

UPDATE

Legal Limbo

LAST TIME WE CHECKED IN WITH Debra Killian (“Who Stole My Business?,” December 2006/January 2007), the co-founder of Charter Oak Lending Group in Danbury, Conn. was fighting for her company’s life.

In 2004, 10 employees—or one-third of the mortgage broker’s staff—left to work for CTX Mortgage, a much larger rival. Killian claimed the employees stole 150 pending loans, worth nearly \$1 million in fees, along with customer lists and boxes of

confidential files. Between 2004 and 2005, Charter Oak’s revenues plummeted from more than \$3.5 million to \$300,000.

Charter Oak sued CTX and the 10 defectors, claiming conspiracy, unfair trade practices and misappropriation of trade secrets. Four years and some \$500,000 in legal bills later, the verdict arrived in July: Charter Oak lost on all counts.

“It was a complete shock,” says Killian. “We lost everything that took 10 years to



build in one month, because one company stole it. How is that not illegal?”

In his opinion, Connecticut Superior Court judge Vincent Roche wrote that the individual defendants, “independent contractors and ‘at will’ employees not under any contractual restraints with the plaintiff, could seek whatever employment opportunities were available in the marketplace without being conspiratorial about it.”

Killian claims that the defendants, who received W-2s and benefits and did not hold their own valid licenses or insurance, were employees, not independent contractors—a point that has driven Charter Oak to appeal the case.

“The fact that the judge called them ‘at will’ employees and also ‘independent contractors’—which are mutually exclusive—showed an analysis

that was flawed,” says New Haven attorney William Gallagher, who is handling the appeal.

A spokesperson for Pulte Homes, which merged with CTX Mortgage’s former parent company, told FSB in an e-mail: “We are pleased the judge ruled in our favor in finding that there is no valid claim against CTX Mortgage under Connecticut law. We strongly believe we did nothing wrong and will continue to vigorously defend that position in court throughout the appeal process.”

The lesson for other small businesses? Get your paperwork in order. “Charter Oak didn’t have confidentiality agreements and noncompete contracts,” says Milford, Conn. attorney Tim Bishop, who represented Charter Oak in the original lawsuit. “They were a typical small business that grew faster than expected.”

—CARLYE ADLER

POLICY

Fuzzy Math

IN AUGUST THE SMALL BUSINESS ADMINISTRATION released its annual scorecard tallying federal dollars awarded to small business contractors last year.

The good news? Federal agencies claim they spent \$93.3 billion. That’s \$10 billion more than the year before. The bad news? It’s fuzzy math. Billions of dollars reportedly allocated to small contractors are still flowing to corporate giants (see “Procurement Trickles Down,” July/August). The SBA’s top two “small business contractors” for 2008—VSE Corp. (\$1 billion in annual revenues) and AAI Corp., a division of Textron Inc. (\$14.2 billion in annual revenues)—weren’t small at all. They alone accounted for \$1.6 billion in federal “small business” spending.

Joe Jordan, SBA associate administrator for government contracting, says his agency has been trying to weed out impostors. To get to the \$93.3 billion total from the original \$107 billion reported to it, he says, the SBA scrubbed out some \$6 billion in contracts incorrectly attributed to small businesses, plus more than \$7 billion worth of contracts that were awarded and performed overseas or fell under other exemptions. “We’re confident that this year’s report is based on the most accurate data ever,” Jordan says.

How accurate is that? “The numbers continue to suffer from inaccuracy,” says Tom Sullivan, who spent seven years as chief counsel for advocacy at the SBA before he left in October 2008. “I think we’re three or four years away from knowing exactly what they mean.” —IAN MOUNT

“As soon as one crisis is over, we move on without fundamentally making the system any simpler or more transparent.”

—RON ASHKENAS, HARVARDBUSINESS.ORG VOICES