Fla. Bank Shareholders Lose Bid To Stop Recapitalization Deal

By **David Minsky**

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-- A Florida federal judge has denied a post-trial bid by Eastern National Bank NA shareholders to halt a recapitalization deal and stop the bank's board from implementing an equity compensation plan following claims that the bank didn't have proper authorization from the U.S. government to implement the plan.

U.S. District Judge Darrin P. Gayles shot down the permanent injunction request by ENB shareholders Bancor Group Inc. and Stichting Particulier Fonds Franeker to nullify a 2021 board action to sell an additional one million shares meant to recapitalize the bank and stop bank leaders from receiving restricted stock units as part of an equity incentive plan.

Judge Gayles handed down his ruling following a hearing Friday. The shareholders brought their motions for injunctive relief and limited discovery, challenging a license issued by the Office of Foreign Assets Control and after the shareholders failed to prove, during a trial in June, a Venezuelan government conspiracy to take over the bank.

An OFAC license is necessary, since the bank is partly owned by the Venezuelan national government, according to Evan Stroman of Diaz Reus LLP, counsel for the board members.

"If OFAC had a problem, they would have stopped issuing licenses to the bank long ago, and they did not do that," Evan Stroman told Law360 on Monday. "The judge decided that to prevent the two things that the plaintiffs have asked for would be detrimental to the bank at this point."

The shareholders brought their suit in 2022 against Eastern National Bank leadership and Gabina Rodriguez, an attorney who took control of Eastern National Bank when she was appointed as receiver of parent company Corpofin CA. Bancor and Franeker own less than 100 shares in the bank and are both controlled by Venezuelan-American businessman Juan Santaella, who originally owned Eastern National Bank.

Bancor and Franeker alleged Gabina Rodriguez installed Venezuelan government agents on the bank's board. The shareholders also claimed the board directors allowed the bank to sidestep U.S. penalties in order to benefit the Venezuelan government. The case went to trial and concluded at the end of June.

In its verdict, a federal jury found Gabina Rodriguez breached the fiduciary duties of care and loyalty to the bank and that bank CEO Carlos Rodriguez also breached the fiduciary duty of care owed to Eastern National Bank. The shareholders were **awarded $800,000** in damages, far less than the $27 million they were seeking.

Less than two weeks after the verdict, Bancor and Franekar sought an evidentiary hearing, saying the defendants failed to disclose details of a recapitalization deal with the Monasterio Investor Group during the trial and claimed "irregularities" on the OFAC license, which is needed to conduct business with an entity that's sanctioned by the U.S. government.

"Plaintiffs sought the materials relating to the bank's recapitalization prior to trial, but defendants failed to meet their ongoing discovery obligations by disclosing this highly relevant information about this investor group during pre-trial discovery," the plaintiffs **said in a July motion**. "The only representation that the OFAC document is what it appears to be is the fact that defendants' counsel produced it at the July 9 status conference."

The shareholders would have had to prevail on the merits of their claims during trial in order to get the injunction, but the jury found in favor of the defendants on several claims — including that board members Keith Parker, Gustavo Macias, and Louis Ferreira were not liable for damage to the bank, Stroman told Law360.

Stroman added that Eatern National Bank is a smaller community bank and is "under microscope always" by the U.S. government. He said the testimony from trial was clear that OFAC doesn't issue licenses unless it's in the best interests of the U.S.

Another aspect of the judge's ruling was that complaints about licenses should be made to OFAC, which hasn't taken any action against the bank and won't, Stroman said.

"OFAC took their time in reviewing the application and continued issuing licenses for the past four or five years," Stroman said. "The plaintiffs brought this lawsuit for their own best interest and try to put money in their own pockets."

Representatives for the shareholders did not respond to requests for comment Wednesday.

Bancor and Stichting Particulier are represented by Derek E. León, Diego Pérez Ara, Heaven C. Chee and Maria A. Hernandez of Leon Cosgrove Jimenez LLP.

The board of directors is represented by Evan J. Stroman, Gary E. Davidson, Brant C. Hadaway, Javier Coronado and Ibrahim M. Amir of Diaz Reus LLP.

The case is Bancor Group Inc. v. Rodriguez et al., case number 1:22-cv-20201, in the U.S. District Court for the Southern District of Florida.