

**PRESS RELEASE**

**For Immediate Release**

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**Headline Suggestions:**

**U.S. District Court Allows Suit Against UFDI For Illegally Seizing America West Bank to Proceed**

***Principal Officers Vindicated Regarding 2009 Unlawful Seizure of America West Bank***

**AMERICA WEST BANK v. UTAH DEPARTMENT OF FINANCIAL INSTITUTIONS**

Nearly a decade ago, several local banks were closed by the Utah Department of Financial Institutions (UFDI). The owners of one of these banks, America West Bank, sued the state of Utah via the UFDI and the Commissioner of Financial Institution asserting that seizure of the Bank was unlawful and done without sufficient cause and evidence. UFDI and the Commissioner asked the U.S. District Court to dismiss the case on numerous grounds.

On February 6, 2018, the U.S. District Court, Judge Clark Waddoups (Case No. 2:16-cv-326-CW-EJF) denied the Motion of UFDI and the Commissioner. The Court ruled that America West Bank Members (“AWBM”), the owners of the Bank, had sufficiently alleged in their Complaint that prior to the seizure of America West Bank’s assets in 2009, the Bank should have received a non-arbitrary, fair and impartial hearing. Judge Waddoups found that AWMB’s Complaint properly alleged that constitutionally guaranteed rights of due process had not been upheld by the government at the time of seizure. *\*Please see end of press release for further rulings in the bank’s favor.*

Bruce R. Baird, co-counsel for AWMB who argued against the UFDI/Commissioner’s Motion, said: “The Court’s decision is extraordinarily thorough in its legal analysis and we are grateful that

the Court has given us a chance to further prove our case, including damages. We look forward to proceeding on the matter and are confident that AWBM will prevail and vindicate its legal rights.”

Douglas Durbano, co-counsel and former CEO, of AWB said: “The Bank was always in sound financial condition and the State’s actions were wrong and in violation of the law. We are happy that the Court has given us the chance to further prove that the Commissioner and UDFI acted unlawfully in seizing what was a great bank with an innovative ‘Member Banking’ concept.”

In 2000, the Utah Department of Financial Institutions (UDFI) chartered America West Bank (AWB). For several years thereafter AWB enjoyed early success and positive regulatory reviews. In 2007, AWB was poised to implement an innovative and revolutionary member banking concept that would give it the ability to distribute earnings to member/owners while avoiding the corporate-level taxation of a traditional bank. In essence, AWB would provide its members banking benefits similar to those used by credit unions to build member loyalty. The change was expected to raise significant additional capital in the short term and lead to an overall competitive advantage long-term. The Federal Reserve approved AWB’s implementation of this concept in late 2007.

In 2008 the Federal Deposit Insurance Corporation (FDIC) and UDFI suddenly, and without any justification, reversed its previous stance and, as alleged in AWBM’s Complaint, became “aggressive and hostile,” taking “unreasonable positions not previously taken in evaluating the bank.”

Following the reversal of position from the FDIC and UDFI, AWBM attempted to defend its position by demonstrating a willingness to contribute additional capital in addition to providing evidence of an engaged board, AWB’s profitability and a willingness to respond to recommendations from regulators. Due to these efforts, AWB’s performance improved in 2007 (as noted in the FDIC’s Material Loss Review) and peer reports remained strong. However, despite these positive indicators, AWB’s regulatory ratings continued to decline due to a new and artificial examination process implemented by the UDFI and FDIC.

On May 1, 2009, UDFI Commissioner Edward Leary, without any notice to AWB or opportunity to be heard, obtained a Court Order seizing possession of AWB. Apparently without any evidence Commissioner Leary claimed that AWB did not meet minimum capital requirements. The FDIC immediately and publicly announced the seizure of AWB and began liquidating its assets.

Judge Waddoups ruled, after reviewing the Commissioner’s *ex parte* seizure petition, concluded that “at this stage, the Amended Complaint contains sufficient non-conclusory allegations to support a reasonable inference that Commissioner Leary knowingly violated the law in acting to seize the bank when he did. The Court cannot conclude at this time that the statutory requirements were met on non-arbitrary grounds.”

Further, the Court ruled that the AWB could proceed in its civil suit against Commission Leary “because it was clearly established [in well-plead allegations of the Amended Complaint] that [Commissioner Leary] could not act without reasonable justification to seize the bank under the guise of the state authorizing statute, and because the complaint contains sufficient allegations that he acted arbitrarily out of political pressure and motive, rather than legitimate government interest.”

Finally, because the Court concluded that the alleged conduct if proven would violate the federal Constitution, the Court also found that AWB had sufficiently made well-plead and un rebutted factual allegations, which the Court accepted as true, allowing the Court to also conclude that a

“flagrant” due process violation may have occurred and could also be prosecuted under the Utah Constitution as well.

For more information about America West Bank, the recent Federal Court ruling and ongoing proceedings, please visit [www.illegalbankseizure.com](http://www.illegalbankseizure.com).

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