

**EXAMINATION**

**OF**

**EPISCOPAL CHURCH HOME AND AFFILIATES LIFE CARE COMMUNITY, INC.**

**d/b/a CANTERBURY WOODS**

**AS OF**

**DECEMBER 31, 2001**

**DATE OF REPORT**

**MARCH 21, 2003**

**EXAMINER**

**JOSEPH S. KRUG**

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

George E. Pataki  
Governor

Gregory V. Serio  
Superintendent

March 21, 2003

Honorable Gregory Serio  
Superintendent of Insurance  
Albany, NY 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 21943, dated October 16, 2002 annexed hereto, I have made an examination into the condition and affairs of the Episcopal Church Home and Affiliates Life Care Community, Inc. d/b/a Canterbury Woods, a not-for-profit Continuing Care Retirement Community authorized pursuant to the provisions of Article 46 of the New York State Public Health Law.

Wherever the designation "the Community" appears herein, without qualification, it should be understood to indicate the Episcopal Church Home and Affiliates Life Care Community, Inc. d/b/a Canterbury Woods. The examination took place at the site of the Community at 705 Renaissance Drive, Williamsville, NY.

The Community's required reserve liability as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,085,679. Subsequent to the examination date, the Community filed a Plan of Restoration that was accepted by the New York Insurance Department on January 10, 2003.

## **1. SCOPE OF THE EXAMINATION**

The Community was formed on December 26, 1995 and began operating on June 1, 1999. This examination covered the period from June 1, 1999 through December 31, 2001. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the New York Insurance Department and the New York Department of Health conducted a site survey of the Community's facility on October 2, 2002 pursuant to Section 4610 of the New York Public Health Law.

The examination comprised a verification of the assets and liabilities of the Community as of December 31, 2001 in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the New York Insurance Department pursuant to New York 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 and independent actuary. A review was also made of the following items:

- Community documents
- Growth of the Community
- Financial documents
- Board of Trustees meeting minutes

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 THE COMMUNITY**

Canterbury Woods 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 was formed to build, own, and operate a continuing care retirement community which consists of two hundred three (203) independent living units, and an eighty (80) bed health center consisting of thirty-two (32) enriched housing units and forty-eight (48) skilled nursing beds. The Community is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

The facility provides residents with a continuum of services including independent living, enriched housing, and nursing home care. As a condition precedent to providing these services, the Community enters into a life care contract with each prospective resident that sets forth the responsibilities of both parties. For the right to occupy and use the living accommodations and utilize the services of the Community, each resident is required to pay an entrance fee and monthly service fee based on the size and type of living unit and the number of occupants.

Entrance fees are due in two installments. Ten percent of the entrance fee is due when the life care contract is signed, while the remainder is to be paid upon the earlier of (1) the date the resident occupies the facility or (2) 60 days from the date the contract is executed.

Entrance fees include a residential component and a life care component. During the first 90 days after the resident pays the entrance fee in full, all amounts collected by the Community are fully refundable if the resident terminates the contract for any reason. At the end of the 90-day period, the entrance fee refund will be reduced by a 4% processing fee. For each of the next three months, the refund will be reduced by 2% per month. At the end of these three months, the remaining 90% of the residential

component of the entrance fee will be refundable for the duration of the contract term. The refund of the life care component will be further reduced by 2% per month for each additional month of residency until the 51<sup>st</sup> month, after which there will be no refund.

**A. Management**

Pursuant to the Community's charter and bylaws, management of the Community is to be vested in a board of directors consisting of not less than three (3) and not more than twenty-one (21) Regular Directors. As of the examination date, the board of trustees was comprised of nine (9) Directors. The board is required, at minimum, to meet four times per year. An Annual Meeting is to be held every April and at least three other Regular meetings throughout the year. The Annual Meeting is open to all residents. The Community may hold other special meetings as deemed necessary. The board of directors as of December 31, 2001 were as follows:

Board of Directors

<u>Name</u>	<u>Position</u>
The Reverend Judith D. Burrows Williamsville, NY	Priest, St. Marks' Episcopal Church
Howard F. Gondree Buffalo, NY	Director of Finance, Episcopal Diocese of WNY
David G. Hecht Callawassie Island, SC	Retired
Professor Reid R. Heffner, Jr., M.D Buffalo, NY.	Physician
Thomas D. Lunt Orchard Park, NY	Financial Consultant, Smith Barney
Steven W. McGranka Buffalo, NY	Retired
H. Ernst Montgomery, II Buffalo, NY	President, HEM Enterprises

<u>Name</u>	<u>Position</u>
Anthony J. Renaldo Williamsville, NY	Senior Partner, Renaldo, Myers and Palumbo
The Reverend Charles W. Whitmore Orchard Park, NY	Rector, St. Marks' Episcopal Church

The minutes of all meetings of the Board of Directors were reviewed. All such meetings were well attended. However, it was noted that Howard F. Gondree failed to attend at least one-half of the meetings he was eligible to attend. These absences were not excused by the board.

Members of the board 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. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria.

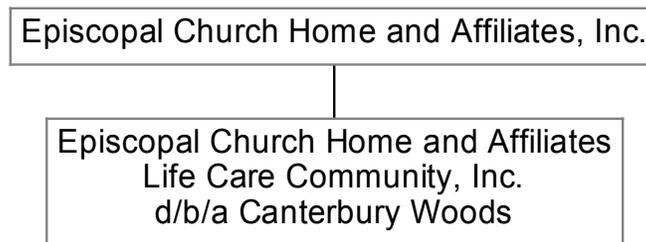
It is recommended that the members of the board of directors attend at least one-half of the regular board meetings. Board members who are unable or unwilling to attend meetings consistently, should resign or be replaced.

The principal officers of the Community, as of December 31, 2001, were as follows:

<u>Name</u>	<u>Title</u>
Edward C. Weeks	Chief Executive Officer
David J. Staszak	Chief Financial Officer
Thomas D. Lunt	Director

**B.  Holding Company System**

The structure of the Holding Company, as of the examination date, is as follows:



The Community is a Type B corporation as defined by Sections 201 and 601 (a) of the Not-for-Profit Corporation Law. The sole member of the Community is Episcopal Church Home and Affiliates, Inc. (ECH&A). The Community is controlled by ECH&A through bylaw requirements. ECH&A must approve any amendments to the bylaws or articles of incorporation.

On April 6, 1999, a management agreement was entered into between the Community and Episcopal Community Health Care, Inc. (hereinafter referred to as Manager). Under this agreement, the Community retains, appoints and engages the Manager to provide Pre-Opening Services, Oversight Services and Management Services. The following is a summary of each of these three Services:

**1. Pre-Opening Services:**

- a. Operations/Administration – prepare initial business plan for the Community, establish operating policy procedures, develop the resident handbook, and assist the residents to establish a Residents’ Association.
- b. Continuous Quality Improvement – orient and train all newly hired employees on the standards and philosophies of the Community.
- c. Human Resources – prepare a personnel policy manual, and develop employee fringe benefit programs.
- d. Finance and Accounting – prepare initial operating and capital budgets.
- e. Marketing and Public Relations – prepare marketing plans for the assisted living apartments and health center.
- f. Health Center – prepare for pre-opening inspections with the Department of Health by formulating and submitting an opening plan.
- g. Dining Services – prepare operations of the dining service department, including selection of departmental software, development of menus and cycles, and acquisition of kitchen equipment and china.
- h. Laundry, Housekeeping, Maintenance and Security – prepare the fire safety and disaster planning policy and procedures manual and train all staff. Assure that the Community’s environment is safe and secure through the implementation of policies and procedures; i.e. security cameras, speed bumps, etc.
- i. Cultural Arts and Community Programs – plan and develop activities for residents in the Community and arrange for instructors for various Community Programs.

**2. Oversight Services:**

- a. Operations/Administration – provide oversight of Community operations including attendance at Board of Directors meetings, review and approve all pre-opening plans, policy and procedures manuals, and advise and assist in the evaluation and acquisition of technology.
- b. Continuous Quality Improvement (CQI)– review and approve all activities and information related to the CQI process, counsel and participate in programs as frequently as possible.

- c. Human Resources – assist in the recruitment process for department managers, provide technical expertise with respect to developing wage and salary grade scales and formulate staff benefit plans.
- d. Finance and Accounting – review and approve all budgets and long range financial projections, coordinate the annual independent financial audit, provide Management Information Systems oversight and on-site staff training.
- e. Marketing and Public Relations – review and approve all marketing plans and public relations initiatives.

### **3. Management Services:**

- a. Operations/Administration – enforce all policies and rules that were established regarding the operation of the Community, meet with the Residents' Association on a regular basis to hear ideas, update residents, discuss operating and/or policy changes and respond to suggestions.
- b. Continuous Quality Improvement – provide CQI training to all employees of the Community.
- c. Human Resources – responsible for the recruitment, hiring, training, supervision and termination of all personnel necessary for the efficient operation of the Community. Also, recommend and institute appropriate employee benefits.
- d. Finance and Accounting – prepare and deliver monthly unaudited financial statements containing a balance sheet, statement of cash flows, a statement of revenues and expenses, together with variance analyses and departmental reports, all within thirty (30) days after the close of each calendar month. Prepare all financial reports, statements of affairs or records required by any federal, state or local government. Prepare a financial projection for a ten (10) year period, accompanied by assumptions upon which the projection is based.
- e. Marketing and Public Relations – develop marketing objectives and plans to maintain satisfactory levels of occupancy, and establish marketing policies and procedures to be followed by the staff of the marketing department.
- f. Health Center, Assisted Living and Wellness Program – develop forms, systems and programs to exceed state and federal requirements and seek innovative methods to continually improve the level of clinical care.
- g. Dining Services – review all dining budgets, policies and procedures. Provide periodic inspections and reviews on environmental and sanitation factors as well as culinary quality and presentation.
- h. Laundry, Housekeeping, Maintenance and Security – supervise a program of regular maintenance and repair in accordance with state and local codes, including, but not limited to, cleaning, painting, decorating, plumbing, carpentry, grounds care and such other maintenance and repair work as may be necessary.

- i. Cultural Arts and Community Programs – maintain a recreation and cultural arts program for residents of the Community.
- j. Capital Expenditures – recommend capital improvements, additions or expenditures to be undertaken by the Community.
- k. Insurance – arrange for appropriate types, categories and amounts of insurance including, but not limited to, insurance required by the Erie County Industrial Development Agency Bonds.
- l. Purchasing – establish purchasing standards for supplies and food necessary for the operation of the Community.

The management agreement has been approved by the New York State Department of Health.

The Community incurred the following management fees during the period under examination:

<u>Year</u>	<u>Amount</u>
1999	\$ 75,000
2000	\$150,000
2001	\$161,500

**C. Occupancy rates**

The following reflects the occupancy rates at each year-end from 1999 to 2001 for the independent living units:

<u>Year end</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Occupancy rate	13.0%	84.8%	94.5%

The following reflects the occupancy rates at each year-end from 1999 to 2001 for the skilled nursing facility:

<u>Year end</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Occupancy rate	20.4%	57.8%	93.1%

## **D. Investments**

### Custodial Agreements

A review of the Community's custodial agreements for the safeguarding of securities indicated the following protective covenants and provisions were not included. The Department regards these protective covenants and provisions as indicative of prudent business practices.

1. The bank shall have in force, for its own protection, Bankers Blanket Bond Insurance of the broadest form available for commercial banks and will continue to maintain such insurance. The bank will give the Community 60 days written notice of any material change in the form or amount of such insurance or termination of this coverage.
2. The bank will at all times give the securities held by the bank thereunder the same care the bank gives its own property of a similar nature.
3. The bank shall furnish the Community (at least quarterly) with a list of such securities showing a complete description of each issue, which shall include the number of shares or par value of bonds so held at the end of each quarter.
4. The bank shall maintain records sufficient to verify information the Community is required to report in the Annual Statement blanks of the Insurance Department.
5. The bank shall furnish the Community with the appropriate affidavits in an acceptable form in order for the securities referred to in such affidavits to be recognized as admitted assets of the Community.
6. Access shall be during the bank's regular hours. Those persons who shall be entitled to examine, on the bank's premises, securities held by the bank and the bank's records related to those securities, shall be specified. An authorized officer shall furnish the bank with written instructions to that effect.
7. Written instructions hereunder shall be signed by any two of the Community's authorized officers specified in a separate list for this purpose which will be furnished to the bank from time to time signed by the treasurer or an equivalent officer and certified under the corporate seal by the secretary or an assistant secretary.
8. In connection with any situation involving registration of securities in the name of a nominee of a bank custodian, the custodian agreement should empower the bank to take such action.

9. The agreement should have a provision that would give the Community the opportunity to secure the most recent report on the review of the custodian's system of internal control, pertaining to custodial record keeping, issued by internal or independent auditors.

It is recommended that the Community include the enumerated protective covenants and provisions in its custodial agreements.

**E. Disaster Recovery/Business Continuity Plan**

It was noted that, at December 31, 2001, the Community did not maintain a disaster recovery plan. A disaster recovery plan is essential to the maintenance of continuity of services to the Community's residents in the event of a disaster. It was also noted that the Community did not maintain a business continuity plan. A business continuity plan is also essential to the maintenance of continuity of services to the Community's residents in the event of a disaster.

It is recommended that the Community develop and maintain both disaster recovery and business continuity plans.

### 3. FINANCIAL STATEMENTS

#### A. Balance sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2001. It is the same as Scenario 8 of the revised actuarial balance sheet filed by the Community per the Plan of Restoration, presented on a Statutory Accounting basis, pursuant to New York Insurance Department Regulation 140 (11 NYCRR350) (See item 4, herein for further explanation):

#### Assets:

Total current assets	\$ 1,077,394
Other cash and investments	20,396,867
Property, plant and equipment	58,342,411
Unamortized financing costs	1,587,542
Deferred marketing costs	<u>1,137,820</u>
 Total assets	 <u>\$82,542,034</u>

#### Liabilities:

Long-term and short-term debt	\$42,090,000
Current liabilities	2,114,915
Required reserve liability	<u>42,422,798</u>
Total liabilities	<u>\$86,627,713</u>
Net surplus	(4,085,679)
Total liabilities and surplus	<u>\$82,542,034</u>

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. Also, there is an immaterial difference due to rounding.

The Community's required reserve liability as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,085,679. Subsequent to the examination date, the Community filed a Plan of Restoration that was accepted by the New York Insurance Department on January 10, 2003.

B. Statement of revenue, expenses and surplus

The statement of revenue and expenses is presented on a GAAP basis for the period June 1, 1999 through December 31, 2001.

Revenues, gains and other support:

Resident fees - (apartments, cottages)	\$ 19,822,517	
Interest income	2,573,087	
Other operating revenue	<u>399,932</u>	
Total revenues		\$ 22,795,536

Operating expenses:

Salaries and wages	\$ 7,607,920	
Employee benefits	1,319,600	
Contract labor	81,483	
Supplies	2,313,814	
Purchased and contracted services	3,494,467	
Utilities and rentals	1,598,875	
Other operating expenses	2,204,831	
Interest	7,094,031	
Depreciation and amortization	<u>9,244,139</u>	
Total operating expenses		<u>34,959,160</u>
Loss from operations		\$ (12,163,624)
Extraordinary loss from extinguishment of debt		<u>(296,343)</u>
Income or (loss) from operations and non-operating gains		<u><u>\$ (12,459,967)</u></u>

C. Changes in actuarial surplus

Reserves and surplus decreased \$3,763,664 during the examination period, June 1, 1999 through December 31, 2001, detailed as follows:

Surplus as of June 1, 1999			\$ (322,015)
	<u>Gains in</u>	<u>Losses in</u>	
	<u>Net Worth</u>	<u>Net Worth</u>	
GAAP basis net income/(loss)		\$(12,459,967)	
Statutory adjustment	\$ 8,696,303		
Subtotal			<u>\$(3,763,664)</u>
Surplus per examination as of December 31, 2001			<u>\$(4,085,679)</u>

#### **4. REQUIRED RESERVE LIABILITY**

The Community's required reserve liability as determined using generally accepted actuarial standards and applying statutory requirements was impaired in the amount of \$4,085,679. Subsequent to the examination date, the Community filed a Plan of Restoration that was accepted by the New York Insurance Department on January 10, 2003.

#### **5. MARKET CONDUCT REVIEW**

The examination included a market conduct review focusing on the following major areas:

- a) Sales and advertising,
- b) Disclosure statement,
- c) Residency agreement, and
- d) Residents handbook.

No problem areas were encountered during the review.

6. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
A. The Community's required reserve liability as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,085,679. Subsequent to the examination date, the Community filed a Plan of Restoration that was accepted by the New York Insurance Department on January 10, 2003.	1, 13, 16
B. It is recommended that the members of the board of directors attend at least one-half of the regular board meetings. Board members who are unable or unwilling to attend meetings consistently, should resign or be replaced.	5
C. It is recommended that the Community include the enumerated protective covenants and provisions in its custodial agreements.	11
D. It is recommended that the Community develop and maintain both a disaster recovery and a business continuity plan.	11



**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:

**Joseph Krug**

*as a proper person to examine into the affairs of the*  
**Canterbury Woods Continuing Care Retirement Center**

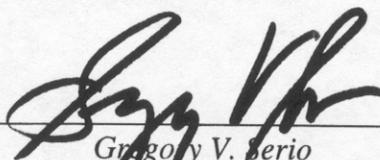
*and to make a report to me in writing of the said*

**Company**

*with such information as he 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 16th day of October 2002*

  
\_\_\_\_\_  
Gregory V. Serio  
Superintendent of Insurance

