

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND:  
EXCHANGE COMMISSION,

Plaintiff

-v-

JOHN E. BRINKER, JR., et al.,

Defendants

:

:

:

:

:

Case No. IP 01-0259-C-H/G  
(Judge Hamilton)

- 0 -

The deposition of **JOHN R. ANDRES**, taken before Melea Eilene Chaney, Court Reporter and Notary Public in and for the State of Ohio, at the law offices of Hemmer, Spoor, Pangburn, DeFrank & Kasson, 8044 Montgomery Road, Suite 624, Cincinnati, Ohio, on the 1st day of August, 2001, beginning at the hour of 9:48 a.m. and ending at the hour of 1:06 p.m. of the same date.

- 0 -

**RIVERSIDE REPORTING SERVICE**  
Certified Court Reporters  
P.O. Box 949  
Covington, Kentucky 41012  
(859)291-6110

**ORIGINAL**

## APPEARANCES:

FOR THE RECEIVER: JACQUELINE SCHUSTER HOBBS, Esq.  
Attorney at Law  
600 Vine Street  
Suite 2800  
Cincinnati, Ohio 45202

FOR THE WITNESS: ROBERT A. WINTER, JR., Esq.  
Attorney at Law  
8044 Montgomery Road  
Suite 624  
Cincinnati, Ohio 45236

FOR ANDERSON BANK: MICHAEL SCOTT KEARNS, Esq.  
Attorney at Law  
215 West Ninth Street  
Cincinnati, Ohio 45202

- 0 -

## STIPULATIONS:

It is stipulated by and between counsel for the respective parties that the deposition of **JOHN R. ANDRES**, a witness herein, may be taken at this time pursuant to the Federal Rules of Civil Procedure and Notice; that the deposition may be taken via Stenomask by the Notary Public/Court Reporter, and transcribed by her out of the presence of witness; that the deposition was submitted to counsel for the witness for reading and signature.

- 0 -

**INDEX OF EXAMINATION:**

By Ms. Hobbs.....	4
By Mr. Kearns.....	119
By Mr. Winter.....	122

**INDEX OF EXHIBITS:**

1 mortgage ( [REDACTED] ).....	20
2 register ( [REDACTED] ).....	22
3 spreadsheet.....	27
4 general warranty deed [REDACTED].....	45
5 agreement of sale ( [REDACTED] ).....	51
6 specification of agreement.....	53
7 2/12/99 correspondence with loan application..	53
8 land installment contract.....	58
9 check Eleven Eighty-Five (No. 105).....	64
10 consent and assumption agreement.....	66
11 4/21/99 correspondence enclosing good faith estimate and federal truth-in-lending disclosure for construction loan ( [REDACTED] [REDACTED] ).....	68
12 open end mortgage ( [REDACTED] ).....	70
13 promissory note.....	71
14 land contract subordination agreement.....	72
15 receipt, Wooden Nickel Antiques.....	77

16	8/2/00 correspondence.....	78
17	9/4/01 Anglo Irish Bank statement.....	85
18	check, Eleven Eighty-Five (No. 5545).....	86
19	9/4/01 Anglo Irish Bank statement.....	86
20	check, Eleven Eighty-Five (No. 5950).....	87
21	check, Eleven Eighty-Five (No. 5949).....	87
22	check, Eleven Eighty-Five (No. 6612).....	88
23	check, Eleven Eighty-Five (No. 6619).....	88
24	check, Eleven Eighty-Five (No. 1021).....	89
25	checks, Eleven Eighty-Five (Nos. 1613, 1614, 1615).....	90
26	checks, Eleven Eighty-Five (Nos. 1652, 1671, 1672).....	91
27	checks, Eleven Eighty-Five (Nos. 1660, 1661, 1662).....	92
28	Wells Fargo Bank, Nevada, transaction report for 9/21/00.....	93
29	check, Eleven Eighty-Five (No. 1690).....	94
30	checks, Eleven Eighty-Five (Nos. 1741, 1769, 1772).....	94
31	checks, Eleven Eighty-Five (Nos. 42686, 1870, 1826).....	95
32	check, Eleven Eighty-Five (No. 1864).....	95
33	purchase agreement.....	97
34	2/14/01 fax to Mr. Andres from Anderson Bank.....	101
35	first amendment to land installment contract.....	102
36	2/22/01 fax to Mr. Brinker from Mr. Andres.....	103

37 2/23/01 correspondence from Wood & Lamping  
with attached affidavit for mechanic's  
lien.....104

38 3/6/01 fax to Mr. Andres from Mr. Brinker....105

39 3/6/01 fax to Scott from Mr. Andres.....106

40 affidavit for mechanic's lien.....108

41 spreadsheet.....109

42 Star One addendum to contract to purchase I..110

43 register report.....112

44 Stonehill loan distribution report.....112

45 personal insurance bills ( [REDACTED] ).....114

46 promissory note (executed).....119

47 open end mortgage (executed).....119

1           **JOHN R. ANDRES**, called as a witness, being first duly  
2 sworn, testified as follows:

3                           MS. HOBBS: Good morning, Mr. Andres.

4                           THE WITNESS: Good morning.

5                           MS. HOBBS: As I said, I'm Jackie  
6 Hobbs. We've been introduced.

7                           THE WITNESS: Mm-hmm.

8                           MS. HOBBS: I'm here to take your  
9 deposition today.

10           BY MS. HOBBS:

11                           Q           Have you ever been deposed before?

12                           A           Mm-hmm. Oh, yeah.

13                           Q           What type of case was that?

14                           A           We had a wrongful termination through  
15 Andres Lumber which was -- that -- that was dismissed.  
16 Let me think of the other. There was -- oh, with Don  
17 Lerner. We had a situation with a partner on a real  
18 estate matter. And one other time. I can't -- I can't  
19 recall what it was. Three or four times.

20                           Q           Don Lerner was the lawyer?

21                           A           Mm-hmm. Yeah. He was representing the  
22 plaintiffs.

23                           Q           I know Don.

24                           A           Yeah. He's -- Rick Rothfuss is my

1 neighbor, so -- the same firm.

2 Q And when was your deposition taken in  
3 those cases?

4 A I have no -- years ago. The wrongful  
5 termination was probably three or four years ago it  
6 seems, the timing, and then the Vineyard venture matter  
7 was probably a year or two before that.

8 Q Five to six years?

9 A Yeah, I would think.

10 Q What did you refer to that as, Mr.  
11 Andres?

12 A Which one?

13 Q The venture.

14 A Vineyard ventures. It was a land  
15 development. We had a site distance situation with the  
16 county and -- on a land development or development. We  
17 develop real estate.

18 MS. HOBBS: Okay. The reason I asked  
19 is because if you've never had your deposition  
20 taken before, there are certain ground rules,  
21 so to speak. One being that you want to give  
22 oral answers. Nods of the head, uh-huh, huh-uh  
23 --

24 THE WITNESS: Mm-hmm.

25 MS. HOBBS: -- can't be taken down by

1 the court reporter, so you want to say yes or  
2 no. You can nod your head, but obviously say  
3 yes or no at the same time.

4 THE WITNESS: Okay.

5 MS. HOBBS: I'll try not to speak over  
6 you and if you could do the same for me, that  
7 would be great because the court reporter can't  
8 take us down talking at the same time.

9 THE WITNESS: Mm-hmm.

10 MS. HOBBS: If I ask you a question and  
11 you give me a response, I will assume that you  
12 understood the question. If for some reason  
13 you don't understand my questions, feel free to  
14 ask me to clarify or tell me what you don't  
15 understand and I'll try to rephrase it.

16 If you need to take a break at any  
17 time, just let me know. As long as there's no  
18 question pending, I'll be happy to take a short  
19 break and continue.

20 BY MS. HOBBS:

21 Q I'm going to ask you a few just  
22 preliminary questions, background questions. Why don't  
23 you state your full name for the record.

24 A John Robert Andres.

25 Q Spell your last name.

1 A A-N-D-R-E-S.

2 Q Are you married?

3 A Yes.

4 Q What is your wife's name?

5 A [REDACTED]

6 Q What is your age, Mr. Andres?

7 A Fifty-two.

8 Q What is your date of birth?

9 A 4/28/49.

10 Q Social security number?

11 A [REDACTED]

12 Q What is your current address?

13 A [REDACTED]

14 Q How long have you lived at Rollingrock

15 Lane?

16 A Twenty-one years.

17 Q I'm sorry?

18 A Twenty-one.

19 Q Do you own or rent?

20 A Own.

21 Q What is your occupation?

22 A President, Andres Lumber & Supply.

23 Q Where is Andres Lumber & Supply

24 located?

25 A 4343 Mt. Carmel-Tobasco Road.

1 Q What does Andres Lumber & Supply do?

2 A Sells lumber, building materials  
3 primarily to builders, professionals.

4 Q How long has that been in business?

5 A Eighty-one years.

6 Q I take it you're also an owner of the  
7 company?

8 A I'm the sole stockholder. It's a  
9 regular C corp.

10 Q Besides Andres Lumber & Supply, are you  
11 employed by any other companies?

12 A Not employed, no.

13 Q Are there any other companies or  
14 entities that you own or in which you have an ownership  
15 interest?

16 A Yes.

17 Q Tell me about those.

18 A J.A. Properties, Ohio Limited  
19 Partnership. It owns the land and building that Andres  
20 Lumber is located on.

21 Q Does it do anything else?

22 A No. It just owns real estate, leases  
23 it back to the corp. It owns three contiguous  
24 properties, a total of about eight acres.

25 Q What other property does it own besides

1 4343 Mt. Carmel-Tobasco --

2 A [REDACTED] and [REDACTED]. They're all contiguous.

3 Q What sits on those properties, the  
4 other two?

5 A On the other two? Two residential  
6 homes and -- and one just vacant lot. We knocked the  
7 house down.

8 Q Which lot did the two residential homes  
9 sit on?

10 A [REDACTED] and [REDACTED]. There's -- [REDACTED] is the  
11 -- is the building, then [REDACTED] is the first house, [REDACTED]  
12 is the second house and [REDACTED] is a vacant lot.

13 Q To whom are the two residential homes  
14 leased?

15 A [REDACTED] is in [REDACTED].

16 Q How do you spell her last name, Mr.  
17 Andres?

18 A [REDACTED].

19 Q [REDACTED] you say?

20 A Yes. And [REDACTED] I can't -- I can't --  
21 doesn't come to me right now. If you want to call, I  
22 can get the name. I can't remember.

23 Q Is it an individual?

24 A They're -- [REDACTED] is unmarried. I  
25 believe the couple in [REDACTED] are married.

1           Q           How long has J.A. Properties been  
2 around?

3           A           We formed that -- I don't know exactly,  
4 but my best recollection would be probably 1979. It  
5 was formed -- it might have preceded that a little. It  
6 might have been about '75 or '76 come to think of it.  
7 We bought a couple of pieces of just raw ground in  
8 those years and we did one development in that company  
9 and then we moved to -- we moved the business to the  
10 4345 in late '79 and J.A. Properties -- bought and --  
11 and built that property. So J.A. might have been '75  
12 or '76. I'd have to look in the --

13           Q           Besides yourself who else owns or has  
14 an ownership interest in J.A. Properties?

15           A           We -- we -- we -- a couple years ago we  
16 modified it slightly. Actually if you looked at the  
17 structure, JAP Development Company, Inc. is the general  
18 partner. J.A. Properties and -- and the one I'll tell  
19 you about in a minute, Chanticleer, were both converted  
20 to limited partnerships.

21                       For practical purposes it's just my  
22 father and myself. Just -- the way the structure works  
23 is JAP Development Company is an S corp; it's the  
24 general partner. I'm the -- I'm the owner of that.  
25 And it is the general partner of both J.A. Properties

1 and of Chanticleer Properties.

2 Q JAP Development is?

3 A JAP Development. And JAP Development  
4 is -- the corporation is a one percent -- is a one  
5 percent owner of both of these entities. My father is  
6 50 percent limited partner. I'm 49 percent limited  
7 partner. So the sum of the 49 and the one, we're --  
8 we're basically 50/50. It was done for -- for state  
9 tax purposes and that and liability reasons.

10 Q What is your father's name, Mr. Andres?

11 A Jack Robert.

12 Q Andres?

13 A Mm-hmm. Yes.

14 Q We've talked about quite a few  
15 companies here. Let me just go back and get some  
16 information.

17 A Well, Chanticleer -- okay.

18 Q I just wanted to get some clarification  
19 from you.

20 A Sure.

21 Q You mentioned the JAP Development  
22 Company, Inc. as the general partner of J.A.  
23 Properties, an Ohio Limited Partnership, correct?

24 A Yes.

25 Q What does that company do, J.A.

1 Development Company?

2 A Nothing. It's just -- it's just a  
3 general partner. It's -- it's not an active company.  
4 My attorney, Kevin Hopper, is the one that -- and with  
5 my accountant restructured it that way.

6 Q So its sole purpose is to be a general  
7 partner and have a one percent --

8 A For the two -- for the two limiteds,  
9 yes, ma'am.

10 Q You mentioned Chanticleer Properties.

11 A Chanticleer. Mm-hmm.

12 Q Is that a limited partnership?

13 A Ohio limited -- that was also converted  
14 to an Ohio limited partnership.

15 Q What does Chanticleer Properties do?

16 A Chanticleer is -- primarily purchases  
17 and develops real estate in -- in most cases into  
18 residential building lots. We sell lots to builders  
19 and hopefully subsequently sell them the lumber. We do  
20 some home building under Chanticleer Properties.

21 Q Anything else?

22 A That's pretty much the extent of what  
23 that entity is for.

24 Q Does it own real estate?

25 A Yes.

1 Q Where is the real estate located that  
2 it currently owns?

3 A The -- primarily Anderson Township and  
4 Clermont County. I -- I would -- Union Township and  
5 Anderson Township, Clermont and Hamilton County.  
6 Nothing really out of the city or -- or city locale.

7 Q And this real estate that it owns, are  
8 these the vacant lots that you're talking about or are  
9 they actually --

10 A They're vacant lots. I've got -- let's  
11 see. I've got a house down on -- off of Four Mile and  
12 Wyndwatch that I took back from a builder that --  
13 through Firststar that Chanticleer Property owns. It  
14 owns a lot in the Coldstream area that I took back --

15 Q Is that Kentucky, Mr. Andres?

16 A No. That's in Anderson Township.  
17 Coldstream Country Club area. And recently transferred  
18 the property over on Cannes. If I looked at one of my  
19 spreadsheets, I could tell you, but I think we've got  
20 about 15 lots in Union Township and I've got -- I've  
21 got -- I've got 13 undeveloped out in Anderson right  
22 now. I got seven that are already developed in  
23 Anderson. So it has a couple of mortgages, second  
24 mortgages, that it owns.

25 Q For what properties?

1           A           Well, the -- the one property is the  
2           ██████████, the original house I sold to Mr.  
3           Brinker. There's a -- a note -- a mortgage on that.  
4           There's a property on Wuebold that I've got a -- I've  
5           got a mortgage on. Sold it and carried some paper on  
6           that. I think that's the extent of second mortgages  
7           and/or notes.

8           Q           Have we talked about all the companies?

9           A           No.

10          Q           Okay. Let's keep going.

11          A           I -- you could have -- I could have  
12          made it easier. I've got a write-up of all this stuff  
13          and I could have provided it for you. I didn't realize  
14          that they were of any interest. But there's another  
15          company, Chanticleer Homes, which is primarily dormant.  
16          It has built six -- six, eight houses over the years.  
17          The -- the only thing that's -- that's a partnership  
18          between myself and Mark Kiddie, a personal friend.

19          Q           Kiddie?

20          A           K-I-D-D-I-E. A 50/50 partnership; it's  
21          a general partnership. The remaining piece of  
22          property, and that is ██████████, a house that  
23          I sold on a lease with option to purchase to ██████████  
24          ██████████ in '94.

25          Q           That's not ██████████ enough?

1 A That is [REDACTED] yes, ma'am.

2 Q You sold that to who?

3 A Sold on a lease with the option to  
4 purchase to [REDACTED]. And I think it was in  
5 '94. It could be '95. It -- that was in a development  
6 called Megan's Point. We built -- there's nine lots in  
7 there. We built seven of them and sold three of them  
8 on either land contracts or lease option to purchase.

9 Q Any other companies that you have an  
10 interest in or that you --

11 A There's a company called Jamb, J-A-M-B.  
12 It's a limited partnership, myself and Mike Brown. It  
13 owns one piece of property in northern Kentucky at [REDACTED]  
14 [REDACTED] that we lease to -- there are three  
15 lessees in there.

16 Q Any other companies or entities that  
17 you own or have an ownership interest in?

18 A J.A., Chanticleer, Jamb, I think that's  
19 it. I can edit that or modify it if I've -- if I've  
20 forgotten something, but I don't think I have.

21 Q Is that it then?

22 A I'm reasonably sure, so --

23 Q Okay. How long have you known John  
24 Brinker?

25 A I think my first contact with him was

1 '97 or '98 when he bought the property at 4287  
2 Wellington. I would say early to mid-1998. It appears  
3 around June of '98 we closed on [REDACTED]. That  
4 was my first contact with him.

5 Q And how did that contact come about,  
6 Mr. Andres?

7 A As I told you, I develop residential  
8 building lots, sell them to builders. In this case --  
9 and -- and what happens a lot of times, I will sell a  
10 lot -- or sell a lot to a builder, they want to build a  
11 model. They'll -- they'll build a model for me. I'll  
12 buy the model and lease it back to them. And then when  
13 they're finished with that section or phase, they'll  
14 sell the house off and probably move to another model  
15 unless the subdivision is over.

16 John Brinker had come to -- Expression  
17 Homes was the lessee. They were -- they were the sole  
18 builder in my subdivision called Chanticleer Woods of  
19 which Eight -- Wellington Woods -- Wellington Drive is  
20 in. I developed that parcel, 61 lots. Sixty-two lots  
21 I believe. And when it was time for that phase to --  
22 to -- Expression to move to another phase and build a  
23 new model, John Brinker approached him, said "I'd like  
24 -- I'd be interested in buying this house." I -- I  
25 don't think he could get -- he -- he didn't have the --

1 the cash to cash me out. He -- he could -- he got a  
2 conventional loan. I carried a second on it. He  
3 borrowed -- I carried a second for \$45,000. There was  
4 not enough equity in that property. There was about  
5 \$35,000 equity in the property, so they pledged the  
6 real estate on [REDACTED]. His daughter  
7 was living in or owned a condominium on [REDACTED]  
8 [REDACTED].

9 Q Do you know the exact address of that?

10 A I've got it on the mortgage here.  
11 Let's see if I can find it. It should be in here. I  
12 thought I forwarded the documents to you. She signed  
13 the mortgage Kelly Hudson. I think that's his daughter  
14 and -- but I couldn't -- I'm not 100 percent sure, but  
15 I believe that's his daughter. This is -- in the legal  
16 is Exhibit A. I don't have the legal. Condominium  
17 project on [REDACTED] just south of Andres  
18 Lumber, probably one mile. I -- I honestly don't have  
19 the exact street address.

20 But that was the original -- as I  
21 indicated, the \$45,000 was inadequate equity in the  
22 house. I took the second back on the house and so they  
23 pledged this property which -- and about a year later  
24 they paid that off, that \$10,000 off. And that was  
25 where he was paying me the -- he was paying me \$991.09

