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Newark's Robin Hood

NJ trustee draws notion of fraudulent conveyance

Bobby Joe Sweetser, a Fayetteville, Ark., department store salesman, wanted to raise money for his daughter's education, so he called **New Jersey Affordable Homes Corp.** in 1997 and became one of hundreds of investors to pump more than \$123 million into the real estate investment company.

N.J. Affordable Homes ran afoul of state regulators in 2002, three years before its bankruptcy, but Sweetser got back his money and profits he thought were due to him. Now a bankruptcy trustee from a Newark, N. J., court wants Sweetser—and others—to return the money to pay off creditors owed money by the Woodbridge, N.J., real estate investment company. Sweetser, who admits in court documents that he is not a sophisticated investor, is about to be schooled in the concept of fraudulent conveyance.

"It strikes me as unfair that you're taking money back after you had a court order which ordered the debtor to allow investors to rescind their contracts," said Linda Snyder, partner at Newark-based **Meyner Landis LLP**, Sweetser's counsel. "It seems unfair that the trustee would go after these investors. For what? To pay the trustees' attorneys another million? Let's be honest, they are the only ones making out here."

Sweetser said in an affidavit filed with the U.S. Bankruptcy Court for the District of New Jersey, where the debtor filed for Chapter 7 on Nov. 22,

2005, that he was promised a return of at least 15% on his investment with the company. He decided to invest \$20,000 for a piece of a mortgage on one of the properties.

After learning of the investigation into N.J. Affordable and his right to recoup his investment, the salesman from Arkansas quickly notified the company that he was cashing out. By late 2004, he received principal and interest totaling \$55,000, court records show.

The investigation by the New Jersey Bureau of Securities prompted the state to require N.J. Affordable to offer a rescission to whoever had a fractional interest in a mortgage on one of the more than 340 properties connected to the company before Feb. 2, 2002. Investors who accepted the rescission were paid principal plus interest within a year.

But N.J. Affordable found itself in a Newark bankruptcy court where a Chapter 7 trustee would ultimately uncover the severity of its elaborate Ponzi scheme. Charles M. Forman of **Forman Holt & Eliades LLC**, the liquidating trustee, attempted to sort out the mess of commingled investments in the debtor's estate by suing investors in hopes of recouping payments and pooling them with money from which all N.J. Affordable's unsecured creditors will be paid.

For some attorneys representing the investors, Forman is essentially suing creditors to pay creditors.

But even Snyder concedes that he

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CONTROVERSIES NOVELTIES

Pack of creditors snaps at Wolf Den

A pack of persistent creditors are using the bankruptcy court to force their way into **Wolf Den LLC**, or so the Massachusetts real estate company alleges in its response to the second involuntary Chapter 11 petition filed against it in a nine-month span.

Wolf Den will head to the U.S. Bankruptcy Court for the District of Connecticut in Hartford on Feb. 22, hoping to have the latest involuntary Chapter 11 brought against it dismissed, arguing in court filings that there are no real claims against the estate and the petition is just a way for one of its equity holders to gain full control of the company "through the guise of an involuntary."

Two of the five creditors in the first involuntary petition—Richard H. Seidman, who claims \$75,000 for legal services, and **Kostin, Ruffless & Co. LLC**, claiming \$6,500 for accounting services—are listed on the newest involuntary, along with two others: **Malcolm Arnold LLC**, which is allegedly owed \$5,000 for landscaping services, and the holder of 25% of Wolf Den's equity, Antonio Reale. The first involuntary was filed on March 3, and was dismissed on July 10. The latest involuntary was filed on Dec. 28.

Reale claims he's owed \$50,000 on a loan to the debtor, which Wolf Den disputes, along with all of the other alleged

claims. "[Reale] has no loan agreement with Wolf Den, no promissory notes and no other documentation of an alleged loan. In fact, there is no loan and no basis for this equity owner to assert one," the alleged debtor said in its response to the petition.

Instead, Wolf Den indicated in court filings that Reale spearheaded the involuntary petition after backing out of an agreement to buy the company. The company asserts that Reale intends to get it on the cheap through bankruptcy.

Wolf Den even accused Reale of extortion, alleging that he threatened to file an involuntary against the company months before the first one if 50% equity holder Rocco Scippa didn't pay him \$1 million, court records said.

"[Reale] has orchestrated both involuntary cases in the pursuit of his vendetta against Mr. Scippa," Wolf Den said in court filings.

"Reale then reneged on his written agreement to acquire the entire membership interest against Wolf Den or to sell his own. The obvious reason for Reale's conduct is his blatant effort to seize control of Wolf Den as cheaply as possible."

The first involuntary Chapter 11 included Seidman and Kostin Ruffless, along with **St. Paul Travelers Indem-**

nity Co., Structures Canatruess Inc., and Michael Finnegan Electrical Contracting Inc.

Judge Robert L. Krechevsky dismissed the case on July 10 because the majority of the petitioning creditors didn't have legitimate claims against Wolf Den, records show.

Although Reale wasn't listed as a petitioner on the first involuntary against Wolf Den, his attorney, Anthony S. Novak of **Chorches & Novak PC**, who negotiated the purchase of Wolf Den which Reale later backed out of, is listed as the petitioner's counsel for that petition, court records show.

Novak, who didn't return calls, is also representing the petitioners in the second involuntary.

In addition to disputing Reale's claim, Wolf Den said Seidman's \$75,000 claim for representing the company during a recent real estate acquisition is baseless because the attorney is only entitled \$15,000 for his work, which he was paid, pursuant to the Department of Housing and Urban Development regulations.

Wolf Den disputed the other petitioners' claims as well.

The alleged debtor's only asset is a complex of 100 residential apartments on 13 acres of Norwich, Conn., real estate, valued at about \$12 million and aptly named "Wolf Den Village," court filings show. ■ —John Blakeley

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cause NJ Affordable operated a Ponzi scheme—where investments were commingled, with money from some investors used to pay other investors, and even the debtor's president, Wayne Puff—the trustee has a right under the U.S. bankruptcy code to go after the payments.

"In order to generate profit out of a Ponzi scheme, the money comes from somewhere, it's stolen from one person to pay return to an earlier investor," says Harry M. Gurfelsh, also at Forman Holt. "Since there is no economic substance to the transaction, there is no justification for profiting in the Ponzi scheme."

In other words, since Sweester cashed out \$35,000 on his original investment, the trustee has every right to go after

his return because he benefited from a fraudulent conveyance.

Former bankruptcy judge Ron Barliant, principal at Chicago-based **Goldberg Kohn Bell Black Rosenbloom & Moritz Ltd.**, explains that Forman's lawsuits are fairly typical of trustees trying to recover funds from a Ponzi scheme, "where some [investors] win, and some lose, even though they may all be in the same class."

Barliant, once on the bench of the U.S. Bankruptcy Court for the Northern District of Illinois in Chicago, adds: "It's not an equal distribution to all creditors [if some are reimbursed on their investment], so a trustee will typically try to take back some or all [money] in order to equalize return to all investors. The

idea is that any profit paid to any investors, has nothing to do with the investor's knowledge, guilt or innocence," if they benefited from a fraudulent conveyance.

Despite the legal precedent backing Forman's move, attorneys for the investors have filed motions to dismiss the suits, arguments to which were heard on Feb. 1. And while Judge Donald H. Steckroth reserved judgment after the hearing, some legal practitioners don't expect Steckroth to rule in favor of investors who got their money before NJ Affordable's bankruptcy petition.

"I'm not confident" that the suits will be dismissed, says an attorney for two of such investors who was at the hearing. ■ —J.B.