

Chinese EB-5 Investors Claim \$99M Fraud at Nicholas Mastroianni II's Harbourside Place

by Lidia Dinkova

Prolific EB-5 investment broker Nicholas Mastroianni II is accused of duping 78 Chinese investors into putting up \$99.5 million for a mixed-use development in Jupiter under false promises their loans would be secured.

The money directed to Mastroianni went into the completed Harbourside Place on the northwest corner of U.S. Highway 1 and Indiantown Road along the Intracoastal Waterway.

He structured the deal so he won't have to repay the investors in case of default, foreclosure or if the project wasn't profitable enough, the attorney for the Chinese investors said.

"The point is to get the money for free," said Jeffrey Schneider, a founding partner of Levine Kellogg Lehman

Schneider + Grossman in Miami. "His objective was to get \$99.5 million and, if the project is fabulously successful and he can pay back some of it or all of it, terrific, then I am sure he would pay it back. But if not, he positioned this thing so he could then wipe out the \$99.5 million and not pay them back at all."

The investors on Thursday sued Mastroianni, New York attorney Richard Yellen, Palm Beach County attorney R. Bowen Gillespie, Mastroianni's Jupiter-based regional EB-5 center U.S. Immigration Fund LLC, another EB-5 regional center run by Mastroianni and Yellen, Mastroianni's development company Allied Capital and Development of South Florida LLC, site owner Harbourside Place LLC and the Harbourside limited part-



"The point is to get the money for free," said Jeffrey Schneider, a founding partner of Levine Kellogg Lehman Schneider + Grossman in Miami.

nership with shares distributed to Chinese investors.

Mastroianni didn't return a request for comment by deadline at his U.S. Immigration Fund and Allied Capital and Development.

Yellen's law firm Richard L. Yellen & Associates declined comment.

A man named Gillespie who answered at law firm Gillespie & Allison in Boca Raton said he isn't the right Gillespie and declined comment. Schneider said it's the same Gillespie named in the complaint.

Mastroianni is the founder, CEO and chairman of U.S. Immigration Fund and was profiled in an October 2015 Fortune story on his EB-5 fundraising.

Mastroianni and Yellen started soliciting EB-5 investments into Harbourside in 2010. Mastroianni told investors his goal was to secure \$100 million from 200 investors, but if he fell short, he would secure a senior loan. The amount would be limited so the total financing wouldn't exceed \$110 million. But the Palm Beach Circuit Court lawsuit claims the loan would trump the investors' first priority position in case of default, and Mastroianni intentionally

failed to meet his goal by falling one investor short.

"It is absolutely inconceivable to me that he was unable to find another investor to invest in this project. Inconceivable," Schneider said. "He stopped at \$99.5 million on purpose so he can bring in another lender to be the first secured lender on the project."

Mastroianni's U.S. Immigration Fund has secured more than \$3 billion in EB-5 money for U.S. real estate projects, according to his website.

Instead of taking out a \$10.5 million loan to complement the EB-5 investors' financing, Mastroianni took out an \$18 million line of credit, and the senior loan grew through more financial maneuvering to \$60 million, according to the complaint. That senior loan then was assigned to a Mastroianni affiliate. Schneider said the details of that relationship remain unclear.

Mastroianni made himself the EB-5 investment conduit, developer, borrower and lender to cut out oversight over the EB-5 money.

"The way this story is going to end is either through a foreclosure or a bankruptcy. That is unfortunately the way this is going to end. In either, the objective is going to be to wipe out the EB-5 investor," Schneider said. "This was fraud from the very beginning."

Harbourside Place has nine restaurants, more than 13 shops and boutiques, the Wyndham Grand Jupiter hotel and a waterfront amphitheater, according to its website.

This is at least the fourth EB-5 fraud case involving South Florida real estate that has been filed in recent months.

Lidia Dinkova covers South Florida real estate for the Daily Business Review. Contact her at LDinkova@alm.com or 305-347-6665. On Twitter @LidiaDinkova.