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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 05-5242-E

COMMONWEALTH,

Plaintiff,

vs.

MICHAEL W. O'DONNELL,<sup>1</sup>

Defendant.

**FINDINGS OF FACT, RULINGS OF LAW  
AND ORDER FOR JUDGMENT**

**Introduction**

The Office of the Massachusetts Attorney General (the "Attorney General" or the "Attorney General's Office") brings this action on behalf of the Commonwealth, pursuant to its statutory authority under G.L. c. 93A, § 4, against defendant Michael W. O'Donnell ("Defendant" or "Mr. O'Donnell") for engaging in a series of allegedly unfair and deceptive business acts and practices, including: (1) using fictitious names and entities while conducting lending, foreclosure, and real estate transactions; (2) preparing and entering into residential mortgage agreements that were designed to fail; (3) using charitable organizations to conceal his business dealings and protect himself from liability; (4) conducting unauthorized transactions in his role as fiduciary to various charitable organizations, including misappropriating property belonging to the organizations for his personal benefit; and

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<sup>1</sup> Individually and d/b/a Boston Financial Trust and Setter Financial.

(5) failing to register and file annual reports for the charitable organizations that he created as required by G.L. c. 12, §§ 8E and 8F.

The Court tried the case, without a jury, intermittently over the course of several months in late 2014 and early 2015.<sup>2</sup> Twenty witnesses testified live at trial and more than 130 exhibits were admitted in evidence. After the close of all the evidence, the Attorney General submitted post-trial proposed findings of fact and conclusions of law.<sup>3</sup> Closing arguments were conducted on January 23, 2015. Although all of the proceedings were recorded, no official trial transcript was generated. The Court has relied, instead, on its extensive notes of the witnesses' testimony and the parties' arguments.

Having now fully considered the evidence introduced at trial and the parties' various written submissions, the following constitutes the Court's Findings of Fact, Rulings of Law and Order for Judgment on the claims asserted.<sup>4</sup>

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<sup>2</sup> All told, the trial of this case consumed some or all of nine (9) court days. The progress of the trial was delayed on multiple occasions as a result of Mr. O'Donnell's recurrent failure to appear in court as scheduled. In some instances, Mr. O'Donnell's failure to appear may have been attributable to circumstances beyond his control (*e.g.*, on one occasion, he claimed to have been assaulted in the Boston Public Gardens on his way to the Suffolk Superior Court and, on another occasion, he claimed to have been abducted, bound and gagged by an unnamed person or persons on the morning of trial). The Court is persuaded, however, that in some instances Mr. O'Donnell's failure to appear was intentional. For this reason, the Court sanctioned Mr. O'Donnell for his unexcused failure to appear for a status conference on the morning of December 4, 2014. *See* Contempt Order, dated Dec. 4, 2014. At that time, the Court directed Mr. O'Donnell to pay the sum of \$1,000 to the Clerk of Court. As of the date of this Order for Judgment, Mr. O'Donnell still has not complied with the Court's Contempt Order (*i.e.*, his payment check bounced).

<sup>3</sup> After the close of the evidence on December 18, 2014, both sides were invited to submit revised proposed findings of fact and rulings of law on or before January 16, 2015. The Court thereafter received a set of revised proposed findings and rulings from the Attorney General, but not from Mr. O'Donnell. Rather, late in the day on January 16, 2015, the Court received an e-mail message from Mr. O'Donnell that purported to include -- but did not actually include -- an electronic version of Mr. O'Donnell's revised proposed findings and rulings. Nor did Mr. O'Donnell ever provide a hard copy of his revised proposed findings and rulings to the Court or to the Attorney General, even when the Court later inquired as to the whereabouts of his submission. As a result, the Court has been forced to rely on the somewhat outdated proposed findings of fact and rulings of law that Mr. O'Donnell submitted to the Court before trial commenced.

<sup>4</sup> The Commonwealth's First Amended Complaint contains nine counts, not all of which were pressed at trial. The counts that actually were tried are Counts I-IV and VI (Unfair and Deceptive Acts and Practices in

## Findings of Fact<sup>5</sup>

### I. Baystate Affordable Housing Agency, Inc.

#### A. *The Organization and Holdings of Baystate.*

Baystate Affordable Housing Agency, Inc. ("Baystate") was a Massachusetts not-for-profit corporation organized under the provisions of G.L. c. 180 on May 26, 1995. Baystate's Articles of Organization lists "James Wright" as Baystate's President, Treasurer, Clerk, and sole Director, with a mailing address of "17 Bonair Street, #1, Somerville, Massachusetts 02145." Trial Exhibit ("Tr. Ex.") 35. According to the Articles of Organization, Baystate was created to,

conduct any activity ... that is not inconsistent with exemption from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986.... Specifically, but without any limitation, to conduct any activity that would help create or result in the provision of housing to low or low-to-moderate income people or to those in need of housing.

*Id.* at 000407.

Shortly after Baystate was formed, a request for tax exempt status was filed on Baystate's behalf with the Internal Revenue Service ("IRS"). Tr. Ex. 83. The "Application

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Violation of G.L. c. 93A, § 2), Count VIII (Violations of G.L. c. 12, § 8E and 8F), and Count IX (Breaches of Duties of Loyalty and Care). All of the Commonwealth's claims against Mr. O'Donnell's original co-defendant, R. David Cohen, Esq., were resolved separately prior to trial by means of an Agreement for Judgment (Docket No. 91.0).

<sup>5</sup> These findings of fact are based upon the Court's consideration of all the credible evidence presented at trial. In appropriate instances, the Court makes reference to specific testimony or exhibits in order to identify the evidentiary basis for its findings. To the extent that the Court makes no reference to a particular exhibit or to the testimony of a particular witness, the Court finds either that the content of such exhibit or testimony was not genuinely disputed, was not persuasive or credible, or was not germane to the issues to be decided. The Court's findings also take account of the fact that Mr. O'Donnell chose to assert, at trial, his right against self-incrimination under the Fifth Amendment to the United States Constitution. In some instances, the Court has drawn an adverse inference against Mr. O'Donnell on the basis of his Fifth Amendment assertion. See *Labor Relations Comm'n v. Fall River Educators' Ass'n*, 382 Mass. 465, 471 (1981) ("In a civil action, a reasonable inference adverse to a party may be drawn from the refusal of that party to testify on the grounds of self-incrimination.") (internal citations omitted).

for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code” states, in part, that Baystate’s intended activities were,

[t]o provide affordable housing to the community. The activity was initiated in May 1995. It will be conducted generally in Eastern Massachusetts by volunteers.... [And to] provide counseling and education to prospective end users.

*Id.* at 001591. The signature on the application forms is difficult to read, but the documents again identify “James Wright” as the President of Baystate, and a “Mark McMasters” at “P.O. Box 6, Boston, MA 02131” as the “person to be contacted if additional information is needed.” *Id.* at 001590, 001592. The IRS eventually granted Baystate’s application for tax exempt status in March 1996. *Id.* at 001578.

Although Baystate’s organizational purposes were explicitly charitable in nature and it applied for, and obtained, federal tax exempt status under Section 501(c)(3) of the Internal Revenue Code, Baystate never registered as a charity with the Massachusetts Attorney General as required by G.L. c. 12, § 8E, and never filed annual financial reports with the Attorney General as required by G.L. c. 12, § 8F.<sup>6</sup> Tr. Ex. 137.<sup>7</sup>

Baystate ultimately came to own three separate properties in Taunton, Massachusetts. The first property, located at 4 High Street Extension, was acquired in October 1992 for

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<sup>6</sup> Massachusetts General Laws c. 12, § 8E, requires every “public charity established, organized or chartered under the laws of the commonwealth or under the laws of any other state ... before engaging in charitable work or raising funds in the commonwealth, [to] register with the [Charities Division of the Office of the Attorney General] by filing a copy of its charter, articles of organization, agreement of association or instrument of trust, a true copy of its constitution and by-laws and a one-time initial registration fee of \$100, together with such other information as the director may require.” General Laws c. 12, § 8F, in turn, requires that “[t]he trustee or trustees or the governing board of every public charity shall annually, at a time to be determined by the director, file with the [Charities Division] a written report for its last preceding fiscal year ... [that] shall contain such financial and other information as the director may require.”

<sup>7</sup> Trial Exhibit 137 is the sworn “Affidavit of Stacie Harper,” an Administrative Assistant in the Public Charities Division of the Office of the Attorney General. Ms. Harper’s trial testimony was submitted by affidavit pursuant to an oral stipulation between the parties that was entered on the record on November 5, 2014.

\$100.00 from a person allegedly named “William O’Donnell.” Tr. Ex. 89. The second, an adjacent parcel located at 6 High Street Extension (collectively, with 4 High Street Extension, the “High Street Extension Properties”), was acquired by Baystate in November 1994 from Mr. O’Donnell himself for \$1.00. Tr. Ex. 91. The third, located at 115 Tremont Street (the “Tremont Street Property”), was acquired in April 2001 from another of Mr. O’Donnell’s business ventures, “Boston Financial Trust” (“Boston Financial”), purportedly for the sum of \$155,000. Tr. Ex. 99. Boston Financial, as the alleged financier of Baystate’s purchase, retained a mortgage on the Tremont Street Property. *Id.*

**B. *Mr. O’Donnell’s Operation of Baystate for His Personal Purposes.***

While purportedly charitable in purpose, Baystate’s acquisition of the High Street Extension Properties and the Tremont Street Property was nothing more than a legal shell game perpetuated by Mr. O’Donnell for his own benefit. No evidence whatsoever was presented at trial that any of Baystate’s properties ever was developed into “affordable housing for the community” or ever served any other charitable function. Instead, all of the credible evidence supports the reasonable inference, which the Court makes in this case, that Mr. O’Donnell used Baystate simply as a legal mechanism to hold various properties that he intended eventually to resell for his personal profit.

For example, no persons named “James Wright” or “Mark McMasters” actually were involved in the creation or operation of Baystate. Efforts to locate Mr. Wright yielded no person by that name who ever lived at 17 Bonair Street in Somerville, Massachusetts (Testimony of Nancy Ward;<sup>8</sup> Tr. Ex. 137), and repeated attempts by the City of Taunton to

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<sup>8</sup> Ms. Ward is a clerk and part-time investigator employed by the Attorney General. She testified on November 6, 2014.

contact Mr. Wright also were unsuccessful, Tr. Ex. 27, at 3-4. Similarly, no evidence of Mr. McMasters' existence (other than his name on various documents associated with the properties at issue in this action) was presented at trial.

That Mr. O'Donnell was the true controlling force behind Baystate is further demonstrated by the fact that Baystate's official mailing address -- P.O. Box 6, Boston, Massachusetts 02131 ("P.O. Box 6") -- was a post office box that Mr. O'Donnell rented from 1988 to 2005.<sup>9</sup> Tr. Ex. 1. All of the communications between Baystate and the IRS concerning Baystate's application for federal tax exempt status list P.O. Box 6 as Baystate's mailing address. Tr. Ex. 83. P.O. Box 6 also appears as the mailing address for Boston Financial on numerous documents and communications. *See, e.g.*, Tr. Exs. 96, 97, 102, and 107. At or about the same time, Mr. O'Donnell used P.O. Box 6 as his personal mailing address in his dealings with the Massachusetts Registry of Motor Vehicles and on his personal checks. Testimony of Monique Cascarano<sup>10</sup>; Tr. Ex. 120. Indeed, an official "Routing Slip" obtained from the records of the United States Postal Service discloses that Mr. O'Donnell used P.O. Box 6 during the relevant timeframe as the mailing address for a variety of his businesses and aliases, including, but not limited to, "Baystate Towing," Baystate Building Maint[enance]," "ASAP Towing," "Peter Duncan" and "Michael Shea." Trial Testimony of John Stassi<sup>11</sup>; Tr. Ex. 2.

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<sup>9</sup> For venue purposes, the Court finds that Mr. O'Donnell's principal place of business at all relevant times has been in Boston, Massachusetts, as reflected in his primary mailing address.

<sup>10</sup> Ms. Cascarano is an investigator employed by the Office of the Massachusetts Attorney General. She testified on November 6 and December 18, 2014.

<sup>11</sup> Mr. Stassi is a United States Postal Inspector. He testified on November 3, 2014.

Mr. O'Donnell admitted his use of false aliases in his business dealings in a rare, truthful discussion that he had with David Domingos, a now-retired Massachusetts State Police Trooper, at a fire scene involving another of Mr. O'Donnell's vacant properties in Mansfield, Massachusetts in August 1999.<sup>12</sup> Mr. O'Donnell initially introduced himself to investigators at the scene as "Mark McMasters," but subsequently admitted his real name under questioning by Trooper Domingos. Testimony of David Domingos. When asked to explain his attempted use of an alias, Mr. O'Donnell stated that he frequently used false names as the record owner or manager of his properties in order to shield himself from liability, to cloud title to the properties, and to make it more difficult for towns and municipalities to determine who was responsible for paying taxes and water bills on the properties. *Id.* Mr. O'Donnell further told Trooper Domingos that he frequently used false names to purchase abandoned properties, then granted fictitious mortgages on the properties to his own mortgage companies. *Id.* In this way, Mr. O'Donnell explained, he could formally "disassociate himself" from the properties, while still maintaining control in the guise of mortgagee. *Id.*

All of the credible evidence supports the conclusion, and the Court so finds, that Mr. O'Donnell organized and operated Baystate, using the false names "James Wright," "Mark McMasters" and others, to provide a cover for Mr. O'Donnell's personal business dealings, including, but not limited to, the acquisition, rehabilitation and sale of real estate for Mr. O'Donnell's own financial benefit. The Court further finds that Mr. O'Donnell utilized false names and Baystate in an effort to improperly eliminate or reduce state, local and federal taxes on his real estate holdings until such time as he sold or otherwise disposed of the

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<sup>12</sup> Mr. Domingos was an investigator with the Massachusetts State Police for over twenty-seven years. He testified on November 5, 2014.

properties. Mr. O'Donnell frequently used aliases such as "Kevin Joyce," "Peter Duncan" and "Paul Willis" when he interacted in writing with the City of Taunton's Assessor's Office on multiple occasions in an unsuccessful effort to obtain property tax abatements and/or exemptions for the High Street Extension Properties, the Tremont Street Property, and other allegedly charitable properties owned by Baystate.<sup>13</sup> Testimony of Joyce Griffin<sup>14</sup>; Tr. Ex. 45. Mr. O'Donnell is the only person, however, who ever physically appeared in the City of Taunton Assessor's Office to address matters pertaining to Baystate. Testimony of Jayne Ross.<sup>15</sup>

**C. *Mr. O'Donnell's Transfer of Baystate's Property Holdings to Himself for His Personal Gain.***

None of the properties owned by Baystate ever served any charitable purpose. Rather, ~~Mr. O'Donnell arranged to have each of the properties stripped away from Baystate in October 2006 for Mr. O'Donnell's own personal gain and on terms that yielded no benefit for Baystate or its supposed charitable beneficiaries.~~

The High Street Extension Properties were transferred from Baystate as a group. On October 26, 2006, Baystate, through its purported president, "Ching Chang," filed Articles of Amendment changing Baystate's name to "Reintegration Services, Inc." Tr. Ex. 36. The

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<sup>13</sup> The principal reason that Mr. O'Donnell generally was unsuccessful in obtaining local tax relief for his allegedly "charitable" properties is that the City of Taunton required the properties to be occupied by the charities that purportedly owned them in order to be eligible for such relief. Testimony of Joyce Griffin. As observed by Ms. Griffin and other City personnel, the particular properties for which Mr. O'Donnell sought tax relief were either vacant, were being used for purposes related to one of Mr. O'Donnell's other businesses, or were occupied by Mr. O'Donnell himself. *Id.* See also Tr. Ex. 93, at 00592 (listing Mr. O'Donnell's residence in 2003 as "4 High Street Ext., Taunton, MA 02780").

<sup>14</sup> Ms. Griffin served as Assistant Assessor, and later Assessor, for the City of Taunton. She testified on November 6, 2014.

<sup>15</sup> Ms. Ross worked for the City of Taunton Assessor's Office for forty-one years. She testified on November 3, 2014.

alleged corporate purpose of the renamed entity was “[t]o help integrate people who have served their time and want to become part of society.” *Id.* Four days later, Mr. (or Ms.) Chang executed a “Deed in Lieu” conveying 4 High Street Extension and 6 High Street Extension to Mr. O’Donnell personally for the total sum of \$100.00, purportedly in satisfaction of an unrecorded mortgage that Mr. O’Donnell allegedly held on the properties. Tr. Ex. 114. The combined, fair market, appraised value of the High Street Extension properties at or about the time of the transfers was approximately \$281,500.00.<sup>16</sup> Testimony of Joyce Griffin; Tr. Ex. 48 (listing appraised value of \$154,200.00 for 4 High Street Extension as of 2006); Tr. Ex. 49 (listing appraised value of \$127,300.00 for 6 High Street Extension as of 2006).

Baystate’s ownership interest in the Tremont Street Property was transferred to Mr. O’Donnell at the same time in roughly the same manner. On October 30, 2006, Ching Chang, as the purported president and treasurer of Reintegration Services, Inc. (a/k/a Baystate), executed a second “Deed in Lieu” that conveyed the Tremont Street Property to Boston Financial for the total sum of \$100.00. Tr. Ex. 116. The fair market, appraised value of the Tremont Street Property at or about the time of its transfer was approximately \$561,000.00. Testimony of Joyce Griffin; Tr. Ex. 47 (listing appraised property value as of 2006).

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<sup>16</sup> The “appraised” values of the Baystate properties are contained in the records of the City of Taunton’s Assessor’s Office. These values are separate and distinct from the “assessed” values of the properties, which also are set forth in the same records. Ms. Griffin, the former City Assessor, credibly testified that the appraised property values listed in the records of the Assessor’s Office are based on actual sales data contained in the third party “Vision” computerized appraisal system, which is periodically tested and verified for accuracy. As such, the Court finds that the appraised values listed in the records of the Assessor’s Office provide a reasonably reliable means of determining the value of the properties at issue. *See Correia v. New Bedford Redevelopment Auth.*, 375 Mass. 360, 363 (1978) (describing, with approval, “the ‘norm’ of comparable sale approaches as evidence of [real estate] value”).

The transfer of the High Street Extension properties to Mr. O'Donnell on October 30, 2006, and the transfer of the Tremont Street Property to Boston Financial on the same date, were shams. There was no Ching Chang and no valid mortgage on the High Street Extension properties in favor of Mr. O'Donnell at that time.<sup>17</sup> Moreover, the evidence supports the reasonable inference, which the Court makes, that Boston Financial was just another one of Mr. O'Donnell's various enterprises that masqueraded as a legitimate, independent business. All of Boston Financial's business activities were undertaken by, and benefitted only, Mr. O'Donnell.<sup>18</sup> The true purpose of the purported "Deed[s] in Lieu" that were executed on Baystate's behalf in October 2006 was to provide ostensible legal cover for Mr. O'Donnell's blatant pillaging of Baystate's charitable assets for his own financial gain.<sup>19</sup>

## II. Save the Star, Inc.

### A. *The Organization and Holdings of Save the Star.*

The facts pertaining to the creation and operation of Save the Star, Inc. ("Save the Star"), another Massachusetts not-for-profit entity, mirror Mr. O'Donnell's involvement in Baystate. Save the Star was organized in September 2002 purportedly to preserve and rehabilitate the Star Theater/Leonard Block (the "Star Theater Property"), a large, dilapidated,

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<sup>17</sup> When questioned by the Court at trial concerning Ching Chang's gender and current whereabouts, Mr. O'Donnell was evasive and non-committal on both points.

<sup>18</sup> Mr. O'Donnell admitted having an interest in Boston Financial at trial. Although he claimed that one or more other investors also possessed an interest in that entity, no evidence of their alleged holdings ever was offered or introduced in evidence.

<sup>19</sup> At Mr. O'Donnell's deposition in this action, Mr. O'Donnell was asked, among other things: (1) "Who is in charge of Baystate Affordable Housing Agency, Inc.'s bank accounts"; (2) "Who has possession of its books and records"; and (3) "Have you ever derived any money or income from Baystate Affordable Housing Agency, Inc." Deposition of Michael O'Donnell, dated March 1, 2007 (Tr. Ex. 108), at 46. Mr. O'Donnell asserted his Fifth Amendment right against self-incrimination in response to each question. *Id.* His refusal to testify on the topic of Baystate's finances further supports the Court's finding that Mr. O'Donnell personally profited from the transfer of Baystate's property holdings in October 2006. See *Labor Relations Comm'n v. Fall River Educators' Ass'n*, 382 Mass. at 471.

150 year old structure located at 107-111 Main Street in downtown Taunton. Save the Star's

Articles of Organization, dated September 30, 2002, describe its charitable purpose as:

conduct[ing] any activity ... that is not inconsistent with exemption from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986.... Specifically, but without any limitation, to rehabilitate and promote the architecturally significant buildings within the historic portions of Taunton, Massachusetts, including, but not limited to, the Star Theater/Leonard block. In addition, to educate people as to the historic significance of these architecturally significant buildings.

Tr. Ex. 34. "Kevin Joyce" of 96 Danforth Street, Taunton, Massachusetts is identified in the Articles of Organization as the president, treasurer and clerk of Save the Star, while Mr. Joyce and "Peter Walsh" of 685 Bay Street, Taunton, Massachusetts are identified as the organization's directors. *Id.* No reference to Mr. O'Donnell appears anywhere in the document. *Id.*

Although Save the Star's organizational purposes were explicitly charitable in nature, Save the Star, like Baystate, never registered as a charity with the Massachusetts Attorney General as required by G.L. c. 12, § 8E, and never filed annual financial reports with the Attorney General as required by G.L. c. 12, § 8F. Tr. Ex. 137.

Save the Star acquired the Star Theater Property from its prior owner, G. and A. Realty Trust, on October 1, 2002 for the sum of \$154,400.00. Tr. Ex. 106. No individuals named Kevin Joyce or Peter Walsh appeared at the closing. Mr. O'Donnell was present, however, supposedly as agent for Mr. Joyce. Tr. Ex. 22. The same day, Save the Star and Boston Financial entered into a mortgage agreement whereby Save the Star mortgaged the property to Boston Financial in consideration of a purported \$450,500.00 loan, the amount of which was

almost three times the \$154,400.00 purchase price.<sup>20</sup> Tr. Ex. 107. The mortgage agreement was signed on Save the Star's behalf by Kevin Joyce as the organization's president and treasurer. *Id.*

Despite the poor physical condition of the Star Theater Property, several commercial tenants continued to occupy portions of the property after it was acquired by Save the Star in 2002. The tenants generally were instructed to make their rent checks payable to "Michael Davis," "M. Davis" or the "Michael Davis Fund." Tr. Ex. 111. Mr. Davis' precise position or role with respect to Save the Star was not explained at trial. The numerous cancelled checks and other bank records introduced at trial, however, establish that tenants of the Star Theater property made in excess of \$50,000.00 in rent payments to Mr. Davis or the Michael Davis Fund in the period from 2003 through 2008. *Id.*

**B. *Mr. O'Donnell's Operation of Save the Star for His Personal Purposes.***

As he did with Baystate, Mr. O'Donnell operated Save the Star, through a series of aliases and false names, for his own personal financial benefit, rather than for any charitable purpose. The evidence supports the conclusion, and the Court so finds, that no persons named "Kevin Joyce" or "Peter Walsh" ever participated in the creation or operation of Save the Star. For example, various records searches undertaken by federal, state and local investigators uncovered no evidence that anyone named "Kevin Joyce" ever resided at 96 Danforth Street in Taunton, or that anyone named "Peter Walsh" ever resided at 685 Bay Street in Taunton.<sup>21</sup>

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<sup>20</sup> There was no evidence presented at trial that Boston Financial ever delivered \$450,000.00 in value to Baystate for the mortgage that Baystate granted to Boston Financial on October 1, 2002. The Court finds, based on all of the circumstances, that the stated mortgage amount was a fiction that was intended solely to increase Mr. O'Donnell's control over the Star Theater Property.

<sup>21</sup> When questioned about Mr. Joyce and Mr. Walsh at his deposition in this action, Mr. O'Donnell again asserted his Fifth Amendment right against self-incrimination. Tr. Ex. 108, at 18, 23.

Testimony of Nancy Ward, Joseph Rose<sup>22</sup> and Gregory Galligan.<sup>23</sup> The evidence also establishes that various checks made payable and issued to Kevin Joyce for reasons having to do with Save the Star ultimately were deposited into Mr. O'Donnell's personal bank accounts at Sovereign Bank and Citizens Bank. Tr. Ex. 105, 111 and 121.

Mr. O'Donnell's success in hiding behind his Kevin Joyce alias is demonstrated, in part, by the fact that the City of Taunton was forced to file a Superior Court lawsuit against Save the Star and Kevin Joyce in July 2006 in an effort to determine who actually controlled the Star Theater and compel that person or entity to repair the building's nonfunctioning fire alarm system. Testimony of Joseph Rose; Tr. Ex. 24. Notice of the City's complaint eventually was provided to the defendants through publication in the Taunton Daily Gazette because the City was unable to locate or contact Kevin Joyce through any other means. Testimony of Joseph Rose; Tr. Ex. 26. The suit eventually was resolved when Mr. O'Donnell, purportedly acting as trustee of Boston Financial, made the necessary repairs.<sup>24</sup> Testimony of Joseph Rose.

Similarly, the Court heard no evidence that any actual person named Michael Davis ever was involved in the management of the Star Theater Property. To the contrary, most, if

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<sup>22</sup> Chief Rose was a member of the Taunton Fire Department for more than thirty years, during which time he served in a variety of positions, including Deputy Fire Chief and Interim Fire Chief. He testified on November 4, 2014.

<sup>23</sup> Mr. Galligan is an Arson Investigator with the Taunton Fire Department. He testified on January 13, 2015.

<sup>24</sup> Throughout his dealings with the Taunton Fire Department regarding the Star Theater Property, Mr. O'Donnell insisted that Kevin Joyce was in charge of Save the Star, but was unable to make Mr. Joyce available to Fire Department personnel. Testimony of Joseph Rose.

not all, of the rent checks that tenants at that property directed to Mr. Davis once again wound up in Mr. O'Donnell's personal bank account at Sovereign Bank. Tr. Ex. 111.

From these facts (and others), the Court reasonably infers that Kevin Joyce, Peter Walsh and Michael Davis were merely aliases that Mr. O'Donnell used in an effort to conceal his business activities involving the Star Theater Property, and to shield him from any personnel financial exposure on account of those activities.<sup>25</sup>

The Court further finds that Mr. O'Donnell utilized Save the Star's alleged charitable status and various false names in an improper effort to eliminate or reduce state, local, and federal taxes on the Star Theater Property until such time as he sold or otherwise disposed of that property for his own gain. Mr. O'Donnell repeatedly approached Taunton Assessor Joyce Griffin seeking local property tax abatements for the Star Theater Property based on its alleged charitable status. Testimony of Joyce Griffin. In his discussions with Ms. Griffin, Mr. O'Donnell explicitly represented that the Star Theater Property was owned by a charitable entity that qualified for local tax relief. *Id.* Ms. Griffin even toured the Star Theater Property with Mr. O'Donnell sometime in the early 2000s, at which time she observed that the property actually was being used by Mr. O'Donnell to store stuffed animals and other personal belongings of unfortunate home foreclosure victims (another of Mr. O'Donnell's numerous businesses).<sup>26</sup> *Id.* Although the City of Taunton denied Mr. O'Donnell's request for tax relief

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<sup>25</sup> The specific instances described in which Mr. O'Donnell used aliases and false names to carry out his business activities are not, by any means, exclusive. The Attorney General submitted evidence at trial of numerous other occasions on which Mr. O'Donnell, or persons acting on his behalf, deceptively concealed Mr. O'Donnell's ownership interest and/or identity through the use of unregistered aliases and false names. See, e.g., Tr. Ex. 28, 30, 32, 85, 86, 87, 94, 96, 97, 98, 102, 104, 128, 131, 135, and 136. The Court credits this evidence as proof of additional unfair and deceptive acts or practices on Mr. O'Donnell's part.

<sup>26</sup> The Commonwealth presented evidence at trial showing that Mr. O'Donnell used the Star Theater Property at 107-111 Main Street as the principal place of business for a variety of his other business ventures in

on that occasion, the City subsequently granted a partial abatement application submitted by Kevin Joyce on behalf of Save the Star in 2005 based, at least in part, on Mr. Joyce's representation that the Star Theater Property had been given an "incorrect usage classification" by the City. Tr. Ex. 45.

Mr. O'Donnell also utilized Save the Star's alleged charitable status to obtain a conditional grant from Heart of Taunton, Inc. ("Heart of Taunton"), a not-for-profit corporation dedicated to revitalizing the downtown Taunton area, to repair and restore the exterior of the Star Theater Property in early 2003. Testimony of Julie Sprague<sup>27</sup>; Tr. Exs. 8, 9 and 10. Heart of Taunton later revoked the grant, however, due to Mr. O'Donnell's failure to submit the required plans and complete the restoration in a timely manner. Testimony of Julie Sprague; Tr. Ex. 10.

**C. *Mr. O'Donnell's Transfer of the Star Theater Property to Himself for His Personal Gain.***

Save the Star, like Baystate, never served any charitable purpose. Rather, Mr. O'Donnell, in the guise of Boston Financial, eventually foreclosed on Boston Financial's mortgage on the Star Theater Property on October 31, 2006, based on Save the Star's alleged "breach of the conditions thereof." Tr. Ex. 117. No evidence was introduced at trial that Save the Star actually was in breach of any conditions of its mortgage to Boston Financial at that time. Rather, all of the circumstances support the reasonable inference, which the Court

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the 2000s, including Boston Financial, Setter Financial, and Alpha Development. *See, e.g.*, Tr. Ex. 115 (listing Boston Financial's business address as "111 Main Street, Taunton, MA 02780"); Tr. Ex. 64 (listing Setter Financial's business address as "107 Main Street, Taunton, MA 02780"); and Tr. Ex. 23 (listing Alpha Development's business address as "109 Main Street, Taunton, Massachusetts 02780").

<sup>27</sup> Ms. Sprague was the Executive Director of Heart of Taunton from 2002 through 2012. She testified on November 3, 2014.

makes, that Mr. O'Donnell foreclosed on the Star Theater Property for his own personal gain and on terms that yielded no benefit whatsoever for Save the Star. The fair market, appraised value of the real property comprising the Star Theater Property (*i.e.*, 107-111 Main Street) was approximately \$442,800.00 at or about the time of the foreclosure. Testimony of Joyce Griffin; Tr. Ex. 46 (listing appraised value of property as of 2006).

### III. Carol Rebello's Home Mortgage Loan.

#### A. *The Margaret Road Property.*

Counts I through IV of the Commonwealth's First Amended Complaint assert claims against Mr. O'Donnell based on his alleged violations of various consumer lending and mortgage loan laws and regulations in his dealings with Carol S. Rebello ("Mrs. Rebello") in the 2004-2005 timeframe. At the time this action was commenced in 2005, Mrs. Rebello was 71 years old and resided at 68 Margaret Road, Taunton, Massachusetts (the "Margaret Road Property" or simply the "Property"). Now deceased, Mrs. Rebello was the sole owner of the Margaret Road Property (after her divorce) from its completion in the 1960s to the time of her death in October 2013. Testimony of Mary Rebello.<sup>28</sup> In the late 1980s, Mrs. Rebello relocated to East Hartford, Connecticut to care for her ailing mother and sister with the

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<sup>28</sup> Much of the evidence concerning the history of the Margaret Road Property and Mr. O'Donnell's dealings with Mrs. Rebello was admitted through the testimony of Mrs. Rebello's daughter, Mary Rebello, who testified on November 17, 2014.

In addition, the Court received and admitted a transcript of Mrs. Rebello's sworn deposition testimony, which was taken on April 12, 2006 (*see* Tr. Ex. 51), and an "Affidavit of Carol S. Rebello in Support of Complaint," dated December 13, 2005 (*see* Tr. Ex. 52), which was marked as an exhibit at the deposition. The transcript of Mrs. Rebello's deposition reflects that Mr. O'Donnell was represented by legal counsel at the deposition. Massachusetts law holds that the prior recorded testimony of an unavailable witness may be admitted at trial where, as here, the opposing party had the opportunity and similar motive to develop the witness' testimony by means of direct, cross or redirect examination at the time it was given. *See, e.g., Commonwealth v. Meech*, 380 Mass. 490, 494 (1980).

intention of returning to the Property after caring for her family. *Id.* Mrs. Rebello's stay in Connecticut ultimately lasted over ten years. *Id.*

The Margaret Road Property fell into significant disrepair during Mrs. Rebello's extended absence. *Id.* In 2003, Mrs. Rebello started making periodic visits to the Property in order to clean it up, make necessary repairs and improvements, and eventually move back to the Taunton area. *Id.* Her efforts were insufficient, however, to adequately address all of the problems that had developed over time.<sup>29</sup> In February 2004, the Taunton Board of Health notified Mrs. Rebello by letter that it intended to condemn the Margaret Road Property due to its decrepit condition. Tr. Ex. 70. The City gave Mrs. Rebello twelve months to bring the Property into compliance with state sanitary code requirements. *Id.*

A year passed. When conditions at the Property did not materially improve, the Taunton Board of Health, working in conjunction with the Attorney General's Office, commenced an action against Mrs. Rebello in Fall River Housing Court seeking to appoint Pro-Home, Inc. ("Pro-Home") as receiver for the Margaret Road Property.<sup>30</sup> Pro-Home is an honest-to-goodness not-for-profit corporation, established under G.L. c. 180 and Section 501(c)(3) of the Internal Revenue Code, with the goal of, among other things, "[d]eveloping and preserving affordable housing in the City of Taunton." Testimony of David Tipping<sup>31</sup>;

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<sup>29</sup> Mary Rebello testified at trial that her mother was a hoarder.

<sup>30</sup> The collaboration between the Taunton Board of Health and the Attorney General's Office was part of an "Abandoned Housing Initiative" that, between 1998 and 2006, sought to address, through court proceedings and receiverships, the large number of abandoned homes in certain parts of the Commonwealth, including the greater Brockton, Taunton, and New Bedford areas. Testimony of Andrew Berge. Attorney Berge is an Assistant Attorney General who testified on November 12, 2014.

<sup>31</sup> Mr. Tipping is a vice-president of Bristol County Savings Bank who also serves, on a voluntarily basis, as president of Pro-Home. He testified on December 18, 2014.

Tr. Ex. 130. Pro-Home's charitable activities include acting as receiver for abandoned properties, rehabilitating the properties, and reselling them to qualified buyers. *Id.* Mr. O'Donnell served as a member of Pro-Home's board of directors in the early 2000s. Tr. Ex. 72.

The Fall River Housing Court conducted a hearing in the receivership proceeding involving the Margaret Road Property on March 9, 2005. Mrs. Rebello appeared at the hearing and represented that she intended to remedy the code violations at the Margaret Road Property, as well as pay the back taxes and other fees then owed to the City of Taunton. Testimony of Mary Rebello. The Housing Court gave Mrs. Rebello an additional thirty days to clean up the Property, obtain a loan to finance the necessary repairs, and hire a contractor to do the work. *Id.*

**B. *Mr. O'Donnell Takes Unfair Advantage of Mrs. Rebello's Need for Financial Assistance.***

Mrs. Rebello was unable to obtain financing to repair the Margaret Road Property over the next thirty days because the City's intention to condemn the Property prevented her from receiving loan offers from mortgage lenders. *Id.* Shortly before her next court hearing date, Mrs. Rebello was visited at her Margaret Road home by Mr. O'Donnell, who asked her whether she needed a loan to repair the Property. *Id.*; Tr. Ex. 52, ¶ 8. The evidence supports the reasonable inference, which the Court makes, that Mr. O'Donnell learned of Mrs. Rebello's distress and her need for financial assistance through his position on Pro-Home's board of directors.<sup>32</sup>

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<sup>32</sup> Pro-Home's board of directors held a meeting on the evening of March 9, 2005, which Mr. O'Donnell attended. Tr. Ex. 74. During the meeting, Mary Ellen Rochette, reported that the Housing Court had given Mrs. Rebello thirty days to "clean the yard of all vehicles and debris, obtain financing & execute a

In the course of their discussion, which took place in Mrs. Rebello's front yard, Mr. O'Donnell told Mrs. Rebello that "it was a shame how the City of Taunton takes away peoples' homes." Tr. Ex. 52, ¶ 8. He also told her that, if Pro-Home was appointed as receiver for the Margaret Road Property, it would repair the Property, then sell it to the highest bidder. Testimony of Mary Rebello. Mrs. Rebello understood Mr. O'Donnell's statements as an attempt to make her fearful that she would lose her home if she did not obtain sufficient financing to make the repairs that the Board of Health required. Tr. Ex. 52, ¶ 8. Mr. O'Donnell eventually left without offering Mrs. Rebello any financial assistance, and without disclosing his affiliation with any company that was willing to offer her assistance.

Mrs. Rebello appeared again in Housing Court for a follow-up hearing on April 13, 2005. Tr. Ex. 52, ¶ 9. She had been unable to obtain the needed financing prior to the hearing. Testimony of Mary Rebello. Then, literally in the middle of the hearing, Mrs. Rebello received a fax that was sent to the courthouse by "Setter Financial" offering Mrs. Rebello a \$58,000 mortgage on the Margaret Road Property. Tr. Ex. 57. The fax said:

Setter Financial commits itself to the following terms for the mortgage at 68 Margaret Rd., Taunton, MA 02780:

TERM: The mortgage shall be for a term of twenty (20) years.

AMOUNT: The mortgage shall be in the amount of Fifty-Eight Thousand (\$58,000.00) Dollars.

INTEREST RATE: The interest rate shall be 10.4% per annum.

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signed contract to have the house brought up to code." *Id.* Mr. O'Donnell was asked at his deposition in this case whether he learned of Mrs. Rebello's urgent need for financing through his position on Pro-Home's board of directors. Tr. Ex. 108, at 51-52. Mr. O'Donnell refused to answer the question and asserted his Fifth Amendment right against self-incrimination. *Id.*

DISBURSEMENTS: \$14,000.00 directly to the City of Taunton to pay R.E. taxes.  
\$4,000.00 closing costs and fees.  
\$40,000.00 rehabilitation work on premises.

CONDITIONS: contractor will be paid directly on a draw basis for rehabilitation work performed.

*Id.* The signature that appears on the Setter Financial fax is undecipherable. *Id.*

Believing her situation to be “desperate,” Mrs. Rebello felt compelled to accept the proposed loan from Setter Financial on the terms offered in the faxed commitment letter. Tr. Ex. 52, ¶ 10. Two days later, on April 15, 2005, she attended the loan closing at Taunton City Hall. *Id.*, ¶ 11. Mrs. Rebello was unrepresented at the closing by legal counsel. *Id.* Attorney Shannon Shreve appeared on behalf of Setter Financial, but was largely unknowledgeable regarding the terms of the loan or the Margaret Road Property itself. *Id.* During the closing, Attorney Shreve had Mrs. Rebello sign a “Mortgage and Security Agreement” (Tr. Ex. 129), a “Promissory Note” (Tr. Ex. 56), and two additional documents that were not referenced anywhere in the fax commitment letter: a document titled “Additional Terms of Mortgage” (Tr. Ex. 54), and another titled “Rebello Disbursements” (Tr. Ex. 55) (collectively, the “Mortgage Agreement”). *Id.*, ¶ 12. Mrs. Rebello was not given the opportunity to review any of these documents before the closing, or to seek the advice of counsel regarding the requirements that they imposed. Tr. Ex. 52, ¶ 11.

The “Additional Terms of Mortgage” that Mrs. Rebello was required to sign on April 15, 2005 were material to the transaction and onerous. One non-standard term required Mrs. Rebello to “obtain a Title V inspection within three months” of the closing date notwithstanding the fact that no sale of the Margaret Road Property was contemplated.

Tr. Ex. 54. Another stated that the mortgage on Mrs. Rebello's residence would be a "commercial mortgage," and that she was prohibited from converting the mortgage to a residential mortgage. *Id.* The "Additional Terms of Mortgage" also provided that all "mortgage proceeds will be available on a draw basis in accordance with a separate unrecorded schedule ... which shall be determined solely by the Mortgagee." *Id.* Similarly, the "Rebello disbursements" schedule disclosed that all contractor payments made on the project would be subject to a ten percent (10%) charge "for review and verification." Tr. Ex. 55. Unlike the Mortgage Agreement itself, the additional documents that Mrs. Rebello signed on April 15, 2005 were not recorded at the Bristol County Registry of Deeds. Tr. Ex. 129.

Although he asserted his Fifth Amendment right against self-incrimination when questioned about his involvement in Setter Financial at his deposition in this action (*see* Tr. Ex. 108, at 54-56), Mr. O'Donnell acknowledged at trial that he was the sole investor in Setter Financial. Mrs. Rebello remained unaware that Mr. O'Donnell had any involvement in the mortgage loan that she obtained from Setter Financial, however, until well after all of the loan documentation had been signed.<sup>33</sup> Tr. Ex. 51, at 59-61; Tr. Ex. 52, ¶ 13.

Mr. O'Donnell thereafter was actively involved in all matters relating to the renovation of the Margaret Road Property, either visibly or behind the scenes. For example, it was Mr. O'Donnell, not Mrs. Rebello, who selected the contractor who would perform the anticipated repairs to the Property. *Id.*, ¶ 14. Prior to beginning repairs, Mrs. Rebello

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<sup>33</sup> Mrs. Rebello first learned that Mr. O'Donnell had any involvement in her mortgage transaction with Setter Financial when her daughter told her sometime later that, after the closing, she had observed Mr. O'Donnell deliver a check to pay the outstanding taxes, water charges, and other unpaid fees on the Margaret Road Property to Taunton City Hall. Tr. Ex. 51, at 59-61.

received a phone call from Jose Borges, who said he was calling “through Mike.”<sup>34</sup> *Id.*, ¶ 15. Mr. Borges, in turn, presented Mrs. Rebello with a written proposal from “Goncalves Contractor,” which offered to install new roofing, reframe portions of the house, repair the plumbing, install new windows, and “[r]enovate the entire interior of the house” for the total sum of \$47,000.00, including all labor and materials.<sup>35</sup> *Id.*; Tr. Ex. 59. Missing from the proposal was any mention that Mrs. Rebello would be personally responsible for any additional costs associated with the contractor’s work, and the fact that the contractor chosen by Mr. O’Donnell was not a licensed general contractor. Tr. Ex. 52, ¶ 16. As a result of the latter omission, Mrs. Rebello subsequently was forced to obtain the necessary permits to begin the repair work on her home in her own name. *Id.*

The process of repairing Mrs. Rebello’s home on Margaret Road did not proceed smoothly or as planned. On May 19, 2005, Mrs. Rebello received a letter from “Jonathan Ridlew,” Setter Financial’s purported “Account Manager.” Tr. Ex. 61. In the letter, Mr. Ridlew informed Mrs. Rebello of a previously undisclosed \$353.22 monthly home insurance payment she was required to make. *Id.* In a subsequent letter and in telephone discussions with Mrs. Rebello, Mr. Ridlew directed her to send the monthly insurance payments to Setter Financial, which allegedly had obtained coverage through its own unidentified carrier. Tr. Exs. 62 and 52, ¶ 21.

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<sup>34</sup> When questioned at his deposition about his role in selecting and overseeing the contractors who subsequently performed the repair work on Mrs. Rebello’s home, Mr. O’Donnell once again asserted his Fifth Amendment right against self-incrimination. Tr. Ex. 108, at 59-60.

<sup>35</sup> While the “Goncalves Contractor” proposal is signed by “Antonio J. Goncalves,” no contractor with that name ever performed any work on Mrs. Rebello’s home. Tr. Ex. 59; Testimony of Mary Rebello. All of the work that took place was performed by Mr. Borges, or by other persons working for or with Mr. Borges. Testimony of Mary Rebello.

The evidence supports the reasonable inference, which the Court makes, that “Jonathan Ridlew” is yet another false name that Mr. O’Donnell used in an effort to conceal, as much as possible, his personal involvement in Setter Financial and its operations and his role in the purported repair and renovation of Mrs. Rebello’s home.<sup>36</sup> The Court likewise infers and finds that the monthly insurance payments that Mrs. Rebello was directed to make to Setter Financial were nothing more than an effort by Mr. O’Donnell to extort additional funds from Mrs. Rebello to which Setter Financial had no entitlement to under the parties’ Mortgage Agreement.

Mr. Ridlew’s May 19, 2005 letter further informed Mrs. Rebello that sufficient work had been completed on her home to authorize the first disbursement of funds to the contractor, Mr. Borges, in the amount of \$20,000.00. Tr. Ex. 61. Mrs. Rebello was required to pay \$2,000.00 of that amount out of her own pocket, however, to cover the purported costs of inspecting and verifying the repair work that allegedly had been performed. *Id.* Significantly, while Mr. Borges signed the bottom of the letter as the general contractor, the initials “MO” appear next to each of the completed project checkpoints. *Id.*

The repair work that actually was performed on the Margaret Road Property by Mr. Borges and his representatives was substandard, overpriced and ultimately incomplete. Mrs. Rebello was forced to pay substantial sums of money for materials, supplies and extra labor despite the agreed upon contract price and the representation in the proposal supplied by Mr. Borges that the project would “[r]enovate the entire interior of the house,” including the

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<sup>36</sup> At his deposition in this case, Mr. O’Donnell asserted his Fifth Amendment right against self-incrimination when questioned about Jonathan Ridlew, including whether Mr. Ridlew is a fictitious person, whether Mr. O’Donnell impersonated Mr. Ridlew in correspondence with Mrs. Rebello, and whether Mr. O’Donnell forged Mr. Ridlew’s signature to those letters. Tr. Ex. 108, at 61-63.

flooring, plumbing and bathrooms. Tr. Ex. 59. All told, Mrs. Rebello paid at least \$15,000.00 out of her own pocket for, among other things, toilets, tubs, sinks, faucets, tub fixtures, bath cabinets, a hot water heater, flooring and electrical work. *Id.*; Tr. Ex. 52, ¶ 33. All of these expenditures were reasonably within the scope of the original contract. Mr. Borges eventually stopped working on the project without finishing the work. Testimony of Mary Rebello. Work on the Margaret Road Property remained unfinished at the time this action commenced in December 2005. *Id.*

The evidence supports the reasonable inference, which the Court makes, that Mr. O'Donnell is the "MO" who supervised, inspected and approved Mr. Borges' shoddy and incomplete repair work. The Court further infers and finds that Mr. O'Donnell directed or, at the very least, participated in the process of overcharging Mrs. Rebello for the partial work that was performed, as well as Mr. Borges' unilateral decision to stop working on the project.

***C. Mr. O'Donnell's Efforts to Prematurely and Unfairly Foreclose on the Margaret Road Property.***

Mr. O'Donnell's ultimate goal in extending a mortgage loan to Mrs. Rebello in April 2005 was not to assist her in renovating the Margaret Road Property so that she could satisfy the City of Taunton's concerns and continue to reside on the Property. Rather, it was Mr. O'Donnell's plan and intention to use the onerous terms of the parties' Mortgage Agreement to foreclose on the Margaret Road Property at the earliest opportunity and resell it for a profit. This finding by the Court is supported by Mr. O'Donnell's oppressive and deceptive conduct in administering that agreement beginning in the summer of 2005.

For example, the terms of the Promissory Note between Setter Financial and Mrs. Rebello stated that a mortgage payment of \$575.49 would be due monthly, beginning

July 14, 2005. Tr. Ex. 56. Mrs. Rebello, however, received no payment book or written statements with instructions on how to go about making her monthly payments. Tr. Ex. 52, ¶ 20. As a result, she was unclear as to where she should send her mortgage payments. *Id.*

On July 25, 2005, Mrs. Rebello received a letter from Mr. Ridlew on behalf of Setter Financial informing her that she had defaulted on the terms of her Mortgage Agreement by failing to make her first mortgage payment of \$575.49 by the due date. Tr. Ex. 64. Mrs. Rebello was surprised by the letter because she previously had told someone purporting to be Mr. Ridlew by telephone that she lacked payment instructions. Tr. Ex. 52, ¶ 25. After receiving the July 25 letter, Mrs. Rebello spoke with Mr. Ridlew again by telephone and was instructed to hand deliver her mortgage payments to a box marked "103-111 Main Street" at the Star Theater Property. *Id.* These instructions only confused Mrs. Rebello further because she perceived the Star Theater Property to be vacant, but she complied with Mr. Ridlew's instructions and delivered her overdue first mortgage payment (including a \$34.53 late fee and the previously-undisclosed insurance payment of \$353.22), as well as all of her subsequent payments, to the box marked "103-111 Main Street" as directed. *Id.*

The evidence supports the reasonable inference, which the Court makes, that all of Mrs. Rebello's purported telephone discussions with Mr. Ridlew concerning her allegedly overdue mortgage payment were, in fact, discussions with Mr. O'Donnell. This finding is supported, in part, by the fact that all of the payments that Mrs. Rebello made to Setter Financial per Mr. Ridlew's instructions eventually wound up being deposited in Mr. O'Donnell's account at Sovereign Bank. Tr. Ex. 78. The Court further finds that Mr. O'Donnell intentionally ignored Mrs. Rebello's initial request for payment instructions in

an unsuccessful attempt to generate a default under the parties' Mortgage Agreement that would give Mr. O'Donnell grounds to foreclose on the Margaret Road Property.

Mr. O'Donnell's efforts to fabricate grounds to default Mrs. Rebello and foreclose on the Margaret Road Property were not limited to interfering with her timely mortgage payments. On July 13, 2005, Mrs. Rebello received another letter from Mr. Ridlew (a/k/a Mr. O'Donnell) asserting that Setter Financial had not received a Title V septic system inspection report for the Property as required under the Additional Terms of Mortgage. Tr. Ex. 63. The July 13, 2005 letter prompted Mrs. Rebello to contact several septic companies, all of whom explained to Mrs. Rebello that, due to its age, the septic system at the Margaret Road Property necessarily would fail any Title V inspection. Tr. Ex. 52, ¶ 21. Mrs. Rebello promptly passed this information along to Mr. Ridlew by telephone, and inquired why Setter Financial was demanding a septic system inspection if Mrs. Rebello had no plans to sell the Property. *Id.* Mr. Ridlew (a/k/a Mr. O'Donnell) did not explain the reason for the requirement, but continued to insist that Mrs. Rebello obtain and provide a certificate establishing that her septic system complied with Title V. *Id.*

Mr. O'Donnell had no legitimate business reason to include a Title V inspection requirement in the Additional Terms of Mortgage that Mrs. Rebello felt compelled to sign on April 15, 2005. The evidence supports the reasonable inference, which the Court makes, that Mr. O'Donnell added the Title V inspection requirement in order to impose a condition that he knew Mrs. Rebello could not satisfy and, thereby, create a basis for an eventual default by Mrs. Rebello and foreclosure on the Margaret Road Property by Mr. O'Donnell.<sup>37</sup>

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<sup>37</sup> At his deposition in this case, Mr. O'Donnell asserted his Fifth Amendment right against self-incrimination when questioned about whether he provided Mrs. Rebello with a mortgage loan for the Margaret

The Court's inference regarding Mr. O'Donnell's true improper intentions once again is borne out by the evidence as to what actually occurred. Mr. Ridlew's July 13, 2005 letter was promptly followed, on July 25, 2005, by another letter in which Mr. Ridlew announced that Mrs. Rebello's failure to provide Setter Financial with a Title V inspection certificate constituted a default under the parties' Mortgage Agreement.<sup>38</sup> Tr. Ex. 64. As Mr. O'Donnell well knew, it simply was not possible for Mrs. Rebello to obtain a Title V certificate. That, however, was Mr. O'Donnell's plan.

On September 28, 2005, Mrs. Rebello received a hand-delivered letter under the front door of her home from "David Lee," the purported "Attorney" for Setter Financial. Tr. Ex. 66. In the letter (which, curiously, is written on Setter Financial stationary), Attorney Lee told Mrs. Rebello that she was "in default in [sic] the terms of the mortgage on your property on Margaret Road" based upon her failure "to obtain the Title five inspection report as is required by your mortgage." *Id.* He also informed her, on behalf of Setter Financial, that "[w]e have no choice but to accelerate the terms of your mortgage. This is the next step in the foreclosure process on your property." *Id.*

The evidence supports the reasonable inference, which the Court makes, that David Lee is yet another false name that Mr. O'Donnell used in an effort to conceal, as much as possible,

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Road Property with the intention of foreclosing on the Property, and about whether he provided Mrs. Rebello with a mortgage loan in the hope of acquiring title to the Property. Tr. Ex. 108, at 57.

<sup>38</sup> Not coincidentally, this July 25, 2005 letter is the same letter in which Mr. Ridlew (a/k/a Mr. O'Donnell) notified Mrs. Rebello that she purportedly also was in default for failing to make her first mortgage payment in a timely fashion. Tr. Ex. 64.

his personal involvement in Setter Financial and its operations and his role in the attempted foreclosure of Mrs. Rebello's home.<sup>39</sup>

On November 28, 2005, Mr. O'Donnell personally appeared at Mrs. Rebello's home on Margaret Road. Tr. Ex. 52, ¶ 30. He yelled at Mrs. Rebello, insulted and threatened her, and told her that she was in default of her Mortgage Agreement due to some "15 violations" that Mr. O'Donnell said made him "look like a fool" to Setter Financial.<sup>40</sup> *Id.*; Tr. Ex. 51, at 90. Mr. O'Donnell angrily asked Mrs. Rebello if she had received a foreclosure notice, which she had not. *Id.* Mr. O'Donnell then handed Mrs. Rebello a letter, dated November 15, 2005 and purportedly signed, once again, by Attorney Lee (a/k/a Mr. O'Donnell), which repeated the assertion that Mrs. Rebello was in default because she had not provided Setter Financial with a Title V inspection certificate. Tr. Ex. 67. The letter further asserted, confusingly, that "the developer for the [Margaret Road] property has not been paid for all of his charges." *Id.* Enclosed with the letter was a "Notice of Mortgagee's Sale of Real Estate" (the "Foreclosure Notice"), which stated, in part, that Setter Financial intended to sell the Margaret Road Property at public auction on December 15, 2005 at 12:00 p.m. *Id.*

At the time that Mr. O'Donnell delivered a copy of the Foreclosure Notice to Mrs. Rebello on November 28, 2005, Mrs. Rebello was not, in fact, in default of any

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<sup>39</sup> At his deposition in this case, Mr. O'Donnell asserted his Fifth Amendment right against self-incrimination when questioned about Attorney David Lee, including whether Attorney Lee is a fictitious person, and whether Mr. O'Donnell impersonated Attorney Lee in correspondence with Mrs. Rebello. Tr. Ex. 108, at 64-66.

<sup>40</sup> Throughout his dealings with Mrs. Rebello, Mr. O'Donnell deceptively sought to portray himself as separate and independent from Setter Financial. For example, Mr. O'Donnell, in the guise of Mr. Ridlew, "constantly denied" to Mrs. Rebello in their telephone discussions that Mr. O'Donnell had any affiliation with Setter Financial. Tr. Ex. 51, at 83.

legitimate terms of her Mortgage Agreement with Setter Financial. Rather, Mrs. Rebello's alleged mortgage default was a contrivance that Mr. O'Donnell had manufactured for the purpose of forcing Mrs. Rebello from the Margaret Road Property so that he could take the Property and resell it for his personal gain.

Mr. O'Donnell appeared at Mrs. Rebello's home on Margaret Road again on December 7, 2005. Tr. Ex. 52, ¶ 32. He rang Mrs. Rebello's doorbell, banged on her front door, and circled all around her home, including up onto her back deck, rang the back door doorbell, and banged on her back door and windows. *Id.* He also looked in Mrs. Rebello's windows in an apparent effort to determine whether Mrs. Rebello was home. *Id.* Mr. O'Donnell eventually left after placing a note on Mrs. Rebello's front door, which stated, "Carol Rebello call Setter Financial immediately. If you do not call them they will be here in 36 hours to make entry on the property." *Id.* During the majority of Mr. O'Donnell's visit to the Margaret Road Property on December 7, 2005, Mrs. Rebello hid in a closet of her home trembling with fear. *Id.*

**D. *The Commencement of this Action.***

After Mr. O'Donnell delivered the Foreclosure Notice to Mrs. Rebello, the Office of the Massachusetts Attorney General commenced this action against Mr. O'Donnell. On December 29, 2005, the Court enjoined Mr. O'Donnell from foreclosing on the Margaret Road Property until further order.<sup>41</sup> The Court also ordered Mrs. Rebello to pay all future mortgage payments on the Property into an escrow account at Eastern Bank. Mrs. Rebello did as the Court instructed until her death, despite the fact that she was on a limited, fixed income,

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<sup>41</sup> During the course of the Attorney General's investigation into Mr. O'Donnell's dealings with respect to the Margaret Road Property, the Attorney General learned that Mr. O'Donnell, on behalf of Setter Financial, failed to take various procedural steps that were required to foreclose on the Property, including satisfying certain filing and notice requirements under the Servicemembers Civil Relief Act. Tr. Ex. 133. No evidence was presented at trial that these statutory requirements ever were fulfilled by Mr. O'Donnell or Setter Financial.

and despite the fact that she often went without heat and other essentials as a result. Testimony of Mary Rebello. As of October 2014, the Eastern Bank escrow account held funds totaling approximately \$32,700.00. *Id.*

### Rulings of Law

This case presents the following legal questions for the Court to answer:

1. Whether Mr. O'Donnell engaged in unfair and deceptive acts and practices in violation of G.L. c. 93A, § 2, by: (a) using aliases and false names for the purpose of engaging in real estate and other business transactions; (b) forming and operating Baystate and Save the Star as charitable organizations in order to gain favorable tax treatment for his personal real estate holdings; and (c) entering into and administering the Mortgage Agreement with Mrs. Rebello;
2. Whether Mr. O'Donnell violated the charitable registration and annual filing requirements of G.L. c. 12, §§ 8E and 8F, in his creation and operation of Baystate and Save the Star;
3. Whether Mr. O'Donnell is personally liable for transferring Baystate and Save the Star's property holdings to himself in October 2006 for little or no consideration; and
4. What remedies does the Court order as a result of Mr. O'Donnell's violations, if any?

The Court separately addresses each of these questions below.

**I. Whether Mr. O'Donnell Engaged in Unfair and Deceptive Acts in Violation of G.L. c. 93A, § 2.**

The primary claims in this case concern Mr. O'Donnell's alleged violations of G.L. c. 93A, the Massachusetts Consumer Protection Act ("Chapter 93A" or the "Act"). Chapter 93A prohibits "unfair methods of competition" and the use of "unfair or deceptive

acts or practices” in the conduct of any trade or commerce in the Commonwealth. G.L. c. 93A, § 2. The Act, by itself, does not define the specific criteria that make a particular act or practice “unfair or deceptive,” recognizing that “there is no limit to human inventiveness in this field.” *Commonwealth v. Fremont Inv. & Loan*, 452 Mass. 733, 742 (2008). Rather, the courts must evaluate and decide whether a party’s alleged conduct constitutes an unfair or deceptive act or practice on a case-by-case basis. *See Fraser Engineering Co. v. Desmond*, 26 Mass. App. Ct. 99, 103 (1988) (“The possible existence of [an unfair act or practice is] to be determined on a case-by-case basis”). Whether a particular act or practice violates Chapter 93A is a question of fact, while the general boundaries of the categories of conduct that can qualify as “unfair or deceptive” for statutory purposes presents a question of law. *Klairmont v. Gainsboro Rest., Inc.*, 465 Mass. 165, 171 (2013).

Happily, certain guideposts have appeared in the case law over time to help courts in distinguishing conduct that is “unfair or deceptive” from conduct that, while perhaps not laudable, is not actionable under Chapter 93A. A practice generally is deemed “unfair” if any of the following three circumstances apply: (a) the practice is “within the penumbra of a common law, statutory, or otherwise established concept of unfairness”; (b) the practice is “immoral, unethical, oppressive, or unscrupulous”; or (c) the practice “causes substantial injury to competitors or other business people.” *Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 562-563 (2008) (internal quotation marks and citations omitted). Similarly, an act or practice is deemed “deceptive” for purposes of Chapter 93A if it “could reasonably be found to have caused a person to act differently from the way he otherwise would have acted.” *Lowell Gas Co. v. Attorney General*, 377 Mass. 37, 51 (1979).

Chapter 93A expressly empowers aggrieved private and commercial parties to file an action for damages and/or equitable relief, and authorizes an award of multiple damages and attorney's fees in cases where the defendant's violation is found to have been willful or knowing. See G.L. c. 93A, §§ 9 and 11. The Act also empowers the Massachusetts Attorney General to commence an action for restitution, equitable relief and/or civil penalties in appropriate cases. It says, in relevant part,

[w]henver the attorney general has reason to believe that any person is using or is about to use any method, act, or practice declared by section two to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the commonwealth against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. The action may be brought in the superior court of the county in which such person resides or has his principal place of business, or the action may be brought in the superior court of Suffolk county with the consent of the parties or if the person has no place of business within the commonwealth.... Said court may issue temporary restraining orders or preliminary or permanent injunctions and make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice any moneys or property, real or personal, which may have been acquired by means of such method, act, or practice. If the court finds that a person has employed any method, act or practice which he knew or should have known to be in violation of said section two, the court may require such person to pay to the commonwealth a civil penalty of not more than five thousand dollars for each such violation and also may require the said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorneys' fees.

G.L. c. 93A, § 4. In instances where an unfair or deceptive act or practice is committed by a corporation or other business entity, corporate officers or managing agents of the entity can be held individually liable under G.L. c. 93A based on their "personal participation ... in

orchestrating" the unlawful conduct. *Community Builders, Inc. v. Indian Motorcycle Assocs., Inc.*, 44 Mass. App. Ct. 537, 560 (1998).

In this case, the Attorney General alleges that Mr. O'Donnell violated G.L. c. 93A in essentially three ways. First, the Attorney General asserts that Mr. O'Donnell's frequent use of aliases and false names in his business dealings involving the Baystate Properties, the Star Theater, and Mrs. Rebello was inherently unfair or deceptive. Second, the Attorney General asserts that Mr. O'Donnell's creation and operation of Baystate and Save the Star as purported charities was unfair or deceptive. Third, the Attorney General asserts that Mr. O'Donnell's Mortgage Agreement with Mrs. Rebello, in the guise of Setter Financial, was unfair and deceptive both in substance and in the manner in which it actually was administered by Mr. O'Donnell. Each of these claims finds substantial support in the evidence, as discussed *infra*.

**A. *Mr. O'Donnell's Use of Aliases and False Names for the Purpose of Engaging in Real Estate and Other Business Transactions.***

The evidence establishes that Mr. O'Donnell frequently has made use of aliases and false names, including James Wright, Mark McMasters, Kevin Joyce, William O'Donnell, Peter Walsh, and Ching Chang, in his real estate dealings and in his other business transactions in order to conceal his identity, mislead or confuse government officials or private individuals as to who they were dealing with, and thereby limit his personal exposure for his actions. Mr. O'Donnell admitted as much in his discussion with Trooper Domingos at the fire scene in Mansfield, Massachusetts in August 1999. Testimony of David Domingos. He openly acknowledged using false names to purchase properties, as well as granting fictitious

mortgages on the properties to his own mortgage companies, in order to “disassociate himself” from the properties, while still maintaining control in the guise of mortgagee. *Id.*

The Court concludes, based on all the evidence, that Mr. O’Donnell’s knowing and willful use of aliases and false names for such purposes constitutes the epitome of a “deceptive act or practice” under G.L. c. 93A. Certainly, Mr. O’Donnell’s use of aliases and false names “could reasonably be found to have caused a person to act differently from the way he or she otherwise would have acted” and “possesse[d] a tendency to deceive.” *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 394 (2004). Indeed, the evidence establishes that Mr. O’Donnell often was successful in using aliases and false names to hide his identity and mislead others regarding his activities, as demonstrated, in part, by the City of Taunton’s failed attempt to make Kevin Joyce respond to the lawsuit that the City filed against him and Save the Star in July 2006, and Mrs. Rebello’s testimony that she was unaware that Mr. O’Donnell had any involvement in the mortgage loan that she obtained from Setter Financial until sometime after all of the loan documentation had been signed. Tr. Ex. 51, at 59-61; Tr. Ex. 52, ¶ 13. The record leaves no doubt that Mr. O’Donnell’s use of aliases and false names in his real estate dealings and other business transactions was intended to, and had the actual effect of, deceiving the public and others in violation of G.L. c. 93A, § 2.<sup>42</sup> See, e.g., *Zayre Corp. v. Computer Sys. of America, Inc.*, 24 Mass. App. Ct. 559, 570-571 n.23 (1987) (conscious

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<sup>42</sup> Mr. O’Donnell’s improper use of using aliases and false names in this case is readily distinguishable, both legally and factually, from the use of business names and “DBA’s” by sole proprietors, corporations and other legitimate business entities. In normal circumstances, the identity of person or entity behind a particular business name can be obtained from public records. See, e.g., G.L. c. 110, § 5 (requiring “[a]ny person conducting business in the commonwealth under any title other than the real name of the person conducting the business, whether individually or as a partnership” to “file in the office of the clerk of every city or town where an office of any such person or partnership may be situated a certificate stating the full name and residence of each person conducting such business....”). Mr. O’Donnell’s practice of listing false names and fictitious persons in his legal documents and government filings, conversely, made it difficult, if not impossible, for the organizations and people with whom he dealt to discern his affiliation or identity.

misrepresentations may be deemed “seriously deceptive” for purposes of imposing liability under Chapter 93A).

**B. *Mr. O’Donnell’s Creation and Operation of Baystate and Save the Star for His Personal Purposes.***

The determination of whether an organization is charitable in nature presents a question of fact. See *Keene v. Brigham & Women’s Hosp., Inc.*, 439 Mass. 223, 239 (2003) (whether an entity qualifies as a charitable organization is a “[f]actual matter[] ... to be determined by the fact finder”). An entity will be deemed “charitable” if the “dominant purpose of its work is for the public good and the work done for its members is but the means adopted for this purpose.” *Harvard Cmty. Health Plan, Inc. v. Board of Assessors*, 384 Mass. 536, 544 (1981). The fact that an organization does not solicit donations directly from the public is not dispositive of its charitable status. *Attorney Gen. v. Weymouth Agric. & Indus. Soc’y*, 400 Mass. 475, 477, 480 (1987). Rather, the courts will look to the language of the organization’s articles, constitution and bylaws, and whether the organization’s declared purposes are charitable in nature. *H-C Health Servs., Inc. v. Board of Assessors*, 42 Mass. App. Ct. 596, 599 (1997). A court also may consider an organization’s 501(c)(3) tax-exempt status, or its stated intention of seeking 501(c)(3) tax-exempt status, as evidence of its charitable nature. *Id.*

In this case, both Baystate and Save the Star qualify as charitable organizations because both were organized by Mr. O’Donnell as tax-exempt corporations that were dedicated to charitable purposes. The Articles of Organization for each entity expressly state, in part, that,

[n]otwithstanding anything else provided herein, the Corporation is organized and shall be operated exclusively for purposes described in Section 170(c) and 501(c)(3) of the [Internal Revenue] Code, or under any successor sections thereto. All powers of the Corporation shall be exercised only in such a

manner as will assure the operation of the Corporation to be exclusively for said purposes, it being the intention of the Corporation to be exempt from federal income taxes under Section 501(a) of the Code as an organization described in Section 501(c)(3), and that all contributions to it be deductible pursuant to Sections 170(c) and 501(o) of the Code. All powers and purposes herein shall be interpreted and exercised consistent with said intention.

Tr. Exs. 34 and 35.

Consistent with the foregoing language, the Articles of Organization for Baystate further describe the intended purpose of that entity as “conduct[ing] any activity that would help create or result in the provision of housing to low or low-to-moderate income people or to those in need of housing,” while the Articles of Organization for Save the Star further describe the intended purpose of that entity as “rehabilitat[ing] and promot[ing] the architecturally significant buildings within the historic portions of Taunton, Massachusetts, including, but not limited to, the Star Theater/Leonard block.” *Id.*

Mr. O'Donnell's actions further support the conclusion that Baystate and Save the Star were charitable organizations. For example, Mr. O'Donnell applied for, and actually obtained, tax exempt status for Baystate from the IRS under Section 501(c)(3) of the Internal Revenue Code. Tr. Ex. 83, at 001578. He also sought, without success, to have local property taxes on the Star Theater abated and to obtain grant funds to repair the Star Theater façade from Heart of Taunton, based on Save the Star's purported charitable status. Testimony of Joyce Griffin; Testimony of Julie Sprague.

While Baystate and Save the Star were expressly organized as charities by Mr. O'Donnell, they were not operated as such. Rather, Mr. O'Donnell treated Baystate and Save the Star merely as convenient and (he hoped) low-cost vehicles to camouflage his private

real estate endeavors. Mr. O'Donnell had no genuine interest in promoting affordable housing or preserving architecturally significant buildings in the City of Taunton unless those activities benefitted him personally. There was, in fact, only one real beneficiary of Baystate and Save the Star; Mr. O'Donnell himself.

An examination of Massachusetts case law finds no reported precedent for the proposition that falsely holding out a private, for-profit enterprise as a charitable organization is a violation of Chapter 93A. Comparable decisions from other jurisdictions, however, support the conclusion that such conduct, at the very least, constitutes a deceptive business practice. See *National Comm'n on Egg Nutrition v. Federal Trade Comm'n*, 570 F.2d 157, 163 (1978) (it was a deceptive trade practice for an organization to promote itself as a public interest group when, in fact, it existed for the pecuniary benefit of the egg industry); *In the Matter of Funeral Director's Institute*, 77 F.T.C. 648 (1970) (it was a deceptive trade practice for a for-profit public relations agency to misrepresent itself as a non-profit educational institution). With or without precedent, the Court is persuaded that Mr. O'Donnell's knowing and willful exploitation of Baystate and Save the Star for his own pecuniary gain is "within at least the penumbra of some common-law, statutory, or other established concept of unfairness," and otherwise is sufficiently "immoral, unethical, oppressive, or unscrupulous," to constitute unfair or deceptive acts or practices for purposes of G.L. c. 93A, § 2. *PMP Assocs., Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975).

**C. *Mr. O'Donnell's Home Mortgage Loan to Mrs. Rebello.***

Unlike the creation and use of charitable organizations for private purposes, home mortgage lending practices in the Commonwealth of Massachusetts are subject to numerous,

clearly-delineated regulations and requirements. General Laws c. 93A, § 2(c) provides, in part, that the “attorney general may make rules and regulations interpreting” precisely what conduct constitutes “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” for purposes of the Act. Pursuant to this statutory authority, the Attorney General has promulgated regulations which contain an extensive list of unfair or deceptive home mortgage lending practices that are actionable under Chapter 93A. See 940 Code Mass. Regs. §§ 8.00 *et seq.* (2008). Among the “Prohibited Practices” identified by the Attorney General are the following:

(1) It is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact if the representation or statement is false or misleading or has the tendency or capacity to be misleading.... Such claims or representations include, but are not limited to the availability, terms, conditions, or charges, incident to the mortgage transaction and the possibility of refinancing. In addition, other such claims and representations by the broker may include ... the identity of the mortgage lender that will provide the mortgage loan or commitment;

(2) It is an unfair or deceptive act or practice for a broker or lender to charge an application and/or broker fee which significantly deviates from industry-wide standards or is otherwise unconscionable;

(3) It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any broker fee, application fee or other fee, prior to the borrowers receipt of any disclosure forms mandated by 940 CMR 8.05(1)....;

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(5) It is an unfair or deceptive act or practice for a mortgage broker or lender to directly or indirectly, regardless of the receipt or the expectation of receipt of compensation from the contract, to ... use a home improvement contractor as an agent for its business....;

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(8) It is an unfair or deceptive act or practice for a lender to fail to disburse funds in accordance with any commitment or agreement with the borrower;

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(11) It is an unfair or deceptive act or practice for a mortgage broker or lender to fail to give to the borrower or his or her attorney the time and reasonable opportunity to review every document signed by the borrower and every document which is required pursuant to 940 CMR 8.00, prior to the disbursement of the mortgage funds;

(12) It is an unfair or deceptive act or practice for a mortgage broker or lender to accept any fees which were not disclosed in accordance with 940 CMR 8.00 or applicable law;

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(15) It is an unfair or deceptive act or practice for a ... mortgage lender to make a mortgage loan unless the mortgage broker or lender, based on information known at the time the loan is made, reasonably believes at the time the loan is expected to be made that the borrower will be able to repay the loan based upon a consideration of the borrower's income, assets, obligations, employment status, credit history, and financial resources....;

(16) It is an unfair or deceptive act or practice for a mortgage broker or lender to process or make a mortgage loan without documentation to verify the borrower's income....; [and]

(17) It is an unfair or deceptive act or practice for a mortgage broker to process, make or arrange a loan that is not in the borrower's interest....

940 Code Mass. Regs. §§ 8.06(1)-(17).<sup>43</sup>

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<sup>43</sup> The first fourteen enumerated paragraphs of 940 Code Mass. Regs. § 8.06 were promulgated in 1992 and, thus, were in effect at the time Mr. O'Donnell entered into the Mortgage Agreement with Mrs. Rebello, and subsequently sought to foreclose on the Margaret Road Property, in 2005. The last three enumerated paragraphs (nos. 15-17) were promulgated in 2008 and, thus, were not in effect when Mr. O'Donnell engaged in the loan transaction with Mrs. Rebello. The Attorney General argues that 940 Code Mass Regs. § 8.06 is not intended to provide an exhaustive list of unfair and deceptive practices. See 940 Code Mass Regs. § 8.02 ("940 CMR 8.00 defines unfair or deceptive acts or practices. They are not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a). Acts or practices not specifically prohibited by 940 CMR 8.00 are not

The Attorney General asserts that Mr. O'Donnell managed to violate most, if not all, of the foregoing prohibitions in entering into and administering the home mortgage loan that he extended to Mrs. Rebello in 2005.<sup>44</sup> The Court agrees. The evidence presented at trial proves that Mr. O'Donnell, in the guise of Setter Financial, committed numerous violations of G.L. c. 93A, § 2, in his business dealings with Mrs. Rebello. A non-exhaustive list of Mr. O'Donnell's unfair or deceptive acts or practices in this context includes, but is not limited to:

- Providing a home loan proposal to Mrs. Rebello in the name of Setter Financial, and communicating with Mrs. Rebello using the fictitious names of Jonathan Ridlew and David Lee, in an effort to conceal Mr. O'Donnell's identity and the extent of his involvement in the transaction, in violation of 940 Code Mass. Regs. § 8.06(1);
- Including new, material provisions in the "Additional Terms of Mortgage" that Mrs. Rebello was required to sign on April 15, 2005, such as excessive, previously-undisclosed fees for "review and verification" of work performed, and not providing Mrs. Rebello with a reasonable opportunity to review the

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necessarily consistent with M.G.L. c. 93A or otherwise deemed legitimate by the absence of regulation here." ). Relying on the broad ability of this Court to define the boundaries of what constitutes unfair and deceptive practices or acts under Chapter 93A, this Court finds that conduct violating paragraphs 15-17 always has been unfair or deceptive, notwithstanding the fact that such conduct was not expressly prohibited until 2008. See *PMP Assocs.*, 366 Mass. at 596 (prohibited practices under Chapter 93A include those that violate "some common-law, statutory, or other established concept of unfairness").

<sup>44</sup> At trial, Mr. O'Donnell insisted that the mortgage loan Setter Financial extended to Mrs. Rebello in April 2015 was a "commercial mortgage loan," not a "home mortgage loan." This Court, not being blind to the obvious, finds otherwise. While there is language in the Mortgage Agreement to the effect that the loan was "solely for commercial and business purposes and that no part of the premise are used or intended to be used as [Mrs. Rebello's] residence" (see Tr. Ex. 54 and 129), the terms of the parties' agreement, construed as a whole, evince an understanding and intention that the loan proceeds would be used to repair and rehabilitate the Margaret Road Property in which Mrs. Rebello was then residing. See *Hallett v. Moore*, 282 Mass. 380, 394 (1933) (for a mortgage to be a workable instrument, it must be construed as a whole and due weight must be attributed to all its parts). Certainly, Mr. O'Donnell understood that Mrs. Rebello was living at the Margaret Road Property before he entered into the Mortgage Agreement because the Setter Financial loan proposal is addressed to Mrs. Rebello at "68 Margaret Road, Taunton, MA 02780." Tr. Ex. 57.

terms with counsel, in violation of 940 Code Mass. Regs. §§ 8.06(1), 8.06(2), and 8.06(11);

- Requiring Mrs. Rebello to pay fees and costs, including purported insurance premiums, that were not disclosed anywhere in the loan documents, in violation of 940 Code Mass. Regs. § 8.06(3);
- Hiring and employing Mr. Borges for the purpose of partially performing planned improvements to the Margaret Road Property, in violation of 940 Code Mass. Regs. § 8.06(4);
- Approving the disbursement of loan funds to Mr. Borges for substandard work and/or work that was not actually completed or performed, in violation of 940 Code Mass. Regs. § 8.06(8);
- Requiring Mrs. Rebello to obtain a Title V inspection of the septic system at the Margaret Road Property within three months of the closing date, notwithstanding the fact that no sale of the Property was contemplated, in order to bring about a default by Mrs. Rebello and an eventual foreclosure on the Property, in violation of 940 Code Mass. Regs. §§ 8.06(1), 8.06(15) and 8.06(17);
- Notifying Mrs. Rebello on or about September 28, 2005, and again on or about November 15, 2005, that she was in default of her mortgage loan, even though she had made all required monthly payments under the terms of the parties' Mortgage Agreement, in violation of 940 Code Mass. Regs. § 8.06(1);

- Making false and threatening statements in person to Mrs. Rebello at her home on or about November 28, 2005, including statements to the effect that Mrs. Rebello had no right to be living in her home and that a foreclosure notice had been issued for the Margaret Road Property, although no proper foreclosure notice ever actually was issued, in violation of 940 Code Mass. Regs. § 8.06(1); and
- Delivering to Mrs. Rebello, on or about November 15, 2005, a “Memorandum of Mortgagee’s Sale of Real Estate” that falsely asserted that a foreclosure sale of the Margaret Road Property had been scheduled, even though Mr. O’Donnell did not have the authority, and had not taken the necessary steps, to foreclose on the loan in accordance with the law, in violation of 940 Code Mass. Regs. § 8.06(1).

The Court further finds that Mr. O’Donnell committed the foregoing unfair or deceptive acts or practices knowingly and willfully. Indeed, the evidence overwhelmingly supports the conclusion, which the Court makes, that Mr. O’Donnell entered into the Mortgage Agreement with Mrs. Rebello, then administered that Agreement, with the primary intention and surreptitious goal of bringing about a loan default by Mrs. Rebello and an eventual foreclosure on the Margaret Road Property. See *Town of Sudbury v. Scott*, 439 Mass. 288, 302 (2003) (“A person’s intent is a question of fact to be determined from his declarations, conduct and motive, and all the attending circumstances.”) (internal quotation marks and citation omitted). Mr. O’Donnell’s efforts in this regard constitute an unequivocal breach of the covenant of good faith and fair dealing that is implied in every Massachusetts contract, as

well as additional violations of the Attorney General's regulations proscribing unfair or deceptive home mortgage lending practices. See, e.g., *Druker v. Roland Wm. Jutras Assocs.*, 370 Mass. 383, 385 (1976) (implied covenant of good faith and fair dealing requires that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract") (internal quotation marks and citation omitted); 940 Code Mass. Regs. §§ 8.06(1), 8.06(15) and 8.06(17).

The Court addresses the remedies to be ordered for Mr. O'Donnell's various violations of Chapter 93A in Section IV(A), *infra*.

**II. Whether Mr. O'Donnell Violated the Charitable Registration and Annual Filing Requirements of G.L. c. 12, §§ 8E and 8F, in His Creation and Operation of Baystate and Save the Star.**

General Laws c. 12, §§ 8E and 8F, expressly require all public charities to register and file annual reports with the Attorney General's Charities Division. Section 8E provides, in relevant part, that,

[a] public charity established, organized or chartered under the laws of the commonwealth ... shall, before engaging in charitable work or raising funds in the commonwealth, register with the division by filing a copy of its charter, articles of organization, agreement of association or instrument of trust, a true copy of its constitution and by-laws and a one-time initial registration fee of \$100, together with such other information as the director may require.

G. L. c. 12, § 8E (2010). Section 8F further provides, in relevant part, that,

[t]he trustee or trustees or the governing board of every public charity shall annually, at a time to be determined by the director, file with the division a written report for its last preceding fiscal year.

G.L. c. 12, § 8F (2010 & Supp. 2014).

The Court already has concluded in Section I(B), *supra*, that both Baystate and Save the Star were organized as charitable corporations under Massachusetts law. The fact that these entities subsequently were misused and abused by Mr. O'Donnell for his personal gain does not excuse them, or Mr. O'Donnell as the effective responsible officer of each entity, from complying with the Commonwealth's registration and reporting requirements for charities. To the contrary, the need for oversight by the Attorney General is even greater in cases, such as this, where the charitable organization is subject to the control of a single individual. See G.L. c. 12, § 8 (empowering and requiring the Attorney General to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof").

Mr. O'Donnell does not dispute that he did not register Baystate and Save the Star as charitable organizations as required by G.L. c. 12, § 8E, and that he did not file any annual reports for either entity as required by G.L. c. 12, § 8F. It also is undisputed that Mr. O'Donnell never rectified these deficiencies, including at any time after he received notice of this action in December 2005. Failure to register a charitable organization is punishable by a civil penalty of up to \$50 per day for each day that the required registration is delinquent, "provided, however, that the maximum aggregate penalty for failure to register shall not be greater than \$10,000." G.L. c. 12, § 8E(c). Similarly, the failure to file an annual report is punishable by a civil penalty of up to \$50 per day for each day that the required report is delinquent, "provided, however, that the maximum aggregate penalty assessed with respect to any report shall not be greater than \$10,000." G.L. c. 12, § 8F. In appropriate cases, penalties payable under Sections 8E and 8F "may be assessed against a responsible officer or

agent of the public charity” where the “responsible officer or agent ha[d] the authority to cause the public charity to comply with the requirements of [each] section but neglected or refused to do so after notice and demand.” G.L. c. 12, §§ 8E(c) and 8F.

The Court addresses the penalties to be assessed against Mr. O’Donnell based upon his violations of G.L. c. 12, §§ 8E(c) and 8F, in Section IV(B), *infra*.

**III. Whether Mr. O’Donnell is Personally Liable for Transferring Baystate and Save the Star’s Property Holdings to Himself in October 2006 for Little or No Consideration.**

Massachusetts law requires a director, officer or incorporator of a charitable corporation to “perform his duties ... in good faith and in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position with respect to a similar corporation organized under this chapter would use under similar circumstances.” G.L. c. 180, § 6C (2015). In this context, the charge that someone responsible for handling the assets of a charitable corporation “has caused such assets to be transferred to himself is a very serious one.” *In re Matter of Troy*, 364 Mass. 15, 57 (1973). Where such wrongdoing is suspected, “it is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings.” *Lopez v. Medford Community Center, Inc.*, 384 Mass. 163, 167 (1981) (internal quotation marks and citations omitted).

The Attorney General asserts that, in this case, Mr. O’Donnell violated his obligations under G.L. c. 180, § 6C and at common law by orchestrating the transfer of all of the property holdings of Baystate and Save the Star to himself in October 2006 for little or no consideration. Once again, the Court agrees. The evidence plainly establishes that the transfer of the High

Street Extension properties to Mr. O'Donnell for \$100.00 on October 30, 2006, and the transfer of the Tremont Street Property to Boston Financial for the same nominal amount on the same date, were sham transactions that yielded no real benefit for Baystate or its intended charitable beneficiaries. Similarly, the transfer of the Tremont Street Property to Boston Financial on October 30, 2006, by means of Ching Chang's purported "Deed in Lieu" was another sham that profited Mr. O'Donnell, but conferred no benefit on Baystate or its beneficiaries. In each instance, Baystate was stripped of a significant asset for effectively no compensation.

The story with respect to Save the Star is no different. Mr. O'Donnell's foreclosure on the Star Theater Property on October 31, 2006, based on Save the Star's purported "breach of the conditions" of its alleged mortgage served Mr. O'Donnell's personal interests, but conferred no benefit on Save the Star or its intended charitable beneficiaries. The net result of the bogus foreclosure proceeding was that Mr. O'Donnell acquired ownership of the Star Theater Property, while Save the Star lost its only real asset without any compensation.

The last sentence of G.L. c. 180, § 6C provides that "[a] director, officer or incorporator of a [charitable] corporation shall not be liable for the performance of his duties if he acts in compliance with this section." Mr. O'Donnell did not comply with Section 6C in his dealings involving Baystate and Save the Star. Rather than acting "in good faith and in a manner he reasonably believe[d] to be in the best interests" of those charitable entities, he acted exclusively for his own gain and in a manner that any reasonable person would have perceived to be detrimental to the best interests of Baystate and Save the Star. G.L. c. 180, § 6C. Accordingly, Mr. O'Donnell is personally liable for the losses suffered by Baystate and

Save the Star as a result of his conduct. *Id.* Cf. *Greenfield Sav. Bank v. Abercrombie*, 211 Mass. 252, 256 (1912) (trustees of failed bank not personally liable “[f]or honest errors of judgment, while acting with ordinary skill and prudence, measured according to the demands of the duties or business which they have taken upon themselves,” but “they cannot excuse themselves from the consequences of their misconduct or of their ignorance or negligence by averring that they have failed merely to exercise ordinary skill, care and vigilance”).

The Court addresses the remedies to be ordered for Mr. O’Donnell’s violations of G.L. c. 180, § 6C in the next section.

#### **IV. Remedies and Sanctions Ordered by the Court.**

##### ***A. Remedies and Sanctions Imposed for Mr. O’Donnell’s Various Violations of Chapter 93A.***

Remedies available in a civil action commenced by the Attorney General pursuant to her authority under Section 4 of Chapter 93A include injunctive relief and an order of restitution in favor of any victims of the defendant’s unfair or deceptive acts or practices. G.L. c. 93A, § 4 (a court may “make such ... orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice any moneys or property, real or personal, which may have been acquired by means of such method, act, or practice”). See also *Commonwealth v. DeCotis*, 366 Mass. 234, 245-246 (1974) (“Relief in favor of all wronged persons would be the result in a class action brought by a consumer under G.L. c. 93A, § 9, and we see no logical reason for a distinction in an action brought by the Attorney General under § 4.”). The Attorney General also can seek and recover a penalty of up to \$5,000.00 for each individual act or practice which the court finds the defendant “knew or

should have known to be in violation” of G.L. c. 93A, § 2, as well as the “reasonable costs of investigation and litigation of such violation[s], including reasonable attorneys’ fees.” G.L. c. 93A, § 4.

The Court finds that each of the forgoing remedy types (*i.e.*, injunctive relief, an order of restitution, civil penalties, and an award of attorney’s fees and costs) is called for in this case as follows.

1. Mr. O’Donnell’s Use of Aliases and False Names.

With respect to Mr. O’Donnell’s knowing and willful use of aliases and false names in his business dealings involving Baystate, Save the Star and Carol S. Rebello, the Court conservatively counts at least thirty-two (32) instances in which Mr. O’Donnell or his representatives used an unregistered alias or false name to file official documents, or to communicate in writing with government personnel or private individuals for business purposes. See, e.g., Tr. Exs. 28, 30, 32, 34, 35, 36, 45, 56, 57, 59, 60, 61, 62, 63, 64, 66, 67, 85, 86, 87, 94, 96, 97, 98, 102, 104, 112, 113, 129, 131, 135, and 136. The Court further counts at least three (3) instances in which Mr. O’Donnell used an unregistered alias or false name in oral communications with government personnel or private individuals for business purposes, including his various telephone communications with Mrs. Rebello in the guise of “Jonathan Ridlew.” See, e.g., Tr. Ex. 128 and 52, ¶¶ 21 and 25.

Mr. O’Donnell knew or should have known that each of the foregoing instances was an unfair or deceptive act or practice in violation of G.L. c. 93A, § 2. See G.L. c. 93A, § 4. Accordingly, the Court will assess Mr. O’Donnell a penalty of \$5,000.00 for each identified violation. The Court also will award the Attorney General the reasonable costs incurred in

investigating and litigating Mr. O'Donnell's violations, including attorney's fees, and will enjoin Mr. O'Donnell from engaging in similar conduct in the future. See *id.*

2. Mr. O'Donnell's Creation and Operation of Baystate and Save the Star.

With respect to Mr. O'Donnell's creation and operation of Baystate and Save the Star, the Court conservatively counts at least seven (7) instances in which Mr. O'Donnell falsely represented, either orally or in writing, that these organizations were being run for charitable purposes. See, e.g., Tr. Exs. 8, 34, 35, 36, 45, and 83; Testimony of Joyce Griffin.

Mr. O'Donnell knew or should have known that each of the foregoing instances was an unfair or deceptive act or practice in violation of G.L. c. 93A, § 2. See G.L. c. 93A, § 4. Accordingly, the Court will assess Mr. O'Donnell a penalty of \$5,000.00 for each identified violation. The Court also will award the Attorney General the reasonable costs incurred in investigating and litigating Mr. O'Donnell's violations, including attorney's fees, and will enjoin Mr. O'Donnell from engaging in similar conduct in the future. See *id.*

3. Mr. O'Donnell's Home Mortgage Loan to Carol Rebello.

With respect to the home mortgage loan that Mr. O'Donnell extended to Mrs. Rebello in April 2005, the Court conservatively counts at least eight (8) different ways in which Mr. O'Donnell violated the Attorney General's regulations governing home mortgage lending practices as described in Section I(C), *supra*.<sup>45</sup> See 940 Code Mass. Regs. §§ 8.00 *et seq.* (2008).

Mr. O'Donnell knew or should have known that each of the foregoing acts or practices was unfair or deceptive in violation of G.L. c. 93A, § 2. See G.L. c. 93A, § 4. Accordingly,

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<sup>45</sup> The Court does not include among these violations the multiple instances in which Mr. O'Donnell misrepresented or falsely concealed his identity from Mrs. Rebello, for which the Court already has sanctioned Mr. O'Donnell as discussed in Section IV(A)(1), *supra*.

the Court will assess Mr. O'Donnell a penalty of \$5,000.00 for each identified violation. The Court also will void the Mortgage Agreement and related Promissory Note entered into by Mr. O'Donnell, in the guise of Setter Financial, and Mrs. Rebello; will require Mr. O'Donnell to make restitution to Mrs. Rebello's estate by ordering the release of all mortgage payments that currently are held in escrow at Eastern Bank, and all interest that has accrued thereon, to the duly authorized personal representative of the estate; will award the Attorney General the reasonable costs incurred in investigating and litigating Mr. O'Donnell's violations, including attorney's fees; and will enjoin Mr. O'Donnell from engaging in similar conduct in the future. *Id.* Cf. *Shaw's Supermarkets, Inc. v. Delgiacco*, 410 Mass. 840, 842 (1991) ("A contract induced by fraudulent misrepresentations is voidable....").

**B. Remedies and Sanctions Imposed for Mr. O'Donnell's Failure Register Baystate and Save the Star as Charitable Organizations as Required by G.L. c. 12, § 8E, or File Annual Reports for Each Entity as Required by G.L. c. 12, § 8F.**

Mr. O'Donnell's failure to register Baystate or Save the Star as charitable organizations exposes him to civil penalties of \$50 per day for each day that each required registration is delinquent, up to a maximum aggregate penalty of \$10,000.00 per organization. G.L. c. 12, § 8E(c). As Mr. O'Donnell has failed to file appropriate registration statements for over ten years, the Court will impose the maximum allowable penalty (*i.e.*, \$10,000.00), for each entity, on Mr. O'Donnell personally as the person who "ha[d] the authority to cause the public charity to comply with the registration requirements of [Section 8E] but neglected or refused to do so after notice and demand." *Id.*

Mr. O'Donnell's failure to file annual reports for Baystate or Save the Star as charitable organizations similarly exposes him to civil penalties of \$50 per day for each day that each

required report is delinquent, up to a maximum aggregate penalty of \$10,000.00 for each report. G.L. c. 12, § 8E(c). Baystate was formed in May 1995, and Save the Star was formed in September 2002. Tr. Exs. 34 and 35. Accordingly, Mr. O'Donnell was required to file annual reports for Baystate for the years 1995 through at least 2006, and for Save the Star for the years 2002 through at least 2006, but has failed to do so. All told, Mr. O'Donnell has failed to file seventeen (17) required annual reports. As most of these failures have persisted for over ten years, the Court will impose the maximum allowable penalty (*i.e.*, \$10,000.00), for each missing report, on Mr. O'Donnell personally as the person who "ha[d] the authority to cause the public charity to comply with the registration requirements of [Section 8F] but neglected or refused to do so after notice and demand." *Id.*

**C. Remedies and Sanctions Imposed for Mr. O'Donnell's Transfer of Baystate and Save the Star's Property Holdings to Himself in October 2006 for Little or No Consideration.**

The Court has found that Mr. O'Donnell violated his obligations under G.L. c. 180, § 6C, and at common law by orchestrating the transfer of all of the property holdings of Baystate and Save the Star to himself in October 2006 for little or no consideration. While Massachusetts case law regarding the proper relief to be awarded in circumstances such as this is scant, the Court regards Mr. O'Donnell's conduct to be comparable to an unlawful conversion, and will award comparable relief. See *Cahaly v. Benistar Property Exchange Trust Co., Inc.*, 68 Mass. App. Ct. 668, 679 (2007) ("Conversion consists of a wrongful exercise of dominion or control over the personal property of another.").

The Court, therefore, concludes that an appropriate remedy for Mr. O'Donnell's wrongful misappropriation of Baystate and Save the Star's properties is to order

Mr. O'Donnell to pay restitution to an escrow fund to be established by the Attorney General based on the fair market value of those properties at the time of the transfer, plus prejudgment interest. See *Welch v. Kosasky*, 24 Mass. App. Ct. 402, 404 (1987) (damages for conversion "are measured by the value of the converted goods at the time of the conversion, with interest from that time"). The funds paid into escrow by Mr. O'Donnell shall be applied by the Attorney General, under the direction of the Court, to one or more charitable organizations in the greater Taunton, Massachusetts area, whose purposes fall within the original charitable purposes described in the Articles of Organization for Baystate and Save the Star. See, e.g., *Wesley United Methodist Church v. Harvard College*, 366 Mass. 247, 249-250 (1974) ("Where property is given in trust for a particular charitable purpose, and it is impossible or impracticable to carry out that purpose, the trust does not fail if the testator has a more general intention to devote the property to charitable purposes. In such a case the property will be applied under the direction of the court to some charitable purpose falling within the general intention of the testator.").

### Order

For the foregoing reasons, it is hereby **ORDER**, **ADJUDGED**, and **DECREED** that:

1. Judgment shall enter for plaintiff Commonwealth of Massachusetts (the "Commonwealth") against defendant Michael W. O'Donnell ("Mr. O'Donnell") on Counts I-IV and VI (Unfair and Deceptive Acts and Practices in Violation of G.L. c. 93A, § 2) of the First Amended Complaint as follows:

- a. Mr. O'Donnell shall pay the Commonwealth civil penalties in the total amount of two hundred fifty thousand dollars (\$250,000.00) for the fifty

(50) separate violations of G.L. c. 93A, § 2, identified in Sections IV(A)(1)-(3), *supra*;

- b. The Mortgage and Security Agreement and related Promissory Note pertaining to the property located at 68 Margaret Road, Taunton, Massachusetts (the "Margaret Road Property") entered into by Mr. O'Donnell, in the guise of Setter Financial, and Carol S. Rebello ("Mrs. Rebello") on or about April 5, 2005, are null and void;
- c. All mortgage payments made by Mrs. Rebello on the Margaret Road Property that currently are being held in escrow at Eastern Bank pursuant to this Court's Order of December 29, 2005, and all interest that has accrued thereon, shall be released and paid over to the duly authorized personal representative of Mrs. Rebello's estate as partial restitution for Mr. O'Donnell's unfair or deceptive acts or practices in his business dealings with Mrs. Rebello;
- d. Mr. O'Donnell is permanently enjoined from: (i) issuing, negotiating, transacting any business or activity concerning any real estate or any mortgage loan, whether through himself individually, or through any business, charity or any other type of organization; (ii) being involved in any capacity in any actual or purported charitable organization, including, but not limited to, founding, establishing, serving on, consulting with, or acting as an officer, board member or trustee, agent, or employee for, or otherwise exerting direction, control, oversight, or

administration in any respect over the activities of any charitable organization, regardless of form, and wherever organized; (iii) directly or indirectly approaching or contacting any member of Mrs. Rebello's immediate family, including, but not limited to, any of her children and grandchildren; and (iv) engaging in any unfair or deceptive act or practice in violation of G.L. c. 93A, § 2, including, but not limited to, any unfair or deceptive act or practice of the types described in the Commonwealth's First Amended Complaint in this action, dated October 15, 2009; and

- e. The Commonwealth shall recover from Mr. O'Donnell the reasonable costs incurred in investigating and litigating his violations of G.L. c. 93A, § 2, including attorney's fees. The Attorney General shall submit an affidavit to the Court setting forth, in reasonable detail, the Commonwealth's recoverable and costs within twenty-one (21) days of the entry of this Order.

2. Judgment shall enter for the Commonwealth against Mr. O'Donnell on Count VIII (Violations of G.L. c. 12, § 8E and 8F) of the First Amended Complaint as follows:

- a. Mr. O'Donnell personally shall pay the Commonwealth civil penalties in the total amount of twenty thousand dollars (\$20,000.00) for the two (2) separate violations of G.L. c. 12, § 8E, identified in Section IV(B), *supra*; and

- b. Mr. O'Donnell personally shall pay the Commonwealth civil penalties in the total amount of one hundred seventy thousand dollars (\$170,000.00) for the seventeen (17) separate violations of G.L. c. 12, § 8F, identified in Section IV(B), *supra*.

3. Judgment shall enter for the Commonwealth against Mr. O'Donnell on Count IX (Breaches of Duties of Loyalty and Care) of the First Amended Complaint as follows:

- a. Mr. O'Donnell shall pay the total sum of one million two hundred eighty-five thousand three hundred dollars (\$1,285,300.00), plus prejudgment interest from October 31, 2006, calculated pursuant to G.L. c. 231, § 6B, into an escrow fund to be established by the Attorney General as restitution for the properties belonging to the charitable organizations known as Baystate Affordable Housing Agency, Inc. ("Baystate") and Save the Star, Inc. ("Save the Star") that Mr. O'Donnell unlawfully transferred to himself in October 2006; and
- b. The funds paid into the escrow fund by Mr. O'Donnell shall be applied by the Attorney General, under the direction of the Court, to one or more charitable organizations in the greater Taunton, Massachusetts area, whose purposes fall within the original charitable purposes described in the Articles of Organization for Baystate and Save the Star. Within ninety (90) days of receipt of the funds from Mr. O'Donnell, the Attorney General shall submit to the Court for its review and approval an

appropriate petition identifying the specific charitable organizations to which the Attorney General proposes to direct the funds.

A handwritten signature in black ink, appearing to read "B. A. Davis", written over a horizontal line.

Brian A. Davis,  
Associate Justice of the Superior Court

Date: October 29, 2015