

DEPCO Asset Review Committee
February 21, 2005
Minutes of the Meeting

A DEPCO Asset Review Committee meeting was held on Monday, February 21, 2005 in the Department of Administration Building, Conference Room B, 2nd floor, One Capitol Hill, Providence.

At 3:04 p.m. Gary Clark called the meeting to order. Committee members present: Lawrence C. Franklin and Gary Clark.

Mr. Clark stated that in the absence of Chairperson Rosemary Booth Gallogly, he agreed to serve as Chair for the meeting. The agenda was as follows: Review, consideration and/or for approval of a settlement proposal in the matter of: State of Rhode Island (“State”), as Successor to Rhode Island Depositors Economic Protection Corporation (“DEPCO”) v. James Procaccianti (“Procaccianti”) and the Estate of Armand Procaccianti, P.C. No. 94-2635 (the “Litigation”).

Mr. Clark called on Steve Richard, Esq., counsel to the State of Rhode Island, to present Mr. Procaccianti’s proposal.

Mr. Richard introduced his partner Patrick Guida. He then stated that the Department of Administration has been focusing on settlement efforts with Procaccianti to achieve full payment of the indebtedness at issue in the litigation, and that result is achieved with this proposal. The litigation concerned a promissory note executed January 31, 1990 by Armand and James Procaccianti that was subsequently acquired by DEPCO and the State of Rhode Island. As of February 18, 2005, the indebtedness equals \$6,528,635.00. Mr. Procaccianti agreed to make full payment in that amount. The breakdown of the numbers follows: principal balance is \$2,770,420.00, accrued interest \$3,683,131.00, accrued expenses \$75,084.00, for a total of \$6,528,635.00. Mr. Procaccianti will effectuate this payment by making a wire transfer Tuesday, February 22, 2005 of \$750,000.00. The balance of \$5,778,635.00 will be wired on Thursday, February 24, 2005. Upon full payment by Mr. Procaccianti, the State will provide a release of a note at issue in the litigation as well as releasing any and all loan documents deemed beyond the recovery periods allowed by the statute of limitations under Rhode Island law. The State will receive a release back from Mr. Procaccianti absolving it from any claims concerning its collection efforts concerned with this litigation or any other loan previously made in favor of Marquette and subsequently acquired by DEPCO for the State. Mr. Richard stated that he recommended this settlement because it constitutes a full payment of the debt, and it brings closure to this matter and allows the State to receive full recovery of the amounts at issue in the litigation. Prior to completing the settlement negotiations at the request of the Department of Administration, Mr. Guida and Mr. Richard assisted the Department of Administration in the review of all loans related to James Procaccianti and related entities dating back to Marquette Credit Union and concerning all loans that were subsequently acquired by DEPCO and the State. A report was prepared dated February 14, 2005 on the status of loans made by Marquette Credit Union to James Procaccianti and related entities, to be marked as Exhibit I for purposes of this hearing.

The Department of Administration undertook a careful review of all the loan documents. Counsel worked with the Department to review the relevant file documents including all of the notes and guarantees at issue. The legal research entailed a careful review of all terms of the loan documents to determine when causes of action may have accrued under them and to confirm that any potential claims are, in fact, beyond the statute of limitations and therefore not subject to any litigation proceedings. As stated in the report, the conclusion is that there are no timely claims to be pursued other than the claim and litigation which is being paid in full. Counsel has carefully reviewed the statute of limitations issues with the Department and feels confident that diligent efforts have been undertaken to ensure that the fullest possible recovery will be effectuated by this settlement.

Mr. Richard then introduced into the record a resolution, marked as Exhibit 2, for the Committee's consideration, which outlines the confirmation of Mr. Procaccianti's full payment of all principal, interest and expenses due in litigation. The Committee was asked to approve the settlement recommendation, which was presented with the fullest recommendation and support of counsel given the full payment of the debt.

Mr. Clark asked if this proposal represents a full recovery of this loan together with accrued interest and expenses.

Mr. Richard responded "yes".

Mr. Clark also asked if the State will not only be releasing this loan, but will be releasing all of the other loans that have been determined to be outside the statute of limitations.

Mr. Richard stated that was correct. The Department of Administration and counsel carefully reviewed each loan file to determine under the language of each loan document when a claim would have accrued. From that point in time, they applied a statute of limitations and the loans are clearly beyond the statutory period which Rhode Island laws allow to bring the claim in Superior Court.

Mr. Franklin asked for a few minutes to review the documents.

Mr. Franklin asked for confirmation that if the resolution were approved, there would be no quid pro quo situation tied to any matter extraneous to the litigation.

Mr. Richard stated that the resolution explicitly states that Mr. Procaccianti acknowledges that his full payment of the indebtedness is not contingent upon or related to the occurrence of any matter extraneous to the litigation that is being settled. Settlement negotiations focused on one issue – full repayment of the debt - which was achieved.

Mr. Franklin asked if the other loans involved have other guarantors.

Mr. Richard stated that there were other guarantors involved in various transactions.

Mr. Franklin asked if the statute of limitations applies to them as well.

Mr. Richard stated that was correct and the accrual dates are the same under the loan documents for each party to a loan document.

Mr. Clark asked if this was Mr. Procaccianti's proposal to the State or is this the State's proposal to him.

Mr. Richard stated that Mr. Procaccianti made a proposal to provide full payment to be effectuated by two-wire transfer over the next few days. The State recommends acceptance of Mr. Procaccianti's proposal given that it results in full repayment of the debt.

Mr. Franklin asked if the State decided not to accept this proposal, what are the potential options.

Mr. Richard stated that there are two options. One would be to continue settlement discussions, but frankly, full repayment of the debt is the absolute best result in this matter. The other alternative would be if the matter were not settled today, the case would remain pending in the Superior Court. There is no trial date and he would have to see a Justice on the Business Calendar to obtain a trial date. There is always the possibility of an appeal by the party that did not prevail at the trial. If there were an appellate process from this point going forward, we would be looking at potentially 12 to 18 months of litigation and litigation always involves additional costs and uncertain results. Counsel reiterated that the proposal to the Committee is 100 cents on the dollar.

Mr. Stern commented on a question by Mr. Franklin on statute of limitations. He stated that the last statute of limitation was actually 2001.

Mr. Clark asked if there were any public comments. None were received.

Mr. Clark stated that we have a resolution for consideration. Mr. Clark asked that Ms. Rodriguez, Legal Counsel, read the resolution into the record.

Ms. Rodriguez read as follows:

RESOLUTION REGARDING JAMES AND ARMAND PROCACCIANTI, ET AL
LOAN SETTLEMENT

Whereas, Marquette Credit Union made a series of loans to James and Armand Procaccianti and nine related entities which currently involve one (1) unsecured deficiency loan with an outstanding balance of approximately \$6,528,635.00; and

Whereas, during the decade of the 1990's DEPCO made decisions in managing the litigation to collect a number of the other deficiency loans that have caused collection of ten (10) of the notes to be time-barred under Rhode Island's statute of limitations; and

Whereas, in order to settle the outstanding legal balance under a note dated January 31, 1990, that is currently in litigation (CA 94-2635) and owed to the State (as successor to DEPCO) by James A. Procaccianti and The Estate of Armand Procaccianti, an agreement has been reached where James A. Procaccianti (Procaccianti) will pay \$6,528,635.00, the full amount of the principal, interest, and accrued expenses remaining due and payable. On February 22, 2005, Procaccianti will wire \$750,000.00 to the client escrow account of Tillinghast, Licht LLP. On February 24, 2005, Procaccianti will pay the remaining balance of \$5,778,635.00; and

Whereas, the proposed actions provide for the recovery of the full principal, accrued interest, and accrued expenses remaining due and payable on the disputed loan and the recognition and release related to other indebtedness now time-barred from collection; and

Whereas, James Procaccianti expressly acknowledges that his full payment of the indebtedness is not contingent upon or related to the occurrence of any matter extraneous to the Litigation; and

Whereas, other guarantors of such loans will not be released from their guaranty obligations and the State will continue to pursue recoveries from such parties where not barred by the passage of time.

NOW THEREFORE, the committee hereby approves the settlement upon the terms outlined above, and the Director of the Division of Taxation or his authorized deputy or his duly authorized attorney-in-fact, acting alone, are hereby authorized to execute and deliver any and all documents required to be executed by the State to complete the settlement outlined above, and as provided in the material presented to the Committee and upon such additional terms and conditions as the party executing the same shall deem necessary and appropriate subject to the completion of settlement documents, including without limitation, mutual general release documents, in form and substance acceptable to the authorized representative executing the same and in all respect satisfactory to the authorized representative executing the settlement documents.

Mr. Franklin moved that the resolution be accepted as proposed by Counsel. Mr. Clark seconded the motion and it passed unanimously.

Mr. Clark stated that there would be another public meeting at a later date, however, not with regard to this particular matter, but with regard to the next public meeting.

Mr. Richard stated that he will work with Counsel for Mr. Procaccianti to resolve the settlement documents promptly, get them executed, and effectuate a dismissal of the litigation following full receipt of the monies owed in the litigation.

Mr. Franklin made a motion to adjourn. Mr. Clark seconded the motion and the motion passed unanimously.

The meeting adjourned at 3:20 p.m.