

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10584 / December 12, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18927

In the Matter of

**AMERICA MODERN GREEN
SENIOR (HOUSTON) LLC,
AMERICA MODERN GREEN
COMMUNITY (HOUSTON) LLC,
and AMERICA MODERN GREEN
RESIDENTIAL (HOUSTON) LLC,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against America Modern Green Senior (Houston) LLC, America Modern Green Community (Houston) LLC, and America Modern Green Residential (Houston) LLC (“AMG Senior,” “AMG Community,” “AMG Residential,” respectively, and collectively the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

Summary

1. Crown Point Regional Center ("CPRC"), a federally-designated regional center formed and approved to participate in the EB-5 Immigrant Investor Program ("EB-5 program"), sponsored the raise of \$49.5 million from 90 immigrant investors in three EB-5 offerings. The EB-5 program can provide a path to permanent residency and, ultimately, citizenship, to foreign investors. Respondents were formed so that qualifying equity investments could be made pursuant to the EB-5 program. Respondents told investors that their funds would finance a portion of the development and operation of a mixed-use real estate development project located near Houston, Texas (the "Project").

2. Respondents, however, did not use investor funds as promised. Instead, Respondents improperly transferred \$20.5 million of investor funds for undisclosed purposes; namely, to fund purchases with respect to two unrelated real estate projects.

3. In addition, AMG Community and AMG Residential provided investors with offering materials that misstated the title and purported management role of a Houston-area real estate expert, and similarly misstated the purported management role of a second Houston-area real estate expert.

4. Respondents' misuse of \$20.5 million of investor funds and their false statements and omissions regarding the use of funds and the management associated with the Project violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Respondents

5. **America Modern Green Senior (Houston) LLC** ("AMG Senior"), is a Texas limited liability company founded in 2013 with its principal place of business in Pearland, Texas. AMG Senior was formed to use EB-5 investor funds to help finance the development, construction, and operation of a senior independent and assisted living facility located within the Project.

6. **America Modern Green Community (Houston) LLC** ("AMG Community"), is a Texas limited liability company founded in 2015 with its principal place of business in Pearland, Texas. AMG Community was formed to use EB-5 investor funds to help finance the development, construction, and operation of townhomes and a community center located within the Project.

7. **America Modern Green Residential (Houston) LLC** ("AMG Residential"), is a Texas limited liability company founded in 2015 with its principal place of business in Pearland,

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Texas. AMG Residential was formed to use EB-5 investor funds to help finance the development, construction, and operation of a multifamily apartment community, condominium community, and 9,000 square feet of retail space located within the Project.

8. Respondents are all 100% owned by a master developer that is an indirectly wholly-owned subsidiary of a foreign real estate company (“International Parent Company”).

Other Relevant Entity

9. **Crown Point Regional Center LLC** (“CPRC”), is a Texas limited liability company founded in 2010 with its principal place of business in Pearland, Texas. CPRC was established to participate in the EB-5 program to promote economic growth and facilitate investment within Harris and Montgomery Counties. CPRC was approved as a “regional center” by U.S. Citizenship and Immigration Services (“USCIS”) in May 2011.

Background

10. From May 2015 through March 2017, Respondents raised \$49.5 million from 90 immigrant investors through three related EB-5 investment offerings. The EB-5 program, administered by USCIS, can provide a path to permanent residency and, ultimately, citizenship, to foreign investors who invest in a commercial enterprise that creates at least 10 jobs for American workers. Each offering consisted of a \$500,000 capital contribution and a \$50,000 administrative fee, and investors purchased equity interests in one of three entities: (1) AMG Senior, (2) AMG Community, and (3) AMG Residential.

11. According to Respondents’ offering materials, investor funds would be used solely for the development and construction of a particular phase of the Project. For AMG Senior, investment funds would “finance the development and operation of a senior independent and assisted living facility comprised of five building elements in mid-rise format.” For AMG Community, the investment proceeds would be used to “own, develop, construct, and operate a mixed-use residential community with townhomes and a clubhouse.” And for AMG Residential, investor funds would be used to “own, develop, construct, and operate a multifamily apartment community . . . and condominium community with [ground level] retail space with some age restrictions for residents.” Respondents also provided investors numerous brochures on the different phases of the Project’s development and tours of the Project site.

12. Approximately six months after AMG Senior started soliciting and receiving investor funds, it began transferring a portion of those funds to a different subsidiary of the International Parent Company—an entity unrelated to the Project (hereafter, “Unrelated Entity”). From November 2015 through February 2016, AMG Senior made three improper and undisclosed transfers of investor funds, totaling \$14 million, to the Unrelated Entity. These funds were used to make purchases associated with an unrelated real estate project. Similarly, in May 2016, AMG Community improperly transferred \$4 million of investor funds to the Unrelated Entity and used those funds to make purchases associated with a second unrelated real estate project. Finally, AMG Residential improperly transferred \$2.5 million of investor funds in May 2016 to the Unrelated Entity also used to make purchases associated with the second,

unrelated project. During the same time period, Respondents sent EB-5 investors at least 10 investor update letters touting the Project's community support and detailing its progress, but they never disclosed the misuse of investor funds for purposes wholly unrelated to the Project.

13. The International Parent Company eventually replaced the \$20.5 million that Respondents had improperly transferred.

14. AMG Community and AMG Residential also distributed to investors Private Placement Memoranda ("PPMs") that included misstatements regarding the management of the master developer and CPRC by two Houston-area real estate experts. These misstatements were based on previous draft versions of the PPMs that were not corrected before distribution to investors. The two Houston-area real estate experts were instead associated with an affiliate of the International Parent Company not involved with the EB-5 offerings. They held no titles at CPRC, the master developer, or any other developer of the Project as stated in the PPMs for AMG Community and AMG Residential. The PPM for AMG Senior accurately described the roles played by these real estate experts. After being alerted to the misstatements, Respondents issued a December 2016 investor update, which clarified that one of the experts "did not provide any services to the Developer for the Project and was not involved in the Project" without specifying the update related to both AMG Community and AMG Residential.

15. Respondents should have known the transfer and misuse of investor funds, which were never disclosed, fell outside of the stated use of proceeds detailed in the offering materials. Respondents approved the improper transfers, knew none of the expenditures were related to the Project, and should have known those transactions would operate as a fraud or deceit on investors. Finally, Respondents should have known the misstatements regarding the Houston-area real estate experts were materially misleading.

16. As a result of the conduct described above, Respondents AMG Senior, AMG Community, and AMG Residential violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Respondents' Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents, including the replacement of the misused funds prior to any contact from the Commission staff in connection with its investigation, the advanced repayment of all funds to investors (\$49.5 million) prior to final settlement of this matter, and the cooperation afforded the Commission staff.

Undertakings

18. Within 180 days of the date of entry of this Order, and prior to or simultaneous with the payment of interest to investors consistent with Section IV.B. below of the Order, Respondents shall provide a copy of this Order to all 90 investors via mail or e-mail, along with a cover letter copying Commission staff. Respondents shall provide a certification that they completed this undertaking in a manner consistent with Section IV.D. below of the Order.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and Section 17(a)(3) of the Securities Act.

B. Respondents shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$51,444,135.40 as follows:

1. Respondent AMG Senior, within 180 days of the date of entry of the Order, shall pay disgorgement of \$17,600,000 and prejudgment interest of \$463,496.67. If timely payment is not made, additional interest shall accrue pursuant to Commission Rule of Practice 600 [17 C.F.R. 201.600].
2. Respondent AMG Community, within 180 days of the date of entry of the Order, shall pay disgorgement of \$4,400,000 and prejudgment interest of \$110,533.06. If timely payment is not made, additional interest shall accrue pursuant to Commission Rule of Practice 600.
3. Respondent AMG Residential, within 180 days of the date of entry of the Order, shall pay disgorgement of \$27,500,000 and interest of \$570,105.68. If timely payment is not made, additional interest shall accrue pursuant to Commission Rule of Practice 600.
4. \$49.5 million of the disgorgement ordered in Sections IV.B.1-3, above, shall be deemed satisfied by Respondents' payments previously distributed to investors.
5. Respondents will pay reasonable interest on the disgorgement amount to the affected investors, calculated at the short-term Applicable Federal Rate compounded quarterly from the end of the month in which each investment was made through June 30, 2018, totaling \$1,144,135.41, pursuant to calculations reviewed and approved by the Commission staff.
6. Respondents shall, within 45 days of the date of entry of the Order, pay a civil money penalty of \$800,000, on a joint and several basis, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying AMG Senior, AMG Community, and AMG Residential as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to James E. Etri, Assistant Director, Division of Enforcement, Fort Worth Regional Office, U.S. Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX, 76102.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. Respondents shall certify, in writing, compliance with the payment of disgorgement and interest to investors set forth in Section IV.B. above. The certification shall provide written evidence of compliance in the form of a narrative and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and

supporting materials shall be submitted to James E. Etri, Assistant Director, Division of Enforcement, Fort Worth Regional Office, U.S. Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX, 76102, no later than sixty (60) days from the date of completion of such undertakings.

By the Commission.

Brent J. Fields
Secretary