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Investors Say NY EB-5 Center Misled Them From The Start

By **Quinn Wilson**

Law360 (December 12, 2022, 5:07 PM EST) -- Chinese investors accusing an EB-5 regional center of defrauding them of \$57 million are fighting to keep their lawsuit alive, telling a New York federal court to deny the center's "absurd" motion to dismiss because they were owed a fiduciary duty, not just U.S. green cards.

The coalition of 107 individual investors filed a **memorandum Friday** in the Southern District of New York accusing the defendant, New York City Regional Center LLC, of choreographing the alleged scheme from the project's inception, the filing said. They accused the NYCRC of taking advantage of their lack of understanding of English as well as concealing the various issues that arose with the project throughout the decade.

An EB-5 program reserves green cards for foreign investors who commit capital to a U.S. project and create at least 10 jobs in the United States.

"NYCRC sold plaintiffs an investment that was supposed to be extremely safe and that could produce a modest return," the memorandum said. "They accepted their risks on that basis and they were blatantly lied to."

The plaintiffs invested either \$540,500 or \$549,000 each into one of two funds managed by NYCRC in 2011 to pay for upgrades to the George Washington Bridge's bus station. In August, they **filed their suit** seeking upwards of \$57.78 million, including lost investment, punitive damages, interest and fees, according to their complaint.

The plaintiffs said they were given only English-language signature pages, which they did not understand, when they signed onto the investment in 2011, according to the memorandum. They allege that these documents also misrepresented the project's details, such as who would be doing construction, the filing said.

"The offering memorandum also stated that 'the construction work would be performed by Skanska AB, a Stockholm-based international construction company with global operations,'" the memorandum said. "But Skanska "had already abandoned the project and, in 2011, no replacement had even been identified."

The plaintiffs also accused NYCRC of routinely misleading them when they were given period updates on the project's status, the filing said. In 2014, the defendants allegedly did not disclose in a project update that there had been cost overruns, an increased need for capital or the fact that construction had only begun in late 2013.

Throughout the process, several loan defaults had allegedly taken place, but none were disclosed to the investors, the memorandum said.

In 2019, the project's developer, George Washington Bridge Bus Station Development Venture LLC, filed for bankruptcy. This allegedly was the first the investors learned of the problems associated with the project, the memorandum said.

On Oct. 31, the NYCRC **hit back at the lawsuit** and asked for it to be dismissed on the grounds that the statute of limitations of six years for fraud claims had been missed by a year, the October filing

said. They also said the investors "knowingly assumed" their risks and were able to apply for the U.S. green cards they wanted.

The plaintiffs said that because the NYCRC concealed alleged fraud for years, they should not be compelled to anticipate potential affirmative defenses like the statute of limitations, the December memorandum said. They also argued that receiving their U.S. green cards, which allows them to live and work in the U.S., should not excuse the NYCRC's fiduciary duty.

"While they did get their visas, they each lost the entirety of their investments ... and the broker, defendant [NYCRC], got rich, collecting tens of millions in fees," the December memorandum said.

Attorneys for NYCRC and for the investors did not immediately respond to requests for comment Monday.

NYCRC is represented by David J. Lender, Jessica F. Falk and A.J. Green of Weil Gotshal & Manges LLP.

The investors are represented by Robert Seabrook Landy, Renée L. Jarusinsky, Stephen R. Halpin III and Bryan W. McCracken of Ford O'Brien Landy LLP.

The case is Wen et al. v. New York City Regional Center LLC, case number 1:22-cv-07383, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Grace Dixon and Micah Danney. Editing by Rich Mills.