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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
whether there has been a violation  
of the Securities Act of Washington by:

Mill Creek Development, LLC; John  
Tomasello; John D'Arcy

Respondents.

Order Number S-09-403-10-CO01

CONSENT ORDER

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On February 2, 2010, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose Fines, and to Charge Costs ("Statement of Charges"), S-09-403-09-SC01, against Mill Creek Development, LLC, John Tomasello, and John D'Arcy. Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division of the Department of Financial Institutions ("Securities Division") and Respondents, Mill Creek Development, LLC, John Tomasello, and John D'Arcy, do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law stated below.

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**FINDINGS OF FACT**

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Respondents

1. Mill Creek Development, LLC (Mill Creek) is a California limited liability company with its principal place of business at 13026 Tabeaud Road, Pine Grove, California 95665. For much of the period relevant to this Statement of Charges, Mill Creek's principal place of business was 516 Neely Court, Alamo, California 94507. Mill Creek is a real estate development firm.

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CONSENT ORDER



1 9. In 2002, D'Arcy sold a promissory note made by Mill Creek for \$60,000 to Investors A and B.  
2 The note provided for a deed of trust on property owned by Mill Creek to secure payment. Investors A and  
3 B never received such a deed of trust.

4 10. In 2003, D'Arcy sold promissory notes made by Mill Creek in the amounts of \$26,000 and  
5 \$50,000 to the Investors. The \$26,000 note was secured by a deed of trust on real property called Amaral  
6 Ranch. The \$50,000 note provided for a deed of trust on real property owned by Mill Creek to secure  
7 payment. Investors A and B never received such a deed of trust.

8 11. The three promissory notes described above were paid in full, with interest, by Respondents.  
9 Investors depended upon the interest generated by the promissory notes for a significant portion of their  
10 living expenses.

#### 11 Offers and Sales in Washington

12 12. In late 2004, Investors A and B relocated to the State of Washington.

13 13. In the months preceding Investors A's and B's move to Washington, D'Arcy initiated  
14 discussions by phone and in person concerning Investors A and B making another investment in Mill Creek.  
15 Shortly after their relocation to Washington, Investors A and B were contacted by D'Arcy by phone.

16 14. D'Arcy told Investors A and B that investment in Mill Creek would allow Mill Creek to take  
17 advantage of opportunities to acquire real estate for development and to pay for expenses incidental to its  
18 real estate development business such as permits and surveying. D'Arcy did not identify specific pieces of  
19 real estate that Mill Creek sought to develop or was in the process of developing.

20 15. D'Arcy did not provide any information about Mill Creek's financial state during this  
21 solicitation. D'Arcy did not discuss how Mill Creek would return Investors A's and B's money. D'Arcy did  
22 not reveal the existence of any creditor of Mill Creek.

1 16. In December, 2004, D'Arcy offered and sold a \$200,000 promissory note made by Mill Creek to  
2 Investors A and B. Payment was made by a cashier's check that Investors A and B sent to Mill Creek via  
3 Federal Express. The note was due on December 31, 2005. The note provided for monthly interest payments  
4 of \$3,000 and for a lump payment of twenty percent of principal, less the amount of any interest payments  
5 previously made, upon return of the principal invested. The note was signed by both D'Arcy and Tomasello.

6 17. D'Arcy told Investors A and B that the note would be secured in the same fashion that the three  
7 previous notes had been secured. The note provided for a deed of trust to secure payment. Investors A and B  
8 received no such deed of trust.

9 18. Investors A and B were motivated to purchase this note by the diminution of the value of their  
10 retirement assets and their previous profitable investments with Mill Creek.

11 19. In late 2005, D'Arcy called Investors A and B to discuss another investment in Mill Creek.  
12 D'Arcy stated that if Investors A and B bought another note from Mill Creek, Mill Creek would increase the  
13 interest payments due Investors A and B on the outstanding Mill Creek notes Investors A and B would be  
14 holding. D'Arcy discussed a \$20,000,000 development deal involving Kaufman and Broad, a subsidiary of  
15 KB Homes, that Mill Creek hoped to finalize with Investors A's and B's money. D'Arcy also told Investors  
16 A and B that they could make money by taking a home equity loan and using those loan funds to buy  
17 another Mill Creek note that would pay Investors A and B a higher rate of interest than the interest owed on  
18 the home equity loan.

19 20. D'Arcy did not provide any information about Mill Creek's financial state during this  
20 solicitation. D'Arcy did not discuss how Mill Creek would return Investors A's and B's money. D'Arcy did  
21 not reveal the existence of any creditor of Mill Creek.

1 21. In January, 2006, D'Arcy offered and sold a \$100,000 promissory note made by Mill Creek to  
2 Investors A and B. The note was due on January 11, 2006. The note provided that Mill Creek would make a  
3 single interest payment of \$25,000 upon full return of the principal to Investors A and B. The note was  
4 signed by both D'Arcy and Tomasello.

5 22. The note provided for a deed of trust to secure payment. Investors A and B received no such  
6 deed of trust.

7 23. In October, 2008, D'Arcy visited Investors A and B at their Washington home. D'Arcy told  
8 Investors A and B that Mill Creek had found a "hot" property and wished to purchase it. D'Arcy told  
9 Investors A and B that Mill Creek would be able to purchase this property only if Mill Creek received an  
10 immediate investment of \$75,000 from Investors A and B.

11 24. D'Arcy promised to pay fifteen percent interest on the \$75,000 until Mill Creek had repaid the  
12 full amount of Investors A's and B's notes, \$375,000.

13 25. D'Arcy did not provide any information about Mill Creek's financial state during this  
14 solicitation. D'Arcy did not discuss how Mill Creek would return Investors A's and B's money. D'Arcy did  
15 not reveal the existence of any creditor of Mill Creek.

16 26. Investors A and B wrote and delivered to Mill Creek a check for \$75,000, dated October 1, 2008,  
17 and payable to Mill Creek. The check was deposited in Mill Creek's account at Delta National Bank.

18 27. Investors A and B did not receive a written document as evidence of their October, 2008  
19 investment.

20 28. In connection with the offer and sale of at least one of the notes offered and sold in Washington,  
21 D'Arcy told Investors A and B that other potential investors could profit from interest paid on Mill Creek

1 notes, but that D'Arcy would prefer to see a family member profit from purchasing Mill Creek notes and  
2 that Investors A and B could "live off" the interest.

3 29. The \$375,000 invested in Mill Creek represents the substantial majority of Investors A's and B's  
4 retirement funds.

5 30. To date, Investors A and B have received only a small percentage of the money owed them  
6 under the three Mill Creek notes they purchased in Washington.

7 Misrepresentations and Omissions

8 32. D'Arcy made a false statement of material fact to Investors A and B in October, 2008  
9 regarding the use of investors A's and B's funds as no property was purchased with the \$75,000 received  
10 from Investors A and B.

11 33. In the offer and sale of Mill Creek notes, D'Arcy failed to disclose material information  
12 which made the disclosed information misleading to Investors A and B as described in paragraphs fifteen,  
13 twenty, and twenty-five of the Findings of Fact. D'Arcy failed to provide investors with material  
14 information regarding Mill Creek's financial condition at the time Investors A and B invested.

15 Registration Status

16 34. Mill Creek is not currently registered to sell its securities in the State of Washington and has  
17 not previously been so registered nor has it filed a claim of exemption from registration.

18 35. John D'Arcy is not currently registered as a securities salesperson or broker-dealer in the State of  
19 Washington and has not previously been so registered.

20 36. John Tomasello is not currently registered as a securities salesperson or broker-dealer in the  
21 State of Washington and has not previously been so registered.

1 **CONCLUSIONS OF LAW**

2 Based upon the Findings of Fact, the following Conclusions of Law are made:

3 1. The offer or sale of promissory notes in the State of Washington described above constitutes  
4 the offer or sale of a security as defined at RCW 21.20.005(10) and (12).

5 2. The offer or sale of said securities is in violation of RCW 21.20.140 because no registration for  
6 such offer or sale is on file with the Securities Administrator.

7 3. D’Arcy has violated RCW 21.20.040 by offering or selling said securities while not registered as  
8 a securities salesperson or broker-dealer in the State of Washington.

9 4. Tomasello has violated RCW 21.20.040 by offering or selling said securities while not registered  
10 as a securities salesperson or broker-dealer in the State of Washington

11 5. The offers or sales of the promissory notes in the State of Washington described above were  
12 made in violation of RCW 21.20.010 because, as set forth in the Findings of Fact, D’Arcy made  
13 misstatements of material facts or omitted to state material facts necessary in order to make the statements  
14 made, in light of circumstances under which they were made, not misleading.

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18 **CONSENT ORDER**

19 Based upon the foregoing:

20 IT IS AGREED AND ORDERED that Respondents Mill Creek Development, LLC, John  
21 Tomasello, and John D’Arcy, and their agents and employees each shall cease and desist from offering or  
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23 CONSENT ORDER

1 selling securities in violations of RCW 21.20.140, the securities registration section of the Securities Act  
2 of Washington.

3 IT IS FURTHER AGREED AND ORDERED that Respondents, Mill Creek Development, LLC,  
4 John Tomasello, and John D'Arcy, and their agents and employees each shall cease and desist from  
5 acting as an unregistered securities broker-dealer or salesperson in violation of RCW 21.20.040, the  
6 broker-dealer and securities salesperson registration section of the Securities Act of Washington.

7 IT IS FURTHER AGREED AND ORDERED that Respondents, Mill Creek Development, LLC,  
8 John Tomasello, and John D'Arcy, and their agents and employees each shall cease and desist from  
9 violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

10 IT IS FURTHER AGREED that Respondents Mill Creek Development, LLC, John Tomasello, and  
11 John D'Arcy shall be liable for and shall pay the Securities Division the costs and other expenses incurred  
12 in the investigation of this matter in the amount of \$2,000. The payments shall be made as follows:  
13 Respondents Mill Creek Development, LLC, John Tomasello, and John D'Arcy shall make an initial  
14 payment of \$333 on or before the entry of this Consent Order. Respondents Mill Creek Development,  
15 LLC, John Tomasello and John D'Arcy shall then make monthly payments of \$333 for five (5)  
16 consecutive months. The first monthly payment shall be due on August 16, 2010. Subsequent monthly  
17 payments shall be due on the 15<sup>th</sup> day of the month.

18 IT IS FURTHER AGREED that, in the event that Respondents Mill Creek Development, LLC,  
19 John Tomasello, and John D'Arcy default on any payment, the Securities Division will provide notice of  
20 default and may thereafter seek recovery of the amounts due, plus costs and attorney fees, pursuant to  
21 remedies available under the Securities Act of Washington, RCW 21.20.



1 IT IS FURTHER AGREED that Respondents Mill Creek Development, LLC, John Tomasello, and  
2 John D'Arcy enter into this Consent Order freely and voluntarily and with full understanding of its terms  
3 and significance.

4 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Order.

5 IT IS FURTHER AGREED that in consideration of the foregoing Respondents Mill Creek  
6 Development, LLC, John Tomasello, and John D'Arcy waive their to a hearing in this matter and judicial  
7 review of this order.

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9 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE**

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16 SIGNED this \_\_\_\_9th\_\_ day of \_\_\_\_\_ June \_\_\_\_\_, 2010.

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18 Signed by:

19 Mill Creek Development, LLC

20 By: \_\_\_\_\_s/\_\_\_\_\_

21 Title: \_\_\_\_\_Member\_\_\_\_\_

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23 CONSENT ORDER

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Signed by:

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John Tomasello, individually

Signed by:

\_\_\_\_\_ s/ \_\_\_\_\_  
John D'Arcy, individually

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SIGNED and ENTERED this 11th day of June, 2010

CONSENT ORDER

*Suzanne Sarason*

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Suzanne Sarason  
Chief of Enforcement

Presented by:

*Edward R. Thunen*

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Edward R. Thunen  
Financial Legal Examiner

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