

Barclays Agrees To Cough Up \$2B Over Noxious RMBS

By **Stewart Bishop**

Law360 (March 29, 2018, 12:14 PM EDT) -- Barclays and two former executives have agreed to pay a combined \$2.002 billion to settle claims that the British bank deceived investors about the quality of \$31 billion worth of residential mortgage-backed securities, U.S. prosecutors said Thursday.

Brooklyn federal prosecutors had accused Barclays PLC and two of its top former employees — Paul K. Menefee, the banker in charge of mortgage securitizations, and John T. Carroll, the bank's former head trader for subprime loan acquisitions — of bilking investors by claiming loans the bank was packaging into securities between 2005 and 2007 had been thoroughly vetted and that all were performing.

In reality, according to the government, the thousands of loans worth billions of dollars that were being stuffed into the securities were subprime and in many cases underwater, meaning the mortgages were worth more than the underlying homes, while borrowers were missing payments.

The deal, in which the bank must pay \$2 billion and the former executives are on the hook for a total of \$2 million, resolves claims that Barclays, several affiliates and the bankers violated the Financial Institutions Reform, Recovery, and Enforcement Act, through mail fraud, wire fraud, bank fraud and other misdeeds.

In a statement, the U.S. attorney for the Eastern District of New York, Richard P. Donoghue, said, "The substantial penalty Barclays and its executives have agreed to pay is an important step in recognizing the harm that was caused to the national economy and to investors in RMBS."

Barclays CEO Jes Staley called the deal "fair and proportionate," saying it has been a top priority at the bank to resolve these "historic issues."

"The completion of our restructuring in 2017, and putting significant legacy matters like this one behind us, mean Barclays is well positioned to produce stronger earnings going forward, and to start returning a



Barclays PLC and two of its top former employees have been accused by Brooklyn federal prosecutors of bilking investors. (AP)

greater proportion of those earnings to our shareholders over time,” Staley said in a statement.

The government’s 198-page complaint claimed that Barclays in many cases did not perform due diligence on mortgages that were included in the 36 securitizations at issue, and that when they did so the due diligence was cursory at best. Even with the limited reviews the bank performed, Barclays knew that a sizable chunk of the loans in the RMBS deals was not as the bank represented to investors,” the complaint said.

Indeed, third-party due diligence vendors frequently warned Barclays about the quality of the loans packaged into the securities, calling them "craaptacular," others as "scariest collateral" and others as having the “distinct aroma of default,” prosecutors said.

Prosecutors say that’s because Barclays saw the originators of the loans, including subprime lenders like Countrywide Financial, New Century and Indymac Bancorp., as their “true clients,” not the investors, including credit unions, pension funds and charitable endowments, that were purchasing certificates of those securities.

Menefee attorneys Barry Berke and Dani James of Kramer Levin Naftalis & Frankel LLP said their client has always maintained that the government’s case was baseless and should never have been brought.

“As a managing director at Barclay’s Capital Inc., Mr. Menefee worked tirelessly, diligently and in good faith at all times on behalf of Barclays and its investors. Solely to put this matter behind him, Mr. Menefee has agreed to a settlement in which he has not admitted any wrongdoing,” Berke and James said in a joint statement.

A lawyer for Carroll, Glen McGorty of Crowell & Moring LLP, said his client is pleased that prosecutors relented in their efforts to prove wrongdoing where none exists, and noted he settled the case without admitting to wrongdoing.

“Throughout his career, Mr. Carroll has worked honestly and honorably in the interests of his employers and investors, and now, he looks forward to putting this experience behind him,” McGorty said.

The government is represented by F. Franklin Amanat, Matthew R. Belz, Charles S. Kleinberg, Evan P. Lestelle, Matthew J. Modafferi, Josephine M. Vella and Alex S. Weinberg of the U.S. Attorney’s office for the Eastern District of New York.

Barclays is represented by Jeffrey T. Scott, Jonathan M. Sedlak, Matthew A. Schwartz, Nicolas Bourtin and Richard H. Klapper of Sullivan & Cromwell LLP and Kannon K. Shanmugam and David M. Zinn of Williams & Connolly LLP.

Carroll is represented by Glen G. McGorty, Sarah Gilbert, Arlen Pyenson and Jared A. Levine of Crowell & Moring LLP.

Menefee is represented by Dani R. James, Barry H. Berke, Marjorie Sheldon and Kerri Ann Law of Kramer Levin Naftalis & Frankel LLP.

The case is U.S. v. Barclays Capital Inc. et al., case number 1:16-cv-07057, in the U.S. District Court for the Eastern District of New York.

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