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Trinity County
Board of Supervisors
By: _____

Superior Court of California County of Trinity

ELIZABETH W. JOHNSON
Judge

MEMORANDUM

TO: Board of Supervisors ✓
Trinity County CAO

FROM: Staci Holliday, Court Secretary

DATE: June 24, 2014

RE: 2013-2014 Trinity County Grand Jury Report
FAR-2013-2014-0185: Business Enterprise Loans

This report is being provided to your department pursuant to Section 933.05 of the Penal Code relative to grand juries. Penal Code § 933.05(f) requires that grand juries, **following approval by the Superior Court Presiding Judge and at least two working days prior to the public release of the report**, shall furnish each respondent a copy of the report which pertains to the respondent. No respondent shall disclose any contents of the report prior to the public release of the final report.

This report will become a matter of public record on **June 30, 2014**. Sections 933 and 933.05 require you to respond in writing to the findings and recommendations pertaining to matters under the control of you or your department. Your original response should be addressed to Elizabeth Johnson, Presiding Judge of Trinity Superior Court **with a copy to the County Administrative Office "Clerk of the Board"**.

Enclosure

TRINITY COUNTY GRAND JURY
2013-2014

Financial and Administration Committee
Final Report

FAR-2013-2014-0185
Business Enterprise Loans

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JUN 23 2014

TRINITY COUNTY
SUPERIOR COURT

Approved June 19, 2014

**2013-2014 Trinity County Grand Jury
Committee Investigation
FAR-2013-2014-015
Business Enterprise Loans**

Summary

The Grand Jury investigated the status of three Economic Development Business Loans granted between 2007 and 2013. The investigation was in response to an anonymous complaint that one of the loans was in default and that the County was not taking action to collect said loan. The Jury investigated the claim, found that it was essentially correct, and made recommendations as to what actions the County might take to collect this debt.

Glossary

CDBG – Community Development Block Grant
UCC – Uniform Commercial Code
TC – Trinity County
CAO – Chief Administrative Officer
FFE – Furniture, Fixtures and Equipment
PI – Program Income
ED – Economic Development
FTE – Full-time Equivalent Employees

Background

The Grand Jury received an anonymous complaint alleging that TC made a Business Enterprise Loan to Elizabeth Johnson to fund the Johnson Steakhouse Restaurant and Golf Course, that the loan is in default, and that TC is not doing anything to recover the principal and interest on the loan. This prompted the Jury to investigate this loan as well as other such loans granted by TC in recent years.

Methodology

The Jury conducted several interviews with the CAO and the Grants Project Specialist during March and April. Copies of documents were obtained for each of the loans granted, which included the original loan agreements, objectives, promissory notes and collateral documents.

Discussion

The California Department of Housing and Community Development administers the CDBG Program which provides grant money to counties for a variety of purposes. These include Housing Rehabilitation Loans, various study projects, a variety of community facilities, and ED assistance loans for small businesses.

Since its inception in 1996, TC has received over \$14.4 million in CDBG funds. Of this amount, about \$1.7 million was identified as ED Enterprise Funds for business loan, micro-enterprise loans and technical assistance. The primary objective of business loans is the creation of jobs for low-income employees. The Jury decided to evaluate such loans made since 2006.

Since 2006, there were six applications for small business assistance loans. Two were withdrawn by the applicants, one was declined at the State level, and three were granted: the Johnson Steakhouse loan in 2007, the Jaktri Market in 2009, and the Red Barn in 2012.

1. Jaktri Market

Borrowers: Bernard and Marcia Berkowitz, Dba: Jaktri Market.

Date of Loan: 5/18/09

Amount: \$105,000

Interest and terms: 4.00%, 180 months, Monthly payment: \$776.67.

Objective: 3 FTE, 1 created, two retained.

Collateral: A Promissory Note, a Security Agreement that included a second and a third position on two parcels of real property, an Unconditional and Continuing Guaranty, and a UCC-1 filing giving the lender a lien on FFE.

Status:

This business has closed. Both properties submitted as collateral have been foreclosed, leaving no assets remaining for TC. No attempt was made to obtain salvage value of the FFE. The borrowers have filed bankruptcy, making the Guaranty valueless. No payments were ever made on the loan. It is unclear whether the 3 FTE were ever hired. TC has closed this account.

Discussion

No funds were available for TC to collect. Administrative costs to recover salvage value of the FFE under the UCC filing always exceed the salvage value. TC was correct in closing this account.

2. Red Barn

Borrowers: Jimmie Rogers and Marlee Wild-Rogers, Dba The Red Barn

Date of Loan: 6/21/12

Amount: \$35,000

Interest and terms: 3.00%, 60 months, Monthly payment: \$150.00

Objective: 1 FTE

Collateral: A Promissory Note, a Security Agreement that includes a second-position lien on the real property, and Unconditional and Continuing Guaranty, and a UCC-1 filing on the FFE.

Status:

This business is still in operation. Since inception, only four payments have been made on the loan, two in 2012 and one in 2013. As of 1/31/14, the total amount due, Principal and Interest is \$37,059.88. As best as can be determined, one FTE was hired for a short time but let go as business has not developed according to plan.

3. Johnsons Steakhouse

Borrowers: Charles and Elizabeth Johnson, DbA: Johnson's Steakhouse and Golf Course.

Date of Loan: 2/23/07

Amount: \$185,000

Interest and Terms: 7.00%, 120 Months, Monthly payment: \$2148.01

Collateral: Promissory Note with subordinate position lien on one parcel of real property.

Collateral Required By TC Business Loan Committee Project Evaluation (January 2007):

Clubhouse/Land
Two Autos
Home
Equipment
Personal Guarantee
UCC Filing

Only the Deed of Trust on a home appears in the file. It is unclear whether the other items of collateral were included in the final loan agreement.

Objective: Six full-time and 11 part-time employees.

Status:

The business was closed in mid-2013. The real property was foreclosed by the primary lien-holder, leaving no remaining assets for TC. No attempt was made by TC to recover salvage value under the UCC-1 filing.

During the course of the loan, a total of \$26,054.09 in loan payments were made, \$17,184.08 in 2007 and \$8870.01 in 2013. No payments were made between 2007 and 2013. The total balance due Principal and Interest as of 1/31/14 is \$242,526.28.

The objective of hiring 6 full-time and 11 part-time employees was met between 2007 and 2013. This business, while open, made a significantly positive contribution to the local employment situation and to the TC economy.

Discussion:

Over the course of the loan, TC has had repeated discussions with the Johnsons about repayment. At one point, TC offered to re-finance the loan to a longer term and revised interest rate if the past interest was paid and the loan made current. The Johnsons apparently did not respond to the offer.

Any funds recovered from repayment of the loan can be reused for Community Facilities, Housing Rehabilitation Loans or Economic Development activity. Under TC's Program Income Reuse Plan, the County is obligated to "assure collection of all program income due from the recipients (e.g. loan payments)". Since Elizabeth Johnson became the County's only Judge, TC has not made a pro-active effort to obtain repayment. Because of the size of the amount due, repayment of the loan would have a very significant benefit for TC.

Findings

- F1: Berkowitz Loan: The County was correct in closing this account. No assets remained for collection.
- F2: Rogers Loan: While no payments are being made on the loan at present, there is some possibility, however small, that repayment may eventually be made.
- F3: Johnson Loan: The complainant was essentially correct in that the loan balance is very large and TC is not taking aggressive, pro-active steps to demand repayment.

Recommendations

- R1: No Action; the matter is closed.
- R2: TC should continue to monitor progress of the business and take appropriate steps to collect if and when the business turns around.
- R3: TC should take immediate steps to attempt to collect this debt. Actions to be explored include:
 - a) A letter from County Counsel to the Johnsons indicating that collection steps are about to commence.
 - b) Obtaining a court order authorizing wage garnishment on either or both borrowers
 - c) Reporting the loan default to the three major credit-reporting agencies.
 - d) Turning the loan over to a professional debt-collection agency.

Request for Responses

- R3: CAO to respond within 90 days.