

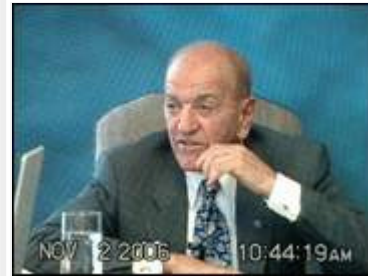
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Strong-arm tactics are alleged

LBM Financial target of complaints

By Thomas Caywood TELEGRAM & GAZETTE STAFF

At least six real estate developers who borrowed money from a Marlboro-based investment firm with ties to prominent Worcester businessman David G. "Duddie" Massad now claim they were later strong-armed by the company under threat of financial ruin to make unusual payments, do costly favors or sign over an ownership interest in property.



Mr. Massad

Their stories of LBM Financial LLC allegedly driving them to the brink of foreclosure or bankruptcy with exorbitant interest rates — and then taking advantage of their financial vulnerability — mirror racketeering complaints filed against LBM, Mr. Massad and others in a series of civil suits recently combined into one action in U.S. District Court.

LBM is a lending company formed in 1996 and managed by Marcello M. Mallegni, 53, of Southboro. A lawyer representing Mr. Massad said the Worcester businessman has no ownership interest or management role in LBM, but, through other companies he owns or has a stake in, put up an undisclosed portion of the money LBM loaned to developers and others.

LBM borrowers Bernard J. Laverty of Boston and Robert M. Bradley of Barnstable said separately in interviews over the last two weeks that they were told by Mr. Mallegni over and over that any decisions involving their loans had to be made by Mr. Massad because it was his money they had borrowed.

In a general scenario alleged by six developers identified by the Telegram & Gazette, Mr. Laverty said he first borrowed from the Marlboro firm about five years ago based in part on promises that, once he got his projects started, it would help him get a traditional bank loan at a far lower interest rate than the 16 percent charged by LBM.

But the promised bank loan never came, he said, and the company stymied his efforts to refinance his debt. Mr. Laverty said he eventually fell behind on his payments to LBM, triggering a default interest rate as well as a series of penalties and fees that drove up his effective interest rate to a budget-busting 32 percent.

Then came the demands, he said.

"It was, 'If you don't do this, we're going to do that.' Either I agree to do whatever they say or they foreclose on all my stuff, and I'm out of business," Mr. Laverty said. "It was a nightmare."

At least two lawsuits specifically accuse LBM of "extortion."

'Notorious hard money lender'

An ongoing lawsuit filed in Middlesex Superior Court last spring against LBM, Mr. Mallegni and the company's counsel, Michael J. Norris of Natick, by real estate investor Sandra DiGiovanni of South Yarmouth echoes Mr. Laverty's allegations.

Ms. DiGiovanni alleges LBM ran a "scheme purposefully designed to gain property or monies far beyond what was reasonable or due on the loans that were made" and engaged in fraud to block her efforts to "extract herself" from the company's control.

Another complaint filed in federal court last month as part of a bankruptcy case involving a defunct Boston developer, Shamus Holdings LLC, calls LBM a "notorious hard money lender."

The Shamus Holdings complaint alleges Mr. Mallegni "routinely demands that LBM borrowers grant him and his counsel, Michael J. Norris, an equity stake in the borrower's business. If and when one of LBM's borrowers defaults or becomes vulnerable, Mallegni and Norris extort additional equity, fees and other financial gratuities as a condition of LBM's forbearance and cooperation."

A Boston lawyer representing LBM in those lawsuits, Jeffrey D. Ganz, denied the allegations and chalked them up to borrowers trying wiggle out of repaying the money the company loaned them. "As a general matter, LBM denies all of the fraud, extortion, and all of the other outrageous allegations made in the complaints," Mr. Ganz said in an interview.

Mr. Norris also denied the various allegations, saying in an interview, "It's absolutely not true."

A bargain in Quincy

In August 2004, Mr. Laverty said, Mr. Norris demanded under threat of foreclosure that the struggling developer buy a Quincy condominium unit at his own expense and sell it to Mr. Norris' daughter, Heidi, at a \$10,000 loss.

"He said, 'I need you to do this, or I'll pull the plug on everything,' " Mr. Laverty said in an interview last week. "I paid \$175,000 for it, and I had to sell it to her an hour later."

Norfolk County Registry of Deeds records confirm Mr. Laverty bought the new condo for \$175,000 and sold it to Ms. Norris for \$165,000. Both transactions were recorded by the registry on the same morning. Ms. Norris sold the property less than three years later for \$185,000, according to the records.

Mr. Norris disputed the developer's characterization of the sale.

"Mr. Laverty assisted in the purchase," Mr. Norris said in an interview, later adding, "There's litigation going on, so I really can't talk about it. But there was no extortion, no force, no nothing."

LBM and 'Duddie'

LBM is headquartered in a two-story brick commercial building at 171 Locke Drive in Marlboro. Mr. Norris' law office and several companies controlled by Mr. Massad also are based at that address.

The building is the headquarters of 1-800 East-West Mortgage Co., on whose board of directors Mr. Massad and his daughter, Pamela Massad, both serve. The building also is home to Sterling Lion LLC, a for-sale-by-owner real estate company for which Ms. Massad is listed as manager in state records, and Cognitive Resources Inc., a manufacturing business that lists Mr. Massad as a director, chief executive officer, chief financial officer and treasurer.

Boston lawyer David H. Rich, who represents Mr. Massad, said that other than investing in loans made by the company, his client has no active role in LBM's management. Mr. Rich declined to disclose which of Mr. Massad's companies have financed loans made by LBM, the number of loans or the overall dollar amount of those loans.

"David Massad has zero ownership interest in LBM whatsoever," said Mr. Rich, who described

his client's role in the company as that of a passive investor.

At least two of the aggrieved developers dispute that characterization, saying they were told repeatedly that Mr. Massad called the shots on deals through Mr. Mallegni.

"Every conversation I've had with Marcello, on every single topic, started and ended with the same statement from him. 'I have to talk to Duddie,' or 'I'll let you know what Duddie says.' Every conversation for five years. Duddie, Duddie, Duddie," Mr. Lavery said.

Mr. Bradley, the Barnstable developer, said Mr. Mallegni constantly claimed in meetings that his hands were tied because Mr. Massad made all the decisions.

"Many, many times Marcello said in the presence of myself, my business partner and my attorney that he would give us an extension, or do this or that, if he could, but it's Duddie's money, and Duddie won't let him," Mr. Bradley said.

Mr. Rich said that if Mr. Mallegni conferred with his client on loan decisions it was only because he values Mr. Massad's opinion as a successful businessman.

Mr. Mallegni did not return numerous messages left at his office and home over the last two weeks.

'I think we call it LBM'

Mr. Massad, chairman of Commerce Bank & Trust and the former owner of car dealerships in the area, declined through his lawyer to discuss LBM himself.

In a videotaped 2006 deposition from another case, Mr. Massad, asked about businesses he owns, provided a lengthy list, then added: "I have another loan company business ... I think we call it LBM. I think it's LBM."

A voice off camera asks what kind of business it is and then asks what percentage of the company he owns.

"Fifty percent," Mr. Massad responded.

His lawyer, Mr. Rich, said last month that the elderly businessman was merely confused at the time of the deposition.

"He's just mistaken," Mr. Rich said. "The records speak for themselves, and there are no records that show he owns anything in LBM — because he doesn't."

A former financial adviser to Mr. Massad said in an interview last month that Mr. Massad and Mr. Mallegni often met in Mr. Massad's corner office on the second floor of Commerce Bank's downtown headquarters to discuss LBM loans around a large conference table. The financial adviser, who asked not to be identified by name because he is being sued by Mr. Massad, said he was present at many of those meetings until he had a falling out with his boss in 2005.

Commerce Bank President Brian W. Thompson and Mr. Rich said the bank has no involvement, directly or indirectly, with LBM. Although Commerce Bank is named as a defendant in at least one of the lawsuits, Mr. Thompson said the bank has thoroughly reviewed its actions and is comfortable that it acted appropriately.

Pattern of misconduct alleged

Boston lawyer Charles A. Dale III, who represents Shamus Holdings, said in an interview that his client's experience with LBM is typical of the Marlboro lender's tactics.

"LBM Financial is a disreputable outfit that should not be in the business of lending or doing

anything else, and it's high time that they be called to account for their misconduct," Mr. Dale said.

Similarly, Mr. Bradley said the allegations in the lawsuits filed to date are all too familiar to him and other developers he knows.

"Everybody I know that has done business with them, when you read a lawsuit like the Fiorillo and Depietri cases, it reads like your life story. You just change the names and dates, and it's exactly what happened to you," Mr. Bradley said.

Worcester developers Nicholas J. Fiorillo and Robert Depietri Jr. were the first to lodge racketeering allegations against LBM, Mr. Massad, Mr. Mallegni and others in court. A federal judge last month combined their lawsuits into one megasuit seeking \$118 million in damages. Mr. Fiorillo previously sued, making similar allegations, in Worcester Superior Court, but eventually lost that case.

Motions to dismiss parts of the federal civil suit were pending as of press time, according to court records.

Mr. Bradley filed for bankruptcy protection on Feb. 14, according to court records. The following day, two outside lawyers for LBM informed the court that they would be representing the firm's interests in Mr. Bradley's bankruptcy case.

Mr. Bradley declined to discuss the specifics of his dealings with LBM on the advice of his lawyer. However, he provided a written document drafted by his lawyer laying out a number of allegations against the company.

The document echoes many of the claims in the recently combined federal racketeering lawsuit brought by the Worcester developers. That lawsuit alleges Mr. Massad, Mr. Mallegni, Mr. Norris, LBM and others constituted a racketeering enterprise engaged in "mail fraud, bank fraud, money laundering, obstruction of justice, loan sharking and extortion."

The document provided by Mr. Bradley calls the company's lending practices a "scheme" that is "designed to effectively strip the project or property of its equity and force borrowers to refinance their loans for a higher amount that would include fraudulently inflated interest." It goes on to allege LBM sought unusual special payments from Mr. Bradley.

Ms. DiGiovanni's lawsuit claims the company preyed upon her at a time she was financially "vulnerable, desperate and easy to manipulate."

Mr. Lavery, among whose projects was a South Boston condominium development involving Mr. Bradley and LBM, levels similar accusations.

For example, Mr. Lavery said he was required to write a \$5,000 check made out to Mr. Mallegni — not LBM — for every condo unit he sold in a West Roxbury development for which Mr. Mallegni had arranged a loan from a Framingham bank. Mr. Lavery said he wrote 17 such checks made out to Mr. Mallegni before he finally lost control of the condominium complex when he had to declare bankruptcy.

"There are just so many people that they've done this to. It's just one scheme after another," he said.

Mr. Ganz, the Boston lawyer representing LBM, said there was no truth to the developers' allegations.

He added, "The upshot of these lawsuits is that LBM Financial has loaned hundreds of thousands of dollars, in some cases millions of dollars, to people who have decided they simply don't want to pay the money back. They are coming up with every excuse to alleviate

their debt. They received the money. They haven't paid it back."

High-interest loans

Mr. Laverty said he and other developers unwittingly got involved with LBM by taking out what they expected to be short-term loans to get real estate projects started. The interest rates were high — with astronomically higher contingent rates should the borrower fall behind on payments — but he expected to refinance into a traditional bank loan within a few months once the project was rolling, Mr. Laverty said.

Or so he thought.

Several plaintiffs in the various lawsuits against LBM allege one of the firm's tactics to keep the high-interest meter running on what were supposed to be short-term loans was to drag its feet or simply refuse to provide the borrower a legitimate pay-off amount on the loans. Without that figure, a borrower wouldn't be able to refinance or sell the property to avoid defaulting on the LBM loans.

"They would stall and stall and stall until you're in default and paying at the default interest rate of 32 percent," Mr. Laverty said.

The state usury law dating back to the 1970s ostensibly caps the maximum legal interest rate at 20 percent, but also allows lenders to charge higher rates if they notify the state attorney general's office in writing. LBM filed notifications announcing its intention to charge interest rates above the usury limit on loans in 1997, 2000, 2002, 2005, 2006, 2007 and 2008, according to records on file at the attorney general's office.

The one- or two-page notification letters, signed by Mr. Mallegni, don't say exactly how far above the usury limit the company intended to set its interest rates.

"All that the statute requires is that if a business is going to lend above a certain rate, they must file with this office," said Melissa Sherman, a spokeswoman for Attorney General Martha Coakley. "We do approve these, but serve more as a depository for such notices."

Mr. Laverty said he bitterly regrets the day he got involved with LBM, Mr. Mallegni and Mr. Massad. In the five years since then, he said he has lost his business, his developments and his home.

"I'm no saint, and I know the rules of the game, but don't extort things out of me," Mr. Laverty said. "All they want to do is take your project."

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