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Ex-Sunwest boss faces trial

Jon Harder, his senior housing chain in disarray, pleads not guilty in a \$130 million fraud case


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Jon Michael Harder, who built one of the nation's largest senior housing chains in Salem before its spectacular downfall, pleaded not guilty Friday to criminal charges that he defrauded more than 1,000 investors of \$130 million.

But does the affable, hard-charging Harder deserve decades of jail time he faces if convicted under the government's 56-count fraud indictment? Or does he deserve accolades for cooperating in the recovery of 60 percent of Sunwest Management Inc. investors' money, as his current



Harder
Named in
56-count fraud
indictment

 Read more about Jon Harder and Sunwest Management Inc. and read the federal indictment at oregonlive.com/business

and former attorneys claim?

A jury could resolve those clashing portrayals as early as Nov. 30, when one of the state's largest financial fraud cases is slated for trial.

Harder, who once claimed to be worth \$300 million, appeared before U.S. Magistrate John Acosta in a Portland courtroom Friday in a prison-blue shirt, beige slippers and pink

socks. He sought help from a publicly financed defense attorney.

He had turned himself in Thursday under secret indictment by a federal grand jury on charges of operating a Ponzi scheme. Authorities allege the 47-year-old defrauded investors while running Sunwest's more than 300 assisted-living centers and related entities into financial ruin during the real estate market's plunge of 2008.

"Mr. Harder has lived like a rajah over the last few years," Assistant U.S. Attorney Allen Garten told Acosta.

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Harder

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Harder's current and former attorneys insist Sunwest investors would have never recovered 55 to 60 percent of their investments — some will eventually recover all their money — without his cooperation and financial contributions.

"This so-called Ponzi scheme was purchased by one of the most sophisticated investment companies in the world," said Steve English, an attorney with Perkins Coie in Portland who once represented Harder, after the hearing.

"Jon cooperated from the beginning and did what he could to assist people who were at risk of losing their money in the investment," English said. "The result was, by just about everyone's judgment, a success."

Acosta appointed chief

deputy federal public defender Stephen Sadey but vowed to review Harder's financial statements before allowing taxpayers to pay for his defense.

He also released Harder but ordered him to seek permission from the court before traveling outside Oregon or North Dakota, where Harder reportedly is trying to do business amid the state's oil boom.

The 30-page indictment, originally filed under seal Tuesday in U.S. District Court in Portland, charged Sunwest's former majority owner and chief executive with money laundering, mail and wire fraud, criminal forfeiture and aiding and abetting.

Garten's office seeks a money judgment of \$130.5 million and the forfeiture of land and other belongings. Among them: \$100,000 in stock options, ranch land in Deschutes County and beachside property in Lincoln County. It's also seeking to prevent the sale of assisted

living centers in Canyonville and Sheridan, in which he has a stake.

Already, authorities have seized Harder's Mercedes, Land Rover, Ford F-150 pickup and Jetta. They were moving to take custody of a diamond ring worth \$200,000, Garten said.

At Sunwest's height, its facilities housed more than 15,000 residents with an average age of 85, federal authorities said.

Prosecutors allege that between 2006 and 2008, Harder promised investors their money would go into specific housing facilities and earn returns based on each center's individual performance. He described Sunwest, which he founded in 1992, as strong and successful.

Instead, the money was commingled with other investor money and bank loans, and by 2006, Sunwest was losing millions of dollars a year, prosecutors allege.

As Sunwest faltered, Harder went on a buying binge to

mask its losses, acquiring more than 100 assisted-living centers at a rate of one a week, the indictment says.

He also continued raising money from investors, flying around the country on corporate jets, without mentioning Sunwest's defaults on bank loans.

Harder's Sunwest enterprise was complicated and included more than 700 corporations, partnerships and limited liability companies, and he had an ownership interest in nearly every one, authorities said.

Harder usually sold investments in tenancy in common interests, also known as TICs, the indictment said. With TICs, investors made tax-free exchanges of property they already owned for interests in a Sunwest senior facility.

Investors were told they'd receive annual returns of 8 to 10 percent in the form of rent payments. Harder and Sunwest chief operating officer Darryl Fisher vowed to personally back the payments,

which they said had never been missed, according to the indictment.

In 2008, as Sunwest fell into turmoil, it sold preferred membership interests with the promise of 10 percent annual returns. Yet it began commingling investor funds, loan reserves and loans to make rent payments.

Meanwhile, its senior facilities were falling into disrepair or going half-filled. Some were put into bankruptcy. Harder ultimately filed for personal bankruptcy.

The U.S. Securities and Exchange Commission eventually accused Sunwest and Harder of fraud. Lawyers earned tens of millions in fees in the complicated restructuring.

"Harder and his ilk were emblematic of the promoters that drove the real estate bubble that led to the collapse and recession," said Michael Esler, a Portland attorney who represented Sunwest investors. "The collapse could have left thousands of investors

devastated and owing large income tax bills were it not for the intervention of the SEC."

Last year, Sunwest's restructuring team, court-appointed receiver and bankruptcy attorney won accolades from the Turnaround Management Association for their work rescuing it.

The team sold 145 Sunwest senior living centers to private-equity giant The Blackstone Group in 2010 for \$1.35 billion. As a result, investors will eventually see 60 percent of \$800 million they put into the empire, attorneys say.

The SEC is still seeking millions in penalties from Harder, English said. In 2010, he agreed to pay \$4.2 million to the Oregon Division of Finance and Corporate Securities to benefit investors. Van Pounds, the division's enforcement chief, said Friday that Harder has not made any payments.

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