



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

State, The (Columbia, SC)

2006-10-29

Section: BUSINESS

Edition: FINAL

Page: F1

MORRIS STILL FREE, COUNTS ON APPEAL

BEN WERNER

bwerner@thestate.com

Two years ago Thursday, former Lt. Gov. Earle E. Morris Jr. stood trial for his role in the failed Upstate firm Carolina Investors.

Morris, now 78, was convicted on 23 counts of securities fraud for lying to investors as chairman of the Pickens-based investment firm and sentenced to a 44-month jail term, or almost four years. Now, he's trying to overturn that ruling.

Attorneys representing Morris have filed an appeal of his conviction with the S.C. Court of Appeals. Morris, who has remained free on \$75,000 bail pending an appeal, wants his conviction to be thrown out because - among other reasons - he was not properly informed of his constitutional right against self-incrimination - commonly known as Miranda right.

If successful and the conviction is overturned, the former lieutenant governor, longtime comptroller general and Upstate senator could avoid jail.

Morris' attorney, Joel Collins, did not respond to messages asking for comment about the appeal.

Attorney General Henry McMaster's office is working on a response to Morris' appeal, and would not comment on what has been filed.

The demise of Carolina Investors started more than a decade ago, after it became a subsidiary of a sub-prime mortgage lender eventually named HomeGold Financial Inc.

Increasingly, Lexington-based HomeGold fueled its growth with money raised by Carolina Investors, which essentially sold junk bonds to S.C. residents.

This money was loaned by Carolina Investors to HomeGold. But as the amount of money HomeGold borrowed increased, its ability and likelihood of repayment dramatically decreased.

By early 2003, Carolina Investors was out of cash and HomeGold could not repay its loan.

In March 2003, Carolina Investors filed for bankruptcy. HomeGold followed shortly thereafter.

More than 8,000 investors lost more than \$288 million. A civil settlement in federal court has

since awarded investors about 18 cents for every dollar lost.

Though much smaller in scale, the failure of Carolina Investors and its parent has been considered by many as South Carolina's own version of the collapse of Houston-based Enron. Just this past week, former Enron chief executive Jeffrey Skilling was sentenced to more than 24 years in prison.

In Pickens, the town of his birth, Morris was supposedly the man looking out for investors in the firm's board room when it imploded in spring 2003.

Many of the investors were retirees who had supported Morris' political career.

For Morris, after three-weeks of testimony in November 2004 that alternated between explanations of securities law and the blistering charges leveled by jilted investors, a jury convicted him on 23 counts of lying to investors. Morris was sentenced to 44 months.

It did not take long for the Upstate to react, instantly pushing to remove the name Earle E. Morris from highway signs in Pickens County.

The appeal of his securities fraud conviction, though, is moving forward much slower and is likely to continue at an unhurried pace.

The Miranda issue is one of eight causes for appeal included in an amended appeal brief filed by Collins for Morris. He is asking the appeals court to either overturn the conviction or let the case be reheard in a lower court.

While most of the causes for appeal concern events that occurred during the trial, such as instructions given to the jury, the Miranda issue occurred more than a year before the trial started.

This issue is also a contributing reason why the Morris appeal is moving slowly.

Attorneys representing both Morris and McMaster's office are currently waiting for the transcripts of pre-trial hearings where the Miranda issue was raised.

End result, it is likely Larry Owen, former Carolina Investors president serving an eight-year sentence after pleading guilty to similar charges of securities fraud, will be paroled before Morris' appeal is even heard.

Jack Swerling, a longtime Columbia trial attorney, said he was not surprised to hear about the pace of Morris' appeal.

"The time frame is legitimate, and the issues are reasonable," said **Swerling**, who is not involved in the case.

A complex case, such as securities fraud, tends also to be document intensive, **Swerling** said. When drafting an appeal or responding to an appeal, attorneys need to sift through mountains of documents, along with researching case law.

With the Morris trial, attorneys had to wait nearly a year for the trial transcript. Then it took

several months to review this lengthy document to file the appeal.

As for the Miranda issue, **Swerling** said, in the 40 years since the Miranda ruling, courts still are setting the boundaries for this rule. That creates a lot of case law for both sides to review.

Collins, before Morris' trial and now in his appeal, questions whether his client should have been informed of his right not to self-incriminate.

Collins claims that shortly after Carolina Investors filed for bankruptcy, when Morris testified before the state's securities commissioner, he should have been read his rights.

The state has never disputed that Morris gave information in a meeting with the securities commission staff, but has maintained Morris voluntarily testified.

Collins has said this information became the basis of the indictment against Morris.

Does this mean Morris should have been read his rights?

"There's no question there's a perception out there that you have to give a Miranda warning," **Swerling** said.

But, he added, this is not always the case. The key to when a person needs to be Mirandized is establishing whether the person is in custody or a target of an investigation.

When somebody volunteers information, as the state says Morris did, the question is tougher to sort out, especially because of a quirk in S.C. securities law, **Swerling** said.

In South Carolina, the securities commissioner also is the attorney general.

By appearing before the securities commission staff, did Morris also, in effect make a statement to the attorney general - the person charged with investigating and prosecuting the case? If so, then when did he become a target of the attorney general's investigation?

These questions are what a panel of appeals court judges is being asked to decide.

"If the court agrees a statement was made (to the attorney general or state grand jury), the state would have a more difficult case to prove," **Swerling** said.

WHAT HAPPENED

* Funds raised by Carolina Investors had for several years been used to fuel the growth of its parent, Lexington-based subprime lender HomeGold Financial Inc.

n The debt owed by HomeGold to its subsidiary continued to grow without being fully repaid.

* In March 2003, when Carolina Investors needed more cash, the parent company, struggling with its own financial woes, could not pay any of the money it owed.

* When Carolina Investors filed for bankruptcy, more than 8,000 investors - many of them

retirees - lost more than \$288 million. A civil settlement in federal court eventually awarded investors about 18 cents for every dollar lost. They have yet to be paid the full amount.

-Ben Werner

KEY PLAYERS

LARRY OWEN

n The former president of Carolina Investors is serving an eight-year sentence after pleading guilty to 22 counts of securities fraud a week into his trial in July 2004. He becomes eligible for parole in May.

ANNE OWEN

* The former vice president of Carolina Investors and wife of Larry Owen pleaded guilty in July 2005 to eight counts of securities fraud. She is serving 18 months of home detention and electronic monitoring, after serving a 90-day jail sentence.

KAREN MILLER

* The former chief financial officer of HomeGold pleaded guilty in September 2005 to one count of conspiracy to commit securities fraud. Her sentencing has been deferred while she cooperates with the investigation.

RONALD J. SHEPPARD

* The former chief executive of HomeGold is free on bail until the start of his trial, scheduled for January. He pleaded not guilty in November 2005 to securities fraud and other charges. If convicted, he faces up to 57 years in prison and fines of more than \$165,000.

JACK STERLING

* The former chairman of HomeGold is free on bail pending trial. He faces up to 25 years in prison and a \$105,000 fine. No court date has been set.

-Ben Werner

WHAT'S NEXT

Attorneys representing Earle E. Morris Jr. have filed an appeal of his conviction:

- * The state now gets a chance to respond to the appeal.
- * However, the state is waiting for a transcript of the pre-trial hearings because of issues raised in Morris' appeal. It is unclear when the transcript will be filed.
- * After the state responds, Morris' attorneys get one more chance to respond to the state.

* Then the appeal is scheduled to be heard by a panel of judges from the S.C. Court of Appeals.

* Under a best-case scenario, it is possible Morris' appeal will be heard before the end of 2007.

* After the appeal is heard, depending on the ruling, the case could be sent back to the lower court to be reheard, the conviction can be overturned, or it can stand.

There also is the possibility for another round of appeals to the S.C. Supreme Court.

-Ben Werner

ABOUT THE APPEAL

Attorneys representing Earle E. Morris Jr. have filed an appeal of his conviction on 23 counts of securities fraud, and the state will have an opportunity to respond to the appeal. Morris' appeal centers on several key points:

n Whether Morris should have been informed of his right against self-incrimination

* Whether the jury instructions included words that improperly made it easier for the jury to convict

* Whether the lower court should have stalled Morris' trial until the attorney general's investigation into the failure of Carolina Investors and HomeGold Financial Inc. was concluded. Morris' attorney claims key witnesses would not testify because of the ongoing investigation.

* Whether one of the state's expert witnesses should have been allowed to testify

* Whether one of Morris' expert witnesses should have been allowed to testify

* Whether Morris' attorney should have been allowed to enter into evidence a copy of the examiner's report, made as part of the bankruptcy court proceedings

* Two questions regarding whether the case should have been dismissed on procedural issues

-Ben Werner

Reach Werner at (803) 771-8509.

1. Former Lt. Gov. Earle E. Morris Jr., right, talks to his wife, Carol, while waiting for the jury to make its decision in November 2004. He was found guilty on 23 counts of securities fraud for lying to investors. FILE PHOTOGRAPH/THE ASSOCIATED PRESS

2-6. L. Owen, A. Owen, Miller, Sheppard, Sterling

7. Jincy Suttles, left, and Jeanette Burgess review a proposed settlement from Carolina Investors in this August 2003 photograph. Many in Pickens County had their money in the company when it filed for bankruptcy. FILE PHOTOGRAPH/THE STATE

8. A copy of a returned check from Carolina Investors. A civil settlement in federal court eventually awarded investors about 18 cents for every dollar lost. They have yet to be paid the full amount.

9. HomeGold auctioned off its possessions to pay back some of its investors.



[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](#)