

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

In the Matter of
ROBERT L. NIEBAUER and
PROFESSIONAL REALTY & DEVELOPMENT CORP.,

PETITION FOR ORDER
(SUMMARY)

File No. S-06169 (EX)

Respondents.

The staff of the Bureau of Enforcement of the Division of Securities, Department of Financial Institutions, State of Wisconsin ("the Division") has conducted an investigation in this matter pursuant to § 551.56, Wis. Stats.,¹ and as a result thereof alleges as follows:

1. Upon information and belief, Robert L. Niebauer ("Niebauer") (DOB: 2/5/37) is an individual who has been a controlling person of Professional Realty & Development Corporation ("PRDC") with a last known home address of 8616 Blackwolf Drive, Madison, Wisconsin 53717-2164.
2. Upon information and belief, PRDC is a Wisconsin corporation with a last known address of 7609 Elmwood Avenue, Suite 201, Middleton Wisconsin 53562.
3. PRDC was incorporated in Wisconsin on December 6, 1989, and remained in good standing until it became delinquent on October 1, 2008, until it was dissolved administratively on March 11, 2011.
4. Upon information and belief, Niebauer was an officer and president of PRDC for most of its existence, and at all times material to this matter.
5. Upon information and belief, Niebauer, through PRDC, engaged in numerous real estate development projects in Wisconsin and other states, involving many different types of projects.
6. Upon information and belief, prior to December 1, 2004, Niebauer had a reputation as a successful real estate developer.
7. Upon information and belief, on or about December 1, 2004, PRDC had several projects going at the same time, including some condominium conversions and some retirement communities.
8. Upon information and belief, Niebauer, through PRDC and its agents, was the primary source of information given to investors in his real estate development projects.
9. Upon information and belief, one of the projects being sold by Niebauer from December 10, 2004 through May 11, 2006 was a retirement community in Dubuque, Iowa known as Angelus of Dubuque.
10. Upon information and belief, the Angelus of Dubuque project was structured by Niebauer as follows:

¹ Unless otherwise noted, the statutory references are to the Wisconsin Statutes (2005-06), which were in effect at the time of the violations alleged herein and apply pursuant to § 551.703, Wis. Stats. (2007-08).

- a. In August, 2004, Niebauer formed a Wisconsin limited liability company (“LLC”) named Angelus of Dubuque LLC.
 - b. Angelus of Dubuque purchased the property on which the project would be built, and later would assign its interest in the property to small LLCs, which each would receive a 1.5% tenant-in-common (“TIC”) interest in their project for an investment of \$300,000.
 - c. In the Angelus of Dubuque project, the TIC LLCs were named numerically as DUB 1, LLC; DUB 2, LLC; etc. (collectively “the DUBs”). The DUBs were organized by Niebauer as a sole member LLC and sold to individual investors or a small group of investors.
 - d. Another affiliated company would manage the project through a lease agreement with the TIC LLCs. The TIC owners had no control or management authority of the project, and all such control and authority was held by Niebauer and his affiliated entities.
11. Upon information and belief, in January, 2005, Niebauer gave a promissory note to William Godfrey and Alan Luther who had loaned \$2,400,000 to Niebauer directly for his Richmond Terrace project, and Niebauer gave Godfrey & Luther a security interest in DUB 13-DUB 20 as collateral for the note.
 12. Upon information and belief, Niebauer’s attorneys, Foley & Lardner LP, filed liens with the UCC Division of the Department of Financial Institutions on January 19, 2005, memorializing the above collateral agreement.
 13. Upon information and belief, between September 15, 2005 and May 11, 2006, Niebauer and PRDC sold TIC LLC interests in Angelus of Dubuque to investors in Wisconsin.
 14. As TIC LLC interest holders in the Angelus of Dubuque project, the investors were involved in a common enterprise with the expectation of profit to be derived from the essential managerial efforts of others, the interests offered by the respondents are investment contracts as defined in DFI-Sec. § 1.02(6)(a), Wis. Admin. Code, and therefore are securities as defined by § 551.02(13), Wis. Stats.
 15. The TIC LLC interests in Angelus of Dubuque were not registered with the Division pursuant to § 551.21, Wis. Stats.
 16. In connection with the sales of TIC interests in Angelus of Dubuque as alleged above, Niebauer and PRDC, personally and through their agents and affiliates, made the following misrepresentations of fact to investors:
 - a. On or about May 11, 2006, Niebauer and PRDC promised at least one investor “guaranteed” monthly interest payments and repayment of principal on or before November 30, 2019. The investor received about three monthly payouts before the monthly payments stopped in about August 2006. The investor has received no more interest repayments or principal repayments.
 - b. In the 31-page booklet entitled “PRDC Investment Opportunity-Angelus of Dubuque” which was provided by Niebauer to investors on behalf of PRDC, the “Project Summary Section” states “In the first 3 years, the property will be in its lease up period. There are significant budget reserves to cover holding costs during this period.” No such budget reserves were retained by Angelus of Dubuque, but any funds available for that purpose were put into one account with the funds of other projects and used to fund all Niebauer/PRDC projects.

- c. Niebauer failed to disclose to investors that on and after January 31, 2006, several of his development projects were delinquent in paying their property taxes totaling approximately \$750,000, including Angelus of Nekoosa, Marina Place, Richmond Terrace, Angelus of McHenry East, Heather Valley Condo LLC, Foxglove of Sheboygan LLC, Windberry of Sheboygan LLC, Briarwood of Sheboygan LLC, PRDC-Junction Point, and Angelus of Clintonville.
 - d. Niebauer failed to disclose to investors a default on a \$600,000 loan from William Godfrey & Alan Luther in February, 2006.
 - e. Niebauer failed to disclose to investors the default on a \$4.2 million loan from Associated Bank in April 2006.
 - f. Niebauer failed to disclose to investors that Niebauer had previously pledged DUB 13-DUB 20 as collateral to other investors.
 - g. Niebauer and PRDC failed to disclose to investors that, contrary to the representations made in the prospectus, he did not have a reserve of funds from the sales of TIC interests in Angelus of Dubuque that would be held for use in the development of Angelus of Dubuque, but had put the funds in a big pot with the funds of other projects, and would spend those funds on any project he chose.
 - h. Niebauer and PRDC failed to disclose that some of his projects were already in financial difficulty and that money from other projects might be used to fund those projects.
17. As described above, Niebauer and PRDC violated § 551.41(2), Wis. Stats., by making an untrue statement of a material fact in connection with the sale of securities to investors.
18. As described above, Niebauer and PRDC violated § 551.41(2), Wis. Stats., by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, in connection with the offer and sale of securities to investors.

Therefore, the staff of the Bureau of Enforcement petitions the Administrator of the Division of Securities to issue the attached Order pursuant to Ch. 551, Wis. Stats.

Dated this 3rd day of June, 2011.



 Gregory L. Kipfer
 Examiner
 Bureau of Enforcement



 Leslie M. Van Buskirk
 Attorney Supervisor
 Bureau of Enforcement