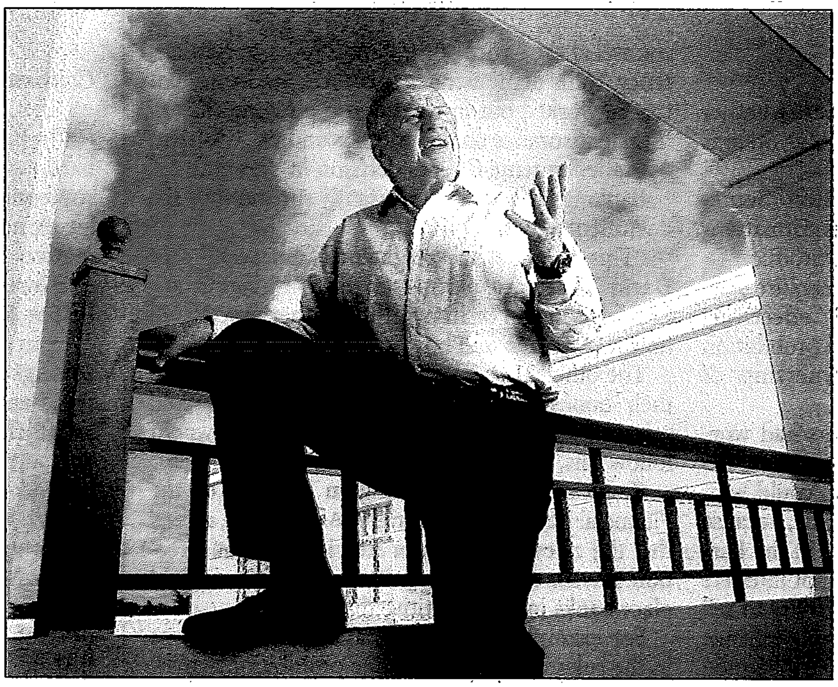
AMERICAN BANKER®
The Daily Financial Services Newspaper
Monday, June 24, 1996



Tom Salyer

SEYMOUR HOLTZMAN has led a group of dissident Onbancorp shareholders in a struggle to weaken the company's protections against a takeover bid. Mr. Holtzman operates a hedge fund in Boca Raton, Fla.

Upstate N.Y. Bank Forced to Defend Its Rules from Its Own Shareholders

◆ By CHRISTOPHER RHOADS

If the handful of dissident shareholders of Onbancorp believed they were playing David against a corporate Goliath, events have not followed those in the Bible.

The giant, in this case, has parried every challenge so far. The $5.4 billion-asset bank overpowered the shareholders' seven-month attempt to dismantle the company's extensive anti-takeover provisions.

With the help of a high-powered Wall Street law firm — Skadden, Arps, Slate, Meagher & Flom — the Syracuse-based banking company methodically beat down the opposition.

"They have badgered us every step of the way," said Seymour Holtzman, who runs a Boca Raton, Fla., hedge fund and is one of Onbancorp's largest shareholders.

The case illustrates some of the vigorous, and often creative, steps that small and medium-size banks and thrifts are taking to shield themselves from the growing wave of

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Upstate N.Y. Bank Fending Off Attack by Shareholders

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shareholder activism.

Even the smallest of banks are taking aggressive steps to beat back unwanted advances, as hostile actions from both investors and other banks proliferate, lawyers and bankers said.

"The conventional wisdom that hostile takeover tactics would not be utilized in the banking industry has been turned upside down, largely by virtue of Wells Fargo's success in the First Interstate case," said Jonathan D. Joseph, a San Francisco lawyer. Mr. Joseph represents Newport Beach, Calif.-based Genesis Financial Partners, an aggressive hedge fund that has taken on several small northeastern thrifts in recent months.

At Onbancorp, Mr. Holtzman and several other shareholders had scored what they thought was a partial victory at the company's annual meeting two months ago, when a majority of votes cast supported three of six proposals to undermine the company's takeover defenses.

Robert J. Berger
Chief financial officer, Onbancorp

But the insurrectionists were blocked. Onbancorp said at the April meeting that because the proponents did not attend the meeting to present their proposals, the company was not required to recognize the vote on the proposals.

Earlier this month, federal regulators rejected their request to force the company to recognize the results of the votes, stating that the matter fell under state law. The shareholders appear unlikely to file suit, citing high legal costs.

But Robert J. Berger, Onbancorp's chief financial officer, said the board is considering the proposals, after which it will make a statement.

The conflict is not the first time that such tactics and tenacious anti-takeover defenses have been employed by smaller banks, observers said.

Consider the past few months alone:

• Lisle Savings, a $276 million-asset mutual thrift located outside of Chicago, closed out about 250 accounts of depositors who weren't from the surrounding area, including Jerome Davis, a well-known thrift investor based in Greenwich, Conn.

The thrift deemed the accounts, which averaged around $1,000, as belonging to so-called "professional depositors," who open accounts in mutuals in order to gain the right to buy stock in the institutions if and when they convert to stock form. In many instances, these investors try to buy enough stock to ultimately push for a sale of the company.

"If they are not from this area, we know that the only reason they are here is for a stock conversion, and so we know it's not worth it to develop any sort of relationship with these customers," said James J. Renn, president of Lisle Savings.

• The Office of Thrift Supervision approved, with some conditions, a plan by Ocean Federal Savings Bank of Brick Township, N.J., to place 8% of its new stock from its conversion into a charitable foundation.

Thrift officials say the move was designed to solidify their ties with the local community. But some critics had argued that it puts more of the stock in friendly hands — and out of the hands of potentially hostile investors.

It also dilutes the stock of the thrift's depositors, hampering any efforts to agitate for a merger.

• Lawrence Savings Bank, a $324 million-asset North Andover, Mass., institution, told Genesis' top official, Steven Gordon, that he couldn't nominate himself and a colleague for the board of directors because he had filed too late. Mr. Gordon appealed to regulators, who sided with him, and Lawrence reversed its decision.

• In another case involving Genesis and Central Co-operative Bank, Central denied Genesis' request for a shareholder list, claiming that there was no proof that Genesis itself was a shareholder. Skadden, Arps represented both Lawrence and Central in their battles with Genesis.

The battle that escalated in recent months at Onbancorp, a holding company that includes three thrifts, stemmed from a disastrous year the company experienced in 1994.

The company had lost $38.4 million from securities transactions in the fourth quarter that year when the Federal Reserve raised interest rates. During that time assets shrank by nearly $1 billion, to $5.6 billion.

Its stock suffered, falling into the low-20s toward the end of 1994 after hovering in the high-30s a year earlier.

Blow by Blow
The struggle at Onbancorp

Nov. 21
A handful of shareholders submit proposals for annual meeting to dismantle anti-takeover defenses and to consider selling company.

Jan. 4
In letter to SEC, company tries to block proposals by asserting that shareholders are "alter egos" of largest shareholder, Seymour Holtzman.

Feb. 15
SEC sides with shareholder insurgents, forcing bank to place most of proposals, with some changes, on ballot.

April 23
Three shareholder proposals pass, but company refuses to recognize them, on the grounds that proponents were not at meeting.

June 4
SEC says it cannot enforce successful proposals, rejecting request of shareholders' lawyer.

The handful of dissidents were originally shareholders of Franklin First Federal Savings Bank in Wilkes Barre, Pa., which was acquired by Onbancorp in summer 1993, thereby making them shareholders of the Syracuse company.

Unhappy with the sagging stock, the Wilkes Barre shareholders, including Berkshire Asset Management — the company's largest shareholder with about 3% of its stock — last November submitted eight proposals, including one to sell the company.

The other proposals sought to replace the staggered board with an entire slate elected annually, reduce to 10% from 75% the percentage of outstanding shares needed to call a special meeting, and eliminate restrictions on mergers prompted by stockholders who obtain more than 10% of the stock, among other initiatives.

Onbancorp's response was to prepare for battle.

In anticipation of a proxy fight, the company hired two proxy solicitation firms. That's a maneuver reminiscent of the takeover craze of the 1980s, when companies would hire multiple investment banking firms, in part to keep them from being hired by their opponents.

"They viewed it as a battle where the stakes were the same as those between RJR Nabisco and whomever," said Kevin T. Timmons, an analyst with First Albany Corp. in Albany, N.Y.

Mr. Berger dismissed the move as a "business judgment."

"The bottom line is that we wanted to get the best advice that we could, and they are excellent, so why not use them?"

He estimated the costs at about $30,000 to hire the two firms.

Onbancorp also contacted Skadden, Arps, which it has used periodically over the years on special matters. Onbancorp attempted to bar votes on the proposals at the annual meeting in April.

The bank argued that the shareholders were just acting as "alter egos" of Mr. Holtzman, violating the Securities and Exchange Commission one-proposal-per-shareholder rule.

The SEC disagreed with the bank's arguments. With some changes, the regulator said the proposals should be put to a vote of the company's shareholders. ◇