

Life is Larger than Fiction in EB-5 Litigation: SEC Moves For Asset Freeze, Accounting, and Receiver Appointment in Civil Fraud Action in Florida

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What do a \$175,000 Sea Ray yacht, a brand new \$100,000 Mercedes Benz S-550 and a \$55,000 BMW X5 SUV all have in common? According to the SEC, they were all items purchased by one Lin Zhong (a/k/a Lily Zhong) with money she fraudulently obtained from investors who were told that their funds were being invested in EB-5 real estate development and construction projects. Zhong also purchased with investor funds homes for herself in Poinciana Florida and Worcester, Massachusetts – all while telling investors that 100% of their funds would be used in construction projects and that all investments would be held *in escrow* until their EB-5 immigration petitions were approved.

In a civil action filed by the SEC against EB5 Asset Manager, LLC and its owner Lin Zhong in the United States District Court of Southern Florida on November 3, 2015 the SEC alleges that since at least March 2011, Zhong has used several entities that she owns and controls to exploit the EB-5 program, defrauding at least 17 investors out of \$8.5 million. See Case 0:15-cv-62323-JAL. U.S. EB-5 Investments LLC, Oakland Office Holdings LLC, and B.X Property Management, among others, are owned and controlled by Zhong and named as relief defendants. The SEC alleges that Zhong has violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a); and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15. U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

Summary of Factual Allegations

This scheme presents another example of EB-5 offerings gone haywire, where very real allegations against a fraudster almost seem larger than fiction. Here, Zhong is alleged to have had complete authority over several versions of offering documents provided to investors, through which many false and misleading claims were made to convince investors to invest. According to the complaint, Zhong falsely told investors that: (1) 100% of investor funds would be used in construction projects; (2) any transactions that benefitted Defendants would require investors' consent; (3) investors' funds would be held *in escrow* until their Form I-526 immigrant petitions were approved; (4) investors would receive unaudited financial statements; and (5) Zhong had extensive experience in real estate development. Her promise to hold investors' funds *in escrow* until approval of their I-526 petitions for green cards presented yet another sham, as according to the complaint approximately \$6.5 million moved out of escrow before approval of any green card cases by USCIS.

Zhong allegedly concealed her scams through a complex arrangement of layering her EB-5 deal with related corporate entities that she controlled. In the complaint, the SEC also raises Zhong's alleged omissions from offering documents about her being the subject of bankruptcy proceedings in New Zealand, as well as misleading verbal statements about her track record as a developer. The SEC is seeking to freeze assets held by Zhong, EB5 Asset Manager, LLC and the relief defendants named in the case, and noted in its complaint that even after Zhong became aware of the Commission's investigation, she engaged in alleged asset transfers among related entities, remaining signatory authority on relevant accounts.

Analysis: Expect an SEC Victory and Zhong's Assets to go into a Deep Freeze

Presuming the SEC's allegations are true, Zhong had both motive and opportunity to commit securities fraud through related companies overlaying her dealings. One fact that will also play to the advantage of

the SEC is that even after she was informed of an SEC investigation, Zhong allegedly sought to engage in a transfer of assets to both misuse and dissipate investor funds. According to the SEC, Zhong continued to engage in encumbering assets purchased through EB-5 proceeds, right up to the date the SEC filed its case.

Zhong also appears to have created circumstances which resulted in EB-5 investors being completely unaware of her activities. Based on the complaint, investors appear to have been represented by the same counsel that represented Zhong and her affiliated companies. This attorney, whose name is not referenced in the complaint, has owned three USCIS designated regional centers in Florida. Contrary to representations in the offering materials, investors had absolutely no involvement in the management or decision-making, and hence no control, over the new commercial enterprise they funded.

With these facts, one can expect the SEC, at a minimum, to prevail on its asset freeze request, and Zhong to likely be permanently out of the investment business. As with other EB-5 scams, the ultimate losers will be the EB-5 investors who are unlikely to be made whole and who will need to get back into the line for an EB-5 green card. This is the most recent chapter in what we think will be volumes of EB-5 related litigation brought by the SEC and investors in the coming years.

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