

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Joseph Giuttari, Hybrid Capital Group LLC,  
The Fens Company, LLC &  
Peerless Hi Yield Realty Group, LP

Respondents

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)  
) **ORDER TO CEASE AND DESIST**  
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) **COM2021- 0005**  
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**NOTICE OF ORDER**

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:6-613.

**LEGAL AUTHORITY AND JURISDICTION**

Pursuant to RSA 421-B:6-604(a), the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

Pursuant to RSA 421-B:5-508, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:6-603 or RSA 421-B:604, or who violates RSA 421-B:5-505 knowing that the statement was false or misleading in any material respect, shall be guilty of a class B felony.

Pursuant to RSA 421-B:6-604(d), the Secretary of State has the authority to impose administrative penalties of up to \$2,500 for a single violation.

Pursuant to RSA 421-B:6-604(e) the Secretary of State may order rescission, restitution or disgorgement for violations of this chapter.

Pursuant to RSA 421-B:6-604(g), the Secretary of State may charge the actual cost of an investigation or proceeding for a violation of this chapter or an order issued under this chapter.

### **NOTICE OF RIGHT TO REQUEST A HEARING**

The above named respondents have the right to request a hearing on this order to cease and desist, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the respondents, or by their duly authorized agent of the above named respondents, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B: 6-604(b), within 15 days after receipt of a request in a record from the respondents, the matter will be scheduled for a hearing. If the Respondents subject to the order do not request a hearing and none is ordered by the secretary of state within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to the respondents subject to the order, may modify or vacate the order or extend it until final determination. If the respondents to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such respondents shall be deemed in default,

and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

### **STATEMENT OF ALLEGATIONS**

The allegations contained in the Staff Petition for Relief dated March 17, 2022 (a copy of which is attached hereto) are incorporated by reference hereto.

### **ORDER**

**WHEREAS**, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

**WHEREAS**, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested, therefore:

It is hereby **ORDERED**, that:

1. Respondents are hereby ordered to immediately cease and desist from further violations of N.H. RSA 421-B:5-501(a), and from misrepresenting and omitting material information in connection with offering securities in the State of New Hampshire.
2. Respondents shall pay jointly and severally restitution in the amount of \$737,466 to Investor #1;
3. Respondents shall pay jointly and severally an administrative fine of \$7,500.
4. Respondents shall pay jointly and severally the Bureau's investigation costs in the amount of \$25,000.
5. Respondents are permanently barred from any securities business, licensure and securities registration in the State of New Hampshire.

6. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties and other relief described herein being imposed upon the defaulting respondents.

SIGNED,  
DAVID SCANLAN  
SECRETARY OF STATE  
BY HIS DESIGNEE:

Dated: 3-17-2022

  
BARRY J. GLENNON, DIRECTOR,  
BUREAU OF SECURITIES REGULATION

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION  
25 CAPITOL STREET  
CONCORD, NH 03301

**STAFF PETITION FOR RELIEF**  
**IN THE MATTER OF:**

Joseph Giuttari  
Hybrid Capital Group, LLC  
The Fens Company, LLC  
Peerless Hi Yield Realty Group, LP

COM2021-0005

- I. The staff of the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as the "Bureau") hereby petitions the Director, and makes the following statements of fact:

**STATEMENTS OF FACT**

1. Joseph Giuttari (hereinafter "JG") resides in Cranston, Rhode Island. JG is in control over several businesses located at 758 Eddy Street, Suite 400, Providence, Rhode Island 02903. Those businesses are Hybrid Capital Group, LLC ("hereinafter "HCG"), The Fens Company, LLC (hereinafter "TFC") and Peerless High Yield Realty Fund, LP (hereinafter "PHYRF") (collectively JG, HCG, TFC, and PHYRF referred to as Respondents). HCG and TFC are single-member LLCs owned by JG. Upon information and belief, JG is the alter ego of, and owns and controls, all of the above-referenced entities.
2. In January of 2021, an ad was placed in a local New Hampshire newspaper advertising investments with PHYRF. According to the newspaper ad, PHYRF is a division of HCG. The

ad was an offer to sell interests in the PHYRF for the purpose of making short term loans collateralize by a mortgage and pay investors 12% interest annualized. The ad stated that the loans serviced markets in Boston, Massachusetts, Providence, Rhode Island and in Connecticut. It is believed that HCG is also in the business of making short-term mortgage loans at high interest. Also according to the ad, HCG is a registered commercial lender and mortgage broker, and they originate and manage mortgages. According to documents obtained by the Bureau, the PHYRF's objective is to generate income and appreciation by providing interim financing with short-term loans secured by real estate, purchasing distressed or foreclosed real estate, purchasing distressed mortgage notes, and lending money at above-market rates. According to an interview of JG conducted on December 14, 2021 that the Bureau participated in, JG admitted that approximately 4-5 New Hampshire residents responded to the newspaper advertisement but only Investor #1 ultimately invested.

3. In the early part of 2021, a New Hampshire resident (age 62 at the time) from Conway, New Hampshire ("Investor #1") saw the ad described above and called the phone number in the ad. The phone number is believed to belong to HCG. During the call and in subsequent calls, JG offered to sell Investor #1 short-term promissory notes with a promised 12% interest rate. The notes were made on behalf of JG, HCG and TFC.
4. The first note from HCG, TFC, and JG to Investor #1, was made on or about February 19, 2021, and was in the amount of two hundred thousand dollars (\$200,000) at 12% interest payable to Investor #1. The note was due and payable in full on August 19, 2021. The interest only payment was two thousand dollars (\$2,000) per month and the principal balance was due August 19, 2021. It was represented in the note that it was secured by four building lots located in Sturbridge, Massachusetts. JG made the payments for March, April, May and June 2021 on the note and then stopped paying. Investor #1 believed that his investment money would be used to make short-term bridge loans to building contractors and/or other short-term loans. This understanding was also documented in a letter JG sent to Investor #1 confirming receipt of his investment and stating that the loan proceeds would be "invested into short term mortgages for a maximum 6-month term only." Additionally, Investor #1 understood that his funds would also be used for development and construction on the four building lots located

in Sturbridge, Massachusetts.

5. The Bureau obtained bank records for HCG and TFC as part of its investigation. Investor #1's funds were deposited in TFC's bank account and, prior to Investor #1's deposit, the balance in the TFC's account was under three thousand dollars (\$3,000). The Bureau notes that all other bank accounts of HCG and TFC had even lower balances in their accounts at the time of Investor #1's deposit. The records indicate that HCG and TFC were in financial trouble.
6. The Bureau traced Investor #1's funds and determined that a significant amount (if not all) of Investor #1's funds were not used to fund short-term mortgages as represented to Investor #1. In fact, the records show that a significant amount of Investor #1's funds were used to pay off prior debts and withdrawn in checks made payable to JG.
7. On or about April 12, 2021, JG, HCG, TFC and JG Family Trust made a second note to Investor #1 in the amount of four hundred thousand dollars (\$400,000) at 12.5% interest per annum paid to Investor #1. JG paid an upfront 2% origination payment for the note of twenty thousand dollars (\$20,000). The note represents that it is secured by land and a building located at 147 Hillcrest Drive North, Cranston, Rhode Island 02921, though the Bureau believes that the collateral is likely insufficient to cover the amounts owed and the note is under-secured. The interest only monthly payment was four thousand one hundred sixty-seven dollars (\$4,167.00) and the note was due and payable in full on July 12, 2021. JG made two payments on this note for May and June 2021 and then stopped paying. Investor #1 believed that his investment money would be used to make short-term bridge loans to building contractors and/or other short-term loans.
8. Investor #1's check for four hundred thousand dollars (\$400,000) was deposited into the same TFC account as the first check. Prior to Investor #1's deposit, the account had a negative balance and some of Investor #1's funds was used to cover the overdraft. Most of Investor #1's funds appear to be withdrawn by wire transfer or by check to various people and entities, including significant checks made payable to JG.

9. On or about May 3, 2021, a third note was issued from JG, HCG and TFC to Investor #1 in the amount of one hundred eighty-five thousand dollars (\$185,000) at 12.75 interest per annum payable to Investor #1. An origination fee of eleven thousand one hundred dollars (\$11,100) was paid to Investor #1. The note was due and payable in full on May 14, 2021. There was no security interest associated with this note. No payment was made on this note. Investor #1 understood that this investment would be used by JG and his businesses to assist in establishing some equity line of credit for JG and his businesses.
10. Investor #1's check dated May 3, 2021 for of one hundred eighty-five thousand dollars (\$185,000) was deposited on May 4, 2021 into the same TFC account as the first two checks. Prior to Investor #1's deposit, the account had less than five thousand dollars (\$5,000) and by the end of the month the account had a negative balance. Most of Investor #1's funds appear to be withdrawn by wire transfer or by check to various people and entities, including significant checks made payable to JG. JG provided Investor #1 with a check for one hundred eighty-five thousand dollars (\$185,000) dated May 14, 2021, representing a return of principal to Investor #1. However, when Investor #1 attempted to cashed the check, the account was already closed.
11. As part of the Bureau's investigation into this matter, it was learned that these three notes were sold as a result of the public advertisement that appeared in a local New Hampshire newspaper and that the notes were not registered or exempt from registration in the State of New Hampshire.
12. The Bureau asserts that JG, HCG and TFC did not disclose to Investor #1 that the securities being offered were not properly registered for sale with the Bureau and that JG, HCG, and TFC were having financial trouble prior to Investor #1's investments. Furthermore, it was not disclosed to Investor #1 that a significant amount of his funds would be used by JG and his businesses to pay off prior debts or withdrawn by JG.
13. In summary Investor #1 invested a total of seven hundred eighty-five thousand dollars (\$785,000) with JG and his various companies. After considering the origination fees paid back to Investor #1, as well as installment payments received by Investor #1, the total out-



of-pocket loss for Investor #1 as of the date of this petition totals seven hundred thirty-seven thousand four hundred sixty-six dollars (\$737,466).

### STATEMENTS OF LAW

II. The staff of the Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, 421-B, and regulations thereunder:

1. JG, HCG, TFC, PHYRF are “persons” within the meaning of N.H. RSA 421-B:102 (39).
2. The notes between Investor #1 and JG, HCG, TFC, and/or JG Family Trust are securities as defined by RSA 421-B:1-102(53) (A) and RSA 421-B:1-102(29)(A).
3. Pursuant to RSA 421-B: 3-301(a), it is unlawful for any person to offer or sell any security in this state unless it is registered under 421-B, the security or transaction is exempt, or it is a federal covered security. JG, HCG, TFC and PHYRF have violated this provision.
4. Pursuant to RSA 421-B:5-501(a), it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: (1) To employ any device, scheme, or artifice to defraud; (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. JG, HCG and TFC violated this section by misrepresenting and omitting material facts to Investor #1, including that they were in financial trouble, that the securities being offered were not properly registered for sale with the Bureau, that a significant amount of the funds would be used to pay off prior debts of JG, and that a significant amount of funds would be withdrawn by check made payable to JG.

5. Pursuant to RSA 421-B:6-604(d), in a final order, the secretary of state may impose a civil penalty up to a maximum of \$2,500 for a single violation. In addition, every such person who is subject to such civil penalty, upon hearing, and in addition to any penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or be barred from registration or licensure. JG, HCG, and TFC are subject to this provision and should be jointly and severally fined up to \$22,500 for nine violations of RSA 421-B: 5-501(a) and JG, HCG, TFC and PHYRF should be jointly and severally fined up to \$7,500 for three violations of N.H. RSA 421-B:3-301. Additionally, JG, HCG, TFC and PHYRF should be barred from any further securities business in New Hampshire.
6. Pursuant to RSA 421-B:6-604(a), if the secretary of state determines that a person has, is, or is about to materially aid in an act, practice, or course of business constituting a violation of this chapter, the secretary of state may issue an order directing the person to cease and desist from engaging in an act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter. JG, HCG, TFC and PHYRF are subject to this section and should be required to cease and desist from engaging in the conduct as described in the Statements of Fact for violations of RSA 421-B:5-501 and RSA 421-B:3-301.
7. Pursuant to RSA 421-B: 6-604(e), the secretary of state can order the payment of restitution to Investor #1. JG, HCG, TFC and PHYRF are subject to this provision and should be order to pay Investor #1 restitution in the amount of seven hundred thirty-seven thousand four hundred sixty-six dollars (\$737,466), plus interest at the legal rate.
8. Pursuant to RSA 421-B:6-604(g), in any investigation to determine whether any person has violated any rule or order under this title, the secretary of state shall be entitled to recover the costs of the investigation. JG, HCG, TFC and PHYRF are subject to this provision and should be ordered to pay the Bureau's costs of twenty-five thousand dollars (\$25,000).

## RELIEF REQUESTED

III. The staff of the Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act:

1. Find as fact the allegations contained in section I of the Statements of Fact of this petition.
2. Make conclusions of law as stated in section II relative to the allegations contained in section I of this petition.
3. Order Respondents to permanently cease and desist from further violations of N.H. RSA 421-B:6-604.
4. Pursuant to RSA 421-B: 6-604 impose an order of restitution against Respondents jointly and severally to be paid to Investor #1 in the amount of seven hundred thirty-seven thousand four hundred sixty-six dollars (\$737,466) plus interest at the legal rate.
5. Order Respondents be permanently barred from any securities business, licensure and securities registration in the State of New Hampshire, in accordance with N.H. RSA 421-B.
6. Pursuant to N.H. RSA 421-B:6-604, order JG, HCG, and TFC to jointly and severally pay an administrative fine of twenty-two thousand five hundred dollars (\$22,500) for nine violations of RSA 421-B: 5-501(a) and order JG, HCG, TFC and PHYRF to jointly pay an administrative fine of \$7,500 for three violations of N.H. RSA 421-B:3-301.
7. Pursuant to N.H. RSA 421-B:6-604, order Respondents to pay the Bureau's costs of investigation in an amount of twenty-five thousand dollars (\$25,000)
8. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of N.H. RSA-421-B.

RIGHT TO AMEND

The Bureau's Staff reserves the right to amend this Petition for Relief and to request that the Director of Securities take additional administrative action. Nothing herein shall preclude the Staff from bringing additional enforcement action under N.H. RSA 421-B or the regulations thereunder.

Respectfully submitted by:

  
\_\_\_\_\_  
Jeffrey D. Spill, Deputy Director

3/17/22  
Date

  
\_\_\_\_\_  
Eric A. Forcier, Deputy Secretary

3/17/22  
Date