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Nov. 10, 2006

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Lawyer bids to seal records

Protection sought for partial owner of USA Capital

By JOHN G. EDWARDS
REVIEW-JOURNAL

Attorneys for Joe Milanowski, a key manager and part owner of failed USA Capital, are asking a bankruptcy judge to seal and keep secret documents to protect Milanowski in potential regulatory and criminal cases.

The nature of the documents is not publicly known. But Milanowski's attorneys say the documents may affect possible criminal prosecution of their client.

USA Capital controlled \$962 million in assets for thousands of investors when it filed for bankruptcy court protection in April. The private lender solicited money from individual investors and used the money to make short-term mortgage loans, sometimes called trust deeds, to developers.

The company was making monthly payments to all of the investors, who thought they were receiving interest payments from performing loans. However, in many cases, the borrower had stopped paying on the loans.

Milanowski and Thomas Hantges were majority owners and managed USA Capital. They also borrowed money from investors for some of their own real estate projects.

In July, the FBI reported that it was reviewing the USA Capital case at the request of the U.S. attorney's office.

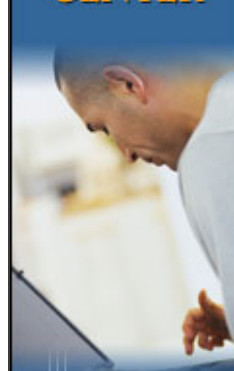
"We're certainly continuing to look at it," FBI spokesman David Nanz said Thursday. "The inquiry has not ended."

Attorneys for Milanowski on Wednesday filed a motion asking Bankruptcy Judge Linda Riegler to seal and protect the confidentiality of documents submitted by attorney Sarah O'Connell.

A public document explained that O'Connell's declaration "set forth confidential

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factual information regarding pending criminal investigations and subpoenas requesting confidential information pertaining to USA Investment Partners LLC and Joseph D. Milanowski."

USA Investment Partners is a company that Milanowski and Hantges used to develop real estate and to make investments in real estate.

The court document says Milanowski's attorneys "seek to prevent this information from being acquired by or disclose(d) to potential hostile parties that may adversely use the information to cause any possible waiver of movants' Fifth Amendment rights or cause adverse parties to use the information to the detriment of (USA) Investment Partners, Joseph D. Milanowski and the bankruptcy estate."

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The Fifth Amendment to the Constitution says a criminal defendant cannot be forced to testify against himself.

"We're just trying to get documents back. It's really no big deal," said attorney Russell Walker of Salt Lake City. "We're just trying to keep it so there isn't any prejudice to (Milanowski) in any possible regulatory or criminal prosecution."

Frank Cremen, a criminal defense attorney and unsuccessful candidate for district attorney, said the motion appears to relate to subpoenas either in the bankruptcy case or in a separate criminal investigation.

"It's pretty clear that there is a criminal investigation going on" based on the motion, Cremen said. Cremen said the motion appears to indicate that "this is very, very sensitive information" and that the motion seeks to prevent disclosure of the information.

Martin Lobel, a Washington, D.C., attorney, agreed with Cremen.

"It looks like they don't want to tell somebody about how they were cheating," Lobel said.

A local lawyer who spoke on condition of anonymity said Milanowski's attorneys apparently want to keep two secrets: the documents and arguments about why the documents should be secret.

"They want to be sure that the court keeps to itself information that Milanowski is providing in support of his arguments to keep other information confidential," the lawyer said.

In another development, attorneys for USA Capital and four committees for creditors and investors will tell Riegle on Monday about an agreement on a plan to reorganize USA Capital.

The proposed plan calls for each of five related USA Capital companies to liquidate assets "in an orderly way" for payment to creditors.

Direct lenders, investors who bought fractional interests in trust deeds, will keep their rights under loan documents. The plan provides for sale of loan servicing agreements, except those in which the USA Capital Diversified Trust Deed Fund is the sole or main lender.

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