

## **INVESTORS AWARDED \$10.8 MILLION FROM BANK**

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Author: FRED LEESON - of the Oregonian Staff

Summary: A jury says First Interstate Bank of Oregon violated state racketeering laws in managing an escrow account

A Portland jury Friday sided with the investors of an unsuccessful Christmas tree partnership, holding First Interstate Bank of Oregon liable in a \$10.8 million decision.

The verdict included \$4.7 million in punitive damages for violating state racketeering laws plus \$1.2 million more in punitive damages for breaching a fiduciary duty in managing an investment escrow account in 1986.

The Multnomah County Circuit Court jury -- deliberating for seven days after a nine-week trial - set total compensatory losses at just under \$1.6 million for the 33 investors. That damage total is tripled as a result of the racketeering finding.

"This might be the first case in the country to hold that banks acting as a trustee have a duty to protect investors from out-and-out manipulation of escrow funds," said Michael J. Esler, a lawyer who represented the investors.

Esler said the verdict would alert banks that they have a duty "not to close their eyes to reasonable facts" they should detect in holding escrow funds.

Jurors also concluded that the bank breached its escrow account contract with investors and violated state securities laws in connection with the Classic Christmas Tree Associates limited partnership.

The jury did not impose punitive damages for those violations. The jury vote on the the key punitive damage questions was 10-2 against the bank. At least nine jurors had to agree for a verdict.

"First Interstate Bank believes that the verdict is outrageous and totally unsupported by the evidence," said Ken Martin, a bank vice president and manager of media relations. "The bank intends to vigorously pursue an appeal and ultimately prevail on all issues."

The suit was brought after the limited partnership collapsed in the face of market changes and alleged misuse of funds attributed to managers of the enterprise.

The bank's involvement concerned the closing of an escrow account on Aug. 15, 1986. Under its escrow responsibilities, the bank was supposed to hold money from investors until 40 units, valued at \$40,500 each, had been sold in the partnership.

On the Aug. 15 deadline, the bank received a \$1,035,000 contribution that turned out to be a momentary loan that was quickly transferred to another bank on behalf of James Spolyar, the

general partner, who was trying to stave off foreclosure on trees involved in the limited partnership.

Esler argued that investors would have pulled out of the deal if they had known that it was in trouble from the outset.

He contended that the bank should have known that the \$1,035,000 payment was not investor money. Esler said the bank was receiving instructions from Spolyar and from Leonard DuBoff, a lawyer representing the general partner, instead of protecting the interests of the investors.

After the subsequent financial collapse of the limited partnership, Esler said it took four years of investigation to uncover the bank's role.

“The bank hoped it would be buried forever,” he said.

Jurors concluded that the bank had engaged in a pattern of criminal activity under Oregon racketeering statutes. Esler and a partner, Kim T. Buckley, said the pattern involved the handling of escrow funds in earlier limited partnerships.

Buckley said there was evidence from the earlier partnerships that the bank engaged in similar conduct so that its loans to the general partner would be protected.

George L. Kirklin, a lawyer who represented the bank, said First Interstate was paid \$600 to handle the escrow account. He argued that the bank had not engaged in criminal activity and had no motive to do so.