

## Cover Story: Some South Florida EB-5 projects mired in litigation, fraud charges 🔑

Seventy-nine foreign investors were hoping that \$500,000 each and a new hotel in Palm Beach would be their ticket to residency in the U.S., but the developer is facing criminal charges for allegedly misusing their money and none of them have been approved for visas.

In another local EB-5 project, 60 Chinese investors risk losing not only their \$30 million, but their visa status, as development of the Las Olas Ocean Resort in Fort Lauderdale has stalled amid foreclosure and bankruptcy proceedings.

Both cases are examples of what can go wrong in the government's EB-5 program, which allows foreign investors and their immediate family to apply for green cards in exchange for investing \$500,000 in a U.S. business that creates at least 10 jobs. While many successful ventures, including restaurants and schools, have been financed by EB-5 in South Florida, there have been some high-profile examples of fraud and mismanagement, dashing the dreams of these immigrant investors.

The EB-5 litigation tracking page of EB5Projects.com, owned by Miami-based investment advisor USAAdvisors.org, lists 116 civil lawsuits or criminal prosecutions involving EB-5 nationwide.

"There is fraud in every capital markets category, but the level of fraud in EB 5 is unprecedented," said [Michael Gibson](#), managing director of USAAdvisors.org. "It's just unbelievable."

### Vulnerabilities in deal structure

In the case of the Palm House Hotel, the structure of the EB-5 investments didn't prevent funds, which were supposed to be used for hotel construction, from allegedly being spent on the developer's lavish lifestyle.

The 79 investors, hailing from China and Iran, contributed \$500,000 each, plus \$40,000 in administrative fees, for an equity interest in Palm House Hotel LLLP, which pledged to renovate a property in the wealthy town into a 79-room, five-star hotel. The investors were told the developer would contribute \$22 million in equity and obtain a bank loan of at least \$29 million, but the property was actually mired in debt, according to a lawsuit the EB-5 investors filed against the developer in 2016.

The developer falsely claimed that both Bill Clinton and Donald Trump were on the Palm House Hotel's advisory board, according to the lawsuit. No jobs were created at the hotel, and all the EB-5 investors' visa applications were denied, the complaint states.

In March, a federal grand jury in Connecticut indicted developer Robert Matthews and attorney Leslie Evans for allegedly defrauding the EB-5 investors by using their funds for personal gain, including the purchase of homes and investment properties, plus a 151-foot yacht. Both men pleaded not guilty.

Connecticut attorneys David Ring and Ross Garber, who represent Matthews and Evans, respectively, didn't respond to a request for comment.

Gunster attorney David J. George, who represents 63 of the EB-5 investors in the Palm House Hotel, said there was virtually no oversight of the developer after he accepted investors' money. Their funds were supposed to be

kept in escrow accounts until they obtained conditional approval for their visas, he said. The case remains pending.

“The government could require all investment money to be put in escrow accounts and monitored, but escrow accounts are not required by the government for EB-5,” George said. “The only remedy to our clients in this lawsuit is the recovery of their money. The ability to get their visas is not something we can get through a lawsuit.”

That’s especially bad news for the Iranian investors in the Palm House Hotel. President Trump’s travel ban has made them ineligible to apply for a green card again, even through EB-5.

In Fort Lauderdale, \$30 million in EB-5 funds and 60 green cards are at risk as the Las Olas Ocean Resort sits unfinished, with construction halted. Bancorp Bank filed a \$36.94 million foreclosure lawsuit against builder 550 Seabreeze Development in January. The developer filed for Chapter 11 reorganization in February and is still seeking to work out a deal with the lender. Meanwhile, the project’s general contractor claims it is owed about \$5.3 million for its work.

The bank’s foreclosure lawsuit alleges the project ran into trouble due to the developer’s “mismanagement and incompetence.”

Attorney Paul Battista, who represents 550 Seabreeze in Chapter 11, didn’t respond to a request for comment.

A bankruptcy court statement by the builder said the principals invested over \$5 million of their personal funds into the project, which was delayed by Hurricane Irma in 2017 and other environmental factors beyond their control. That means significant equity in the Las Olas Ocean Resort project came from the EB-5 investors.

If the hotel is seized in foreclosure or sold through bankruptcy to another developer, that would make the EB-5 investors ineligible for green cards, even if they recover some funds, said Levine Kellogg Lehman Schneider + Grossman attorney Jeffrey C. Schneider, co-counsel for the EB-5 investors. They’re hoping the developer and lender reach a resolution where the project can be completed and the EB-5 investors maintain their equity interest.

Developers should not count on EB-5 funds for the majority of their equity, said attorney Julian Montero, a partner at Saul Ewing Arnstein & Lehr. Depending on EB-5 to complete the project is too risky, he said.

Banks have become more aware of developers over-relying on EB-5 as a risk factor when making construction loans, said Charles Penan, executive VP of Miami-based Aztec Group. He expects banks will demand more equity capital from the principal developers.

“The EB-5 investors came up with \$500,000 each, and that is the maximum they ever expect to fund,” Penan said. “There is no one to cover a shortfall. The deal should have more contingency capital available.”



[Enlarge](#)

Sixty Chinese investors could lose \$30 million and their visas if this stalled Fort Lauderdale resort project isn't revived.

## City of Miami ends program

Although no fraud is alleged, Miami City Manager Emilio T. Gonzalez said the city intends to terminate its EB-5 regional center because it has delivered no results.

U.S. Citizenship and Immigration Services (USCIS) sent the city a letter in April, saying that the city-run regional center would be eliminated within 30 days due to lack of activity. The federal agency has received no petitions from immigrant investors and documented no investment or job creation from the regional center since it was created in 2014, the letter said.

Gonzalez said the city spent \$746,200 on the regional center since its founding and took in no revenue. He noted that South Florida still has many privately owned EB-5 regional centers raising money.

"If the market can take care of it, then municipalities really shouldn't get involved," Gonzalez said.

Mikki Canton, the former managing director of the city's regional center, said she was very surprised by the USCIS letter because the Panorama Tower project has created hundreds of jobs, and that offering closed at the end of 2016. However, USCIS hasn't certified those jobs or approved any visa applications tied to the project.

## Developers find success in EB-5

Many immigrant investors and developers have found success with the program.

Miami resident Kenneth Baboun is on track toward obtaining his green card after an EB-5 investment in the Epicurean Hotel in Tampa, and he feels his investment is secure. He immigrated to the U.S. from Mexico on a student visa about 20 years ago, and has stayed thanks to an investor visa. Earning a green card through EB-5

was the easiest way for him to obtain permanent residency, which is important because he's a managing partner at Miami-based commercial real estate lending firm BGI Capital.

"For me, it was a low-risk investment," Baboun said. "The hotel was finished by the point I invested in [it]. I know the project did generate the jobs."

Miami-based Riviera Point Development Group is raising funds for its sixth EB-5 project, and has already completed three – all office buildings in South Florida, President and CEO Rodrigo Azpurua said. Over 200 green cards have been awarded to his investors, he said.

Over time, Azpurua has used EB-5 to fund a smaller portion of the project costs because raising money from a large pool of EB-5 investors is complex, and there's uncertainty as to whether Congress will extend the program. He only needs 20 to 30 investors per project.

"Focusing on smaller projects is the key," Azpurua said. "My projects are feasible. They are driven by what the market needs. We have a detailed breakdown of our budget, and we send reports to investors."

Driftwood Acquisitions and Development, which uses EB-5 for both debt and equity on its projects, is working on its fourth EB-5-funded hotel, said Carlos Rodriguez Sr., CEO of the Miami-based firm. He lines up the conventional equity and a bank loan first, then raises EB-5 funds to replace them at a lower cost of capital for the developer. The added benefit is that the EB-5 investors might choose to continue doing business with the firm.

"We break ground whether we raised all the money or we raised none," Rodriguez said.

Driftwood also operates the hotels, so it has a stake in creating the jobs.

The Paramount Miami Worldcenter condominium tower broke ground with developer equity and construction loans, and later the developer added EB-5 to the mix. Peggy Fucci, CEO of OneWorld Properties, said this had the unexpected benefit of attracting more condo buyers. Of the 159 EB-5 investors who committed, about 70 also bought condos at Paramount, she said.

Just over half of the EB-5 investors are Chinese, she added. OneWorld Properties recently opened an office in Shanghai, which has traditionally been a difficult market for Miami condo brokers to reach.

"It allowed us to bring in people who were probably never considering to buy a condo," Fucci said.

## Patching up problems

In March, Congress extended the EB-5 program through September – once again granting a short-term extension as major reforms are floated. The proposed EB-5 Reform Act would raise the minimum investment to \$1 million, increase the job requirement to 12, and provide more incentives for projects in rural areas and low-income urban communities. Advocates for investors hope the changes will include provisions to weed out fraud.

Schneider would like to see mandatory third-party oversight for how developers use funds raised through EB-5 to ensure they aren't misused. An escrow agreement could prevent the funds from being distributed unless there's a valid purpose.

"It's an easy, lax and regulation-free way of obtaining money," Schneider said. "For some developers and EB-5

investors, that could be a wonderful thing. But for developers who are liable to commit fraud, that is a dangerous thing.”

EB-5 is an inherently risky investment, and it’s up to the investor to conduct due diligence, Montero said. He recommends making sure the developer works with a fund administrator, such as NES Financial, to monitor how the money is used.

The problem is that many EB-5 investors live overseas and don’t read English well, so they are more vulnerable to signing a bad deal, Gibson said. He recommends that EB-5 investors hire an independent analyst with no ties to the developer to examine the deal before they invest. That’s key, as foreign investors often deal with immigration attorneys and EB-5 regional center executives with a financial incentive to place them in the project, he added.

The EB-5 Reform Act has proposed audits of regional centers and disclosures of conflicts of interest with third-party promoters.

“We need to have the SEC involved and more regulation so we can clean the industry of the bad actors,” Azpurua said.

## **About EB-5**

The EB-5 program allows foreign nationals and their immediate family members to apply for a green card if they invest \$1 million – or \$500,000 in a targeted employment area like most of South Florida – in a U.S. business venture that creates at least 10 jobs.

They first apply for a temporary visa and can receive a green card after two years if U.S. Citizenship and Immigration Services verifies that the jobs were created.

The investments are made through EB-5 regional centers, of which there are 78 in Florida.

## **EB-5 projects that ran into trouble**

- Key Biscayne resident Ariel Quiros, the chairman of Miami-based Q Resorts, reached an \$84 million settlement with the SEC in February after facing civil charges of defrauding EB-5 investors. He had raised more than \$350 million from 700 investors to build the Jay Peak ski resort in Vermont, but allegedly misused at least \$200 million for his personal use and unrelated business ventures.
- Jason Adam Ogden, CEO of Weston-based Juiceblendz and Yoblendz, paid \$1.2 million in 2016 to settle civil charges by the SEC that he misused more than \$1 million in EB-5 investor funds in those businesses for his personal use.
- In 2016, Boca Raton resident Lin Zhong and Oakland Park-based EB5 Asset Manager paid \$1 million and \$10 million, respectively, to settle a civil complaint from the SEC, accusing them of defrauding EB-5 investors in the City Center mixed-use project in Port St. Lucie. They raised nearly \$8.5 million and allegedly diverted at least \$1 million for personal use, including the purchase of Zhong’s home, boat and car.