



TheState.com | News | Business | Sports | Entertainment | Living | Classifieds | Jobs | Cars | Homes |

State, The (Columbia, SC)

2007-02-09

Section: BUSINESS

Edition: FINAL

Page: B9

**THE COLLAPSE OF HOMEGOLD/CAROLINA INVESTORS
SIGHTS NOW SET ON STERLING
BUT EXPERTS SAY FORMER COMPANY CHAIRMAN'S CONVICTION NOT A LOCK**
BEN WERNER bwerner@thestate.com

Prosecutors have secured convictions for all Home Gold Financial and Carolina Investors officials tried -- five so far -- but experts say there are many reasons why the next person to stand trial should not surrender just yet.

On Wednesday, Ronald J. Sheppard, former chief executive officer of Home Gold, was sentenced to 20 years in prison for his role in the 2003 failure of the subprime mortgage lender and its Upstate subsidiary, Carolina Investors. When the companies went under, more than 8,000 investors lost more than \$277 million. Now, S.C. Attorney General Henry McMaster and his staff have one more former Home Gold official in its prosecution cross hairs -- one-time chairman and chief executive John "Jack" Sterling. No date has been set for a trial.

Sheppard's quick conviction and harsh sentence after a three-week trial sent a clear message about breaking state securities law, McMaster said.

But don't expect Sterling to plead out and avoid trial.

Defense attorneys not involved in the case say there are many reasons why it is better to go to trial instead of settling:

- * The lack of state laws setting clear precedents for securities fraud trials, making it hard to predict an outcome.
- * The use of expert witnesses has set up grounds for appeal in the past.
- * The fact that McMaster has not offered deals to those who have plead guilty to securities fraud.

In Sterling's case, McMaster will only consider a guilty plea on all counts, his office said.

So "if the state is not willing to make any concessions, you almost need to go to trial," said **Jack Swerling**, a Columbia defense attorney, not involved in this case.

During Sheppard's trial, Sterling's actions were mentioned almost daily in testimony for the defense and the prosecution. Bart Daniel, representing Sterling, also was a constant a

presence. Daniel took copious notes, paid attention to what witnesses said and watched how the prosecution used expert testimony.

After Sheppard's guilty verdict and prison sentence, Daniel said he did not want to detail his defense strategy. "Right now, we're getting ready for trial," he said.

Meanwhile, after more than two years of prosecuting former Home Gold and Carolina Investors officials, the attorney general's staff has fine tuned its court cases.

In the trials of Larry Owen, former president of Carolina Investors, and Earle E. Morris Jr., the former lieutenant governor and Carolina Investors chairman, the state brought many victims to testify.

During Sheppard's trial, however, prosecutors relied heavily on certified public accountants and corporate law experts.

The use of such testimony is where Columbia defense attorney Dick Harpootlian sees the potential for trouble and grounds for appeal.

Harpootlian was not directly involved in any of the Home Gold or Carolina Investors trials, but is defending a client in a case involving high-risk securities seller Thaxton Group.

Harpootlian says witnesses cannot say what a defendant should have known, could have known or would have known.

Morris is appealing his conviction, and the use of expert testimony is part of that appeal. Harpootlian said he suspects if Sheppard decides to file an appeal, expert testimony will be among the points objected.

Harpootlian also said there are not a lot of precedents in South Carolina's case law for securities fraud trials.

While Circuit Judge James Johnson has been consistent when dealing with questions of securities law during the Home Gold and Carolina Investors trials, Harpootlian said many questions need to be clarified for all judges by the S.C. Supreme Court.

Such unresolved issues are partly why **Swerling** said as long as defendants truly believe they are innocent, they are better off testing the law in court.

Harpootlian also said there have not been many advantages to pleading guilty for Home Gold and Carolina Investors executives.

Larry Owen, by pleading guilty part way through his trial, gave up his right to appeal the use of an expert in his trial.

However, Owen has not received any leniency for pleading guilty and is serving an eight-year prison term. He was denied parole once and is eligible again in late May.

Still, **Swerling** cautions not to count too heavily on appeals. Having tried several cases before Johnson, **Swerling** said he is an excellent judge. "He doesn't get reversed very often."

In the end, defending these cases is tough, **Swerling** said.

"Juries have zero tolerance for this type of corporate fraud. There's not a whole lot of sympathy."

Reach Werner at (803) 771-8509.

* * *

WHAT'S NEXT

Sterling

-- * John "**Jack**" Sterling, one-time Home Gold Financial chief executive and board chairman, has been charged with three counts of securities fraud. A trial date has not been set.

-- * Circuit Judge James Johnson has delayed a ruling on whether seven remaining charges against Ronald J. Sheppard fall under the jurisdiction of the state grand jury. Originally, Sheppard had been indicted on 11 counts, but Johnson broke them apart before this trial started. One count was thrown out, leaving seven.

-- * Former Lt. Gov. Earle E. Morris Jr., who was chairman of Carolina Investors, is appealing his 2004 conviction of securities fraud. He is free on bail.

-- * Larry Owen, former Carolina Investors president, is serving an eight-year prison term and is eligible for a parole hearing in late May. A May 2006 hearing rejected his parole request.

(1) - Sterling



[News](#) | [Business](#) | [Sports](#) | [Entertainment](#) | [Living](#) | [Shop Local](#) | [Classifieds](#) | [Jobs](#) | [Cars](#) | [Real Estate](#)

[About TheState.com](#) | [About the Real Cities Network](#) | [About the McClatchy Company](#)
[Terms of Use](#) | [Privacy Policy](#) | [Copyright](#)