NexPoint Seeks Injunction Against UDF IV Execs Who Used $65 Million of Shareholder Funds to Pay Legal Fees

NexPoint Advisors, L.P., a Dallas-based alternative investment firm, has filed a motion for preliminary injunction against United Development Funding IV, a real estate investment trust in which NexPoint owns approximately 5.8 percent of the outstanding shares.

NexPoint, which sued UDF IV and its affiliates and executives last month, seeks to prevent the continued improper use UDF IV's assets to pay legal fees incurred in the appeal of their criminal convictions.

According to NexPoint, Hollis Greenlaw, Theodore Etter, Benjamin Wissink, and Cara Obert have used more than $65 million of shareholder assets to pay their legal fees and indemnification expenses. The other defendants include UMTH General Services (UDF IV's advisor), UMTH Land Development L.P. (UDF IV's asset manager), and UMT Holdings L.P.

Earlier this year, four UDF executives were sentenced to a combined 20 years in prison after being convicted on 10 federal counts of securities fraud, wire fraud, and bank fraud. Chief executive officer Hollis Greenlaw was sentenced to seven years. Partnership president Benjamin Wissink and chief financial officer Cara Obert were sentenced to five years each; and asset management director Jeffrey Jester to three years. Greenlaw, Wissink, and Obert were also fined $50,000 each.

In addition, in July 2018, the SEC ordered several UDF funds and executives to pay $7.2 million in disgorgement and prejudgment interest, as well as a $1.1 million fine, for misleading investors by failing to disclose that it could not pay its distributions and was using money from a newer fund to pay distributions to investors in an older fund.

NexPoint claims that the defendants "are using their status within the advisor to cause UDF IV to pay their significant legal fees in connection with the criminal case and possibly other litigation." NexPoint believes this practice continues to this day as the three felons are appealing their convictions but using UDF IV to pay for their lawyers.

"The UDF 'web of companies' has been set up in a purposefully complex and obtuse manner in order to maximize control in the hands of a few individuals (the individual defendants) while hiding their operations," said D.C. Sauter, general counsel at NexPoint. "The Defendants have engaged in egregious acts of misconduct and despite their convictions continually seek to benefit themselves at the expense of shareholders, with the active consent of UDF IV independent trustees. On behalf of fellow shareholders, we believe the time has come to put an end to this outrageous behavior."

UDF IV's activities are controlled, managed, and conducted by UMTH General, its advisor, and by the advisor's officers and employees, including the individual defendants.

According to NexPoint, the advisory agreement states that UMTH General has a fiduciary relationship with the UDF IV shareholders and prohibits indemnification for allegations of securities law violations except in limited circumstances not applicable in this case.

NexPoint's motion seeks to put a stop to defendants requesting and using indemnification from UDF IV to cover "significant" legal fees and expenses in connection with the criminal case and possibly other litigation.

Plaintiffs in the case are NexPoint Diversified Real Estate

Trust (NYSE: NXDT), a publicly traded REIT formerly known as NexPoint Strategic Opportunities Fund (NYSE: NHF), and its wholly owned subsidiary, NexPoint Real Estate Opportunities LLC.

NexPoint Advisors is an SEC-registered adviser on the NexPoint alternative investment platform. It serves as the adviser to a suite of funds and investment vehicles, including a closed-end fund, interval fund, business development company, and various real estate vehicles.

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NexPoint Sues UDF IV Advisors and Executives over "Massive Multi-Year Deception"

NexPoint Advisors L.P., a Dallas-based alternative investment firm, has filed a new complaint in a Dallas district court related to United Development Funding IV, a real estate investment trust in which NexPoint owns approximately 5.8 percent of the outstanding shares. The remaining shares are owned by an estimated 30,000 shareholders, mostly retail investors.

Defendants in NexPoint's lawsuit include UMTH General Services (UDF IV's advisor), UMTH Land Development L.P. (UDF IV's asset manager), UMT Holdings L.P., and executives Hollis Greenlaw, Todd Etter, Ben Wissink, and Cara Obert.

Earlier this year, four UDF executives were sentenced to a combined 20 years in prison after being convicted on 10 federal counts of securities fraud, wire fraud, and bank fraud. Chief executive officer Hollis Greenlaw was sentenced to seven years. Partnership president Benjamin Wissink and chief financial officer Cara Obert were sentenced to five years each; and asset management director Jeffrey Jester to three years. Greenlaw, Wissink, and Obert were also fined $50,000 each.

NexPoint said that its lawsuit is part of "ongoing efforts to protect its interests alongside the other UDF IV shareholder interests by seeking transparency and holding accountable the fund's management to act in accordance with its fiduciary duties."

"This lawsuit seeks to hold accountable those individuals and entities that have perpetuated the massive multi-year deception and fraud that is the United Development Funding 'investment' program," the complaint states. "The defendants ran UDF's consecutive 'investment' funds as a Ponzi scheme; sought to cover it up through an endless series of fake loans and payments; paid themselves millions of dollars in improper fees; lied to investigators about it; got caught by the SEC and were ordered to disgorge profits and pay fines;…were indicted by a federal grand jury on 10 counts of securities, wire, and banking fraud that covered an extended period of time; tried to save themselves by spending $65 million or more of shareholder funds on legal fees, costs and payments; never disclosed to shareholders their massive expenditure of shareholder funds on their individual defense; were convicted on 10 counts of securities, wire, and banking fraud, and still expect the shareholders to pay their legal fees while they refuse to return any of their ill-gotten profits."

In July 2018, the SEC ordered several UDF funds and executives to pay $7.2 million in disgorgement and prejudgment interest, as well as a $1.1 million fine, for misleading investors by failing to disclose that it could not pay its distributions and was using money from a newer fund to pay distributions to investors in an older fund.

NexPoint's complaint alleges that the defendants used shareholder money to pay their own personal obligations under an SEC settlement and "then lied about it and tried to cover it up" by making it look like the funds came from a "payment" from its largest borrower, Mehrdad Moayedi, owner of Centurion American, who purportedly owes UDF in the ballpark of $1 billion.

NexPoint argues that the SEC lawsuit was settled by engaging in the "same act that they were being sued for in the first place." Specifically, "taking UDF IV shareholder money, pretending it was a loan to Moayedi and having him make a corresponding fake payment that defendants used to satisfy…the SEC order."

In addition, NexPoint claims that UDF's current management "refuses to do anything" about the bad acts of its prior management, calling them "one and the same."

"While one would think that criminal convictions of UDF's top executives (three of whom are defendants in this case) would force UDF's 'remaining' management to re-examine its prior practices and seeks repayment from the UDF wrongdoers for the damage they caused and the legal fees they improperly made the shareholders pay, that has not happened," Nexpoint said in the complaint.

NexPoint further alleges that UDF IV has refused to provide financial information to shareholders since November 2015 or hold an annual shareholder meeting. It has been seven years since the last trustee election, and one of the current trustees has never been elected by shareholders.

"In light of this pattern of never-ending improper behavior, it is high time that those who operated and participated in the UDF web of corruption be held responsible for their brazen acts of fraud and breach of fiduciary duty," said NexPoint.

“This lawsuit seeks to do just that.”

Plaintiffs in the case are NexPoint Diversified Real Estate Trust (NYSE: NXDT), a publicly traded REIT formerly known as NexPoint Strategic Opportunities Fund (NYSE: NHF), and its wholly-owned subsidiary, NexPoint Real Estate Opportunities LLC.

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UDF Executives Facing 20 Years in Prison Lose Bid to Remain Free Pending Appeal

Four United Development Funding executives who were recently sentenced to a combined 20 years in federal prison for fraud have lost their bid to remain free pending their appeal. The executives have appealed their convictions to the U.S. Court of Appeals for the Fifth Circuit.

In January 2022, each UDF executive was found guilty of 10 counts of conspiracy to commit wire fraud affecting a financial institution, conspiracy to commit securities fraud, and securities fraud.

Chief executive officer Hollis Greenlaw was sentenced to seven years. Partnership president Benjamin Wissink and chief financial officer Cara Obert were sentenced to five years each; and asset management director Jeffrey Jester to three years. The judge also ordered Greenlaw, Wissink, and Obert to pay fines of $50,000 each.

While the court found that the defendants are not flight risks and are not appealing for the sake of delay, their attorneys failed "to present any substantial question of law or fact that will result in a reversal or new trial" – a deciding factor in granting a request for continued release pending appeal.

U.S. District Judge Reed O'Connor ruled that the executives should report to federal prison in July, except for Jester who on Friday was granted a six-week extension from July 5th until August 16th.

In addition to the current surge of COVID-19 in the Bureau of Prisons, Jester requested that his surrender date be extended because his teenaged son, an avid baseball player, is playing in "a high-level baseball series" that starts on July 5th – Jester's original report date.

"This is a pivotal event in [Jester's son's] life and could be the point in which he decides where he will go to college. At the very least, it will indicate which colleges show interest in him, whether he has an opportunity to play college baseball, and where he may want to play college baseball. If Mr. Jester reports on July 5, this will impact his son's performance since this will likely be the worst day in [his son's] life," the motion stated.

Founded in 2003 in Grapevine, Texas, UDF utilized a family of five funds – UDF I, II, III, IV, and V – to invest in various residential real estate developers and private homebuilders.

When developers failed to repay money borrowed from one fund, triggering multimillion-dollar shortfalls, the defendants transferred money out of another fund to pay distributions to the original fund's investors, all without disclosing the transfers to the SEC and the investing public.

From January 2011 until November 2015, approximately $65 million in UDF IV investors' money was used to pay UDF III investors a return on their investment and fulfill other financial obligations. Similarly, approximately $7.4 million in UDF V investors' money, along with money obtained from a financial institution, was purportedly used to pay returns to UDF III and UDF IV investors.

The registration statements of UDF III, a limited partnership, UDF IV, a real estate investment trust that previously traded on the Nasdaq and later the over-the-counter market, and UDF V, a non-traded REIT, were revoked by the SEC in August 2020 for "failure to comply with periodic filing requirements."

The case dates to 2016, when the FBI raided the UDF offices in response to concerns raised by Dallas-based Hayman Capital Management about the company's operations. Hayman Capital's Kyle Bass dubbed the actions a "Ponzi-like scheme" and short-sold its stock; he said he later earned more than $30 million on the UDF trades.

In July 2018, UDF agreed to pay $8.3 million to settle similar charges brought by the SEC without admitting to wrongdoing.

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UDF Executives Sentenced to a Combined 20 Years

Four United Development Funding executives were sentenced to a combined 20 years in federal prison for fraud, according to U.S. Attorney for the Northern District of Texas Chad E. Meacham.

In January 2022, each UDF executive was found guilty of 10 counts including conspiracy to commit wire fraud affecting a financial institution, conspiracy to commit securities fraud, and securities fraud. The Federal Bureau of Investigation's Dallas Field Office conducted the investigation concerning the REIT.

Chief executive officer Hollis Greenlaw was sentenced to seven years for all 10 counts. Partnership president Benjamin Wissink and chief financial officer Cara Obert were sentenced to five years each; and asset management director Jeffrey Jester to three years. U.S. District Judge Reed C. O'Connor also ordered Greenlaw, Wissink, and Obert to pay $50,000 each. None of the four was ordered to pay restitution.

According to evidence presented during the trial, the defendants orchestrated a scheme to mislead investors and the SEC about their funds' performance. The Dallas Morning News reported government attorneys testifying that Greenlaw was the scheme's "mastermind." "UDF executives comingled funds, shuffling money from one fund to another without disclosing their actions to investors or regulators," Meacham said following the verdict.

Founded in 2003 in Grapevine, Texas, UDF utilized a family of five funds – UDF I, II, III, IV, and V – to invest in various residential real estate developers and private homebuilders.

When developers failed to repay money borrowed from one fund, triggering multimillion-dollar shortfalls, the defendants transferred money out of another fund to pay distributions to the original fund's investors, all without disclosing the transfers to the SEC and the investing public.

The case dates to 2016, when the FBI raided the UDF offices in response to concerns raised by Dallas-based Hayman Capital Management about the company's operations. Hayman Capital's Kyle Bass dubbed the actions a "Ponzi-like scheme" and short-sold its stock; he said he later earned more than $30 million on the UDF trades.

In July 2018, UDF agreed to pay $8.3 million to settle similar charges brought by the SEC without admitting to wrongdoing.

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Four UDF Executives Convicted of Fraud

Four United Development Funding executives were found guilty of fraud on Friday following a five-day trial and nearly 12 hours of jury deliberation.

Chief executive officer Hollis Greenlaw, president Benjamin Wissink, chief financial officer Cara Delin Obert, and asset management director Jeffrey Brandon Jester were convicted on all 10 counts, including conspiracy to commit wire fraud affecting a financial institution, conspiracy to commit securities fraud, and securities fraud. Paul Pelletier, Greenlaw's attorney, confirmed that the defendants plan to appeal the verdict.

The executives, who each face up to 25 years in federal prison, were accused of orchestrating a scheme to mislead investors and the Securities and Exchange Commission on the performance of UDF's investment funds.

The Dallas Business Journal reported that they were taken into custody immediately after the trial and were held until a detention hearing on Monday.

"UDF executives shuffled money from one fund to another without disclosing the co-mingling to investors or regulators," said Chad Meacham, U.S. Attorney for the Northern District of Texas. "The Justice Department takes financial improprieties seriously, and we are proud to hold these defendants accountable for their crimes. After a long battle, justice has been done."

Founded in 2003 and headquartered in Grapevine, Texas, UDF utilized a family of five private and public investment funds – UDF I, II, III, IV, and V – to invest in various residential real estate developers and private homebuilders.

Specifically, the funds were created to provide loans to residential housing developers by using money obtained from investors and financial institutions. The developers were required to pay back the loans with interest, which would serve as the source of distributions paid to investors.

When developers failed to repay the money they borrowed from one fund, triggering multi-million dollar shortfalls, the defendants reportedly transferred money out of another fund in order to pay distributions to the original fund's investors, all without disclosing the transfers to the SEC and the investing public, prosecutors said.

The registration statements of UDF III, a limited partnership, UDF IV, a real estate investment trust that previously traded on the Nasdaq and later the over-the-counter market, and UDF V, a non-traded REIT, were revoked by the SEC in August 2020 for "failure to comply with periodic filing requirements."

According to the prosecution, from January 2011 until November 2015, approximately $65 million in UDF IV investors' money was used to pay UDF III investors a return on their investment and fulfill other financial obligations. Similarly, they alleged that approximately $7.4 million in UDF V investors' money, along with money obtained from a financial institution, was purportedly used to pay returns to UDF III and UDF IV investors.

In July 2018, UDF agreed to [pay roughly $8.3 million] to settle similar charges brought by the SEC, without admitting or denying the allegations.

UDF is also engaged in ongoing litigation against Kyle Bass and his hedge fund Hayman Capital, although the district court twice denied allowing any evidence relating to Bass from being included in the federal trial.

UDF sued Bass after he posted a series of anonymous online reports in late 2015 accusing UDF IV of operating as a Ponzi scheme – an accusation the company has vigorously denied. UDF contends that Bass and Hayman Capital instigated a "short-and-distort" campaign and spread damaging information in order to profit from their short positions in UDF IV's plummeting stock – to the tune of $60 million.

In February 2016, shortly after Bass/Hayman [revealed their short positions](), the [FBI raided UDF's]() Grapevine office and seized multiple boxes. This followed the [December 2015 revelation]() that UDF was the subject of a nonpublic fact-finding investigation conducted by the SEC that began in April 2014.

Pelletier [previously told The DI Wire]() that during the litigation against Bass and Hayman, they discovered that "the government had collaborated with Bass" in drafting the anonymous posts and "tipped-off" Bass before the search warrant.

The Dallas Business Journal reported that Greenlaw testified that the FBI raid sent his company into a tailspin.

"After the execution of the FBI search warrant, we basically lost access to the capital markets…," Greenlaw stated. "[The FBI agents] took every piece of paper out of our business. They took three-and-a-half U-Hauls full."

A pre-sentence investigation is scheduled to take place by March 14th, followed by a sentencing hearing on May 20th.

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Four UDF REIT Executives Charged with Fraud

Federal prosecutors have charged four United Development Funding executives with allegedly engaging in a "scheme to defraud" using three of the company's investment funds, according to an indictment filed in a Texas federal court.

The funds include UDF III, a limited partnership, UDF IV, a real estate investment trust that previously traded on the Nasdaq and later the over-the-counter market, and UDF V, a non-traded REIT. The Securities and Exchange Commission revoked the funds' registrations last August for "failure to comply with periodic filing requirements."

The executives named in the indictment, Hollis Greenlaw, Benjamin Wissink, Cara Obert, and Brandon Jester, were charged with one count of conspiracy to commit wire fraud affecting a financial institution, one count of conspiracy to commit securities fraud, and seven counts of securities fraud/aiding and abetting.

Federal prosecutors allege that the four defendants conspired to conceal from investors, external auditors, the SEC, and others, the performance of UDF III's business and financial condition in order to encourage investment in later funds. They are also accused of filing financial documents with the SEC that contained "false and fraudulent representations" concerning the source of funds used to pay distributions and bank loans, and how investors' money and loans were being used.

Hollis Greenlaw's attorney, Paul Pelletier, said "While no one wishes to be wrongly indicted, Mr. Greenlaw is grateful that he can now demonstrate the baselessness and vexatiousness of these charges and the egregiousness of the government's misconduct in a public forum – something we have been trying to do for many years now."

The UDF funds were created to provide loans to residential housing developers by using money obtained from investors and financial institutions. The developers were required to pay back the loans with interest, which would serve as the source of distributions paid to investors.

Since inception, UDF III paid monthly distributions to its investors using money purportedly from revenues derived from its loan portfolio. However, according to the indictment, the developers were not repaying the loans made by UDF III, and later UDF IV, quickly enough, causing a shortfall of cash to fund distributions and loan repayments.

To cover the shortfall, the complaint alleges that UDF V began issuing loans to developers who already had loans with the two earlier funds. The money was purportedly used to not only repay the older loans, but to cover the distributions for UDF III and UDF IV, contrary to representations made to UDF V's investors.

According to prosecutors, from January 2011 until November 2015, approximately $65 million in UDF IV investors' money was used to pay UDF III investors a return on their investment and fulfill other financial obligations. Similarly, they allege that approximately $7.4 million in UDF V investors' money, along with money obtained from a financial institution, was purportedly used to pay returns to UDF III and UDF IV investors.

In July 2018, UDF agreed to pay roughly $8.3 million to settle similar charges brought by the SEC, without admitting or denying the allegations.

UDF is currently engaged in litigation against Kyle Bass and his hedge fund Hayman Capital. UDF sued Bass after he posted a series of anonymous online reports that accused UDF IV of operating as a Ponzi scheme – an accusation the company has vigorously denied.

UDF contends that Bass and Hayman Capital instigated a “short-and-distort” campaign, where the defendants spread damaging information in order to profit from their short positions in UDF IV’s plummeting stock to the tune of $60 million.

“For the past 18 years UDF has financed some of the most successful real estate developments in North Texas,” explained Pelletier, Greenlaw’s lawyer. “For the past 6 1⁄2 years UDF has endured an illegal predatory short-and-distort attack, an unlawful FBI search and a transitory government investigation with ever-changing theories of alleged liability.”

Pelletier claims that during the litigation against Bass and Hayman Capital, they discovered that “the government had collaborated with Bass” in drafting the anonymous posts and “tipped-off” Bass before the search warrant. UDF and its executives filed a Bivens action against the individual agents and prosecutor following what Pelletier calls the “the government’s egregious unconstitutional actions.”

“The government…offered to enter into an agreement not to prosecute UDF or UDF’s executives if UDF and its executives would agree to dismiss the Bivens action. UDF and its executives, as prudent fiduciaries, declined to do so, believing such an arrangement would not be in accordance with the law and relevant ethical considerations,” said Pelletier.

“The government now, after more than six years, has filed this criminal action intentionally mischaracterizing the economic reality for the repayment of [UDF] IV loans and erroneously concluding that these transactions, though fully disclosed in UDF’s public filings, constituted criminal disclosure violations,” he added.

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Texas Supreme Court Denies Kyle Bass Petition to Review, UDF Lawsuit Will Proceed

A lawsuit filed by United Development Funding L.P. against Kyle Bass and his hedge fund Hayman Capital will proceed in the trial court after the Supreme Court of Texas denied the defendant's petition to review the matter.

UDF originally filed its lawsuit in Dallas County Court against Bass and Hayman Capital in November 2017, claiming the defendants made false statements that damaged its business and interfered with its contracts and business relations.

The lawsuit stemmed from a series of anonymous online reports allegedly authored by Bass and posted to an investor networking website, detailing unsubstantiated claims that UDF operated as a Ponzi scheme – an accusation the company has vigorously denied.

UDF contends that Bass and Hayman Capital instigated a "short-and-distort" campaign, where the defendants spread damaging information in order to profit from their short positions in UDF's plummeting stock to the tune of $60 million.

In June 2018, the Dallas County Court ruled that UDF had sufficient grounds to proceed with the case and denied Bass's motion to dismiss the lawsuit under the Texas Citizens Participation Act.

Bass and Hayman filed an accelerated appeal with the Texas

Judicial Branch Fifth Court of Appeals, which affirmed the Dallas court's decision to deny Bass's motion to dismiss the lawsuit.

UDF said in a statement that the appeals court reviewed more than 2,000 pages of pleadings, affidavits and evidence, and concluded, "UDF's pleadings and affidavits explain how and why Hayman's statements were false" and "Illustrate and describe how and why Hayman made the false statements knowingly or recklessly, and chronicle the economic and business damages and losses UDF sustained as a direct result of Hayman's false statements."

Bass then filed a petition with the Texas Supreme Court to review the appeals court decision, which it upheld, and UDF expects the case will be remanded to the trial court in 30-40 days, where full discovery and a trial will follow.

The UDF funds previously raised more than $1.2 billion in investor capital between 2003 and December 2015. UDF V, a non-traded REIT, terminated its $1 billion offering in March 2016. United Development Funding IV, a publicly traded REIT, was delisted in October 2016.

Appeals Court Denies Kyle Bass and Hayman Capital's Motion to Dismiss UDF Lawsuit

The Texas Judicial Branch Fifth Court of Appeals has affirmed the decision by the Dallas County Court to deny defendants J.

Kyle Bass and Hayman Capital's motion to dismiss a lawsuit filed by United Development Funding.

UDF filed a lawsuit in Dallas County Court against Bass and his hedge fund Hayman Capital in November 2017, claiming the defendants made false statements that damaged UDF's business and interfered with its contracts and business relations.

The lawsuit stemmed from a series of anonymous online reports that were allegedly authored by Bass and posted to an investor networking website, detailing unsubstantiated claims that UDF operated as a Ponzi scheme – which the company has vigorously denied.

UDF contends that Bass and Hayman Capital instigated a "short-and-distort" campaign, where the defendants spread damaging information in order to profit from their short positions in UDF's plummeting stock to the tune of $60 million.

In June 2018, the Court allowed limited discovery and ruled that UDF had set a cause of action to defend the intentional business disparagement and tortious interference by the defendants, denying the defendants' motion to dismiss the lawsuit under the Texas Citizens Participation Act.

Bass and Hayman attempted to appeal the decision, and UDF filed its appellate brief in November 2018 opposing the appeal and presented its oral argument to the court in May 2019.

The appeals court reviewed more than 2,000 pages of pleadings, affidavits and evidence, concluding that, "Hayman's initial anonymous posts on a website it created using a false name further indicate its state of mind. UDF offered sufficient evidence to support a fact finding that Hayman did not want to be identified as the publisher of the posts challenging the legitimacy and legality of UDF's business so that its statements would be more certain to plunge UDF's stock value, resulting in a huge profit to Hayman, which, in fact, is what happened."

UDF's Hollis Greenlaw said, "We believe the court's 47-page opinion speaks volumes. All should read it. We will continue to see that all facts and people involved will be pursued. We also strongly affirm that it is our commitment to work vigilantly to expose Bass's actions, to have him held accountable and to preserve and continue to create shareholder value. Our employees and our investors deserve both vindication and justice, and we are one step closer."

The UDF funds had previously raised more than $1.2 billion in investor capital between 2003 and December 2015. UDF V, a non-traded REIT, terminated its $1 billion offering in March 2016. United Development Funding IV is a publicly traded real estate investment trust that was delisted in October 2016.

UDF Files Brief to Oppose Kyle Bass and Hayman Capital Appeal

United Development Funding filed an appellate brief in the Texas Judicial Branch Fifth Court of Appeals in the matter of J. Kyle Bass, et. al. versus United Development Funding, L.P., et. al.

As previously reported, UDF claims that its funds were damaged by disparaging statements made by defendants Bass and Hayman Capital, the investment firm controlled by Bass, including that it operated as a Ponzi scheme, which the company vigorously denies.

In late 2015, Bass allegedly anonymously authored and posted a series of online reports on an investor networking website that detailed unsubstantiated claims against UDF that sent stock prices plummeting.

The firm contends that Bass and Hayman Capital instigated a “short-and-distort” campaign as it was targeted by the defendants, who allegedly spread damaging information in order to profit from their short position with an estimated $60 million or more.

On November 28, 2017, UDF filed a lawsuit in Dallas County Court against Bass and Hayman Capital claiming they made false statements that disparaged UDF’s business and interfered with its contracts and business relation. The suit also claims those statements were made with malice and caused extensive damage to UDF’s business.

The matter escalated on June 12, 2018, when the Court allowed limited discovery and ruled that UDF had set a cause of action to defend the intentional business disparagement and tortious interference by the defendants.

The defendants quickly filed an appeal on June 29, 2018, which allowed them to stay any additional discovery until a ruling is made in the Appeals Court, where the matter is now pending.

UDF is represented by Ellen A. Cirangle, Jonathan E. Sommer and Kyle A. Withers with Lubin Olson & Niewiadomski LLP, who have extensive experience successfully litigating market manipulation claims against hedge funds.

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SEC Orders Proceedings Against UDF After Enforcement Allegations

After an investigation of United Development Funding by the Securities and Exchange Commission's Division of Enforcement, it was determined that three of the company's funds, including United Development Funding III, LP, a Delaware limited partnership, United Development Funding IV, a publicly traded real estate investment trust (OTCMKTS: UDFI), and United Development Funding Income Fund V, a Maryland real estate investment trust were collectively delinquent in their obligations to file timely periodic reports since September 30, 2015.

In particular, UDF III, UDF IV and UDF V failed to file a Form 10-Q. Previously, UDF IV had common shares traded on the NASDAQ Global Select Market under the symbol "UDF" beginning June 4, 2014. The NASDAQ halted trading on February 18, 2016 due to the company not submitting timely file audited financial statements. Further action was taken with a Form 25 to delist UDF IV on May 18, 2017.

Since August 22, 2018, the common stock of UDF IV was quoted on OTC Markets Inc. under the symbol "UDFI," had four markets makers, and was not eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

According to the SEC, "For this piggyback exception to apply, the security must have been the subject of quotation (exclusive of any identified customer interests) in the IDQS ("any system of general circulation to brokers or dealers which regularly disseminated quotations of identified brokers or dealers") on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation."

Furthermore, UDF failed to file annual reports under the Exchange Act Section 13(a), under the Exchange Act Rule 13a-1 as well as quarterly reports under the Exchange Act Rule 13a-13.

On September 24th, 2018, UDF was ordered by the SEC to respond to these allegations within 10 days and then participate in a prehearing conference with the SEC's Division of Enforcement with 14 days. The date of the public hearing before the Commission has yet to be determined.

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Chief Accounting Officer Resigns from Two UDF REITs

David Hanson has voluntarily resigned from his positions at United Development Funding IV (OTCMKTS: UDFI) and United Development Funding Income Fund V, two real estate investment trusts sponsored by UDF.

Hanson served as chief accounting officer of UDF IV, a non-traded REIT, and chief accounting officer and chief operating officer of UDF V, a public REIT that now trades on the over-the-counter market after being delisted from Nasdaq in October 2016. Both REITs noted that his resignation was not the result of any disagreement with the companies or their respective boards.

UDF recently filed a lawsuit in a Dallas County Court against hedge fund manager Kyle Bass and his firm Hayman Capital, which held a short position in one of UDF's entities. In late

2015, Bass anonymously authored and posted a series of online reports on an investor networking website that detailed unsubstantiated claims against UDF that sent stock prices plummeting.

The lawsuit claims that the UDF funds were “extensively” damaged due to disparaging statements made by defendants Bass and Hayman, including that UDF operated as a Ponzi scheme.

In July, the Securities and Exchange Commission charged two UDF funds and four executives, including Hanson, for allegedly misleading investors by failing to disclose that it could not pay its distributions and was using money from a newer fund to pay distributions to investors in the older fund. The SEC also charged a fifth executive for allegedly signing false SEC filings.

In addition to Hanson, the SEC’s complaint named UDF III, a limited partnership, UDF IV, co-founder and CEO Hollis Greenlaw, president Benjamin Wissink, chairman and co-founder Theodore Etter, chief financial officer Cara Obert.

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UDF Executives Ordered to Pay $8.3 Million to Settle SEC Charges

The Securities and Exchange Commission has charged two real estate investment funds and four executives for allegedly misleading investors by failing to disclose that it could not pay its distributions and was using money from a newer fund to pay distributions to investors in the older fund. The SEC also charged a fifth executive for allegedly signing false SEC filings.

United Development Funding is a family of private and publicly-traded investment funds that deploys investor capital as loans to homebuilders and land developers. The SEC said that UDF allegedly solicited investors by advertising annualized returns of up to 9.75 percent as well as regular distributions.

The SEC's complaint named UDF III, UDF IV, and various UDF executives including co-founder and CEO Hollis Greenlaw, president Benjamin Wissink, chairman and co-founder Theodore Etter, chief financial officer Cara Obert, and David Hanson, the chief accounting officer of UDF IV.

The regulators claim that for nearly five years, UDF did not tell investors that it lacked the monthly cashflow at times to cover investor distributions in one of its older funds, UDF III, a publicly registered non-traded limited partnership.

Instead, to pay these distributions, the company's newer public REIT, UDF IV, allegedly loaned money to developers who had also borrowed money from UDF III. Rather than using those funds for development projects that were underwritten by UDF IV, UDF directed the developers to use the loaned money to pay down their older loans from UDF III.

The SEC claims that in most of these cases, the developer never received the borrowed funds, and UDF transferred the money between funds so that UDF III could make the distributions to its investors.

The complaint also alleges that UDF III failed to appropriately impair loans in violation of GAAP, and that UDF IV did not adequately disclose the status of real property within its portfolio.

Finally, the complaint accuses David Hanson of signing false and misleading SEC filings and management representation letters without taking sufficient actions to ensure their accuracy.

Without admitting or denying the allegations, Greenlaw, Wissink, Etter, and Obert agreed to pay $7.2 million in disgorgement and prejudgment interest, as well as a $1.1 million fine, while Hanson agreed to pay a $75,000 fine. The defendants also agreed to orders enjoining them from violating certain federal securities law provisions in the future.

In a statement, Greenlaw said "We believe that it was time to put this matter behind us and that this settlement is in the best interests of UDF and its investors. UDF IV had already undergone an independent investigation conducted by the law firm Thompson & Knight LLP with the assistance of independent forensic accountants from a global accounting firm."

The company's commissioned investigation concluded in May 2016 and found no evidence of fraud or misconduct.

"The settlement will allow the companies to avoid the time, expense and distraction of a potential dispute with the SEC, which will enable UDF to focus on returning value to its investors," added Greenlaw. "Furthermore, UDF believes their business was injured by Kyle Bass and Hayman Capital, and it intends to pursue that litigation with all the more vigor now that this SEC matter is resolved."

In early 2016, hedge fund manager Kyle Bass publicly accused UDF IV of operating a "Ponzi-like real estate scheme," by using new investor money to pay existing investors. It was later revealed that Bass held a short position in the company's common stock.

UDF filed a lawsuit against Bass and his Hayman Capital hedge funds late last year, claiming that their funds were financially damaged by their accusations. UDF believes that

Bass and his funds raked in profits of an estimated $60 million or more as a result of their short position. A Dallas court recently denied a motion by Bass to dismiss the lawsuit, allowing it to proceed to trial.

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Judge Allows UDF Lawsuit Against Kyle Bass and Hayman Capital to Move Forward

A Dallas County Court has denied a motion by hedge fund manager Kyle Bass to dismiss a lawsuit filed by United Development Funding against him and his firm Hayman Capital, which held a short position in one of UDF's entities. UDF sponsors several non-traded real estate investment trusts, as well as a traded REIT, United Development Funding IV (NASDAQ: UDF).

The lawsuit claims that the UDF funds were "extensively" damaged due to disparaging statements made by defendants Bass and Hayman, including that UDF operated as a Ponzi scheme.

In late 2015, Bass anonymously authored and posted a series of online reports on an investor networking website that detailed unsubstantiated claims against UDF that sent stock prices plummeting.

It was later revealed that Bass and Hayman Capital were shorting UDF IV after he launched the website www.UDFexposed.com. UDF believes that Bass and his funds raked in profits of an estimated $60 million or more as a result of their short position.

UDF claims that following the Ponzi accusations, it lost access to credit and capital markets and was forced to sell its assets at reduced prices and to pay off many of its loans. The company also noted that it lost builder and developer customers and future investors, which allegedly caused damages in the hundreds of millions of dollars.

Bass and Hayman attempted to have UDF's lawsuit dismissed by filing a motion under the Texas Citizen's Participation Act, known as an anti-SLAPP motion, arguing that they were exercising their rights of free speech in publishing negative material concerning UDF's business, and that the speech was made without actual malice.

In March, the court authorized limited discovery, including the production of some documentary evidence. After an extended evidentiary hearing, the court ruled in favor of UDF, allowing the lawsuit to proceed to trial.

"We are very pleased with the court's ruling and the court's allowance of limited discovery prior to the ruling," said UDF's Hollis Greenlaw. "The limited discovery granted by the court allowed us to see this coordinated plan documented in the emails and texts of Bass and Hayman. We intend to pursue the lawsuit to trial as expeditiously as possible, and we look forward to our day in court."

The ruling enables UDF to move beyond the initial, limited discovery into full discovery on the merits of the case. However, Bass and Hayman can further delay discovery by appealing the ruling, if they are unwilling to proceed with the trial court case at this time.

UDF has submitted 11 affidavits to the court that included testimony from developers, a banker, brokers, investors, executives, and a forensic accounting expert who was formerly Ernst & Young's fraud investigations practice leader in the

Americas.

Bass's Hayman Capital hedge funds focus primarily on short-selling stocks, or betting that a company's stock price will decline. Bass is best known for betting against subprime mortgages and securing massive profits for himself in 2008 following the housing market crash, and was profiled in the bestselling book, *The Big Short* by Michael Lewis.

UDF claims that Bass was under pressure to hit another big payout after a series of losses and made UDF his target, engaging in a "short-and-distort" scheme where a "short seller spreads false and damaging information about the target company it is betting against in order to harm the business and its stock price."

In December 2015, UDF disclosed that it was the subject of a non-public fact-finding SEC investigation that started in April 2014, and a few months later its Grapevine, Texas headquarters was raided by the FBI.

UDF believes that Hayman's general counsel Christopher Kirkpatrick, a former branch chief of the SEC's enforcement division, contacted his old employer, as well as the FBI and the United States Attorney's Office in Dallas "to prompt those agencies to take some public action against UDF that defendants understood and hoped would spook investors."

Since listing on NASDAQ in June 2014 until December 2015, UDF IV had traded in a range of $16.02 to $19.95 per share. By mid-February 2016, UDF IV traded below $4 per share, before trading was halted by NASDAQ. The company was delisted in October 2016 for failing to file its 2015 annual financial reports and subsequent quarterly reports with the SEC.

UDF alleges that the delisting was part of Hayman Capital's plan to buy discounted shares of UDF IV in the over-the-counter market from institutional investors, since UDF IV was no longer in the Russell 2000 Index.

The UDF funds had previously raised more than $1.2 billion in investor capital between 2003 and December 2015. UDF V, a non-traded REIT seeking to raise $1 billion, terminated its offering in March 2016.

The complaint alleges multiple counts including business disparagement, tortious interference, civil and conspiracy. Plaintiffs demand a trial by jury on all issues and seek monetary relief in excess of $1 million for damages, disgorgement, pre-judgment interest, attorney's fees, and other relief.

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Newbridge Securities Under Fire for ARC REIT Sales to Pennsylvania Police and Firefighters

Lawyers representing a number of retired Philadelphia police and firefighters plan to file more complaints with Financial Industry Regulatory Authority against Boca Raton-based Newbridge Securities for unsuitable non-traded REIT sales.

In November and December 2017, four investor complaints were against Newbridge, alleging losses totaling $760,000 for "unsuitable securities" sales. The investors claim that they were not warned of the risks of the securities.

Last summer, the Pennsylvania Department of Banking and Securities fined Newbridge $499,000 for failing to supervise one Pennsylvania broker that sold structured products to his clients in the state.

Although the broker was not named in Pennsylvania complaint against Newbridge, FINRA records show that Austin Dutton of Bridge Valley Financial Services, an affiliate of Newbridge Securities, was the firm's Pennsylvania agent. Dutton is no longer affiliated with Newbridge.

The Pennsylvania Department of Banking and Securities also fined Dutton $200,000 for engaging in "dishonest or unethical practices" for the unsuitable recommendations.

Dutton, who was not named as a respondent in the Newbridge FINRA arbitrations, vehemently denies all of the allegations, according to a comment on his Brokercheck profile.

In a 2014 interview with the Philadelphia Inquirer, Dutton was outspoken in his methods of marketing and selling American Realty Capital investments to police officers, firefighters, teachers, and retirees.

Two lawyers representing Dutton's former clients reportedly plan to file a combined 20 complaints with FINRA against Newbridge for improper non-traded REIT sales, as originally reported by *Investment News.* Their clients were invested in non-traded REITs sponsored by AR Global and United Development Funding.

Newbridge Financial was one of seven broker-dealers fined by Massachusetts' securities regulators in 2016 in connection with the Realty Capital Securities proxy fraud scandal that shuttered the firm in December 2015. Realty Capital Securities was the wholesaling broker-dealer of American Realty Capital, now known as AR Global.

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