

[NASHVILLEPOST]

NASHVILLE'S PREMIER BUSINESS PUBLICATION

By: Stephen Elliott

4/23/2018

Multimillion-dollar fraud alleged in Auto Masters bankruptcy

Armed guards called in as Freeland seeks to take over car lots



Mark Janbakhsh at Plaza Mariachi
Photo: Eric England

Local auto dealer Ben Freeland earlier this month agreed to buy bankrupt Middle Tennessee car lot chain Auto Masters, but the process hasn't been free of roadblocks.

According to testimony in federal bankruptcy court, longtime Auto Masters owner Mark Janbakhsh on multiple occasions in the past month sent armed guards from Plaza Mariachi, the cultural and shopping center he opened on Nolensville Road last year, to the main Auto Masters lot, also on Nolensville Road, in order to "forcibly [take] possession" of the facility. The move "led to much anxiety and confusion," according to testimony from one employee of the court receiver in the case. A federal bankruptcy judge on Friday said Janbakhsh, in bringing armed

security to the lot, had "the intention of intimidating those parties ... that he felt were acting against his interest."

Additionally, Janbakhsh and his father have twice in the past month shut down the auto dealership's website, through which many customers make loan payments. According to testimony, the company collects nearly \$100,000 per day through the website.

Charles Walker, the federal bankruptcy judge in the case, on Friday found Janbakhsh in contempt for the actions, criticizing him for his "purely emotional reactions" to steps taken by creditors and others in the case. Walker ordered Janbakhsh to turn over access to the Auto Masters lot on Nolensville Road by Friday afternoon or pay a fine of \$10,000 per day.

"If I need to be a day care instructor I will and we'll hold people accountable going forward to that standard," the judge said during court Friday, according to a transcript of the

proceedings. “So, let it be known to all the parties that being here today indicates that perhaps all the parties aren’t as mature as I thought they might be in resolving these matters and the court will take its appropriate role in making them mature by holding them accountable if need be.”

Inadvertent error or intentional falsification?

Being told off by a judge is only part of Janbakhsh's story these days. Work done on Auto Masters' books since last summer has produced evidence of either a major oversight by the company's operators or, as creditors allege, the fraudulent transfer of millions to family members or other insiders.

Auto Masters **filed for bankruptcy protection in October**, claiming that its major creditor Capital One's decision to exit the “buy here, pay here” market had undercut the chain's business model, in which customers receive financing on site through a related entity.

“It's unfortunate that Auto Masters' primary lender decided to exit this market, but fortunately Auto Masters can survive without this continued funding,” Griffin Dunham, the Dunham Hildebrand attorney representing Auto Masters, said at the time.

The initial Auto Masters bankruptcy filing also detailed an “inadvertent error” that resulted in an overstatement of the collateral it held in securing more than \$60 million in financing from Capital One and First Tennessee. And yet testimony since the initial filing, including by Steve Curnutte, the chief restructuring officer hired by Auto Masters as part of the bankruptcy proceedings, details willful misstatements of collateral. What Capital One called “intentionally falsified” loan data led to an overstatement of more than \$30 million in collateral.

According to testimony from Curnutte, multiple Auto Masters employees — including one Janbakhsh relative — entered false payment information on thousands of inactive car loans for years, inflating the value of the company's collateral by millions of dollars.

Owed millions of dollars, Capital One and other creditors have precipitated the sale of the company and its assets to Freeland. Terms of the sale are not available, as the transaction has not closed. A separate company has purchased Auto Masters' auto loan papers.

In a statement provided to the *Post*, and in corresponding testimony, Curnutte detailed the process by which he and his staff at Tortola Advisors searched for unusual patterns in Auto Masters' loan files before they “finally ciphered things out.” The initial discovery of what Curnutte described as intentional misstatements took Tortola about a week after it was first engaged last fall, though investigators from California-based Berkeley Research Group, retained by creditors Capital One and First Tennessee, had already been trying to determine the reason for the collateral inflation for several weeks before that.

“It is always tough to see a business go through hard times,” Curnutte told the *Post* in the statement. “Buy Here/Pay Here lots provide vital access to cars for many people in our community. We met many great employees at Auto Masters and wish them, and customers of Auto Masters, great luck in the future under the new ownership structure.”

Capital One also argues that Janbakhsh and his family members who co-own various Auto Masters-related entities stripped a “staggering” amount of the allegedly ill-gotten money out of the business.

“During the one year period prior to the Bankruptcy Cases, the Debtors made distributions, payments and ‘loans’ (apparently with no loan documentation, collateral or payment terms) to equity holders, their family members and non-Debtor entities owned and controlled by equity holders totaling more than \$15,000,000,” Capital One lawyers wrote in a November court filing.

The payments from the 12-month period in 2016 and 2017 included more than \$3.6 million to Plaza Mariachi and an additional \$1.07 million to Maz Fresco, the Latin market at Plaza Mariachi.

Capital One lawyers said the Auto Masters business model “appears mainly as an effort to benefit the Debtors’ insiders,” which include several family members.

Janbakhsh, through a statement provided by his attorney Bob Mendes, said he had spent the majority of his time in the years leading up to the bankruptcy focused on his other businesses, including a growing stable of Spanish-language radio stations, Plaza Mariachi and another, unaffiliated auto dealership.

"In late summer 2017, Auto Masters realized that its collateral base with Capital One was overstated," Janbakhsh said. "Although the annual third party external audits had missed the overstatement, and although CapOne's own collateral audits had missed the overstatement, Auto Masters discovered it. At my direction, Auto Masters reported the overstatement in its required monthly reporting to CapOne."

Janbakhsh even argued in court Friday that the collateral misstatement was partially the creditors' own fault. He told an attorney for First Tennessee, a participant in the Capital One loan, that his company had found the misstatement "no thanks to" the creditors' auditors.

"I don't know how you wanna dish out the fault, but I think partially yes," it's the creditors' fault, Janbakhsh said in court Friday, according to a transcript.

Janbakhsh added in the statement that the banks have "always known about" his other businesses, including Plaza Mariachi.

"Certainly, Auto Masters' audits have fully disclosed the other businesses," he said through his attorney. "I am especially proud of Plaza Mariachi. It is doing great and we are all proud of the difference it is making in our community."

Freeland looks to move forward, Janbakhsh heads to second courtroom

Freeland, the owner of multiple area dealerships including Freeland Chevrolet, told the *Post* he expects to retain the Auto Masters name and as many employees as possible when he begins reopening most of the car lots over the course of the next few weeks.

"They've spent a lot of money building that brand over time," said Freeland, represented in the matter by Bone McAllester attorney David Anthony. "They have a lot of name recognition, so we'll probably attempt to keep that name going forward."

The bankruptcy proceedings, which have included hundreds of filings in federal and state court and dozens of attorneys, is nearing at least some semblance of conclusion. Dunham, the attorney representing Auto Masters, said this week that the sale to Freeland was good news for the business, whose ownership and management he added "have always been fiercely loyal to their customers and the Middle Tennessee community."

"Given the particular facts of this case, a sale to Freeland made the most economic sense for everyone involved," Dunham said in a statement provided to the *Post*. "Freeland brings the additional experience, leadership, and commitment that Auto Masters required before agreeing to any sale."

Janbakhsh's public profile has grown in the past several years as his ownership of Spanish-language radio stations has expanded and as he started both the Hispanic Family Foundation and Plaza Mariachi with his wife, Diane. Last year, he was **featured on the cover of *Nashville Post* magazine** and in the ***Nashville Scene's* People Issue**.

But now he's fighting to maintain his remaining business interests. In court last week, he described his response to his physical removal from an Auto Masters lot earlier this month.

"If you're thrown off of your property, you're gonna react, right?" he asked a cross-examining attorney. "The world works that way."

In his statement to the *Post* and in corresponding court testimony, Janbakhsh said the lease for the car lot was in his name, not Auto Masters', so he sent the security guards after the receiver denied him access to the property.

"After the judge issued his ruling on Friday, I promptly and fully complied with the order and provided access to the bank's receiver," he said.

Janbakhsh will be back in Davidson County Chancery Court on Monday afternoon, facing civil contempt charges similar to those he faced in federal court last week. Ahead of the hearing, Adams and Reese attorney Charles Cook, representing Capital One, filed a brief arguing Janbakhsh had "intentionally, willfully and maliciously" violated multiple court orders in both state and federal court. He added that Janbakhsh's decision to transfer some Auto Masters assets to his father was intended to "insulate himself" from the receiver.

"It appears that so far, two orders from this Court and two orders from the [federal] Bankruptcy Court have not been enough to stop Mr. Janbakhsh," Cook wrote. "Moreover, it further appears that Mr. Janbakhsh is willing to involve others in his wrongful conduct so he can create the ruse of non liability. This also has to stop for good."