



Date posted online: Monday, November 28, 2005


Hotel faces foreclosure in Spencer

By Russ Oechslin, Journal correspondent

SPENCER, Iowa -- Foreclosure proceedings against the owner of The Hotel in downtown Spencer are the talk of the town.

But nobody involved is talking about it.

The owner, Steve Bear refuses to discuss the situation on the record.

 The future of The Hotel, in Spencer, Iowa, appears to be uncertain in light of recent foreclosure proceedings. Built in 1920, it is the tallest building in downtown Spencer. (Photo by Russ Oechslin)

Without citing any of the allegations, Spencer businessman Toby Shine, whose wife and a friend once owned the five-story facility, says only that they don't want it back.

And the banker forcing the issue, Northwest Federal Savings Bank Senior Vice President Dean Jacobson, has only one comment: "No comment."

But the court filings -- more than 150 pages of documents filed in about the last month tell much of the story using words like "fraud," "conspiracy," "scheme," and "concealing of evidence."

Bank filed in October

The Northwest Federal foreclosure action against Bear was filed Oct. 17. Also named as defendants were Spencer businessman Toby B. Shine, his wife Sylvia Shine, Shine Bros. Corp. and Carolyn Toebe.

Toby Shine and his family business, Shine Bros., are guarantors on the bank note for the property. Sylvia Shine and Toebe were The Hotel's owners who sold the property to Bear in September 2000.

The filing cites delinquency on a \$575,000 promissory note listing a principal balance of \$283,639 plus \$1,710 in interest as of Oct. 5. Late fees add another \$3,314, and continue at the rate of \$55.51 per day.

While in his Nov. 10 response Bear admits missing payments, his filing notes an agreement to modify the payments and that Northwest Federal has since refused to accept payment. The response also claims an imperfect security agreement and adds that the plaintiff "did not provide the defendant with a notice of right to cure the default as required..."

The response cites a "breach of fiduciary responsibility" as causing damages to Bear and alleges "bad faith."

Calling transfer of stock between the Shines, Toebees and Bear "fraudulent," Bear's response to the bank's action says, "Northwest colluded, conspired, assisted and/or entered into a common scheme with Sylvia Shine, Carolyn Toebees and Toby Shine to conceal evidence from the officers of The Hotel of the fraudulent transfer," and explains that at least one stock certificate was "manufactured, and represents false and fictitious shares since these shares ... were pledged as collateral and in the possession of Northwest Federal."

Judge disqualifies herself

While requesting a jury trial, Bear asked that Judge Nancy Whittenburg be disqualified as his business maintains "a business relationship with the family...and (the judge's) impartiality might reasonably be questioned."

Whittenburg had been scheduled to consider receivership for the property today. The bank has asked that Sioux City attorney D. L. Harnett be appointed. Shine has filed a request that Carolyn Toebees' husband, Hank Toebees, a former Spencer businessman, assume that position.

The bank opposed the motion as "merely another attempt to delay the appointment of a receiver."

While in a Nov. 22 order, Whittenburg did recuse herself from any further involvement, the question of a receivership is unresolved.

The business involved, Chuck Whittenburg Distributing, is a Budweiser wholesaler, and is managed by the judge's brother, Charley Whittenburg.

The judge's husband, Gary Nelson, also works for the distributorship.

Insurance actions questioned

Another suit involving The Hotel has been on file since March 2004, when Ohio Casualty Insurance threatened to cancel the business' casualty coverage, including dram shop coverage, in mid-term -- and, according to the suit filed by Bear against Ohio Casualty, without notification.

In the suit, Bear alleges he never received notification from the company or its agent -- that his only notice was from the state Alcohol Beverage Division. That notice explained that his liquor license would be cancelled within three days if he could not provide proof of dram shop coverage.

A temporary restraining order forestalled the Ohio Casualty action. Since the expiration, which was to have been July 2004, coverage has been replaced and The Hotel, its restaurant and bar continue to operate.

Bear's suit claims the defendant, Ohio Casualty, did not follow the requirements of the Iowa Code, and that the company acted in bad faith. It asks for a jury trial. His action cites e-mails between Ohio Casualty officials dating to November 2003 that show a concerted effort toward mid-term cancellation.

The e-mails consider risk standards and financial condition, along with the facility allegedly being underinsured and show that the issuing agency, Spencer Insurance, was aware of the situation months before Bear received notification from the Alcohol Beverage Division.

In a subpoenaed but unanswered e-mail from the Spencer Agency's Libby Sticker to Bear (Jan. 26, 2004) it is explained "I just wanted to let you reiterate that you have no

coverage through Ohio Casualty at this time."

A subpoenaed letter dated Jan. 23, 2004, explains to Bear "we are returning this payment (dropped off 1-23-04) since the policy was canceled effective Jan. 19, 2004, due to failure to comply with safety recommendations."

Other e-mails submitted for the file purport to show solicitations made by the agency to other insurers to replace the Ohio Casualty coverage.

While the insurer did provide alleged proof of the mailing of cancellation documents, Bear claims they were never received and that the company cannot prove his receipt.

Bear seeks unspecified damages in the dispute with the insurance company.

In response to the foreclosure, Bear is asking for rescission of the purchase agreement with damages awarded. Citing unjust enrichment, his response also calls for compensation and punitive damages.

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