SIGTARP | Office of the Special Inspector General For The Troubled Asset Relief Program

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FORMER CEO AND FORMER CHIEF LOAN OFFICER OF FAILED SONOMA VALLEY BANK CONVICTED AFTER TRIAL OF BANK FRAUD AND OTHER CRIMES

Sonoma Valley Bank Received an $8.65 Million Bailout from TARP, Which Was Lost When the Bank Failed

Sean Clark Cutting and Brian Scott Melland, respectively the former Chief Executive Officer and former Chief Loan Officer of Sonoma Valley Bank, were convicted yesterday of conspiracy, bank fraud, wire fraud, money laundering, falsifying bank records, lying to bank regulators, and other crimes, announced Special Inspector General for the Troubled Asset Relief Program (SIGTARP) Christy Goldsmith Romero; United States Attorney Brian J. Stretch; Federal Deposit Insurance Corporation (FDIC), Office of Inspector General, Special Agent in Charge Wade Walters; and Federal Housing Finance Agency (FHFA), Office of Inspector General Western Region, Special Agent in Charge Jay N. Johnson. Co-defendant David John Lonich, an attorney for Marin and Sonoma County real estate developer Bijan Madjlessi (who had been indicted on these charges before his death on May 16, 2014) was also convicted of conspiracy, bank fraud, wire fraud, attempted obstruction of justice, and other offenses. The verdicts followed an eight-week trial before the Honorable Susan Illston, U.S. District Judge.

The evidence at trial demonstrated that Cutting, 48, of Sonoma, Calif.; Melland, 48, of Santa Rosa, Calif.; and Lonich, 63, of Santa Rosa, Calif.; were involved in multiple schemes to defraud Sonoma Valley Bank, which failed on August 20, 2010; its regulators at the FDIC; what was then called the California Department of Financial Institutions ("DFI"); and other financial institutions. The schemes involved years of excessive and illegal lending to Madjlessi, often using "straw" or nominee borrowers, for real estate projects in Santa Rosa, Calif., and Petaluma, Calif. As alleged in the indictments, the failure of Sonoma Valley Bank caused in excess of $20 million in losses to taxpayers, approximately $11.47 million to the FDIC, and $8.65 million to the TARP.

"Today a federal jury brought justice to the top two officers of Sonoma Valley Bank for a massive fraud scheme designed to conceal bad loan after bad loan to a single customer, which ultimately cost the bank millions," said Special Inspector General Romero. "An aspect of the scheme started weeks after the bank received an $8.65 million bailout from TARP, all of which was lost. An important source of lending to the Sonoma community was extinguished when this bank failed a little more than a year later. I thank the U.S. Attorney's Office for the Northern District of California for its excellent work and commitment to fighting TARP-related crime."

"Ultimately, this case was about senior bankers, and the persons with whom they conspired, putting their interests ahead of the federally-insured and federally-regulated bank they served," United States Attorney Stretch stated. "The defendants resorted to bank fraud, lies to bank regulators, and other crimes in a multi-year scheme to conceal millions of dollars in failed and failing loans. By doing so, they put a respected community bank at ever greater risk of loss and jeopardy. I am proud of the collaboration between the United States Attorney's Office and our law enforcement partners whose perseverance and dedication over a multi-year investigation made this just outcome possible."

"Today's verdict sends a strong message that bank executives and attorneys who devise and orchestrate multi-million-dollar bank fraud schemes will be held accountable for their crimes," said FDIC Inspector General Lerner. "The FDIC Office of Inspector General is committed to working with U.S. Attorneys and its other law enforcement partners to deter such activity and help protect financial institutions against harm."

"The evidence at trial showed that the defendants used their positions of power to take advantage of the banking system and ultimately the taxpayers," said Special Agent in Charge Johnson. "As the jury found in this case, their actions were unacceptable and will not be tolerated. We are appreciative of our law enforcement partners on this case. We will continue to work diligently to bring bad actors to justice."

Much of the evidence at trial related to Madjlessi's real estate projects at the Park Lane Villas in Santa Rosa and Petaluma Greenbriar Apartments in Petaluma. According to the evidence admitted at trial, between 2004 and 2010, Sonoma Valley Bank loaned Madjlessi and the persons and entities he controlled in excess of $35 million, approximately $24.7 million more than the legal lending limit set by the bank's regulators. To conceal this high concentration of lending, Melland, the loan officer who worked most closely with Madjlessi, and Cutting recommended that the bank approve multi-million dollar loans to nominee or "straw" borrowers. The evidence at trial established that Melland and Cutting knew that millions in proceeds from loans to these other borrowers would go to Madjlessi and the companies he controlled. In sum, the evidence at trial proved that Cutting and Melland schemed to give Madjlessi and his companies in excess of $8.6 million in proceeds from loans nominally made in the name of other borrowers.

Melland was also convicted of receiving a bribe from Madjlessi of approximately $50,000 in April 2008. According to the trial evidence, one day after he received the bribe, Melland recommended a set of loans for approximately $3.65 million to a nominee or "straw" borrower controlled by Madjlessi.

Cutting and Melland also were convicted of making false statements to Sonoma Valley Bank's regulators, the FDIC, and DFI. The evidence established that during joint examinations in May 2008, and again in December 2009, Cutting and Melland provided false and misleading information to the regulators about the true nature and extent of the bank's lending to Madjlessi and the persons and entities he controlled.

Yet another scheme involved a conspiracy whereby Lonich, Madjlessi's lawyer, conspired with Cutting and Melland to mislead Sonoma Valley Bank into lending millions more to Madjlessi, again in the name of a nominee or "straw" borrower, so Madjlessi could illegally buy back a debt he owed to IndyMac Bank. IndyMac Bank had failed and been taken over by FDIC. In early 2009, the defendants conspired to lend the money to Madjlessi's nominee so that Madjlessi could buy the approximately $27 million debt back for only approximately $4 million. FDIC rules specifically prohibited delinquent borrowers, like Madjlessi, from purchasing their own notes at auction. Nonetheless, the defendants were convicted of an elaborate bank and wire fraud scheme to obtain the defaulted note by misleading Sonoma Valley Bank, the FDIC, and eventually other financial institutions about Madjlessi's true role in the transactions.

In late 2009 and early 2010, Cutting helped Lonich gain control of additional units at the Park Lane Villas by issuing letters on Sonoma Valley Bank letterhead. The letters falsely stated that potential nominee buyers had sufficient funds at Sonoma Valley Bank to purchase the units. The evidence at trial also demonstrated that Lonich attempted to obstruct justice by, among other things, instructing the nominee to make false statements to federal agents.

On May 6, 2014, approximately two months after he was indicted in this case, Madjlessi was found dead after a single-person car accident in a steep ravine in the Marin Headlands off Highway 1 in Marin County.

The defendants were convicted of the following specific crimes, which carry the maximum statutory penalties specified below:

DEFENDANT CHARGES

Cutting, Melland, and Lonich (one count each)
Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. § 371, with up to 5 years of imprisonment, 3 years of supervised release, and a fine of $250,000.

Cutting, Melland, and Lonich (one count each)
Bank Fraud, in violation of 18 U.S.C. § 1344, with up to 30 years of imprisonment, 5 years of supervised release, and a fine of $1,000,000.

Cutting (six counts), Melland (eight counts), and Lonich (five counts)
False Bank Entries and Reports, in violation of 18 U.S.C. § 1005, each with up to 30 years of imprisonment, 5 years of supervised release, and a fine of $1,000,000.

Cutting and Melland (one count each)
Conspiracy to Make False Statements to the FDIC, in violation of 18 U.S.C. § 371, with up to 5 years of imprisonment, 3 years of supervised release, and a fine of $250,000.

Cutting and Melland (one count each)
Misapplication of Bank Funds, in violation of 18 U.S.C. § 656, with up to 30 years of imprisonment, 5 years of supervised release, and a fine of $1,000,000.

Cutting and Melland (one count each)
False Statements to the FDIC, in violation of 18 U.S.C. § 1007, with up to 30 years of imprisonment, 5 years of supervised release, and a fine of $1,000,000.

Melland (one count)
Receipt of Gifts for Procuring Loans, in violation of 18 U.S.C. § 215, with up to 30 years of imprisonment, 5 years of supervised release, and a fine of $1,000,000.

Cutting, Melland, and Lonich (one count each)
Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349, with up to 30 years of imprisonment, 5 years of supervised release, and a fine of $1,000,000.

Cutting, Melland, and Lonich (five counts each)
Wire Fraud, in violation of 18 U.S.C. § 1343, each with up to 30 years of imprisonment, 5 years of supervised release, and a fine of $1,000,000.

Cutting, Melland, and Lonich (twelve counts each)
Money Laundering, in violation of 18 U.S.C. § 1957, each with up to 10 years of imprisonment, 3 years of supervised release, and a fine of $250,000.

Lonich (one count)
Attempted Obstruction of Justice, in violation of 18 U.S.C. § 1512(c), with up to 20 years of imprisonment, 3 years of supervised release, and a fine of $250,000.

In addition, the defendants face a $100 mandatory special assessment for each count of conviction against them as well as potential forfeiture and restitution. However, any sentence following conviction will be imposed by the court only after consideration of the U.S. Sentencing Guidelines and the federal statute governing the imposition of a sentence, 18 U.S.C. § 3553. Judge Illston scheduled the defendants' sentencing hearing for April 27, 2018.

Assistant U.S. Attorneys Robert David Rees and Adam A. Reeves are prosecuting the case with the assistance of Philip Villanueva, Maryam Beros, Patricia Mahoney, and Bridget Kilkenny. The prosecution is the result of an investigation by the Special Inspector General for the Troubled Asset Relief Program, the Federal Housing Finance Agency Office of Inspector General, and the Federal Deposit Insurance Corporation Office of Inspector General, with the assistance of the Marin County Sheriff's Office, the Sonoma County Sheriff's Office, and the Santa Rosa Police Department.

About SIGTARP
The Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) is a federal law enforcement agency that targets crime at financial institutions or in TARP housing programs and is an independent watchdog protecting the interests of the America people. SIGTARP investigations have resulted in the recovery of $10 billion and 237 defendants sentenced to prison.

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