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Texas Jury Awards \$15M Over Sham Real Estate Investment

By **Daniel Siegal**

Law360 (March 27, 2019, 9:40 PM EDT) -- A Texas federal jury on Tuesday found that several real estate investment entities conspired to defraud an investment company that was attempting to buy more than 1,000 non-performing residential home loans, and awarded the ripped-off investor nearly \$15 million in damages.

After deliberating for roughly three hours following a week-and-a-half-long trial, the Houston jury returned with a verdict in favor of plaintiff SED Holdings LLC in its convoluted bankruptcy adversary proceeding against entities controlled by real estate investor Mark Hyland. SED had alleged Hyland used the now-defunct 3 Star Properties LLC to pull off a fraud in which SED paid \$4.3 million up front for 1,235 non-performing home loans 3 Star didn't actually own.

The jury found that Hyland and three entities he controlled — Biltmore Funding, TM Property Solutions and TMPS — conspired with the custodian for the loans at issue and an attorney to rip off SED.

The jury awarded SED \$10.68 million in compensatory damages, finding that 3 Star, the loan custodian Brown & Associates and the attorney, Mark E. Dykes, were each 20 percent responsible for the damages. Additionally, the jury found TM Property Solutions and Biltmore Funding were each 15 percent responsible for the alleged fraud, and that Hyland bore the remaining 10 percent of blame.

The jury also imposed \$4 million in punitive damages, equally split between Hyland, TM Property Solutions, Biltmore Funding and Dykes.

Finally, the jury found that Hyland's choice of service provider for the non-performing loans, Home Servicing LLC, breached its loan servicing agreement with SED, and awarded SED \$300,000 for that breach.

SED attorney Jared I. Levinthal of Levinthal Wilkins PLLC told Law360 on Wednesday that despite the complicated machinations underlying the "crazy" case, the jury had made the right call.

"I think that the jury got it absolutely right and I think they did everything in their power to stop these defendants from further engaging in this kind of despicable conduct," Levinthal said. "These guys wouldn't listen to courts ... I think [the jury] just accepted the challenge."

Levinthal said that as the defendants had all conspired to harm SED, its position is that all are jointly and severally liable for the \$10.68 million compensatory damages award, but that the issue would have to be decided by the trial court.

Levinthal added that the \$10.68 million he had asked the jury to award accounted for not only the \$4.3 million upfront payment that SED lost, but also the profits it lost and expenses it incurred because the deal was a sham.

SED is an entity formed by several investors specifically to do the transaction at issue in the case, according to Levinthal, and thought it was going to buy the 1,235 nonperforming loans in the case for a total of roughly \$14 million, and then turn a roughly \$4 million profit

SED first sued Hyland and 3 Star in December 2014 in North Carolina state court, but while that suit was pending in September 2016, a former business partner of Hyland's pushed 3 Star into involuntary bankruptcy, which ultimately led to SED's claim becoming part of the federal bankruptcy action in Texas in May 2017.

In June 2016, meanwhile, Hyland's former business partner, Tim Fleet, filed suit with another entity, Biltmore Funding II, in Texas state court over fallout from the deal. SED intervened in that suit and obtained a judgment that 3 Star had defrauded it by selling loans it didn't actually own.

Sean M. Reagan of Leyh Payne & Mallia PLLC, representing Hyland, his companies and Home Servicing, told Law360 via email on Wednesday that SED was unfairly able to brandish that judgment at the jury trial, even though it had been reached through a side-deal with Biltmore Funding II, and SED never actually got any relief from 3 Star in that trial.

"SED then used that judgment as evidence that 3 Star defrauded it in various courts throughout this case, and relied heavily on it at trial," Reagan said. "But we were prevented from discussing the true agreement between SED and Hyland's former partner, so all the jury saw was a judgment that 3 Star committed fraud."

Reagan added that he didn't know where the \$10.68 million compensatory damages award came from, saying that SED's counsel just "threw it out in closing without any explanation."

"We believe we have several grounds for challenging the verdict on appeal," he said. "We plan to appeal, and we expect to prevail whenever this long and winding case finally ends."

An attorney for Brown & Associates did not immediately respond to a request for comment on Wednesday.

SED is represented by Jared I. Levinthal of Levinthal Wilkins PLLC, Douglas W. Hanna of Graebe Hanna & Sullivan PLLC, and Blake Hamm of Snow Spence Green LLP.

Hyland, Biltmore Funding, TM Property Solutions, Home Servicing, TMPS and Mark Dykes are represented by Sean M. Reagan of Leyh Payne & Mallia PLLC.

Brown & Associates is represented by Gary L. Pate of Thompson Coe Cousins &

Irons LLP.

The case is SED Holdings LLC v. 3 Star Properties LLC et al., case number 4:17-cv-01655 in the U.S. District Court for the Southern District of Texas.

--Editing by Adam LoBelia.

Correction: A prior version of the story misidentified one of the individuals involved in the dispute. The error has been corrected.

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