

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

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**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

**DIKE BOONE NERREN,**

**Defendant.**

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**Case No.: 20-cv-965**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) files this Complaint against Defendant Dike Boone Nerren (“Nerren” or “Defendant”), and respectfully shows the Court as follows:

**SUMMARY**

1. From late 2015 through May 2017, Nerren and others raised approximately \$1.4 million from 22 investors in two related offerings in order to acquire and develop a single family subdivision for a real estate project in McKinney, Texas (the “McKinney Project”). Contrary to representations in the offering materials, and without disclosure to investors, Nerren diverted \$450,000 of investor funds to a separate, unrelated real estate project in which he had an ownership interest. Although Nerren ultimately repaid the funds after being confronted by the developer of the McKinney Project, the missing funds impeded the project by contributing to delays and higher costs.

2. As a result of Nerren’s unauthorized use of funds, the McKinney Project experienced financial difficulties with subcontractors, cost overruns, and ultimately foreclosure,

resulting in a total loss for all 22 investors. By engaging in this conduct, Nerren violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)].

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this action under Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)]. Venue is proper in this District because: (a) a substantial part of the events giving rise to the claims occurred in the Eastern District of Texas, (b) the McKinney Project is located in this District, and (c) a majority of the investors reside in this District.

4. The membership units and limited partnership units sold in this case are investment contracts and, therefore, securities, under Section 2(a)(1) of the Securities Act.

5. In connection with the conduct described herein, Nerren, directly or indirectly, made use of the mails or the means or instruments of transportation or communication in interstate commerce.

### **PARTIES**

6. Plaintiff is an agency of the United States government.

7. Dike Boone Nerren, age 62, is a resident of Coppell, Texas. He was the managing member and owner of a company that operates as the manager of various real estate projects (“Company A”). Company A was the manager or co-manager of several related entities that raised funds for and developed real estate projects, including Sapient Fund II, LLC (“SF II”) and Vintage Place Fund, LP (“VPF”).

## FACTS

### **I. Sale of Securities**

8. From November 2015 through May 2017, Nerren and others raised money to fund the McKinney Project by selling investments in SF II and VPF. Nerren and others offered and sold to investors membership units in SF II and limited partnership units in VPF, and investors expected to derive profits solely from the efforts of Nerren and the other managers of the McKinney Project. Accordingly, the SFII membership units and VPF limited partnership units were passive investments and are securities under the federal securities laws.

9. Nerren and others solicited investors in SF II and VPF using private placement memoranda (“PPMs”). Nerren supplied information for the PPMs and had authority over the documents before they were sent to potential investors. The PPMs identified Nerren as part of the management team of the McKinney Project through his ownership of Company A. Nerren handled day-to-day operations of the McKinney Project and secured additional bank financing.

10. The offering materials stated that SF II was formed to hold an ownership interest in VPF and that VPF would acquire the land and develop the single-family subdivision. The SF II and VPF offering materials specified that investor funds would be used *solely* in connection with the acquisition and development of the McKinney Project.

11. Through these two securities offerings, Nerren and others raised \$1.1 million for SF II and \$300,000 for VPF.

### **II. Undisclosed Misuse of Investor Funds**

12. Nerren was the primary signatory on bank accounts for Company A, the manager of SF II. Almost immediately after he began to raise funds through SF II and VPF, Nerren diverted some of those funds to another project unrelated (“Unrelated Project”) to the McKinney Project.

13. Between January 5 and May 9, 2016, Nerren diverted a total of \$450,000 from SF II and VPF to the Unrelated Project:

- a. On January 5, 2016, Nerren sent \$20,000 of McKinney Project investor funds to a title company for a closing in the Unrelated Project.
- b. In March 2016, Nerren withdrew \$180,000 of McKinney Project investor funds to cover expenses in the Unrelated Project.
- c. On May 9, 2016, Nerren diverted an additional \$250,000 of McKinney Project investor funds to cover expenses in the Unrelated Project.

14. While Nerren was diverting investor funds, and throughout the following year, Nerren and others continued to raise money from investors in SF II and VPF using the same offering materials which specified that investor funds would be used solely in connection with the McKinney Project.

15. Nerren's repeated representations in offering documents that investor funds would be used only for purposes related to the McKinney Project and the offering documents' omission of the actual diversion of investor funds were information that a reasonable investor would have considered important in making her or his investment decision.

### **III. Status of the McKinney Project**

16. In February 2017, the developer for the McKinney Project became aware of the missing \$450,000 and questioned Nerren about the diverted funds. In March 2017, Nerren began to return the diverted funds, piecemeal, to McKinney Project accounts, but the repayment process took more than two years.

17. Nevertheless, at least as early as June 2017, the McKinney Project was experiencing financial difficulties and was unable to pay subcontractors because of Nerren's

diversion of funds from the project. Unpaid bills led to construction delays, which, in turn, led to cost overruns for the McKinney Project.

18. In May 2020, the lender for the McKinney Project instituted foreclosure proceedings, resulting in a total loss for the SF II and VPF investors. According to the McKinney Project developer, the project would have been successfully completed but for Nerren's diversion of \$450,000 from the project in 2016.

### **CLAIM FOR RELIEF**

#### **Violations of Section 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)]**

19. The Commission repeats and re-alleges Paragraphs 1 through 18 of the Complaint as if fully set forth herein.

20. By engaging in the conduct described herein, Nerren, directly or indirectly, in the offer or sale of securities, by use of the means or instrumentalities of interstate commerce or of the mails, and at least negligently, obtained money or property by means of untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

21. By engaging in the conduct described herein, Nerren, directly or indirectly, in the offer or sale of securities, by use of the means or instrumentalities of interstate commerce or of the mails, and at least negligently, engaged in transactions, practices, and/or courses of business which operated as a fraud or deceit upon purchasers, prospective purchasers, and other persons.

22. By engaging in this conduct, Nerren violated, and unless enjoined will continue to violate, Sections 17(a)(2) and (3).

**REQUEST FOR RELIEF**

For these reasons, the Commission respectfully requests that this Court enter a final judgment:

1. permanently enjoining Dike Boone Nerren from violating, directly or indirectly, Sections 17(a)(2) and 17(a)(3) of the Securities Act;
2. ordering Dike Boone Nerren to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]; and
3. granting such additional relief as the Court deems just, appropriate, and equitable.

DATED: December 21, 2020

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF  
SECURITIES AND EXCHANGE COMMISSION

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.