

HOAs In Crosshairs Of 'Serial Relators' For Alleged PPP Fraud

By Quinn Wilson

Law360 (February 9, 2024, 6:12 PM EST) -- A series of whistleblower lawsuits accusing scores of homeowner associations and other organizations of illegally receiving Paycheck Protection Program funds has netted a handful of settlements, and one expert says cases are becoming more commonplace.

In 2022, Wade Riner launched at least four lawsuits accusing dozens of homeowner and condominium associations as well as country clubs of fraudulently receiving funds through the government's PPP. The program was enacted in the wake of the COVID-19 pandemic in 2020 to provide loans backed by the U.S. Small Business Administration to help businesses continue to pay up to eight weeks of payroll as well as mortgages, rent and utilities.

In each suit, Riner accused the defendants of violating the federal False Claims Act and sought three times the damages that the U.S. suffered plus civil penalties.

The lawsuits were initially filed under seal. In 2023, when the U.S. Department of Justice declined to intervene in Riner's lawsuit in Florida's Northern District and filed an unopposed motion to open parts of a case in Colorado federal court, those cases were opened.

In the third lawsuit, filed in Florida's Southern District, the U.S. government agreed to intervene regarding four Florida country clubs — the Aberdeen Golf & Country Club Inc., Mayacoo Lakes II Club Inc., Tequesta Country Club and The Loxahatchee Club Inc. — according to a September 2023 order from U.S. District Judge Kathleen M. Williams. The DOJ declined to intervene with respect to the remaining HOAs named in that lawsuit. A fourth lawsuit in California remains under seal after one HOA settled.

Qui tam suits are filed by a relator, who traditionally has been someone with inside knowledge of alleged fraud, said Jason Crawford, a partner with Crowell & Moring LLP. But Riner is an outsider, a circumstance that has increased in prevalence in response to the waves of pandemic-related fraud that reportedly exceeded \$200 billion, Crawford told Law360.



With the DOJ extending the statute of limitations on PPP fraud in 2022, private clubs and HOAs are likely to be in the crosshairs of serial relators for the time being, one Crowell & Moring attorney said.
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"It appears he had scoured publicly available information and found entities that are 501(c)(4)'s because those don't appear to be eligible for the loans," he said.

Crawford described Riner as a "serial relator" and said his unsealed litigation efforts could just be the tip of the iceberg in the evolving landscape. With the DOJ extending the statute of limitations on PPP fraud in 2022, private clubs and HOAs are likely to be in the crosshairs of serial relators for the time being, Crawford said.

But in wide-ranging FCA lawsuits like Riner's, the government will often selectively pick its battles when choosing when to intervene, Crawford said. He formerly prosecuted qui tam suits as a part of the DOJ's Civil Fraud Division.

"We would only intervene in generally 20% of the cases that are filed," Crawford said.

Crawford also pointed out that a majority of the HOAs' loans were forgiven, meaning the funds likely went toward PPP's intended uses, regardless of whether the associations were eligible. He also said the government's lack of intervention could indicate that the program's guidelines weren't "totally clear."

"The [False Claims Act] has a knowledge requirement, and it could be a lot harder to prove that knowledge element," Crawford said.

The four country clubs reached undisclosed settlement agreements with the government in October 2023, according to various dismissal stipulations filed in December. The government said in one of its stipulations that Mayacoo Lakes returned its first loan of more than \$386,000 and repaid roughly \$11,600 for a processing fee reimbursement but still sought the repayment of a second loan for the same price. Riner had accused a collection of 43 Florida HOAs and country clubs of fraudulently receiving more than \$36 million in PPP loans, according to the complaint. A majority of the loans were ultimately forgiven by the federal government.

Neither the U.S. Department of Justice nor the country clubs responded to requests for comment.

According to Riner's complaints, HOAs, condominium associations or for-profit country clubs were never made eligible for PPP loans. Despite multiple lobbying efforts to include these kinds of organizations, Congress never deemed them eligible during the two times it expanded the emergency loan program, Riner said in his complaints.

"Their fraud deprived the United States of the ability to loan appropriated funds to qualified businesses, as the funding for PPP loans ran out shortly after defendants applied for their loans," Riner said in his South Florida complaint.

On Thursday, five HOAs were dismissed from the South Florida lawsuit, according to a notice.

Randall C. Owens, a partner with Wright Close & Barger LLP who is representing Riner, told Law360 on Thursday that it was later learned that some of the HOAs had successfully applied for the loans, but later returned them after looking further into the program's guidelines. Owens declined to specify those HOAs and declined to comment further on the cases.

Riner pointed out that many of the HOAs had "substantial value" and access to capital markets. Hunters Run Property Owners Association Inc., located in Boynton Beach, Florida, has an annual revenue of \$33

million and spent only \$40 million over a five-year period, with potentially millions in reserve funds, according to Riner's South Florida complaint.

In California, a San Diego-area HOA reached a settlement with the DOJ in which it will pay more than \$2 million after it allegedly received roughly \$1.5 million in PPP funds, according to Crawford's blog post on Crowell & Moring's website. That settlement, which was also brought by Riner and still remains under seal, will net him nearly \$245,000 as the whistleblower.

In Colorado, 26 HOAs and condominium associations were accused by Riner of defrauding the PPP program for more than \$19 million, according to his complaint. The government has not said whether it will intervene in this case.

In North Florida, Riner accused 11 HOAs of defrauding the program for more than \$3.1 million, according to the complaint. Dunes of Panama Management Association Inc., the sole defendant to respond to Riner's lawsuits, denied his allegations and asked a federal judge to deny him relief on Jan. 25.

None of the remaining defendants could immediately be reached for comment.

Riner is represented by Randall C. Owens and Michael Adams-Hurta of Wright Close & Barger LLP and Kevin Ackerman of The Ackerman Law Firm PA.

The government is represented by James Alan Weinkle of the U.S. Attorney's Office for the Southern District of Florida and Mary Ann Lane Couch and Marie Armstrong Moyle of the U.S. Attorney's Office for the Northern District of Florida.

Dunes of Panama Management Association Inc., is represented by Stephen Syfrett of Williams & Syfrett PLLC.

Counsel information for the remaining defendants was not immediately available Friday.

Case information for the California lawsuit under seal was not immediately available Friday.

The cases are United States Of America et al. v. Hunters Run Property Owners Association, Inc. et al., case number 1:22-cv-23342, in the U.S. District Court for the Southern District of Florida; Riner et al. v. Watercolor Community Association Inc. et al., case number 3:22-cv-11072, in the U.S. District Court for the Northern District of Florida; and Riner et al. v. Beaver Run Homeowners Association et al., case number 1:22-cv-02071, in the U.S. District Court for the District of Colorado

--Editing by Haylee Pearl.