

REAL-TIME NEWS FROM BIRMINGHAM

SEC files fraud charges against 11 former Superior Bank executives

Updated on January 19, 2016 at 2:38 PM

Posted on January 18, 2016 at 8:10 PM

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The Securities and Exchange Commission has filed fraud charges against 11 former executives and board members at the now defunct Birmingham-based Superior Bank and its holding company. The regulatory agency says the bankers were involved in various schemes to conceal the extent of loan losses as the bank was faltering in the wake of the financial crisis, according to an SEC statement issued last week.

Specifically, the SEC alleges the high-ranking officers and directors schemed to mislead investors and bank regulators by propping up Superior Bank's financial condition through straw borrowers, bogus appraisals, and insider deals, according to the statement. The SEC also says the officials improperly extended, renewed, and rolled over bad loans to avoid impairment and the need to report ever-increasing allowances for loan and lease losses in its financial accounting.

As a result, Superior Bank overstated its net income in public filings by approximately 99 percent for 2009 and 50 percent for 2010. The Birmingham, Ala.-based bank failed in 2011.

Superior Bank was closed in April 2015 by the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation (FDIC) was named Receiver. Community Bancorp LLC, Houston, Texas chartered a new bank subsidiary - Superior Bank, N.A - to assume all the deposits of Superior Bank.



Then in November 2011 **Community Bancorp LLC**, announced it was merging Superior Bank with Cadence Bank into a single entity based in the city.

Nine of the 11 bank officers and directors have agreed to settle the SEC's charges. Contesting the SEC's complaint filed in federal district court in Tallahassee are **Kenneth D. Pomeroy**, who was president of Superior Bank's central Florida region, and **William C. McKinnon**, who was a senior vice president and commercial loan officer.

"Accurate and fair reporting of loan impairment is of paramount importance for financial institutions during periods of severe financial stress," said Andrew J. Ceresney, Director of the SEC's Enforcement Division. "Superior's senior-most officers and certain directors allegedly engaged in a widespread and egregious accounting fraud by concealing significant losses from loan impairments."

Walter E. Jospin, Director of the SEC's Atlanta Regional Office, added, "We allege that pervasive fraudulent behavior rippled through the executive offices at Superior Bank in a calculated effort to mislead investors on the amount of loan losses and disguise the bank's flailing financial condition."



Under the settlements in which they neither admit nor deny the SEC's charges and are each permanently barred from serving as officers or directors of a public company:

- **Charles S. Bailey**, former CEO and chairman of the bank's holding company Superior Bancorp, must pay a \$250,000 penalty.
- **James A. White**, former CFO of Superior Bancorp, must pay a \$200,000 penalty
- **Dewayne S. Maddox**, former market executive at Superior Bank, must pay a \$200,000 penalty
- **William H. Caughran**, former general counsel of Superior Bank and Superior Bancorp, must pay a \$150,000 penalty.
- **Charles W. Roberts III** and **Robert R. Parrish Jr.**, who served as outside directors at Superior Bancorp, must each pay \$100,000 penalties.
- Superior Bank's former president and CEO **Charles M. Scott Jr.**, former chief credit officer **John E. Figlewski**, and former president **George J. Hall** have each agreed to bifurcated settlements in which the court will determine financial penalties at a later date.



According to the SEC's statement the fraud involved many of the largest loans in Superior Bank's portfolio.

Among the lending schemes they used to materially understate bank public filings and conceal the loan problems:

- They engaged in non-recourse loans in which they replaced the borrowers of record for a severely delinquent loan with alternative borrowers who typically were in default on multiple other loans from Superior Bank. They agreed to the additional loan relationship as an explicit accommodation to avoid foreclosure or collection efforts on prior loans and understood they were not obligated to repay Superior Bank under the new loans.
- They frequently utilized appraisals that were several years out-of-date with no justification supporting the continued use of the stale appraisals, which routinely overstated the value of the loan properties and identified wholly inaccurate or unviable projected future uses of the properties. Other times they used conflicted appraisers beholden to Superior Bank or the borrower.
- They approved renewals or modifications of severely delinquent loans either by rolling forward relevant payment dates or funding new loans to the borrower and using those proceeds to pay down the prior loan. This technique made the loan appear current on paper and within Superior Bank's internal systems.



- They proposed, structured, and documented non-recourse joint venture agreements with defaulted borrowers and a now-deceased outside director of Superior Bancorp in which Superior Bank benefited from the appearance that the loan was current despite its near-certainty of falling back into delinquency and default.
- Bailey, Hall, Scott, and White orchestrated a separate accounting fraud by failing to appropriately impair more than \$250 million in substandard loans being actively marketed for sale to third parties at less than 50 cents on the dollar.
- Bailey, Scott, and White knowingly failed to write-down to zero a deferred tax asset that Superior Bancorp was using to offset future income they knew would never materialize as a result of the fraudulent lending schemes and operating losses.



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