

REPORT ON EXAMINATION

OF

ACTIVE RETIREMENT COMMUNITY, INC.

D/B/A

JEFFERSON'S FERRY

AS OF

DECEMBER 31, 2003

DATE OF REPORT

FEBRUARY 8, 2006

EXAMINER

SYLVIA D. LAWSON

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Superintendent

February 8, 2006

Honorable Howard Mills
Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law and the New York Public Health Law and acting in accordance with the instructions contained in Appointment Number 22144, dated February 3, 2004, annexed hereto, I have made an examination as of December 31, 2003, into the condition and affairs of Active Retirement Community, Inc. (D/B/A Jefferson's Ferry), a not-for-profit continuing care retirement community licensed pursuant to the provisions of Article 46 of the Public Health Law, and submit the following report thereon.

Wherever the designation "the Community" appears herein, without qualification, it should be understood to indicate Jefferson's Ferry.

The examination was conducted at the office of the Community at One Jefferson Ferry Drive, South Setauket, NY 11720.

As of December 31, 2003, the Community's required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$20,230,000.

The Community is currently operating under a Plan of Restoration ("Plan") that was accepted by the New York Insurance Department on May 19, 2004. The Plan of Restoration relies on increasing the entrance and monthly fees over a period of time and controlling the annual increase in operating expenses. The projected date for the removal of the impairment under the Plan is calendar year 2011.

1. SCOPE OF EXAMINATION

The Community is a New York not-for-profit organization which opened in May 2001 as Long Island's first continuing care retirement community. This examination covered the three-year period from its inception through December 31, 2003. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2003 in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the Department pursuant to Insurance Department Regulation 140 {11 NYCRR 350}, a review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Community's independent certified public accountants. A review was also made of the following items:

- Community documents
- Growth of the Community
- Financial documents
- Board of directors

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

2. **DESCRIPTION OF COMMUNITY**

Jefferson's Ferry is a continuing care retirement community as defined under Article 46 of the New York State Public Health Law, and has received a Certificate of Authority from the New York State Continuing Care Retirement Community Council.

The Community is a New York not-for-profit organization which opened in May 2001 as Long Island's first continuing care retirement community. The Community's independent living section consists of 220 apartments and 28 cottages. Its health center has 60 private studio and one-bedroom apartments. There is also a skilled nursing facility with 40 private rooms, plus 20 private skilled nursing rooms in a secured dementia area.

The Community operates as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

In exchange for an entrance fee and monthly maintenance charges, the Community provides lifetime residence and varying benefits for nursing care. The amount of the entrance fee and monthly maintenance charges are dependent upon the size of the residence being occupied.

The following is a description of the two different Contract options available to residents:

Traditional Continuing Care Residency Agreement

This Contract provides for a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center, less (i) any costs incurred by the Community at the specific request of the resident as set forth in an addendum to the agreement to the extent that those costs were not paid by the resident and (ii) any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement and damage to the living accommodation. The Community will pay a refund of the second person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center. Payment of a refund is made within thirty (30) days after a new resident pays the applicable entrance fee for the living unit, but in no event more than one year after the resident terminates residency. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the Contract.

90% Refundable Option First Person Entry Fee; Non Refundable Second Person Entry Fee

This Contract provides for a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two

percent (2%) for each month that the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center, with the added provision that the refund shall not be less than 90% of the first person entrance fee; except if (i) any costs incurred by the Community at the specific request of the resident as set forth in an addendum to their agreement to the extent that those costs were not paid by the resident and (ii) any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement, and damage to the living accommodation. The Community will pay a refund of the second person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center. Payment of a refund is made within thirty (30) days after a new resident pays the applicable entrance fee for the living unit, but in no event more than one year after the resident terminates residency. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the Contract.

Upon review of the aforementioned Contracts, it was noted that the Community was not in compliance with Paragraph 15 of Section 4608 of the New York State Public Health Law, which states:

“A statement that any amendment to the contract and any change in fees or charges, other than those within the guidelines of an approved rating system, must be approved by the superintendent of insurance.”

The Contracts state that fees will be adjusted in accordance with the methodology approved by the Superintendent of Insurance; however, the Contracts do not make mention of the Superintendent's approval regarding amendments to the Contracts, or regarding the changes of any other charges. The above cited paragraph applies to all changes and amendments, not just fee changes.

It is recommended that the Community revises its Contracts to comply with the requirements of paragraph fifteen (15) of Section 4608 of the New York Public Health Law.

Section 4606 of the New York Public Health Law states in part:

“Initial disclosure statement. Prior to the execution of a contract, or before the transfer of any money, other than a refundable priority reservation fee or non-refundable priority reservation agreement application fee, to an operator by or on behalf of a prospective resident, whichever occurs first, the operator shall deliver to the person with whom the contract is to be entered into or the person's legal representative the most recent annual statement as required by section forty-six hundred seven of this article, and an initial disclosure statement which contains the following:

(5) If the facility is to be operated by a manager:

a. the identities of any other facilities managed by said individual or entity and a copy of the agreement currently in effect or to be entered into between the provider and the manager for the operation of the facility;

(12) A statement indicating that community residents who are enrolled in a health maintenance organization may have nursing facility benefits available under both the health maintenance organization subscriber contract and the continuing care retirement contract. Such statement shall also indicate that if the health maintenance organization and the community cannot reach an

agreement on appropriate financial arrangements, then the resident may have to be admitted to a facility approved by the health maintenance organization in order to receive their Medicare benefit for nursing facility services under the health maintenance organization subscriber contract.

(14) In accordance with regulations promulgated by the council, the operator shall prepare a standard information sheet for each approved continuing care requirement community, which must be approved by the Department of Health, distributed with the community's marketing materials and attached to the initial disclosure statement prepared in accordance with this section."

It should be noted that the Community maintains that the requirements of paragraphs five (5) and fourteen (14) are provided as inserts to their Disclosure Statement Book, but that the required wording of paragraph twelve (12) is excluded. The Community stated that it has plans to rewrite its entire Disclosure Statement Book.

It is recommended that the Community complies with Section 4606 of the New York Public Health Law, and include the wording of paragraph twelve (12) in its initial Disclosure Statement.

A. Management

Pursuant to the Community's charter and by-laws, management of the Community is to be vested in a board of directors consisting of not less than six (6) nor more than twelve (12) directors. As of the examination date, the board of directors was comprised of six members. The directors as of December 31, 2003 were as follows:

Name and ResidencePrincipal Business Affiliation

George F. Rice, Esq.
Garden City, NY

Chairman,
Spellman, Rice, Schure, Gibbon,
McDonough, & Polizzi, LLP

Vincent Bove
Belle Terre, NY

Vice-Chairman,
John T. Mather Memorial Hospital

Wayne Shattes
Port Jefferson, NY

Secretary,
John T. Mather Memorial Hospital

Michael E. Russell
Port Jefferson, NY

Treasurer,
Wachovia Securities

Americo Melo
Miller Place, NY

Director,
Melo Construction

Robert Murphy
Port Jefferson Station, NY

Director,
Chief Administrative Officer
Maryhaven

It should also be noted that ten sets of board minutes for the period under examination, were not signed by the Secretary. However, in response to a request made by the examiner, seven certificates signed by the Secretary signifying approval of the meetings were provided.

It is recommended that the board's Secretary sign all board minutes.

Article IV, Section 3(e) of the Community's by-laws state as follows:

“Each director shall be required to attend at least seventy-five percent (75%) of all Regular meetings of the Board in each year, unless excused by the Chair of the Board. Any director who is compelled to be absent from any Regular meeting of the Board shall promptly submit to the Chair of the Board their reason for such absence.”

It should be noted that the examiner's review of the board minutes determined that Director Americo Melo attended less than seventy-five percent 75% of the board meetings in calendar years 2000, 2001, and 2002. Additionally, Director Robert Murphy, who resigned from the board on March 17, 2005, attended less than seventy-five percent (75%) of the board meetings in calendar years 2001, 2002 and 2003. It should be noted that there was no documentation found in the minutes, verifying that the chair excused any of the above absences. Furthermore, it should be noted that the percentage of attendance determined for the directors, did not include the minutes where member attendance could not be determined, therefore it is possible that additional members of the board failed to meet the above stated attendance quota.

The Community maintains that its policy regarding excused absences, is that all absences are considered excused unless they are documented as unexcused. This practice makes it difficult to determine whether these absences are actually excused; furthermore, any director who is compelled to be absent from any regular meeting of the board is to promptly submit to the chair of the board their reason for such absence; however because there was no notation of such submissions found in the board minutes, it could not be

determined if the board members were actually in compliance with Article IV, Section 3(e) of the Community's by-laws.

It is recommended that the attendance of all board members' excused absences be documented within the minutes of the board of directors' meetings.

Members of the board of directors have a fiduciary responsibility and must evince an ongoing interest in the affairs of the Community. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that the board may reach appropriate decisions.

The principal officers of the Community as of December 31, 2003 were as follows:

Officers

George F. Rice, Esq.
Vincent Bove
Wayne Shattes
Michael E. Russell

Title

Chairman of the Board
Vice-Chairman of the Board
Secretary
Treasurer

B. Conflict of Interest

The relationship between the Community and its directors, officers, appointees with administrative responsibilities, employees and volunteers should be one which carries with it a strict duty of loyalty and fidelity. Such persons shall exercise the utmost good faith in all transactions touching upon their duties at the Community and its property. They shall not use their positions or knowledge gained thereof so that a conflict might arise between the interest of the Community and that of the individual director, officer, appointee, employee or volunteer.

In 2001, the Community implemented a conflict of interest and annual disclosure statement policy. On an annual basis, the Community's board members and officers are required to complete questionnaires regarding conflicts of interest. These questionnaires are then reviewed, and any conflicts would be reflected in the General Interrogatories section of the Community's filed annual statement. Conflict of interest statements for the period under examination were requested. The Community could only provide annual conflict of interest/annual disclosure forms for 2002 and 2004. The 2001 conflict of interest /annual disclosure forms could not be located, and for the 2003 annual disclosure forms, the examiner was told to use the same forms that were submitted in 2002.

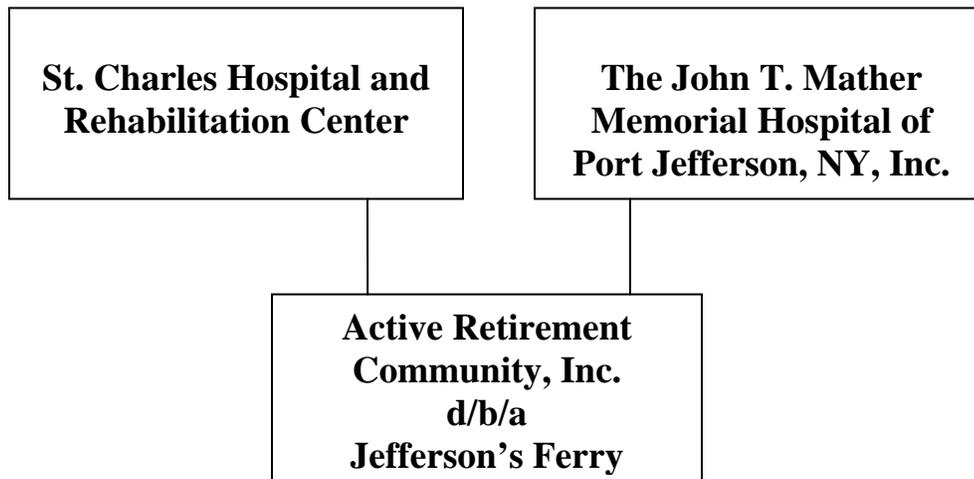
Finally, it was noted that only the board members and officers of the Community filed a conflict of interest form. The Community's conflict of interest policy should also be extended to its appointees with administrative responsibilities, employees, and volunteers.

It should be further noted that for the 2004 conflict of interest forms, only four were signed and completed. The Community failed to locate and provide the conflict of interest/ annual disclosure form for its board of directors' secretary.

It is recommended that the Community have conflict of interest/annual statement disclosure forms completed on an annual basis for its directors, officers, appointees with administrative responsibilities, employees, and volunteers.

C. Holding Company System

The structure of the Community's Holding Company System as of the examination date is as follows:



The Community entered into a Management Agreement with New Life Management, Inc. in November of 1999. The term of the contract was five (5) years, commencing six months prior to the commencement date. Thereafter, the contract is on an annual basis, automatically extended by one year, unless sixty days prior to such date, the owner (the Community) determines in their discretion, that the quality of the management services provided are not consistent with the operation of the Community.

The Manager under the Agreement is to provide quality administration of the Community, to effectively and efficiently manage the day to day operations of the Community, and to provide quality services and a suitable, congenial, and attractive environment for the residents of the Community. The Manager is also responsible for providing the necessary services to supervise the Community's employees, so as to provide proper quality care and services to the residents and patients of the Community.

D. Occupancy Rates

The following reflects the occupancy rates at each year-end during the examination period for the Community's Independent Living Units:

Period	2001	2002	2003
Occupancy	91%	98%	97%

The following reflects the occupancy rates at each year-end during the examination period for the Community's Assisted Living Units:

Period	2001	2002	2003
Occupancy	44%	86%	90%

The following reflects the occupancy rates at each year-end during the examination period for the Community's Skilled Nursing Facility:

Period	2001	2002	2003
Occupancy	63%	93%	93%

The following reflects the occupancy rates at each year-end during the examination period for the Community's Dementia Facility:

Period	2001	2002	2003
Occupancy	0%	99%	95%

E. Record Retention

Department Regulation 152 {11 NYCRR 243} states in part:

“(b) Except as otherwise required by law or regulation, an insurer shall maintain...

(8) any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review.”

The Community's record retention policy states in part:

“Records will be filed and maintained so that Jefferson's Ferry's compliance with relevant laws is fully documented. This policy may require that certain records be retained for a time period in excess of legal and/or regulatory requirements. Such longer time period as specified in this policy must be followed...

Board of directors, by-laws, and committee meeting minutes including: board committee minutes and a list of all members of the board of directors, on a permanent basis.”

- The examiner requested the minutes of the board of directors meetings from 1997 through 2004. It was noted that the minutes from the April 2001 meeting were missing. When the examiner requested the additional minutes, the Community was unable to provide them.
- The examiner requested conflict of interest forms for the period under examination. The Community failed to provide the 2001 conflict of interest/annual disclosure forms stating that they simply could not be located by the Community.

It is recommended that the Community complies with Department Regulation 152 {11 NYCRR 243}, as well as its own record retention policy in regard to maintaining pertinent information, such as board of director minutes and conflict of interest/annual disclosure forms.

F. Accounts and Records

During the course of the examination, it was noted that the Plan's treatment of certain items was not in accordance with Statutory Accounting Principles, Annual Statement Instructions, or did not reflect a good business practice. A description of such items is as follows:

1. The Community incorrectly reported investments, with maturity dates greater than one year, in its Bank of New York Operating Account, as being short-term investments.

It is recommended that the Community adheres to the definition of a short-term investment, and classify securities with maturity dates greater than one year as long-term investments in its filed financial statements.

2. The Community follows Suffolk County Industrial Development Agency (SCIDA) guidelines for their investments. Section 5.10(a) – Investment of Funds and Accounts - of SCIDA’s guidelines for bonds, states in part:

“...that the amount on deposit in the Debt Service Reserve Fund shall be invested in Government Obligations, Agency Obligations or Investment Agreements, which (i) at least 30% of the amount invested shall mature or be redeemable at the option of the Holder not later than three years from the date of purchase; (ii) no investment shall mature or be subject to redemption at the option of the Holder later than five years from the date of purchase; and provided further that all moneys in the Operating Reserve Fund shall be invested in Investment Securities maturing or redeemable at the option of the Holder not later than twelve (12) months from the date of purchase.”

The Community was in violation of Section 5.10(a)(ii) of the Suffolk County Industrial Development Agency guidelines for their investments in that the investments in the Operating Reserve Fund had maturity dates which were greater than twelve months.

It is recommended that the Community complies with Section 5.10(a)(ii) of the SCIDA's guidelines and not have investments with maturity or redemption dates greater than twelve months from the date of purchase.

3. The Community has an investment policy with the Suffolk County Industrial Development Agency. Under the heading "Review of Investment Managers", it states:

"At least annually, there shall be a review of each Investment Manager in order to ascertain the quality of service received, investment performance, communication with the Board and other important factors.

The Chairman of the Investment Committee shall direct certain members of the Committee and management to perform such a review."

The Community maintains that New Life Management Company's CFO reviews the investment manager's performance each month. In addition, the board reviews the performance of all investments and the investment managers monthly. The Community states that financial statements, including any analysis of investments, are provided to the board each month and concerns are discussed during the board meetings. Furthermore, as per the Community, the Treasurer of the board reviews the performance of the investment managers and discusses their performance on a regular basis with the CFO.

Although the Community appears to be reviewing the performance of the investments, they fail to document the review of the investment manager's quality of service, communication with the board, and other important factors. It should also be

noted that the board minutes did not reflect who has the responsibility of reviewing the investment manager's performance.

It is recommended that the review of the investment managers be formally documented so that all members of the board are kept abreast of the investment manager's investment performance and the investment manager's quality of service, communication with the board and other important factors. Additionally, it is recommended that the board minutes reflect who has the responsibility of reviewing the investment managers annually.

4. The Community entered into a service contract with Global Computer Systems in 2001. As part of the service contract, Global Computer Systems ("Global") provided the Community with a disaster recovery plan ("DRP"). Although it appeared that the Global DRP was not documented in a comprehensive manner, there was no evidence that the DRP was not functioning as intended. In fact, the Community noted that it enacted certain features of the DRP in the past. However, the Community did not keep a record of its use of the Global DRP and how the DRP functioned under the various situations it encountered.

It is recommended that the Community documents any enactment or testing of the Global Computer Systems disaster recovery plan to determine that it is working effectively.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as determined by this examination. The balance sheet below has been revised to reflect the Community's May 2004 restoration plan.

Assets

Cash and investable assets	\$ 22,285,000
Accounts receivable and prepaid expenses	1,650,000
Property, plant and equipment	82,686,000
Deferred financing costs	1,385,000
Deferred marketing costs	<u>1,109,000</u>
Total assets	<u>\$ 109,115,000</u>

Liabilities

Loans payable	
IDA bonds	\$ 53,435,000
Actuarial reserve	<u>75,910,000</u>
Total liabilities	\$ 129,345,000
Net surplus	<u>(20,230,000)</u>
Total liabilities and surplus	<u>\$ 109,115,000</u>
Ratio of net surplus to total liabilities	<u>(15.6%)</u>

Note 1: It should be noted that the asset values herein are reported on a statutory/actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's Certified Public Accountants using Generally Accepted Accounting Principles (GAAP basis).

Note 2: As of December 31, 2003, the Community's required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$20,230,000. The Community is currently operating under a Plan of Restoration ("Plan") that was accepted by the New York Insurance Department on May 19, 2004. The Plan of Restoration relies on increasing the entrance and monthly fees over a period of time and controlling the annual increase in operating expenses. The projected date for the removal of the impairment under the Plan is calendar year 2011.

B. Statement of Revenue, Expenses and Net Worth

The statement of revenue and expenses is presented on a GAAP basis for the period of January 1, 2001 through December 31, 2003.

Revenue

Operating revenue	
Monthly maintenance fees	\$18,008,229
Other revenue from residents	13,171,013
Earned entrance fees	3,050,231
Interest and dividend income	2,520,954
Net realized capital gains (losses)	<u>68,749</u>
Total revenues	\$36,819,176

Expenses

Operating expenses	
Interest expense	11,076,204
Residence expenses	
Facility expenses	6,831,063
Dining	6,713,498
Health expense	10,012,454
Administration expenses	6,997,701
Depreciation and amortization	7,507,588
Real estate taxes	<u>614,561</u>
Total expenses	\$ <u>49,753,069</u>
Net loss	<u>(12,933,893)</u>

4. CONCLUSION

As of December 31, 2003, the Community's required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$20,230,000.

The Community is currently operating under a Plan of Restoration ("Plan") that was accepted by the New York Insurance Department on May 19, 2004. The Plan of Restoration relies on increasing the entrance and monthly fees over a period of time and controlling the annual increase in operating expenses. The projected date for the removal of the impairment under the Plan is calendar year 2011.

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	<u>Description of Community</u>	
	i. It is recommended that the Community revises its Contracts to comply with the requirements of paragraph fifteen (15) of Section 4608 of the New York Public Health Law.	7
	ii. It is recommended that the Community complies with Section 4606 of the New York Public Health Law, and include the wording of paragraph twelve (12) in its initial Disclosure Statement.	8
2.	<u>Management</u>	
	i. It is recommended that the board's Secretary sign all board minutes.	9
	ii. It is recommended that the attendance of all board members' excused absences be documented within the minutes of the board of directors' meetings.	11
3.	<u>Conflict of Interest</u>	
	It is recommended that the Community have conflict of interest/annual statement disclosure forms completed on an annual basis for its directors, officers, appointees with administrative responsibilities, employees, and volunteers.	13
4.	<u>Record Retention</u>	
	It is recommended that the Community complies with Department Regulation 152 {11 NYCRR 243}, as well as its own record retention policy in regard to maintaining pertinent information such as board of director minutes and conflict of interest/annual disclosure forms.	16

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5. Accounts and Records
- i. It is recommended that the Community adheres to the definition of a short-term investment, and classify securities with maturity dates greater than one year as long-term investments in its filed financial statements. 17
 - ii. It is recommended that the Community complies with Section 5.10(a)(ii) of the SCIDA's guidelines and not have investments with maturity or redemption dates greater than twelve months from the date of purchase. 18
 - iii. It is recommended that the review of the investment managers be formally documented so that all members of the board are kept abreast of the investment manger's investment performance and the investment manager's quality of service, communication with the board and other important factors. Additionally, it is recommended that the board minutes reflect who has the responsibility of reviewing the investment managers annually. 19
 - iv. It is recommended that the Community documents any enactment or testing of the Global Computer Systems disaster recovery plan to determine that it is working effectively. 19

Appointment No. 22144

STATE OF NEW YORK INSURANCE DEPARTMENT

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Sylvia Lawson

as a proper person to examine into the affairs of the
Active Retirement Community, Inc.

d/b/a **Jefferson's Ferry**

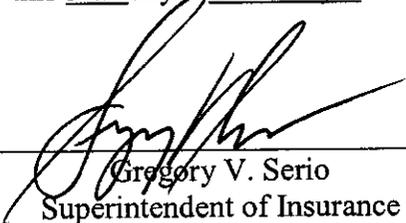
and to make a report to me in writing of the said

Company

with such information as she shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal
of this Department, at the City of New York.

this 3rdrd day of February 2004



Gregory V. Serio
Superintendent of Insurance

