

# Vancouver Sun

## Money was being shuffled to meet funding shortfalls

Monday, January 17, 2005

Page: D1 / FRONT

Section: Businessbc

Byline: David Baines

Source: Vancouver Sun

Series: The Rise and Fall of Eron Mortgage

Illustrations: Color Photo: Brian Slobogian

Color Photo: Frank Biller Color Photo: Vancouver Sun files / Robert Hobart was the B.C. registrar of mortgage brokers when he revoked Eron Mortgage Corp.'s licence. The registrar's toll-free hotline received more than 400 calls on the first business day after the intervention.

The trial of Brian Slobogian and Frank Biller, senior executives of Eron Mortgage Corp., starts today in B.C. Supreme Court. The two are charged with defrauding investors of millions of dollars. The Sun's David Baines files the last of his three-part series on B.C.'s biggest financial fiasco.

---

On Oct. 3, 1997, when B.C. registrar of mortgage brokers Robert Hobart revoked Eron Mortgage Corp's licence, it was like pulling the pin on a hand grenade.

Investors exploded in shock and anger. On Oct. 6, the first business day after Hobart's intervention, more than 400 people called the registrar's toll-free hotline. Dozens more wrote letters.

Heinz Weber, a resident of Hope, complained that Eron had been operating smoothly for years and "allegations of misconduct are apparently based solely on Mr. Hobart's opinion or whim.

"In the absence of any evidence to the contrary, I think Mr. Hobart should be held responsible for any damage, financially or otherwise, he has inflicted on Eron and on us unwashed investors."

Hobart had alleged that Eron had raised money for some projects that were partly or wholly owned by the firm's two top executives, Brian Slobogian and Frank Biller, creating untenable conflicts of interest.

Money had been shuffled from one project to another -- without the knowledge or approval of investors -- to meet funding shortfalls and pay the huge rates of interests that Eron had promised them.

Eron's accounting records were a shambles, making it difficult if not impossible to determine which project an investor was in, or how an investment was secured, if at all.

In some instances, the amount of money that Eron raised for its projects far exceeded the amount of the mortgage security, leaving investors unduly exposed to loss.

Some of the investments, such as Nexus Ventures which was funding a winery in France, did not qualify as a mortgage investment under the B.C. Mortgage Brokers Act.

One of Eron's key brokers, Al McLean -- who had sold millions of dollars of Eron investments to former NHL pros and recreational hockey players in the Lower Mainland -- was not licensed as a mortgage broker.

For many investors, however, these were simply technical infractions. Eron had been paying principal and interest like clockwork. There was no good reason to spoil the party.

"I think they [Eron's principals] were doing their business well. They were giving small investors a chance to earn some money," said Diane Comens, a school teacher and Eron investor.

Investor outrage would intensify in coming weeks and months, but not because Hobart had acted precipitously, rather because he had not acted quickly enough.

According to internal documents, registrar officials had advised Eron of their concerns as early as August 1996 -- 13 months before they suspended Eron's licence.

Three months later, they raised additional concerns, including the fact that lawyer Doug Jackie, who processed mortgage security for Eron investors, was being paid by Eron and therefore lacked independence.

The Jackie issue was critical, as many investors were told their mortgage loans would be registered in second position. Unknown to them, they ended up in third, fourth, fifth and even sixth position.

In an interview with The Vancouver Sun, Jackie said he forwarded all relevant mortgage documents to Eron, and had assumed the firm passed them on to investors.

"I understand that some of them did not [receive the documents]. I am horrified to know that that is the case," he said at the time.

As Hobart's concerns heightened, he called for an audit of some of Eron's deals. One was Shuswap Falls Development Ltd.

He learned that Eron had decimated this project by taking huge brokers' fees and diverting large chunks of investors' money to other projects, including

\$150,000 to Slobogian's vanity project, the West Coast Golf Classic, where he schmoozed with golf pros such as John Daly and Dick Zokol.

As these horror stories emerged and it became apparent that overall losses would be massive, investors became more and more incensed with what they viewed as the B.C. government's failure to properly regulate Eron's affairs.

However, if they ever had a chance of exerting moral pressure on the government, they blew it on Nov. 2.

That day -- a Sunday -- more than 1,500 investors jammed the Capilano College gymnasium. "The system has failed us," said Laura Thaw, who invested \$17,000. "Now we have to take control."

In attendance were about a dozen television, radio and print reporters, ready to communicate their concerns to public.

But the organizer of the meeting, Janet McDermott, turfed them from the gym and even threatened to sue a Sun photographer who took her picture in an outside common area.

Investors formed a committee, called the Eron Lenders Committee, to represent them on common issues, but it lacked leadership and it soon became racked with internal dissension.

As a result, the committee was never able to make Eron's collapse a political issue, which might have led to some compensation, as occurred after the Principal Group fiasco years ago.

Although Eron never became a political issue, it became a legal issue in September of 1998, when 55-year-old Penny Cooper filed a lawsuit against Hobart and the B.C. government.

Cooper, who had invested \$94,500 in Eron, alleged that Hobart had breached his duty to investors by not intervening at an earlier stage.

The court agreed to certify the lawsuit as a class action, giving all Eron investors new hope of financial recovery.

It appeared to be a compelling case. Documents filed in court showed the government had known for years that syndicated mortgage offerings, such as those being sold by Eron, were a disaster waiting to happen.

In 1988, a mortgage fund called Newport Realty Inc. had collapsed and about 300 investors lost \$3.5 million. Newport's principal, Kenneth Lawson, was convicted of fraud and sentenced to three years in jail.

The case highlighted the fact small investors were becoming increasingly involved in more complex mortgage investments, and needed more protection from unscrupulous operators.

In 1990, B.C. finance minister Mel Couvelier

promised to address the matter, but nothing was done. Ministry staff became anxious.

"The public could reasonably expect government to have a duty to rectify these problems at the earliest opportunity," one staff member wrote in a July 1994 briefing note.

The staff member predicted future investor losses: "While there may be no immediate repercussions from postponing legislative reform, difficulties will almost certainly occur in future."

He also predicted that, if any losses occurred, investors would hold Victoria accountable: "Delaying any action to deal with these matters could lead to accusations of procrastination, charges of negligence, or demands for compensation."

Cooper's demands for compensation, which were being argued by Vancouver lawyer David Church, had serious repercussions, not only for B.C., but all other provinces. If her case succeeded, it would open the door for an onslaught of legal claims every time a government-regulated financial institution collapsed.

By the time the case reached the Supreme Court of Canada, Church found himself facing not only lawyers for Hobart and the B.C. government, but lawyers for seven other government bodies -- the attorney-general ministries of Canada, Ontario, New Brunswick and Alberta, and the securities commissions of Alberta, Ontario and British Columbia.

He was defeated. In November 2001, the court ruled that the registrar had no specific duty of care to Eron investors. "To impose a duty of care in these circumstances would be to effectively create an insurance scheme for investors at great cost to the taxpaying public. There is no indication that the legislature intended that result."

"We are dead in the water. This is the end of the road," said James Tindle, who had lost \$300,000 and was now head of the Eron Lenders' Committee.

Hobart was not unaffected, however. Under unrelenting criticism from investors and feeling intense personal pressure, he quietly resigned his post and took a job as a financial regulator in Trinidad.

Shortly after Eron's collapse, B.C. Securities Commission enforcement staff, arguing that Eron's mortgage investments were really securities, cited Slobogian and Biller for multiple breaches of the B.C. Securities Act.

The hearing started in April 1999 at a ballroom in the Century Plaza Hotel. Biller, represented by his lawyer Mark Skwarok, attended the hearing and defended himself. Slobogian did neither.

The central allegations were that the pair exaggerated the value of their projects, raised more money than the projects were worth, and did not obtain proper security for investors.

However, as always, it was the squandering of investors' money on hedonistic pursuits that sparked the most outrage in the gallery.

Sasha Angus, the commission's head of enforcement, described how Slobogian and Biller siphoned money from an Eron-sponsored project called Maxim Resources, an oil and gas play in California.

Of the \$7.4 million raised from investors, only \$2.85 million was actually invested in the project.

Of the balance, \$650,000 went to Eron for brokerage fees; \$62,000 to Slobogian; \$60,000 to Biller; \$34,500 to DeBouille Diamonds in Texas to buy diamond watches; \$24,800 for a down payment on the lease of a Mercedes Benz; \$168,000 for a condominium in Hawaii; \$2,262 for airline tickets to Hawaii; \$8,560 for a golf membership at the luxurious Swan-e-Set golf club in Pitt Meadows; \$1,750 for advertising on hockey jerseys for the Eron team; \$8,000 to the Burnaby Eight Rinks hockey facility; and \$2,000 for what Biller itemized as a "Whistler booze party."

Tindle, who had invested in Maxim Resources, was incensed. "I am very angry to find my hard-earned retirement money was being used to buy them diamond watches," he told reporters.

Throughout the hearing, Biller portrayed himself as Slobogian's fall guy. "I feel majorly deceived and lied to," he told the hearing panel in the vernacular of a high-school kid.

He said he trusted Slobogian "like a father" and admired him even though he sometimes abused staff. He recalled how Slobogian "gave me a cuff on the back of the head" and once "ripped the phone right out of my hand" while talking to an investor.

"He led us to believe that he was the pit bull and he could be fierce and mean and get back investors' money."

Biller succeeded in shifting much of the blame to his former boss. In November 1999, the panel ruled it had "no difficulty" finding that Slobogian perpetrated a fraud on investors. "The evidence clearly establishes elements of fraud, dishonesty and deprivation."

It found Biller played a subordinate role, but "ought reasonably to have known he was participating" in Slobogian's fraudulent transactions.

It suspended Slobogian from the market for life and Biller for 10 years (15 years less than Angus had requested). Each were also assessed the maximum fine of \$100,000.

The punishments for both men were meaningless. They had long ago become public pariahs. Their reputational capital was worthless. Suspension or no suspension, there was no chance they could ever do any legitimate work in the public markets.

As for the fines, they were both bankrupt and unable to pay a cent. Even if they had money, the commission said it would subordinate its claims to investors.

On April 9, 2000 -- just five months after the commission's ruling -- Slobogian received some crushing news. His 21-year-old son, Trevor, had committed suicide. He was found dead of a single gunshot wound in the West Vancouver townhouse that he shared with his mother, Onalee.

Days after Eron's collapse, RCMP began what would become the largest, most complex and most expensive white-collar police investigation in B.C. history.

On April 28, 2002 -- nearly five years after that investigation began -- Slobogian and Biller were each charged with 33 criminal counts relating to their handling of six Eron projects.

That afternoon, Slobogian turned himself over to police at the office of his lawyer, David Crossan, and was released on \$100,000 bail, posted by his wife.

Biller was arrested at 7 p.m. that evening while returning to his car in Vancouver's business district. He was released on \$100,000 bail, posted by former NHL hockey enforcer Dave (Tiger) Williams, a long-time friend.

Meanwhile, Slobogian did some consulting work for Martin Chambers, who was intimately involved in Eron's affairs. Chambers would later be convicted in an unrelated money-laundering case in the United States and sentenced to 15 years in jail. Slobogian later adopted the alias Brian Salo and worked at South Burnaby Terminals.

Biller found work in a downtown boiler room, teaching sales people to push virtually worthless stock over the phone to unsuspecting pigeons.

On Nov. 6, 2002, a dozen investigators, accompanied by eight uniformed police officers, raided the office. They found scripts designed to seduce and manipulate people into buying, as well as call sheets chronicling the progress they were making:

"Nice girl, looking for an investment. Has to like what she sees," wrote one phoner. "Also pitched her on [Communicate.com], so beat that out of her, too. Dumb bitch!"

With the heat on in Vancouver, Biller moved to Toronto, where he began pitching a worthless U.S. stock called Extreme Poker Ltd. under the alias Francis Derby.

"I would go in, pick up \$10,000 or \$15,000 worth at 17 cents," he told an undercover Sun reporter. "I mean this is just getting ramped up. Guys really believe this is a two- to five-dollar deal."

When the Sun published an account of the promotion, the Ontario Securities Commission began an

investigation. Biller's current whereabouts are not known, but he will be making a very public appearance within several days or weeks.

On Monday, the long-awaited criminal trial starts in B.C. Supreme Court before Judge Mary Ellen Boyd. After several preliminary matters, which are expected to take two to four weeks, the trial proper will begin. At that point, Slobogian and Biller will be required to attend.

The number of charges have been reduced to 14 counts each -- five charges of fraud, five charges of misappropriation of funds and four of breach of trust -- but the case is still expected to take most of this year.

In what some investors view as the ultimate insult, B.C. taxpayers will pay for all of Slobogian's and Biller's defence costs.

"An absolute outrage," says Tindle.

dbaines@png.canwest.com