

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EDGEWOOD ELM HOUSING, INC.,
EDGEWOOD VILLAGE, INC. AND
YEDIDEI HAGAN, INC.

CASE NO. 3:21-cv-00457-VAB

V.

SELECTIVE INSURANCE COMPANY OF
THE SOUTHEAST, SELECTIVE
INSURANCE COMPANY OF SOUTH
CAROLINA, SELECTIVE INSURANCE
COMPANY OF AMERICA,
JEFF JACOBSON AND CLOCKTOWER
TAX CREDITS, LLC

MAY 28, 2021

AMENDED COMPLAINT

Plaintiffs Edgewood Elm Housing, Inc., Edgewood Village, Inc. and Yedidei Hagan, Inc. respectfully submit this Amended Complaint.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. § 1332 because there is diversity of citizenship between Plaintiffs and Defendants, and because the amount in controversy exceeds \$75,000.00, excluding interest and costs. Plaintiffs are domiciled in Connecticut and Defendants are domiciled in Massachusetts, New Jersey and Indiana. Supplemental jurisdiction exists over state law claims pursuant to 28 U.S.C. § 1367.
2. This Court has personal jurisdiction over the parties and venue in this district is proper pursuant to 28 U.S.C. § 1391, because, among other reasons, a substantial part of the events and omissions giving rise to the claims occurred in Connecticut.

COUNT ONE: BREACH OF CONTRACT:
(as to the Selective Insurance Defendants)

1. Edgewood Elm Housing, Inc. (“Edgewood Elm”) is a Connecticut non-stock corporation with a principal place of business at 386 Whalley Avenue, New Haven, Connecticut.
2. Edgewood Village, Inc. (“Edgewood Village”) is a Connecticut non-stock corporation with a principal place of business at 386 Whalley Avenue, New Haven, Connecticut.
3. Yedidei Hagan, Inc. (“Yedidei Hagan”) is a Connecticut non-stock corporation with a principal place of business at 386 Whalley Avenue, New Haven, Connecticut.
4. Edgewood Elm, Edgewood Village and Yedidei Hagan are registered IRS tax-exempt non-profit corporations (collectively, the “Non-Profits”).
5. The primary mission of the Non-Profits is to acquire, restore and maintain housing for low and moderate-income tenants and families and to support and maintain the character of New Haven’s vibrant and diverse neighborhoods. To meet this mission, the Non-Profits purchase real property located in New Haven, typically multi-family homes in need of upkeep or repair, which they then renovate, revitalize and offer for rent as affordable housing.

The Defendants

6. Selective Insurance Company of the Southeast (“Selective Southeast”) is an insurance company domiciled in Indiana that is approved by the State of Connecticut to offer insurance in this state.
7. Selective Insurance Company of America (“Selective America”) is an insurance company domiciled in New Jersey that is approved by the State of Connecticut to offer insurance in this state.

8. Selective Insurance Company of South Carolina (“Selective South Carolina”) is an insurance company domiciled in Indiana that is approved by the State of Connecticut to offer insurance in this state.

9. Upon information and belief, Selective Southeast, Selective South Carolina and Selective America (collectively, the “Selective Entities”) offer for sale and sell numerous lines of insurance to businesses and individuals throughout Connecticut.

10. Defendant Clocktower Tax Credits, LLC is a business located in Maynard, Massachusetts (“Clocktower”).

11. Defendant Jeff Jacobson (“Jacobson”) is an individual who resides at 2 Mill & Main Place in Maynard, Massachusetts.

12. Jacobson is the principal and founder of Clocktower.

13. Clocktower is a national broker of State and Federal tax credit incentives.

14. Clocktower maintains a website advertising its services. That website advertises Clocktower as having closed state and/or federal tax credits investments in over a dozen states, including Connecticut.

15. Clocktower’s website states that Jacobson individually has “structured and closed transactions in more than thirty states.”

16. Upon information and belief, both Jacobson and Clocktower regularly solicit and do business in numerous states, including Connecticut.

17. In 2013, Jacobson, through Clocktower, served as the tax credit broker for the Non-Profits in Connecticut.

The Connecticut Neighborhood Assistance Act Tax Credit Program

18. Connecticut's Department of Revenue Services ("DRS") oversees and administers the Connecticut Neighborhood Assistance Act Tax Credit Program (the "Program"). The Program is designed to assist municipal and tax-exempt organizations with fund-raising. It does so by providing corporation business tax credits to municipal or tax-exempt organizations which may be used by businesses who agree to make, and do make, cash contributions to those organizations.

19. The Program requires each tax-exempt organization desiring to obtain credits under the Program to submit an application form, called a Form NAA-01, detailing the initiative or program for which they are seeking funding. The Form NAA-01 is submitted directly to the municipal agency overseeing the implementation of that Program.

20. The municipality then holds a public hearing on the project described in each Form NAA-01. The governing body of the municipality must vote to approve the project.

21. The municipality submits all approved NAA-01 forms to DRS by July 31 of each year. DRS thereafter publishes a list of all approved projects on its website, including the amount of potential tax credits awarded to the tax-exempt organization that proposed the project.

22. Businesses can then be matched with the tax-exempt entity to which they wish to donate and the approved projects they wish to sponsor.

23. Each business requesting a tax credit under the Program must complete a form, called a Form NAA-02, indicating which project it wishes to sponsor. The NAA-02 requires the prospective donor business to identify the organization/municipal agency to which it intends to contribute, the title of the program involved, and the specific dollar amount it intends to contribute to the organization/municipal agency toward the project.

24. Form NAA-02 must be submitted to DRS between September 15 and October 1 of each year.

25. Unlike the process after a Form NAA-01 is submitted, no public hearing or municipal vote is necessary following the submission of a Form NNA-02. Instead, after all NAA-02 forms are submitted, the DRS reviews them to determine whether more than \$5 million in aggregate tax credits have been pledged.

26. The total amount of all tax credits allowed under the Program in any fiscal year is \$5 million. If the demand exceeds that amount the DRS pro-rates the approved tax credits among the approved projects

27. In or around December of each year, the DRS publishes a final list of all funders for each approved project. The DRS does not alter the recipient of funds as stated in each Form NAA-02; it simply determines whether the full amount of the promised donation is available under the Program, or whether a lower pro-rated amount will be substituted.

Program Events in 2020

28. In 2020, Edgewood Elm submitted a Form NAA-01 and was approved for participation in the 100% tax credit Program to support an energy renewal program in one of its New Haven-based residential housing units.

29. In 2020, Edgewood Village submitted a Form NAA-01 and was approved for participation in the 100% tax credit Program to support a large energy renovation program in one of its New Haven-based residential housing units.

30. In 2020, Yedidei Hagan submitted a Form NAA-01 and was approved for participation in the 100% tax credit Program to support an energy renovation and restoration project in one of its New Haven-based residential housing units.

31. The Non-Profits utilized a broker to place the Non-Profits' tax credits with interested donors. The broker identified the Selective Entities as parties that would donate money and receive tax credit allocations.

32. Selective Southeast agreed to give Edgewood Elm \$25,000 in exchange for a tax credit allocation from Edgewood Elm in that amount. It submitted a Form NAA-02 indicating it wished to sponsor Edgewood Elm's energy renewal project in the amount of \$25,000.

33. Selective America agreed to give Edgewood Village \$100,000 in exchange for a tax credit allocation from Edgewood Village in that amount. It submitted a Form NAA-02 indicating it wished to sponsor Edgewood Village's energy renovation project in the amount of \$100,000.

34. Selective South Carolina agreed to give Yedidei Hagan \$25,000 in exchange for a tax credit allocation from Yedidei Hagan in that amount. It submitted a Form NAA-02 indicating it wished to sponsor Yedidei Hagan's energy renovation and renewal project in the amount of \$25,000.

35. On December 11, 2020, the DRS published a list of approved projects and the amounts for their corresponding corporate donors. The DRS list indicated that Selective Southeast had been allocated Edgewood Elm tax credits in the amount of \$24,656.56, that Selective America had been allocated Edgewood Village tax credits in the amount of \$98,626.26 and that Selective South Carolina had been allocated Yedidei Hagan tax credits in the amount of \$24,656.56.

36. Upon information and belief, the slight difference between the requested and final tax credit amounts for each of the Selective Entities was due to the DRS prorating the \$5 million in allowed tax credits among the approved projects statewide.

37. On or about December 16, 2020, the Selective Entities caused a check to be prepared and mailed to Edgewood Elm in the amount of \$25,000.

38. On or about December 16, 2020, the Selective Entities caused a check to be prepared and mailed to Edgewood Village in the amount of \$100,000.

39. On or about December 16, 2020, the Selective Entities caused a check to be prepared and mailed to Yedidei Hagan in the amount of \$25,000.

40. The Non-Profits received these checks on or about December 21, 2020.

41. On that same date, Sarah Greer, who is Secretary and Director of each of the Non-Profits, called the Non-Profits' current tax credit broker to inquire whether the Selective Entities wished to donate the full amounts they sent, or whether they only wished to donate the slightly smaller amounts that matched their tax credit allotment under the December 11 DRS list.

42. In response, the broker informed Sarah Greer that the Selective Entities had told their bank to stop payment on the donation checks, and that the Selective Entities were refusing to honor their agreement to donate to the Non-Profits in exchange for tax credits under the Program.

43. The Selective Entities' stated reason, according to that broker, was that they had received information from Clocktower and Jacobson that Sarah Greer's husband had been "in prison" and was allegedly involved in some unspecified "fraud".

44. Clocktower and Jacobson were familiar with both the Non-Profits and the Selective Entities, as Clocktower and Jacobson had worked with them in the past.

45. The Selective Entities and the Non-Profits entered into binding contracts, by which Selective Southeast agreed to donate \$25,000 to Edgewood Elm in exchange for the right to receive Edgewood Elm tax credits as approved under the Program; Selective America agreed to donate \$100,000 to Edgewood Village in exchange for the right to receive Edgewood Village tax credits as approved under the Program; and Selective South Carolina agreed to donate \$25,000 to

Yedidei Hagan in exchange for the right to receive Yedidei Hagan tax credits as approved under the Program. These contracts were formed upon the submission of each Form NAA-02 to DRS.

46. The Selective Entities breached their contracts with the Non-Profits when the Selective Entities stopped payment on the checks the Non-Profits had already received and refused to make the agreed-to donations.

47. The Non-Profits have demanded that the Selective Entities make their agreed-to donations but to date, the Selective Entities have failed to do so.

48. As a result of the Selective Entities' breach, the Non-Profits have suffered damages including but not limited to costs and expenses associated with the projects the Selective Entities agreed to fund.

COUNT TWO:
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(as to the Selective Insurance Defendants)

1-48. Paragraphs 1-48 of Count One are incorporated by reference as if fully set forth herein.

49. Upon information and belief, the Selective Entities knowingly and intentionally failed to fulfill their contractual duties to the Non-Profits because they desired to avoid the appearance of any association with Sarah Greer's husband and the Non-Profits.

50. Upon information and belief, to accomplish this, the Selective Entities went so far as to ask DRS to remove the December 11 DRS list from its website and replace it with one indicating that the Selective Entities had directed their payments to other entities, thereby erasing any trace of an association between the Selective Entities and the Non-Profits.

51. Upon information and belief, the Selective Entities in bad faith made the decision to disregard and ignore their contractual duties to the Non-Profits with the self-interested and bad

faith motive of placing their own financial and corporate interests ahead of the contractual rights and financial well-being of the Non-Profits.

52. The Selective Entities knowingly and intentionally failed to fulfill their contractual duties to make the agreed donations to the Non-Profits without any regard for the effects of their actions on the Non-Profits.

53. In so doing, the Selective Entities acted with malice and/or reckless disregard for the Non-Profits and their legal rights.

54. Accordingly, the Selective Entities breached the implied covenant of good faith and fair dealing when they cancelled their agreed-to payments to the Non-Profits in bad faith and without legal excuse or justification, thereby frustrating the Non-Profits' ability to undertake their approved charitable projects and programs and serve the New Haven community.

55. The Non-Profits have suffered damages as a result of the Selective Entities' improper conduct in violation of the implied covenant of good faith and fair dealing.

COUNT THREE:
DETRIMENTAL RELIANCE/PROMISSORY ESTOPPEL
(as to the Selective Insurance Defendants)

1-44. Paragraphs 1-44 of Count One are incorporated by reference as if fully set forth herein.

45. Selective Southeast promised to donate \$25,000 to Edgewood Elm to fund Edgewood Elm's energy renewal program, as evidenced by its multiple statements to this effect, its filing of a form NAA-02 choosing Edgewood Elm as the recipient of a \$25,000 donation, and the December 16, 2020 check mailed to Edgewood Elm.

46. Edgewood Elm relied on this promise to its detriment in that it did not seek to market these approved tax credits to any other businesses and began incurring costs and obligations in connection with the energy renewal program Selective Southeast agreed to fund.

47. Selective America promised to donate \$100,000 to Edgewood Village to fund Edgewood Village's energy renovation project, as evidenced by its multiple statements to this effect, its filing of a form NAA-02 choosing Edgewood Village as the recipient of a \$100,000 donation, and the December 16, 2020 check mailed to Edgewood Village.

48. Edgewood Village relied on this promise to its detriment in that it did not seek to market these approved tax credits to any other businesses and began incurring costs and obligations in connection with the renovation program Selective America agreed to fund.

49. Selective South Carolina promised to donate \$25,000 to Yedidei Hagan to fund Yedidei Hagan's energy restoration and renovation project, as evidenced by its multiple statements to this effect, its filing of a form NAA-02 choosing Yedidei Hagan as the recipient of a \$25,000 donation, and the December 16, 2020 check mailed to Yedidei Hagan.

50. Yedidei Hagan relied on this promise to its detriment in that it did not seek to market these approved tax credits to any other businesses and began incurring costs and obligations in connection with the renovation and restoration project Selective South Carolina agreed to fund.

51. The Selective Entities failed to keep their promises to the Non-Profits.

52. As a result of the Selective Entities' conduct, the Non-Profits have suffered damages.

COUNT FOUR:
TORTIOUS INTERFERENCE WITH CONTRACT
(as to Jacobson and Clocktower)

1-55. Paragraphs 1-55 of Count Two are incorporated by reference as if fully set forth herein.

56. The Non-Profits had a contractual and/or beneficial relationship with the Selective Entities in 2020, wherein the Selective Entities agreed to donate the specified funds to the Non-Profits in exchange for receiving the Non-Profits' tax credit allocations under the Program.

57. Clocktower and Jacobson knew of this contractual and/or beneficial relationship; indeed, it was posted publicly on the DRS website.

58. Clocktower and Jacobson intentionally interfered with the contractual and/or beneficial relationship between the Selective Entities and the Non-Profits by providing the Selective Entities with damaging information about Sarah Greer's husband, including information about an unspecified "fraud".

59. Clocktower and Jacobson's actions were outrageous and malicious, and undertaken with a willful disregard for the Non-Profits' rights with respect to their contracts and/or beneficial relationships with the Selective Entities.

60. The Non-Profits suffered damages as a result of Clocktower and Jacobson's actions.

61. In addition to compensatory damages, the Non-Profits are entitled to an award of punitive damages against Clocktower and Jacobson for their outrageous and malicious tortious conduct.

COUNT FIVE:
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS
(as to Jacobson and Clocktower)

1-55. Paragraphs 1-55 of Count Two are incorporated by reference as if fully set forth herein.

56. The Non-Profits had a business relationship with the Selective Entities in 2020.

57. Clocktower and Jacobson knew of this business relationship; indeed, it was posted publicly on the DRS's website.

58. Clocktower and Jacobson intentionally interfered with the business relationship between the Selective Entities and the Non-Profits by providing the Selective Entities with negative information about Sarah Greer's husband, including information about a supposed unspecified "fraud".

59. Clocktower and Jacobson's actions were outrageous and malicious, and undertaken with a willful disregard for the Non-Profits' rights with respect to their business relationship with the Selective Entities.

60. The Non-Profits suffered damages as a result of Clocktower and Jacobson's actions.

61. In addition to compensatory damages, the Non-Profits are entitled to an award of punitive damages against Clocktower and Jacobson for their outrageous and malicious tortious conduct.

WHEREFORE, the plaintiffs claim:

1. Money damages and interest within the jurisdiction of the court.
2. Common law punitive damages against Jacobson pursuant to Counts Four and Five.
3. Any and all other relief the court deems just and proper.

THE PLAINTIFFS,
EDGEWOOD ELM HOUSING, INC.,
EDGEWOOD VILLAGE, INC. AND
YEDIDEI HAGAN, INC.

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CERTIFICATE OF SERVICE

This is to certify that on May 28, 2021, a copy of the foregoing Amended Complaint was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and by mail to all parties that are unable to accept electronic filing. Parties may access this filing through the Court's electronic system.

/s/ Amanda C. Nugent
Amanda C. Nugent