

MIAMI-DADE COUNTY JUNE 1, 2016 7:15 PM

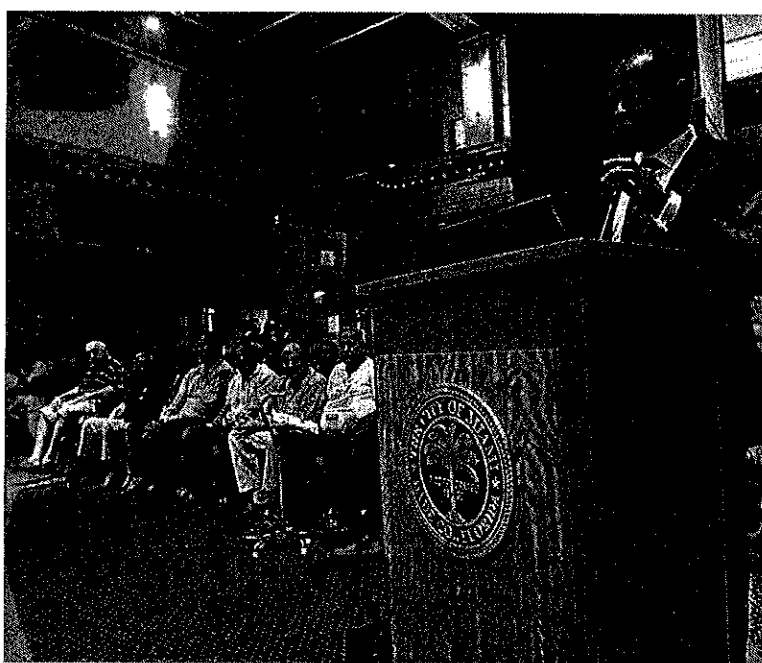
Miami digs in against SEC as securities fraud civil trial looms

HIGHLIGHTS

The SEC accused Miami officials of playing shell games to hide losses from bond investors in the late 2000s

Miami attorneys say a series of budget transfers was legal, and no one was misled

A trial is scheduled to start Aug. 22



Former Miami Budget Director Michael Boudreaux has been called the “architect” of budget transfers that are now the subject of a Securities Exchange Commission lawsuit. Miami Herald file

BY DAVID SMILEY
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A civil securities fraud case against the city of Miami is coming to a conclusion this summer, nearly seven years after federal investigators began probing a series of questionable accounting maneuvers that temporarily masked a mounting financial crisis at the city.

And though evidence suggests Miami officials temporarily shifted highly restricted funds into bleeding operating accounts to mask losses in the late 2000s — all the while assuring bond investors

their finances were still rosy — the city appears intent on fighting the Securities and Exchange Commission all the way to a jury trial.

In court documents filed late Tuesday, attorneys for the city and former budget director Michael Boudreaux argued that the SEC has spent years trying to turn what maybe at worst was bad budget practice into a nefarious scheme to defraud the public. Despite years of investigation and litigation, they said the SEC has no evidence to prove the city violated securities laws or harmed a single bond investor while shifting around \$37.5 million in 2007 and 2008 in order to pad the city's reserves.

"We think the SEC has mischaracterized the actions of the city and disagree with their allegations," city attorney Victoria Méndez said Wednesday. "We look forward to our day in court."

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WE LOOK FORWARD TO OUR DAY IN COURT

Victoria Méndez,
Miami city attorney

The stakes are high for Miami, which has already spent more than \$2 million on attorneys fighting the case, and for Boudreaux, who now works as a business manager for a congregation of nuns in New Orleans. After attempts to settle the case failed, the SEC is asking Judge Cecilia Altonaga for a permanent injunction barring Miami — labeled a repeat offender after being hit with SEC sanctions in 2003 — from engaging in improper budget practices, and seeking undisclosed civil penalties. A jury trial is scheduled for Aug. 22.

"It's really rare for a city or a municipality to go through nuclear war with the SEC," said Andrew Stoltmann, an attorney and adjunct securities law professor at Northwestern University. "Sometimes they may not settle until the courthouse steps, but going to an actual trial is really rare for a city or municipality, in part because there's always dirty laundry that's aired."

To be sure, attorneys for the SEC say they have thousands of pages of emails, financial documents and deposition transcripts to prove Boudreaux "masterminded" a scheme to hide a financial crisis by playing a "shell game" with various city accounts. Faced with multimillion-dollar losses in 2007 and 2008, Boudreaux convinced his bosses and Miami's city commissioners to transfer funds from capital projects back into Miami's general fund in order to pad the city's coffers.

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IT'S REALLY RARE FOR A CITY OR A MUNICIPALITY TO GO THROUGH NUCLEAR WAR WITH THE SEC

Andrew Stoltmann, securities attorney

Boudreaux said the dollars were “unspent.” But the SEC says in reality the funds were either highly restricted development “impact fees,” already spent, or still needed to fund ongoing projects that continued to incur expenses — the reason ultimately given for Boudreaux’s firing in 2010. One example given by an SEC expert involved the city’s purchase of more than \$4 million in police cars from a raided account that was nearly empty.

Ultimately, most of the money transferred into the city’s general fund was transferred back into the original accounts in 2010 following a scathing audit, contributing to a financial meltdown. Boudreaux has said the shifting of funds was done in order to stave off layoffs and steep cuts and with the blessing of senior officials and outside auditors. But the SEC believes the city had different motivations.

At the heart of the case are allegations that the transfers were all a “shell game” to pad the city’s coffers and mask its true financial problems at a time Miami was heading to market to sell more than \$150 million in bonds. SEC attorneys note that both before and after the city presented its finances to credit ratings agencies — which categorized the city’s bond offerings as low-risk, low-interest bonds — then-finance director Diana Gomez sent emails questioning the validity and legality of the cash transfers, and whether the city was being honest about its financial situation.

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IT IS HARD TO IMAGINE MORE EGREGIOUS SCHEMES THAN THAT WHICH OUR CITY ENGAGED TO DEFRAUD INVESTORS

from June 1 SEC motion for summary judgment

“For at least two years, they solicited investors and sought to maintain the investors they had in prior bond offerings based on numerous misrepresentations and omissions, raising more than \$165 million in the process,” lead SEC trial attorney Amie Riggle Berlin argued in a filing early Wednesday morning. “It is hard to imagine more egregious schemes than that which our City engaged to defraud investors. And yet they have done this before, but remain undeterred.”

In reality, they say the shifting of funds was akin to rearranging the deck chairs on the Titanic. In depositions, Boudreaux acknowledged that by 2006 his own projections showed the city was headed for bankruptcy — a fate avoided when commissioners declared “financial urgency” and unilaterally slashed employee compensation.

Still, attorneys for the city and Boudreaux say the city’s transfers were, in fact, all done above board and fully explained in their annual financial reviews according to government accounting standards. They also say the financial documents questioned by the SEC were honest about expenses exceeding income. Furthermore, they note that the SEC has not brought forward a single disgruntled investor to prove anyone was damaged by the city.

“If the purportedly false information is not material to an investor, it is not material to the SEC,” attorney Scott Cole argued in a joint filing on behalf of the city and Boudreaux.

It’s possible the case won’t get to trial. The motions filed Tuesday and Wednesday by the city and SEC were for summary judgment, essentially asking Altonaga to decide parts or all of the case before it goes to trial. If the case does head to trial, though, the timing may feel odd, with the city’s reserves fully stocked and property tax revenues soaring.

“In these kinds of cases, you may have members of the public scratching their heads wondering is it really worth the money?” said David Chase, a defense attorney and former SEC investigator who pored over Miami’s books in the 1990s. “You can have a discussion for the greater good. But a resident of the city of Miami may just be looking at it saying why are both parties going through the process?”

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Roberto Ravelo

7 yrs from now there will be a trial again

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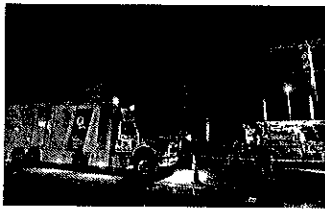


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