



Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Deloitte Claims Stand In Fraud Scheme Suit

By **Christie Smythe**

Law360, New York (October 28, 2008) -- Financial advisory firm Deloitte & Touche LLP can be held accountable for allowing insiders at bankrupt USA Commercial Mortgage Co. to steal from the mortgage company and defraud investors, a federal judge has ruled.

Judge Philip Pro on Friday denied Deloitte's motion to dismiss the case, which was filed by a liquidation-related trust for USA Commercial Mortgage in the U.S. District Court for the District of Nevada.

In the complaint, USACM Liquidating Trust alleged that the lender's former auditor, Deloitte, aided and abetted in a securities fraud scheme perpetuated namely by former principals Thomas A. Hantges and Joseph D. Milanowski.

Hantges, the former chairman and CEO, and Milanowski, the former president and treasurer, stole money from the mortgage company's servicing unit and investment fund to make interest payments on loans for commercial real estate projects, the complaint said.

By making the interest payments, Hantges and Milanowski were able to convince investors who put up principal that the loans were current. In fact, many of the borrowers for the commercial real estate loans were defaulting or going belly-up, according to the complaint.

The scheme eventually tipped Las Vegas-based USA Commercial Mortgage into liquidation bankruptcy in 2006 and left numerous small investors, mostly retirees, without any means of recouping much of their savings, the managers of the liquidating trust alleged.

Deloitte assisted in the scheme by issuing unqualified audit opinions on “materially false and misleading financial statements” from December 1998 through December 2001, the complaint said.

After signing off on the 2001 financial statements, Deloitte “orchestrated a quiet withdrawal” from its work as an auditor for the mortgage company without notifying stakeholders that it had discovered wrongdoing, the complaint alleged.

Deloitte maintained that it had no role in the alleged investment scheme and should not be held liable for it, according to Judge Pro’s ruling on Friday.

“They know that there was a problem here, and they fired their client because of the knowledge they had,” said Bill Reid, a partner in Diamond McCarthy LLP, representing the liquidation trust. “But as we alleged in our complaint, they really should have done something different other than issue a clean audit and withdrawal.”

Attorneys for Deloitte did not return calls for comment on Tuesday.

In April, the U.S. Securities and Exchange Commission filed a civil suit against Milanowski, charging him with securities fraud in connection with his role in the scheme. The SEC has not brought charges against Hantges, Reid said.

USA Capital, a fund created by the company to provide loans, raised about \$150 million from 1,900 investors between May 2000 and September 2005, according to the SEC.

The liquidation trust was formed as part of the wind-down plan in USA Commercial Mortgage’s bankruptcy, which was filed as a liquidating Chapter 11 in the U.S. Bankruptcy Court for the District of Nevada in April 2006.

In its suit against Deloitte, the liquidation trust sought damages for all losses suffered by the mortgage company and the investment fund, disgorgement of fees Deloitte received from the mortgage company and punitive damages, according to the complaint.

The suit also sought damages from a former USA Commercial Mortgage in-house accountant, Victoria Loob, who allegedly helped perpetuate the scheme.

The liquidating trust is represented in the matter by Diamond McCarthy LLP and Lewis and Roca LLP.

Deloitte & Touche LLP is represented by Morris Pickering & Peterson and Latham & Watkins LLP.

The case is USACM Liquidating Trust v. Deloitte & Touche LLP, case number 2:08-cv-00461, in the U.S. District Court for the District of Nevada.