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Fallen empire

The tangle of properties Jason Palmer created is proving hard to unravel

By WILL ASTOR

"Ah, yes," Maureen Bass said on hearing Jason Palmer's name. "The gift that keeps on giving."

Bass, a bankruptcy and insolvency attorney in the Buffalo office of Buchanan, Ingersoll & Rooney P.C., has racked up many billable hours representing a lender pressing to foreclose on Palmer properties.

No doubt less appreciative are Palmer's onetime business partners, whose court challenges Bass has profitably toiled over.

Also unlikely to look kindly on Palmer are Rochester and East Rochester officials dealing with some \$6 million in assessment reductions sought for 10 properties that once were part of an extensive local portfolio controlled by Palmer.

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The Palmer holdings included the landmark former Rochester Community Savings Bank building on Franklin Street.
Photo by Kimberly McKinzie

Banking landscape changes

Its decadelong climb deposits M&T at No. 1

By THOMAS ADAMS

Roughly a decade ago, M&T Bank Corp. ranked No. 4 in the region with a 10.5 percent market share and roughly \$1.8 billion in deposits. This week it emerged as the leader—by a wide margin.

The departure of HSBC Bank USA N.A. from Upstate New York has changed the local deposit landscape, leaving M&T Bank with twice the market share of its nearest competitor.

Total deposits in the region fell 2.7% in the past year.

M&T has more than \$3.6 billion in local deposits and a 23.6 percent share of the \$15.3 billion total in the Rochester market, data released this week by the Federal Deposit Insurance Corp. show.

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Lawsuit claims staff underpaid at Applebee's

By WILL ASTOR

An employment lawsuit filed last week in Rochester could have a far-reaching effect on U.S. restaurants.

The lead plaintiffs in the case, which seeks class-action status, are two former waitresses in Rochester-area locations of Applebee's Neighborhood Bar & Grill. The action takes the position that restaurants should pay waiters and waitresses full minimum wage, \$7.25 an hour, for any work not related to their duties as servers.

The lawsuit, filed Sept. 24 in U.S. District Court in Rochester, targets T.L. Cannon Corp., a Florida company that operates 61 franchises of Applebee's Interna-

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M&T continues its streak

Buffalo-based bank leads the region in SBA loans for 19th straight year

By THOMAS ADAMS

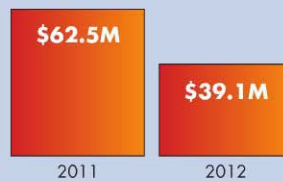
Local 7(a) loans backed by the U.S. Small Business Administration declined 37.4 percent in the Rochester market this fiscal year with the end of federal incentives. M&T Bank Corp. led the way in lending for the 19th straight year.

The SBA supported 278 of the 7(a) loans here totaling more than \$39 million for the fiscal year ending Sept. 30.

That is down from 368 loans and \$62.5 million in 2010-11, with the cap raised to \$1 million from \$350,000 for SBA-Express lines of credit and without the guarantee fee as part of the Small Business Jobs Act of 2010.

Sharp drop

Local 7(a) loans plunged after federal incentives ended.



ness Jobs Act of 2010.

"The main difference is the fact that last year the government had an incentive program related to SBA loans, where they waived the guarantee fee," said Daniel Burns, M&T's Rochester region president.

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Company seeks to drive sales in Google move

By TROY L. SMITH

Harris Interactive Inc. has joined with online giant Google Inc. to create a market research platform that is at the center of the latest phase of the local firm's turnaround effort.

The partnership features the collaboration of Harris Interactive's best-known product, the Harris Poll, and Google Consumer Surveys. Together they have formed the Harris Poll and Google Consumer Surveys Platform.

The platform will feature ongoing benchmark studies investigating customer satisfaction in key industries, officials said. The first benchmark study investi-

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APPLEBEE'S LAWSUIT

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tional Inc. in New York and Connecticut. The complaint is aimed only at the firm's 54 franchises in New York but could be widened, said the servers' attorney, Nelson Thomas of Thomas & Solomon LLP.

If it succeeds, the suit could force all U.S. Applebee's restaurants as well as every eatery in the country to adopt vastly different practices, Thomas believes, closing a labor law loophole that lets restaurant operators underpay wait staff.

The lawsuit follows a 2006 class action that made a similar claim against Applebee's International Inc., the Kansas-based franchisor of Applebee's restaurants. The 2006 case was filed on behalf of some 5,500 servers and bartenders in a Missouri bloc of Applebee's restaurants.

Applebee's settled with the Missouri

plaintiffs this year after a panel of the 8th U.S. Circuit Court of Appeals upheld a district judge's denial of the Applebee's franchisor's motion for summary judgment. Details of the agreement are still under court review and have not been published.

The newly filed New York case could enlist as many as 15,000 plaintiffs and could take the Missouri lawsuit's claims a step farther, Thomas said.

At the heart of both cases is an exception to the national minimum-wage law that lets employers pay a rate of \$2.13 an hour to workers who derive a substantial percentage of their income from tips. The \$5.13 tip credit assumes that tipped workers will receive at least \$5.12 an hour in tips to bring their total pay up to the \$7.25 hourly minimum.

The dispute in the Missouri case largely turned on how much time wait staff and bartenders spent on cleaning and other non-tippable chores. A Department of Labor guideline disallows the tip credit if at least

20 percent of a tipped staffer's time is spent on serving-related but not tippable tasks.

Citing another Labor Department rule that sets \$30 as the least a worker can get monthly in tips for a job to be classed as tipped, Applebee's lawyers argued that workers are tipped even if they sometimes perform duties such as cleaning bathrooms, sweeping or filling ketchup bottles.

Courts found in the servers' and bartenders' favor.

While it takes care to assert that Applebee's servers in the chain's New York franchises spend 20 percent of their time or more doing untippable chores, the T.L. Cannon case moves the dispute into new territory, arguing that any time spent on chores not directly related to tippable duties should be reimbursed at full minimum wage, Thomas said.

Waiters at three-star New York City eateries can pull in six-figure incomes and seldom, if ever, are asked to do the clean-

ing chores that the plaintiffs were ordered to do, Thomas said. But legions of wait staff in more modest chain restaurants, diners and family-owned eateries collect far less in tips and are routinely asked to do cleaning and other non-waiting chores.

In the \$5.13-an-hour tipped-worker credit, some restaurant operators are getting a well-deserved break, Thomas conceded. But others are using the tipped-worker provision to exploit employees, vastly underpaying waiters and waitresses for hours of gratuity-free menial work.

"Let's face it," Thomas said. "If you give employers an inch, they'll take a mile."

A request to T.L. Cannon for comment yielded an emailed response from an Applebee's International Inc. corporate spokesman: "Applebee's and our franchisees conduct business with the utmost integrity, which includes paying fair and competitive wages to servers and bartenders who are highly valued team members. Their pay is based on the tip credit provision of the Fair Labor Standards Act, which ensures that tipped employees are paid at least the federal minimum wage through a combination of cash wages and tips."

The lead plaintiffs in the local case, Ashley Hicks and Kristin Raymond, worked at local Applebee's for five and nine years. Hicks waited tables at locations in Pittsford, Henrietta and Irondequoit; Raymond worked in Gates, the court complaint states. At each location, they and other wait staff were required to perform a variety of non-table-waiting duties ranging from food preparation to general cleanup to washing windows.

The suit against T.L. Cannon cites a long list of duties that servers in New York Applebee's restaurants are ordered to perform: scrubbing chair legs, cleaning the glass on pictures hung on the walls, washing windows, cleaning bathrooms, dusting furniture, scraping gum from underneath tables, wiping down kitchen shelves and other similar tasks.

Rather than exploiting the tip credit to pay less than minimum wage for such work, restaurant operators should either hire non-tipped employees to do all cleaning and other jobs they routinely assign to servers or should record when servers switch between tipped and non-tipped duties, paying straight minimum wage or more for untipped work, Thomas suggested in the interview.

Applebee's argued in the Missouri case that such record keeping would be unduly burdensome, he said, but he does not believe that to be the case.

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Photo by Kimberly McKinzie

The lead plaintiffs in the case here worked at local Applebee's locations in Pittsford (above), Henrietta, Irondequoit and Gates.