Bond Case Briefs

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A Ponzi Scheme, a Retiree and a Revolt Against OppenheimerFunds.

- **Florida real estate district files for bankruptcy protection**
- **Sets fight with bondholder over legacy of subprime collapse**

Donald Dwyer left statehouse politics for retirement in Clearwater, Florida, at the Grand Venezia, a 336-unit condominium complex with a pool, tennis courts and ill-fated ambitions to bring a touch of Italian luxury to the Gulf Coast.

But the former Maryland lawmaker is now leading an unusual community tax revolt against OppenheimerFunds Inc., which oversees $230 billion in assets, that may echo far beyond his tiny patch of Florida's western shore.

During the height of the real estate bubble, the Clearwater Cay Community Development District sold notes and bonds for a development that was supposed to include a water park and a gondola-lined canal with Venice-style bridges that would turn the Grand Venezia into a destination resort. But those amenities were never constructed, and the developer is serving a 40-year prison sentence for running a Ponzi scheme. So on June 4, Dwyer and the district's board of supervisors opted to push it into bankruptcy, seeking to reduce the debt and the approximately $1,500 they each pay every year for it.

The district had $13.9 million in bonds outstanding as of September 2017, according to its financial report, though Dwyer said he has doubts about the accuracy of that figure. OppenheimerFunds owns all of it.

"I have no option other than filing bankruptcy," said Dwyer, 61. "We're going to let somebody else intervene on our behalf because this has gotten insane."

The step marks a rare, if quixotic, challenge to a major corner of the tax-exempt bond market where companies routinely raise money to build roads, sewers and other infrastructure for new real estate developments. When the properties are sold, fees charged to homeowners by their land districts cover the debt. There is about $7.3 billion of such securities outstanding in Florida alone, with billions more in fast-growing states such as California, Texas and Colorado.

Uphill Battle

James Spiotto, managing director of Chapman Strategic Advisors LLC and an expert of municipal bankruptcies, said the district faces an uphill fight. He said he's not aware of any other community-development district that has gone bankrupt in Florida, and it will need the approval of the governor. Moreover, the revenue securing the bonds — the assessments — is a very secure type of debt that is "not supposed to be impaired," he said.

"I don't really know if they can avoid the debt obligation," Spiotto said.

An OppenheimerFunds spokesman declined to comment. In August, a state judge sided with the firm by striking down residents' earlier effort to dissolve the Clearwater Cay district and claw back debt payments. At a meeting with residents that month, Brian Crumbaker, a Tallahassee-based lawyer for OppenheimerFunds, said there would be widespread defaults in Florida if such districts were allowed to repudiate their debts.

The Clearwater Cay district was created in 2005, during the height of the housing mania, to bring the look of Venice, Italy, to a stretch of coastal property about 22 miles (35 kilometers) from Tampa. It issued debt backed by a tax levy on a 49-acre area that developer Dave Clark promised to transform into a "luxury, regional resort destination" with apartments, shopping, and a water park, according to 2005 debt offering documents.

But Clark's business ventures unraveled. According to the U.S. Justice Department, his company, Cay Clubs, defrauded investors by raising $300 million to redevelop dilapidated vacation-rental properties in Florida, Las Vegas and the Caribbean. Regulators said it was a Ponzi scheme that relied on fraudulent purchases to artificially inflate the property's values, including those in Clearwater. In 2016, he was sentenced to 40 years in prison.

Suing Over Fallout

Bruce Barnes, a lawyer based in Safety Harbor, Florida, who has represented those who sued Clark, says he has been dealing with the fallout from the Clearwater development for 12 years. Barnes said that in 2014 he began to look into residents' concerns over why they were still paying assessment charges associated with the district's debt.

That money was going to OppenheimerFunds, which purchased the debt in 2006 and 2007 for two of its mutual funds, including its high-yield municipal fund, according to court filings. That fund, the fourth-biggest of its kind with $7 billion in assets, has been known to make risky bets, includingon debt sold by real estate development districts roiled by the subprime crash.

In 2016, Barnes sued the district and the mutual funds on behalf of a condo association at the Venezia, saying the annual fees between $1,400 and $1,500 were going to debt issued for a district that wasn't legitimate. The lawsuit asked for OppenheimerFunds to refund the assessments, claiming the debt wasn't used to benefit the community. Last year, the judge ruled against the homeowners while ordering the size of the fees to be reassessed, according to court records.

In a lengthy district board meeting with residents in August, Crumbaker, the OppenheimerFunds lawyer, said the bond proceeds did provide a benefit by funding land purchases and water and sewer services. He said the only risk that the firm took on was that the debt payments would fall short if individuals stopped paying their tax bills, not that the district would repudiate its obligations. "Otherwise, every city, county, school board, 600 community development districts in Florida, et cetera, would be doing the same thing," he said.

After the judge sided with the investment firm, Dwyer mounted a takeover of the district board in November. He said OppenheimerFunds hasn't provided details about how the assessment money is being used or how much debt is still owed. The 2017 financial report notes that the district couldn't provide "evidential matter" on the trustee's expenditures from the debt service fund.

"I'm not going to assess my community for a debt I can't justify," he said.

OppenheimerFunds is no stranger to such legal fights. Its funds were big owners of bonds issued by Puerto Rico, which is now working through a record bankruptcy. In September, it sued Harvey, Illinois, after it defaulted on bonds issued in 2007.

The district decided to file for bankruptcy in the hopes of getting the investment firm to the bargaining table, Dwyer said. “It might mean that the bondholders take a haircut,” he said. “They’re going to have to write down some of their debt, or walk away from all of it.”

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