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Former Greenberg Partner on Hot Seat for Alleged Role in Bank Fraud

Carlos Loumiet, now a partner at Hunton & Williams, is set to go before an administrative judge today

John Pacenti
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It involved questionable Latin American loans, the Russian economic crisis and a multimillion-dollar cover-up. The fallout was in South Florida where it cost three Hamilton Bank members their freedom and nearly \$1 million in fines for the area's most prominent law firm.

The last man standing is Hunton & Williams partner Carlos Loumiet, who is scheduled to go before an administrative judge today for his alleged role in helping the now-defunct Hamilton Bank hide losses from \$20 million in Russian loans.

The Office of Comptroller of the Currency, which regulates all national banks, seeks a cease-and-desist order from Administrative Judge Ann Z. Cook that would bar Loumiet from providing legal counseling to any federally insured financial institution.

"This is a professional death penalty case," said Miami attorney Alan G. Greer of the law firm of Richman Greer, which is representing Loumiet. "Even if he were to be barred from financial institutions for just a period of time, nobody would hire him. He becomes tainted."

The OCC closed Hamilton Bank in 2002. The failure cost the federal insurance fund \$127 million and public shareholders lost their entire investment. The CEO of the bank, Eduardo Masferrer, was convicted of 16 fraud charges and sentenced to 30 years in prison after two other officers - president Juan Carlos Bernace and John Jacobs -- pleaded out and testified against him.

Bernace and Jacobs were sentenced to 28 months in prison on two counts of securities fraud.

Opening statements and the first witnesses are scheduled to appear today in what is expected to be a two-week public hearing.

The OCC is also seeking a \$250,000 fine against Loumiet, accusing him of engaging in unsafe or unsound practices. Investigators say it was a conflict of interest for Loumiet and his firm at the time, Greenberg Traurig, to take on an "independent" study of the transactions considering that it had been retained by the bank prior to that as outside counsel.

An OCC spokesman didn't return phone calls on the matter but the office issued a statement reiterating previous remarks: "Mr. Loumiet protected the bank officers by making materially false and misleading assertions, and by suppressing material evidence."

Loumiet is accused of concealing the bank's swap, conflict of interest, making materially false and misleading statements, and generally harming the bank through his faulty investigation.

Loumiet oversaw the writing of two reports in November 2000 and March 2001. He worked along fellow Greenberg Traurig shareholder

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Robert L. Grossman investigating Hamilton's selling of the Russian loans and the purchase of Latin American debt at above-market prices.

The bank's board had asked Greenberg Traurig to look into the transactions at the urging of its auditor.

The OCC suspected a loan swap, an illegal transaction to hide red ink from bank investors. Also called an adjusted price trade, the purpose is to conceal an imbedded loss by swapping an asset for other assets with imbedded losses. The difference meant big money for the bank's officers. Masferrer, for instance, received a \$1.8 million bonus.

Both reports by Greenberg Traurig concluded, though, there was no overwhelming evidence that the transactions involving the Russian debt and the Latin American loans were adjusted price trades.

The OCC, in its charges against Loumiet, points out that after the reports were generated, Hamilton bank officers steered \$1.16 million in fees during 2001-02 to Greenberg Traurig.

The prominent Miami-based firm and Grossman settled with the OCC in December 2006, agreeing to pay \$925,000 in fines to settle OCC allegations. Under conditions of the settlement, neither Greenberg Traurig nor Grossman admitted fault.

"Although the firm respectfully disagreed with the OCC's assessment of the facts, the firm nevertheless entered into this agreement without admitting or denying the OCC's allegations so it could resolve this matter in a manner satisfactory to the OCC, and without further expense or distraction to the firm," said Jill Perry, director of marketing and communications for Greenberg Traurig.

Loumiet worked for Greenberg Traurig for 19 years, chairing its banking and international law departments in Miami. He joined Hunton & Williams in 2001, where he is a partner in the firm's business practice group, focusing on international business and banking.

Hunton & Williams has said it does not believe the proceedings will impact its clients because the firm is not a party to the proceedings.

"The current trial results from an administrative action against Carlos Loumiet in connection with his co-authoring of two reports approximately six years ago, at which time Mr. Loumiet, a longstanding and distinguished member of the [Florida] Bar, was a partner at another law firm. Hunton & Williams LLP is neither a target of the action nor a party to the proceedings," Hunton & Williams said in a statement released Monday.

Joseph E. Ankus of Ankus Consulting, a legal recruiting firm in Weston, Fla., said Loumiet's current firm may be crossing its fingers. "If one of your partners is in the limelight, you want it for good things. You don't want your partners defending themselves," Ankus said.

Loumiet, though, said he is being targeted because he dared to point the finger back at the OCC, blaming investigators for lax oversight of Hamilton. He is making a stand, refusing to settle or admit any guilt, saying the reports contained the facts as presented by the bank to his team and that it was simply inconclusive if a loan swap occurred.

"They [the OCC] are trying to destroy this man because he didn't do what they couldn't do," Greer said. "This hearing will have a huge impact for any lawyer undertaking this kind of work in the future."

Ankus agreed, calling the hearing "a big deal."

"If it comes out such a way that it's not good, it will have a chilling effect on banking lawyers, limiting them in creative or new theories," Ankus said. "This is unfortunate, because novel or creative or new doesn't mean that's illegal or ineffective."

Hamilton Bank's problems started in June 1998 when the price of oil and other raw materials dropped, spurring an economic crisis in Russia. As a result, the OCC reviewed the bank's loans to cities in Russia, including Moscow. On Sept. 9, 1998, the OCC downgraded three of those loans to "substandard" and ordered a 25 percent reserve for these loans, which would have resulted in a \$3.1 million reported loss for Hamilton.

The bank within days sold the \$6 million Moscow loan to West Merchant Bank of London at part value -- far in excess of its approximately \$900,000 values. Hamilton agreed to purchase perpetual notes through a West Merchant intermediary for \$15 million, when it was in fact worth about half as much.

Hamilton swapped another Russian loan with West Merchant for debt securities in Colombia. Both financial institutions paid far more than what the loans were worth. Two other swaps of Russian loans for various Latin American debt were also made, according to the charges filed against Loumiet by the OCC.

Going against its auditors' advice, Hamilton did not report a loss upon completing its transactions, instead recording the prices bought and sold that were above fair market value.

A big part of the case against Loumiet will be memoranda from bank officials involved in buying the Russian loans. The memos describe the transactions as loan swaps. Greer said the OCC was uncooperative in sharing such information and that at least one of those bank officials said Loumiet and his Greenberg Traurig team denied there was loan swap.

When asked to hear a Westdeutsche Landesbank official's incriminating statement, OCC investigators would only read portions of his statement to Loumiet.

The Florida Bar has also opened an investigation into Loumiet and Grossman. Loumiet has never been disciplined by the Bar. Greer

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said the Bar, as is often the case, is awaiting the outcome of the administrative hearing.

Of the witnesses in the hearing, there will be three people who are conspicuously absent: the three imprisoned Hamilton Bank officials. Greer said he couldn't get to the men, but the government has agreed to stipulate to basic facts of their roles in the bank's failure.

When asked if their absence could affect the outcome, Greer said: "It certainly could be very, very relevant."

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