

## Oyster Bay Town helped restaurateur get \$16M in private loans exposing taxpayers to liabilities

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Harendra Singh is shown at his restaurant H.R. Singletons in Bethpage on Oct. 26, 2005. (Credit: Newsday / David L. Pokress)

Town of Oyster Bay officials helped a private businessman secure loans by arranging with lenders to have the town pay in case of defaults -- potentially exposing taxpayers to millions of dollars in liabilities, a Newsday investigation has found.

Bethpage restaurateur Harendra Singh, who has several lucrative concessionaire contracts with the Town of Oyster Bay, struggled to obtain three separate loans for capital improvements at town facilities totaling about \$16 million beginning in 2010.

Records show he secured a \$1.5 million line of credit in 2010, thanks to a guarantee from the town that it would pay the lender in the event that Singh defaulted within a time period just shy of five years. Singh secured two more loans with a face value totaling \$14 million in 2011 and 2012, and emails obtained by Newsday show that Deputy Town Attorney Frederick Mei negotiated directly with lenders to structure those loans with a guarantee similar to the one for the line of credit.

It's unclear whether the latter two loans included the same language because town officials have refused to release the loan documents or explain their involvement in those agreements. However, public records filed with the Connecticut Insurance Department lists the Town of Oyster Bay, and not Singh, as the debtor for the loans, indicating that some sort of town guarantee was part of the agreement.

Singh's lawyer, Joseph Conway of Mineola, called the deals for the two outstanding loans a guarantee.

"The way it was structured is that the town became a guarantor, so that if Singh was to default, the town was a guarantor and the bank would be able to go after them as well," Conway said.

New York's state constitution prohibits municipalities from guaranteeing private debt. Emails obtained by Newsday show that outside attorneys warned town officials that their plans to guarantee Singh's debt were illegal and in violation of the state constitution.

"Bottom line: I don't see how the Town can possibly guaranty an open-ended general purpose line of credit for . . . [Singh's] business," Jonathan Sinnreich, the town's outside counsel, wrote in an April 7, 2010, email to Mei, regarding the 2010 \$1.5 million line of credit.

Mei responded that the bank's attorney "was very willing to make changes to the guaranty, as long as it sticks to the . . . [Singh] fails, town pays theme."

Sinnreich said he could not discuss advice that he had given a client, but that he was not consulted on the deal the town ultimately reached with the lender months later.

The town has hired a securities trial lawyer, Jonathan Pickhardt of Quinn Emanuel Urquhart & Sullivan LLP, to represent it in possible litigation over the 2011 and 2012 loans.



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He declined to answer questions about those loans but said the town's role in backstopping the 2010 \$1.5 million line of credit was "not a guarantee."

"Those . . . [potential] payments are all less than the value of the improvements that have been paid by Mr. Singh and that the town would be getting the benefit of," Pickhardt said.

At the least, the arrangement amounts to a questionable "backdoor guarantee," said Paul Sabatino, a former Suffolk chief deputy county executive and legislative counsel.

"That's a huge red flag," Sabatino said. "The party defaulting should not get the benefit of taxpayer dollars."

Sabatino and two other experts in municipal finance reviewed documents and records related to the line of credit arrangement at Newsday's request. Each agreed that although the town's arrangement with Singh's lender may have been structured to skirt the state's prohibition against guaranteeing private debt, it still exposed the town to Singh's financial liabilities.

#### **Disclosure questions**

Another potential problem for Oyster Bay is that the Singh loans do not appear to have been disclosed in the town's audited financial statements or bond prospectuses. The omissions could open the town up to sanctions from the Securities and Exchange Commission, according to the financial experts who spoke with Newsday.

"Agreements that obligate a municipality to expend funds should be disclosed," Sabatino wrote in an email. "Disclosure allows investors and rating agencies to form their own opinion or judgment as to the financial condition of the municipality. Selective disclosure of obligations makes an official statement (bond prospectus) misleading."

Failure to disclose material financial issues can bring enforcement action by the SEC, including cease-and-desist orders and even fraud charges. Penalties can range from fines to jail time.

One financial expert, who asked not to be identified, reviewed the documents and said Oyster Bay officials "could be in very serious trouble with the SEC, and it wouldn't surprise me that it would spark a federal investigation."

Pickhardt declined to say whether the two loans for \$14 million were disclosed. He said the \$1.5 million line of credit, which has since closed, didn't need to be disclosed because it is too small to be considered material.

Former Nassau County Comptroller Howard Weitzman wrote in an email that it would have been better for the town to include the loans in its statements "in the interest of full disclosure, especially considering the financial condition of the town. Given the size of the town and their weakened financial condition \$1-2 million could be considered borderline material."

In at least one instance, the town considered a potential liability of \$2 million material in an unrelated legal case. It disclosed it in its most recent borrowing prospectus.

Oyster Bay town officials declined to be interviewed for this story. The town has also refused to provide the most recent agreements and amendments concerning Singh that Newsday has requested under the state Freedom of Information Law.

The town's unusual willingness to help Singh secure financing came just months after Nassau County Executive Edward Mangano first took office in January 2010, following a narrow victory over incumbent Thomas Suozzi.

Newsday reported two weeks ago that Singh, a longtime friend of Mangano, arranged and paid for vacation trips for Mangano and his family, as well as separate trips for Mei.

It is unclear whether Mangano or Mei ever reimbursed Singh for the trips, and each has declined to comment. Newsday has requested Mangano's calendar for the dates coinciding with the trips, but Nassau County has not yet provided those public records.

Federal investigators seized Singh's business records last August, and Thursday FBI agents again took more records from Singh's headquarters at H.R. Singletons Grill & Bar in Bethpage. Singh's lawyer, Conway, has said that Singh is cooperating with investigators, although the nature of the investigation has not been made public.

#### **Loan agreements**

Singh sought the enhanced financing beginning in 2010 for capital improvements he'd agreed to make at the restaurants he operated on Oyster Bay property. The amount of those improvements was supposed to total \$11.7 million by 2014.

However, independent reviews provided by the town have shown only \$5.6 million in improvements. Town officials have not explained the discrepancy.

Records show that Madison National Bank agreed to extend Singh a \$1.5 million line of credit, but only with a financial backstop from the town.

On March 9, 2010, the Oyster Bay Town Board's agenda included a resolution "authorizing the supervisor to enter into a guaranty of payment" on the Tobay Beach and golf course

concessions. When the resolution was approved later that month, the word "guaranty" no longer appeared. Instead it said the loan would be secured by "the collateralization of the concession agreements."

Under the final agreement, the bank extended the line of credit to Singh's company, SRB Concession of Bethpage, which operates food and beverage service at Tobay Beach. The agreement states that if Singh defaulted with the lender and missed a deadline to cure the default, the town would cancel its concession agreement with Singh and make a direct payment to the bank.

Singh sought two similar transactions with another lender, NDH Capital Corp. of Purchase, in 2011 and 2012. NDH filed records concerning those loans with New York's Department of State, and then assigned the loans to subsidiaries of Connecticut-based The Phoenix Companies Inc. Each subsidiary filed a report to the Connecticut Insurance Department showing loans for \$6 million and \$7.9 million as debts of Oyster Bay.

A Phoenix spokeswoman confirmed recently that the subsidiaries still hold the debt.

Town officials tied themselves to Singh with these agreements as the restaurateur hit a patch of financial instability.

He had bought in 2009 The Water's Edge Restaurant, an establishment in Long Island City that included an unfunded pension plan. Workers had to go to court to ultimately get the pensions they had earned over years at the restaurant. New York City, which owns the property, started eviction proceedings against Singh's company in February. Singh is fighting the eviction and has countersued.

The unfunded pension plan triggered two IRS liens -- which are still active -- against Singh totaling \$2.4 million. There is a third IRS lien against H.R. Singletons, Singh's flagship restaurant, for \$44,000 for unpaid taxes.

Singh was also facing at least two multimillion-dollar class-action lawsuits brought by employees claiming that he paid them late, deducted pay for breaks they didn't have time to take, and charged for meals they didn't eat. One suit was settled in September, and the terms of the settlement are sealed. The other lawsuit is ongoing.

#### **Town extends deal**

Newsday obtained emails to Singh and some of his top employees, including his financial controller, that show creditors hounded Singh for late payments in early 2014. The emails show Singh was behind on loans, lease payments, credit card bills, food bills and legal fees.

Despite those financial problems, the town board extended Singh's concession agreements on April 8, 2014, at the town golf course and Tobay Beach for an additional 20 years, giving him the Tobay contract through 2065 and the golf course concession through 2070.

These were great deals for Singh: Anyone operating a business on town property does not have to pay property taxes, and an exclusivity clause in the concession agreement let Singh operate restaurants at those popular sites without having to worry about competition for more than 50 years.

The town's extension occurred the same day a collection manager emailed a Singh employee to notify him that Singh's company was a total of seven months behind payment on two lease agreements.

"If I do not hear from someone immediately, these leases can be turned over to our attorney for collection, which can result in fees," the email states.

In September 2014, Axis Capital sued Singh, accusing him of failing to make payments on equipment leases. The lawsuit includes an affidavit that says a "confidential informant" informed the company that Singh had committed "the largest and most massive fraud since Madoff."

The confidential informant, according to Axis Capital attorney Mitchell Cohen's affidavit, said Singh had "perpetrated a massive fraud going back many years involving literally millions and millions of dollars" and included equipment that "didn't exist" or had been "double-financed."

He also said the informant warned him that Singh was "likely to flee the country to avoid prosecution."

Conway said the fraud allegations in the Axis lawsuit were "completely unfounded" and the prospect of Singh fleeing the country was "ridiculous."

Conway said he helped Singh reach a settlement with Axis to pay back about \$700,000, including an upfront payment of \$500,000 followed by monthly payments.

Conway said he did not know where Singh got the money.

"The settlement's been honored and paid. Where the money came from I can't tell you," Conway said.

#### **Private loans**

Two individuals with direct knowledge of Singh's business dealings said Singh has borrowed heavily from members of the local Indian community to pay bills, and the records and emails obtained by Newsday back up that assertion.

One individual, who asked not to be named, provided Newsday with a copy of a six-figure loan agreement he'd reached with Singh. The loan is signed by Singh and witnessed by Kamlesh Mehta, a close friend of Singh's.

Mehta's online LinkedIn profile states he founded the South Asian Times, a newspaper based in Hicksville, and is co-chair of the Raj & Rajeshwari Foundation, a charity founded by Singh's father that operates a hospital in India. Mangano appointed Mehta to be Nassau County's director of business and economic development in 2010.

A Dec. 28, 2011, email from Mehta to Singh shows Mehta acting as a broker arranging financing for Singh. Mehta wrote that he was "confident" that he could secure a \$100,000 check but that he was finding it a "little difficult to ask for new money" for Singh "at the same time I am giving post-dated interest checks. . . . My position as broker is very delicate."

Mehta declined to comment for this story.

In late June, Oyster Bay officially notified Singh that he had fallen behind on payments to the town. Earlier this month, Town Supervisor John Venditto said Singh had worked to catch up but still owed the town about \$75,000.

Conway said that there had been discussions with the town and that he thinks Singh might have actually made some overpayments. He said Singh expected to be caught up on payments to the town by the end of August.

When asked by a reporter in May whether the town was aware of Singh's financial difficulties when the board extended the concession agreements with Singh last year, Venditto said he didn't know.

"We'll have to search our records to even verify any of the information you're spewing out," Venditto said.

At that time, Singh was at least seven months late with his payments for the golf course.

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