

Judge Dismisses Most Claims in Class-Action Lawsuit Against Orion Bancorp

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Originally published 05:31 p.m., September 28, 2011

Updated 03:36 p.m., September 29, 2011

A federal judge has dismissed most of the claims in a class-action lawsuit brought against Orion Bancorp Inc. by its former employees.

Employees sued the holding company and its directors more than a year ago, seeking damages after losing their nest egg in a company retirement plan. In the plan, they were investing mostly in Orion stock. The value of the stock dropped to zero after the bank failed in 2009.

"The case can go forward in a very limited fashion, as of right now," said Lawrence Kellogg, a Miami attorney who represents most of the former Orion Bancorp directors named in the suit.

All of the company's directors, except the embattled ex-CEO Jerry Williams, have been dismissed from the lawsuit.

"They are relieved and they feel vindicated because they didn't do anything wrong, with respect to this pension plan," Kellogg said.

Kellogg does not represent Williams. Williams' attorney could not immediately be reached for comment about the ruling.

The lawsuit alleged the holding company's directors, as a group, failed to "prudently and loyally" manage the retirement plan's investment in Orion stock and failed to provide complete and accurate information to its participants.

According to the lawsuit, 96 percent of the retirement plan's assets – more than \$33 million – were invested in Orion stock.

In his order, U.S. District Judge John Steele ruled that the facts presented in the case didn't suggest a "dire situation" that would have required the company or its directors to stop offering stock as an investment option or to take the money out of the stock and invest it elsewhere. That would have been "contrary to the very purpose of the plan," which was created to give employees ownership in Orion.

"Stock fluctuations do not establish that Orion was on the 'brink of collapse' and that no reasonable fiduciary would continue investing in Orion stock," Steele wrote.

Steele noted that employees did have a choice of investing in other options.

The former employees failed to show the directors “believed or knew Orion would collapse,” Steele said in his order.

With the ruling, the plaintiffs can only go against Williams for the personal stock he sold to the plan before the bank collapsed, Kellogg said.

“The case has gone from a potentially \$35 million case to a \$1 million case against Williams only,” he said.

Joseph White, a Boca Raton attorney representing the Orion employees, doesn’t agree with that interpretation. He said the damages that can be directly attributed to Williams go far beyond \$1 million.

“Mr. Williams remains at the center of this entire situation, leaving nothing but victims around him,” White said in an email. “This is an unfortunate situation thrust upon the hard working employees of Orion Bank by Mr. Williams and we will continue to advance this action to recover everything that is available to be redistributed back to the plaintiffs.”

Williams was indicted on bank fraud charges in March. He faces carry a maximum sentence of 220 years in prison.

If convicted, Williams could also face millions in penalties and be ordered to pay restitution to Orion Bank shareholders including employees. His trial is set for early next year.

Through the class-action lawsuit, former employees have sought to recover damages they suffered from Jan. 1, 2006 to Nov. 13, 2009 – the day regulators swooped in to close the bank. In 2007, Orion’s stock was valued at as much as \$55 a share, when in reality it was “utterly worthless” because the company had adopted unsound business and lending practices, the lawsuit contends.

The former employees allege that even as the bank was failing they were encouraged to invest in the retirement plan and to continue buying company stock.

In June 2008, Williams sold 18,182 shares of his personal Orion stock for \$55 a piece to the employee retirement plan, for a little over \$1 million. Because the plan had no money to buy the shares, the plan had to borrow money, putting it in debt, according to court records.

The former employees will have to prove that Williams did something wrong when he sold his personal stock to the plan, Kellogg noted.

In his order, Steele said Williams’ decision to sell his own stock “may have well been contrary to the interests of the participants.”

The legal team working for Orion's former employees will "strive to find every dollar we can and get it back into the hands of Mr. Williams' victims," White said.

In the lawsuit, plaintiffs allege violations of the Employee Retirement Security Act of 1974, which is meant to ensure the soundness and stability of plans to make sure they pay the promised benefits. Through the retirement plan, employees could contribute up to 10 percent of their pay a year, with a \$1 for \$1 match from the company, according to the lawsuit.

"While we had hoped that all of our claims would survive, we feel that the court properly exercised its discretion in dismissing some claims while allowing others to proceed," White said.

He said these types of cases can be tough to prove.

"The legal standards are difficult to meet and we are happy that we have been able to do so on behalf of our clients in this instance," White said.

