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## Hundreds of Millions at Stake in Securities Fraud Lawsuit

By Cathy Tyson



Former office of R.E. Loans and Mortgage Fund '08 in Lafayette. Photo Cathy Tyson

A recently filed class action lawsuit for over \$700 million dollars centered in Lafayette could potentially be the largest case of its kind in California's history. The lawsuit alleges securities fraud and breach of fiduciary responsibility for over two thousand investors. Four related private lending groups -R.E. Loans, B-4 Partners, Mortgage Fund '08 and Bar-K, Inc., along with the owners and managers of those funds, Walter Ng, and his sons Barney Ng and Kelly Ng-Dr. Bruce Horwitz, Wells Fargo Capital Finance, and Greenberg Traurig, LLP are the named defendants in the case. As the complicated drama unfolds, investors will have to wait and see if they can recover even a fraction of their original investments.

The FBI and the SEC are currently investigating the tangled web of companies that appears to be a house of cards that collapsed. Plaintiffs allege the financial disintegration of Ng family companies: R.E. Loans - a mortgage brokerage, B-4 Partners - which acted as manager for R.E. Loans along with Bar-K - a mortgage broker and loan servicer for loans originated by R.E. Loans, had been raising funds illegally in violation of federal and California securities laws. It will be up to the court to decide if market

forces drove the companies into the ground, bad investment decisions were made, or less than legal choices led to demise of the investment firms.

"The Fund managers operated R.E. Loans and Mortgage Fund '08 in tandem as a Ponzi scheme. Funds raised from Mortgage Fund '08 investors were loaned to R.E. Loans in order to pay distributions and other expenses of R.E. Loans," writes Nance Becker, of Chavez & Gertler, LLP, one of the attorneys for the plaintiffs in the class action complaint.

The lawsuit claims that R.E. Loans promised investors returns of between 7.5% and 12.5% annually. More than \$700 million was raised by early 2007. However, in the following months operating capital was paid out to close friends and family members, and by the summer of 2007 R.E. Loans faced a liquidity crisis. To prop up funding of RE Loans, a \$50 million dollar line of credit was arranged from Wells Fargo. Plaintiffs allege that, "within days after securing the Wells Fargo Line of Credit, the Company's management drew down over \$43 million...and paid out nearly \$25 million of that amount in additional preferential distributions to themselves, family members and business associates."

News of the investment opportunity that had in years past made money, spread via word of mouth to many in the community, especially those who were nearing retirement - enticed by the reassurances that their money was safe and secure. "It's quite tragic," said Becker.

The outlook for investors went from bad to worse with Walter Ng, Kelly Ng and Barney Ng along with Bruce Horwitz, R.E. Loans, Mortgage Fund '08 and B-4 Partners filing for bankruptcy in the months following the filing of the class action suit.

To add another wrinkle to the matter, attorneys for R.E. Loans filed a motion to have their case heard in Texas Bankruptcy Court. Jeff Krause, attorney with Stutman, Treister & Glatt, representing R.E. Loans, had no comment.

Attorney Becker has filed a motion asking the Court to consolidate her clients' claims with another similarly situated class action group. "Everything else is currently on hold until some of the bankruptcy proceedings move forward," she said. Becker believes that Texas is not the proper venue since most of the defendants, as well as the investors and the properties that secured the loans, are in California.

"We believe they targeted a group of susceptible clients," said Becker. She explained their firm's strategy is to look for relief from Wells Fargo and Greenberg Traurig, stating, "You're allowed to develop creative solutions to help your clients, but not to knowingly mislead third parties."

The former office of R.E. Loans and Mortgage Fund '08 at 201 Lafayette Circle is dark - with only boxes of documents visible through the tinted windows. A small sign taped to the locked door re-directs clients to an office building on Camino Diablo, home to Bailey, Elizondo, Brinkman. Bill Brinkman is the Responsible Individual who was retained by Mortgage Fund '08 to provide restructuring advice and to manage the company after an involuntary bankruptcy case was filed against it on September 12, 2011. "We are attempting to make the best of a bad situation, and we hope to return money to the note holders as quickly as possible," said Brinkman.

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