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SEC Recoups Bonus of Former Beazer Executive Under Sarbanes-Oxley

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On August 30, the Securities and Exchange Commission announced a settlement with the former chief financial officer of Beazer Homes USA to recover more than $1.4 million in bonus and stock profits that he received after the home builder filed fraudulent financial statements during fiscal year 2006.

Although the chief financial officer, James O'Leary, was not himself charged with wrongdoing, the SEC claimed in its complaint that it was required under Section 304 of the Sarbanes-Oxley Act to recoup the money on behalf of Beazer. The SEC argued that money can be recouped based on required certifications that O'Leary made pursuant to Section 302 of the Sarbanes-Oxley Act in Beazer's quarterly and annual reports concerning the accuracy of Beazer's financial statements. The SEC's settlement with O'Leary is subject to court approval.

Section 304 requires reimbursement to the company by the chief executive officer (CEO) and chief financial officer (CFO) of the issuer for incentive or equity-based compensation received during the 12-month period following the issuance of restated financial statements where there is "material noncompliance of the issuer, as a result of misconduct," with financial reporting requirements. In this instance, such compensation included O'Leary's bonuses and equity-based compensation, as well as the profits he received from selling Beazer stock he received on exercise of stock options.

This is only the second time the SEC has succeeded in enforcing its interpretation of Section 304 to apply to a CEO or CFO even though the executive officer was not accused of engaging in "misconduct."

To read the SEC press release announcing this settlement, click here.

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