

U.S. Century Bank, directors hit with new class action lawsuit

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A lawsuit filed on behalf of minority shareholders alleges U.S. Century Bank and some of its directors depleted the bank's capital and wasted taxpayer funds for personal benefit.

The complaint, which seeks class action status for more than 400 minority shareholders, says the taxpayer TARP funds were "squandered" and used to "bail out" the business ventures of certain current and former directors.

Many of the minority shareholders are professionals and small business owners who were customers of the bank.

U.S. Century Bank is the nation's largest "undercapitalized" bank and in urgent need of capital after its sale to C1 Bank fell through in December. The Doral-based bank also owes the federal government \$50.2 million borrowed from the Troubled Asset Relief Program (TARP).

The minority shareholders would have recovered only 1.5 cents on the dollar if the C1 Bank deal had gone through and taxpayers faced a major haircut on TARP.

Coral Gables attorney Gonzalo Dorta represents shareholder Jesus R. Tome, who is also an attorney, and his wife in the class action lawsuit filed on Jan. 9.

Dorta is also the attorney representing the Tomes, along with six other U.S. Century Bank shareholders, in a lawsuit filed in November for breach of contract against the bank and also as a shareholder derivative action demanding that the current and former directors pay damages to the bank to compensate for the money they allegedly deprived it of.

U.S. Century Bank has vowed to fight the November lawsuit. The bank's spokeswoman declined comment on the latest lawsuit.

There's a strategy behind Dorta's multiple types of claims. Winning a shareholder class action lawsuit against U.S. Century Bank at the moment would essentially be futile because the bank is low on capital. Winning a derivative claim against its current and former directors might result in them paying the bank, which would provide money to pay the shareholder class action claim.

The bank has a \$20 million directors and officers liability insurance policy that could potentially be tapped to pay claims, according to U.S. Century Bank shareholder documents. Some of its current and former directors are successful businessmen.

"The matters alleged are quite serious. It remains to be seen if the plaintiffs can prove them," said non-party to the litigation **Barton S. Sacher**, founding shareholder of **Sacher, Zelman, Hartman, Paul, Beiley & Sacher, P.A.** and a former senior enforcement attorney for the Securities and Exchange Commission. "I would be surprised if the regulators, whether it's the FDIC, the SEC or others, are not already looking into these allegations."

Among those currently at the bank, the class action lawsuit names Chairman Ramon Rasco, a partner in Coral Gables-based law firm Rasco, Klock, Reininger, Perez, Esquenazi, Vigil & Nieto, and President and CEO Carlos Davila. The complaint also names former directors Sergio Pino, the head of Century Homebuilders; Carlos M. Garcia, a developer; Armando Guerra, a real estate investor and former VP of Sedano's Pharmacy; Agustin Herran, a developer and president of Sedano's Supermarkets; Manuel Herran, chairman of Sedano's Supermarkets; Rodney Barreto, a developer and head of consulting firm Floridian Partners; and former senior lending officer Abel Montouri.

Barreto is one of the key figures working to bring the Super Bowl back to Miami Gardens and a major advocate involving in securing public funding for the renovation of Sun Life Stadium.

The complaint charges that the bank directors abused their power to exploit business opportunities and advance risky extensions of credit to keep their development projects and business ventures from insolvency at the expense of minority shareholders. The directors secured U.S. Century Bank loans for their family, friends and business associates at unusually favorable terms not available to other customers, the complaint says.

"Upon information and belief, the TARP money was used to bail out and rescue the collapsing business and real estate investments of the controlling shareholders and directors, Rasco, Pino, Garcia, Guerra and the Herrans," the complaint stated.

The complaint cited the nine U.S. Century Bank branches leased to directors at rates allegedly higher than market rates and \$22 million in insider transactions they benefited from.

The *Business Journal* detailed those insider transactions, such as leases, legal fees and asset sales, in December. Another *Business Journal* story found that bank insiders benefited by about \$16.8 million from 2006 through 2009 by receiving more favorable loan and deposit rates than non-insider customers.

The charges against the bank in the complaint include breach of fiduciary duty, negligence and waste of corporate assets for not properly overseeing the lending functions of the bank and allowing it to act as a "lending pool" for the speculative real estate projects of directors.

The breach of fiduciary duty charge is also made against the individual directors and officers and named wrongful acts they allegedly did. All of the directors were charged with failing to monitor insider lending to board members and allowing branches to be placed in locations that benefited Pino, Guerra and Agustin Herran.

Pino responds

"I recommended hundreds of customers to U.S. Century Bank," Pino said in an email. "At no time I participated in decision making on a loan or a branch site where I or my family had an

interest in it. It is my understanding that every loan was done with the support of professional appraisals with the support of our own U.S. Century Bank professional management and the support of the most decent fellow board members that I have ever worked with and excluding my participation.”

Pino added that professional appraisals were ordered for the branch sites.

For Pino individually, the complaint says that he used U.S. Century Bank to finance buyers in his real estate developments, including Century Gardens Village in Kendall, and the loans were often under-collateralized and poorly underwritten, which led to many forecloses. A search of court records by the *Business Journal* found that U.S. Century bank held 35 loans for a total of \$7.2 million in three Century Homebuilders projects in Miami-Dade County. Most of the loans were made in 2009 – a year when home sales were tough to finance.

Pino confirmed that some of the borrowers were U.S. Century Bank shareholders as well.

“We have never used U.S. Century Bank to fund my products,” Pino said. “Those you mention in Gardens Village were loans to U.S. Century Bank shareholders who happen to buy a house from Century Garden Village. It is my understanding they are the best loans U.S. Century Bank currently have on their real estate portfolio.”

The complaint alleges that Pino’s loans from U.S. Century Bank were on terms more favorable than what other customers received. It also says that he used U.S. Century Bank to help him sell depreciating real estate assets.

Public records show that U.S. Century Bank gave a \$15.8 million loan to DYL Merrick Park Development for a site in Coral Gables that it bought for \$24.5 million in 2006 from Pino’s Merrick Arc, which paid only \$11.2 million for it two years earlier. The loan wound up in foreclosure – and that’s not the only time such a situation happened.

Pino said he never encouraged the bank to make any deals.

The complaint also charges Agustin Herran and Guerra for using U.S. Century Bank to help him dispose of depreciated real estate assets.

For Barreto, the complaint says he had the bank restructure a \$17.5 million U.S. Century Bank loan on several gas stations on terms highly favorable to him after he felt the bank. Barreto previously defended the interest rate reduction on that loan in a *Business Journal* story.

In Rasco’s case, the complaint says he amassed nearly \$2 million in legal fees from the bank for primarily insider loan closings (a monetary figure confirmed by the bank’s financial filings) and authorizing loans to his political friends, as well as the partners, secretaries and staff members of his law firm, on favorable terms.

For Garcia, the complaint says he utilized his director status to have U.S. Century Bank buy a Homestead property from him for \$1.6 million, only to sell it in 2012 for \$575,000 – without building a branch there.

As to current CEO Davila, who joined the bank in September, and Montouri, the complaint says they breached their fiduciary duty by failing to monitor insider loans and transactions and

promoting an “elite lending program” with less underwriting scrutiny for friends and affiliates of board members and controlling shareholders.

At the same time, the derivative lawsuit was amended for a third time to include many of the allegations against directors present in the minority shareholder class action. However, former U.S. Century Bank CEO Octavio Hernandez was voluntarily dismissed from that lawsuit. The plaintiff attorney declined to say why.

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