

BankBCLP

FDIC SUES FORMER DIRECTORS AND OFFICERS OF OMNI NATIONAL BANK

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On March 16, 2012, the FDIC, in its capacity as Receiver for the failed Omni National Bank, brought a lawsuit in the Northern District of Georgia against several former officers, some of whom had also served as directors, of the Bank seeking to recover over \$24.5 million in losses the bank suffered on over 200 Community Development Lending Division (“CDLD”) loans on low income residential properties. The Complaint also seeks to recover an additional \$12.6 million in what it contends were wasteful expenditures on low income Other Real Estate Owned (“OREO”) properties.

Omni National Bank of Atlanta, Georgia was closed by the regulators on March 27, 2009. This lawsuit was brought almost exactly three years later, which is the operative statute of limitations.

Most of the defendants named in the Complaint were former CDLD officers, who are alleged to have approved the loans at issue in the Complaint despite alleged “numerous, repeated and obvious violations of the Bank’s loan policies and procedures, banking regulations and prudent and sound lending practices.” The violations alleged include violations of loan to one borrower limits through the use of straw borrowers, violations of loan to value limits, failure to obtain appraisals prior to funding, lack of required borrower equity or down payment, insufficient borrower credit scores or repayment ability, and other improprieties. The Complaint also includes claims against more senior former executives, including the former CEO and President of the Bank, based on their alleged failure to supervise the CDLD lending function, their alleged previous knowledge of misconduct and other “red flags” of problems in the CDLD lending program, and their alleged authorization of certain OREO expenditures described below.

The Complaint also asserts claims for alleged wasteful OREO expenditures after September 15, 2008. This claim is made against a former vice president, who was responsible for management of OREO. FDIC alleges that, instead of liquidating the additional OREO properties “as is” to conserve remaining capital, this defendant expended over \$12.6 million to maintain, rehabilitate, renovate, and/or improve the additional OREO properties. The Complaint alleges that these expenditures further depleted the Bank’s already deficient capital and hastened the Bank’s failure.

As with previous complaints, this Complaint continues to allege claims under both simple negligence and gross negligence theories, despite the holding of a federal court in the Integrity Bank

case in Georgia that simple negligence claims are not available against former directors and officers of a failed bank under Georgia law.

MEET THE TEAM



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