

## **Nektar eatery theft case ends**

**A judge “forever discharged” embezzlement charges against two brothers, citing the former prosecutor’s failure to refile charges within 90 days**

By AISLING SWIFT

NAPLES — Embezzlement charges against two brothers, former business partners in a Naples restaurant, have been forever discharged by a judge, who ruled the prosecution missed a 90-day deadline to retry them after dismissing charges.

The state, however, has filed a notice of appeal with the Second District Court of Appeal.

Meanwhile, a lawsuit filed by a third partner against Elton Alikaj, 31, and Armond Alikaj, 36, of North Naples, is pending after the Mediterranean restaurant was dissolved. The dissolution came after it lost almost \$500,000 and was faced with eviction due to nearly \$50,000 in unpaid rent.

The Alikajes, who were accused of embezzling about \$80,000, have since opened their own Mediterranean restaurant, Absinthe in North Naples.

The case was discharged on Nov. 14 after defense attorneys Edward O’Donnell IV and his father, Edward O’Donnell Jr., successfully filed a motion to discharge.

Acting Collier Circuit Judge Rob Crown ruled that now-retired Assistant State Attorney Jerry Brock had refiled the same criminal charges 98 days after filing a nolle prosequere that dropped the case on April 22, the day of trial. Crown ruled that once the case was dismissed, a new 90-day “speedy trial” period began in which to bring the case to trial.

That meant a 15-day “window of recapture” that would have given the state 105 days was not available to the prosecution, the judge ruled, forever discharging the criminal case.

The notice of appeal by Assistant State Attorney James Molenaar, who took over Brock’s post in the Economic Crimes Unit, was filed Nov. 25 and records filed last week show it is pending in the appellate court.

"The state respects Judge Crown's decision, however we have chosen to appeal that decision," Molenaar said Monday, declining further comment.

Edward O'Donnell IV said he was confident the ruling would withstand an appeal.

"The Supreme Court has spoken very loud and clear: There is no recapture window in these circumstances," the younger O'Donnell said in a telephone interview. "Quite frankly, we didn't even think the state was going to refile again."

O'Donnell contended it wasn't a criminal case, but a business dispute between the brothers and their partner, Thomas Scholten, who owns East Naples-based Scholten Construction.

"Under Scholten's theory, they were indentured servants," O'Donnell IV said of the brothers. "What he was paying them violated every labor law there is. We were prepared to clear the Alikajes once and for all."

In the civil case, the brothers admitted voiding transactions, while in the criminal case, the O'Donnells argued their clients were entitled to that money as salary. During one hearing, O'Donnell Jr. told the judge Scholten's agreement said the brothers were to be paid \$1,000 weekly, but they took less and worked 52 weeks a year, 12 and 16 hours daily, and didn't close the restaurant even for Christmas.

Criminal trial rules say the state has 175 days after an arrest to bring someone to trial unless the defense waives its right to a speedy trial. Molenaar's motion argued the defendants hadn't filed a demand for a speedy trial and lost their right to speedy trial after asking for two continuances. He also argued they're not entitled to a dismissal because they hadn't filed a "notice of expiration" of speedy trial time, as rules require, and a jury hadn't been sworn in on April 22.

But the O'Donnells argued that no notice of expiration needs to be filed when the state files a notice of nolle prosequere and doesn't refile charges until after the speedy trial period. The judge agreed, noting that a pool of potential jurors had been sworn in for jury selection a day before trial.

The brothers were arrested Sept. 13, 2006, and faced up to 30 years in a state prison if convicted of the first-degree felony, scheme to defraud. Brock had refused to offer any plea bargains and the O'Donnells maintained the brothers wanted to clear their names and weren't interested in a deal.

The trial had been postponed three times by the defense and the fourth time by Brock, who dropped the charges.

Nektar, which was on Seventh Avenue South, opened on May 10, 2005, and was owned by the brothers, who contributed \$50,000 each, while Scholten paid \$100,000, in addition to loaning the business \$382,887.83. Under the agreement, the brothers

were to manage the restaurant and be paid \$1,000 weekly.

The brothers' arrest in 2006 came as Scholten sued them in an effort to gain control and dissolve the partnership. The brothers had locked him out of monitoring the restaurant's finances by computer, the lawsuit said, so Scholten changed the locks.

The lawsuit said the brothers voided \$74,537 in transactions, while Naples police placed it at roughly \$80,000. Police said that after Scholten's manager suspected irregularities, a bookkeeper and accountant audited Nektar's finances, prompting the police investigation, which showed:

The audit determined cash transactions and sales taxes that were to be paid to the state were stolen because the brothers voided cash receipts, trying to make it appear cash-paying customers never existed by voiding those transactions. The brothers pocketed the money, believing it was unaccounted for, but the transactions were retrieved from the computer's hard drive.

To confirm thefts were occurring, Naples detectives sent in undercover agents posing as cash-paying customers and those transactions also were deleted.

Neither Scholten nor their attorney in the civil case, Rachel Loukonen of Naples, could be reached for comment. A receiver's report shows the Alikajes canceled two appointments with the receiver and didn't show up for a third, resulting in the dissolution. The report showed losses from 2005 through July 17, 2008, totaled \$483,803, and Scholten covered those, losing about \$925,000 in the entire deal.



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**APPEAL COURT RULES PARTNERS IN DEFUNCT NAPLES RESTAURANT CAN'T BE PROSECUTED**

By AISLING SWIFT  
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**NAPLES** — A state appeal court has upheld a Collier judge's ruling that two former business partners in a Naples restaurant can never be prosecuted on embezzlement charges for voiding roughly \$80,000 in customers' cash transactions.

The 2nd District Court of Appeal upheld a 2008 ruling by Acting Collier Circuit Judge Rob Crown that North Naples residents Elton Alikaj, 33, and Armond Alikaj, 38, partners with Thomas Scholten in the now-defunct Nektar Mediterranean restaurant, can't be prosecuted again.

There was no written opinion, just an order affirming Crown's ruling.

"The Alikajs have moved on and are running their new restaurant, Absinthe. Next time they won't be so trusting," said defense attorney Edward O'Donnell IV of Miami.

Noting that it was a unanimous decision, State Attorney's Office spokeswoman Samantha Syoen said there would be no further appeal.

A related lawsuit filed by Scholten, who owns Scholten Construction, may be headed toward dismissal due to inactivity.

The Seventh Avenue South restaurant was dissolved in 2008. It had lost almost \$500,000 after facing threats of eviction. Scholten covered those, losing about \$925,000 in the partnership.

Nektar opened in May 2005, with the brothers contributing \$50,000 each and Scholten providing \$100,000 and a \$382,887.83 loan. The brothers were to be paid \$1,000 weekly as managers.

Their 2006 arrest came after Scholten sued to gain control and dissolve the partnership. The brothers had locked him out of monitoring the finances by computer, so Scholten changed the building's locks.

Another manager had suspected irregularities and alerted Scholten, who asked a bookkeeper and accountant to conduct an audit. It found \$74,537 of voided cash transactions, including money for state sales taxes.

Naples police sent in undercover agents, cash-paying customers, and their transactions were voided. In the end, police said roughly \$80,000 was taken.

The brothers admitted voiding transactions, but denied it was embezzlement.