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# Aequitas executives' splintered defense on display before their case goes to jury

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Three executives of defunct financier Aequitas Capital — Bob Jesenik (left), Brian Rice and Andrew MacRitchie — face accusations of charges of fraud, money laundering and conspiracy for their role in the firm's collapse, which cost investors millions of dollars.

**By [Jeff Manning | The Oregonian/OregonLive](#)**

The five-week [fraud trial of three former executives of Aequitas Capital](#), which went to the jury after Wednesday's closing arguments, offered a compelling example of what attorneys call the "two-prosecutor" dilemma.

[Defendants Bob Jesenik, Andrew MacRitchie and Brian Rice](#) found themselves pitted against not only federal prosecutors but also officials who replaced them at the helm of their company.

Court-appointed receiver Ronald Greenspan offered prosecutors a detailed account of what exactly happened at Aequitas as the Lake Oswego finance firm fell into a fatal tailspin in 2015.

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Characteristically, the Aequitas case offered an additional twist as one of the accused executives turned on his co-defendants. This third “prosecutor” in the mix led to heated protests and cries of mistrial at Wednesday’s closing statements.

Aequitas was one of the largest investment disasters in Portland history. When the company collapsed in 2016, it took about \$600 million of investors’ cash with it.

Jesenik, Rice and MacRitchie denied misleading anyone. They said they relied on the advice of respected professionals like accountants from the huge Deloitte firm and lawyers from the Tonkon Torp firm in Portland that their actions complied with the law.

The defendants also claimed that investors were informed that their money could be used to pay off prior investors.

Aequitas dissolved because investors panicked and demanded their money back, not unlike a run on a bank, said Conor Huseby, Jesenik’s lawyer.

“Businesses fail, that’s not illegal,” he said in his closing statement.

Prosecutors countered that investors were kept in the dark and that Aequitas’ fundraising amounted to an illegal Ponzi scheme.

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Three former Aequitas executives, Brian Oliver, Olaf Janke and Pat Gillis, chose to plead guilty. Oliver and Janke provided key testimony for the government. Oliver was on the stand for a week.

Tung Yin, a law professor at Lewis & Clark Law School, explained that in the typical “two-prosecutor” scenario, the white-collar defendants find themselves fighting both federal prosecutors and their former company, whose executives are typically eager to cooperate with prosecutors and avoid corporate liability.

Aequitas shut down operations in 2016 after the U.S. Securities and Exchange Commission persuaded a judge to appoint a receiver. Greenspan took charge and has been selling off assets and winding down the company’s affairs ever since.

Mike Esler, a Portland attorney who represented Aequitas investors in their civil lawsuits, said the receiver’s own investigation provided prosecutors a roadmap for building their case.

What’s more, Greenspan waived attorney-client privilege, freeing up reams of valuable communication between Aequitas and its lawyers.

One of the key witnesses for the prosecution was Brad Foster, an accountant who had worked closely with Greenspan on the Aequitas case.

It was no secret that Rice, a relative latecomer to Aequitas, intended to argue that he’d been lied to and taken advantage of just like the company’s investors.

Sure enough, Rice’s attorney, Angelo Calfo, spent virtually all of his closing argument Wednesday arguing Rice had been hoodwinked by Jesenik, Oliver and others.

Before Calfo could even return to his seat, attorneys for Jesenik and MacRitchie loudly protested. They demanded additional time to rebut Calfo’s allegations.

Calfo then demanded that he be allowed to rebut their rebuttals.

As Judge Michael Simon tried to maintain order, Huseby, Jesenik's attorney, said he intended to ask for a mistrial.

Before the trial began, Simon had rejected requests from the defense lawyers that their cases be tried separately.

After the back-and-forth Wednesday, the case got back on track. In his final rebuttal, Assistant U.S. Attorney Chris Cardani once again summarized the prosecutors' version of events.

He described the desperate cash shortage Aequitas suffered after a lucrative deal with a controversial for-profit college came apart in 2014.

He told of the "cash dashes" and "blue-light specials," Aequitas instituted to raise new cash from investors.

He described once again the Aequitas holdings note – a complex inter-company loan from one subsidiary to another – which he characterized as "the dumping ground" for all of Aequitas' troubled investments.

All three involved some level of deception and concealment from Aequitas' investors, Cardani said.

"They were knowingly lying to investors," he told the jury. "Folks, that's a crime. That's fraud."

Portland's investment industry and many of its lawyers have watched the case closely. Few know more about the case than the handful of lawyers who represented Aequitas investors.

One of those attorneys is Chris Kayser, who gets downright indignant over the claims that Aequitas fully disclosed to investors the risks of putting money into the company.

"This is a completely misleading fig leaf," he said. "Had they been honest, no one in their right mind would have invested."

Keith Ketterling, who led a class-action lawsuit of investors against Aequitas and its allies, said in an email that Jesenik's "run on the bank" defense is "creative." But with his "lavish expenses, creative bookkeeping, inter-company swapping/loans to create the impression of value – that is not how banks operate."

Jesenik clearly has the most exposure,” Ketterling added. “Rice and MacRitchie are much tougher” for prosecutors.

“Definitely both would likely have been found liable in a civil case — no question,” he said. “But the question here is criminal liability. I just don’t know.”

-- Jeff Manning; [jmanning@oregonian.com](mailto:jmanning@oregonian.com)

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