

Unwrapping a Multi-Million-Dollar Fraud



CHRISTOPHER MORAFF
ABF Journal Correspondent

BY CHRISTOPHER MORAFF

There was something fishy going on at Massachusetts-based Ocean Fresh Seafood, and it wasn't just the inventory. By the time Wells Fargo auditors found the source of the smell, they'd been defrauded out of at least \$7 million, and the man who allegedly orchestrated the scheme was in the wind. Here's how it played out...

September 6, 2007 began like any other day at Ocean Fresh Seafood, a wholesale and retail operation in western Massachusetts just a stone's throw east of the Rhode Island state line: it started early. The sun rose just after six o'clock that morning and already there was activity at the company's North Attleboro warehouse facility. Today was an important day, auditors from the company's creditor, Wells Fargo Business Credit, were coming to conduct their quarterly inventory inspection.

The company had been there before. Four times a year Wells Fargo sent its auditors to review the collateral and receivables that backed the company's revolving credit line.

To complete the ruse, Coutu instructed that money be transferred back and forth between Odett Holdings, a Bahamas-based company in which he had an interest, making it appear that the product was being paid for.

But today, as the inspectors leafed through the stack of invoice sheets in front of them, something didn't look right. For one thing, they couldn't track down many of the invoices that corresponded to the receivables reported on Ocean Fresh's latest daily collateral report, which had been submitted just the day before. On top of that, it was beginning to look like the company had significantly less inventory than it said it did.

They reached out to the company's controller Cynthia LaRose — who was out of the office with a family emergency — and asked her to come to the warehouse. LaRose had started working for Ocean Fresh Seafood when she was still in high school, mainly as an office assistant. Now 36, she had been the company's controller for the past year, since the retirement of Chris Day, who previously held the position.

For the rest of that day and most of the next, the Wells Fargo inspectors, with the help of LaRose, poured over Ocean Fresh's documentation, comparing it to previous collateral reports. Then they started calling customers. They were looking for verbal confirmation that the sales the company was reporting — invoices, which, at that point, totaled more than \$8.2 million — corresponded to actual deliveries of seafood. Yet over and over they heard the same story: that the purported customers had not purchased the inventory listed on the invoices.

In May 2008, following his arrest, Coutu pleaded not guilty to all 17 counts against him; but at the beginning of November, he changed his plea to guilty to the charges of conspiracy to commit bank fraud, bank fraud and money laundering. He faces up to 30 years in prison on the bank fraud charge alone.

By the end of the day on September 7, the audit uncovered a discrepancy in the value of receivables that Ocean Fresh said it had and what it actually did have totaling more than \$7.6 million. And, of the \$6.7 million in inventory the company had listed, they were able to account for just over \$652,000 of it.

Two days after the audit began, on September 8, Wells Fargo took decisive action; it seized the Ocean Fresh facility and all of the company's inventory and receivables, pursuant to its rights under its credit agreement with the company.

The very next day, the owner of Ocean Fresh, Robert Coutu — who was not present during the inspection — hopped a plane for Venezuela. It would be eight months before authorities would catch up with him.

Over the coming weeks and months, with the help of LaRose and others, federal investigators would piece together a receivables and inventory fraud scheme perpetuated by Ocean Fresh principals that spanned nearly a decade and netted million of dollars in gains.

The Entrepreneur

At 59, prior to his arrest, Coutu had spent his entire life in the seafood business. Growing up in a lower-middle class New England family, Coutu was no stranger to hard work; he was just a teenager when he got his first job in the business, in a seafood shop in North Providence, RI.

In 1975, he and brother, Edward, purchased a little seafood shop in North Attleboro called Red's Seafood. Over the next decade they grew the company, which they incorporated, as Ocean Fresh Seafood Inc., into a national seafood concern, moving from the tiny 1,200 square foot shop to a new 22,000 square foot retail and warehouse facility.

A 1986 profile of the company in the *Providence Journal* quoted Coutu, then a 39-year-old workaholic, on his decision to leave college and become an entrepreneur, and his expansion plans for Ocean Fresh. "I had the opportunity to go into a business I had always worked in," he said. "Hopefully our long-range plan will come true and I can spend more time with my wife."

Coutu eventually bought out his brother to become sole proprietor, and by 2000, Ocean Fresh had roughly 100 employees and was raking in \$40 million in annual revenue, financial records show. But, in a candid interview, Coutu's attorney Jim Felman said that in the early 2000s, changes to fishing regulations in Canada — where Coutu got the bulk of his fresh inventory — forced him to go further and further afield for product.

A string of bad business deals, and, according to Felman, at least one instance of falling victim to fraud in South America, left Coutu struggling to keep his company afloat. "So he hatched this plan; I really think he thought he was going to eventually make the payments back on this, but it snowballed out of his control," Felman said.

The Scheme

The plan Felman is referring to was a simple one on the surface: to borrow from Wells Fargo more money than Ocean Fresh was entitled to under the company's existing credit agreement and, hopefully, put Ocean Fresh on stronger footing.

The groundwork for the scheme was laid back on Christmas Eve 2002, when Ocean Fresh inked its receivables financing agreement with Wells Fargo Business Credit. Under the original terms of the deal, the company was authorized to borrow up to \$10.75 million at any given time based on a combination of accounts receivable and inventory. Ocean Fresh was permitted to borrow up to 85% of its eligible accounts receivable and 60% of its inventory, with the maximum amount the company could borrow changing over time based on the value of the collateral.

Under the agreement, Ocean Fresh granted Wells Fargo a security interest in the company's entire inventory and all of its accounts receivable. Ocean Fresh was also required to submit daily collateral reports (DCR) that reflected changes to inventory and receivables and, therefore, the status of the Wells Fargo line. On a quarterly basis, Wells Fargo inspectors traveled to the North Attleboro facility and conducted on-site audits during which time it verified inventory and checked invoices.

By all accounts, Wells Fargo had covered its bases; but for at least four years starting in 2006, Coutu was able to stay one step ahead of them. In discussions with LaRose — who cooperated fully with prosecutors — as well as Ocean Fresh customers, and other employees, FBI agents, led by special agent Kenneth Heitkamp, determined that Coutu used at least two different methods to give the impression that Ocean Fresh's inventory and receivables — the two variables upon which its credit line was gauged — remained abnormally high.

According to LaRose, even before taking over as controller, Coutu had instructed her to create false sales receipts for nine different companies to give the impression that product was going out. "LaRose told me that Coutu directed her to create false invoices reflecting sales that Ocean Fresh did not in fact make," said Heitkamp, in an affidavit. "She then recorded each fake sale as a receivable on the Ocean Fresh books and records."

LaRose further confirmed that the fake receivables were included on the DCRs submitted to Wells Fargo. "LaRose also told me that Coutu directed her to create phony purchase orders to make it appear that Ocean Fresh was purchasing the seafood that the fake invoices falsely reflected it was selling," Heitkamp continued.

To complete the ruse, Coutu instructed that money be transferred back and forth between Odett Holdings Ltd., a Bahamas-based company in which he had an interest, making it appear that the product was being paid for.

Beyond the receivables, Coutu still had the inventory to worry about; and with Wells Fargo making quarterly audit visits, it was going to take something a little more creative than fake invoices to cover his tracks. Court records show that prior to Wells Fargo's scheduled audits, Coutu would inquire of his former vice president of operations, Ron Kaplan, how much inventory was needed to fill the freezer. He would then order the required amount from a Canadian supplier, D.B. Kenney. After the auditors counted each box, the inventory was shipped back unopened.

Wells Fargo declined to comment on the extent of the fraud, but records show that in 2007 alone, Coutu and Ocean Fresh drew down \$31 million. At the time of discovery, Wells Fargo estimated that it was in the hole for \$7 million.

The Arrests

On April 9, 2008, Coutu was picked up by customs officials in Costa Rica while allegedly traveling on a falsified Panamanian passport. He was sent back to the U.S. through Miami and held over for trial in Massachusetts. Also indicted in the scheme were LaRose, Christopher Day — the controller until 2006 — and Ocean Fresh's accountant Fred Guarino. Prosecutors said that in spite of raising objections to the scheme, Guarino continued to sign off on Ocean Fresh's financial statements, which were provided to Wells Fargo.

In November, Guarino, 62, pleaded guilty to one count of "misprision" of a felony, having knowledge of a felony and failing to report it. He faces a maximum of three years at his sentencing on February 17, 2011. He declined comment, but his attorney, James Sultan, painted his client as an unwitting victim of an overzealous client.

"Mr. Guarino's mistake in judgment was to sign off on Ocean Fresh's annual audit reports in the face of warning signs ... that something was seriously amiss, trusting his longtime client, Coutu, who assured him that all of the identified problems were being addressed," said Sultan.

For her cooperation, on December 13 LaRose was sentenced to three years of probation and \$5,000 in restitution.

In May 2008, following his arrest, Coutu pleaded not guilty to all 17 counts against him; but at the beginning of November, he changed his plea to guilty to the charges of conspiracy to commit bank fraud, bank fraud and money laundering. He faces up to 30 years in prison on the bank fraud charge alone.

His attorney, Felman, thinks that's excessive. "We'll be asking for something significantly lower, and we feel like we're justified in getting it," he said.

For his part Coutu consistently maintained that he had only his company's survival in his mind. In court in September following his plea, he filed a 15-page financial statement showing that he has no assets and has been granted the right to have a forensic accountant at his sentencing hearing on February 22, 2011 to testify to that.

"It wasn't like he sat down one day and said, 'I'm going to defraud a bank out of \$7 million and buy a Maserati and a Swiss chalet,'" Felman said. "I think he thought he'd make good on paying it back and things got out of hand." **abfj**

CHRISTOPHER MORAFF is a contributor to *ABF Journal*.



William Stucky and Associates, Inc.

OVER 30 YEARS IN BUSINESS

Specializing in software products for the Asset-Based Lending industry.

SOFTWARE SOLUTIONS offered by WSA

- ABLM.NET System
- NTVABL System
- StuckyNet-Link, The Internet Borrower Link
- NOVA Commercial Lending System
- NOVA Factoring System
- PEGASUS Factoring System

For information on our software products, please contact Linda Hynes at (415) 788-2441 ext. 41, or via email at linda.hynes@stuckynet.com.



The Leader in Asset-Based Lending and Factoring Software

Two Embarcadero Center, Suite 2220, San Francisco, CA 94111 - www.stuckynet.com