

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
IN RE: SUNBELT PORTFOLIOS, LLC, a limited liability company; SERENDIPITY REAL ESTATE GROUP, LLC, a limited liability company; 444, LLC, a limited liability company; EMBER INVESTMENTS, LLC, a limited liability company; DAVID SUDDUTH, an individual; and KENNETH GOMEZ, an individual, Respondents.	
CYNTHIA H. COFFMAN, Attorney General JENNIFER MINER DETHMERS, Reg. No. 32519 Senior Assistant Attorney General Colorado Department of Law Consumer Protection Section Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: 720-508-6228 Fax: 720-508-6040 Email: jennifer.dethmers@coag.gov	
ASSURANCE OF DISCONTINUANCE UNDER C.R.S. § 6-1-110(2)	

This Assurance of Discontinuance ("Assurance") is entered into by and between the State of Colorado, *ex rel.* Cynthia H. Coffman, Attorney General for the State of Colorado ("Attorney General" or "State"), and Respondents Sunbelt Portfolios, LLC; Serendipity Real Estate Group, LLC; 444 LLC; Ember Investments, LLC; David A. Sudduth; and Kenneth M. Gomez (collectively, "Respondents"). This Assurance is entered into pursuant to the Attorney General's powers under C.R.S. § 6-1-110(2), and constitutes a settlement between the Attorney General and Respondents regarding the following allegations.

I. PARTIES

1. Cynthia H. Coffman is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (CCPA). C.R.S. §§ 6-1-101, *et seq.*

2. Respondent Sunbelt Portfolios, LLC ("Sunbelt") is a Colorado limited liability company with a principal office mailing address of P.O. Box 33810, Denver, CO 80234 and a principal office street address of 8902 E. Via Linda, #110-102, Scottsdale, AZ 85258.

3. Respondent Ember Investments, LLC ("Ember") is a Colorado limited liability company with a principal office street address of 1111 E. 130th Place, Thornton, CO 80241 and a principal office mailing address of P.O. Box 33810, Denver, CO 80234.

4. Respondent Serendipity Real Estate Group, LLC ("Serendipity") is a Colorado limited liability company with a principal office mailing address of 12403 Cherry Street, Thornton, CO 80241 and a principal office mailing address of P.O. Box 204, Westminster, CO 80036.

5. Respondent 444 LLC ("444") is a Colorado limited liability company with a principal office street address of P.O. Box 204, Westminster, CO 80036.

6. Respondent David A. Sudduth is an individual residing at 11519 Decatur St., Westminster, CO 80234. Mr. Sudduth has held himself out as an owner and officer of Sunbelt and, at all relevant times, was authorized to act and sign documents on behalf of Sunbelt. At all relevant times, Mr. Sudduth directed, participated, authorized, and controlled the activities of Sunbelt. Moreover, at all relevant times, Mr. Sudduth was an employee of and consultant authorized to sign documents on behalf of Serendipity and 444. Currently, Mr. Sudduth is the registered agent of Ember and is authorized to sign documents and act on its behalf. Mr. Sudduth is also the registered agent of Apartments Resurfacing LLC, RDR Acquisitions Groupe, and Waytech, LLC.

7. Respondent Kenneth M. Gomez is an individual residing at 1733 Pagosa Way, No. 137, Aurora, CO 80011. Mr. Gomez is the owner and registered agent of Serendipity and 444. At all relevant times, Mr. Gomez directed, participated, authorized, and controlled the activities of Serendipity and 444. Mr. Gomez is also the registered agent of The Serendipity Group LLC and I C 444 LLC.

II. STATUTORY FRAMEWORK

8. Under the Colorado Foreclosure Protection Act (CFPA), C.R.S. §§ 6-1-1101, *et seq.*, an “equity purchaser” is a person who acquires title to a residence in foreclosure. C.R.S. § 6-1-1103(2).

9. A “residence in foreclosure” is a residence or dwelling

that is occupied as the home owner’s principal place of residence, is encumbered by a residential mortgage loan, and against which a foreclosure action has been commenced or as to which an equity purchaser otherwise has actual or constructive knowledge that the loan is at least thirty days delinquent or in default.

C.R.S. § 6-1-1103(8)(b).

10. All contracts between a homeowner and equity purchaser must be in writing and “fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.” C.R.S. § 6-1-1111. In addition, equity purchasing contracts must comply with applicable provisions of the CFPA, which include, but are not limited to, a three-day right to cancel and notification thereof; a clear and conspicuous disclosure of whether or not the equity purchaser will be assuming any of the home owner’s financial or legal obligations; and a prohibition on facilitating or engaging in any unconscionable conduct. C.R.S. §§ 6-1-1111 through -1121.

11. Any violation of the CFPA is a violation of the CCPA. C.R.S. § 6-1-105(1)(xx).

12. It is also a violation of the CCPA to knowingly pass off a good, service, or property as those of another; knowingly make a false representation as to the characteristics or benefits of services; fail to disclose material information concerning services or property that was known at the time of an advertisement or sale if the failure to disclose was intended to induce the consumer to enter into a transaction; and to fail to obtain all governmental licenses required to perform services as agreed to or contracted for with a consumer. C.R.S. § 6-1-105(1)(a), (e), (u), and (z).

III. FACTUAL ALLEGATIONS

13. Sunbelt, Serendipity, 444, and Ember (collectively, the “Corporate Respondents”) obtained titles of residences in foreclosure from homeowners for a minimal amount, generally between \$1,000 - \$10,000. In exchange, Respondents cured the default, if any, on the properties; renovated or rehabilitated the properties; and sold or leased the properties to third parties. With few exceptions, Respondents did not share the rental or sale proceeds with homeowners. The Corporate Respondents, therefore, are equity purchasers under Colorado law.

14. During the time the Corporate Respondents own the property, Respondents do not assume, pay off, or otherwise refinance the mortgage loan. Even though Respondents generally make the mortgage payments during the time the Corporate Respondents own the properties, the homeowners ultimately remain responsible for the mortgage loans.

Respondents’ Contracts with Homeowners

15. While Respondents advertised through television, radio, internet, and direct mail, Respondents mainly solicited business by going door-to-door of homeowners with residences in foreclosure. Respondents obtained the names of these homeowners from public foreclosure records.

16. Respondents encouraged homeowners to enter into contracts entitled “Agreement to Lease Real Estate with an Option to Purchase” (“Agreement”) or “Master Agreement” (collectively, “agreements”).¹ The Agreements, however, were not leases and did not contain option-to-purchase provisions. In reality, all agreements were contracts for Respondents to purchase property because they required the homeowner to sell, assign, transfer, convey, and deliver all rights, title, and interest in the property to the Respondents. The homeowners generally signed a quitclaim deed or warranty deed, transferring title of the property to Respondents on the same day as they signed the agreement.

17. The Agreements explained that the subject property was in foreclosure and that the homeowner was “unable to bring the deed of trust note current.” The Master Agreements further stated that the homeowner was “at substantial risk of losing the Property and/or equity therein.” Furthermore, the agreements provided that Respondents would stop the foreclosure sale by curing the delinquency and bringing the mortgage loan and the owners’ association loan, if applicable, current.

¹ Some of the agreements were entitled, “Agreement to Purchase Real Estate.”

18. While Respondents agreed to keep the “mortgage loan and note in good standing,” they also purchased the property “subject to the mortgage.”² The term “subject to the mortgage” meant that the homeowner would have “continuing contingent financial liability under the deed of trust to mortgage lender and/or note holder.” In other words, the homeowner was still financially liable for the mortgage loan on a property that he or she did not own.

19. Respondents agreed to negotiate with the lender or trustee to release the deed of trust or reduce the liability. None of the Respondents has a mortgage loan originator license or hires mortgage loan originators to negotiate mortgage loan terms.

20. These agreements between homeowners and Respondents do not meet the statutory requirements for equity purchaser contracts as set forth in the CFPA.

21. At the time the homeowners signed the agreements, Respondents also required them to execute an Authorization Release of Information through which the homeowner gave his or her mortgage company permission to share information related to the mortgage loan with Respondents.

22. Also at the time the homeowners signed the agreements, Respondents required them to execute a Limited Power of Attorney permitting Respondents (or others) to “distribute all revenues, aside and apart from those directed to pay off the first and second mortgage, to all liens, tradesmen and any other party responsible for improving the foregoing property or having a claim thereto.” This authorization included appointees who may, on behalf of the homeowner, “sign any and all documents, including documents to sell foregoing property, any checks (utility, insurance, bank or any other checks pertaining to said foregoing property) on my behalf.” These powers of attorney remained in effect even if the homeowner became disabled, incapacitated, or incompetent.

23. The State alleges that the agreements violate various provisions of the CFPA. For example, the agreements were not fully completed, signed, and dated by homeowner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure in violation of C.R.S. § 6-1-1111. Additionally, the equity purchase contracts did not contain the required notices, disclosures, and terms, including but not limited to the notice of cancellation and a clear and conspicuous disclosure as to whether Respondents were assuming financial or legal obligations of the homeowner. C.R.S. §§ 6-1-1-1112 & 6-1-1114. Respondents’ conduct in connection with their equity purchasing activities also violates C.R.S. § 6-1-1117(2),

² In the Master Agreements, Respondents agreed to “faithfully and timely continue making mortgage payments in homeowner’s stead.”

which prohibits, until the time to cancel expires, an equity purchaser from accepting, or inducing a homeowner to execute, an instrument of conveyance of any interest in the residence in foreclosure, and from paying any consideration to the homeowner.

Respondents' Ownership of Properties

24. After obtaining title to the properties, Respondents either sold or leased the properties to third parties. Respondents generally rehabilitated or renovated the properties prior to selling or leasing them. Respondents sold at least 21 properties to third parties. On average, Respondents realized nearly \$52,000 in profit on each property sold.

25. With a few exceptions, Respondents did not share any of the sale proceeds with homeowners. The homeowners generally received only the amount listed in the Agreement or Master Agreement, which ranged between \$1,500 and \$11,000.

26. Respondents have leased or are leasing at least 19 properties to third parties, but they do not share any of the rental income with the original homeowners. Moreover, the leases provide that lessees must bear all expenses for property damage, maintenance, and repairs, which means that Respondents are not responsible for typical maintenance and repair fees.

27. Because the monthly rental income far exceeds the monthly mortgage payments, Respondents are earning substantial profits. On average, Respondents realize approximately \$1,700 in profit each month per property.

28. While Respondents generally make monthly payments on the underlying mortgage loan, they do not (a) assume, pay off, or refinance the mortgage loan into their own names; (b) notify the mortgage lender or servicer of the change in ownership; or (c) timely record the change in ownership with the county.

29. In some cases, the leases to third parties are traditional one year leases; in other cases, the leases contain an option whereby the lessor has the opportunity to purchase the property after making a substantial down payment or additional monthly payments, i.e., a lease-to-own arrangement.

30. In some instances, the Respondents acted as the lessor or landlord but were not the owners of the property. None of the Respondents has a real estate broker license.

Home Saver Program

31. Respondents also entered into "Home Saver" agreements with several homeowners who were delinquent on their mortgage payments. Respondents cured the delinquency and, in exchange, received title to the property. The homeowners agreed to pay back the amount that Respondents paid to cure the delinquency as well as a 50% fee over a 36-month period.

32. Respondents have represented that they are no longer operating the Home Saver Program.

IV. INJUNCTIVE RELIEF

33. Respondents assure the Attorney General that they, as well as any principals, officers, directors, members, agents, employees, representatives, successors, affiliates, contractors, consultants, or any person acting on their behalf will comply with all provisions of the CCPA and CFPA, as now constituted or as may hereafter be amended.

34. Respondents agree to develop a policy for the destruction or proper disposal of documents that contain personal identifying information in accordance with C.R.S. § 6-1-713, as amended by HB18-1128, within 30 days of the Effective Date of this Assurance, if they use documents containing such information during the course of their businesses.

35. For all properties to which Respondents hold title, whether or not the title has been recorded in county records, Respondents agree to assume or pay off the mortgages through a refinance or otherwise within 15 months of the Effective Date of this Assurance.

36. Respondents agree to update the Attorney General on a quarterly basis regarding their progress toward assuming or paying off the mortgages. The update shall include whether each mortgage loan has been assumed or paid off for each property to which Respondents hold title as well as all efforts Respondents have made to assume or pay off each such loan. Respondents shall provide the first update to the State no later than 90 days after the Effective Date of the Assurance. Respondents shall subsequently update the State every 90 days thereafter until they have assumed or paid off all mortgage loans on properties to which they hold title.

37. Despite their diligent efforts, if Respondents are not able to assume or pay off each mortgage loan on all properties to which they hold title within 15 months of the Effective Date of this Assurance, the State may, within its sole

discretion, extend the deadline within which they have to do so. The State will rely on the updates provided pursuant to paragraph 35 in making its decision.

38. Respondents agree to timely make mortgage payments on all properties to which they hold title, as well as pay all applicable taxes, insurance, and any owners' association fees. The updates referred to in paragraph 35 shall include a confirmation that Respondents timely made these payments and, if they have not, shall include the reasons that they did not make such payments.

39. Respondents represent that they will not operate the Home Saver or any similar program in the future.

V. MONETARY RELIEF

40. Respondents jointly and severally agree to pay \$300,000 as a Stipulated Claim to the Colorado Department of Law to resolve this investigation.

41. If Respondents comply with the following payment schedule and the Injunctive Relief set forth in paragraphs 34-40 of this Assurance, the State will waive the remaining \$190,000 of the Stipulated Claim:

- 40.1. David Sudduth shall pay \$30,000 within five days of the Effective Date of this Assurance, and \$55,000 within ninety days from the Effective Date of this Assurance;
- 40.2. Sunbelt shall pay \$10,000 within five days of the Effective Date of this Assurance; and
- 40.3. Kenneth Gomez, Serendipity, and 444, jointly and severally, shall pay \$15,000 within five days of the Effective Date of this Assurance.

42. All payments shall be made by electronic funds transfer according to written payment processing instructions provided by the State with a reference to "*Sunbelt Portfolios, LLC et al. Settlement.*" Respondents shall provide written notice to the State at or around the time that they initiate the electronic funds transfer. All payments will be held, along with any interest thereon, in trust by the Attorney General to be used for reimbursement of the Attorney General's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement actions, or to support consumer education and public welfare.

VI. GENERAL PROVISIONS

43. Scope of Assurance. Unless otherwise provided, this Assurance shall apply to Respondents and their officers, directors, agents, servants, employees, affiliates, subsidiaries, successors, and assigns, together with the other parties described in C.R.C.P. 65(d).

44. Effective Date. The Effective Date of this Assurance shall be the date of signature of the last signatory to this Assurance.

45. Release of Claims.

45.1 Subject to the conditions in paragraph 45.2, the State agrees and acknowledges that execution of this Assurance is a complete settlement and release of all claims that the State could have asserted through the Effective Date against Respondents for violations of the CCPA and CFPA that arise from or relate to the conduct described in the Factual Allegations.

45.2 The State will release all existing monetary claims not otherwise paid upon full and timely completion of payments in accordance with paragraph 41 and upon proof that they have complied with the injunctive provisions of paragraph 34-40; provided, however, that if Respondents fail to fully and timely complete such payments, or if any Respondent files bankruptcy within 91 days after the full and timely completion of such payments, no release shall be granted and Respondents shall remain liable for the full unpaid balance of the State's claim. That amount may be asserted by the State in any subsequent proceeding to enforce this Assurance, whether through execution, garnishment, or other legal proceedings, or through a proof of claim in any bankruptcy proceeding filed by any Respondent.

45.3 If Respondents have not complied with the injunctive provisions of paragraphs 34-40, then the State is under no obligation to waive the remaining portion of the Stipulated Claim but, in its sole discretion, may do so provided that Respondents are making substantial progress toward assuming or paying off the mortgage loans.

46. No Admission of Liability. All parties are entering into this Assurance for the purpose of compromising and resolving the investigation and to avoid the expense of further litigation. It is expressly understood that nothing contained in

this Assurance shall be construed as an admission by Respondents of any liability, wrongdoing, or factual or legal issue.

47. Preservation of Law Enforcement Action. Nothing herein precludes the State from enforcing the provisions of this Assurance or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Respondents not covered by this Assurance or any acts or practices in which Respondents engage after entry of this Assurance.

48. Compliance With and Application of State Law. Nothing herein relieves Respondents of their duty to comply with applicable laws of the state of Colorado nor constitutes authorization by the State for Respondents to engage in acts and practices prohibited by such laws. This Assurance shall be governed by the laws of the state of Colorado.

49. Non-Approval of Conduct. Nothing herein constitutes approval by the State of any of the Respondents' past, present, or future business practices, and Respondents shall not make any representation to the contrary.

50. Preservation of Private Claims. Nothing in this Assurance shall limit, constrain, abridge, abrogate, waive, release, or otherwise prejudice any private rights, causes of action, or remedies of any person against Respondents with respect to the acts and practices covered by this Assurance.

51. No Third-Party Beneficiaries Intended. This Assurance is for the benefit of the parties only and does not create or confer rights or remedies upon any other person, including rights as a third-party beneficiary. This Assurance does not create a private right of action on the part of any person or entity, whether to enforce this Assurance or otherwise, other than the parties hereto.

52. Execution in Counterparts. This Assurance may be executed in counterparts, each of which is an original and all of which are one and the same.

53. Severability. If any provision of this Assurance is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

54. Amendment. This Assurance may be amended solely by written agreement signed by the State and Respondents or their authorized representatives.

55. Complete Agreement. This Assurance represents the entire agreement between the parties hereto and a complete merger of prior negotiations and

agreements. No other written or oral terms or agreements exist except for those contained in this Assurance.

56. Attorneys' Fees and Costs. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs in connection with this matter.

57. Public Record. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

58. Voluntary Agreement. Respondents acknowledge that they have had an adequate opportunity to review this Assurance and consult with legal counsel in connection with the negotiation, drafting, and execution of this Agreement. Each party and signatory to this Agreement represents that he, she, or it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

59. Assurance Jointly Drafted. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted jointly by both parties and, in the event of any dispute arising out of this Assurance, shall not be construed against or in favor of any party.

60. Entire Agreement. Respondents agree and represent that they have read and understand this Assurance, accept the legal consequences involved in signing this Assurance, and that there are no other representations, agreements, or understandings between Respondents and the Attorney General that are not stated in writing herein.

61. Violation. A violation of any term of this Assurance shall constitute a prima facie violation of the CCPA under C.R.S. § 6-1-110(2).

61.1 Upon Respondents' violation of any term of this Assurance, the Attorney General shall be entitled to file a civil action under the CCPA and the CFPA in any court of competent jurisdiction and seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

61.2 In addition to any remedies provided under the CCPA and the CFPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against any Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General that such Respondent(s) violated this Assurance. In such event, each Respondent agrees to waive any and all defenses and counterclaims that they may have had to such an action, except as to

claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

62. Notice. All notices to the State shall be sent to the following:

Jennifer Miner Dethmers
Senior Assistant Attorney General
Colorado Department of Law
Consumer Protection Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203
Email: jennifer.dethmers@coag.gov


All notices to Respondents shall be sent to the following:

Brian DeBauche, Esq.
Law Firm of Brian DeBauche, LLC
401 Kalamath Street,
Denver, CO 80204
Email: debauchelaw@comcast.net

63. Signatures. Facsimiles of signatures and signatures provided by portable document format (".pdf") shall constitute acceptable, binding signatures for all purposes of this Agreement.

For the State

STATE OF COLORADO, *ex rel.*
CYNTHIA H. COFFMAN, Attorney General


JENNIFER MINER DETHMERS, #32519*
Senior Assistant Attorney General
Colorado Department of Law
Consumer Protection Section

Dated:

9-7-18

For the Respondents

Sunbelt Portfolios, LLC



Print Name: Martin David Kiome
Title: President
Serendipity Real Estate Group, LLC

Dated: 09/07/2018

KENNETH M GOMEZ


Print Name: Kenneth Gomez
Title: President
444, LLC

Dated: 09/04/2018

KENNETH M GOMEZ

Print Name: Kenneth Gomez
Title: President
Ember Investments, LLC

Dated: 09/06/2018



Print Name: Erika Elston
Title: President
David A. Sudduth, individually

Dated: 09/06/2018

David A Sudduth

Dated: 09/06/2018

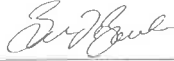
Kenneth M. Gomez, individually

KENNETH M GOMEZ

Dated: 09/04/2018

Attorney for Respondents

LAW FIRM OF BRIAN DEBAUCHE, LLC



Brian DeBauche, Esq.

Dated:

08/30/2018