

AGENCY & PARTNERSHIP QUESTION

Four years ago, a man and a woman properly formed a partnership to own and manage a multi-million-dollar apartment complex. They qualified the partnership as a limited liability partnership (LLP). The complex required a good deal of maintenance, and they anticipated regular borrowings of up to \$25,000 to cover maintenance expenses as is customary in this industry.

While the partnership agreement contained no limitations on the authority of the partners to act for LLP, two months after LLP was formed the man and the woman agreed that neither partner would have authority to incur indebtedness on behalf of LLP in excess of \$10,000 without the consent of the other partner. They then signed a statement of partnership authority describing this limitation, but this statement was never filed.

Over the next two years, the man regularly borrowed amounts from LLP's bank to cover the complex's ordinary maintenance expenses. The amounts borrowed ranged from \$5,000 to \$9,000, and the man did not ask for the woman's consent when he entered into these loans on behalf of LLP.

Earlier this year, the man, without the woman's knowledge, asked the bank to loan \$25,000 to LLP. The man told the bank's loan officer that the funds would be used for ordinary maintenance of the apartment complex. This amount, though greater than LLP's previous borrowings from the bank for maintenance, was in line with loans made by the bank for maintenance to other similar apartment complexes.

When the loan officer asked the man if he had authority to borrow the money on behalf of LLP, the man handed the loan officer a copy of the partnership agreement. The man, however, did not give the officer a copy of the statement of partnership authority, nor did he tell the loan officer that it existed. The bank had no actual knowledge of the limitation on the man's authority to obtain the loan on behalf of LLP.

Without contacting the woman, the bank loaned \$25,000 to LLP. The loan agreement was signed only by the man and the bank's loan officer. The woman, though she had knowledge of the earlier borrowings from the bank, had no knowledge of this loan.

The man then used the \$25,000 to pay his personal gambling debts. LLP has not made any payments to the bank on the loan.

1. Is LLP liable to the bank on the loan? Explain.
2. Is the woman personally liable to the bank on the loan? Explain.
3. Is the man liable for breaching his fiduciary duties and, if so, to whom is he liable? Explain.