

“The New York State Dairy Farm Bankruptcy Octopus”

by Pete Hardin

Kirk Herse: Just One of a Few Dozen Mortgage-Abused NY Dairy Farmers

This investigative report focuses on the bankruptcy perils of Kirk Herse, an ex-dairy farmer from Lowville, New York. But Mr. Herse is far from alone in attacks against his assets. Consider the following:

In spring 2008, a bundle of about three dozen dairy farmers' mortgages was transferred from HSBC USA NA to CVM Partners I, LLC. Of those mortgages assumed by CVM Partners I, LLC, all but one farmer was forced into bankruptcy in the following few years. Of those nearly three dozen bankrupt farmers, only Herse and one other family currently retain their farms. All the other mortgages assumed by CVM Partners I, LLC in spring 2008 have been foreclosed, the farmland seized and sold off. That's over a 95% foreclosure rate conducted by CVM Partners I, LLC against dairy farmers in that bundle of loans.

The single dairy farmer not forced into bankruptcy by CVM Partners I, LLC's tentacles was a producer from New York's "North Country," who was hounded in the following fashion. In the late 1990s, a previous lender allowed that farmer to pay on an "interest only" basis for several months, following the horrific ice storm that devastated the region. That producer operated his farm for more than three months on a generator after the ice storm. That's how long the local utility needed to restore electrical service. About *ten years* later, the new mortgage holder — CVM Partners I, LLC — smacked that dairy farmer with about \$70,000 in interest charges, late fees and penalties. What basis for those devastating surcharges? Lawyers for CVM Partners I, LLC alleged that dairy farmer's failure to pay full monthly mortgage installments to the long-ago, prior lender! Fortunately, the farmer in question had assiduously saved financial records. He was able to finally convince the predatory, new mortgage holder that his decade-prior "interest-only" payments to a previous lender were legitimate. Even so, that farmer termed his clash with "The New York State Dairy Farm Bankruptcy Octopus" the worst experience of his life.

All but one of those approximate three dozen borrowers plunged into bankruptcy? All but three of those borrowers losing their farms to foreclosure, so far? Such predatory behaviors are why *The Milkweed* characterizes the succession of lenders as "The New York State Dairy Farm Bankruptcy Octopus." Strangely, "The Octopus" is tied to New York's biggest dairy cooperatives: Dairy Farmers of America and Dairyalea Co-op.

Imagine ... farm lenders clearly dedicated to bankrupting dairy farmers whose mortgages those organizations held. Worse yet, imagine those predatory lenders being intimately linked to major dairy cooperatives!

Welcome to New York State, where the corrupt practices of corporations and individuals tied to Dairyalea Cooperative and Dairy Farmers of America (DFA) have long ruled that state's feces-soiled roost.

Kirk Herse, 58, is an ex-dairy producer from Lowville, New York. He's dedicated several years of his life searching for more details about the organizations and individuals responsible for seizing his cattle, tractors, and farm machinery through foreclosure. The big prize remains still (barely) in Herse's possession: Kirk's 176-acre farmland located several miles west of milk-rich Lowville, at 7963 NY State Route 12. So far, Herse has tenaciously hung on to his land. But by his own admission, Kirk is hanging on by his fingernails. Herse's story — the first installment in a series on corruption in the New York dairy industry — depicts one man's fight to dig up and reveal the roots of what we'll call, "The New York State Dairy Farm Bankruptcy Octopus."

Hard to believe that organizations and individuals associated with dairy farmer cooperatives are parties to defrauding dairy farmers off their land.

Devaluing Herse's seized assets ...

Kirk Herse watched as his remaining milk cows and young stock were seized on October 10, 2010. His animals were transported to the Empire Livestock sales barn at Gouverneur, New York. Three days later, Kirk watched as most of his under-performing milk cows were sold at or below normal "kill prices." The Gouverneur sales barn had no cow-milking facilities. So three days passed, between when his milk cows were seized, and then auctioned without being milked. That mistreatment degraded his milk cows' values. (In 2010, Empire Livestock was a wholly owned subsidiary of Dairyalea Cooperative. Dairyalea and Dairy Farmers of America — DFA — merged into one entity on April 1, 2014.)

Kirk's daughter, Chelsea (then 18), cried after she found the manure-trampled, red collar of her favorite cow, #82, lying on the loading dock at Gouverneur sale barn, where cull cows were shipped out to become hamburger.

Kirk Herse also watched on October 10, 2010, as his tractors and farm machinery were loaded up for transport to the Jack Lomeo's auction in West Lowville. Kirk begged the creditors to wait and auction the machinery the following spring, when, hopefully, prevailing rock-bottom milk prices would improve and local farmers would need tillage and harvest equipment. No dice, the mortgage holder replied. That machinery was sold on October 25, 2010.

In the auctions of both his seized livestock and equipment, Kirk angrily states that those assets' values were intentionally minimized by the timing and tactics of the seller. The net impact of those ill-timed sales was that Kirk's obligations to the array of mortgage holders were not significantly diminished. Con-

venient that the mortgage holder never provided Kirk with an accounting of the sale of those assets. In fact, throughout the protracted bankruptcies (plural) that Herse has entered, the series of mortgage holders has not provided him with current statements of his obligations.

The real prize: Herse's farmland

Herse's asset most coveted by mortgage holders (and local mega-dairies intent on expansions) is 176-acres of fertile, black soils on the plain west above Lowville. Kirk's land is some of the best farmland in milk-rich Lewis County. No, the mortgage holders didn't give a rip about Herse's run-down milk cows and rusty machinery. They wanted his land. As this story — and intended subsequent articles — will detail, the master plan of the New York State Dairy Farm Bankruptcy Octopus is seizure of small- and medium dairy farmers' land.

Too frequently to be coincidental, Herse has observed that the seized farmland assets end up in the possession of mega-dairies. Expansions of mega-dairies are contingent on adding acres for manure applications.

Dairy-farmer-turned-investigator

Searching to learn more details about the long list of Limited Liability Corporations that have held his farm mortgage over the past eight years, Herse has basically morphed into an unsalaried private investigator. He's trolled the Internet for years, pulling together plenty of pieces of the murky puzzle behind the mortgage-holding LLCs. Along the way, he's networked with some good helpers.

Over the years, *The Milkweed* has periodically reported on abusive lenders' practices directed against U.S. farmers and their land. Over those years, we've observed a basic truth: Some back-against-the-wall farmers will resist with every cell in their bodies to protect their farms against such predators. Kirk Herse is a prime example of that unyielding willpower. How Kirk has maintained his farm, indeed, his sanity, while confronting a series of high-falutin' lawyers seeking to grab his land, is a near-miracle. Kirk has used the same tenacity and focus that elevated him to be a nationally-ranked tennis player in his late teens ... along with the toughness gained from 30+ years of dairy farming.

Fairport, New York ... home of "The Octopus"

"The New York State Dairy Farm Bankruptcy Octopus" is based at Fairport, New York — a nice community about 10 miles southeast of Rochester. The series of these mortgages holders has operated out of Fairport. Perhaps not coincidentally, Fairport, for many decades, has served as the hub for Dairyalea Cooperative's insurance subsidiaries. (Russell Dennis, a long-ago Dairyalea director who "graduated" to head the insurance subsidiary when his cows departed, was a resident of Fairport area.)

Here's the progression of firms controlling Kirk Herse's farm mortgage since 2006:

- HSBC
- CVM Partners I, LLC (Fairport, New York, in addition to locations in Kansas City, Missouri, Delaware, and Minneapolis, Minnesota)
- ACM Browncroft Trust (located in Fairport, New York, among at least one other location)
- Fmm Bushnell, LLC (located in Fairport, New York)

HSBC (under various names) entered the picture when that Hong Kong-based bank merged with the Buffalo, New York-based Marine Midland Bank right around New Year's Day in 2005. Marine Midland had aggressively expanded its loan portfolio of New York State dairy farms, mainly in the northern, central and western parts of the state. But HSBC's leaders apparently didn't have the stomach for the volatile, up-and-down cycles of dairy farmer prices and profits. In 2006, HSBC started shifting out of commercial agricultural lending. In spring 2008, HSBC shifted most of its remaining portfolio of dairy farm mortgages to CVM Partners I, LLC — the next stop for about three dozen dairy farmers' mortgages, including Herse's. CVM Partners I, LLC, was located at Fairport, New York.

Geographic location isn't the only commonality of the Fairport, New York tentacles of "The Octopus." In the instances of CVM Partners I, LLC, ACM Browncroft Trust, and Fmm Bushnell, LLC, the CEO and the President were identical. John Michael Himmelberg, Jr. was/is CEO of those three entities. Himmelberg is a lawyer and the offspring of a highly-placed lawyer with previous deep connections at USDA. Serving as President of those three lenders was/is Timothy P. Sheehan, another lawyer. (Sheehan's prior legal career included filings on behalf of HSBC's agricultural lending unit.)

"How can they legitimately claim that flipping my mortgage from HSBC to CVM Partners I, LLC, and then to ACM Browncroft Trust, and finally to Fmm Bushnell, LLC were 'arms-length transactions' when Himmelberg, Jr. served as CEO of three of those corporations. And Sheehan worked with HSBC, and then served as President of the three successive holders of my mortgage? That could be a violation of federal banking laws." Herse puzzles.

Midwest Services — the "man behind the curtain"

Over time, Kirk Herse has determined that the hidden entity pulling the strings tied to his various vindictive lenders is a separate entity: Midwest Services. Midwest Services' lineage perhaps helps explain how the origins of "The New York State Dairy Farm Bankruptcy Octopus" extend further back than Herse had earlier imagined.

Midwest Services was chartered in Kansas City, Missouri and New York State within a couple months of the formation of DFA — back in 1997.

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Not hard to imagine that DFA's cynical roots ran deep. DFA was more than a merger of four dairy cooperatives in fall 1997. DFA was a strategic thrust to gain dominance over the U.S. dairy industry in many, many aspects. Two examples suffice to show the sinister motives behind what's now the nation's largest dairy co-operative:

- 1997-1998 court documents unearthed during the Southeast Dairy Antitrust Litigation showed how DFA's predecessor organization – Mid-America Dairyman – conspired with Dean Foods' predecessor – Suiza Foods – to force co-op membership upon independent dairy farmers selling their milk to firms owned by a joint Mid-Am/Suiza venture.

- A September 18, 2000 audio tape issued internally by the co-op quoted former DFA CEO/President Gary Hanman bragging that the co-op would force independent dairy farmers into the co-op, despite the fact that current oversight by federal antitrust personnel was significant. "Prior intent" was clearly established for DFA's 15+ years of competitive atrocities in the Northeast dairy markets.

Same *modus operandi* for tentacles of "The Octopus"

The same locations and the same top officials just two of the similarities in the various firms persecuting Kirk Herse in bankruptcy court. Many tactics (and administrative personnel) are also identical. Examples:

- Silviya Gyurova was an administrative person for Midwest Services, Inc., working out of the Fairport, New York office, who sent Herse nasty notices on behalf of the various firms holding his farm mortgages.

- Never in the past eight years has Kirk Herse personally received an accounting of his financial position from these various tentacles of the "The Octopus", despite his payments. Never has Herse received any forms filed with the federal Internal Revenue Service detailing his interest payments to those lenders. A fellow New York dairy farmer, who shall remain anonymous for now, never received a statement of his accounts with the "The Octopus", despite a court-directed Stipulation Agreement that regular statements be provided. In some cases, specious, unexplained legal fees and penalties have been piled upon bankrupt dairy farmers by the Octopus.

"The Octopus" has used the following dirty tactics at Herse:

- Herse originally approached HSBC in spring 2002, when he was in the process of selling his former farm and buying his current farm. Actual purchase of the new farm did not take place until April 2003. Details of the transaction included:

—\$100,000 from the sale of the old farm applied to the \$250,000 purchase of the "new" farm, plus an extra \$100,000 for cattle, machinery, etc. But a HSBC document titled, "OPTIONAL ADVANCE TIME OR DEMAND GRID NOTE" was dated December 31, 2002 and stated that Herse's farm loan was secured with HSBC. That document stated that the Herse's loan was not to exceed \$491,832.66. What was wrong?

Kirk Herse actually borrowed about **\$250,000 from HSBC, after applying \$100,000 in proceeds from sale of his prior dairy farm. But he ended up paying 6% to 8% interest for years, based on the \$491,832.66 figure! He was paying interest on approximately \$120,000 of "phantom" loans from HSBC – money to which he never had access!**

Admittedly, a good question is why didn't Herse realize he was paying interest on about \$112,000 more principal than he'd borrowed. Kirk explains that oversight, "I was just a dumb farmer, milking 120 cows and tending to an equal number of young stock with just my wife and kids helping. I was too busy to pay attention. I trusted my banker's integrity."

- In Federal Bankruptcy Court in Utica, New York, a real estate specialist hired by Midwest Services provided a financial analysis of three properties allegedly in the same school district that were comparable to Herse's farmland. That document was somewhere between a fabrication and a forgery. In fact, two of the three properties cited were not for the locations cited in the court documents. Instead, those locations were in another county – some 75 miles away. Small wonder that filing listed photos of the properties as "Not Available." Herse relates how, when he showed those fabrications to a Farm Credit Services farm appraisal specialist – Rebecca Stone — she turned white because she'd previously evaluated those two falsely-depicted properties. When Herse brought these false filings to an Assistant Attorney General for the State of New York, that official shrugged off the false filings as insignificant.

- Herse received by mail a federal bankruptcy court notice signed and dated August 20, 2013 that valued his farm property at \$560,000. The court accepted that valuation from a local, certified New York State appraiser that Herse claims was hand-selected by the lender. The letter was dated August 20, 2013 – **seven days before** the Chapter 12 Proceeding – Objection to Confirmation hearing scheduled for August 27, 2013. The court accepted that appraisal even before the judge had approved it ... or Herse had a chance to appeal that valuation. That sky-high valuation was designed to render unfeasible any bankruptcy plan that Herse may have proposed. Herse questioned the validity of that document. But Herse was told by bankruptcy court officials that pre-empting his ability to challenge that valuation didn't really matter.

Leavings ...

The matter of "The New York State Dairy Farm Bankruptcy Octopus" has been on *the Milkweed's* radar screen for about five years. About five years ago, an informal investigative team consisting of John Bunting (a New York dairy farmer and contributor to *The Milkweed*), a local lawyer, and an investigative reporter with world-class research capabilities, tried without success to crack these matters. At that time, the investigative reporter labeled the smoke and fog surrounding the inter-locking LLCs as "the greatest paper trail cover-up" he'd ever seen.

Kirk Herse spent some scarce funds to hire a private investigator from New York City to look into CVM Partners 1, LLC. Without naming names at this point, Herse was informed that one of the investors in CVM Partners 1, LLC – the firm literally bankrupting dairy farmers – was also a director of Dairylea Cooperative.



This guy won't quit. Kirk Herse, 58, is an ex-dairyman from Lowville, New York. He's struggled for years to keep his 176 acres of prime farmland from foreclosure by creditors. Kirk's sleuthing has uncovered a lot of dirty tricks pulled by these creditors against dozens of other New York dairy farmers.

- "The New York State Dairy Farm Bankruptcy Octopus" may extend to even dirtier dealings – from county Farm Credit Services offices all the way up to the highest tiers of Co-Bank and the national Farm Credit System. Robert Engel, the current CEO of CoBank (annual salary \$4.5 million), is a former HSBC officer and accountant with KMPG, LLP and Deloitte Touche. (KMPG, LLP is currently DFA's auditing firm. KMPG, LLP replaced Deloitte Touche as DFA's auditing firm several years ago). Engel was a featured guest speaker at DFA's recent annual meeting in March 2016.

Meanwhile, at least one county Farm Credit Service office in New York State has hounded borrowers to turn over their farms – sometimes upon what, in retrospect, would appear to be the most trifling amounts of money owed. Funny thing: With eerie consistency, the foreclosed land often ended up in the possession of local megadairies – many of which are believed to have milk marketing agreements and, in some cases, loan agreements with Co-Bank subsidiaries and Dairy Farmers of America.

To be continued ...

A dying man's final words ...

For several years, Kirk Herse worked with a fellow dairy farmer to reveal the inner workings behind the string of abusive holders of their farm mortgages. That partner was a decent, fair-minded individual, who anguished over how so many clear inequities could be dished out to a hard-working dairy farmer by abusive lenders. In late 2013, that man sold off his final 40 (or so) head of dairy livestock, hoping to erase his outstanding obligations to "The Octopus" of about \$40,000. But when his cows were sold, the farmer was notified that about \$56,000 in additional, unspecified fees and penalties had been added to his ledger by the lender, ACM Brown-croft Trust. Never had the various incarnations of "The Octopus" provided that farmer with a statement of his account. The stress mounted.

In January 2015, that farmer was felled with a fatal heart attack. That farmer's final words to his family included the admonition to help Kirk and Pete to tell this story ...