

Did Moves By Parent Help Doom Illinois Thrift?

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By Joe Adler

WASHINGTON — Although Platinum Community Bank was troubled before it was bought by the mortgage lender Taylor, Bean and Whitaker Mortgage Corp. last year, questions are growing about whether the parent company caused the downfall of its subsidiary — and why regulators let it happen.

The Rolling Meadows, Ill., thrift was shut Sept. 4 by the Office of Thrift Supervision, just over a week after Taylor Bean declared bankruptcy; the failure came after some unusual transactions between the two.

In the days leading up to Taylor Bean's Aug. 24 bankruptcy, the Florida mortgage giant more than doubled Platinum's size, depositing \$210 million in escrow funds that were pledged to Freddie Mac.

Platinum used most of the new funding to buy loans from its troubled parent, giving Taylor Bean extra cash and ultimately leading to its downfall.

After Taylor Bean collapsed amid accusations of accounting errors, Freddie Mac, which had cut off its servicing ties with the bankrupt lender, demanded all of its money back. But Platinum could not pay — it only had \$28 million in cash on hand — and could not sell the loans to raise cash because it did not have possession of the parent's loan files.

Observers said Platinum's investment in its own parent's loans raises issues related to restrictions on affiliate transactions, and some speculated that Taylor Bean may have used the thrift as a last-ditch effort to stay afloat.

"Using the funds to buy loans at Taylor Bean, and not having the loan files ... is way out of the ordinary," said John Douglas, a partner at Davis Polk & Wardwell and a former general counsel at the Federal Deposit Insurance Corp. "You have all sorts of ... issues associated with buying loans from an affiliate, and certainly normally the bank would like to have the loan files for the loans it owns."

Others said regulators should have been more adept at walling off the thrift from its embattled owner. "Where OTS didn't do its homework was in evaluating what would happen if Taylor Bean went into bankruptcy," said Kip Weissman, a partner in Luse Gorman Pomerenk & Schick PC.

An OTS spokesman declined to comment for this article.

Taylor Bean was once one of the nation's top mortgage lenders, and it outlasted many competitors done in by the housing crash. But it quickly deteriorated as multiple states issued complaints over the firm's handling of nontraditional mortgages and an external auditor raised concerns about potential fraud. On Aug. 4, the Department of Housing and Urban Development, citing the lender's failure to disclose these issues, suspended Taylor Bean from its lending programs, and federal agents raided the company along with a warehouse lending office of Colonial BancGroup, the mortgage lender's troubled creditor. The next day, Taylor Bean stopped originating loans. Colonial, once expected to be acquired by Taylor Bean, failed on Aug. 14, and its operations were sold to BB&T Corp.

Regulators normally act to ensure that a collapsing parent's problems do not affect its depository institution subsidiaries, especially to prevent the owner from using a bank as support.

But observers said Platinum appeared anything but isolated from Taylor Bean. Many said the transactions between the two entities leading up to their failures raise concerns that they violated well-known restrictions on affiliate dealings in section 23A of the Federal Reserve Act.

"That would have been an issue right there," said Nicholas Ketcha Jr., a former director of supervision at the FDIC and now a bank consultant at FinPro Inc., "not so much" because Platinum received "the deposits but that it then bought loans from the holding company."

D. Anthony Plath, a professor at the University of North Carolina at Charlotte, said Platinum made poor financial decisions that should have been obvious.

"No. 1, there is a conflict of interest when you use a wholly owned escrow agent. You can't do that," he said. "No. 2, Platinum made an extremely bad investment decision with respect to putting money into a lender that was on the verge of failure. At that point, didn't they know that Taylor Bean was under investigation by the FBI? The answer to that is: yes. Don't they have a fiduciary responsibility to the bank and the FDIC to invest in assets that are relatively riskless and liquid?"

But others said the thrift was probably powerless.

"Platinum may have ended up being an innocent pawn in this," said Bert Ely, an independent bank consultant based in Alexandria, Va. "It looks like Taylor Bean needed

to get these mortgages off its books, probably at a price greater than they were worth, so somehow they engineered this transfer into Platinum Bank with the intent of using it to buy these mortgages. This was one of the most egregious failures I've ever seen. In effect, the parent company busted it out."

Colonial's failure may also have been a link in Platinum's collapse.

With Freddie Mac demanding its escrow funds, the thrift presumably could have sold the Taylor Bean loans for quick liquidity. But according to a release explaining the failure, the OTS said the loan files "were never in the savings bank's possession." In fact, they were being held by Colonial, which counted them as collateral against its credit to Taylor Bean. After Colonial's failure, the FDIC, as the bank's receiver, held the loan files.

"When the FDIC entered into the agreement with BB&T to take over Colonial, we carved out the TBW assets that Colonial had on its books," said an FDIC spokesman. "Those are left behind in receivership."

The mess of multiple institutions regulated by different regulators — Colonial was supervised by the FDIC and the state of Alabama — has already led to questions over who was to blame for what.

"Where there are multiple failures and multiple jurisdictions that get involved, there comes major finger-pointing," Ketcha said.

Weissman said there may have been a breakdown in communication. "I would like to know more about the coordination between the regulators who were dealing with the Colonial situation and the OTS," he said. "Did the Colonial regulators share all they know with the OTS so that it could properly evaluate the Platinum business plan? If coordination between the regulators were better, would the Platinum situation have been avoided? These are definitely questions worth answering."

While relatively small, Platinum's failure was also unusually expensive. The FDIC estimated it would cause a \$114 million loss to the Deposit Insurance Fund, which was 77% of the thrift's size at June 30, before the big deposit by Taylor Bean.

Given the unusual transactions, Plath said the FDIC should sue for damages.

"The FDIC should file suit against the managers and directors of Taylor Bean to recover what was lost," he said.

The FDIC spokesman said it was premature to say whether the agency would address the failure any further.