

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

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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