

## Chase owner alleges former operator used hotel money to pay personal taxes



MARCH 19, 2013 12:15 AM • BY TIM BRYANT  
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For years, Jim Smith has been the St. Louis developer most credited with saving and restoring the iconic Chase Park Plaza. Last month, abruptly and without explanation, he was ousted from the hotel.

Court documents made public Monday offer an explanation.

The majority owner of the Chase Park Plaza alleges that Smith, the landmark hotel's former operator, used nearly \$435,000 in hotel money to pay personal income taxes.

Included in the court record is a sworn statement by a former hotel general manager who alleged Smith ordered the tax payments made despite being told they would be improper.

Until he was replaced on Feb. 19, Smith was the long-time public face of the rejuvenation of the Chase complex under the majority ownership of a Dallas-based real estate investment trust, Behringer Harvard. An affiliate of the REIT, Chase Park Plaza Hotel LLC, bought a 95 percent interest in the complex in 2006. The \$180 million deal included Smith as a 5 percent owner.

A St. Louis fixture since the 1920s, the Chase complex has 350 hotel rooms, 51 corporate apartments, meeting rooms, restaurants, bars and a movie theater, plus 86 condos in the 29-story Park Plaza tower.

In February, Behringer Harvard announced that it had terminated as operator a company run by Smith and replaced it with Pyramid Hotel Group, of Boston. At the time, Behringer Harvard said only that the transition would be seamless.

But the court documents unsealed Monday describe a crisis that had been unfolding for months. Among the documents is a sworn statement by Bruce Westerlin, who became the hotel's general manager in 2002.

In the statement, Westerlin said that Smith told him last October that the hotel had a \$500,000 tax liability "and that it was imperative that all efforts be made to collect all outstanding receivables to the hotel immediately and that the hotel maximize all revenues to cover this expense." Because the hotel had no such overdue tax bill, Westerlin suspected that Smith had a personal tax liability, his affidavit said.

In December, Smith ordered David Sutton, a hotel accountant, to issue a check for \$63,625.73 from CWE Hospitality Services, the Chase's manager, to the Missouri Department of Revenue, Westerlin's statement alleged. Smith is president of CWE.

In January, after the Chase was paid "a large receivable," Smith instructed Sutton to issue a CWE check of \$371,310.57 to satisfy a tax bill from the Internal Revenue Service, the statement said.

In both instances, the money came from hotel accounts even though the tax liabilities were of Smith and his wife, Francine, said Westerlin, adding that he had been fired after he questioned the tax payments.

He also said in his statement that he had refused to have the hotel accountant issue the check for the state taxes "because it was apparent to me this tax liability was a personal tax liability for Mr. Smith and his wife, and thus I told Mr. Smith that issuing a check from the Chase's account to satisfy a personal tax liability for Mr. Smith and his wife would be a criminal act."

Smith responded in a statement Monday that he and the majority owner had been involved in financial disputes since early 2012, but said he was "caught totally unaware when Behringer Harvard executives showed up at my office unannounced on Feb. 19 with a court order they had obtained with no notice to us."

Smith also replied in court, where his attorneys sought to dissolve the court order that removed him from the hotel.

"Outrageous, unconscionable, reprehensible, shocking, unjustified, baseless and bad faith — these are just a few of the words that come to mind relative to (the majority owner's) ambush and assault" of Smith and other defendants, his attorneys said in a court filing.

Chase Park Plaza Hotel LLC, the Behringer Harvard affiliate that owns the majority of the Chase, has sued Smith and others in St. Louis Circuit Court. The civil suit alleges the defendants "no longer can be trusted to properly manage, control, and preserve the hotel." The suit contends that Westerlin was fired "because he told defendants that their conduct was criminal

and he refused to participate in it."

Sutton, in a sworn statement that is among newly released documents in the suit, said that Smith "told me to pay his personal taxes."

"I told Mr. Smith that the tax bills were not hotel expenses, but Mr. Smith said that they were and I was to pay them," Sutton's statement said.

He added: "Mr. Smith ordering me to pay these two personal tax bills was the most unprofessional thing that has ever happened to me in my career. While I signed the checks, I have three children to support, and felt that because my boss ordered me to do it, I had to do it."

Michael O'Hanlon, chief executive of Behringer Harvard Opportunity Funds, said Monday that the REIT had no plan to sell the Chase.

"We are very committed to the hotel and to the city," he said in a telephone interview.

Behringer Harvard will keep Pyramid Hotel Group as manager of the hotel and condos, O'Hanlon said. Pyramid operates hotels nationwide, including luxury properties such as the Arizona Biltmore in Phoenix, the Claremont Resort in Berkeley, Calif., and the Boston Harbor Hotel.

Smith said in his statement that he had devoted 16 years of his life to the Chase. "We were able to make it a successful operation and restore its status as a landmark and anchor of the Central West End," he said.

Marcia Smith Niedringhaus, Smith's daughter and another former Chase executive, said in a statement that her father "has lost the 16 years of 24-7 work he put into the Chase and resurrecting it as a vital neighborhood asset." She is among the defendants in Behringer Harvard's suit.

"Even when we are vindicated in court, we can never replace what we have lost," she said.

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