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How the RTC Trampled One Borrower's Rights

By Berin Szoka

"The first rule of the bureaucracy: Protect the bureaucracy." Eleven years ago, John and Rhetta Sweeney of Hamilton, Mass., never could have imagined just how right Ronald Reagan was — or how far federal bureaucrats would go to protect their administrative dominions.

On a cold day in February 1998 when armed U.S. marshals assaulted the Sweeneys' home, arrested John Sweeney, carried him off to jail in shackles and carted away everything they owned in two 18-wheelers, the Sweeneys lost everything except each other and the clothes on their backs. But the most important thing the marshals stole from them that day was their faith in the U.S. Constitution and the Bill of Rights as more than just scraps of paper.

Why their despair? Because John Sweeney, a former Green Beret, resisted efforts of the marshals to seize his 14-acre estate and has been forced to serve four months in the Plymouth Correctional Facility in Massachusetts for contempt of court. Sweeney's supporters insist that he has committed no crime — save defending his home and standing up for what he asserts are his "inalienable rights."

"Have we now reached a point in this country where agents for the federal government can drive down any street and say, 'Let's take this property'?" asks a frustrated but resolute Rhetta Sweeney.

The Sweeneys' nightmare began in 1987, when they borrowed $1.6 million from ComFed Mortgage bank to develop and subdivide their historic 14-acre property in Hamilton, a leafy, old-money suburb of Boston. After receiving several purchase offers in 1988, Rhetta Sweeney asked ComFed to release the quarter of the loan set aside for construction costs and make good on its written promise to increase the amount of the loan. ComFed refused, saying the purchase offers were too low. Without any other way to pay back the loan, the Sweeneys were forced to default.

The Sweeneys learned some years later that ComFed had been running what some Massachusetts bank officials called a racketeering scheme. Because they worked on commission, ComFed's officers had a strong incentive to inflate the size of the loan a borrower needed, and often did, saddling people with loans they could not possibly pay off.

In April 1989, after ComFed filed for foreclosure, the Sweeneys sued ComFed Mortgage, ComFed Advisory and their parent company, ComFed Savings, along with their mortgage officer for breach of contract, fraud, intentional infliction of emotional distress and violation of the Massachusetts Deceptive Trade Practices Act.

In March 1990, a jury ordered the Sweeneys to pay off the $1.6 million note but also awarded Rhetta Sweeney $65,000 for emotional distress. The case then went to State District Judge Katherine Izzo, who had legal authority to rule on the charges of unfair and deceptive trade practices. Her Jan. 30, 1991, decision against ComFed awarded the Sweeneys $4 million in damages and interest as well as $97,000 in legal fees, and raised the $65,000 emotional damages award to $315,000. Most significantly, Izzo ruled that "ComFed knew or should have known ... that based on its representations the Sweeneys believed ComFed would provide construction mortgage financing once subdivision approval had been obtained for the subject parcels."

But in December 1990, before Izzo filed her decision, ComFed Savings failed and was taken over by the Resolution Trust Corporation, or RTC. Because the case now involved a corporation of the federal government, federal statutes allowed the case to be removed to the U.S. Court of Appeals for the federal circuit in Washington. Along came John Hanify, ComFed's lawyer, who short-circuited this process by taking the original decision from Izzo's court and concealing it in his office for 26 days. He saw to it that the case was transferred to the 1st U.S. Circuit Court of Appeals in Boston, telling neither the Sweeneys nor Izzo of the removal.

The case then came before Judge Edward Harrington, who in an ideal world might have recused himself due to personal ties to Hanify and his family. It turns out that Harrington and Hanify worked together in the U.S. Attorney's Office and Hanify's father, Edward, had testified on Harrington's behalf before the Senate Judiciary Committee in 1987 to help Harrington get confirmed as a federal judge. Harrington's son had gotten a job at Hanify's law firm in 1993, during the Sweeney litigation, say the Sweeneys.

In April 1991, Harrington expunged from the record Izzo's $4 million decision in the Sweeneys' favor. He also swept aside Izzo's ruling of ComFed's fraud, to which ComFed itself admitted publicly, by invoking an arcane legal doctrine called *D'Oench Duhme*, which holds that federal banking regulators cannot be held liable for secret, sweetheart deals between banker and borrower.

In March 1993, Harrington denied Rhetta Sweeney's motion to remand the case back to state court and instead ordered her to file no further motions in the circuit court and fined her $1,000.

In January 1994, the RTC had the Hamilton county sheriff serve the Sweeneys with foreclosure papers. The RTC foreclosed on the Sweeneys' property at the end of May 1994 and advertised a July 14 auction of their property.

During the last eight years, the Sweeneys have enlisted some allies on Capitol Hill, but to little avail. At a hearing of the Senate Governmental Affairs Committee on Jan. 31, 1995, then-senator William Cohen, a Maine Republican, attacked the RTC for its pattern of abuse. "For the Sweeneys," he said, "*D'Oench Duhme* has meant just that — doom." In a June 1994 hearing of the Senate Banking, Housing and Urban Affairs Committee, then-senator Al D'Amato, a New York Republican, summarized their plight, saying, "The Sweeneys were victimized twice, first by the fraudulent conduct of the bank, which led to a cash award in state court, and then by the federal government, which imposed *D'Oench Duhme* and cut off the Sweeneys' legal rights."

> **Since we won our case, this fight has been about all of us, about the liberties of all Americans."**

In November 1993 and 1995, Cohen sponsored a Senate bill (S1725) that would have prevented the RTC and the Federal Deposit Insurance Company, or FDIC, from using *D'Oench Duhme* as an excuse not to honor valid agreements from banks it had taken over. Cohen's bill failed to pass out of the Banking subcommittee on Financial Institutions.

On March 29, 1997, after the Sweeneys' appeals were denied by courts in both Massachusetts and Washington, Harrington granted the FDIC motion to evict the Sweeneys from their property. According to John Sweeney, this order was served only to U.S. marshals and never to the Sweeneys. In June, the Sweeneys locked and barricaded their property to prevent marshals from seizing their home. In July 1997, the 1st Circuit ordered mediation to end the standoff.

ComFed's former president, James Baldini, who had made millions as president of a corrupt bank whose failure cost the U.S. taxpayer an estimated $828 million, got off relatively lightly. He settled ComFed's 1991 lawsuit against him in 1995 by paying the FDIC $285,000. What's wrong with this picture? Total compensation to Baldini during a four-year period was $7,834,381. ComFed's failure cost the taxpayers $828 million, yet the RTC settled with Baldini for a mere $285,000.

It may be asked why the federal government has gone to great lengths to prosecute the Sweeneys, who for their part appear to have been the victims of unscrupulous bank officers and an unsympathetic FDIC. According to the Sweeneys, their $4 million victory in state court was the first of its kind and set a precedent that would have prevented the RTC and FDIC from using *D'Oench Duhme* to foreclose on legitimate loans and thereby cost the agency millions.

National news media picked up on the story of alleged RTC abuse in the summer of 1994. CNN reported on July 1, 1994, that "13 RTC whistle-blowers testified before the Senate Banking Committee, reporting atrocities being committed within the RTC, including conflict of interest in their use of law firms, insiders using straws to purchase RTC properties, falsifying reports and shredding evidence by the RTC [Inspector General's] office to Congress."

But media coverage didn't move lawmakers or federal officials to enter the fray on the Sweeneys' side. In November 1995, the RTC refused the Sweeneys' offer of $750,000 for their properties. The RTC then bought the property themselves for less than the Sweeneys had offered.

In March 1996, the U.S. District Court of the District of Columbia, in a sealed decision, dismissed Rhetta Sweeney's racketeering lawsuit against the RTC without a hearing. Meanwhile, the RTC's statute expired and all its assets were transferred to the FDIC.

The Sweeneys learned only in 1999 that the FDIC had "written off" the Sweeneys' note. They learned this when the IRS sent them a tax bill for nearly $400,000, which naturally came as a shock to the Sweeneys, who had declared bankruptcy in 1994. But the way the IRS figured it, the cancellation of the $810,999 debt was a source of "income" to the Sweeneys, who owed taxes and penalties accruing over two years.

And what do the Sweeneys want? "We want John Sweeney's freedom and good name restored. We want to see justice served. We think bureaucrats should be held accountable. We want our lives back. We want the truth to be known."

But they also want to make sure no one else ever has to suffer what they have during the last eleven years. "Since we won our case against ComFed, this fight has been about all of us, about the liberties of all Americans," says Rhetta Sweeney.

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