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Finally, a Financial Executive Is Sacked for His Company's Misdeeds

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Photo: Getty Images

Let's say you run a company whose misdeeds are splashed across the front pages of the business section on an almost weekly basis. You might reasonably expect to be fired without delay. But then let's also stipulate that you're in the financial services industry. Recent history suggests you'll be able to keep your job and your handsome bonus, and that even if law enforcement officials penalize the company for improprieties, somebody else—like your shareholders— will pay those fines, leaving you to continue your charmed life unscathed.

William Erbey, the billionaire chairman of the mortgage servicing giant Ocwen, probably thought that would be his fate as well, but he didn't anticipate the determination of New York Superintendent of Financial Services Benjamin Lawsky.

On Monday, Lawsky announced Erbey would step down chairman of Ocwen and four related businesses, as part of the settlement of an investigation into the company's sad enduring legacy of ripping off homeowners.

It isn't a prison sentence. But on the spectrum of accountability for financial industry executives, "forced to resign" beats "suffered no consequences while staying in power."

Lawsky has been chasing Ocwen for several years. A mortgage servicer handles day-to-day operations on loans, from collecting monthly payments to making decisions after a default. Ocwen has grown almost ten-fold since 2009 by purchasing the rights to service distressed loans from the likes of JPMorgan Chase, Bank of America, and Ally Bank. Big banks have engaged in a fire sale of their mortgage servicing rights, because of increased compliance standards for servicing, and because of new bank capital rules that make servicing loans costly. As a non-bank, Ocwen has more wherewithal to handle mortgage servicing, and this has made it the 4th-largest servicer in America.

Almost immediately, Ocwen showed itself incapable of properly servicing mortgages. In 2011, Lawsky found a litany of problems with Ocwen processes, including incomplete documentation and record-keeping, falsification of evidence through "robo-signing" and pursuit of foreclosures without legal standing. An initial Agreement on Mortgage Servicing Practices, laying out specific reforms and upgrades Ocwen needed to satisfy legal obligations, led to a subsequent consent order in 2012, after an impromptu investigation - http://www.bloomberg.com/news/2014-04-04/lawsky-making-non-banks-behave-means-surprise-mortgages.html - found numerous violations.

Ocwen engaged in "dual-tracking," negotiating loan modifications while also advancing homeowners through the foreclosure process. It improperly charged homeowners unauthorized fees. It failed to honor agreed-upon loan modifications when they bought mortgage servicing rights from other servicers.

The federal Consumer Financial Protection Bureau found similar problems with Ocwen and reached an agreement - http://www.newrepublic.com/article/116010/ocwen-mortgage-fraud-settlement-servicer-fined-homeowner-abuse - on a $2.1 billion settlement. But most of the money went toward modifying loans that Ocwen serviced but didn't own, allowing it to pay the fine with other people's money.

More recently, Lawsky uncovered more Ocwen secrets. He discovered - http://www.housingwire.com/articles/29117-lawsky-letter-condemns-alleged-ocwen-conflicts - that four other public companies chaired by Ocwen chairman William Erbey have close business relationships with the mortgage servicer (Erbey is also the largest individual shareholder for all the companies). One subsidiary hosts nearly all of Ocwen's online auctions; another handles all Ocwen post-foreclosure real estate transactions. So Ocwen profits by funneling default-related business to closely associated companies, providing an incentive to push borrowers into default.

Lawsky also found that Ocwen backdated letters - http://www.housingwire.com/articles/31791-dfs-superintendent-lawsky-accuses-ocwen-of-backdating-borrower-letters - to borrowers, making it impossible for them to challenge denials of their mortgage modifications within a specific time frame. He also investigated whether Ocwen stalled short sales - http://www.bloomberg.com/news/2014-12-18/ocwen-said-to-have-stalled-home-sales-by-underwater-borrowers.html - , where homes get sold for less than the balance on the mortgage, in order to collect additional fees.

It was never clear whether Ocwen deliberately heaped this abuse on homeowners purely for profit, or because its outdated servicing systems were overwhelmed by the spectacular growth. Either way, Ocwen simply cannot do its job within the bounds of the law. According to Monday's consent order - http://www.dfs.ny.gov/about/ea/ea141222.pdf - , a review of 478 loans by Lawsky's compliance monitor revealed "1,358 violations of Ocwen's legal obligations," roughly three violations per loan.

This time, Lawsky did not spare top executives. Erbey will resign both Ocwen and the four related companies by January 16, and subsequently hold "no directorial, management, oversight, consulting, or any other role at Ocwen or any related party." Any other Ocwen employees also working for one of the other four companies will have to drop those responsibilities.

Under the agreement, Ocwen will add two new independent board positions, and an Operations Monitor will work directly with the board on oversight functions, and determine whether other senior management will have to be fired. Ocwen cannot acquire other mortgage servicing rights without the consent of the Operations Monitor. Print

Ocwen will also pay $150 million to New York homeowners harmed by the company. Instead of a "soft-dollar" promise of mortgage modifications that Ocwen can pass on to the owners of the loans they service, these are cash penalties—$100 million to the Department of Financial Services for housing counseling and community redevelopment programs, and $50 million to be split by Ocwen foreclosure victims, with $10,000 for each borrower on whom Ocwen completed foreclosure, and the rest handed out to those with active foreclosures in process. Ocwen will also have to re-evaluate borrowers in foreclosure after paying the penalty, "in light of their improved financial condition resulting from such payment."

Ocwen cannot take a tax deduction on any of these payments, per the agreement. The company also agreed to provide all of its New York borrowers with their complete loan files upon request, along with assurances to detail reasons for any denials of mortgage relief. As the loan files represent evidence in private borrower misconduct litigation, it could expose Ocwen to further legal headaches.

This ramps up the pressure on other law enforcement agencies to deliver legitimate justice in financial services settlements. Lawsky's agency used its leverage to effectively take operational control of Ocwen, forcing out its chairman, adding new leadership and installing multiple compliance standards. This sends a rare message to executives across the industry that crime doesn't pay. Moreover, the cash penalties are real, and the company cannot dodge them. Blocking the purchase of mortgage servicing rights attacks the lifeblood of a company that does not generate its own loans. And the associated publicity around the misconduct has sent Ocwen stock down by two-thirds from its October 2013 peak.

Federal regulators have been sniffing around Ocwen too. Last week, the monitor of the National Mortgage Settlement announced that he could not trust information - http://dealbook.nytimes.com/2014/12/16/regulator-finds-deficiencies-with-mortgage-servicer-ocwen-financial/?_r=0 - coming from Ocwen about its compliance. But federal settlements have a new precedent to live up to—personal accountability on executives, and no free passes for companies that repeatedly violate past agreements.

Lawsky will reportedly leave - http://www.bloomberg.com/news/2014-11-19/lawsky-leaving-after-3-billion-in-fines-makes-mark.html - the Department of Financial Services for the private sector within the next couple months. Monday's action shows why that will be such an enormous loss. He has not only used his relatively obscure regulation agency to fulfill the goal of individual accountability for financial crimes. He also put pressure on the entire regulatory apparatus to live up to his actions, and take a stronger line against Wall Street misconduct. And he targeted the servicing industry, the most broken part of the mortgage market, with actions that may actually put it on an improved path.

In an interview with *The New Republic* in April - http://www.newrepublic.com/article/117377/benjamin-lawsky-toughest-cop-wall-street - , Lawsky said "When a corporation does wrong, it has to be that individuals who work at the corporation have done wrong." It's incredible that, years after the financial crisis, someone not only made that self-evident claim, but followed through on it.