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EB-5 Investors Recover Funds In \$136M Green Card Fraud Suit

By **Christine Powell**

Law360, New York (October 15, 2015, 9:23 PM ET) -- Nearly a dozen foreigners the SEC says were lured into investing with a Washington real estate developer on the promise that they'd receive green cards through a federal program recovered their stakes Wednesday, while the developer defends claims he diverted some of the \$136 million he collected from hundreds of backers into his other interests.

In two short orders, U.S. District Judge James L. Robart granted motions by a group of 11 investors out of the 250 the U.S. Securities and Exchange Commission says were bilked out of at least \$500,000 each, permitting them to intervene and **amend a temporary restraining order** he placed in August on Path America LLC and its owner and CEO Lobsang Dargey to return their funds from escrow.

The investors had backed Path America subsidiaries named in **the SEC's lawsuit** claiming Dargey and his entities misused \$17.6 million of \$136 million in investor funds raised in an allegedly fraudulent EB-5 immigrant investor program scheme. The EB-5 program, which is administered by the U.S. Citizenship and Immigration Services, provides green cards to foreign residents who invest at least \$1 million, or just \$500,000 in a rural or high-unemployment area, in a U.S. business and create at least 10 full-time jobs for American workers.

The SEC alleges Dargey misused \$2.5 million to buy a house in Bellevue and withdrew \$350,000 of investor cash, including more than \$200,000 at 14 casinos. The SEC also says the defendants misused about \$14.7 million in investor money for other real estate projects that Dargey controlled.

"We're very pleased that Judge Robart has agreed to permit the return of our clients' funds," Kelly H. Sheridan of Corr Cronin Michelson Baumgardner Fogg & Moore LLP, who represents the group of investors, said Thursday. "The SEC was very cooperative throughout the process, but we were unable to secure Path America's agreement to release the funds, which is what forced us to move to intervene."

In their motions, which were filed Oct. 1, the investors said they were still hoping to qualify for a green card through the EB-5 visa program by investing their money in a new project either before the law expires Dec. 11 or before Congress amends it, and stressed that their ability to do so depended upon the court releasing their money.

Judge Robart's rulings **come on the heels** of an Oct. 6 order in which he denied the defendants' bid to lift a block on business bank accounts, which they argued in their underlying motion was causing "great and irreparable harm to all, including the EB-5 investors," while simultaneously granting the SEC's request for a preliminary injunction.

The 11 investors noted in their motions that Path America had refused to release the groups' funds, despite agreeing on Sept. 4 to the release of "five separate but identically situated investors' funds."

The defendants, however, filed a document on Oct. 8 stating that they didn't oppose the investors' request to intervene and amend the temporary restraining order. Sheridan said he wasn't sure why Path America changed its stance after the investors' motions were filed.

He also said that his firm is working with a number of other clients in different stages of the EB-5 process and considering options with regard to their investments in Path America.

According to the SEC's complaint, which was filed on Aug. 24, Path America and its subsidiaries targeted Chinese investors in a scheme to sell securities to finance a skyscraper in Seattle and a mixed-use building in Everett, Washington, raising at least \$125 million through securities sales and raking in at least \$11 million in fees.

Investors were allegedly told the project investments would qualify for the EB-5 program, according to the complaint.

The same day the complaint was filed, Judge Robert **agreed to the temporary restraining order** that froze the defendants' assets, called on Dargey to return assets and required Path America to prepare an accounting of all money obtained by investors.

Representatives for the other parties did not reply Thursday to requests for comment.

The investors are represented by Steven W. Fogg and Kelly H. Sheridan of Corr Cronin Michelson Baumgardner Fogg & Moore LLP and Nelson K. H. Lee of Lee & Lee PS.

The SEC is represented by in-house counsel Susan F LaMarca and Sheila E. O'Callaghan.

The defendants are represented by Daniel J. Dunne, George E. Greer, David S. Keenan and Charles J. Ha of Orrick Herrington & Sutcliffe LLP.

The case is Securities and Exchange Commission v. Path America LLC et al., case number 2:15-cv-01350, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Kevin Penton, Allissa Wickham and Natalie Rodriguez. Editing by Richard McVay and Kelly Duncan.

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