Suit seeks $40M for broken lease

Developers assumed debt to construct building for EdFund

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A partnership led by two major local developers is suing a state-run student lender over a $40 million lease in Rancho Cordova.

Mather Development Partners IV LP filed the lawsuit Jan. 14 in Sacramento Superior Court. At the heart of the suit are two buildings with a combined 177,000 square feet constructed by Mather several years ago to house EdFund, a now-defunct auxiliary of the California Student Aid Commission.

Seven years remain on the 10-year lease for the building, custom-built based on EdFund's ability to pay, according to the suit, filed against EdFund and the Student Aid Commission.

The developers assumed debt to construct the building, which housed most of EdFund's 650 employees at the time. Mather Development Partners is led by **Marc Sussman**, president of McCuen Properties, and **Mark Friedman**, president of Fulcrum Property.

"Essentially, my clients have been stiffed by the state of California," said attorney **George O'Connell**, who is representing Mather Development. O'Connell is a partner with Stevens, O'Connell & Jacobs LLP in Sacramento.

Calls to the attorney representing the Student Aid Commission were not returned.

EdFund entered into a 10-year lease with Mather at the end of 2006. Mather agreed to build the building, based on assurances made by EdFund that it "had, and would continue to have, sufficient assets and revenues within its possession, control and authority to satisfy all of its ongoing obligations and rent payments over the entire term of the lease," according to the suit.

An amended 10-year lease was signed at the end of 2008 when EdFund moved into the building.

Changes in federal regs hurt lender

Formerly one of the largest guarantors of student loans in the country, EdFund was decimated by changes in the federal program for student lending. That, combined with a revocation of EdFund's guarantee authority last year, left EdFund a shell with no employees.

For years EdFund worked with private lenders to make government-guaranteed student loans and to service that loan portfolio. At its peak, EdFund was the second-largest guarantor of student loans in the country, trailing only Sallie Mae. In 2009, EdFund processed more than $10 billion in loans and managed a portfolio of more than $38 billion.

But in mid-2009, the federal government dramatically changed the way student loans were made, creating a big hit for EdFund.

Rather than guaranteeing loans made by private lenders, the feds started lending directly to students. That eliminated the Federal Family Education Loan Program, which EdFund had used to generate most of its loans. The FFEL was eliminated by the Student Aid and Fiscal Responsibility Act of 2009, which went into effect July 1.

At its peak in 2006, EdFund had 650 employees. It currently has no employees.

U.S. Department of Education shot another hole in EdFund in August when it terminated its guarantee agreement.

Former Gov. **Arnold Schwarzenegger** tried for several years to sell EdFund, but the U.S. Department of Education ruled that guarantee authority cannot be sold by the state — or anyone. The education department sought to transfer the billions of dollars being serviced by EdFund to another entity, all without compensation to the state.

EdFund's portfolio is now being managed by Educational Credit Management Corp., a St. Paul, Minn.-based company that is one of the largest guarantors in the country.

With these changes last year, representatives for Mather in September sent a letter to the California Student Aid Commission, concerned about EdFund's "ability and willingness to meet its ongoing obligations under the lease," according to the lawsuit.

At the end of November, Mather got a letter from EdFund that it would be terminating its lease in January, also according to the suit.

In letters since then, Mather has asked EdFund to set aside $40 million to satisfy the lease.

Is California on hook for millions?

In its suit, Mather alleges that essentially all of EdFund's assets have been transferred and continue to be transferred to the California Student Aid Commission, the California Department of Finance and the State Controller's Office in an abandonment of EdFund.

In addition, EdFund "has failed to take any steps to preserve sufficient assets to meet its liabilities to its creditors, including its liability to Mather," according to the suit.

The Mather partners tried in good faith to negotiate with the state and took administrative steps to protect their interests, spokesman **Doug Elmets** said.

"Mather's experience with this should serve as a warning for anyone working with the state of California," Elmets said. "It raises serious questions about the government's credibility in paying its obligations."

The partners have been able to lease most of the space, said **Ron Thomas**, a broker with Cushman & Wakefield who represents Mather. The new leases — which include Educational Credit Management Corp. and Sutter Health — are at a far lower rate than EdFund's lease rate.

"I haven't seen a state of California lease suit in some time. It seems they sometimes have an escape clause," said **Bob Greeley**, principal of Greeley Lindsay Consultant Group in Sacramento. Greeley, who is not associated with either party, does turnarounds, workouts and receivership work.

If there is no escape clause, the courts generally tend to enforce the contract requirements of the lease, he said.

The California Student Aid Commission was created by the legislature in 1955 to help provide funding to Californians for education after high school. EdFund was created as an auxiliary of the California Student Aid Commission to guarantee and service student loans.