FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

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| In the Matter of:<br><br>LAUREN MELISSA MCDIVITT, individually and as an institution-affiliated party of<br><br>INSOUTH BANK<br>BROWNSVILLE, TENNESSEE<br><br>(INSURED STATE NONMEMBER BANK) | ) | DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION<br><br>FDIC-17-0042e |

## I. INTRODUCTION

This matter is before the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) following the issuance on December 19, 2018, of a Recommended Decision on Default (Recommended Decision or R.D.) by Administrative Law Judge Christopher B. McNeil (ALJ). The Recommended Decision includes a proposed order that would permanently bar Lauren Melissa McDivitt (Respondent) from the banking industry pursuant to section 8(e) of the Federal Deposit Insurance Act (FDI Act), unless the FDIC consents to her further participation. R.D. at 10.

This is an uncontested proceeding. The charges are set forth in the FDIC's Notice of Intention to Prohibit from Further Participation (Notice). The record shows that Respondent was personally served with the Notice at her place of incarceration. Respondent filed no Answer to the charges in the Notice, and Enforcement Counsel moved for entry of an order of default ("Default Motion"). The ALJ issued an Order to Show Cause directing Respondent to explain her failure to respond and why a default judgment should not be entered against her. R.D. at 1-2. When Respondent failed to respond to the Order to Show Cause, the ALJ issued the Recommended Decision concluding that the uncontested facts supported an order of prohibition.

Respondent filed no exceptions to the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order to Prohibit against Respondent.

## II. BACKGROUND

On August 15, 2018, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act.[1] At all times pertinent to the charges, Respondent was an employee of InSouth Bank, Brownsville, Tennessee (Bank). R.D. at 5. As such, Respondent was an institution-affiliated party, as that term is defined in section 3(u) of the FDI Act.[2] *Id.*

*Respondent's Misconduct*

During her employment with the Bank, Respondent served in various positions at the Atoka, Tennessee, branch of the Bank, including as Branch Head Teller, Customer Service Supervisor, and Branch Administrator or Manager. The Notice alleges that from 2006 through 2016, Respondent misused her position at the Bank by withdrawing or transferring funds from bank customers' accounts without authorization, knowledge, or consent, to accounts owned and controlled by Respondent. Respondent then withdrew the deposited funds for her own use. Respondent falsified Bank records in order to execute and conceal her misconduct. The loss suffered by the Bank as a result of Respondent's misconduct is at least $888,470. R.D. at 6; Notice ¶12.

On August 28, 2017, Respondent pled guilty to embezzlement in violation of 18 U.S.C. § 656. R.D. at 7. On December 13, 2017, she was sentenced to 33 months imprisonment and three years of supervised release, and she was ordered to pay restitution in the amount of $947,951. R.D. at 7; Notice ¶ 30.

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[1] 12 U.S.C. § 1818(e).
[2] 12 U.S.C. § 1813(u).

*Service of the Notice*

On or about September 7, 2018, the FDIC Office of Executive Secretary served the Notice by personal service on Respondent at her place of incarceration. R.D. at 3.

*Respondent's Default*

The Notice directed Respondent to file an answer within 20 days from the date of service as required by 12 C.F.R. § 308.19(a). Notice at 8. Respondent failed to file an answer. R.D. at 2. On October 11, 2018, the FDIC moved for entry of an order of default pursuant to 12 C.F.R. § 308.19. R.D. at 3. The ALJ issued an Order to Show Cause directing that Respondent show good cause why a default judgment should not be granted. The Order to Show Cause was returned without delivery to Respondent because of an erroneous registration number used to identify Respondent at the correction institution. *Id.* at 3-4. On November 26, 2018, the ALJ issued a Reissued Order to Show Cause that was delivered to Respondent on November 29, 2018. *Id.* Respondent failed to respond to the Default Motion or the Reissued Order to Show Cause. *Id.* at 4.

On December 19, 2018, the ALJ granted the FDIC's Default Motion and issued the Recommended Decision. Respondent filed no exceptions to the Recommended Decision.

## III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. The Board is satisfied that the Respondent was properly served by personal service at her place of incarceration. R.D. at 1; *see* 12 C.F.R. § 308.11(c)(2). Accordingly, under 12 C.F.R. § 308.19(c), Respondent has waived her right to contest the allegations in the Notice.

The Board agrees with the ALJ's finding that the undisputed facts in the Notice satisfy the three factors necessary to sustain a prohibition order under section 8(e) of the FDI Act—

misconduct, effects, and culpability.[3] R.D. at 4-5. Specifically, Respondent's misconduct includes violations of law and unsafe and unsound practices by exploiting her position at the Bank to make unauthorized withdrawals from Bank customers' accounts that she diverted for her personal use. Respondent then falsified Bank records and forged documents to conceal her actions. *Id.* at 6-7. The effects prong is met because Respondent received a direct financial benefit of at least $888,470, which also caused damage or other loss to the Bank. *Id.* at 6. Respondent's culpability is evident as she pled guilty to one count of Bank embezzlement in violation of 18 U.S.C. § 656. R.D. at 7; Notice ¶¶ 28-30; Plea Agreement, *United States v. McDivitt*, No. 2:17-cr-20242 (W.D. Tenn. Aug. 28, 2017), ECF No. 5. Respondent's conduct also involved multiple instances of deliberate deception and personal dishonesty, thus exhibiting a willful and continuing disregard for the Bank's safety and soundness.

The uncontested allegations establish ample evidence of violations of law and unsafe and unsound banking practices warranting prohibition. *See Matter of Skabardonis,* FDIC-13-444e, 2016 WL 8201948, at *5-6 (May 10, 2016) (bank employee who embezzled funds from customer accounts and stole a customer's identity engaged in dishonest behavior, unsafe and unsound banking practices, and breach of fiduciary duty); *see also Matter of Bauer*, FDIC-11-21e, 2012 WL 7152170, at *3 (Oct. 9, 2012) (bank employee who embezzled funds from bank engaged in dishonest behavior, unsafe and unsound banking practice, and breach of fiduciary duty); *Matter of Bennett*, FDIC-02-206e, 2004 WL 2185944, at *2 (Aug. 16, 2004) (prohibiting bank employee who embezzled funds).

Because Respondent failed to file an Answer to the Notice, she waived her right to appear and contest the allegations in the Notice. 12 C.F.R. § 308.19(c)(1); *see also Bauer*, 2012 WL 7152170, at *3; *Matter of Shih*, FDIC-10-335e, 2011 WL 2574393, at *4 (May 10, 2011);

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[3] 12 U.S.C. § 1818(e)(1).

*Bennett*, 2004 WL 2185944, at *3. Accordingly, the final order issued by the Board, which is based upon a failure to answer, "is deemed to be an order issued upon consent." 12 C.F.R. § 308.19(c)(1). Moreover, pursuant to 12 C.F.R. § 308.39(b), Respondent's failure to file exceptions to the Recommended Decision is deemed to be a waiver of any objections to the Recommended Decision. *Bauer*, 2012 WL 7152170 at *3; *Shih*, 2011 WL 2574393, at *4; *Bennett*, 2004 WL 2185944, at *3.

## IV. CONCLUSION

After a thorough review of the uncontested record in this proceeding, the Board, for the reasons set forth previously, adopts the Recommended Decision and issues the following order of prohibition.

**ORDER TO PROHIBIT**

The Board, having considered the entire record of this proceeding, finds that Respondent, formerly employed by InSouth Bank, Brownsville, Tennessee, engaged in violations of law and unsafe and unsound banking practices for which she received personal financial gain and caused a loss to the Bank. The Board further finds that Respondent's actions involved personal dishonesty and willful and continuing disregard for the Bank's safety and soundness. The Board hereby ORDERS and DECREES that:

1. Lauren Melissa McDivitt shall not participate in any manner in any conduct of the affairs of any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate Federal financial institutions regulatory agency as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).

2. Lauren Melissa McDivitt shall not solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any financial institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).

3. Lauren Melissa McDivitt shall not violate any voting agreement previously approved by the appropriate Federal banking agency with respect to any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).

4. Lauren Melissa McDivitt shall not vote for a director, or serve or act as an institution-affiliated party, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), of any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7))(D).

5. This ORDER shall be effective immediately.

SO ORDERED.

IT IS FURTHER ORDERED that copies of this Decision and Order to Prohibit from Further Participation shall be served on Lauren Melissa McDivitt, FDIC Enforcement Counsel, the ALJ, and the Commissioner of the Tennessee Department of Financial Institutions.

By direction of the Board of Directors.

Dated at Washington, D.C., this 16th day of April, 2019.

(SEAL)

**085695**

/s/

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street N.W.,
Washington, D.C. 20429