

FW-03435-F

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**DAVID GORDON WALLACE, JR. and COSTA
BAJJALI,**

Defendants.

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: **Civil Action No.: 4:11-cv-1932**
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COMPLAINT

Plaintiff United States Securities and Exchange Commission (“Commission”) files this Complaint against Defendants David Gordon Wallace, Jr. (“Wallace”) and Costa Bajjali (“Bajjali”), and would respectfully show the Court the following:

I.

SUMMARY

1. From November 2006 through December 2008, Wallace and Bajjali offered and sold securities in two real-estate funds they controlled in Houston, Texas, called the Wallace Bajjali Investment Fund II, L.P. (“Wallace-Bajjali Fund”) and the Laffer Frishberg Wallace Economic Opportunity Fund, L.P. (“Opportunity Fund”)(collectively “the Funds”). In written disclosures relating to the securities offerings, Wallace and Bajjali represented to investors that they would limit the Funds’ investment in any one business or project to certain percentages of the money the Funds raised—no more than 33% for the Wallace-Bajjali Fund and no more than 20% for the Opportunity Fund. Contrary to their written representations, Wallace and Bajjali far

exceeded these limits by heavily investing the Funds' money in Business Radio Networks, L.P. d/b/a BizRadio ("BizRadio"), a struggling media company. As a result, they subjected the Funds' investors to substantially greater investment risk than the Fund's written materials disclosed.

2. By reason of these activities, Wallace and Bajjali violated Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(2) and (a)(3)]. The Commission, in the interest of protecting the public from further violative conduct, brings this action seeking a judgment from the Court: (a) enjoining Wallace and Bajjali from engaging in future violations of Sections 17(a)(2) and (a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (a)(3)] and (b) ordering Wallace and Bajjali to pay civil money penalties.

II.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)].

4. The Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]. Defendants, directly or indirectly, used means or instruments of transportation or communication in interstate commerce or used the mails in connection with the transactions, acts, practices, and courses of business described in this Complaint.

5. Venue is proper in the Southern District of Texas because the Defendants reside within the Southern District and many of the transactions, acts, practices, and courses of business described below occurred within the Southern District.

III.

PARTIES

6. Plaintiff Commission is an agency of the United States of America charged with enforcing the federal securities laws.

7. Defendant Wallace, aged 49, resides in Sugar Land, Texas. At all times relevant to this Complaint, Wallace controlled the Wallace-Bajjali Fund and the Opportunity Fund.

8. Defendant Bajjali, aged 45, resides in Missouri City, Texas. At all times relevant to this Complaint, Bajjali controlled the Wallace-Bajjali Fund and the Opportunity Fund.

IV.

STATEMENT OF FACTS

9. Beginning in 2006, Wallace and Bajjali entered an agreement with an investment-adviser firm (“Investment Adviser”) in Houston, Texas. The agreement allowed the Investment Adviser to recommend to its clients securities investments in the Wallace-Bajjali Fund and the Opportunity Fund, both controlled by Wallace and Bajjali. From November 28, 2006, through December 31, 2007, the Wallace-Bajjali Fund raised money through the sales efforts of Wallace and Bajjali and the recommendations of the Investment Adviser. Most Wallace-Bajjali Fund investors were Investment Adviser clients.

10. Wallace and Bajjali reviewed and approved a private-placement memorandum (“PPM”) containing information for investors about the Wallace-Bajjali Fund securities offering. In the offering, Wallace and Bajjali distributed the PPM to investors personally and through the Investment Adviser. The PPM said the Wallace-Bajjali Fund would invest no more than 33% of the offering proceeds in any one business. By May 2007, the Wallace-Bajjali Fund had received offering proceeds of approximately \$16 million and had invested more than \$6.5 million of those

proceeds in BizRadio, a financially precarious Houston-based media company controlled by an Investment Adviser officer. As a result, more than 40% of the Wallace-Bajjali Fund offering proceeds at the time was invested in BizRadio, far exceeding the PPM's 33% limit.

11. At the end of 2007, Wallace, Bajjali, and others created the Opportunity Fund, primarily to invest in real estate projects. Wallace and Bajjali marketed the Opportunity Fund through the Investment Adviser exclusively to Investment Adviser clients. According to the Opportunity Fund PPM, which Wallace and Bajjali reviewed and approved for distribution to investors, the Opportunity Fund would limit investment in any one business to 20% of the Opportunity Fund offering proceeds. The PPM further provided that the 20% ratio had to be in place when the fund closed to new investment. By the time the Opportunity Fund closed in December 2008, it had raised approximately \$7 million. Of that amount, it had invested approximately \$4 million in BizRadio—approximately 57% of the offering proceeds—far exceeding the 20% investment limit.

12. Wallace and Bajjali knew or should have known that, by investing so much in BizRadio, the Wallace-Bajjali Fund and the Opportunity Fund had exceeded the investment limits stated in the respective PPMs. As persons in charge of the Funds, Wallace and Bajjali should have taken steps to ensure the Funds' invested within the limits provided in the PPMs. These limits signified a certain level of diversification, such that the Funds' risk of loss from any single investment would be minimized. Because the Funds exceeded the investment limits in BizRadio, investors were forced to take on much greater investment risk than Wallace and Bajjali disclosed in the PPMs.

V.

CLAIM

Violations of Section 17(a)(2) and (a)(3) of the Securities Act

13. The Commission realleges and reincorporates paragraphs 1 through 12 as if fully set forth herein.

14. Defendants, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails have (a) negligently obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading and (b) negligently engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit.

15. By reason of the activities described above, Defendants Wallace and Bajjali violated and, unless enjoined, may continue to violate Sections 17(a)(2) and (a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (a)(3)].

VI.

REQUEST FOR RELIEF

Therefore, the Commission respectfully requests that the Court issue a Final Judgment providing the following relief:

16. Permanently restraining and enjoining Defendants Wallace and Bajjali from, directly or indirectly, violating Section 17(a)(2) and (a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and (a)(3)];

17. Ordering Defendants Wallace and Bajjali to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] in an amount to be determined by the Court; and

18. Granting such other and further relief as this Court may deem just and appropriate.

Dated: May 20, 2011.

Respectfully submitted,
s/Timothy S. McCole
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