

EXCLUSIVE REPORTS

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Trustee approved in Mile High case

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U.S. Bankruptcy Court Judge Howard Tallman on Jan. 18 authorized the appointment of a trustee to represent creditor interests in the Chapter 11 bankruptcy of [Mile High Capital Group](#).

The trustee, which must be approved by a Denver District Court judge and the U.S. Bankruptcy Court, will work with creditors to craft a plan to recover assets for more than 1,000 individual buyers who invested an average of \$17,500 each for real estate projects -- many of which never were started.

The decision to appoint a trustee, made during an emergency hearing before Tallman, means Mile High Capital Group will be removed from control of the court-appointed receiver that has managed the troubled real estate investment company's affairs since November.

While Tallman and others involved in the case said in court this week that Chapter 11 bankruptcy protection offers the best chance for Mile High creditors to recover at least some of their money, they expressed reservations that all assets can be salvaged.

"This seems to be the best way to maximize recovery," Tallman said. "Be that some [assets] or all, we'll have to see."

An attorney for the Colorado securities commissioner said in the hearing before Tallman that recommending the appointment of a Chapter 11 trustee put the department in an awkward position.

"We want to maximize revenue, but we're not sure this will do it," he said. "The question is, are we going to forward an illegal security?"

Securities Commissioner Fred Joseph said his office is continuing an investigation into possible securities law violations.

Attorneys involved in the case said it will be hard to make all Mile High customers whole.

According to bankruptcy records, the company has \$13.8 million in known liabilities (not including 43 pending lawsuits against the company) and \$5.9 million in assets (not including the personal property of Mile High principals).

Attorney Tom Connolly, who represented the court-appointed receiver, [Hall Wells DiNardo](#), in the Jan. 18 bankruptcy court hearing, told Tallman about 1,000 people deposited earnest money averaging \$17,500 each with Mile High.

Mile High was founded in 2000 by Fredric "Rick" Dryer, but he hasn't been involved in Mile High since the receiver was appointed in November. In a court filing earlier this month, Dryer complained that the court-appointed receiver made unsubstantiated statements about Mile High's financial condition. Dryer, according to the petition, said he wanted to be more closely involved in the receiver's operation of Mile High Capital and have more access to financial records.

Mile High told potential investors at real estate seminars around the country that it identifies and purchases tracts of land, develops subdivisions and sells plots to investor owners.

Once the developments were readied for construction, investors would take out real estate construction loans to build the actual units, which were mostly duplexes.

After a flurry of complaints and lawsuits by investors caught the attention of the Colorado securities division last year, a judge appointed a receiver to manage the business. Several scheduled real estate seminars were canceled.

The company sold contracts for about 1,200 units, receiving about \$21 million in total investments, Connolly said.

Some creditors also took out construction loans for projects that Mile High drew from -- giving customers little in return, Connolly said.

But while a handful of Mile High projects were built, few of the investors actually have title to properties they can call their own, Connolly told Tallman.

"We don't know where that money is," Connolly said, noting the receiver has only about \$32,000 cash on hand and expects \$50,000 to arrive in "the next couple of weeks."

Connolly speculated in court that the money may "have been consumed in lavish living or offshore properties."

In making his case for the appointment of a trustee, Connolly singled out 702 units that might be developed through associations with Mile High. But many of those units will require additional investments, he said.

The project with the most units is Avera Place, a 345-unit apartment and condo development near Raleigh, N.C. Connolly said that, while none of the deals have been closed, Mile High has a contract to acquire the project if investors come on board to make payments to finish it.

Connolly called for the emergency hearing to appoint a trustee in large part because the North Carolina deal could go into default in the next couple of weeks. The appointment of a trustee could delay that.

Other projects include a development called Cima Vista in Colorado Springs. Connolly said all 112 investors associated with the project remain on board. Mile High promoted Cima Vista units through an investment seminar in San Francisco last May.

Mile High submitted a non-binding letter of intent to buy Cima Vista's interests last April, but the parties didn't enter into a binding agreement or option. The receivers for Mile High Capital Group settled a lawsuit filed by the developers of the Cima Vista apartment project in Colorado

Springs on Dec. 15.

Connolly also cited 145 units at a condo and apartment development called Del West, a project in Aurora that Mile High also marketed. He noted that 45 investors already have closed on the units.

Mile High's developments include Cedar View in Montrose, Eagle Preserve in Brighton, Mesa Estates in Grand Junction, Penley Farms in Pflugerville, Texas, and Taft Street in Brooksville, Fla., according to an inventory of properties filed with the bankruptcy petition.

The value of the properties represents the total of Mile High's \$5.9 million in assets. But in a report filed in Denver District Court in December, Hall Wells DiNardo said most of Mile High's property is "encumbered" and many of its receivables are "uncollectible."

Brent Cohen, an attorney for Andrew McFaul, former chief operating officer with Mile High, said during the Jan. 18 bankruptcy court hearing that his client has a plan that's on a "grander scale than what Connolly was suggesting." Cohen is an attorney for the Denver-based firm Rothgerber Johnson & Lyons LLP.

Under the plan, McFaul would underwrite and develop specific real estate projects under court oversight, using remaining proceeds to repay those who invested in Mile High and its affiliates.

In a statement filed with the bankruptcy court regarding an emergency motion to appoint a trustee, McFaul said his plan was rebuffed by the receiver, but he believes it remains "viable and realistic."

McFaul is listed in court documents as Mile High's 14th-largest unsecured creditor, with a claim of \$127,929.

A July 2005 press release issued by Mile High reported that McFaul and his brother-in-law, Jeffrey Dietz, bought the company for \$100 million -- a claim McFaul called "patently false" in a Jan. 17 court document.

McFaul and Dietz resigned from Mile High in September after finding out about Mile High's lawsuits and that Dryer had a prior conviction for securities fraud. McFaul said he then contacted the staff of the Colorado securities commissioner and federal authorities regarding Mile High and is cooperating with an ongoing investigation.

McFaul is engaged in a legal dispute with Dryer over the ownership of Aspen Homes and IPF, two companies associated with Mile High.

Phil Feigin, an attorney representing McFaul, said Chapter 11 gives investors some chance of getting their investment back. "I think it would be imprudent to start waiving the hopes of all those who've already been hurt," he said. "I don't want to dash or create false hopes."

James Faber, a Denver-based attorney who represents 69 individual Mile High customers, said he's not holding out much hope that developing the projects will help his clients recover their money.

"The problem is the number of projects that are remotely real is minimal," Faber said, echoing the conclusion of Hall Wells DiNardo in its receiver's report on Mile High in Denver District Court last month.

But while the chance of recovering the assets through the projects is slim, Faber said, Chapter 11 gives his clients a chance to gain more influence on the case through a court-appointed trustee.

A trustee in the Mile High case is expected to be named soon.