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Bank Investor Wants Maduro-Connected Board Members Out

By **David Minsky**

Law360 (October 5, 2022, 6:57 PM EDT) -- A majority shareholder of Florida's Eastern National Bank is seeking to oust board members with ties to Venezuelan President Nicolas Maduro who allegedly devised a self-enriching stock compensation plan, adding that the bank's operations could cease over $20 million in losses stemming from a U.S. government investigation.

In an expedited motion filed Tuesday in the Southern District of Florida, Mercorp NV, which owns 99% of ENB stock, said chairman Louis Ferreira violated Florida law by refusing to call the meeting, which is required in order to approve the compensation plan that would shift nearly one-third of the company's equity value to shareholders.

The meeting would also decide whether to remove board members Gustavo Macias, Keith Parker and Carlos G. Rodriguez, who proposed the plan that required preapproval from the U.S. government due to the bank's ties to Venezuela, according to the motion.

"Mr. Ferreira's refusal to call a shareholder vote and to, in turn, allow Mercorp to take actions to recapitalize the bank puts the bank at risk of closing," according to the motion. "If the stock compensation plan is fully executed and the shares vest for the beneficiaries, the bank will have to record an additional $4.8 million in expenses."

Attorneys for Mercorp and ENB representatives did not immediately respond to requests for comment. Attorney information for ENB was not listed.

Mercorp sued the defendants, who include Ferreira, Macias, Parker and Rodriguez, alleging they violated Florida law and bank bylaws over their refusal to call the shareholder meeting, according to a complaint filed in September.

In its complaint, Mercorp is also seeking a permanent injunction against the defendants, whose actions are allegedly "causing irreparable" damage resulting in the bank "bleeding money" to the tune of about $310,000 per month.

Mercorp says ENB needs to recapitalize due to $20 million in losses stemming from its failure to comply with consent orders issued by the Office of the Comptroller Currency, which investigated ENB in 2018 and found the bank violated the Bank Secrecy Act and anti-money laundering practices.

The investigation came following transactions from an account that was opened and operated by Venezuela and after U.S. banks stopped doing business with the country in 2017, according to the complaint.

Venezuela had control of the bank since 1999 and through an "illegal" receivership due to debt the country says the bank had to repay, Mercorp alleged.

Mercorp alleges Ferreira — at the time acting through Gabrina Rodriguez, whom the Venezuelan government appointed to control the receivership — refused to believe the debt was paid in November 2020, as Mercorp had insisted.

In August 2022, after Rodriguez abandoned her position, a Mercorp legal beneficiary went to officials in Curacao, where ENB is incorporated, and argued the receivership was illegal, allowing the beneficiary to regain control of the bank.

Additionally, in September 2022, the Venezuelan Supreme Court lifted Venezuela's receivership, further strengthening Mercorp's request for a special shareholder meeting that Ferreira refuses to hold.

While the bank was being investigated, Mercorp alleges Macias, Parker and Rodriguez devised the stock plan that would have issued them restricted bank shares and shifted about 30% of the company's value to shareholders — but Mercorp says the plan was only meant to enrich the three board members.

Mercorp says that even before the restricted stock compensation plan was proposed, it needed preapproval from the Office of Foreign Assets Control because Venezuela is a sanctioned country,

"In addition to the impropriety of consulting privately with someone who is not a member of the board and is also not a representative of any shareholder, defendants' actions in consulting with Gabrina Rodriguez are even more egregious because Gabrina Rodriguez is the government of Venezuela and, therefore, a sanctioned party for OFAC purposes," according to Mercorp's motion.

"Thus, defendants yet again are subjecting the bank to grave risk by engaging with parties that are sanctioned by the U.S. government in direct contravention to OFAC regulations and U.S. foreign policy," it added.

Mercorp NV is represented by Diego P. Ara and Derek E. Leon of Leon Cosgrove LLP.

Attorney information for the defendants was not listed.

The case is Mercorp N.V. v. Louis Ferreira et al., case 1:22-cv-22850, in the U.S. District Court for the Southern District of Florida.

--Editing by Philip Shea.

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