Shareholders file lawsuit against U.S. Century Bank

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File photo / Two Miami shareholders filed a lawsuit against U.S. Century Bank.

Two shareholders of **U.S. Century Bank** filed a lawsuit accusing the bank of "rampant" insider dealings and making speculative land loans with few controls.

The lawsuit could complicate matters as the Doral-based bank seeks to complete its pending merger with St. Petersburg-based C1 Bank. The banks asked the **U.S. Department of the Treasury** for an 87 percent discount on the $50.2 million in Troubled Asset Relief Program (TARP) funds U.S. Century Bank accepted in 2009, but it's not clear that Treasury will agree to it. Treasury previously rejected the banks' request for a 90 percent TARP discount.

U.S. Century Bank shareholders would get $2 million to $3 million in the deal, which represents 1.3 to 2 cents on the dollar based on the amount of capital the bank raised from investors. Shareholders have yet to vote on the deal.

Now, U.S. Century Bank has encountered legal opposition from two minority shareholders. Carlos E. Silva and Jorge E. Silva filed a complaint on Tuesday in Miami-Dade County Circuit Court against U.S. Century Bank for breach of contract and breach of fiduciary duty. They have jointly owned 23,810 shares of the bank since 2002, the year it was founded.

The Silvas are also partners in a Coral Gables law firm. They are represented in the lawsuit by Coral Gables attorney Gonzalo Dorta.

While U.S. Century Bank is "undercapitalized," the main target of their lawsuit could be the directors and officers liability insurance policy, which is worth $20 million, according to the bank's proxy statement to shareholders. Once the merger goes through, that policy would be canceled and the bank would purchase $10 million in tail D&O coverage.

Either way, that's considerably more than shareholders would receive from C1 Bank in the merger. However, the D&O policy is only triggered when the bank directors are sued, which is not the case here.

"The Silva lawsuit makes serious allegations of wrongdoing," said Barton S. Sacher, founding shareholder of Sacher, Zelman, Hartman, Paul, Beiley & Sacher, P.A. and a bank litigation attorney for more than three decades. "However, it appears those allegations are directed to the actions of the directors. But the lawsuit didn't sue any of the directors. As a result, the plaintiffs may have difficulty in sustaining their claims or in recovering any money for their benefit from an otherwise insolvent bank."

Officials at U.S. Century Bank weren't immediately available for comment.

"The absence of effective regulation of the banking sector during the pre-crisis boom years enabled the defendant USCB (and other banks) to engage in self-serving and corrupt lending practices, which maximized its corporate profits at the expense of its shareholders and taxpayers," the Silva complaint states.

The complaint hit on the large volume of bank insiders loans at U.S. Century Bank and the fact that nine of its 24 branches were leased on properties owned by bank directors – subjects recently covered by a *Business Journal* investigation. The bank engaged in land speculation, led by its directors who were developers, while giving little consideration to how these loans would be paid back or how they were collateralized, the complaint says.

The Silvas believe that this was the plan with the bank from the beginning.

"In 2002, the initial USCB board of director members teamed up to form a bank which could help facilitate their own private loans and finance construction projects of their friends, family members and business acquaintances and vendors under unusually favorable terms under lax underwriting, primarily concentrated in the construction industry and related real estate development," the complaint says.

The bank's noncurrent loan ratio of 21.9 percent on Sept. 30 was among the highest in Florida. A considerable portion of those problem assets were land loans in rural areas with little demand for development.

As for the nine branches the bank leased to the bank's directors, the complaint says the rental terms were at rates higher than the fair market value at the time. The complaint calls this an improper personal benefit for the directors, who weren't named in the complaint.

Former U.S. Century Bank directors Sergio Pino, Armando Guerro and Agustin Herran collected rental income of $2.7 million, $418,000 and $589,000, respectively, from their bank in 2011, according to its audited financial statements. The merger agreement with C1 Bank requires U.S. Century Bank to seek lower rental rates at those insider-owned branches.

In a previous interview, U.S. Century Bank President and CEO Carlos J. Davila said he couldn't comment on the terms of the director lease when they were signed because he joined the bank

in August. The opening of those branches and the execution of those leases went through the normal regulatory approval process, he added.

The complaint also cites the 2011 regulatory enforcement action U.S. Century Bank received from state and federal regulators that criticized its management, asset quality, lending practices, capital, internal controls, conflict of interest policy and its compliance with the Bank Secrecy Act. The bank failed to set up appropriate policies and controls for its lending, BSA compliance and director ethics, the complaint says.

U.S. Century Bank warned shareholders this year that it could face fines for BSA violations.

The risky practices of the bank were a breach of its stockholder agreement, which required the board of directors to use prudence and sound business judgment and operate the bank in compliance with the law, the complaint says. The charge for breach of contract says the bank's directors failed in their duty to operate the bank in good faith and in the best interests of the corporation.

While it doesn't specify an amount of potential damages, the Silva complaint said the plaintiffs have reserved the right to file a shareholder derivative claim on behalf of all similarly situated U.S. Century Bank shareholders. If that happens, many more shareholders could join the action.

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