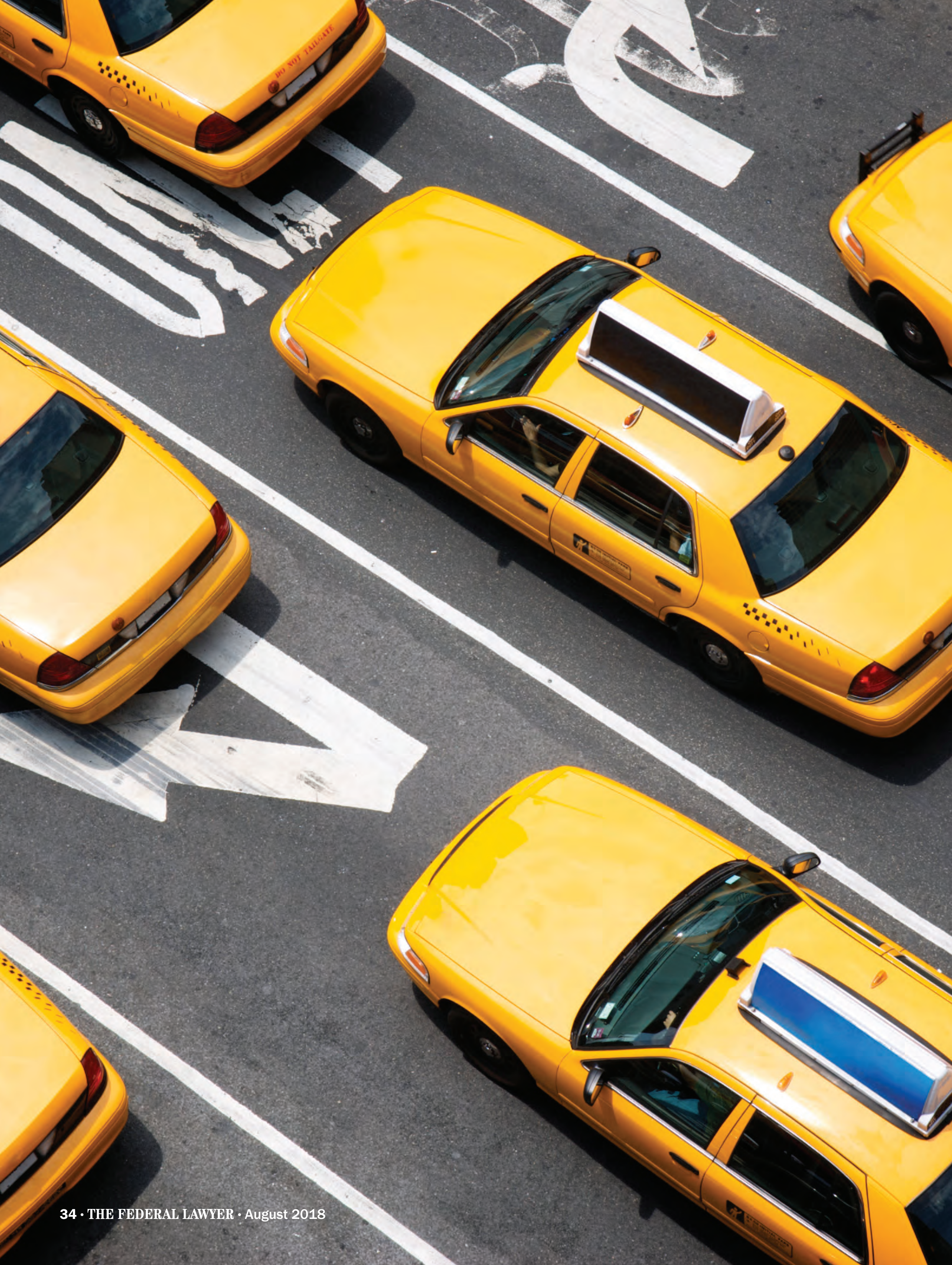

DO NOT TAILGATE

THE YELLOW CAB: A NYC ICON ON THE SKIDS

JANTRA VAN ROY

Thousands of NYC cabbies are facing financial ruin. Many are too old to rebuild or even to work again. Several have taken their own lives. The culprit is the recent precipitous drop in the value of taxi medallions, which stripped many of not only their livelihoods but also their homes and life savings.

In New York City, the license to operate a taxicab is represented by a medallion, which is issued by the NYC Taxi and Limousine Commission (TLC) and affixed to the hood of each vehicle. Because the supply of medallions is limited (currently about 13,500) and ownership can be leased or sold to others, medallion ownership has long been viewed as a secure path to financial independence.

The medallion system, first implemented in 1937, was created to limit the number of taxis by requiring that each have a license (medallion) to operate. Medallion prices steadily rose during the 75 years following their inception, from $2,500 in 1947 to $1.3 million in 2013. But it was only in the mid-1990s that prices began to skyrocket, tripling in value in about two decades. The value of a medallion was thus essentially artificial from the outset, a function of the "limited supply" created by the TLC. The onset of app-based ride services such as Uber and Lyft, cars that can be hailed electronically without the attendant cost of a medallion, blew the artificial lid off the supply side.

And so, another icon of stability became the latest burst bubble, built by many but disproportionately devastating the individual driver-owners and the credit unions that financed many of them.

The American Dreamer: The Medallion Nightmare

Matilda and Genaro Torres

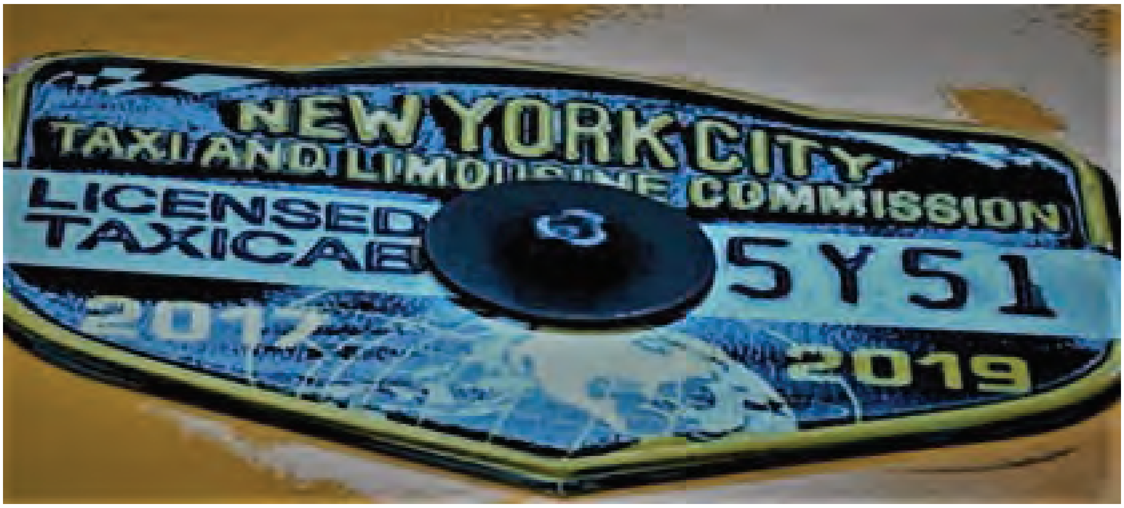
Matilda Torres wonders whether her late husband knows that the modest but secure retirement he thought he had built over a lifetime of driving and saving has gone up in smoke.

When Torres, a grammar school principal from Bogota, Columbia, visited the United States as a tourist in 1973, she did not imagine that she would meet the love of her life, marry, and move to New York City within a year. At that time, Genaro Torres was a recent immigrant from Argentina. Like so many recent immigrants, he chose to earn a living as an NYC cabbie because English fluency, academic degrees, or specialized training were not required to make a decent living. Also, hard work and long hours paid off.

Genaro regularly drove more than 14 hours each day, leaving his Queens apartment in the wee hours of the morning before his family awakened. Matilda and their young sons waited up late into the evening so that the family could have dinner together. Even with two baby boys at home, Genaro was able to save the down payment necessary to purchase his medallion, $110,000 in 1978.

His income was sufficient to service the medallion loan and raise their three boys. Genaro and Matilda lived modestly, in the same apartment for 41 years, and paid off their medallion loan in 2008. Matilda recalls with crystal clarity the day one son telephoned to ecstatically proclaim: "Daddy, you're a millionaire!" He had seen reports that NYC medallions were selling for north of a million dollars.

For the Torreses that meant they would be able to spend their golden years financially independent and basking in their sons' successes. Marcel, their eldest, had received a prestigious award from the U.S. Navy that launched his career in communications technology, Ariel is an American Airlines pilot, and Luis manages a tennis club in New Jersey.



In 2013, Genaro and Matilda implemented what seemed a prudent retirement plan. Exercising great restraint, they borrowed only $350,000 against their medallion, then "valued" at almost $1.3 million based on recent sales. They used half of the loan proceeds to purchase a modest home in the Pocono mountains of Pennsylvania, which reminded Genaro of his woodsy childhood hometown in Argentina and afforded a significantly lower cost of living than NYC. They leased their medallion to a management company to generate an income stream of $3,000 per month, enough to both service their loan and supplement their Social Security income. They were set.

Until they were not. Competition from Uber, Lyft, and other app-based ride-share services was on a meteoric rise. (There are more than 60,000 Uber cars servicing NYC today, more than four times the number of taxis.) Driver demand to lease yellow cabs by the day, week, or month all began a steady decline. As a result, management company monthly payments to medallion owners dipped. By 2015, Matilda and Genaro's medallion income had dropped so steeply that it was insufficient even to service their loan. The precipitous decline in medallion values also meant that refinancing the balloon payment due in 2016 was not an option.

Then Genaro passed away. Matilda's pain is palpable as she describes her fear that Melrose Credit Union will take her home to cover the medallion loan deficiency, leaving her with nothing but her Social Security checks: "It was not supposed to turn out like this."

Larry Weston

Like his father and uncles before him, Larry Weston served our country in uniform and then, as a veteran, drove a taxi. Each of the men in Weston's family was able to save up for his own medallion while leasing one to drive. He explains: "It was a sure path to a stable, honest living and it was a good investment, too—better than the stock market."

Weston purchased his medallion in 1977 for $19,000. He financed his acquisition, and for almost 40 years his taxi income sufficed to cover his debt service as well as his living expenses.

Weston refinanced several times, taking some cash out each time. Ultimately, in 2014, he took out a $600,000 medallion loan. Loan payments were not a problem; the leasing companies were paying Weston $3,300 monthly for his medallion. Weston's medallion was "like a 401(k)," providing an income stream to help meet living expenses in retirement.

Then, in record numbers, drivers were opting for Uber, Lyft, and other app-based ride services. Unable to lease taxis to drivers, the leasing companies lowered their payments to medallion owners. By early 2017, Weston was grossing only $1,100 monthly. Fighting to keep his medallion, for eight months Weston used his Social Security checks to keep his loan current.

Even that was not enough. So Weston took out a $45,000 home equity loan and used the proceeds to help make his monthly medallion loan payments and meet basic living expenses. When that ran out, he made the gut-wrenching decision to turn his medallion in to the TLC. Then he filed a bankruptcy petition. On the very day we spoke, he received a letter from counsel for his lender demanding that he bring his medallion loan current. He can't sleep, wracked with worry that his lender will take his home to cover the deficiency that he knows will remain after his medallion is liquidated. It is all he has left, a two-family house in Woodhaven, Queens, that he and his wife and daughter purchased together in 1999 for $250,000. Weston describes it as "no mansion, and it needs work, but we all live there—my wife and I live with her brother and his son, and my daughter lives downstairs with her two kids."

Weston will turn 70 this month and says he "can totally understand" why other drivers have chosen to end their lives, but "that's not me; I need to go on for my kids."

Limited Options

Attorney Richard Feinsilver has met with more than 500 medallion owners in the last 18 months and has deep ties to the NYC Taxi Driver-Owner Association. Having negotiated medallion loan resolutions for numerous borrowers, Feinsilver has concluded that medallion owners today fall into two broad categories: those whose debt can be restructured and those who are so deeply underwater that a lawyer's only option is to provide some asset planning advice. According to Feinsilver, everybody (the credit unions, the TLC, the large investors, and some management companies) bears some blame, but the damage and harm has primarily fallen upon the individual driver-owners.

The income that can be generated by a medallion is capped. The fares chargeable for individual rides are set by the TLC. Unlike the app-based services, cab drivers are not permitted to charge surge fares or decline undesirable customers or destinations. The lease rates that management companies are permitted to charge a driver (by the shift, week, or month) are also capped by the TLC. The maximum income that could be generated by a medallion in even the best of times was only sufficient to service a loan of approximately $400,000. According to Feinsilver, starting in 2013, the average medallion loan exceeded $600,000, typically requiring monthly payments of over $4,000.

Among Feinsilver's success stories are two individuals who guaranteed $3.2 million of loans secured only by their companies' four medallions. Their only other assets consisted of equity in their homes. Although they were current on their medallion loan payments, their loans were due to mature within months and refinancing was impossible since medallion values had plummeted to about $200,000 each. Using Chapter 13 as a restructuring tool, Feinsilver was able to confirm a plan under which their $3.2 million indebtedness was reduced to $1.6 million to be paid at 3 percent and amortized over 25 years, the individuals kept their homes, using only their non-exempt equity to fund the plan.

The biggest single factor in a borrower's ability to resolve an underwater medallion loan is the lender's approach, which can vary widely. Feinsilver has observed that the lenders that are willing to negotiate a deal, usually involving some debt reduction and a lengthy extension of the loan maturity date, make out better than those that seek only to liquidate their collateral. Of course, the character of the borrower is a factor, and lenders typically find loan restructuring to be more palatable when dealing with a borrower who has not engaged in conduct perceived to be fraudulent.

According to Feinsilver, more than 75 percent of the "American dream medallion owners" who financed through credit unions signed waivers and had no legal representation at their closings. They also signed Confessions of Judgment, enabling their lenders to enter judgment without commencing a lawsuit, depriving them of the opportunity to raise defenses. Moreover, many of his borrower clients own their homes individually, not jointly with their spouses, which was the norm in their cultures of origin. Unfortunately, by the time they seek legal advice it is typically too late to deed their property to joint ownership, and they lose out on half of what would have been the couple's statutory homestead exemption.

Feinsilver has also seen a significant uptick in the number of fraudulent transfer claims asserted by lenders. Some credit unions are aggressively seeking to undo the transfers by their medallion-owning borrower entities (usually LLCs) to their sole members, who typically guaranteed their companies' loan. For the most part, the money so transferred was used to buy the family home, at a time when the medallion owner was solvent. In Feinsilver's experience, "These are not guys who planted their assets overseas to hide them from the bank."

The Large Investor: Building the Bubble

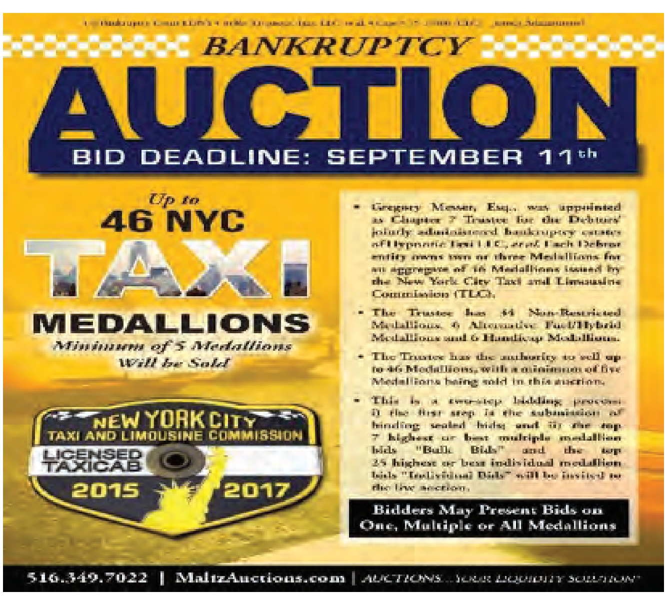
New York's "Taxi King" Evgeny Freidman was found to have done just that. He once owned more than 800 NYC medallions and several taxi management companies. Many believe that he was instrumental in inflating the bubble, knowingly paying prices well in excess of what the cash flows warranted and repeatedly taking cash out by refinancing based on those inflated prices.

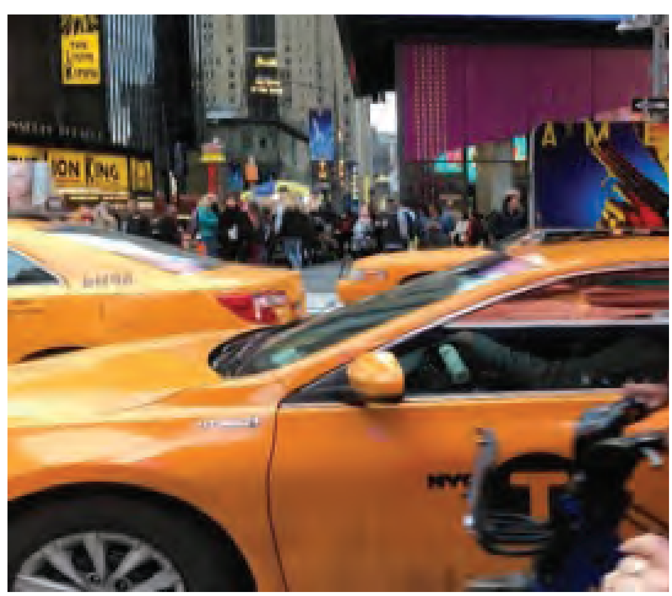
When he defaulted on monthly payments to Citibank and faced imminent seizure of 46 medallions, he put 22 of his medallion-owning entities into Chapter 11 bankruptcy. They owed about $750,000 on each of their medallions at that time, totaling over $31 million. The medallions were worth nowhere near that amount. In fact, they ultimately sold at auction in late 2017 for under $200,000 each.

Because Freidman had guaranteed the loans, his personal assets were at risk.

To keep his assets out of Citibank's reach, and aided by an asset protection lawyer, he fraudulently transferred them to four offshore trusts (in Belize, Nevis, and the Cook Islands) a month after Citibank sued him in state court. The countries he chose are home to some of the world's largest asset protection trusts because those jurisdictions do not recognize American judgments or abide American court orders. Freidman also chose, as his trustees, nationals of those jurisdictions and of Russia, none of whom could readily be brought before a U.S. court.

His assets consisted of his sole ownership interests in LLCs and corporations that he had formed to hold title to more than $60 million of real estate in the United States. Freidman transferred ownership of all of those entities to the offshore trusts. The trusts' beneficiaries were Freidman's parents and children, and Freidman





maintained that he was simply engaging in estate planning. Lawyers for Citibank demonstrated to the court that Freidman made the transfers with actual intent to evade enforcement of Citibank's anticipated judgment and those of other creditors. In a lengthy and well-reasoned Decision After Trial, Chief Bankruptcy Judge Carla Craig of the Eastern District of New York found that Freidman's testimony "can only be described as self-contradictory, evasive and unconvincing" and that "the badges of fraud are numerous and glaring." As a result, the court authorized the U.S. Marshals Service, on behalf of Citibank, to attach up to $40 million of Freidman's assets, including the assets titled in the name of the trusts.[1]

But how was such an attachment to be effectuated? After all, the trusts were carefully crafted, and the foreign trustees chosen, to ensure immunity from our courts' jurisdiction. Indeed, the trusts argued that their assets could not be attached until the fraudulent transfers had been avoided, and, to do so, the bank needed to commence an avoidance action against them. But Citibank's lawyers established that such a lawsuit was unnecessary. After the U.S. Marshals levied attachment by service on Freidman, the court conducted a trial on the question of whether Citibank had effectively attached the trusts' assets. Lawyers for the bank proved that the trusts were Freidman's alter egos and that their assets had been properly attached (giving the bank a lien on those assets) without the need for a judgment undoing any transfers.[2]

Others who followed Freidman's formula—taking cash-out refinancings on large taxi fleets, guaranteeing the loans, and then placing assets into offshore trusts or otherwise shielding them—will undoubtedly be at greater risk now.

Other Victims

Several credit unions have already been seized by federal regulators as a result of their non-performing medallion loan portfolios, including Melrose Credit Union, Montauk Credit Union, Lomto Federal Credit Union, and First Jersey Credit Union of Wayne, New Jersey Credit unions that serve the taxi industry typically provide financing in New York City, Chicago, Philadelphia, and Boston. While New York City has the largest number of taxi medallions, credit unions offer limited taxi medallion financing in other jurisdictions.[3]

There is typically a cap on the amount of loans that a credit union can extend to members. However, the Credit Union Membership Access Act exempts those credit unions chartered for the purpose of making member business loans. Thus, some credit unions were able to risk virtually all of their assets on medallion loans.

As to medallion values, the National Credit Union Administration's April 1, 2014, Supervisory Letter noted merely that:

> A medallion's value is affected by its income-producing potential, and by the laws of supply and demand. Taxi authorities closely regulate and control the type and number of medallions that are issued, and periodically release new medallions through public auctions.… The limited supply of medallions available in the market can lead to a speculative premium (market premium), which occurs when the sales price of a medallion exceeds the value that is supported by the medallion's ability to generate net operating income.

As fungible assets with no intrinsic value, the value of taxi medallions hinged on the artificial cap on the number available, essentially a restraint on competition, set by the TLC. The development of ride-hailing apps presented a form of competition outside of the TLC's control that was neither foreseen nor contained. In retrospect, it certainly appears that greater focus on the supply cap's vulnerability to technological advances was warranted. ⦿

Jantra Van Roy, litigator and partner at Zeichner Ellman & Krause LLP (www.zeklaw.com), is co-chair of the firm's bankruptcy and business insolvency practice. Van Roy has been at the forefront of the taxi medallion crisis, representing the secured lender in New York's infamous "Taxi King" medallion bankruptcy cases as well as in the litigation against him as guarantor, effectively busting his offshore trusts and resulting in several groundbreaking favorable decisions following trials. She has almost three decades of experience in asset recovery litigation, bankruptcy, and out-of-court loan restructuring. Van Roy has extensive motion, trial, and appellate experience representing creditors such as banks, commercial mortgage lenders, and loan servicers in state and federal courts to enforce commercial loans, guarantees, inter-creditor agreements, pooling and servicing agreements, and loan purchase agreements. Van Roy has a unique depth of experience in litigating complex fraud claims and recovering fraudulently transferred assets. She is known for developing practical, cost-effective recovery strategies. Van Roy also heads the firm's structured finance litigation practice. She has served as lead counsel for major European and American banks in complex multi-party actions arising from products such as CDOs, SIVs, and credit default swaps.

Endnotes

[1]*Citibank N.A. v. Bombshell Taxi LLC (In re Hypnotic Taxi LLC)*, 543 B.R 365 (Bankr. E.D.N.Y. 2016).

[2]*Citibank N.A. v. Bombshell Taxi LLC (In re Hypnotic Taxi LLC)*, 2017 Bankr. LEXIS 3546 (Bankr. E.D.N.Y. Oct. 4, 2017).

[3]Nat'l Credit Union Admin., Supervisory Letter No. 14-04 (Apr. 1, 2014), http://www.ncua.gov/resources/documents/supervisoryletter_taximedallion.pdf.