

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____ (___)

Securities and Exchange Commission,

Plaintiff,

vs.

**Jimmy Lynn Bradley and
Lesley Donald Cole,**

Defendants.

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

I. SUMMARY

- 1) Jimmy Lynn Bradley, UCAP, Inc.’s (“UCAP”) former chief financial officer (“CFO”), and Lesley Donald Cole, the engagement partner from UCAP’s former outside auditor, engaged in fraudulent accounting to, among other things, meet falsely a key financial covenant for UCAP’s sole line of credit. Specifically, Bradley and Cole recklessly overstated revenue by recording only half of a revenue adjustment necessary to make UCAP’s financial statements comply with generally accepted accounting principles (“GAAP”) and overstated the value of real estate. Together, these actions enabled UCAP to meet falsely a key financial covenant required to save the company’s sole line of credit. Additionally, Bradley and Cole knowingly allowed UCAP to improperly record revenue from a real estate transaction with a related party and fail to record an expense for a settlement agreement between UCAP and a third party. As a result, UCAP’s

financial statements for the annual period ended September 30, 2002 understated the company's pre-tax net loss by over \$1.8 million, or 26 percent, and were therefore false and misleading.

- 2) As a result of this conduct, Bradley, directly and indirectly, has engaged in and unless restrained and enjoined by this Court will in the future engage in, transactions, acts, practices, and courses of business that violate Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13a-14, and 13b2-1 thereunder [17 C.F.R. §§ 240.10b-5, § 240.13a-14, and 240.13b2-1]. Further, Bradley aided and abetted UCAP's violations of Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A) and (B)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-1].
- 3) Additionally, Cole, directly and indirectly, has engaged in and unless restrained and enjoined by this Court will in the future engage in, transactions, acts, practices, and courses of business that violate Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78j-1(b)], and Rules 10b-5 and 13b2-1 thereunder [17 C.F.R. §§ 240.10b-5 and 240.13b2-1]. Further, Cole aided and abetted UCAP's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20 and 13a-1 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-1].
- 4) The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)], seeking a permanent injunction restraining and enjoining Bradley and Cole from all of the alleged violations and granting other equitable relief.

- 5) The Commission seeks an order requiring Cole to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].
- 6) The Commission seeks an order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], and pursuant to the equitable powers of the court, barring Bradley from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

II. JURISDICTION AND VENUE

- 7) This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue lies in this Court pursuant to Section 27 of the Exchange Act.
- 8) In connection with the transactions, acts, practices, and courses of business described in this Complaint, Bradley and Cole, directly and indirectly, have made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.
- 9) UCAP is a Colorado corporation. During all relevant times, UCAP operated through its wholly-owned subsidiary, United Capital Mortgage Corporation ("UCMC"), an Arkansas Corporation with its principal place of business in Aurora, Colorado. Further, certain of the transactions, acts, practices and courses of business constituting the violations of law alleged herein occurred within this district.

III. DEFENDANTS

- 10) **Jimmy Lynn Bradley**, age 44, a resident of Katy, Texas, served as UCAP's CFO from approximately March 2001 through May 2003, and again from approximately October 15, 2003 through April 20, 2004. Bradley served as a UCAP director from approximately October 30, 2003 through April 20, 2004. Bradley was a certified public accountant ("CPA") in Arkansas until he let his license expire in approximately December 2003.
- 11) **Lesley Donald Cole**, age 46, a resident of Roland, Arkansas, was employed as an audit partner with Moore Stephens Frost, PLC, UCAP's former outside auditor, from approximately December 1989 until April 2003. Cole is licensed as a CPA in Arkansas, Alabama, and Georgia. He is certified, but not licensed, as a CPA in Oklahoma.

IV. RELATED PARTY

- 12) **UCAP, Inc.**, a Colorado corporation, operated a mortgage banking business until it ceased operations on or about April 30, 2004. UCAP operated through its wholly-owned subsidiary, UCMC. UCMC filed for bankruptcy protection on November 2, 2004. UCAP's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act from 1996 through August 23, 2005 and, pursuant to Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, the company was obligated to file reports on Forms 10-KSB and 10-QSB during that time period. On August 23, 2005, the Commission revoked UCAP's securities registration pursuant to Section 12(j) of the Exchange Act. From July 2002 through August 23, 2005, UCAP's common stock was quoted on www.pinksheets.com, a service of Pink Sheets LLC. Prior to July 2002, it was

quoted on the OTC Bulletin Board, a service of the NASDAQ Stock Market, Inc.

Neither UCAP nor UCMC have any current operations.

V. FACTUAL ALLEGATIONS

- 13) UCAP, through its operating subsidiary, UCMC, provided mortgage banking services to consumers nationwide. The company's mortgage revenue consisted of mortgage origination fees (the fees earned when borrowers closed on the loans), and the gain or loss on the sale of mortgages in the secondary market. The company's revenue, therefore, was contingent upon the volume of loans it placed and how quickly it could prepare mortgages for sale in the secondary market.
- 14) In fiscal years ended September 30, 2002 and 2003, among other things, UCAP planned to increase loan originations in order to increase revenue and the price of UCAP's common stock.
- 15) Bradley stood to gain financially and professionally from an increase to UCAP's stock price.
- 16) Bradley and Cole knew that UCAP's mortgage business was dependent on UCMC's single line of credit, which funded the mortgages that were originated.
- 17) Significant increases to the line of credit were necessary to support UCAP's growth. Through its sole lender, the available credit grew from approximately \$30 million in January 2002 to at least \$125 million in September 2002.
- 18) Bradley and Cole knew that UCAP's lender required that certain financial covenants be met to maintain the line of credit. With respect to fiscal year 2002, among other things,
 - (a) UCAP's subsidiary, UCMC, was required to maintain a minimum \$5 million tangible

net worth; and (b) UCAP and UCMC were required to maintain audited financial statements pursuant to GAAP.

Fraudulent Mortgage Revenue Adjustment

- 19) As early as fiscal 2001, Bradley and Cole knew that UCMC had not been recognizing mortgage revenue in accordance with GAAP. Specifically, UCMC had been recognizing mortgage revenue at the time borrowers closed mortgage loans, rather than when loans were sold in the secondary market as required by GAAP.
- 20) Cole requested that UCAP make an adjustment to its consolidated financial statements to correct the error. Bradley informed Cole that UCAP was in the process of purchasing a computer system that would enable UCMC to more easily track loans from origination through sale in the secondary market, and therefore the revenue recognition problem would be corrected in fiscal year 2002.
- 21) Bradley failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances in fiscal 2002 that UCMC properly recognized mortgage revenue under GAAP while the company was implementing the new computer system.
- 22) While conducting UCAP's audit field work for the fiscal year ended September 30, 2002, Cole determined that UCMC was continuing improperly to recognize mortgage revenue.
- 23) Cole informed Bradley that a \$1.67 million adjustment to revenue was necessary to make UCAP's fiscal 2002 financial statements comply with GAAP.
- 24) Bradley and Cole agreed that the full amount of the revenue error, or \$1.67 million, would be recorded in UCAP's fiscal year 2002 consolidated financial statements in order to comply with GAAP.

- 25) Thereafter, at or about the time Bradley was finalizing UCAP's consolidated fiscal year 2002 financial statements, Bradley realized that UCMC may be in breach of the lender's \$5 million minimum tangible net worth covenant.
- 26) Thereafter, Bradley caused UCAP to file a 15-day extension, to January 15, 2003, to file UCAP's 2002 Form 10-KSB and consolidated financial statements.
- 27) In or about early January 2003, Bradley and Cole agreed to record only half of the required \$1.67 million revenue adjustment as a means of meeting the lender's minimum tangible net worth covenant.
- 28) Bradley and Cole knew, or were reckless in not knowing, that recording only half of the required \$1.67 million revenue adjustment was in contravention to GAAP.
- 29) On January 15, 2003, Bradley caused UCAP's fiscal year 2002 consolidated financial statements, included in UCAP's Form 10-KSB filed with the Commission, to include only half of the necessary \$1.67 million revenue adjustment. As a result, UCAP's 2002 Form 10-KSB was materially false and misleading.

Fraudulent Overstatement of Real Estate

- 30) In or about May 2002, UCAP and a related party entered into an agreement whereby UCAP transferred a vacant lot to the related party in lieu of shares of UCAP common stock, valued at approximately \$550,000, which UCAP owed to the related party.
- 31) In or about September 2002, the related party transferred the vacant lot to UCAP's subsidiary, UCMC, in exchange for a promissory note in the amount of \$550,000.
- 32) Prior to the filing of UCAP's fiscal year 2002 financial statements with the Commission, Bradley, with Cole's knowledge, improperly recorded the vacant lot in UCMC's books and records at \$550,000, and booked a corresponding note payable of \$550,000.

- 33) UCAP paid \$200,000 on the note to the related party, leaving \$350,000 due on the note. UCMC then used the note as equity in its tangible net worth calculation, thus increasing its net worth by \$350,000.
- 34) Bradley and Cole knew, or were reckless in not knowing, that Bradley's accounting was in contravention to GAAP, which required UCMC to record the return of the vacant lot at its historical cost basis, which was \$81,000.
- 35) Bradley and Cole knew, or were reckless in not knowing, that the value of the vacant lot had been fraudulently overvalued to assist UCMC to meet its lender's \$5 million tangible net worth covenant.

Fraudulent Revenue and Income from the Vacant Lot

- 36) Bradley caused, with Cole's knowledge and approval, UCAP to recognize \$550,000 of revenue from the transfer of the vacant lot in May 2002, thus making it appear falsely that UCAP generated revenue and income from a sale of property.
- 37) Bradley and Cole knew, or were reckless in not knowing, that GAAP prohibited UCAP from recognizing revenue from the transfer of the vacant lot to the related party because the additional consideration UCAP paid to the related party should not have had an income statement effect, and because GAAP requires accounting to reflect the substance of a transaction over its legal form, and the transfer of the lot to and from the related party caused no substantive change to UCAP.
- 38) As a result of these actions, UCAP's Form 10-KSB for the fiscal year ended September 30, 2002, was materially false and misleading.

Failure to Record an Expense

- 39) On September 11, 2002, UCAP entered into a settlement agreement with a third party that resulted in a liability to UCAP of approximately \$1 million.
- 40) Bradley and Cole were aware of the settlement agreement prior to the filing of UCAP's 2002 Form 10-KSB.
- 41) Bradley and Cole knew, or were reckless in not knowing, that pursuant to GAAP, the accrual of a liability (or expense treatment) is required when a liability has been incurred and the amount is known.
- 42) Bradley and Cole, knowingly or recklessly, failed to cause UCAP to recognize an expense of approximately \$1 million for the settlement agreement in UCAP's fiscal year 2002 financial statements. Some of the terms and conditions of the settlement agreement were contained in UCAP's 2002 Form 10-KSB. The financial statements in UCAP's 2002 Form 10-KSB, however, did not contain an accrual for the liability.
- 43) Bradley and Cole knew, or were reckless in not knowing, that as a result of their actions UCAP's 2002 Form 10-KSB understated the company's pre-tax loss by approximately \$1 million and therefore was materially false and misleading.

UCAP's Financial Statements and Earnings Release

- 44) On January 15, 2003, Bradley certified UCAP's 2002 Form 10-KSB and filed it with the Commission.
- 45) Bradley knew that UCAP's 2002 Form 10-KSB was false and misleading, since it understated the company's pre-tax net loss by over \$1.8 million, or 26 percent.
- 46) UCAP issued an earnings release dated January 15, 2003.

- 47) Bradley knew, or was reckless in not knowing, that the January 15, 2003 earnings release falsely reported \$730,000 in pre-tax income, excluding non-recurring restructuring charges, an overstatement of approximately 107 percent.
- 48) Absent the fraudulent accounting, UCAP should have reported in the earnings release a pre-tax net loss of \$1.1 million.

False Certification

- 49) Bradley certified UCAP's 2002 Form 10-KSB pursuant to the Sarbanes-Oxley Act of 2002.
- 50) Bradley knew, or was reckless in not knowing, that UCAP's financial statements did not comply with GAAP when he certified UCAP's 2002 Form 10-KSB pursuant to the Sarbanes-Oxley Act of 2002.

Unqualified Audit Report

- 51) Cole caused Moore Stephens Frost, PLC to issue an unqualified audit report stating falsely that UCAP's fiscal year 2002 audit had been performed in accordance with generally accepted auditing standards ("GAAS"), and that the financial statements were free of material misstatements and were presented in conformity with GAAP.

UCAP's Demise

- 52) On or about April 22, 2004, new management at UCAP caused the company to file a Form 8-K stating, among other things, that the company's fiscal year 2002 financial statements could not be relied upon.
- 53) On or about April 30, 2004, UCAP ceased operations. UCMC subsequently filed for bankruptcy protection.

**FIRST CLAIM FOR RELIEF
AGAINST BRADLEY AND COLE
(Exchange Act Section 10(b) [15 U.S.C. § 78j(b)]
and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5])**

- 54) Paragraphs 1 through 53 are hereby re-alleged and incorporated by reference.
- 55) Bradley and Cole, directly or indirectly, with scienter, in connection with the purchase or sale of UCAP securities, by use of any means or instrumentalities of interstate commerce, or of the mails, or any facility of a national securities exchange, employed a device, scheme, or artifice to defraud; made an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon the purchasers or sellers of such securities.
- 56) By reason of the foregoing, Bradley and Cole violated and unless restrained and enjoined will violate Exchange Act Section 10(b) and Rule 10b-5 thereunder.

**SECOND CLAIM FOR RELIEF
AGAINST BRADLEY AND COLE
(Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and
Exchange Act Rules 12b-20 and 13a-1
[17 C.F.R. §§ 240.12b-20 and 240.13a-1])**

- 57) Paragraphs 1 through 56 are hereby re-alleged and incorporated by reference.
- 58) UCAP, formerly an issuer of a security registered pursuant to Section 12 of the Exchange Act, filed a materially misleading annual report with the Commission and failed to file with the Commission, in accordance with rules and regulations the Commission has prescribed, information and documents required by the Commission to keep reasonably current the information and documents required in or with an application or registration statement filed pursuant to Section 12 of the Exchange Act and annual reports as the

Commission has prescribed, and failed to add such further material information necessary to make the required statements, in the light of the circumstances under which they were made not misleading.

- 59) By reason of the foregoing, UCAP violated Exchange Act Section 13(a) and Rules 12b-20 and 13a-1 thereunder, and Bradley and Cole aided and abetted UCAP's violations. Unless restrained and enjoined, Bradley and Cole will aid and abet violations of Exchange Act Section 13(a) and Rules 12b-20, and 13a-1 thereunder.

**THIRD CLAIM FOR RELIEF
AGAINST BRADLEY AND COLE
(Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)])**

- 60) Paragraphs 1 through 59 are hereby re-alleged and incorporated by reference.
- 61) UCAP failed to make and keep, and directly or indirectly falsified or caused to be falsified, books, records, or accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets.
- 62) By reason of the foregoing, UCAP violated Exchange Act Section 13(b)(2)(A), and Bradley and Cole aided and abetted UCAP's violations. Unless restrained and enjoined, Bradley and Cole will aid and abet violations of Exchange Act Section 13(b)(2)(A).

**FOURTH CLAIM FOR RELIEF
AGAINST BRADLEY
(Exchange Act Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)])**

- 63) Paragraphs 1 through 62 are hereby re-alleged and incorporated by reference.
- 64) UCAP failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements.

- 65) By reason of the foregoing, UCAP violated Exchange Act Section 13(b)(2)(B), and Bradley aided and abetted UCAP's violations. Unless restrained and enjoined, Bradley will aid and abet violations of Exchange Act Section 13(b)(2)(B).

**FIFTH CLAIM FOR RELIEF
AGAINST BRADLEY AND COLE
(Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1])**

- 66) Paragraphs 1 through 65 are hereby re-alleged and incorporated by reference.
- 67) UCAP's books, records, and accounts were subject to Section 13(b)(2)(A) of the Exchange Act, and Bradley and Cole, directly or indirectly, falsified or caused to be falsified UCAP's books, records, or accounts.
- 68) By reason of the foregoing, Bradley and Cole violated and unless restrained and enjoined will violate Rule 13b2-1 under the Exchange Act.

**SIXTH CLAIM FOR RELIEF
AGAINST BRADLEY
(Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)])**

- 69) Paragraphs 1 through 68 are hereby re-alleged and incorporated by reference.
- 70) Bradley knowingly circumvented a system of internal accounting controls or knowingly falsified books, records, or accounts described in Exchange Act Section 13(b)(2).
- 71) By reason of the foregoing, Bradley violated and unless restrained and enjoined will violate Exchange Act Section 13(b)(5).

**SEVENTH CLAIM FOR RELIEF
AGAINST BRADLEY
(Exchange Act Rule 13a-14 [17 C.F.R. Section 240.13a-14])**

- 72) Paragraphs 1 through 71 are hereby re-alleged and incorporated by reference.
- 73) Bradley, as a certifying official, on Form 10-KSB filed with the Commission for the year ended September 30, 2002, falsely certified that to the best of his knowledge there were

no untrue statements of material fact or omissions of a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading.

- 74) By reason of the foregoing, Bradley violated and unless restrained and enjoined will violate Rule 13a-14 under the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

- 1) Find that Bradley and Cole violated or aided and abetted the violations alleged.
- 2) Enter a permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Bradley and Cole from violating, or aiding and abetting violations of, directly or indirectly, each of the provisions of law and rules alleged in this Complaint.
- 3) Order Cole to pay civil penalties pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. §§ 78u(d)(3)] in an amount to be determined by Court.
- 4) Order that Bradley be barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports.

- 5) Grant such other relief as the Court may deem just or appropriate.

Dated: March 29, 2007

Respectfully submitted,

s/ Mary S. Brady

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