



Businessman Drops Appeal Of \$32.5M Vt. Resort Investor Deal

*By Nathan Hale
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A Miami businessman accused of stealing \$50 million from immigrant investors in Vermont's Jay Peak ski resort is dropping his appeal of a recently approved settlement with law firm Mitchell Silberberg & Knupp LLP that is expected to pay his alleged victims more than \$30 million, according to his attorney.

U.S. District Judge Darrin P. Gayles in Miami issued a paperless order Monday requiring alleged fraud mastermind Ariel Quiros to post a \$250,000 bond if he wanted to appeal the district court's approval of the settlement before the Eleventh Circuit, but Quiros' attorney said Tuesday that her client had already submitted a joint motion with the law firm and one of its partners to dismiss his appeal.

In his order, granting a motion from a court-appointed receiver for several Jay Peak entities, Judge Gayles said Quiros had not responded to the receiver's motion and that the amount the receiver requested was reasonable.

"We believe the judge reached the correct decision," the receiver, Michael I. Goldberg of Akerman LLP, told Law360 on Tuesday. "We are hopeful that the appeal will soon be dismissed."

Goldberg **slammed** Quiros in his Aug. 18 motion, calling Quiros' objection "frivolous." Goldberg argued the bond was appropriate to account for an estimated \$203,200 in appellate costs and \$46,800 interest to cover investors' delayed receipt of settlement funds if Quiros pursued the matter before the Eleventh Circuit.

"By appealing the court's final order overruling his objection to the settlement, Mr. Quiros — the mastermind of this fraud — continues his baseless attempts to interfere with a \$32.5 million settlement that will put literally millions of dollars, and \$20 million in very short order, in his victims' pockets," the receiver said.

The U.S. Securities and Exchange Commission also expressed outrage over Quiros' objections to the settlement, calling them "factually inaccurate, legally groundless and equitably repugnant" in a filing last month.

On Tuesday, Quiros' counsel, Melissa D. Visconti, said they had not responded to Goldberg's motion because they had filed a joint motion with MSK and partner David Gordon in the Eleventh Circuit to dismiss their appeal and had expected that order to have been entered by now.

"So, as soon as the Eleventh Circuit enters the order on that motion and dismisses the appeal, the [district] court's order requiring the bond will be moot," Visconti said. She added: "We are very pleased that we were able to resolve the issues on appeal with MSK and Mr. Gordon. Now, Mr. Quiros can put these issues behind him and the receiver may proceed with distribution of the settlement proceeds pursuant to his settlement with these defendants.

The SEC launched the legal battle against Quiros in 2016 over what the agency described as a "massive eight-year fraudulent scheme" in which Quiros looted more than \$50 million of more than \$350 million that had been raised for the ski resort and related projects from hundreds of foreign investors through the U.S. Citizenship and Immigration Services' EB-5 immigrant investor program.

In February 2018, Quiros cut a deal to resolve the SEC's claims against him, agreeing he was liable for \$81 million in disgorgement and agreeing to pay a \$1 million civil penalty and forfeit roughly \$417,000 in cash. He was also permanently barred from participating in the EB-5 program in any capacity.

The SEC action triggered other litigation over the failed project, including a proposed class action in Vermont from seven Jay Peak investors against MSK and Gordon, who began representing Quiros, his business partner William Stenger and the receivership entities in mid-2013 in connection with the SEC's investigation. The investors claimed MSK and Gordon breached their fiduciary duties and aided and abetted the alleged fraud.

The **receiver revealed the settlement** in a June 4 motion. It would resolve the investors' proposed class action against MSK and Gordon and a separate

suit Goldberg filed in Miami against the law firm and Gordon. The receiver's suit also alleged breach of fiduciary duty as well as fraudulent transfer claims.

Judge Gayles granted final approval of the deal on July 29 following a hearing the same day in which he heard 90 minutes of arguments from Quiros' attorney, according to the receiver's motion.

Goldberg is represented by Jeffrey C. Schneider of Levine Kellogg Lehman Schneider & Grossman LLP.

The proposed class plaintiffs are represented by Harley S. Tropin and Tal J. Lifshitz of Kozyak Tropin & Throckmorton LLP.

MSK is represented by David R. Atkinson and Stephen C. Richman of Gunster Yoakley & Stewart PA.

The SEC is represented in-house by Christopher E. Martin and Robert Kent Levenson.

Quiros is represented by Melanie E. Damian and Melissa D. Visconti of Damian & Valori LLP.

The case is SEC v. Quiros et al., case number 1:16-cv-21301, in the U.S. District Court for the Southern District of Florida. The receiver's case is Michael I. Goldberg, as Receiver for Jay Peak Inc. et al. v. Mitchell Silberberg & Knupp LLP et al., case number 1:19-cv-21862, in the U.S. District Court for the Southern District of Florida. The proposed class action is Qureshi et al. v.

People's United Financial Inc. et al., case number 2:18-cv-00163, in the U.S.
District Court for the District of Vermont.

--Editing by Robert Rudinger.