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Doors Open For Russia Bank Trustee In NYC Embezzle Probe

By **Alex Wolf**

Law360, New York (October 12, 2017, 7:19 PM EDT) -- The trustee for an insolvent Russian bank investigating a purported link between funds embezzled by the bank's former president and New York City real estate purchases won a bankruptcy court fight Thursday with the property buyers over the right to look deeper into past transactions.

Russia's Deposit Insurance Agency, which took over as the trustee for Vneshprombank Ltd. after the Russian government declared it insolvent, defeated **efforts to quash subpoenas** for financial documents the trustee believes may tie funds embezzled by the bank's now-convicted former president, Larisa Markus, to the purchase of expensive Manhattan real estate.

With its legal pursuit in New York, the Russian agency has followed up on allegations that Markus formed eight limited liability companies to own specific apartments in the city that she purchased with funds illegally taken from clients' accounts. According to court documents, Markus was found guilty in Russia earlier this year of fraud charges and admitted to working with others to steal approximately \$2 billion from the bank.

The 13 companies at the root of the agency's inquiry, which include the property LLCs and others that allegedly facilitated the exchange of funds on Markus' behalf, have said that the trustee lacks authority to seek private and highly sensitive information beyond the documents that reveal the companies' current ownership and reflect the source of funds used to purchase the apartments.

Counsel for the companies and a New York-based accountant named Ilya Bykov, who the trustee has learned was appointed manager of Markus' U.S.-based business affairs, told U.S. Bankruptcy Judge Mary Kay Vyskocil at a hearing Thursday that the trustee should not be permitted to issue subpoenas on third parties to obtain historical account records, transactions and communications. The companies attorney Marlen Kruzhkov of Kruzhkov Russo PLLC argued that the subpoenas "are way broader than they need to be."

But Judge Vyskocil said the discovery objections really only amount to a concern over privacy, which can be cleared up by putting a protective order in place. She also noted it is not up to Kruzhkov's clients to determine the necessary scope of the trustee's investigation.

"They have a right to probe it ... especially when Ms. Markus has been convicted in Russian proceedings," the judge said, adding that the agency has a right not to accept whatever it is told "at face value."

Judge Vyskocil also permitted the trustee to serve subpoenas on the New York companies

for information stretching back several years, with the caveat that objections may be brought if Kruzhkov's clients believe the requests are inappropriate.

The foreign representative for Vneshprombank, also known as Foreign Economic Industrial Bank Ltd., **received Chapter 15 protection** in February in an effort to further investigate claims that Markus and others connected to the bank embezzled money from clients' accounts and invested some of it abroad.

Markus' scheme caused the bank to write roughly \$2 billion in loans to fictitious entities that she controlled and move a portion of those proceeds to purchase interests in several condominium or cooperative apartments in New York City, the trustee believes.

The discovery fight **escalated last month** when the trustee said that the resistant parties would not produce anything beyond a "mere selection of bank statements" without a finding that they contributed to the embezzlement or received funds from the embezzlement. The problem is that the discovery requests are intended to provide evidence that would back up that sort of finding, the agency said.

In defense of his clients' stance, Kruzhkov told the court Thursday that they should not have to divulge information like how much they paid for furniture or for maid service. He also explained that Markus made \$6 million a year at Vneshprombank and is not someone "who suddenly ended up with millions of dollars."

Kruzhkov declined to comment on the judge's orders after the hearing ended.

The DIA is represented by Rick Antonoff, Barry N. Seidel and Evan J. Zucker of Blank Rome LLP and Bruce S. Marks of Marks & Sokolov LLC.

The discovery parties are represented by Gregory Plotko of Richards Kibbe & Orbe LLP and Marlen Kruzhkov of Kruzhkov Russo PLLC.

The case is In re: Foreign Economic Industrial Bank Ltd., case number 1:16-bk-13534, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Edrienne Su.

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