unit and people tolerating it, but it's true.

A lot of it is caused by -- it's a natural phenomenon called ice damming, but that's what we were being told it was. Them saying, "Well, it's just snow on the roof that has to be cleared." When we actually went up there and looked at the unit that actually has this problem, we discovered that the gutters were faulty, to one extent or another, so water would enter or ice and
snow would melt into the gutter and then enter the outside of the gutter and freeze and, over a period of hours or a period of a days, the water drips down and makes the icicle.

Q. Are there problems on the grounds with respect to the grass, the trees and whether you can plant anything there and so forth?

A. Yes. We actually -- we were working alongside with the Greater Newark Conservancy, and one of the issues that we had were a lot of shrubs and plants and flowers that we planted were dying and we couldn't understand why. We thought it was just an issue of fertilization.

When they came out and did some soil samples, they basically classified the soil as being urban rubble. There is very little percentage of organic matter in the soil. It's more construction debris than anything else. They were finding bricks, tiles, nails, pieces of siding. Just dig one inch under it and you'll find it.

Q. Let me have, please, Number 210 up on the screen.

A. Yes. This is an area along Warren Street. As you can see, protruding from the
ground you can see slabs of concrete. Three
different sections. It would be interesting to
note that this is a walkway that many children
walk to the school right on that corner. Warren
Street School. We have approximately 300 children
that walk through there. I mean, a piece of
concrete sticking out of the ground is not too
much of a concern, but in certain sections we
actually have rebar -- steel reinforcement bar
that comes out by two feet.

Q. Let's have 211 up.
A. That section there is a -- that's a
piece of rebar. If you drive up Warren Street to
Cornerstone Lane and look at the nearest tree,
it's there. We actually tried to pull it out, but
it's too deep in the ground. It's actually kind
of embedded itself in the roots and we kind of
bent it down and put a plastic cap on the end.
That's all we can really do other than to cut it
off. We've notified K. Hovnanian that we were
going to repair this and we've given them an
opportunity to come by and inspect it and we
haven't heard anything from them, so we went ahead
and corrected it because it is a life safety
issue. Many children running through there and,
if one falls on that piece of rebar, it could be
disastrous.

Q. Let me ask you to take a look at
212. What is that?
A. That is the corner marquee piece on
the corner of Wickliffe and Market -- West Market
Street. In addressing the water problem on
Vaughan Drive, we had to install some extra drains
to reroute the water, and one of the things that
we were looking for was a manhole that was shown
on the site plan, but we couldn't find on the
site. That is the final manhole that leads into
the city's storm sewer system.

The contractor came back to us and
he said the manhole doesn't exist. We said, "No,
it has to exist, it's in the site plan." And just
out of a hunch -- you have to understand, when the
contractors come out they look for the normal.
They don't expect anything that's abnormal. When
I hear about it, I expect something abnormal, I
look for the abnormal.

The conclusion I made was that the
manhole was underneath that wall that says
"Society Hill at University Heights, A K.
Hovnanian Development." It's kind of a little
marquee piece, a little plaque here in front and
there is a brick wall around it. I said, "I bet
you that, if you dig this up, they'd find the
manhole underneath that wall." Of course no one
believed me at first, but --

Q. Can you put up 213.
A. There it is. That is the manhole
that was actually discovered once we excavated
the -- under the marquee. The other interesting
thing about it is that that manhole cover doesn't
lead straight down as a normal manhole would. It
actually -- if you remove the manhole and go down
the ladder, the rungs run at a 45-degree angle
because the actual manhole, the structure, itself,
is directly underneath that wall.

So, when they built this, at some
point they must have realized, "Oh, well, we have
to put a wall here, what are we going to do?"
Some guy said, "Well, we'll put the manhole over
here and put the wall on top of it and we'll just
cover it."

I can't see anyone else -- this
isn't just a mistake. This was -- at some point
someone said, "Hey, let's just get this thing
done, this works, nobody is ever going to know."
Q. Is it fair to say that this is just one example, along with a lot of other things which you talked about today, which really has to raise questions about the inspections that were done during the construction?

A. Yes.

Q. Now, as the treasurer of the homeowners association, can you tell us anything about the financial situation for the homeowners, being that they are faced with these serious deficiencies in the development?

A. When the developer turns over the development to us, they turn it over with a budget. It's in the Public Offering Statement. It's essentially a statement that tells the homeowners, hey, this is what it's going to cost to maintain this property. Part of that budget are two funds. One is the deferred maintenance and capital reserve. These are funds that are set aside -- the money is set aside for the eventual repair of the property due to wear and tear, that's what the deferred maintenance fund is for, and then there is the capital reserve, which is there to replace items, roofs, at the end of their life-span.
These funds are funded according to a reserve study and that reserve study makes the assumption that these components have a certain life-span. We know for a fact that our roofs do not have a 20-year life-span. Many of them are failing now or have failed already before the ten-year mark.

Essentially what that translates into is that our funds are -- they are underfunded. We were never set up with enough money in those funds to address these issues. Not only that, but during our -- just our operating budget, our operating expenses, every time there is a roof leak and we have to send a roofer up there, we are paying three, four, $5,000 in some cases, $8,000. That comes out of our operating budget and right now we are in the hole.

Q. Now, today you brought, I understand, some short videos with you that you wanted to show?

A. Yes, um-hum.

Q. We'll do that right now. My understanding is they are only a couple minutes, right?

A. Yes.
Q. And it's also my understanding that you are going to operate from your laptop, it will be available on the main screen, but we can't put it on this TV, so we'll have to move to see it.

A. The first clip is of Lance and Ann who live over in Callahan Court. They had a typical water heater failure that kind of dominoed into a couple of other things. In the video you'll see that the pan that is supposed to retain the water and send it over to a drain actually failed, which caused the water to go into the floor and into the ceiling of the downstairs kitchen onto a piece of Sheetrock that wasn't adhered properly to the ceiling and that entire section of the ceiling collapsed as a result of that.

(At which time a video is played.)

Q. Can you narrate it? It's not working soundwise.

A. No, it's working soundwise. It's just a little bit low. That's the -- it's kind of hard to see with the lights on, but what she's showing is the actual -- that's her roof -- or her ceiling in her kitchen. It just collapsed right in.
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Q. How recently?
A. In the last six months. Where it came down -- that's the pan right there on the left that was underneath the water heater, and it's supposed to drain out to a separate drain and, when they moved the water heater, they found that the drain wasn't connected and the water came down and ruined her floor and the furniture, clothes in the closet and what have you.

Let's move on to the next one.

Q. Yes.
A. This next clip is of a young woman on Vaughan Drive near her furnace. She has issues with her furnace in her unit where she kind of gets dizzy. We kind of suggested that perhaps it's carbon monoxide. When we looked at her furnace this is what we discovered.

Q. I think you are going to have to narrate it.
A. That is the exhaust gas vent that's shown there. It's supposed to go straight up into the ceiling. It's a natural draft system, but, if you look at the way it was built, it kind of goes up, goes to the left, and goes back and goes around and it kind of goes this way and then makes
a left-hand turn into the wall and then one has to assume that it goes straight up, but that should never have passed any inspection whatsoever. Perhaps in an induced draft system or power vented system perhaps, but not in a natural draft system.

Q. Okay. If you could go to the next one.

A. This is Mrs. Medino, who lives on Wickliffe. This is the one that has the issues with her firewall. Very interesting for a couple of reasons. She always complained about hearing kind of a whistling noise coming from her attic. When we went up we discovered that there was no sheathing on the side of her unit. That is the unit where we had a compromised firewall and saw a picture of it earlier.

Not only is there no sheathing in a section, but, I mean, the gap is so wide, you can actually stick your arm into it and into the next unit. That is that -- in that corner right there of her attic. Kind of right there. You see the brick coming in through the gap. We see photos of this on the next one.

Q. Okay.

A. The reason I say that her unit is
somewhat interesting is because her unit was in
Building 1, which was originally the sales office,
so the units there have their own little quirks.
The one that's unique about her is over here. One
of her -- when she first moved in she was
surprised that her electric bill was so high. She
couldn't quite figure out why. She just assumed
that that's just the way it was.

We did an inspection on the unit, I
had to pull up -- as treasurer, looking through
the archives, and pulling up one of the original
bills that we had paid off on for electrical, and
one of the comments on the invoice was that they
couldn't find the switch or circuit breaker for an
exterior flagpole light. They believed that it
was inside the unit. So, when I looked out the
window I saw the flagpole and it kind of just
jarred my head -- I said, well, let's try this.
Let's try turning off all the circuit breakers to
see if, indeed, that exterior light was connected
to her unit. She's kind of giving a narrative of
when it was discovered, but soon the camera will
pan outside and you can see the outside
streetlight.

Q. So you are saying the streetlight is
connected to the electricity in her house?

A. Yes. It's actually -- to make matters worse, it's connected to her HVAC circuit. Her electricity bill was pretty astronomical, but what's peculiar about this, as you'll see in a moment, she's going to yell to her mother, "Mom, shut off the heat."

Q. Let me guess, when she shuts the heat off, the streetlight goes out?

A. Yes. So she can't remedy it by shutting off a certain circuit because that's her heat and air conditioning that runs off that circuit, so she's kind of in a hole -- a little bit of a pickle on that one.

Q. And is it still that way today?

A. Yes.

Q. Does the local construction office know about it?

A. I don't know if they do or not.

Q. But nothing has been done about it, nothing she can do about it?

A. Right. She'd have to pay an electrician to come in and rewire that particular circuit.

There is one more I'll be glad to
show you. This is a utility closet outside one of
the units. What you see there are the gas
heaters, approximately eight. What you see above
are the actual balconies of the unit above it, you
can see the planks. The problem here is that the
water comes in right through those planks and
right over those meters and the rear backing,
which is just basic plywood.

Right next to that are the
electrical panels. And the electrical panel that
services approximately 60 units weighs, I'm
told -- they just switched it to the infrared mode
so we can see in the dark. You can see the light
coming in through the roof of this utility closet
and here are the meters.

Now this panel, itself, must weigh
easily over a thousand pounds, but, believe it or
not, it is being held up by the power cables.
Those cables that you see there are supporting
this entire panel, and you see how I'm shaking it,
shows you it's not connected, but in a moment you
are going to see me take two of my fingers, and
it's very kind of like magical, and I will stick
it right through the wall -- through this plywood
wall that's supporting this electrical panel.
You'll also notice that there is lots of mold that's forming on the interior walls of the utility closet. There we are. That's the other side of the panel there and that's sheathing or the plywood that's supposed to hold up that panel. And here we go. Watch how I take my fingers, they go right through. That black and white substance you see on that is mold.

Whenever it rains, many of the homeowners in that building lose their power because the breakers trip. What it is is the panel trips. PSE&G has come out and said there is nothing we can do about this because it's going to keep happening. We can't rebuild it for you. You are responsible for everything past the meter.

We've had to pay electricians to come out and try to remedy it, but the only remedy is to rip everything out and build it up again.

There are others, but --

Q. I think that's sufficient for our purposes today. I would ask that we can either -- if you can leave them or get them to us --

A. Sure.

Q. -- so the Commission can have them and, if we have additional questions, we will get
back to you on them.

Mr. Chairman, that's all I have, I believe.

COMMISSIONER EDWARDS: Mr. Cardona, I've got a couple of factual questions or things that hit me while you were going through some of this. You indicated that there was ice damming in a lot of the gutters and they were improperly constructed. How were they -- were their pitches wrong, like the one you described with the sludge collecting in it?

THE WITNESS: In some cases the pitch was wrong and in other cases, where one gutter leads into the other or it leads into a downspout, it wasn't connected properly. Once we cleaned them out we actually found evidence of gutter material being used to wrap around the joints to conceal the fact that they were not joined together properly.

COMMISSIONER EDWARDS: You made a lot of references to a transition agreement with the Hovnanian company. Can you describe that transition agreement, how it was arrived at, what it was supposed to cover --

THE WITNESS: I actually have it
here.

COMMISSIONER EDWARDS: -- who was involved in it.

The transition agreement is a transition from their ownership to yours as a homeowners association? Is that what you mean by a transition agreement?

THE WITNESS: Correct, yes.

COMMISSIONER EDWARDS: And the people that are a party to that or involved in that transition are the existing homeowners association and the developer who was the prior association, is that -- transferring the responsibility over to?

THE WITNESS: It's my understanding that the -- it's transferring the responsibility from the developer --

COMMISSIONER EDWARDS: Right.

THE WITNESS: -- which is also known as the sponsor, to the homeowners or the homeowners association, to be more exact.

COMMISSIONER EDWARDS: Is that a negotiated agreement?

THE WITNESS: Yes, it is.

COMMISSIONER EDWARDS: And that
agreement is required to be negotiated between the
departies based on the DCA approved association
document at the time that the project was
approved? Is that generally accurate?

THE WITNESS: It's my understanding
that there is no set requirement, per se, that it
has to be done. It's something that is generally
done.

COMMISSIONER EDWARDS: It was my
understanding that before anything -- a
condominium association can be put together, DCA
has to approve an association agreement that has
both terms and conditions in it, including things
like a transition agreement has to be prepared,
and, therefore, the terms of the transition
agreement are not in it, but the fact that there
had to be one exists or does not exist.

Do you know?

THE WITNESS: No.

COMMISSIONER EDWARDS: If you don't
know, that's okay. I'm not requiring you to know.
I'm just curious. I can find that out.

THE WITNESS: It's my understanding
that it is not a requirement, but I can't really
speak on that.
COMMISSIONER EDWARDS: The purpose is -- the point I'm getting to is is that the -- in our attempts -- we need to make some recommendations, I think, in reference to associations and transitions, and what's in the original agreements and what kind of protections you get and are they adequate or not adequate, something to prevent these from happening in the future.

It doesn't solve your problem, but we've now been faced over the last two days with maybe three different association issues in which there was an -- had to have been an original agreement and something is not happening properly here and there are people that maybe should be parties that aren't. Example. Was the building department in the -- in Newark in this case involved in the negotiation of the transition agreement or have any knowledge of what's in it?

THE WITNESS: No, they do not.

COMMISSIONER EDWARDS: I would assume they didn't. Maybe they should be, is what I'm getting at. So that the transition agreement, also, I think, probably provides for various inspections, repairs, and various other things to
be done. If the town is not involved and doesn't
know about it, they can't inspect it.

THE WITNESS: Correct.

COMMISSIONER EDWARDS: So it's one
of those missing links that I think we are trying
to get at. So that was the purpose of my
question.

There was a number of examples of
roof problems here in which roofs were not
properly constructed. It's obvious to me -- I
know -- I know what you mean by a -- a ridge cap
and how you leave that open so you can vent, in
certain instances, air from coming out without
letting water come in and this -- so I understand
that.

Was that a typical problem that
exists on roofs all over the project or --

THE WITNESS: Yes, it is, but
usually we don't discover these things until there
is a failure. You don't typically tear up the
roofs just to see if there is something wrong
underneath them, but, when something does go
wrong, we do try to document it as best we can,
and usually, if something goes wrong, nine times
out of ten there is more to it than just water
COMMISSIONER EDWARDS: There have obviously been discussions between the existing association and Hovnanian. What is Hovnanian's response to all these things when they were pointed out? Do they say it's your problem? Do they deny it? Do they fix some items? Do they --

THE WITNESS: I think they probably say as little as they have to say. They do only what they have to do. It's curious, through observation, to note that they will come out whenever problems hit the press or politicians start to yell and scream, but all of that is just momentary -- that comes and goes. The homeowners, they stay there, they live there day to day.

I read recently in the newspaper, it may have been yesterday, that Hovnanian said something along the lines of they really focus on efficiency, not just doing a quick and dirty job. I mean, it's really a nice little sound bite saying we are being efficient and that's why it's going by so quickly, but this isn't efficiency. They say, we don't want to go back and have to fix this thing because it's going to cost more money, but the truth is that they know they don't have to
go back and fix it unless they find it. Who is
going to find it?

COMMISSIONER EDWARDS: So, as you
pointed out, although speed is important, both
economically -- to build an economic unit you can
afford to buy, on the one hand, but quality
shouldn't be sacrificed while speed is going
forward, and in his area they are not going to
show up for a period of time, there is no
incentive on behalf of a developer or builder to
be sure that those items are, in fact, taken care
of, I guess.

THE WITNESS: Philosophically, it's
hard to --

COMMISSIONER EDWARDS: And there is
no penalty if they don't, there is no consequences
one way or the other.

THE WITNESS: Right.

COMMISSIONER EDWARDS: Not only an
incentive or a disincentive, as the case may be.

You mentioned before the sidewalks
had significant upheavals and they are being
replaced and you made a comment about insurance.

THE WITNESS: Yes.

COMMISSIONER EDWARDS: Is that the
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homeowners insurance policy?

THE WITNESS: Yes.

COMMISSIONER EDWARDS: Claims you are getting from falls as a result of the sidewalks, is that what that is?

THE WITNESS: Correct. That's just the nature of the beast, as they say. Whenever there is a fall, you get hit on your loss run and the next year your premium goes up.

COMMISSIONER EDWARDS: Do you have records of how many times you've been sued as a result of that?

THE WITNESS: I'm sure the company provides us with a loss run history. We do have records of that. It's hard to say if we really -- when someone falls, of course they don't call you and say "Give me money." They'll call your insurance company.

COMMISSIONER EDWARDS: Can we get a copy of that loss run or is it available to us?

THE WITNESS: Yes, we can make that available.

COMMISSIONER EDWARDS: Thank you. I have nothing further.

COMMISSIONER MARINIELLO: Mr.
Cardona, I want to first thank you for the excellent presentation that you gave this morning.

THE WITNESS: Thank you.

COMMISSIONER MARINIELLO: It obviously has taken a tremendous amount of time on your part, as a volunteer, essentially, for your association, to collect this data and present it to us as you have, so I thank you for that.

Also, it's fairly clear, at least to me, that much of what you've shown us today is both atrocious and deplorable, to be completely honest with you. Also what you've shown us today is how many of the different systems that we expect to work to protect the home buyer have failed, but, from what I can see from your, you know, testimony this morning, there are issues with the builder not complying with what they were supposed to, the inspection departments not keeping adequate records, maybe even not doing the inspections and, at least upon reserving further inspection of this, DCA not coming in and helping, despite the numerous requests that have been made from the homeowners in that development.

I just want to touch back on the firewall issue that you touched on in the very
beginning. If I remember correctly, you said some
85 percent of the homes that you looked into had
at least some -- the integrity of the firewall
system was called into question?

THE WITNESS: Yes.

COMMISSIONER MARINIELLO: And there
are approximately 480 units at this location?

THE WITNESS: Yes.

COMMISSIONER MARINIELLO: So that
means, using simple math, somewhere around 400 of
those units, those people go to bed every single
night not knowing whether or not a fire in the
next unit could impact them during the night, is
that correct?

THE WITNESS: That's correct. This
is what happened approximately eight months ago.
North Plainfield, a Traditions development. Not a
K. Hovnanian project, but a development in which
there was a fire in the kitchen and it spread from
one unit to the other to the other, and the
amazing thing about that is that it propagated,
from what I'm told by the residents there, within
27 minutes. An entire building was taken out in
27 minutes because they didn't have firewalls.

(Exhibit 227 is marked for
COMMISSIONER MARINIELLO: The integrity of the system, from what you've been able to tell, is only from the area that you've been able to view --

THE WITNESS: Correct.

COMMISSIONER MARINIELLO: -- and, because of the lack of inspections and the lack of recordkeeping, you have no way of knowing, nor do any of the other people who live there, that the area between the walls, between these units, even has the correct firewall in place?

THE WITNESS: Correct. One has to make that assumption. When we see these sort of deficiencies in spaces that you can reach, one has to ask themselves, "What's behind the wall that I can't reach?" I remind you that the attic space only represents approximately one-eighth of the surface area you can actually inspect of your firewall. In the one photo we saw there in the kitchen where the roof or the ceiling collapsed, once we got up there with the video camera we noticed that there were three holes in the firewall going into the next unit. These were holes that were drilled to allow cables to go
through, and it's obvious -- you can see that they tried to -- they drilled one hole, they found they couldn't put the cable through there, they drilled another and found they couldn't put it through there, three drilled a third and that's where they finally put the cable, but they have two-inch -- three two-inch holes in their firewall.

I would have never known about that had the water heater not failed, had the pan not failed, had the water not gone into the kitchen, had the Sheetrock not collapsed because it wasn't attached, had they not complained, had I not gone there with the video camera.

COMMISSIONER MARINIELLO: How many of these problems were disclosed to you at the time that you purchased your home?

THE WITNESS: None.

COMMISSIONER MARINIELLO: Were you able to make any inspection yourself prior to buying the home or did you talk with any of the neighbors which would have given you -- maybe have given you some inclination as to the problem there?

THE WITNESS: Most people are not aware. Most of my neighbors are not aware of the
firewall issue. It's not that we hide it from them, but it's something that we don't want -- it's a double-edged sword. We don't want to put that out there unless we have a remedy for that. If they ask, we tell them, of course, but, for the most part, you know, most people don't know.

COMMISSIONER MARINIELLO: Are any of the problems that you've experienced there covered by the new home warranty program?

THE WITNESS: No. The warranty is a joke.

COMMISSIONER MARINIELLO: Sounds like you've been through that experience. Can you tell me a little bit about it?

THE WITNESS: Many homeowners have. The homeowners warranty covers structural items and I think that's up to five or ten years, but, for the most part -- I mean, a whole truss would have to collapse before you could collect on that policy. Cosmetic issues, water pipes, that expires a few years from when you purchase your home, but the major stuff, anything that really causes a problem like an attic or a roof, that's not really covered. It doesn't cover the water damage or the damage to your unit, which is all
you really care about.

COMMISSIONER MARINIELLO: The particular photo that made me think of the warranty program was the one that you showed with the wood platform outside of the unit seeking to keep the front of the condominium from falling down.

THE WITNESS: Um-hum.

COMMISSIONER MARINIELLO: It would seem to me that part of those issues -- actually all of that goes directly to the structural integrity of the home that people are living in.

THE WITNESS: Correct. That particular unit is over ten years old. It would go out of warranty. And, when we speak of warranty, the warranty is a good faith effort to say that, okay, if you purchase my product, I will give you certain guarantees that it will not fail within a certain amount of time.

Now, that's really based on the assumption that the product was installed properly to begin with, that the product was adequately designed to begin with. It's based on a lot of assumptions. You take out any of those assumptions and the warranty is useless. It's
useless to the consumer and it's also useless to whoever is trying to sell you the product.

COMMISSIONER MARINIELLO: Has any effort been made on behalf of the builder to rectify the problem on that unit or that building?

THE WITNESS: I'm sorry.

COMMISSIONER MARINIELLO: That building that we saw the planks holding up the front of the building, has the builder been put on notice of that issue and have they done anything to correct the problem?

THE WITNESS: Yes, they have. Not quite sure what's become of it.

COMMISSIONER MARINIELLO: So they are on notice, but, to your knowledge, nothing --

THE WITNESS: To my knowledge, they are on notice, but I'm not sure. That's actually part of Phase 2 of our development and my development block does not supervise that section of the development, but also another interesting note on warranties is that, once the homeowners association or a homeowner files a claim with their warranty, they can no longer go after the developer, so the warranty company says, "Okay, we'll give you $500 to cover a $5,000 job."
That's it. You take the 500 and you have no other recourse. You can't go after the developer.

COMMISSIONER MARINIELLO: I don't have anything further at this time, Mr. Chairman.

COMMISSIONER FLICKER: Mr. Cardona, I, too, would like to thank you for your presentation and for all of the work you've done on behalf of your neighbors at Society Hill.

Let me ask you, it sounds like an obvious question, but, if you had any idea about the problems, would you have moved into the home?

THE WITNESS: I would have not moved in and I will never, ever buy into any condominium ever again, let alone any condominium or any building or structure built by K. Hovnanian.

COMMISSIONER FLICKER: Have you had occasion to talk to other transition chairmen or treasurers from other Hovnanian organizations?

THE WITNESS: Yes. We've actually been -- they've reached out to us and we've reached out to them, but, again, we are all volunteers, we all have lives other than this issue.

We have been approached by Tracy Kelley, we shared information with her.
gentleman over in Wall Township, problems that they are having over there. Of course there is Society Hill in Jersey City, we have communications with them. We shared issues, they told us their horror stories, we shared our horror stories.

It's kind of like a fraternity of veterans and we all come to the same conclusion. That conclusion is that we are the little guy and the strategy that is used against us is one of attrition. They know that we cannot endure, either financially or through just personal resources of devoting time to fight this battle, so it's kind of like a lion injuring its prey and just standing back and let it bleed to death.

COMMISSIONER FLICKER: You were explaining that you were in some ways between a rock and a hard place and had to choose arbitration instead of going to suit. Could you explain that to us?

THE WITNESS: Our transition agreement, that process, the process took about six years to come to, a lot of that has to do with the fact that you have a company with a professional negotiator that enters into a debate
with a board of seven -- seven individual homeowners who are -- usually don't get along, and that's common in every condo association. So they take advantage of that. That's just the nature of the situation.

So these agreements can take on -- go on for many, many years and, even though associations do rely on management companies and professional engineering firms, those management companies and engineering firms are under the directive of a board of seven, seven individual homeowners, who may or may not have, usually don't have, any experience in what it is to negotiate, so they are at kind of a disadvantage.

That's just the way -- that is one way in which the playing field is unlevel. There is no professional negotiator on behalf of the homeowners.

COMMISSIONER FLICKER: In your transition phase did your homeowners association hire their own engineering firm?

THE WITNESS: Yes.

COMMISSIONER FLICKER: Are you aware that, in subsequent developments put up by Hovnanian, they are now mandating that the
homeowners association utilize a -- an engineering firm that Hovnanian picks and the homeowners pay for?

THE WITNESS: Yes, I've heard it from -- I've heard this flavor of it. There is an engineering firm out there that they hired, and kind of on the surface it seems like a good idea. Say, we'll hire this engineering firm and this engineering firm is going to inspect the construction of this while it's being constructed and you can have the engineering report and base your transition on it.

On the surface it seems like a good idea, if that engineering firm were truly independent, but, once you look into whether that firm -- what its affiliation is with the developer, are they owned by the developer, they have -- what percentage of their annual income comes from contracts with that developer, a lot of questions that come into play.

On the surface it seems like a good idea, but I think it falls short.

COMMISSIONER FLICKER: Let me get back to one other area you talked about, where you talked about going back to the City of Newark and
saying -- and asking about the remediation work
and they said, "Well, no permits were issued,
therefore, we didn't know there was any going on
and there is nothing we can do," or words to that
effect.

THE WITNESS: Correct.

COMMISSIONER FLICKER: Did you then
say to them, "Well, I'm telling you that they are
doing some remediation work without permits?"

THE WITNESS: Usually I tell them
after the work is done. We usually don't know
they come on the property. A homeowner will call
in and say, "Hey, my sidewalk is missing." I'll
say, "What do you mean?" We walk over there and
discover that the sidewalk is truly missing and
then we discover that they are on the property
doing work.

By the time we report that to our
management company and they, in turn, call
Hovnanian, what have you, the work has already
been done and completed. We'll go to the city and
complain, but the turn-around is just not quick
enough to come out and do anything about it.

COMMISSIONER FLICKER: To your
knowledge, has the city attempted to take any
action against Hovnanian for this sort of hit and
miss repair work that they are doing?

THE WITNESS: The last time I sat
down with Mr. Anstiss --

COMMISSIONER FLICKER: Who is Mr.
Anstiss?

THE WITNESS: He's the building
official.

COMMISSIONER FLICKER: In Newark?

THE WITNESS: In Newark. He gave me
a copy -- he kind of -- he said, "You have to see
this," and he gave me a copy of an article in
which I believe the state court ruled that the
municipalities cannot go after developers. He
says, "Even if I had the mandate, even if I could
help you, there is nothing we can do because we
can't do anything other than to perhaps prod them
to come to the table and sit down with you, which
they have tried, but, beyond that, there is
nothing they can do.

COMMISSIONER FLICKER: Mr. Cardona,
thank you very much.

THE WITNESS: You're welcome.

COMMISSIONER SCHILLER: Just to
follow up on one comment you made, do you know who
owns Dunbar -- is it Dunbar Construction that does
the remediation?

THE WITNESS: Dunbar Construction is
one of the construction firms that has been sent
out to do remediation work.

COMMISSIONER SCHILLER: Up in
Society Hill in Newark?

THE WITNESS: Yes.

COMMISSIONER SCHILLER: Do you know
who owns that company?

THE WITNESS: No, I do not.

COMMISSIONER SCHILLER: Do you know
how much work they do with Hovnanian?

THE WITNESS: No, I do not.

COMMISSIONER SCHILLER: The question
about the -- your particular section of the
condominium, you said that you saw the sealed
plans that were approved by the planning board?

THE WITNESS: Yes.

COMMISSIONER SCHILLER: And they
were for -- I believe you said they were for ten
units?

THE WITNESS: Correct.

COMMISSIONER SCHILLER: And that
there was actually 11 units built?
COMMISSIONER SCHILLER: And that was within ten weeks of the signature of the planning board chairman that they were issued a CO?

THE WITNESS: The model unit, which was in that building, the CO for that unit was approximately ten weeks. That is an approximation from the time that I --

COMMISSIONER SCHILLER: The agreement that you are trying to work out now with K. Hovnanian, and you mentioned that they would not agree to the tolling agreement, that they would not call for tolling, what was that in regard to? Repairs?

THE WITNESS: No. We actually -- we were at a point where our attorney told us, "Well, you are going to have quite a litigation, unless you can find some other way to get them to the table and talk to them about getting repairs done. We really didn't have any proper muscle, so we approached the mayor's office and said, "Can you help us, can you reach out to them and ask them to come and sit down at the table with us?" They said, "Sure," and I think they didn't have a problem doing that, but they wanted some
assurances before we sat down to meet with them.

Our attorney recommended that we have the assurance of a tolling agreement just to keep that time from being used against us in going after them in litigation, and K. Hovnanian wanted a specific list of defects that we wanted to discuss, and we couldn't really provide it because we were going beyond that. We wanted to sit down at the table with them and tell them, look, something went wrong, something went really, really wrong, and we know you are not going to come in here and bulldoze every building down and rebuild them, and we know that you are not going to get away without doing something about this, so let's sit down and talk about a solution, something where we can -- that we can both, you know, live with. But they wanted specifics and the specifics we have, but it goes beyond specifics.

There are things we don't know about, such as this. This is a water main pipe that fed one of the buildings. This pipe failed because of the seal, which is an improper seal to use in that particular condition. It had a rubber seal on the inside that prevented the electrical
current from flowing out through it and caused it
to corrode the pipe here.

The interesting thing about this
failure, just like any other failure that happens
in Society Hill, it's usually water related.
Water trickles down and you kind of find that it
trickles into other things. That water was coming
out of the base of a PSE&G transformer, so we
called PSEG and said, "We have water coming out of
your transformer," and they said, "There is no
water in that transformer. The water is coming
from someplace else." So we called the city, the
city came out on nine separate occasions and dug
nine separate holes looking for a water leak.
They couldn't find it.

They said, "Well, water is coming
from in there, but we don't have anything in our
plans to show that there is a water leak there."
So the engineer, this is his original note, put a
sketch together about what he thought might be the
location of the water main. We had to hire an
engineering firm to come out, sight the water
main, find it, another firm to come out, a
construction firm, to dig it up just to find this.

Now, I took this to the head of
water and sewer and I showed it to him. I said, "How is that?" He said, "Where is it from?" I said, "In the ground." He said, "That couldn't be, that's not allowed." I said, "Well, not only is it not allowed and not only was it there, but they tapped into a water main and the city has no record of their ever tapping into that water main." They said, "Well, that's an illegal tap, then." I said, "Well, it is what it is, whatever it is, but that's what we found."

This is what we are talking about. You can't put this on paper in specific, because we don't know where it exists until something fails. So, there is approximately 39 buildings, each building has approximately two water feeds, and do the math. There is a lot of these out there waiting to fail. This repair took, to my estimate, about $35,000 over, what, a $5 seal.

COMMISSIONER SCHILLER: Plus they tapped directly into the line without a meter?

THE WITNESS: Right.

COMMISSIONER SCHILLER: Mr. Cardona, we have received a copy of an invitation. I was wondering whether you were invited to the Kevork S. Hovnanian and Ara K. Hovnanian cordially invite
you to join the members of the staff of K. Hovnanian Companies at a cocktail reception on Wednesday evening --

THE WITNESS: When?

COMMISSIONER SCHILLER: -- Wednesday evening, November 19, 2003, from 5:30 to 8:30 at Bally's Park Place Casino Hotel, Ocean Ballroom, Sixth Floor, Atlantic City. I was wondering if you received one of those.

THE WITNESS: No.

COMMISSIONER SCHILLER: Wait. Counsel will show it to you.

THE WITNESS: I usually know when

his convention is taking place because that's usually when I can't find anyone in any municipality. Not just Newark, but Elizabeth, Roselle, everyone is going there.

I actually did receive an invitation, but it wasn't by a developer, it was by Senator Ron Rice. It was a congratulatory event on his behalf, but I did not receive one of these, although I would like to attend.

COMMISSIONER SCHILLER: Well, I don't know whether I can invite you, but that's the invitation that's out there. Apparently a lot
of other people got it.

Do you know whether Mrs. Moore got one?

THE WITNESS: Mrs. Moore?

COMMISSIONER SCHILLER: Yes.

THE WITNESS: Probably not.

COMMISSIONER SCHILLER: Mr. Cardona, I know that everybody here on the committee has said that, and we all deeply appreciate your real sense of community, caring for others, and basically outrage, as justifiable as it is at an unbelievable situation where government systems, private systems and everything has failed to provide you and protect the other owners in Society Hill of Newark and other places, so, bringing that to our light and, hopefully, to the light of our elected officials will help to change some of that and give the tools to people who can, quote, remedy what's already been done and prevent whatever is going to be happening in the future from ever happening again, and I'm personally very grateful to your coming in and spending so much time with our staff and with us here at the Commission and I'm deeply appreciative and so are all the Commissioners.
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THE WITNESS: Thank you.

COMMISSIONER SCHILLER: We'll take a five-minute break, if that's okay.

(Discussion is held off the record.)

MR. GLASSEN: The Commission calls the next witness. Jeffrey Cartwright.

Could you stand, please, and be sworn.

JEFFREY R. CARTWRIGHT, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GLASSEN:

Q. Mr. Cartwright, would you give your name and your background to the Commission, please.

A. My name is Jeffrey Cartwright, I'm an assistant prosecutor in Essex County. I'm the director of the Essex County Prosecutors Arson Task Force. I was with the prosecutor's office from 1982 until 1990, three years in private practice, returned to the prosecutor's office in 1993. I have a total of 18 years as an assistant prosecutor. I've been director of the arson unit for five years.

Q. Do you have any training in arson reporting?
investigations?

A. Yes, I do. I have attended a week-long course offered by the United States Department of Justice down in Glencoe, Georgia on arson investigation for prosecutors. I have completed the 90-hour course from the Division of Criminal Justice in arson investigation. I have also attended several seminars and programs involving arson and other fire-related investigations, and I have attended National College of District Attorneys arson for prosecutors course down in South Carolina.

Q. Mr. Cartwright, could you describe for the Commission your responsibilities as director of the arson task force?

A. The Essex County Arson Task Force is a multi-jurisdictional group of fire investigators. We have county investigators, we have members from the sheriff's department, local fire departments, local police departments working together. We work with the local municipalities in responding to certain fire events, which is set out in the protocol. Generally, large-scale fires, fires in which people are killed or seriously injured, in which there is a large loss,
county property, places of worship, and any time a
local fire official feels the need for assistance,
we go to assist them in the investigation of a
fire.

Q. Does your position require you to be
familiar with enforcement of the Uniform Fire Code
in the County of Essex in the City of Newark?
A. It has become that way, yes.
Q. Do you have an opinion as to the
Uniform Fire Code inspection enforcement in the
County of Essex?
A. My opinion is that it is not
uniform, that it is deficient in many respects,
especially within the urban areas of the county.
Q. And could you explain that to the
Commission.
A. Yes. First of all, it's generally
not the prosecutor's office's responsibility to
oversee regulatory responsibilities.
The only reason that I got into it
and my unit got into it was we had several fires
in which it was quite apparent during our scene
investigation that either the causes of the fires
or results of the fires were things that could
have been or should have been prevented by
adherence to the Uniform Fire Code. Many cases of deaths and serious bodily injury. And there is a statute that was enacted by the legislature in 1997, 2C:40-18, entitled "Violation of Laws Intended to Protect the Public Health and Safety," and what that statute says is that if someone knowingly violates a law intended to protect the public health or safety or knowingly fails to perform a duty required under such a law, and someone is recklessly either killed, seriously or significantly injured as a result of that failure, then that's a criminal offense. Second degree in the case of death, third in serious bodily injury, fourth in significant bodily injury.

So we started to look at these fires to figure out, well, if there was a violation, how do we prove the knowing violation, and to do that we take a look at the regulatory history of the building, try to see who inspected it, was it inspected, was it registered as required under the laws and, if so, let's get the inspection and see if we can find service of the violation notices upon the owners or the agents and work that way in order to prove this element of the offense.

We met with a fairly frustrating
result in our initial forays to do that. We
thought it would be fairly simple, just go into
fire officials' files or code enforcement files
and retrieving the inspection results and the
violation notices and whatever occurred after
that, and that's when we discovered that there was
a real problem in the coordination of the
inspections, the Notices of Violations going
between the different jurisdictions to the owners,
and having those conditions abated, and we looked
into it and we found deficiencies both on the
local level and on the state level that
contributed to the problem.

Q. Where did most of your
investigations originate?

A. Most of them originate in older
housing in the City of Newark and Irvington, East
Orange, those environs.

Q. Did you find evidence that there is
a failure to enforce the Uniform Fire Code in
residential dwellings in Newark?

A. Yes, we did. You know, just -- by
residential dwelling, the code only applies to --
it doesn't apply to owner-occupied one and
two-family dwellings. So we are talking about
those buildings, you know, three-family and above, basically, that fall under the Uniform Fire Code, but aren't considered life hazard uses under the code.

Q. During the years 2001 and 2002 were there a series of fires in the City of Newark?

A. Well, yes, particularly that involved this aspect of what we were looking at. There are always fires. It -- one of the fires took place at the address -- it's now a closed case, I can speak about it -- 301 Roosevelt Avenue in the City of Newark. It's a large, three-story frame building, balloon frame construction built in the early 20th century. Had been used as a funeral home for years and a residential living quarters on the second and third floors, and that's how it was carried on the tax books of the City of Newark up until 2001 when the fire occurred.

This was in July, and what happened was the fellow who was living on the third floor of the building had to jump out a window because of fire coming up from the second floor and he seriously injured his back and is permanently injured as a result of that. And we looked into
it and one of the things we discovered was this
building, besides being on the tax rolls
incorrectly in the City of Newark, Newark didn't
seem to know it was a multi-family dwelling,
according to their official records.

So we went into the fire
department's records. Turned out in 1994 there
had been a fire there and a fire captain on the
responding engine filed a report saying it appears
to be an illegal six-family house, and sent out
different notices to places in Newark that are
supposed to take care of such things, and
apparently nobody took care of anything and, when
we went to those other agencies, we couldn't find
any record of that referral in any files, and then
over the years it appeared that Newark's code
enforcement had been there on a few occasions on
different complaints on conditions in the
building. None of them seemed to pick up the fact
that it was an illegal six-family house that was
supposed to be a funeral parlor.

And turned out in November of 2000
the state inspected it, DCA inspected it, Bureau
of Housing Inspection, to be particular, came and
inspected the building, and we don't know why,
they couldn't explain to us why they went there,
because it wasn't registered as it should have
been, as a multi-family dwelling.

In November they go in there and the
inspector does a report and, according to the
bureaucratic procedures of the Bureau of Housing
Inspections, the Notice of Violations don't go out
for two months. And included in their inspection
reports are fire code violations, and it turns out
that, from this case, we learned that the Bureau
of Housing Inspection does not tell the fire
official in the City of Newark when they discover
fire code violations in their inspections, and
they also don't order a reinspection of the
property until they've gotten payment on the
registration.

So I don't know what the rationale
of that is, but they won't go back and inspect a
property to protect the tenants until they receive
a payment from the owner of the building for the
registration.

Q. Could you explain that a little bit
further to the Commission, why a registration is
important and how that works for multi-family
dwellings?
A. Yes. There is a state law, the Hotel and Multiple Dwelling Act, and regulations promulgated under that, that require the owners of these multi-dwellings, which is defined as three-family and above, to register, and they pay a registration fee which is supposed to cover the cost of the inspection and then they deal directly with the state in getting it reinspected and paying any penalties that are for things that are discovered during the course of the inspection.

Those records are kept by the State of New Jersey. They are kept in Trenton. They are not kept in the local municipalities and, as far as I know, the local municipalities were not given any access to those records, really. So the fines that got paid got paid to Trenton. They didn't go to Newark, they went to Trenton.

Q. What is the significance of the fines being paid to Trenton as opposed to Newark?

A. Well, in the case of the fire code violations, it could be significant because, under the enforcement procedures that are set out in the Uniform Fire Code, it's the responsibility of the local fire official to enforce the fire code in the city, not the state. It's the responsibility
of the fire official, and the fire official, in issuing a violation, is supposed to keep the owner on a fairly short leash.

And then, if there is a request for an extension, the fire official has to make sure the request is in writing and can only grant it if it's shown that there is no danger to people living in the building.

Well, it just seems that the way the state did it or does it, there is incredibly long periods of time and, from what we've seen, years to go from the time of the original inspection to potential abatement.

Q. When you say a request for an extension, you mean an extension of the hazard that could be threatening the inhabitants?

A. Yes, a request to put off the time for abatement. Now, the state's times for abatement is generally five months from the time of the original inspection, so it's much longer than the 15 to 30 days granted by the fire officials.

Q. With respect to the example that you were explaining to the Commission, would enforcement of the Uniform Fire Code have
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prevented the tragedy in --

A. Yes, it would have, in several respects.

Q. How would it have done that?

A. Well, because it was an illegal occupancy, there had been substandard electrical work done in the building. The problem -- if you have an illegal occupancy, you can't go downtown and get a permit to have the work done because we are going to find out on the inspection that you have an illegal building. So what we found in a lot of cases is, instead of getting permitted work done, you get unlicensed people to do the work and it's substandard work, and especially with electrical work you just have fires waiting to happen.

In this particular building, not only was there substandard electrical work, but there were no self-closing fire-rated doors on the hallway door in the second floor apartment, as required by the fire code. The fire broke out on the second floor, burned through the door on the second floor -- it was left open. Actually, the wall burned out, the door was left open, it didn't self close. That's -- the heat and smoke that
went up the central stairwell to the third floor
where the guy is living in an illegal apartment
that had been discovered in 1994 without a fire
escape. So he's only got one way out of the
building and that's down the central stairwell.
The central stairwell is filled with fire and
smoke so he takes a header out the window.

Q. What happened to the owner of the
building as a result of your investigation?

A. He pled guilty to a third degree
violation of the law intended to protect the
public health and safety. To my knowledge, it's
the first conviction in the State of New Jersey.

Q. Did there come a time when you were
c{(concerned enough about the number of
investigations and what you were finding that you
contacted the Department of Community Affairs?

A. Yes. I had brought this to the
attention of my bosses and to then acting Essex
County Prosecutor, Donald Campolo, and we
discussed it and I drafted a letter for his
signature to go to the commissioner of the
Department of Community Affairs just outlining
some of our concerns of what we had found to bring
it to their attention, because it seemed, from
what we had seen, that there wasn't only a problem
on Newark's level, which we weren't that surprised
about, but at the state level two agencies within
the department seemed to be -- have competing
interests. Those being Bureau of Housing
Inspection and the Division of Fire Safety.

Because it was under the Uniform
Fire Safety Act, it was the Division of Fire
Safety that had responsibility for fire safety in
the State of New Jersey, not Housing Inspection.

So I wrote the letter for acting
prosecutor Campolo's signature and it got sent
out.

Q. Did the Department of Community
Affairs inspect the Newark fire official's office
and audit them following your letter?

A. Just one moment. Let me make sure I
get my dates right here. Actually, the audit had
been done before I sent the letter. The audit had
been done in April of 2001, and this is under a
random audit program required under the Uniform
Fire Code.

What I did was, after we met with
people from DCA, I had asked for a copy of the
audit and the responses of the Newark fire
official because, under the Uniform Fire Code
again, they have 15 days in which to file
exceptions and to provide explanations as to why
they don't think the audit is correct. So I did
write a letter to -- or I made a request, rather,
to assistant prosecutor Charles Richmond for the
monitoring report. This was in August of 2002,
and he did send me a copy of the monitoring
report, which had been written in June of 2001.
Then I wrote back and I said, "Well, can I have
Newark's response to the auditing report required
under the law?"

And I eventually got one that's
dated September 16 of 2002, so it wasn't until I
made the inquiry down to the Division of Fire
Safety that Newark even bothered to respond to the

Q. At some point did the City of Newark
take over responsibility for the five-year
inspections of registered buildings in the state?

A. Yes. This is what I've been told, I
can't find any record of it, however, that, under
the Bureau of Housing Inspection's regulations,
there is a provision that the local municipality
can designate an LEA, a local enforcement agent,
to take care of this stuff. Some of it is called the SHLIP program. I don't even know the exact letters of the acronym and I can't tell you what it means, but basically it's that they became BHI's agents, in terms of doing these five-year cyclical inspections on multiple dwellings, as required in the Multiple Dwelling Act, and I had interviews with the -- Mr. Curtis Watts, who is the director of inspections from BCI, and Adrianna Holme, who is the supervisor of inspections for the Newark area for BCI, and they informed myself and my investigators that, yes, there was a time when Newark took it over, they maintained the files and they were in charge of the inspections, which means that they do the inspections, send the notices down to Trenton to be issued and then Trenton still took care of the enforcement of violations.

But at some point that ended and, when I tried to find out how and when that ended, the explanation I received is that, basically, it was a phone call. Newark called up and said, "We are not doing it anymore," and that was it and there was no formal transfer of the files, as required by the regulations. It's supposed to be
a six-month period, you know, let's get the files,
let's look at them, see what's open, what the
inspection status is, and apparently that didn't
happen and, according to the people I talked to at
BHI, they had to start from scratch.
So they really didn't even have the
inventory of the multiple dwellings in Newark when
they started their reinspection process sometime
in the mid to late '90s.

Q. Do you recall a case in 2002
involving a multi-family residence where
substandard electrical work had been done without
required permits or inspections and a fire started
in the basement and spread up through the walls,
trapping two young girls on the third floor?

A. I remember it very well. I was
there.

Q. What was the result of that fire and
your investigation?

A. Well, the result of the fire was two
dead children. It was a six-family, three-story
wood frame tenement. Wood frame construction.
The fire started in the basement. It was not an
arson fire. The exact cause I'll leave for
investigators to describe, but it was related to
the electrical system in the house. The furnace was not operable in the house. Residents of the house were using electric heaters throughout the apartments.

It was one of the colder nights of the year, I think it was February 4, 2002, one of the only real cold nights we had that year, and one of the conduits -- electrical conduits in the basement became overheated and set a wood hewn beam on fire in the basement, and that appears to have been the point of origin of the fire and spread upward through the outside of the building and trapped the children on the third floor.

The inspection of the basement was kind of difficult because the building collapsed on top of it. It was just a pile of rubble by the time the fire was suppressed. It did spread to two adjacent structures, as well, destroying them. There weren't any further injuries.

We got a search warrant and got a crane, lifted the remains of the building off the basement and took -- we removed the electrical panels from the basement. And I saw the pictures of the panel earlier from Society Hill. The panels in this basement showed that the service
came in to six different meters and everything beyond the meter had been altered, and that originally there had been BX cable, which is an armor-clad electrical cable serving the building.

All of the BX -- and I'm not an electrician, but the simple explanation is that the metal sheathing serves as the ground of the system. That had all been cut away and with what we call air splices, that's just wires connected in midair with tape, instead of in a box as they are supposed to be, the BX was replaced with Romex, which is a three-wire flexible cable, but you can't -- unless you have exactly the right boxes and the right connectors, you are not connecting the grounds, so all of the service in the building above the basement, or past the panels, was ungrounded, so we had an entirely ungrounded building and the furnace was out and everybody was using electric heaters. It was kind of just an invitation for disaster.

And what we found is that the fire department had been there a couple weeks before the fire and discovered that the furnace was out and had notified the city, tried to notify the owner, but nothing had been done, so people
remained in the building without a functioning furnace, and nobody did anything either to get them out of there or to remediate the situation.

So we went to get the records from BHI, because it was a registered building, it was properly registered with the state, to find out what's with this electrical system. Why do we have an ungrounded system in this building? And we did find that it had been inspected I think four years previously. There was no notice or no notation on that inspection report of this new wiring and we couldn't tell when the wiring had been put in, it was just generic Romex, there is no way to tell.

All we found, in terms of on the original inspection report, was the violation for the meter room was that the electrical fixture didn't work; that is, the light didn't work in the meter room. So we wanted to get the reinspection reports and, when we requested them from BHI, we were told that, "Well, the building is destroyed, so we destroyed the reports." There was no record whatsoever of what happened at that building after the original inspection four years before, so we didn't have any way to prove a knowing violation
in that building.

What we do have some evidence of is a failure to perform the duty, as required under the code, but, again, it's knowing. Without the records it's pretty much impossible, so we were kind of met with a situation where it was somewhat of a dead end.

Q. Can you share with the Commission your opinion as to how serious this problem is?

A. It's a very serious problem. This is my opinion based upon having responded to fires in Essex County for the past five years and witnessed many too many fatalities and serious injuries and destruction of property.

We have a lot of very old housing in some of our urban areas in Essex County. It's very vulnerable. It's built before the statewide Uniform Construction Code came into effect, for whatever good that does, apparently, but the buildings are wood frame predominately, a lot of them are balloon frame. That means there is nothing stopping the fire from going from the basement to the cockloft. There is no barriers in the construction.

They are generally occupied by some
of our most vulnerable population, recent
immigrants. This is some of our lowest cost
housing in the county and these are folks who, not
having grown up in the environment of regulated
protected housing, don't realize what's supposed
to be in place in these buildings, so they don't
know enough to complain or bring it to the
attention of the proper officials, and just like
just about anything else that's a failure of a
fire protection system, you find out too late, so
that's -- when we've been finding out, it's too
late.

And, from our examination of, you
know, had the fire code been in force, it just
seems that, in large part, it's taken on a
bureaucracy of its own and serves the bureaucrats
a whole lot more than it serves the people who
live in this housing, and that basically my
opinion is that, if you are a poor person living
in this housing in the City of Newark, you don't
have any reason to go to bed feeling safe.

Q. From your perspective as an
investigator that -- perhaps not a regulator, but
as an investigator having surveyed the regulators
and the regulations, would you have any
recommendations to the Commission in this area?

  A. Yes. One is to get BHI out of the business of fire inspection. Put it with the people who have the duty and responsibility under the law. That's the fire officials and local enforcement agents. If there isn't a fire official in the town, then it falls on the state, but it falls within the Division of Fire Safety, not the BHI. Just get them out of the business.

    One way to do this is simply to make multi-family dwellings life hazard uses under the code because, if they are life hazard uses, that would require periodic inspections by the fire officials within the municipalities to ensure that trained fire inspectors go out and look at these buildings. The housing inspectors are not trained fire inspectors. They are not certified, they are not trained. Get the right people at the right place to do the job with the right enforcement capabilities and the right time frame to protect the people in the buildings.

MR. GLASSEN: Mr. Chairman, I have no further questions.

COMMISSIONER MARINIELLO: I have a question on the six-family that was formerly a
funeral home. You said that the owner pled guilty
to a charge in that case?

THE WITNESS: Yes, he did.

COMMISSIONER MARINIELLO: Was that
under the statute that you previously cited?

THE WITNESS: Yes, it was.

COMMISSIONER MARINIELLO: Does that
statute -- I'm not familiar with it as I sit here
today. Does that statute allow you to -- as the
prosecutor, to prosecute municipal and/or state
officials, as well, under that provision?

THE WITNESS: There is no exclusion
of municipal or state officials, certainly. It
would be for anybody who knowingly fails to
perform a duty under a law intended to protect the
public health and safety.

Just to expand that a bit, when that
statute was passed there was another statute
passed at the same time which came under Chapter 2
of 2C which defined that little part about a duty
required, and it specifies the Uniform Fire Safety
Act, the state Uniform Construction Code Act, as
well as any regulations or codes enacted
thereunder. So it does specifically broaden
things to failure to enforce the regulations, not
just statutes themselves.

COMMISSIONER MARINIELLO: Has your
office or do you know of other offices that have
attempted to prosecute government officials under
that particular provision?

THE WITNESS: To my knowledge, no
charges have been brought. In terms of other
offices, I can't speak, other than I have taught a
class on this to the arson investigation
recertification, and there was a lot of interest
in bringing that back to the various counties that
it came from to make them aware of the statute.
The statute is not really well known. It did not
arise from a fire situation. It was passed in
response to a stampede in a nightclub in Newark
back in 1994, I think it was -- in Elizabeth, I'm
sorry. But the statute certainly applies in a lot
of different situations involving laws intended to
protect the public health and safety.

COMMISSIONER MARINIELLO: It sounds
to me like some of the problems, particularly with
the Newark examples you cited, go directly to the
lack of communication between the authorities that
are involved, and your recommendation seems to
suggest, by cutting out BHI, you are almost
streamlining the process of informing the local
officials of the fire inspections when they occur
and what the violations are. Does that sum that
up?

THE WITNESS: It does. It also
makes the local officials more responsible. I
would note that, when the Newark fire official
finally issued a response to the audit that was
done a year and some months earlier, he cited in
his letter the fact that BHI was primarily
responsible for the inspection of multi-family
dwellings. So he was kind of passing the buck.

COMMISSIONER MARINIELLO: Thank you,
Mr. Cartwright. Mr. Chairman.

COMMISSIONER EDWARDS: Thank you
very much, and your efforts in this area, I think,
should be duly noted by everyone here. The
statute in question that someone was asking you
about, in order to prosecute somebody requires a
physical injury or personal injury to somebody in
order to do that prosecution, am I correct?

THE WITNESS: Yes. Anything from
significant bodily injury to death, as defined in
the law, yes.

COMMISSIONER EDWARDS: Should we --
just getting to recommendations, because we are
coming at this to try to correct and fix things
that are broken in this inspection -- all fire,
all of the code inspections that might exit.

Should we be providing for some kind
of criminal prosecution for people who just fail
to do their job in a grossly negligent way at any
level, whether it be a builder, and putting people
at risk for physical and bodily harm?

We just heard an explanation before
your testimony of firewalls and potential fire
violations across an entire development. We saw
photographs of a multi-family development in
another municipality in which it looks like the
fire codes were not, in fact, followed, putting up
fire safety walls and things of that nature.

Should we be modifying our criminal
code to provide some kind of criminal sanctions
for people who, at some measurable level -- I'm
not talking about making a mistake. I'm talking
about something significant. Should we have -- we
have enough evidence of that level of gross
negligence in some of our communities around the
state that it might be enough to do that.

THE WITNESS: I certainly would
recommend that the panel seriously consider that. There are certain provisions, also, of 2C:17-2 which is causing a risk of widespread injury and damage and there is language in there that it be at least explained or expanded. That may be useful to prosecutors investigating this. Certainly 40-18 is useful, but somebody has got to get hurt, so, unless somebody is hurt, we can't investigate under that statute. We have no basis for getting a search warrant or anything like that.

It would be helpful -- certainly other parts of the criminal code that deal very strictly with fire, explosives and other very dangerous situations in which the kind of culpability required goes down to a negligent level.

Certainly the first line of protection for citizens of the state are the people who are intended to enforce the code to make sure that people are educated about it and that these conditions are, in fact, met, so I would recommend it, yes.

COMMISSIONER EDWARDS: We also want to be careful not to have witch hunts for people...
who make innocent mistakes. It really should be
more than just an error or oversight. It should
be something a little more than that, I would
think. Do you?

THE WITNESS: Oh, absolutely. For one thing, I come from a county where we are not
hurting for business, so we don't need 10,000 more
cases a year, but I never would recommend that
people would be prosecuted merely for negligent
behavior, but, when you undertake a dangerous
enterprise, you have to expect to be held to a
higher level of responsibility than people who do
not.

As people know that going in, they have to know what their responsibilities are and they have to know about the potential fallout, what happens if they don't do it properly, but
the -- like the wording in 40-18 is "Knowingly."
There has to be knowing failure. I think that adequately protects people from just simple
negligence.

COMMISSIONER EDWARDS: Thank you very much. I have nothing further.
THE WITNESS: You're welcome.
COMMISSIONER FLICKER: Mr.
Cartwright, you were in the audience and saw some of the pictures we all saw of the conditions at Society Hill in Newark, and I'm sure you also heard the residents' attempts to get it rectified, obviously putting the owners and the city on notice of what the conditions are in that complex.

If, God forbid, there were a fire there and someone were significantly hurt, what would your opinion be of some kind of criminal prosecution emanating out of that complex?

THE WITNESS: There would be an investigation and, having learned what I learned today, it would be a very interesting historical evaluation of what happened at that complex.

COMMISSIONER FLICKER: So that the knowing aspect that is required for criminal prosecution then can be provided by later behavior, say, example, by the homeowners who bring to the builders' attention the existing conditions and document that so that it might make it easier for a prosecution if, God forbid, one has to take place, for you to prove that something is knowing.

THE WITNESS: I think that would be very good evidence, Commissioner, you're right.
COMMISSIONER FLICKER: I think so, too. I hope that it doesn't come to that, but I think it's important for everyone to understand that it doesn't just have to be knowing conduct at the time the building is built, but that evidence of knowing can come later by action by the homeowners or subsequent inspections or whatever that may be, and I think that remedies like criminal prosecution aren't even in builders' or code officials' vocabulary.

THE WITNESS: I would agree with that. A lot of times I find people have a business plan that will incorporate paying fines and penalties. It's very hard to have a plan that incorporates being arrested. Good hammer to have.

COMMISSIONER FLICKER: Thank you.

THE WITNESS: Thank you, Commissioner.

COMMISSIONER FLICKER: Thank you for all your work on behalf of the citizens of Newark. As a former prosecutor, it is always nice to see a fellow prosecutor and one that's obviously very well taxed by the conditions in Essex County, so thank you on all of our behalf.

THE WITNESS: Thank you for inviting
me. It's been a pleasure. It's been very educational.

COMMISSIONER EDWARDS: I have one more. Any prosecutor is always taxed, I think.

I gathered from -- not just from your testimony, from all the testimony I've heard so far over the last day and a half, some of the other records that I've been reading, and I'll use an example. It was described earlier that one of the residents in the Newark development had a plan filed by K. Hovnanian of a ten-unit building that was being built and the stamp indicating a certain date. Ten weeks later 11 units were built and there were no records between -- there are no records between the CO, which is a document, and the document of the original plan that was filed.

This seems to be replete in many circumstances where the mandated recordkeeping of government, in its inspection process, and the details of records that we require versus ones that some municipalities keep, because I know some municipalities keep very effective records on every piece of construction, they get signed and sealed and certified plans in advance, depending on the quality of the people in the positions.

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sometimes, but shouldn't we be requiring better
records? Wouldn't that make your job a little bit
tbetter?

THE WITNESS: It would seem that you
wouldn't need to even make that recommendation,
that it should be done by the people who have
responsibility to do it, but certainly a reminder
to everybody that it needs to be done would
enhance everybody's ability to enforce the laws
that are on the books as they are now, and in some
cases I think it would help the municipal leaders
wake up to the fact that they have to invest the
resources to make sure that that does get done
properly.

COMMISSIONER EDWARDS: I am appalled
at the lack of records that are available that we
can trace back and say this was supposed to be
done this way and we have no record of what
happened, or what, in fact, was done, and -- but,
thank you very much.

THE WITNESS: My pleasure.

COMMISSIONER SCHILLER: Mr. Cardona,
just speaking a little bit about records, what has
your experience been with the Division of Fire and
Safety in Newark in terms of recordkeeping?
THE WITNESS: The Division of Fire Safety has been very forthcoming with the records that they have. Understand that the fire departments operate autonomously from the Division of Fire Safety. It is not even a law in the State of New Jersey that fire incident reports get filed, unlike police reports. There is some voluntary compliance with that, but one of the problems we have is trying to find out even the fire history of a building. We can't go to a repository of the records.

The Division of Fire Safety has, I think -- I don't want to speak for them, but, from what we've observed in the Department of Community Affairs, there seems to be a slight tension between the Division of Fire Safety and the older Bureau of Housing Inspection as to who has the responsibility for making sure that these conditions and these regulations are enforced, so I think the Division of Fire Safety has a lot on its plate and Director Petrillo has done a lot, I think, to advance that position and how they've been working, but it's still -- they have the responsibility to make sure the local officials do their job and that....
COMMISSIONER SCHILLER: Is it your impression that that is not being done at DCA or is not being done as fully as it should be?

THE WITNESS: Well, as Commissioner Edwards just mentioned, some towns are very, very good at keeping their records. I know -- and this is anecdotal only -- that some towns have been audited several times during the course of the past several years and the Division of Fire Safety auditors have been very thorough and very precise as to requiring a certain way that records be maintained, and I compare that with what I have seen of the audit conducted of Newark, the response and the follow-up, and I have to just note the disparity, that there seems to be a very wide difference between what's expected of the suburban municipalities and what's expected of the City of Newark, in terms of complying.

COMMISSIONER SCHILLER: What has been your experience with DCA, in terms of trying to get them to respond to a --

THE WITNESS: After the letter was sent to Commissioner Bass Levin, we didn't get any reply directly from her. Assistant Prosecutor Charles Richmond did contact us, invited us down
for a meeting, and I went down with an
investigator, we met with him, and I think
Director Petrillo was one week on the job at that
point, he was there, there were some people from
BHS, Mr. Connolly was there, Bureau of Housing
Inspection, some DAGs were there, and we just
discussed, you know, the content of the letter and
the issues that were raised, and basically --
well, I was told flat out by Mr. Connolly that
whoever wrote that letter didn't know anything
about fire inspection, and that's about where we
left off. He said there was no problem, there was
nothing to fix.

And Assistant Commissioner Richmond
has always been very cooperative in getting us any
of the records he could locate, anything we asked
for he's always been forthcoming, but, in terms of
at least advising us of any changes in how the
procedures are done, I am not aware of any.

COMMISSIONER SCHILLER: So, I mean,
if somebody doesn't see any problem, everything is
okay the way it is, there isn't much that person
can do about it.

THE WITNESS: Yes. I mean, there is
more than one person in the department, so it
helps when we get up to the commissioner to do something about it.

COMMISSIONER SCHILLER: But apparently Mr. Connolly had summed it up as that.

THE WITNESS: Summed up his position.

COMMISSIONER SCHILLER: Just to follow up on something that Mr. Edwards brought out, was that this -- perhaps shifting the inspections to -- on things to places where we enforce more heavily where there is pervasiveness of this nonadherence to the fire code standards, and one of the other things that seems to me, too, that there is a gap between the single-family homeowner and the two or more families. That doesn't seem to fit anywhere, either, in terms of even from your enforcement part. That, if you look towards taking enforcement so that it would be even applied to single-family homes and would apply, obviously, to Society Hill where there is condominiums and, therefore, if we did attempt to change some of these regulations that, you know, there would be enforcement, even if there was not bodily injury, but, just knowingly, and the pervasive habit of just ignoring fire code safety
issues that you could see, that you would also
include that in anything that the commission was
talking about, in terms of looking at the statute,
to give you a stronger hand, in terms of
criminality?

THE WITNESS: It would. Certainly,
though, in a situation such as a development,
Society Hill or any other development, if there
was a knowing violation, it could have taken place
at any time. With fire code inspection, once it's
a single-family unit, it's the owner that's
responsible, the person that's living there at
that time.

And, obviously, a fire official
isn't allowed to go crawl around up in the attic
to go look at things. That's supposed to be done
by the construction officials when the building is
going up. Only if something has been breached and
they find out about it, if it's a maintenance
violation, they can cite them, they give them only
three days to fix it.

But, if I was going to be conducting
this hypothetical investigation in this
hypothetical fire, I would look back to whenever
the violation occurred and take a look at who knew
about it, who knew about it when, and if it was --
whatever officials were involved at that time
would have to answer some questions.

COMMISSIONER SCHILLER: And go after
that individual developer or individual builder?

THE WITNESS: We would do a thorough
investigation of the facts, for sure.

COMMISSIONER SCHILLER: Thank you
very much, Mr. Cartwright. I appreciate your time
and effort.

THE WITNESS: Thank you, Mr.
Chairman.

COMMISSIONER SCHILLER: We’ll break
for lunch now. It’s a little bit after 1:00. Why
don’t we say 1:45 we’ll come back and resume the
hearings.

(Recess called at 1:03 p.m.)

(Resumed at 1:47 p.m.)

COMMISSIONER SCHILLER: We’ll resume
the hearing, then.

COMMISSIONER FLICKER: Good
afternoon, ladies and gentlemen.

When the State Commission of
Investigation undertakes an investigation, it’s a
bit like turning over a rock in the woods. You
know that something is going to come scurrying
out, but you certainly don't expect something like
what we encountered. It's like opening a can of
worms and having a 24-foot boa constrictor come
out.

Witnesses this afternoon will
describe a system rife with conflicts of interest
and compromised ethics. It is a system where
government employees, including municipal code
officials and inspectors, accept gifts of meals,
liquor, parties, and golf outings from builders
and developers seeking favors. A system where
builder escrow accounts are charged for
engineering inspections which never took place. A
system where pay-to-play is a proven tactic and
where private influence is peddled to the
detriment of the public interest.

And what about instances where
planned new homes never even get built, when
builders take your money and then go bankrupt or,
for whatever reason, fail to complete the job?
It's called builder default and, as you will hear
this afternoon, it is a worsening problem in New
Jersey.

Witnesses will describe situations
where buyers have been left with no alternative
but to complete construction on their own. In
other cases, unscrupulous builders have simply
reorganized to pursue business as usual under a
different name. In one such instance, a builder
got on ripping off home buyers and
subcontractors, even while under criminal
indictment.

It's not a pretty picture, but it's
one we need to examine in some detail if we are to
get to the bottom of the abuses in new home
construction and inspections.

Ms. Gaal, if you'd please call the
first witness.

MS. GAAL: There will be a panel --
or two witnesses, Joseph Becht and Karen Guhl.

EXAMINATION

BY MS. GAAL:

Q. Mr. Becht, may we have your name,
please, for the record.

A. Joseph Becht.

Q. And by whom are you employed?

A. The State Commission of
Investigation.

Q. In what position?
PUBLIC HEARING -

1. A. Chief accountant.
2. Q. Are you a Certified Public Accountant?
3. A. Yes.
4. Q. And, prior to working -- well, how long have you been with the SCI?
5. A. Approximately seven years.
6. Q. And prior to that where did you work?
7. A. I worked for the Division of Criminal Justice for 20 years as the supervising investigator of the major fraud section and approximately four years for Prudential Insurance Company as a special investigator in their healthcare field.
8. Q. And, Special Agent Guhl, may we have your name for the record.
10. Q. And by whom are you employed?
11. A. I'm currently a member of the State Commission of investigation.
12. Q. And did you work at the Division of Criminal Justice?
13. A. Yes, I did, for 20 years as a state investigator.
PUBLIC HEARING

Q. And you are a special agent with the Commission?
A. That is correct.
Q. This is directed to both of you. Were you both assigned to the Commission's investigation concerning new home construction issues?
MR. BECHT: Yes, we were.
MS. GUHL: Yes.

BY MS. GAAL:
Q. Starting with Chief Accountant Becht, did the Commission subpoena the records of various builders in relation to expenditures that they may have made on behalf of municipal employees and local construction office officials and inspectors?
A. Yes, we did.
Q. And did you personally analyze the records received from the builders to determine whether there was any money expended on behalf of any local municipal officials or code officials and inspectors?
A. Yes, I did.
Q. And did you prepare a breakdown for us of a sample of some of the money that was
expended?

A. Yes, I did.

Q. Could we have 193 up.

And is this a chart depicting some of what you found?

A. Yes.

Q. And what I would like you to do is kind of give us an overview, if you would, of the types of expenditures you found and some of the examples of the amount of monies expended.

A. Well, it starts off with the municipal officials in the building departments and the zoning departments, planning boards. They received donuts, bagels, trays of sandwiches. They got cookie trays, they got pies, some received flowers. There was a golf trip to Myrtle Beach. There were hotel reservations paid on the part of municipal employees when they attended a convention. There were holiday parties, there was a day at the races.

Q. A day at the races is what?

A. That was a day at Monmouth Park where you come and all the food and everything else is supplied to you.

Q. So, local officials were hosted by a
builder at a day at the races?

A. Yes. Normally the cost was about $46 a person, and we had numbers of approximately how many people attended that.

Q. I don't know if you recall, but, on that particular example, were there any local construction officials involved?

A. Yes. On the expense reports what they did was, the building official would list the names of the guests that were invited. Sometimes it would just be the town, other instances it would be a department, and in particular they would even list who the people are who attended.

Q. I see on your list you've got over $4600 in gift baskets. Can you give us any information about what those related to?

A. They were baskets that were supplied during Christmas, ranging anywhere from 30 to $50. They contained fruit, liquor, cheese, crackers, whatever.

Q. Did you find some examples where builders were hosting holiday parties?

A. Yes.

Q. How about, do you have an example there of over $800 in flowers?
A. The flowers were generally for like secretaries' day or, if they found out somebody had a baby, they sent flowers. For Christmas they sent poinsettias to different building officers.

Q. League of Municipalities.

A. After the -- the League of Municipalities meets -- in fact, I think they are meeting today, but, during November, after the -- after each day, some of the builders host parties at different locations down in Atlantic City and invite -- what we saw were just the names of the towns that were invited.

Q. Okay. Special Agent Guhl, did you have occasion to conduct a surveillance of a local construction official just this past holiday season, that would be December, 2002, based on information that a local builder was hosting a party for the construction office?

A. Yes, we did. It was on December 18, 2002.

Q. Could you speak up a little bit so we can make sure we hear you.


Q. And what did you observe?

A. We observed the construction
official entering into a local restaurant located
in a shopping mall, and we observed a number of
other public employees, and the information that
we had developed indicated that it was being paid
for by a builder.

Q. Now, was the developer one that
regularly did business in the municipality in
which the construction official was employed?
A. Yes.

Q. Did you notice other local or
municipal officials also attending the same party?
A. Yes. We observed the building
subcode official, we observed an elected official,
we noticed the director of the department of
public works and a number of the office staff.

Q. And did this occur during the
workday?
A. Yes, it did.

Q. Now, did any of those employees take
any personal time to attend that party?
A. A review of the time sheets for that
day revealed that none of the employees put in for
extended lunchtime and, in fact, the building
subcode official put in for four hours of
overtime.
Q. Now, were we able to actually corroborate this expenditure in the books and records of the builder?

A. Yes, we were. We were able, through subpoenas, to determine that the site superintendent for the builder paid for this.

Q. Paid for it?

A. Paid for it.

Q. Now, did you conduct any other surveillance of this particular construction official during the same holiday season?

A. Yes, I did. We conducted another surveillance on December 20, 2002.

Q. Two days later?

A. Yes.

Q. And what did you see?

A. Well, we learned that the party was being hosted by a builder, invitations had been extended to municipal employees, had been extended to business acquaintances and to the employees of the builder.

Q. And did your surveillance corroborate that, in fact, there was such a party and that those individuals were attending?

A. Yes. We observed the construction
official, we observed the director of public works, and we also identified four municipal vehicles.

Q. Now, again, were we able to corroborate, through the builder's financial records, that this expenditure was paid for through the builder?

A. Yes, through subpoenas to the builder and to the restaurant owner, plus an interview of the restaurant owner corroborated that information.

Q. Now, Chief Accountant Becht, with respect to the builders we looked at, we did not, in this instance, subpoena these records from every builder, did we?

A. No. Only the ones that we were looking at.

Q. So, it was a smaller, more selective number of builders?

A. Right. We issued approximately 28 subpoenas.

Q. And looking again at this exhibit, do we have some additional information concerning some of these expenditures?

A. Yes, I do.
Q. And is that now up on the screen?
A. Yes, it is.
Q. And under the category what we call comments or you call comments?
A. Yes.
Q. And what do those comments -- overall what do they represent? Information you found in the files?
A. Yes, they were contained on the individual expense reports, I guess to substantiate what they were paying and -- I guess they have to give a reason for taking somebody out for dinner, or whatever it was, and these were the comments that were on their expense reports.
Q. In other words, to distinguish it as a business expense, so to speak, from a personal expense?
A. Yes.
Q. If we might take a look at some of those comments, let's -- the comment number one next to lunches and dinners, you've got two notations there in quotes. Could you read those for us?
A. On one of the expense reports it stated, "Maintain relationship, upcoming jobs we
are doing in township."

Q. So that, in other words, that's what
the builder's records reflected was the purpose of
that lunch?

A. Right.

Q. And the second one?

A. There was another one to release the
performance bond.

Q. So there was a lunch or dinner with
some municipal officials for these purposes?

A. Yes.

Q. How about the golf outings? What
notations did you find in the records there that
were of interest?

A. On one it had, "Needed to keep the
name of the project at the name of the township
moving."

Q. So, in other words, the records say
they needed to keep a project in the township
moving, so they took somebody to a golf outing?

A. Yes.

Q. And how about the second comment?

A. The second was -- on some of the
golf outings they were actually run by
different -- this was the code officials
association held the golf outing, which a lot of
the builders attended.

Q. Now, "On trip to Myrtle Beach," is
that all it says?

A. Yes, that's what it said, and I
think it may have said "Golf outing," but I
don't -- it may have been separated.

Q. Now, under the comments for holiday
parties, the total amount there is over $38,000.

A. That was the total cost of the
holiday party on the part of the builder, and
approximately -- we noted 24 different public
officials who attended that party.

Q. At that party?

A. Right.

Q. At a per person cost of $92?

A. Yes.

Q. So that's how you came out with the
$4700?

A. Yes.

Q. Same thing there with a day at the
races. Is that how you came up with that
calculation?

A. Right.

Q. There were $46 spent per person for
Q. One of the quotes, the next quote, is "Maintain good relations." That's how they logged in some of those expenditures?

A. Right, when they sent the donuts or the bagels to the different offices, they would put down "to maintain good relations."

Q. Now, I notice that it's only $1160 in political contributions, but you have noted it. Why have you noted that?

A. Well, it could possibly be a fourth degree crime when an employee donates to a political event and then bills the corporation for that money. It would be okay if he paid it for himself, but, when he then asked for reimbursement on the part of the corporation, it may bring it to a fourth degree crime.

Q. And that would be something that we would refer?

A. Yes.

Q. Now, just so we are clear, did the records that you looked at reveal that these goings on were not just limited to construction officials and inspectors?
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A. Oh, no. Some of them listed the mayors -- the names of the mayors, deputy mayors, there were planning boards, some were MUAs, some were various offices throughout the townships.

Q. And might there also be personal or other guests invited, too?

A. Oh, yes.

Q. Are those other employees and officials included in the totals that you cited here?

A. No.

Q. They are not in the totals?

A. No, not at all.

Q. So this would be related to construction officials?

A. Yes.

Q. Okay.

A. And -- no. There are some other municipal officials noted here, too.

Q. Now, by the way, during our investigation did we find one instance where a builder actually hosted a party which included, among these other highlights, nude dancers and was attended by a subcode official in an unfinished building in that community?
A. Yes.

Q. And was that one of the homes that this same subcode official would have been required to inspect?

A. Yes, it was.

Q. And was any action taken when the community found out about it or the municipality found out about it?

A. When they found out about it, he received a 30-day suspension without pay, and eventually the home did get a CO.

Q. It got a CO?

A. Yes.

Q. Didn't we also find that it was not uncommon for builders to make what, for a lack of better term, I'm going to call large donations or gifts to municipalities in which they are building?

A. Yes.

Q. And tell us a little bit about that. In other words --

A. I know. There were three -- we saw three gifts. One municipality got two ambulances and other emergency equipment. Another municipality had a first aid squad building built,
an ambulance was donated and two bays on the fire department were repaired, and another municipality also got an ambulance.

Q. Did we see one in which there were $340,000 donated?
A. Yes.

Q. Now, did we find that these, quote -- and, for lack of a better word, I'm going to quote -- donations are linked or associated in some way with a developer?
A. Yes.

Q. And how did you see that linkage?
A. Well, they write it into the agreement that they may have to meet Mount Laurel agreements and then they also put in, "In addition we are going to donate $340,000 for emergency services."

Q. Special Agent Guhl, and this question is not just directed to you personally, but, in the course of our investigation, did the Commission question a number of code officials and inspectors and builders' employees about the solicitation and acceptance of gifts and gratuities?
A. Yes, we did.
Q. And what did they tell us? In general, what did they tell us?

A. Generally, that the builders will provide them and that the officials request them.

Q. Did they give us some idea of the nature of what these gifts or benefits are?

A. As shown on NCI-193, it was basically dinners, golf outings, holiday baskets.

Q. Building materials?

A. And building materials.

Q. Do the municipal ethics codes in place in all these municipalities prohibit the employees and officials from accepting gifts and other benefits such as we've seen during the course of this investigation?

A. Absolutely. We surveyed 50 municipalities and utilities. Those that don't have specific codified ethical standards in place defer to the state's local government ethics law, and the language is quite clear.

Q. So, either way, whether they had their own or they used the state's, it would have been prohibited?

A. Yes. Additionally, the Uniform Construction Code has a provision in it for...
conflicts of interest, but it doesn't necessarily relate specifically to acceptance of gifts.

MS. GAAL: That's all I have.

COMMISSIONER MARINIELLO: The agreement that you are saying that you, I think -- Mr. Becht, that you had referred to agreements that may have been part of Mount Laurel Housing requirements, you are saying that, within the actual agreements, themselves, the donations to the municipalities are in writing in those agreements?

MR. BECHT: Yes. What they say is, we'll do this and we'll do that, and 340,000 was mentioned in the agreement. On just one. The other two were just donations.

COMMISSIONER MARINIELLO: You mentioned building materials, Agent Guhl. Can you tell us what kind of building materials you found donated and how extensive that is.

MS. GUHL: We found major appliances, we found landscaping, we found windows, we found ceramic floors.

COMMISSIONER MARINIELLO: And --

MS. GUHL: And, to try to put a dollar amount on it on those specific items, we
would be talking around $20,000.

COMMISSIONER MARINIELLO: And are those provided to people who are directly involved in the inspection process or other municipal officials?

MS. GUHL: These were to individuals directly related to the inspection process.

COMMISSIONER MARINIELLO: Have we referred any of those scenarios to law enforcement authorities?

MS. GUHL: Yes. We've referred a number of matters to the Division of Criminal Justice.

COMMISSIONER MARINIELLO: That's all I have, Mr. Chairman.

COMMISSIONER FLICKER: Other than the ones we referred to criminal justice, are you aware of any history -- recent history of any building or code inspectors being indicted?

MS. GUHL: I believe a subcode official in Manalapan was recently indicted.

COMMISSIONER FLICKER: Can you think of one? I'm not testing you. I'm just saying, it's not common, is it?

MS. GUHL: No.
COMMISSIONER FLICKER: But you found quite a bit of this type of gift giving and gift receiving?

MS. GUHL: Yes.

COMMISSIONER FLICKER: In spite of the fact that it violated ethics rules, both local, state and, in fact, violates the laws of the State of New Jersey?

MS. GUHL: That would be correct.

COMMISSIONER FLICKER: Did you find any examples of code officials insisting upon or expecting workers for the builders to be working for them?

MS. GUHL: Yes.

COMMISSIONER FLICKER: Would you explain that.

MS. GUHL: When various code officials or inspectors were doing renovations to their own homes, the -- there would be a request made by the individual of the various builders to please send a crew to do the landscaping, to do the -- install the windows.

COMMISSIONER FLICKER: And the builder would accommodate that request?

MS. GUHL: Yes, the builder would.
COMMISSIONER FLICKER: Have we referred some of those examples to criminal justice, as well?

MS. GUHL: Yes.

COMMISSIONER FLICKER: Thank you.

COMMISSIONER SCHILLER: Thank you very much, agents.

MS. GAAL: The next witness is a protected witness, so we just need a minute or two for the technical hook-up to be done. He's not in this room with us. Just a minute or two.

COMMISSIONER SCHILLER: Maybe you could explain to the --

MS. GAAL: What we are going to do is we have a witness whose identity is being protected and we are handling it from a remote location, so we just kind of need a minute or two to get the technology hooked up and then I will question the witness and the witness will be able to hear and answer and, if the Commissioners have any follow-up, they will be able to do so, but we only have one live mic. I just need somebody to tell me when it's on. You should be able to see a silhouette at least on the screen.

EXAMINATION
BY MS. GAAL:

Q. Witness A, can you hear me?
A. Yes.

Q. Are you comfortable?
A. Yes.

Q. I have a couple of questions for you this afternoon. Have you ever been employed as a project manager for a home builder in New Jersey?
A. Yes.

Q. And, during your employment as the project manager here in New Jersey, were you ever subjected to personal requests from municipal construction code or inspectors wherein they asked you for gifts or things?
A. Yes.

Q. And did this occur in the very municipality where you were building?
A. Yes.

Q. What kinds of things were you asked for?
A. Windows, appliances, construction equipment.

Q. Windows?
A. Yes.

Q. Large appliances?
A. Yes, stoves, washers and dryers.
Q. Construction materials?
A. Yes.
Q. Can you give us an idea of how often this occurred? I mean, would it occur more than once while you were on a project?
A. Yes.
Q. Did it happen with more than one individual?
A. Yes.
Q. Did the municipal employees or inspectors make some of the requests for themselves?
A. Yes, they did.
Q. Did they also ask at times for things for their family members?
A. Yes.
Q. Now, in your experience, is this a common occurrence with certain individual inspectors or code officials?
A. Yes.
Q. And is it fair to say that other code officials or inspectors don't make these kind of requests?
A. Yes.
Q. Now, have you also, in your past, served as an inspector yourself in a New Jersey municipality?
A. Yes.
Q. And, in connection with that employment, have you learned of other building inspectors requesting materials or personal items from builders and developers doing work in your municipality?
A. Yes.
Q. And did those requests also include things like home building materials?
A. Yes.
Q. How about major appliances?
A. Yes.
Q. Could you do your best to give us a value of what some of those individual requests were worth? I'm talking about a dollar amount.
A. Five to $10,000.
Q. Each time?
A. Yes.
Q. And are you aware of municipal inspectors and construction code officials socializing with builders at the builders' expense?
A. Yes.

Q. And what kind of activities might the builder pay for for the local construction code officials or inspectors?

A. Lunch, dinner, ball games, sporting events.

Q. Now, when these requests were made -- when you worked for the builder, when the requests were made, did the builder that you worked for always agree to provide these things?

A. Yes.

Q. And have you seen instances where builders get preferential treatment when it comes to inspections?

A. Yes.

Q. And how do they -- what are some of the ways that they can get preferential treatment?

A. Inspections are done faster.

Q. So, in other words, if you are a preferred builder, your preferential treatment might be just getting your inspection done quickly?

A. Correct.

Q. On the other hand, have you seen situations where inspectors or code officials will
ride certain builders?

A. Yes.

Q. And what does it mean when they ride a builder?

A. Just to take your time and find out whatever they want.

Q. Nitpick?

A. Nitpick, yes.

Q. Make him wait for inspections?

A. Yes.

Q. Have you seen any situations where a builder who didn't choose to give the gifts then was subjected to being ridden by the other inspectors?

A. Yes.

Q. Are you also familiar with the fact that, in the case of engineering inspections and construction code inspections, they are not always actually done?

A. Correct.

Q. Are there times when the inspectors will sign off and indicate that they did inspections when they really didn't do them?

A. Yes.

Q. Do local inspectors simply sign out
and take, say, three hour lunches and drive
around, if they don't feel like working?

A. Yes.

Q. Have you seen situations where
engineering inspections have actually been charged
against monies escrowed for inspections by the
builders and those inspections were never done?

A. Yes.

Q. In your opinion, is there much
oversight over inspectors and code officials in
New Jersey when they are out in the field?

A. Yes.

Q. There is a lot of oversight or there
isn't?

A. There is a lot of oversight.

Q. Who oversees them?

A. Oh, no, I'm sorry. No, there is no
leadership.

Q. Say that again.

A. There is no leadership.

Q. My question was, once the inspector
is out in the field, is there anybody really
watching what they do?

A. No. They are pretty much on their
own.
Q. Have you seen situations where inspectors have billed for overtime which is not performed?
A. Yes.
Q. Have you heard the term "Drive by" or "Windshield inspections."
A. Yes.
Q. What are they?
A. Just that. You don't get out of vehicle, you just drive through the development or drive through wherever a request might have been made.
Q. And do they occur in New Jersey?
A. Yes.
Q. How often? Do you have any idea?
A. Pretty often.

MS. GAAL: Okay, these are all the questions I have and we are going to see if there are any other questions for you.

COMMISSIONER MARINIELLO: Good afternoon. Can you tell us, to what extent have the building departments or construction departments that you've worked in been infiltrated with this type of corruption? In other words, do the people who work within those departments or
within those municipalities beyond the individual inspectors know what's going on?

THE WITNESS: Only the people that are involved.

COMMISSIONER MARINIELLO: Have you seen instances where anyone other than inspectors, themselves, in other words, people who work in the office, or people who work outside of the construction office, have demanded or requested certain items from developers?

THE WITNESS: Yes.

COMMISSIONER MARINIELLO: And, in your experience, has that been a common occurrence, as well?

THE WITNESS: Yes.

COMMISSIONER MARINIELLO: So it's not just the people doing the inspecting who are requesting builders to do this type of -- I mean, to do work for them or provide them with certain items?

THE WITNESS: That's correct.

COMMISSIONER MARINIELLO: And did you experience that on the developer's side, as well?

THE WITNESS: Yes.
COMMISSIONER MARINIELLO: What is it about this process that -- is there something specific about this process that invites this type of corruption, in your mind?

THE WITNESS: Just to try to get the houses built as fast as possible in the easiest way.

COMMISSIONER MARINIELLO: Is there -- do developers who are seeking this benefit from the town, do they have any sense or fear of being found out?

THE WITNESS: No.

COMMISSIONER MARINIELLO: So they pretty much do this type of activity without regard to whether or not they are breaking the law?

THE WITNESS: Correct.

COMMISSIONER MARINIELLO: Have you witnessed or do you know of personally any circumstances where -- within people you have worked with who have been prosecuted for this type of activity?

THE WITNESS: No.

COMMISSIONER MARINIELLO: And, yet, you've seen it many times?
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THE WITNESS: Yes.

COMMISSIONER MARINIELLO: On the inspection side, do you have any suggestions for us that would help us to provide better oversight of the inspectors who are working for the people of the individual towns?

THE WITNESS: I guess someone has to supervise them, watch them closer, constantly watch them closer.

COMMISSIONER MARINIELLO: In your circumstance, are the officials directly above you supervising your daily activities.

THE WITNESS: No.

COMMISSIONER MARINIELLO: Are they involved in the type of corruption that you are referring to?

THE WITNESS: Some are.

COMMISSIONER MARINIELLO: And the people above them, to what extent are they involved in overseeing your bosses.

THE WITNESS: I don't have an answer for that. I'm not privy to that.

COMMISSIONER SCHILLER: We want to thank you very much. We are going to have a lot more questions for you in private sessions, I'm
sure, but, for the time being, I think you've
given us an overview of what is the state of the
situation out there and, so, the Commissioners,
both in deference to you and also gaining more
information, will probably defer most of our
questions to a private session, so we thank you
very much and thank you for your cooperation.

THE WITNESS: You're welcome.

MR. GLASSEN: The Commission would
like to call the next witness, Mr. William Kondla,
please.

Mr. Kondla, I would like to thank
you for your corporation and apologize for making
you wait this long, but we appreciate your
testimony and appearance here today and value what
you have to say and believe it important to hear
from you.

THE WITNESS: Thank you.

MR. GLASSEN: Will you please stand
and be sworn.

WILLIAM J. KONDLA, after having been first duly
sworn, was examined and testified as follows:

EXAMINATION

BY MR. GLASSEN:

Q. For the Commissioners, would you
please state your name and address.

    A. William Kondla, 609 Four Seasons Drive, Wayne, New Jersey.

    Q. And could you inform the Commissioner of your background, please.

    A. I'm a retired electrical contractor, having my business for 40 years. Served 12 years as a commissioner on the State Board of Electrical Examiners in the State of New Jersey, an ex-fire chief in Oakland, New Jersey.

    Q. Do you continue to maintain any licenses?

    A. Yes, I do. I maintain my electrical license.

    Q. What type of community is the Four Seasons at Wayne?

    A. Four Seasons at Wayne is a senior 55 and over community, and the complex is made up of 14 buildings, of which 12 are 16-unit complexes and one is a -- or two are 19-units, so we have 230 residents residing in there.

    Q. Again, how many buildings are there at Four Seasons at Wayne?

    A. A total of 14.

    Q. Do you hold a position with the
homeowners association?

A. Yes, I do. I am transition chairman and I'm also vice-president of the homeowners association.

Q. Could you explain to the Commission when a transition chair is and what a transition committee does?

A. Sure. What we are supposed to do, once a developer has notified us that they are ready to turn the community over, the transition committee and myself, as chairman, we are to look over what they've provided us and see if we accept what's been provided, and we had a bunch of eye-opening experiences.

Q. As the transition committee chair, were you responsible for hiring an engineering firm?

A. The way it works is that, early on in the development of the complex, when the developer has the majority of the members of the board, at that time they hire an engineering firm and they also hire a management company and usually an attorney.

Q. And then does the homeowners association inherit those individuals?
A. Yes, we do.

Q. Does it cause you concern that the developer has initially hired the engineering firm?

A. Well, yes. I think you have to question where the loyalties are. Is the loyalty going to be with the homeowners association or is it going to be with the developer who is going to continue to recommend these various different individuals and firms?

Q. Who pays the engineering firm for the --

A. The homeowners association does.

Q. Were you satisfied with the report of the engineer hired by the builder for Four Seasons at Wayne?

A. The engineering firm produced a report to us indicating, I want to say, maybe about 200 items that they felt were code violations, unworkmanlike conditions and, upon further investigation by myself and another member of the transition committee, we found about 2600 code violations, life safety issues, and unworkmanlike workmanship.

Q. What enabled you to be able to find
that many more violations at Four Seasons at 
Wayne?

A. Well, I think what happens with most
of these communities is the engineering firm
that's hired is hired under a limited amount of
money, so their investigation is limited by the
dollar amount, so they are doing a quick purview
of the whole complex and they are not really
disclosing or uncovering a bunch of the problems.

Q. Did your background and the
background of your colleague assist you in the
discovery of --

A. Sure did.

Q. -- multiple violations?

A. Sure did, yes.

Q. And how did that assist you? Can
you explain that to the Commission.

A. Well, we found actual blatant code
violations that should have never gotten past the
township inspection. We found things such as
attic access panels that were installed that were
suitable for a single-family residential unit,
but, in the class of construction it is, where you
have multiple families residing in the building,
they were supposed to be metal fireproof doors,
and there was 28 occurrences in 14 buildings, and
that should have never gotten past either building
or fire.

Q. And you are familiar with these code
inspections because of your background and your
colleague's background, is that correct?
A. That is correct.
Q. Can you put a dollar value on the
amount of work that you and your colleague did in
inspecting the Four Seasons at Wayne facility?
A. The law firm that represents the
homeowners association has put a value of probably
somewheres between 150,000 and $200,000 of time
spent between this fellow colleague and myself in
preparing all these reports, because none of this
was disclosed in the engineering reports
initially.
Q. How did you conduct your inspection
of the facility?
A. We actually went building by
building and did a visual inspection. We didn't
open up many things, although DCA had come in at
one point after the mayor from Wayne Township had
requested their presence, and they actually
started to open up electrical boxes, plumbing
access panels, to find additional code violations
that we didn't, as well as myself and the fellow
helping me, we didn't get on the roofs, because
the roofs are like three stories high.

Yet, the engineering firm has found
almost everything similar to what I saw down in
Newark, that all the step flashing was incorrectly
installed, roof shingles were not installed
correctly.

Q. Did you find a repetition of the
errors in your development?

A. Yes. That's what surprised us. In
the process, I guess it was about three years or
four years that they built the complex, they
repeated the same errors, code violations, life
safety issues in all 14, so it wasn't that it
passed by an inspector in just one instance. It
happened 14 times.

Q. When you speak of code violations,
are you talking about workmanship issues or life
safety issues? And can you kind of differentiate
that for the Commission?

A. We had a tremendous amount of
building code violations, electrical code
violations, plumbing code violations, fire code
violations, life safety issues, and where you even got into -- the fine line was, in some of the areas where you had improper workmanship or poor workmanship, that came very close to a code violation or created a code violation.

For instance, just all the fire doors, when I was listening to the gentleman from Essex County talking about all the one-hour fire-rated doors, the closers -- automatic closers that are on the doors are incorrectly installed so the doors don't even close and, when they do, the latching mechanisms that were put in there are the incorrect latching mechanisms for those doorways, so you have a workmanship issue, but that workmanship issue actually creates a fire code violation, because the doors aren't closing to get the one-hour fire rating.

Q. Since we are talking about fire issues in the Four Seasons at Wayne, was there a failure relating to the fire suppression system at the development?

A. Yes, there was. In the very first building they built they had a fire sprinkler system fail with freeze-up. It was a dry system up in the attic that got condensation in the
lines, and in one of the elbows -- a 90-degree elbow was sitting low, it was not pitched properly, water accumulated in there and the fitting cracked in low temperature conditions and flooded the building out. They had to move the residents out.

Q. What was the result of it? They moved the residents out?
A. And they had to repair the building. Extensive repair to the building, yes.

Q. Did that happen more than once?
A. It happened twice.

Q. And this is a community of 55 and older?
A. Yes.

Q. Were the residents inconvenienced?
A. To say the least. I would say also unhappy.

Q. Can you give us an example of a structural failure that occurred at that --
A. Yes. We had a structural failure occur approximately two years ago on a building where a column failed and the building dropped a half an inch. Upon further investigation, it was found by the developer, K. Hovnanian, that the
columns were not put in according to original
design drawings, and that every column in the
entire complex had to be redone into steel. They
were concrete originally, and we had over a
hundred fifty steel columns in the entire complex
that had to be replaced.

Q. Now, were these columns inspected?
A. Yes, they were.

Q. And are you saying every column was
installed incorrectly?
A. They didn't meet the engineering
specifications, certain components of the columns
were missing, they were not finished on the top
correctly. There was a nonshrink grout that was
supposed to be applied at the tops that was
missing, and that's what really caused the
structural failure on the one building.

Hovnanian has been working on the
columns for about 14 months and we are just coming
close to being done, but there has been a
tremendous amount of inconvenience. You are
dealing with seniors and handicapped people that
were forced out last winter during snowstorms as
their buildings were being worked on, so there has
been a tremendous inconvenience to the residents
and their customers.

Q. Could you describe for the
Commission what the 14 buildings are like? When
you say that it dropped a half an inch --

A. Well, the unique part about this
complex, and I believe it was the first time this
developer attempted to do this type of
construction, what we have is we have an underside
garage parking that will handle about 30 some odd
cars, and it's a 16-unit building, and where I
think the failure -- and, of course, it's been a
dual failure. The failure has been by supervision
on behalf of the developer and failure by the
Township of Wayne in not getting the proper
inspections due, and I think that the homeowner
has not been protected. The end consumer was not
protected. We all did pay inspection fees in the
price of our homes and, yet, it wasn't properly
inspected.

It appears that the individual units
that the people reside in don't have the -- as
significant amount of code violations as the
common areas. The common areas being garages,
hallways, elevators, roof. These -- it seems like
there was almost like a noninspection. That's
where we are finding all of these problems. Of course, as transition chairman, we can only report on common areas. The homeowners have to take care of their individual units.

Q. Would the problems with the columns that you observed, would they have been self-evident to an inspector?

A. Especially a couple of them, which I think I did provide a picture to the Commission, because the DCA had told me that the building inspector said that they were hidden by the forms and he couldn't see where the structural parts were missing from the whole column assembly.

Well, I produced a drawing that shows that one column is only under half of the beam, so how that got passed is beyond me.

Q. As a consequence of the repair of the columns, have other problems developed?

A. Yes, we've uncovered -- actually, the first thing that ended up happening was that I went into our clubhouse, into our clubhouse attic area, where the air conditioning system and heating system is for the clubhouse, and it had to be the worst installation I have ever seen in my 40 years of construction experience.
One day we had all of the fire sprinkler valves -- they are called RPC valves -- let go because of a high pressure condition from the Township of Wayne and it flooded out all the garages. Well, that particular day the newspapers were there, the mayor was there, the council was there, and what I did is I took the mayor and I brought him up into the attic and I said, "I want to show you what your town officials are approving," and his comment was, "I'm only a layperson, but, boy, I don't believe what I'm looking at," and he was the one who instituted the investigation by the DCA.

Q. Has the DCA been helpful to you?
A. The DCA has been in there and they've been in for three or four investigations, and they were working on a list that they felt as though there was code violations and they were also concerned that there was some handicap accessibility violations within the complex, which I had only raised in minor essence in my 2600 item report back to the developer, but DCA, all of a sudden, after doing their investigations, on their last visit they said that, under a new court ruling, they would no longer be going to the
developer and that us homeowners would now be
handed the deficiency certificates and we would
then have to fix it and litigate to get it done,
which, to me, we are not protecting the consumer
here. Something is lost in that ruling.

Q. Do you have any estimate as to how
much additional money the homeowners association
has had to expend as a result of these
deficiencies?

A. Yes. We've spent in excess of a
hundred thousand dollars and, to date, we've been
reimbursed by the developer about 40 percent of
that money, and we are under discussions with them
and things were promised where we were told, "Go
ahead and fix it and we'll reimburse you," and now
we are arguing over those issues right now.

Q. What is the financial impact on the
homeowners association and the individual
homeowners?

A. Well, beings that we are a 55 and
older community, of course we are governed on our
budget, our budget has to be a zero balance basis
budget at the end of the year, so we can't develop
extra dollars like this is costing us, so it is
hurting us. I mean, we are spending dollars we
MR. GLASSEN: Mr. Chairman, I have no more questions.

COMMISSIONER EDWARDS: Bill, you found 2600 violations?

THE WITNESS: Yes. Unworkmanlike workmanship and also code violations.

COMMISSIONER EDWARDS: Did you break them down between -- have you broken them down yourself between which are unworkmanlike and which are code?

THE WITNESS: I would say, probably, Commissioner, that we are probably at a 50/50 split, but then, like I had said earlier, some of the workmanship issues create a code violation, so it's a fine line where the developer is -- what the developer has done is responded in taking care of a lot of the code violations, and we are still dealing with some, but the code and life safety issues. They've taken care of some of the drainage. We've had the same drainage situation -- storm drainage. All the storm drainage was half the size. It's all been replaced now.

So, the inconvenience to the
homeowners has been phenomenal because we've just
been ripping up and tearing apart, but we are
getting there.

COMMISSIONER EDWARDS: You heard the
testimony earlier today in Newark. It seems as
though the same developer is working with and/or
resolving a lot of your problems. You've been
complaining about them, but they are involved at
least very aggressively in solving those problems
as opposed to the Newark circumstances. Am I
seeing that accurately?

THE WITNESS: You know, that's what
I gathered today. I mean, we had the same problem
as them, but our issues are being resolved. I
mean, they are looking for a final transition
agreement from us and we are not ready to sign it
because there is issues that they are not agreeing
to, so we still have to hammer that all out, but I
think our transition process is well along the
way.

It just shouldn't happen, though,
Commissioner. In other words, this should never
be, and the thing is, is that, if it wasn't for
myself and this other individual on the transition
committee, most of those things would have gone
undetected. You know, most communities don't have a couple professionals that can dedicate the time that we did to uncover a lot of this and that's pitiful. We are losing protection to the consumer.

COMMISSIONER EDWARDS: Before you get to the transition agreement, which is still to come, under the Newark circumstance, they were already in a transition agreement --

THE WITNESS: Yes, right.

COMMISSIONER EDWARDS: I'm gathering, also, that you are focusing and have focused a significant amount of your complaints to -- about the inspection process. There is no consumer advocate out there, government is not there protecting and, point in fact, the homeowner who is buying the property, the government is protecting the health and safety violations and walking away from the rest of them and protecting themselves by these inspections more than they are protecting the consumer.

And you have a builder in this case, I guess, who is not, for whatever reason that I'll tell you I'm not aware of, and I'm assuming before we end here we'll find out more about it, is
having a problem with the quality of construction that he's doing. That project should not have that level of problem in violations without the builder himself finding out what the problem is.

THE WITNESS: That is absolutely correct. That's what I'm saying. Lack of supervision. I mean, it's a dual -- it's a dual catastrophe that's taken place. Supervision by the developer and lack of inspections by the town, and everybody has an excuse, but the poor homeowner sits there.

COMMISSIONER EDWARDS: I've asked the question of most people over the last couple of days. What recommendations do you have for us -- I know you've given us extensive amounts of information and data, and we deeply appreciate that, and I know personally of your expertise for about 30 years, so I can attest to the fact that the citizens in your community are -- should be thankful for having you there to have caught a lot of these things.

With that level of background, with that expertise, with that information and with this experience, are there recommendations you can make to us about how we might move to make the
system better?

THE WITNESS: A couple suggestions

I'd like to offer to the Commission. First of all, I think it's an unacceptable answer when the township says that the inspector is too busy, okay, and that's why he didn't perform the full inspections. If the inspector is too busy, there best be some more inspectors out there and, if a town is hit with a heavily load, perhaps the state should have it that inspectors can be moved around a little bit to cover these high peak times when towns are hit.

The other thing that I see that New Jersey lacks, and I think it's important, is on HVAC, heating, air conditioning, ventilating, where we don't have an inspector for that. All HVAC work falls under the chief building code official, the fire code official and the plumbing code official, so no one has the total authority, and I got to say that most of the HVAC work in our complex was a disaster and that's because no one saw it -- I mean, you know, when you have major air conditioning systems, there has to be a walkway around the equipment to service it. There was no walkways, trusses were cut to get the air
conditioning equipment in, never repaired. Things like that just shouldn't happen, so I think there has to be a responsible inspector and many states have an HVAC inspector, where New Jersey doesn't.

COMMISSIONER MARINIELLO: Do you have any idea, Mr. Kondla, how much it would have cost the Four Seasons at Wayne association to have a private engineering company come in and do the work that you did?

THE WITNESS: Our attorneys tell us that probably that value was somewheres around 150, $200,000 by the time we prepared all the reports, took pictures, which the Commission does have a copy of the pictures, like 200 some odd pictures noting all the code violations.

COMMISSIONER MARINIELLO: Obviously there are some, and probably many, developments where that's cost prohibitive and they don't have the experience of yourself and the other person --

THE WITNESS: And someone found it. So, these developments are existing with all these same problems, but they just haven't been uncovered.

COMMISSIONER MARINIELLO: Right.

Thank you, Mr. Kondla.
COMMISSIONER FLICKER: Hello, Mr. Kondla.

THE WITNESS: How are you?

COMMISSIONER FLICKER: Nice to see you again.

During some of the problems that your home and your development encountered, was there a lot of press up in your area about some of these issues?

THE WITNESS: No.

COMMISSIONER FLICKER: There was no attention by the local media?

THE WITNESS: The only time we got attention by the local media was when all the fire suppression systems let loose one Saturday morning and that brought the media out, but the media is not responsive and, you know, it's a tough call, you know, actually why, but, you know, do you beat over the head of the person that's feeding you? And, you know, there is where the question comes in with the media.

COMMISSIONER FLICKER: What do you mean?

THE WITNESS: Well, advertising revenue versus bad press.
COMMISSIONER FLICKER: Do you think your -- the day that the press did show up, did you then get some attention in the local papers or the other media?

THE WITNESS: Yes.

COMMISSIONER FLICKER: Was there a flurry of activity thereafter by the developer?

THE WITNESS: Yes, there was.

COMMISSIONER FLICKER: And when that media then died down, what happened to the developer?

THE WITNESS: Well, no, I think that that probably instituted a better working relationship and understanding that we had some real problems there, and I think it maybe brought everybody to attention. I think we have developed a fairly good rapport with the developer at this time, but I don't think it should have had to take this long and I don't think we should have had to uncover all of these problems.

COMMISSIONER FLICKER: What was your relationship with your local mayor and how did that play in?

THE WITNESS: Just the one time when he was out there, and he was the one that brought
the DCA in because he was trying to swing, I believe, the responsibilities from the town to the developer and, you know, like I had stated earlier, it's really a dual responsibility that has failed there.

COMMISSIONER FLICKER: Before the ruling -- before DCA told you about that court ruling, had DCA given you any reports or done anything with the developer?

THE WITNESS: Just verbalized to us things that they found and, since the last meeting with DCA that I had, we have not received any further reports. We were just notified that the developer would no longer be in the picture.

COMMISSIONER FLICKER: Mr. Kondla, we all thank you very much.

THE WITNESS: Thank you.

COMMISSIONER SCHILLER: Mr. Kondla, just like to ask one question. What would be the average cost of one of the homes in your development, Four Seasons?

THE WITNESS: They are selling now in the 350 to almost $400,000 range.

COMMISSIONER SCHILLER: And basically it seems, as you said before, that this
has worked toward some solution with the developer as opposed to what we've heard about at, in particular, Newark's situation.

THE WITNESS: Um-hum, and I think only because we caught it before we signed off on transition.

COMMISSIONER SCHILLER: I think Mr. Edwards pointed out, too, that the work you've done, as compared to most people, it is really very important to the rest of the community and you've supplied an invaluable service to your community and we appreciate your coming in and filling us in on that. Thank you very much.

THE WITNESS: Thank you.

MS. GAAL: Next will be a panel, Mary DeVane, James Sabetta and Richard Mursheno. If we could have you remain standing and the reporter will place you under oath.

MARY L. DeVANEY, JAMES A. SABETTA and RICHARD MURSHENO, after having been first duly sworn, were examined and testified as follows:

MS. GAAL: Thank you. You may all be seated.

EXAMINATION

BY MS. GAAL:

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Q. I'm going to start with Mr. Mursheno on my right. May we have your name, please, for the record.

A. My name is Richard Mursheno.

Q. And by whom are you employed?

A. I'm employed by the New Jersey State Commission of Investigation as a special agent.

Q. Prior to your employment with the Commission, who did you work for?

A. I was employed by the New Jersey State Police for 26 years, 21 of which I spent with -- in the Narcotics and Organized Crime Bureau.

Q. I'm going to ask you to make sure you are close to that mic. I'm going to ask everyone that. It's a little hard to hear you.

Ms. DeVaney, can we have your name and address, please, for the record.

A. Yes. It's Mary Louise DeVaney, 14 Two Penny Run, Pilesgrove, New Jersey.

Q. And that's in Gloucester County?

A. Salem County.

Q. Salem County, excuse me.

Mr. Sabetta, your name, please.

A. James Sabetta, construction official
of Woolwich Township, Gloucester County.

Q. How long have you been the construction official in Woolwich?

A. I've been a construction official for seven years.

Q. What licenses do you hold?

A. I have HHS building, building subcode, construction official license, local dwelling inspector and local housing inspector.

Q. Okay. Mr. Mursheno --

A. Excuse me. I also have a New Jersey home builders license.

Q. Okay. Thank you.

Special Agent Mursheno, were you assigned to the Commission's investigation related to new home construction issues?

A. Yes, I was.

Q. And were you given a specific assignment to look at the question of builder defaults?

A. Yes, I was.

Q. Could you tell the Commission how many scenarios -- approximately how many scenarios you examined?

A. Since April, when I came to the
Commission, I uncovered nine builders,
approximately 91 victims throughout eight counties
in the state.

Q. And those counties would be which?
A. Cape May, Salem, Gloucester,
Monmouth, Morris, Burlington, Mercer, Middlesex Counties.

Q. And, just so we are clear, you found
those scenarios since April when you joined our
staff?
A. Yes.

Q. Was it difficult to find the
scenarios?
A. Yes. The scenarios -- there is no
central place where these scenarios are kept or
these complaints are kept. No state, federal,
local clearinghouse.

Q. So how did you find them?
A. Through Internet searches, through
our analysts that are part of the staff, through
paper reports, media, and also we sent out
questionnaires to the 21 prosecutor's offices
within the state and asked them if they had any
default issues.

Q. So what you found is not, by any
means, necessarily an all-inclusive list?

A. No, by no means.

Q. I'd like you to take a look at Exhibit Number 192, which is -- probably you have a hard copy there. It should be up on the screen. Is it up there?

A. Yes.

Q. It's a chart entitled "Typical Builder Default Scenario," is that correct?

A. That's correct.

Q. And was this prepared by the Commission staff based upon your investigative findings on the default issue?

A. Yes, it was.

Q. And I'd like to kind of briefly go through it and have you explain to us how this depicts what you found occurring in the State of New Jersey. If we start with the circle up at the top that says "Homeowner enters into contract," that's sort of where the process starts, right?

A. Yes, the process starts where the builder and the home buyer enter into a contract. Usually they deposit anywhere from five, 10 percent on the building and the builder typically uses that deposit to begin the process of building
a house, although, when you are in a development, usually what happens is the builder uses that deposit -- your deposit to finish someone else's house.

Q. Okay.

A. Then what happens is the builder recoups that -- under normal circumstances recoups that deposit for the homeowner or for the home buyer through settlement and then puts that into his house.

Q. Okay. So, if we walk through this scenario, you have a homeowner enters into a contract and they normally take maybe five to 10 percent down as a deposit, am I right?

A. Yes.

Q. And the money isn't segregated in any type of escrow account for that particular homeowner?

A. No, it isn't.

Q. Did you find that generally the builder or often the builder begins work utilizing subcontractors?

A. Yes, he does.

Q. So the builder hires subs, and in the default scenario what happens with respect to
the payments to the subs?

A. Well, what happens is, if the builder gets in trouble, either through mismanagement, building costs go up, or some other means, whatever other means there are, the subcontractors subsequently do not get paid. They are working, they don't get paid.

Q. And what did we find occurs when those subcontractors no longer get paid?

A. Well, they stop working.

Q. And what else do they do?

A. And then subsequently they place liens on the property.

Q. And after that what do some of the builders do?

A. Well, the builders -- obviously they were not paying the subcontractors. The homeowner, he -- they are aggravated because they are not getting their house built. Attorneys step into the process and they attempt to litigate the situation, but, in the process, the builder goes -- files for bankruptcy protection.

Q. And, so, now we've got the builders file for bankruptcy protection, the homeowners often hire a lawyer, and there are liens on the property?
homeowners.

What did we find occurs with respect
to the homeowners' efforts to get those homes
completed?

A. Well, typically what happens is the
homeowner has to satisfy the liens, thereby paying
twice for the same services that they already paid
for and, once they satisfy that, then they
continue building themselves, become the
contractor, and muddle through the process
themselves.

Q. So we've found homeowners that end
up sort of muddling through themselves as the
contractor, and did we find sometimes where they
have to go out and get somebody else to finish the
work?

A. Yes. If they go to another
contractor, then sometimes they start brand new,
and that's more expense to the homeowner.

Q. And --

A. On top of that is the lawyer's fees
that they are paying through this whole process,

Q. What's happened to our builder? Now
he's gone into bankruptcy and what do we find that

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they often do?

A. Oh, the builder. The builder typically reorganizes under another name and continues the same practice to another homeowner -- home buyer.

Q. So the cycle starts again?

A. Yes.

Q. Now, what's the average time for completion of a home ordinarily?

A. Ordinarily it's anywhere from six to nine months.

Q. Based on your analysis of the default issue, what was the average time to complete the homes you found?

A. The average of the homeowners that I -- home buyers that I've taken into consideration was 20 months.

Q. Can you give us or give the Commission some description of the impact that this kind of thing has had on some of these homeowners?

A. Well, the homeowner -- the American dream of owning a home in -- with these homeowners has become a nightmare and people just starting out, the young family just starting out with a
family or the people that have been saving all
their lives for that retirement home are
financially devastated. The remedies that the
courts offer are -- usually they do not recover
the money that they -- that they are awarded in
the courts.

On top of that, you have these
families going -- they sell their homes to have
the deposit for their new home. Now they've
settled on their houses, they've moved out, and
now they are forced into either homelessness or
they have to move in with in-laws, they have to
rent an apartment, and there is families that --
one family had five kids, the two sons, 19 and 17,
and a daughter 13, two-bedroom apartment, and
those three kids are living in the same room, the
girls and the boys, on mattresses, because they
don't have enough room to put furniture into the
room. This is a nice family.

Q. We found people that have had to go
to motels, trailers, live with relatives, so
forth?
A. Yes.

Q. Now, did you recently investigate --
or you recently actually learned of a scenario in
Burlington County where homeowners have put down money for homes, but they haven't received anything yet?

A. Yes, there was an 18-lot subdivision located in Maple Shade on Farmhouse Lane. These -- nine of the 18 houses are finished and occupied. The other nine, the builder took deposits anywhere from 14 to $75,000, and in some cases those lots are vacant -- and these deposits were taken between the year of 2000 and 2002. Now these lots are either vacant or the houses that are on there are incomplete and abandoned.

Q. Now there are nine lots you mentioned?

A. Yes.

Q. How many buyers involved?

A. Twelve.

Q. Now, you say nine lots. How did you get the 12 victims?

A. Oh, the builder took several deposits on the same lot.

Q. Were any of those deposits put into an escrow account?

A. No. The builder wouldn't permit that because he said he wanted to put it into the
construction of the houses.

Q. Were you able to get sort of a total dollar amount for us on just that one scenario? How much the builder got?

A. The builder -- approximately a half a million dollars.

Q. Now, Mrs. DeVaney, who was the initial developer on the home in which you reside?

A. Well, Alan Rosenstock was the developer for the land and then we purchased the home from Heritage Building Group, LLC.

Q. And did you sign a contract to purchase your home?

A. Yes, we signed that November 17, 1997.

Q. Was it new construction?

A. Yes.

Q. You are the first owner?

A. Yes.

Q. What was the purchase price?

A. It was supposed to be 47,000 for the land and 153,000 for the home, total of 200,000.

Q. And when was the construction to be completed?

A. Well, they said 150 days from the
signing of the contract, which would probably have
brought it to around September of '98 -- not from
the contract, I'm sorry. From completion of the
foundation.

Q. So 150 days, you think? 120 days, 150 days?
A. Right, 150.
Q. So, about four and a half months
from the foundation the home was supposed to be
completed?
A. Correct.
Q. Did that contract that you had call
for you, as the buyer, to deposit your monies for
the residence in an escrow account with a title
company?
A. Yes. Our builder wanted us to have
the money in an escrow account with Surety Title
and supposedly our money was going to be safe
there and we had --
Q. How much money?
A. As of February of '98 we had
$74,684.43, and by the end of June that same year
we had -- there was only $91.43 left in there.
Q. Now, did the builder tell you which
title company to use?
A. Yes, he did.

Q. And was there supposed to be a procedure in place so that you would be notified before any money was to be paid out on the construction?

A. Yes. We had an escrow agreement combination, it's called. Is it okay to read this?

Q. Sure.

A. It said, "In order to release" — well, first it says, "Surety Title Group agrees to hold in escrow the sum of $72,684.43 from the settlement of the property above-captioned," which is Two Penny Run. "The funds are to be retained in safe" — ha-ha — "custody by the within named escrow agent with interest. In order to release the funds held, the following terms and conditions must be met. By phone call from either Leonard M. DeVaney" — who is my father-in-law who went in on the house with us — "Timothy J. DeVaney" — which is my husband, and myself, "Mary Louise DeVaney for construction draws payable to Heritage Building Group."

Q. So the gist of it is that either you, your husband or your father-in-law were to be
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1 notified before there were any draws?
2    A. Right.
3    Q. Now, did there come a time -- I think you started to reference it earlier -- when you learned that most of the funds that you had on deposit had been disbursed?
4    A. Yes.
5    Q. Do you remember approximately how much time went by before you learned that?
6    A. I would say probably -- maybe a couple months or so, because it came around October and our home still wasn't completed and we were getting a little suspicious because the subs weren't coming back to complete their work and we found out they weren't being paid by our contractor.
7    Q. And did you also find out that at least one of the subs had put a lien on your house?
8    A. There were two that did, yes.
9    Q. And do you remember how much money their liens were for?
10   A. Yes. One lien was from Glassboro Lumber Company, that was in August of '98, that was for $24,263.19, and the second was from B & L...
-PUBLIC HEARING-

Mechanical for $4,000, and that was filed in September of '98.

Q. I think I heard you say there was only $91.43 left in the escrow account.

A. Correct.

Q. Were there other liens placed on your home besides the ones you mentioned?

A. Not that I'm aware of.

Q. How about a lien for dumpsters or anything along that line, or outstanding bills?

A. I'm sorry, yes, I do have that. We had a lot debris on our property that wasn't being removed and we had a dumpster that was filled to the brim and we kept asking the builder to have it removed so a new one could be brought and, oh, yes, I'll take care of it. Never happened. So I called the company and they told me that they had a hold on Heritage Building Group, LLC because they owed $740, so we had to pay that out of pocket before we could have that one dumpster removed and a new one brought in.

Q. In addition to the liens that were placed on the property, did you also learn that there were outstanding debts to some of the other subcontractors? In other words, they hadn't put
liens on the property, but they were owed money?

A. Right, yes, yes, I did. There was

the plumber, the framer.

Q. The roofer?

A. Roofer, yes.

Q. Now, the subs stopped working, am I

right?

A. Correct.

Q. And did you seek or pursue legal

action?

A. Yes.

Q. So you hired an attorney?

A. Yes.

Q. And --

A. I don't want to say hire. My

husband, through his job, gets free legal

services.

Q. Did you ultimately get your home

finished?

A. Yes.

Q. And how did you go about doing that?

A. I became the general contractor.

Q. Did you know anything about building

a home before this?

A. No, but I learned very quickly.
Q. So you took over the construction?
A. Yes.
Q. And who satisfied the liens?
A. We satisfied the $4,000 one and then eventually Heritage Building Group did satisfy the $24,000 one, and we satisfied the $740 one for the dumpster.
Q. Do you remember how long it took before you got a CO on that house?
A. We had a temporary one April of -- April 23rd, I believe it was, of '98, and then the final CO was May 24th -- I'm sorry, I said '98. '99, and the final CO was May of '99.
Q. My rough calculation is that that was about 13 months after the foundation was completed. Does that sound about right?
A. That sounds about correct.
Q. Where did you live during the construction of your home?
A. Well, first we sold our home, we moved in with my father up in Trenton here and we lived with him from the end of January until September of '98, and the house wasn't done so then we moved into an apartment down in Woodstown and we lived there from September of '98 until we
moved in at the end of April, '99. It was a
one-bedroom apartment and I had two children at
that time -- I still have two children. They were
younger children, is what I mean.

Q. But there were four of you?
A. There were four of us in a
one-bedroom apartment.

Q. Mr. Sabetta, you've worked for
Woolwich about seven years, is that right?
A. Yes.

Q. Do you, as a code official in New
Jersey, enforce workmanship?
A. No.

Q. What do you enforce?
A. UCC, Uniform Construction Code.

Q. And is that sort of a minimum code
standard?
A. It is a minimum standards code.

Q. Did you encounter situations where
you have had projects that seem to have difficulty
passing code?
A. Yes. I have a large -- we have a
large failure right in our township.

Q. And, when you say "Large failure,"
what do you mean by that?
A. We do the inspections and they get red stickers, they do not pass, they go to the next step, because things have not met to the code.

Q. And would that be something that causes you have to do an excessive amount of additional work?

A. It's part of the job, it's what we are paid to do, to go back and make it right. That's what we do in our office and that's what we'll continue to do.

Q. Do you find when you are called back that the work hasn't been completed or just hasn't been completed properly or is it a mix?

A. You find both. You find people who do not know how to build a home constantly calling in inspections. The home is not ready or the work was never done, and they are upset with the construction department saying, "You are holding up our customer from getting their house." You hear every excuse out there.

Q. Now, in your official capacity as a construction code official, have you come across scenarios or situations similar to what Mrs. DeVaney and Special Agent Mursheno just talked
A. Yes, many of them.

Q. Do you have a particular one that stands out in your mind in your municipality?

A. I have a minor -- a subdivision of nine homes that was started. Some of those houses were three and a half to four years. It took -- the builder did do two of the homes. The remaining nine homeowners had to take over various states to finish the house.

I had one where the builder told the homeowner to move into the house over Thanksgiving. They had their Thanksgiving dinner. There was no CO, we cited them, gave them a Notice of Violation. It went to the builder, he ignored it. We took it to municipal court. It went through the municipal court process until the fines reached in excess of $5,000. At that time a bench warrant was put out for him, we did have a hearing, he did pay, we did finally get a CO, but the homeowners did all the work to get -- necessary for the CO to pass.

Q. Have you found that construction maybe was done under one name for the builder and changed somewhere during the process?
A. I have one builder which, according to your state records, has over $20,000 of judgments over three different companies. Every time they would have a problem they would go up to Trenton and get another builders license.

Q. How -- go ahead.

A. Just a matter of walking in with $200, no qualifications, no nothing, and you walk out and you are now a builder. This is what seriously is wrong with the problem. I've been a home builder for 26 years, I'm proud of my license.

I was an elected official, I heard the same complaints. This is what's the problem. Trust this. Anybody can walk in off the street, take a pen, sign their name and they are now on that as a registered builder. No test, no bonding, no nothing, no experience.

Q. You mean I could do that tomorrow?

A. Absolutely.

Q. As long as I pay $200?

A. State of New Jersey would gladly take your check and renew it for you every two years.

Q. What is the renewal fee, 200?
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A. $200. A hundred dollars a year.

Cheapest license out there. If you've been involved in the home building industry, if you know how to work your pencils, how to do your deals, it's a very lucrative industry.

Q. Sounds like you can get the registration even if you haven't been involved in the home building industry.

A. Absolutely. I can show you proof of that, too.

Q. Now, have you seen situations where the builder has not been able to get a new home warranty for the home?

A. Yes. That problem happens if they don't pass the CO or they don't have -- or their license has been revoked or they have a judgment, they haven't paid a judgment. The homeowner moves in. Now we are faced with the builder, the developer who built the home, under proto pretense, which means --

Q. Slow down a second. So the builder builds a home under what, a prototype?

A. Yes. A prototype is, he follows one general plan for that house and it's concurrent. Every house is going to be similar. For that we
give him a discount on his permit fee because there is not a plan review. We've seen this house time after time again.

Now, when a homeowner comes in and says, "I've got to finish this house," he doesn't own that plan. That plan didn't really go with that house. It's in the file, but it was the property of the builder or his developer. He's then stuck with, if he needs architectural work, paying that architect additional fees to come in and re-do the plans and say, "They are now your plans, Mr. Homeowner, not the developer's anymore."

Q. Have you seen situations where the homeowners have gone to the closing and there was no new home warranty for them?

A. Yes.

Q. Is that because the builder had lost the insurance? Maybe he bounced a check or something like that?

A. In the one case the builder bounced the checks to the homeowner company in Georgia and they would not give the warranty. So a CO then was not issued. The title company settled without the CO.
Q. Did homeowners -- by the way, was there more than one homeowner involved there?
A. Yes.

Q. Did those homeowners get a warranty?
A. No.

Q. Why not?
A. Because the state would charge them the percentage for a warranty, in which case, who would do the warranty work? Since the builder walked away, why should they pay 15 -- $2,000, $1500 for a warranty, if no one is going to do the work or no one is going to stand behind it?

Q. So, did the State of New Jersey or DCA work out some kind of arrangement with the homeowners?
A. Yes, they did. What they did, they allowed the homeowners to sign affidavits that they did more than 20 percent of the work on their own home, therefore, the statute says they do not need a home warranty.

Q. Now, if we just step back a second, this builder was building, am I right, without the ability to give a new home warranty to these homeowners?
A. When he acquired the permits he had
valid home builders license.

Q. Right.

A. Through the process he had home builders license, but he could not pay the warranty companies because he bounced the checks.

Q. Now, were people still buying homes from him?

A. Yes.

Q. And, so, they go to closing and they've got no warranty?

A. Have no warranty and then some people -- their houses are still in various states of disrepair because the builder cannot -- he's robbed Peter to pay Paul.

Q. Did the construction at that development essentially stop?

A. Yes.

Q. And did the homeowners then go out on their own and engage contractors to complete the work?

A. Yes, and much to her -- what her problem was, paid the liens off for the plumbing, the HVAC, the lumber, and all the other liens that were put on the properties.

Q. Were many of those homeowners young,
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first time buyers, or some of them first time buyers, do you recall?

A. Seven out of the nine.

Q. Was this their dream home?

A. Absolutely.

Q. How much were some of the liens that they found on their homes?

A. $40,000 for lumber, $10,000 for septic and plumbing, HVAC, $5,000.

Q. So the totals were what, up in the 60s plus, 70s?

A. 60 plus. Some more than that. Some 90 some thousand. These were average 350 and higher homes.

Q. And, so, the homeowners had the liens maybe between 60 and $90,000 on them?

A. And they had to negotiate with the contractor to pay so much on it or have them finish it or hire other contractors to come in and litigate it.

Q. To your knowledge, is that builder still building in the state?

A. I was just informed yesterday that they -- in another neighboring township he's taking out permits again.
Q. Mrs. DeVaney, did you learn that the builder that had built your home had filed for bankruptcy?

A. Yes, Lee Garell did, he was one of the partners, and I have a copy of it here, if you want to see it, so -- but, yes, he filed for it so he was out of the picture.

Q. So the builder -- you learned he did file for bankruptcy?

A. Yes, Lee Garell did.

Q. Was he one of the principals at the firm?

A. Yes. It was just himself and Jay Cooke. They were the two.

Q. They were the two principals?

A. Um-hum.

Q. Did you learn that your builder also operated under different names?

A. Yes, yes. There was a couple different developments he had done. I believe one was up around like the Marlton area. He had one called Heritage Walk in Swedesboro, he had one called -- in Willow -- Willow Grove Commons in Upper Pittsgrove, so he was around a few different places with different names.
Q. Was this purchase of your home the single largest expenditure you've ever made?

A. Yes.

Q. What was the impact of this home purchase on you and your family, both emotionally and financially?

A. It was awful. We were living in the apartment. You know, I had to drive my children to school and whatnot. My daughter at the time was seven years old and she used to come home from school every day and say, "Mommy, how come you cry every day," and, you know, how do you explain to her exactly what you are going through, but it was very difficult to try to maintain a family and then take over as a construction manager, which I had no clue, my husband was working, so it kind of all fell on me and it was very stressful and I don't wish it on anyone. There has to be something done so it doesn't happen to another person.

Q. How much additional expense did you and your family have to expend as a result of this? Can you give us an estimate?

A. Well, we had items in storage, we lived in the apartment for so many months, also.
I'm going to say, just off the top of my head, maybe 20 to 30,000. It might be more.

Q. Was that a hardship for you?
A. Yes.

Q. Do you have any recommendations for us?
A. Just he was saying that something has to be -- anybody can become a builder, and I don't know if like fingerprinting or taking their Social Security number every time they apply and then have some kind of record. You know, have their name with the Social Security number or fingerprints -- they can't change them -- I mean, what you are is what you are. Just some kind of system where, if they tried to go from County A to County B, they could say in County B, "Oh, he isn't a reputable builder."

Q. Based on what we've heard today, it sounds like you, yourself, could get a license as a builder.
A. I wouldn't even have to pay the $200. I know what to do now. I mean, legally I don't have to do that, but I wouldn't want to.

Q. Mr. Sabetta, are aware of any protection provided by any government agency in
New Jersey to help homeowners in situations like this?

A. That was the intent of the Home Warranty Act. I was involved in that in 1983 when it went through this legislative process. That was the intent there. It just failed.

Q. It failed?

A. It failed.

Q. And why do you think it failed? We know why it's failing now, but what do you think happened to that process?

A. I think it got lawyered up. The system that came out of the legislature was nothing but was -- when the hearing started what it was supposed to be. When you read the Warranty Act, it is so vague that it covers everything the first year. Yes, every responsible builder will give you a hundred percent guarantee the first two years. Then we go to, you know, if a crack is this big or step, it covers a lot of gray area, and a lot -- part of that warranty is not just black and white, which -- you take a young couple who put every dime they had into it, they are expecting -- it's just like their car. If they think their car doesn't work, they take it back to
General Motors or somebody and they fix it. With a house, after the two years, it's very gray, and there is no protection after that two years. If a builder goes out of business or something, that's the way it is.

Q. Do you have any recommendations for us, besides what we've heard?

A. Yes. Some of the problems in the home building industry have been addressed. Starting in April DCA informed all the inspectors, mandatory framing checklist. It's a very detailed inspection where you go through and you count clips, you count braces, you do everything there and you sign your name to this. This is a start to making housing inspectors come back in New Jersey. This list here has personal accountability. When you go in and make the inspection, it can't be a window inspection here. You got to go in there and count things and see it met the plans. You got to have a have a set of plans in your hands and walk the house. Yes, it takes time, and, yes, the municipalities I'm in have already stepped up to the plate and hired additional staff. It takes additional staffing. To deliver a good product,
you need additional staffing and you need trained staffing. New Jersey does have trained staffing. I've been involved in other states. If you want to cross over the river and look at the horror stories over there, they are much worse than what you are hearing here today. New Jersey has stepped forward. This is one step.

The next thing is we have to make home builder license personally responsible. We have to make it like a plumbing or electric license, where you have an individual who took a test or somehow a license, is bonded and is insured to do that work in the State of New Jersey.

Just coming up here and just signing a piece of paper and giving them $200, walking out and becoming a home builder, because today you can make money being a home builder being a pencil builder. A pencil builder is someone that never knew what a hammer, saw or any type of equipment was, doesn't own any equipment, just owns that piece of pencil or that checkbook and just writes the things through and just a markup on the top. It's very common today that we have this type going on.
Q. You mean pencil builders are common?
A. Absolutely. I think that, if the Regulatory Affairs on the licensing, and we had some way where you had to be responsible, I think it would go a long way. The shore communities had it for years. Every time you wanted to build a house you took a test. It was a simple test, but at least they had confidence in that you knew what you were going to do.

You showed you had insurance, you showed you had business insurance, you showed you had some financial know-how, that you weren't going to stick these young homeowners out and live out in a tent, which I've had, or a trailer behind the house.

MS. GAAL: That's all I have.

COMMISSIONER MARINIELLO: Good afternoon, panel. You've been very informative I'm sure all of us up here have taken a lot away from the testimony of all three of you. When I was a teenager my parents did a renovation, and after it was over my mother, who is one to give out advice to everyone, said, "Son" -- and I must have heard her say at least 200 times since then -- "if you ever do any home construction,
make sure your marriage is on good footing."

So, with that, I'll pose this to Mr. Mursheno because you've had the most experience in dealing with the different types of -- in the nine different developments all the people that have gone through this. Can you elaborate on some of the things that these people go through emotionally during this process?

That Ms. DeVaney was very eloquent in explaining what her family went through. Was that common for most of these families?

MR. MURSHENO: That is common. Like I said, there is a few families, they -- one family, they moved in with their inlaws. Then, shortly thereafter, they moved to a rented house and then that house was sold on them, so then they had to find an apartment. That apartment they could only lease month to month because they are believing that their house is going to be built sometime in the future. Well, they are still in the apartment. It's been a year and a half. And, like I said, this is a family that used to go on vacations in the summer, had their own home, everybody had their own bedroom. They were just building a nicer home. And these are the things
that are common to these people.

        Unfortunately, there is no legislation out there to protect the depositor from the time -- from the time you pay that deposit to the time you get that -- you go to settlement.

        After that there is very minimal protection under the home warranty, but there is absolutely no protection from the time of the deposit to the completion of construction.

        COMMISSIONER MARINIELLO: And, even if the homeowner was lucky enough to find a builder who had deep enough pockets to pay back their monetary damages, they would have virtually no recourse for all the emotional damage that the process has done to themselves and their families?

        MR. MURSHENO: Oh, that's correct.

        COMMISSIONER MARINIELLO: Mr. Sabetta, you referred to some of these builders robbing Peter to pay Paul. Do you find builders who use the deposits from one home to buy materials for other homes?

        MR. SABETTA: Yes.

        COMMISSIONER MARINIELLO: Have you seen instances where homeowners have liens placed
on their home for subcontractors or for materials where the ability to prove that those materials were actually used on those homes -- that onus is left on the homeowners?

MR. SABETTA: Yes. We've had where material was supposed to be shipped to that home and went somewhere else.

COMMISSIONER MARINIELLO: So, absent hiring competent counsel or experts, these homeowners are left to pay these liens on their own without knowing truly whether or not the materials are in their homes?

MR. SABETTA: That's correct.

COMMISSIONER MARINIELLO: In some of these cases that you are referring to, if I can sum up some of the circumstances that you testified to, you could have a homeowner contract with a builder to buy a home -- by a piece of land with a home on it, the builder defaults during the process, the home isn't completely constructed, the homeowner has to come in and essentially take on the general contractor hat, pay off the liens from the last builder. At the end of the day he still has no homeowners warranty -- home warranty because he has to sign an affidavit just so he can
get in the home, saying that he did more than 20 percent of the work.

MR. SABETTA: That about sums everything up.

COMMISSIONER MARINIELLO: So you paid more, did it yourself, and have no one to go after for the damage that was done in the process of building the home?

MR. SABETTA: And if your wife hollers, you have to go fix the repair.

COMMISSIONER MARINIELLO: Sounds like a total system failure for those people.

MR. SABETTA: Yes. Not what it was intended to do when we started this in the '80s.

COMMISSIONER MARINIELLO: Thank you. Mr. Chairman.

COMMISSIONER FLICKER: Agent Mursheno, you described how you uncovered these nine failures. Would there be any way for a homeowner to have any idea about the builder with whom he or she is contracting?

MR. MURSHENO: Really I don’t know of any way that the homeowner -- other than checking -- what some of the homeowners have done is they make a call to the Better Business Bureau,
but what they do is maybe check the references of
the builder, check some developments of the
builder, but that doesn't guarantee that the
builder has the money that he had when he built
the houses that he did previously.

There has got to be some type of
financial check that the homeowners can look at to
see if the builder is financially capable of
building a house.

COMMISSIONER FLICKER: And all I can
say to Mrs. DeVaney is, you are a better man than
I.

MS. DeVANEY: Thank you.

COMMISSIONER FLICKER: Thank you.

COMMISSIONER EDWARDS: Mr. Sabetta,
I've got a couple of things you might be able to
help me with. First of all, you described a
circumstance surrounding a set of plans -- a set
of prototype plans and I didn't quite follow the
details of that. Walk me through that one more
time.

MR. SABETTA: According to the New
Jersey Department of Community Affairs, the UCC
regulations, a contractor or builder who is going
to build repetitive homes will file what's called
proto plans, which is one set -- you know, mark on
the bottom of the construction jacket "Prototype."

That means he's going to build
repetitive -- that same style home. In that you
may have eight or ten different options in that
packet, but he's marked out this is the home he's
going to build. Typically in a development you
may have three or four different style homes or
you may have all and he says that's what they are
going to build. On the regulations they get a
discount for that, being it's not plan reviewed
each time, so that can be between five and 25
percent, whatever the municipality does in their
ordinance. Some municipalities do five because
they don't want to give more of a discount than a
homeowner could get. That means that one print is
on file as a master print and there may be 50
homes built under that.

Now, when that guy goes out, those
homeowners who we don't really know, because the
permit is in the name of the builder, and it's not
Mr. and Mrs. Smith or somebody, it's whoever the
builder was who took out the permit, and that
block and lot is in that builder's name, so that
permit then goes with the block and lot, but that
plan was the property of that builder.

So now there is questions, there is problems with the plans, the architect didn't get paid for something, he's not going to respond until the new homeowner says, "I'm going to contract with you," because most architects, even if they are protos, they work on a residual.

Every time you use that print, it's a thousand, 1500 charged at the settlement table at the end for use of his print.

So he knows he wasn't getting that, so the homeowner then has to pay that. Get an addendum, get a cover sheet, now we are using authorized use Mr. Smith's print and here is the seal.

COMMISSIONER EDWARDS: Even though the construction has already begun on that particular house and that particular style house?

MR. SABETTA: Right. But what happens is, the state makes you change the jacket. The jacket before would be in the builder's name. Now, to qualify for this warranty and all that, if they are going to be the home builder, they are now the general contractor, they come in and change the front of the jackets. They take the
builder's name off, they become the responsible party, they sign the affidavits on the inside and they have to either redraw the print, because it's their own home -- in many cases the technical part, the engineering part is what they need or what might be missing, is where they have to go back to the architect.

COMMISSIONER EDWARDS: The plans on file they are not permitted to use, as a result of this process that you've just described, and, so, they have to submit new plans or hire the architect who was on those plans to make any modifications? I'm having trouble understanding why they can't use the plans that are there.

THE WITNESS: Well, it depends on what stage it's in. Now, if that house hasn't been started, then the permit would be void because it's been six, seven months, a year, nothing has been done, so they come in -- we were a contractor, we want to buy this house, we were -- paid our builder to build this house, he didn't do it, so, now we need plans, we need a new permit processed, you are paying additional fees. What the township committee decided to do, they didn't want these homeowners punished
to pay additional fees. They say, you know, work
with them, let's get them through the process,
let's try to get these people in their homes. Do
whatever we can do here to get them in and that's
what the township decided and that's what we did,
and we did not want to charge them additional
fees, but they were already out --

COMMISSIONER EDWARDS: Right,
wherever they were.

Fundamentally, we can also make
recommendations to clean up the recordkeeping in
that process to allow plans to get carried forward
with the property, if somebody is stuck in the
middle of a permit and a developer is changed, we
can help other people around the state whose
township may not be as insightful as yours.

Let me ask you a question. When we
have renovations that happen and we have new
construction, and you do inspections on both of
those. Do you find any bigger or lesser problems
on renovations versus new construction?

MR. SABETTA: You’ll hear about more
on new construction, but it's blatantly worse on
renovations. The abuses in renovations is much
worse than in new construction, but you'll hear
about the new construction, because you do have some of these safeguards.

COMMISSIONER EDWARDS: You mean, on the renovation side you have some safeguards?

MR. SABETTA: You don't have too many, because there is nothing -- they'll take a deposit and they won't put the roof on, and then leave, and Mrs. Jones, who is 86 years old, just got ripped off. Just like back in the old days with the aluminum siding salesmen going door to door. They are still out there.

COMMISSIONER EDWARDS: I was asking the question with reference to some of the remedies that are available for people in the new construction are not available to the same length they are in the renovations. The Consumer Fraud Act applies to renovations. The Consumer Fraud Act does not apply to new construction, so the level of fraud protection may be exactly the same, it's the remedy that's not available, and I was wondering how well that remedy was, in fact, working and, from your perspective, you don't see a particular difference because of the Consumer Protection Act and that protects them from a fraud claim.
THE WITNESS: The biggest thing we have telling, I'll say our customers, people who come in for the permits, we put on the back of every permit, "Do not make final payment until all inspections have passed," and we put the state statute on there that says that.

Most people, renovators, pool contractors, never want to give the homeowner that yellow placard because it says that on the back and they all want their payment at the end before they get the final inspection. That is the safeguards there, and we stress that, we post that in the two offices that I run, we blew it up, put it on the door when you came in, and we tell every consumer, you know, we are there probably to work for you -- we work -- we work for the municipalities. Here is what it says. This is what the statute says. Use it.

COMMISSIONER EDWARDS: The last area that I want to ask you a couple questions about. What is the structure of your employment arrangement? Who is your boss? Who do you work for? Who hires you? Who can fire you in that world?

I'm not saying any of those would
happen. The opposite. You are obviously doing a
wonderful job, you are that representative of that
very significant number of building inspectors and
officers who work very well in the state.

We need to understand maybe a little
bit more about some of the questions like how you
are hired, who controls what you do and what you
don't do? Some of it -- I think I have some of
it, some of it is practical, some of it is legal,
some of it is not.

MR. SABETTA: Well, Mr.
Commissioner, you came from the political process,
you know how most jobs in the State of New Jersey
are hired. I had the fortunate -- I was hired by
both political parties, being in one, so I do have
tenure in both municipalities I do work in. It
is -- how you deal with the people is a lot of it.
You are hired and fired by your township mayor,
township committee. You are on a four-year term.
At the end of that term you can get tenure. You
do your job, you'll get tenure, and then you are
there for life. Unless you do something to
somebody else, you aren't going to lose your
license. That's pretty much how it works in New
Jersey.
-PUBLIC HEARING-

COMMISSIONER EDWARDS: And who supervises what you do, if anybody?

MR. SABETTA: I am supervised by the Department of Community Affairs. What they do, they have a monitoring staff, which -- they'll come into the office after I or someone went out and made inspections and they'll spot check. They'll come in and say, "I want to see the inspection logs of Jim Sabetta today." Those licensed inspectors then will go back out to where I made inspections, follow behind me and see what they did.

Now, a state inspector is required to make four inspections a day. Well, you've got an eight-hour day. If you are two hours on each inspection, you can find probably almost anything you want to think about. In the real world, the municipalities -- they are not going to tell you to make four inspections a day. They are going to tell you, make the inspections, but you have to make them thorough.

Now, in our departments, we -- our people are salaried, so they are not getting paid overtime, but they have to do the job. Don't come back to that office and say, "I only had time to
do two inspections." Come back at 10:00 o'clock
at night, 8:00 o'clock at night, whatever it takes
to get the job done.

Our paperwork shows my people who
work there, they are caring and they are doing
that, but we do have a high failure rate. If we
had a high pass rate, 95 percent pass rate, then I
would be concerned of the windshield or the other
things that have been brought up here today. I'm
not having that problem. I have dedicated people
and there is a lot of dedicated inspectors in the
State of New Jersey.

COMMISSIONER EDWARDS: There are
subcode officials. To what extent do you control
the people and who do you control in that subcode
and subinspection process?

MR. SABETTA: I'm the construction
official, I'm the boss, so, I mean, I take the
brunt of the complaints. And, you know, I was 13
years on the elected side, so I got the complaints
from the homeowners about the construction
official or about the building inspector, so I try
to mesh that together and, when you sit there and
you realize people -- I do go out and spot check.
When I'm making my building inspection, I'll look
at the plumbing inspector.  

I have 26 years of experience building homes. I know the inside and the outside, I know a 12 wire from a 10 wire, I know -- so I do spot check. Most of your towns where you don't have your -- your smaller towns, especially, the construction officials do have to get out in the field, they do spot check the other subcodes. You don't have as much problems that way. You do do a better job for the consumer.

COMMISSIONER EDWARDS: Do some communities subcontract that out to where a subcode may have -- or an inspector may have two or three or four towns that they work for?

MR. SABETTA: Correct. They subcontract out to a third-party agency, but most of the smaller communities, they will hire part-time inspectors. That way you'll work in two towns. I'm fortunate to work in two adjoining towns, so I'm three hours in one, eight hours in the other. I mean, I have a 57-hour work week.

COMMISSIONER EDWARDS: That helped me a lot.

I have to make a comment about the homeowners warranty program. I was counsel to the
governor when the homeowners warranty program came through and, like you, I think I was younger and a lot more naive then, and the homeowners warranty turned out to be a homeowners warranty for builders. It was a recommendation from -- that came out of hearings similar to this, but it wasn't -- the warranty program that came out -- the warranty program excused the builders by putting something less than the kind of guarantees they should be responsible for in the quality of the work.

The staff knows this, I'm anxiously looking forward to -- we are going to deal with the homeowners warranty program in the next session in a lot more detail and a lot more aggressively, so I'm looking for some solutions to that particular problem, too, and, if you have any -- I mean, I've been around as long as you have, I would appreciate hearing from you about that, but I would like to thank you for your hard work and your coming here today.

MR. SABETTA: Thank you, Commissioner.

COMMISSIONER SCHILLER: I echo what the Commissioner just said, that basically the
three of you have put a face onto a little bit
different problem than what we've been hearing all
day. The individual homeowner contracting for a
home and all those pitfalls that you get into, and
we appreciate your bringing that to the fore and
helping us also to address that problem.

I would also like to echo, Mr.
Sabetta, it's one thing that you forgot to put in
your recommendations, and it's hire people of
integrity and responsibility, as you are, and
perhaps we could achieve a lot in the way of
getting -- having construction code officials that
we need in the State of New Jersey.

So, I want to thank you all for
coming and we appreciate your participation.

MR. SABETTA: Thank you.

COMMISSIONER EDWARDS: Ms. DeVaney,
I'll pay you $200 for your license.

MR. SABETTA: She can only build one
house every five years.

COMMISSIONER SCHILLER: If we could
give the court stenographer just a five-minute
break and we'll resume in five minutes.

(REcess called at 3:45 p.m.)

(REsumed at 4:04 p.m.)
COMMISSIONER SCHILLER: We'll resume the hearing, please.

Mr. Glassen.

MR. GLASSEN: The Commission calls Abraham Chasnoff. If you could stand to be sworn, Mr. Chasnoff.

ABRAHAM J. CHASNOFF, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GLASSEN:

Q. Mr. Chasnoff, could you state your name and your background for the Commission, please.

A. My name is Abraham Chasnoff and I'm an assistant prosecutor in Middlesex County.

Q. And, as assistant prosecutor in Middlesex County, do you work in a particular bureau or have a specialized unit?

A. I'm working in the special investigations unit.

Q. Mr. Chasnoff, did you prosecute an individual named Kenneth Filmore?

A. Yes, I did.

Q. And what was Mr. Filmore initially charged with?
A. He was charged with various counts of theft and writing of bad checks.

Q. And could you describe to the Commission the business or scheme through which Mr. Filmore committed these offenses?

A. He operated a corporation, it was a one-man corporation, called Premo Modular Homes, and he advertised in the types of throw-aways that you would find at the supermarkets, advertising what he called a turnkey operation where someone would -- he would provide the land and he would provide a modular home from beginning to end, and you would just give him the money and you would walk in to a new house.

Q. So, as a turnkey operator, you entrusted him to take care of you from beginning to end, is that correct?

A. That's what he proposed.

Q. Now, did he hold a real estate license?

A. He did.

Q. And did he operate through a corporation?

A. Yes, the corporation was Premo Modular Homes.
Q. And could you describe to the Commission how Filmore's scheme worked.

A. Well, as I said, he had the corporation, he advertised in these local community publications, he was located on a major highway with a large sign in front that said "Premo Modular Homes" and people would read these ads or they would just drive by and they would stop in and he would explain the operation of how a modular home is constructed, he would tell them that he could provide -- he would put them in contact with financing, he would find them the land, if they didn't have the land, and he would build them the home.

Q. Would he take an initial deposit from them?

A. He would give them what was called a nonbinding application form, which a person could put down $2500 and -- just to hold the price of lumber, and then they could think about it and, if they decided they didn't want to go through with the deal, then he would give them their money back.

Q. Did any one of his clients ever decide they didn't want to go through with the
deal and seek their money back?

A. Yes.

Q. Did they get their money back?

A. No.

Q. How did you come to discover Mr. Filmore's pattern of stealing money in this manner?

A. I learned it almost accidentally. I was at the time in a trial team, which meant that I would get the files after an indictment had been returned and I would then end up prosecuting it or assigning it to someone else on my team, and it turned out that I saw five separate indictments, each individually presented by different assistant prosecutors, and they all ended up on my list. When I read them and I saw what they were and I saw that there were additional complaints, I moved and I had them all consolidated and I brought another indictment, as well, so there were a total of six separate indictments with 23 counts charging these various theft and bad check counts.

Q. About how many victims were involved in Filmore's scheme?

A. In that particular one there were 18
victims.

Q. And was he prosecuted?
A. Yes, he was. Of those 18 victims, there were nine people who were purchasers or potential buyers, one was an employee, and the rest were suppliers or subcontractors who had been either not paid or been paid with bad checks.

Q. Now, had these victims attempted to check out Mr. Filmore? Had they retained attorneys? Had they taken steps to protect themselves?
A. Many of them did. They went to the Better Business Bureau, they attempted to do a background check. He provided them with a list of some references. I don't know if they ever checked out the references.

Many of the people had attorneys for the land purchase, but, when you are dealing with a modular home -- a modular home is a separate thing -- entity. It's a very good value because you can get a lot of house for a very little bit -- for relatively little bit of money, and many of the people who came to him were people who were adventuresome, who were trying to get the most bang for their buck, and some of that meant
that they would not go to an attorney when it might have been to their benefit to do so.

So they would go to the attorney, if they did, the attorney would handle the land purchase, but that would be it.

Q. You say you prosecuted him. What was the result of that prosecution?

A. He was convicted of 13 counts, including all nine of the home buyers.

Q. Was he a registered builder?

A. Yes.

Q. And was his registration revoked?

A. Eventually it was. I don't know the details of what it was, but I know that there had been complaints, I know that he had failed to answer the complaints, and I believe when he failed to answer his license was revoked.

Q. And did he continue to do business, nevertheless?

A. He formed or he had formed a new corporation. He was no longer an incorporator or a corporate officer, but he had his wife, who previously had been a hairdresser, I believe, and another gentleman who was in the construction business who were the corporate officers.
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Q. What was the name of that corporation?
A. That corporation is Built To Order Modular Homes.

Q. So was he able to reorganize his business under another name?
A. His business was in the same location, he changed the sign. The contracts, by the way, were pretty much the same. They changed the names on them.

Q. So, in effect, all he did was change the name on the sign and the name on the contract?
A. That's what we say.

Q. Did the second company operate within the law?
A. There is another indictment outstanding with 17 victims, including a corporation. By the way, the second corporation was incorporated on May 22, 1998. The first indictment included charges that went through February of '98.

Q. How much money has he allegedly cheated customers out of the second time?
A. The second indictment we've identified 358,000 some dollars. Of that, 171 of
it we've traced to having been cashed at a check
cashing business, and another $66,000 was in cash
that he received.

Q. How many victims are included in the
second offense?

A. There are 17 that we've -- that we
have presented. There are other people who have
other complaints that we decided we were not going
to present to the Grand Jury.

Q. Were the victims able to complete
their homes?

A. Are you talking about the first or
the second?

Q. Well, either or both.

A. In the first, the nine buyers all
ended up with some level of construction. In the
second, none of the victims that have now been
presented have any kind of housing.

MR. GLASSEN: Thank you, Mr.
Chasnoff.

Mr. Chairman.

COMMISSIONER MARINIELLO: The first
set of indictments he ultimately was convicted
for?

THE WITNESS: Yes.
COMMISSIONER MARINIELLO: And what was the penalty associated with the sentence that came with that?

THE WITNESS: The judge sentenced him to five years probation with 364 days of imprisonment as a condition.

COMMISSIONER MARINIELLO: Not knowing the statute's particulars, was that the minimum that he was eligible for?

THE WITNESS: No. Although none of the victims, none of the thefts individually went to the level of $75,000, which would make it a second degree crime, in the aggregate it was closer to two or $300,000, and we urged that it was all part of a common scheme or plan, and that, therefore, he would be eligible for sentencing as a second degree, which would make it a ten-year maximum sentence, and the judge found that it was not part of a common scheme or plan.

COMMISSIONER MARINIELLO: You probably won't have that problem this time around.

Is there something specific that we can recommend that would help you in that type of a prosecution where the first time -- it may be the gentleman's first time being caught, but it
was 17 different victims, or however many victims it was, and obviously a substantial number of people were bilked out of a substantial amount of money.

THE WITNESS: I don't think that the criminal laws have to be changed. The problem is identifying the crime, itself, and whatever can be done to help the homeowners, which is what you are trying to do now, but I think that the criminal law, itself, is sufficient to handle this type of crime, once you get to that level.

COMMISSIONER MARINIELLO: I have nothing further, Mr. Chairman.

COMMISSIONER FLICKER: Where is this gentleman currently?

THE WITNESS: Home.

COMMISSIONER FLICKER: He's out on bail?

THE WITNESS: No. He served his one year of incarceration and he's on probation, so he's out.

COMMISSIONER FLICKER: And how about the second indictment?

THE WITNESS: It's pending.

COMMISSIONER FLICKER: Is he on bail
for that?

THE WITNESS: I don't know what the bail status is, but, yes, he is out.

COMMISSIONER FLICKER: Do you know if he's still selling modular homes?

THE WITNESS: Not under either of these names.

COMMISSIONER FLICKER: Maybe another name?

THE WITNESS: I don't think so.

COMMISSIONER FLICKER: Thank you very much.

THE WITNESS: You're welcome.

COMMISSIONER EDWARDS: Wouldn't the subsequent violation be a violation of his probation?

THE WITNESS: He hasn't been convicted yet.

COMMISSIONER EDWARDS: But I don't know that you have to be to be involved in a scheme, but anyway, the -- in making this particular case or other cases like this, have you found the records and the information available within the official community of the home construction industry is adequate, inadequate, did
it have any --

THE WITNESS: Well, I have to deal with the construction official -- you know, the construction officials, and they were very helpful and I didn't -- I didn't have a problem getting the information from the individual offices, but I had to go to individual offices to get it, and -- but I didn't have any problem once I had that information, and it was forthcoming.

COMMISSIONER EDWARDS: And they had the information in their files that was necessary for you to do that?

THE WITNESS: Their portion of it, yes.

COMMISSIONER EDWARDS: Thank you.

COMMISSIONER SCHILLER: Can I surmise from that last comment you made that it would be better if we had a more centralized place where these kind of homeowner complaints or a better way of tracking contractors or building licenses?

THE WITNESS: It's difficult to identify the difference between a bad businessman and a criminal, because they are dealing with -- it's a matter of degree, I think. Some people --
it's true that the builders -- and, as a matter of fact, Mr. Filmore indicated that he was robbing Peter to pay Paul, when, in fact, he was robbing Peter and cheating Paul, but there is a difference between that type of person and the person who does go hand to mouth or go from project to project, and it's really a matter of degree. I don't know that putting a central location, a central registry would help in that regard. It might help the individual who is trying to find out whether the builder he is contemplating working with is any good or not.

COMMISSIONER SCHILLER: That's what I'm basically trying to go to. If we had a place where we could at least know that this same person has opened up three or four businesses over a period of time, and all doing the same thing, and folded them because of financial problems, somebody could find that out and at least know that just getting a builders license is not sufficient to go into business.

THE WITNESS: Right, and some of these people, I think, had gone to Community Affairs, but, of course, he never got to the point where there were problems of warranty because the
homes weren't being built, so the Community Affairs portion of it only dealt with complaints of shoddy workmanship or something like that, but not dealing with the -- with the criminal aspect of what he was doing.

COMMISSIONER EDWARDS: It would seem to me that a registry would be valuable. Here is somebody who bilked 17 or 18 people and then went out and did it again and there is no source that anybody could go to to find out he did it the first time.

THE WITNESS: That's right.

COMMISSIONER EDWARDS: We almost need a playbook for the builders or something, really to protect the good ones, as much as it is to get the bad ones.

THE WITNESS: Sure, but it's a question, then, of who is going to make the complaints. You are still going to have to rely on the individual victims to make the complaints to the -- to whatever registry there is. And, if they go -- excuse me -- to one of the 500 and some municipalities or police departments, it's a question of the police department recognizing that there is a pattern.
COMMISSIONER EDWARDS: It just seems that like -- we, as a system, have dropped the ball. If we've got somebody -- first of all, 18 people, got indicted and convicted, and does it again and gets 18 more people, I mean, there is no vehicle by which those people could have ascertained -- reasonably ascertained -- I wouldn't have been able to even pick that one up. I would have to call your office to find out.

THE WITNESS: Well, even if you went and tried to find out about Built To Order, his name would not appear.

COMMISSIONER EDWARDS: Right, exactly. So, we are missing something in the system here in registering people who are unscrupulous or incompetent. As you said, that's a matter of degree. Some are incompetent, some are unscrupulous. The consequence to the victim is the same.

THE WITNESS: Doesn't matter.

COMMISSIONER EDWARDS: Right.

COMMISSIONER SCHILLER: Thank you very much. I appreciate your coming in, and that concludes the hearings.

I want to thank our stenographer,
obviously, for putting up with our long-winded commissioners and also -- but we really want to thank our staff who have put a lot of time and effort into this ongoing investigation. This is only the beginning of gathering of all the facts and doing a presentation of them to the public, so there will be other hearings in January to look at more on that and to present other sides of the story, and also that their work was tireless and also, as always, very professional. And, so, we thank you for all your appearances and for your testimony here today.

Ladies and gentlemen, that will conclude these proceedings for the time being. This is an ongoing investigation and the Commission intends to hold additional hearings early next year at a time and place to be announced.

Before we officially adjourn today, I would like to offer some observations. The issues we are examining in this process duplicate issues that demand the attention of every responsible elected and public official in this state.

We have listened these last days as
witness after witness has described a system that has failed in many fundamental ways. It is a system that allows faulty and deficient construction practices to persist, despite a regulatory and statutory apparatus that was established to prevent such abuses. Why, in this day of high technology and advanced construction techniques, do the residents of an entire development such as Society Hill in Newark, as we heard in harrowing testimony this morning, have to exist in the shadow of life-threatening structural flaws in their own homes?

It is a system that all seems designed to enable greed and graft to prevail over the best interests of the public. How is it possible for the actual inspection process, as we have heard here this afternoon, to be undermined and subverted by unscrupulous code officials operating in league with builders?

It is a system that ultimately provides its victims, the unsuspecting buyers of a piece of the American dream gone wrong, with no quarter when it comes to proper governmental oversight, workable mechanisms for remediation and adequate safeguards against recurring abuses.
As the Commission works its way through this process, we will develop a comprehensive package of recommendations for wide-ranging systematic reform in all of these areas. Our forthcoming second round of hearings in January will focus on a host of remedies, and we welcome the input of all interested parties, home buyers, builders, code inspection personnel and others with a direct stake in the outcome of our work.

Ultimately, our goal is to provide expert guidance to New Jersey’s leaders so that this system, now broken in so many ways, can be made to function in a way that is productive for all of us.

Thank you, and these hearings stand adjourned until a date in January.

(4:24 p.m.)
CERTIFICATE

I, Sean M. Fallon, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Certified Shorthand Reporter
XI00840
Notary Public of New Jersey
My commission expires 4-29-08

Dated: ________________

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