

duties involved personal dishonesty, and demonstrated Respondent's willful or continuing disregard for the safety or soundness of the Bank.

NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION

The FDIC issues this Notice of Intention To Prohibit From Further Participation and Findings of Fact and Conclusions of Law (collectively, Notice of Charges) under 12 U.S.C. § 1818(e) and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, subparts A and B. This proceeding will determine whether an order should be issued against Respondent under 12 U.S.C. § 1818(e), to prohibit Respondent from further participation in the conduct of the affairs of the Bank, and any other insured depository institution or organization listed in 12 U.S.C. § 1818(e)(7)(A) without the prior written approval of the FDIC and other appropriate Federal financial institutions regulatory agency.

NOTICE OF CHARGES FOR AN ORDER OF RESTITUTION

The FDIC further issues this Notice of Charges for an Order of Restitution, Findings of Fact and Conclusions of Law (collectively, Notice for Restitution) under 12 U.S.C. § 1818(b)(6) and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, subparts A and B. This proceeding will determine whether an Order for Restitution in the amount of \$23,677.18 should be issued against the Respondent under 12 U.S.C. § 1818(b)(6).

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY

The FDIC further issues this Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, and Order to Pay (collectively, Notice of Assessment) under 12 U.S.C.

§ 1818(i)(2), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, subparts A and B.

This proceeding assesses a \$70,000 civil money penalty against the Respondent under 12 U.S.C.

§ 1818(i)(2), unless the Respondent formally objects by timely requesting a hearing under 12 U.S.C.

§ 1818(i)(2)(H).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The FDIC makes the following allegations against Respondent:

I. Jurisdiction

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of North Carolina with its principal place of business in Winston-Salem, North Carolina.¹

2. At all times pertinent to this proceeding, the Bank was an insured State nonmember bank, subject to 12 U.S.C. §§ 1811-1831aa, 12 C.F.R. Chapter III, and the laws of the State of North Carolina.

3. At all times pertinent to this proceeding, Respondent was employed as a Community Banking Branch Banker III at the Bank, and continued to serve in that capacity from 2017 until he was terminated in 2019. In his capacity as a Community Banking Branch Banker III, Respondent operated in a position of trust.

4. At all times pertinent to this proceeding, Respondent was an “institution-affiliated party” of the Bank under 12 U.S.C. § 1813(u) and for purposes of 12 U.S.C. § 1818(e)(7), 1818(i) and 1818(j).

¹On December 6, 2019, Branch Banking and Trust Company merged with SunTrust Banks, Atlanta, Georgia. The resultant bank named itself Truist Bank with its principal place of business in Charlotte, North Carolina.

5. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

II. Respondent's Misconduct

6. On June 8, 2018, an ATM/Debit card ending 25744 was issued in the name of a bank customer (Customer) and linked to the Customer's account ending 01074 (Customer's Account), without the Customer's knowledge or authorization.

7. At all times pertinent to this proceeding, Customer was approximately 75 years old.

8. On August 30, 2018, ATM surveillance cameras captured Respondent using the ATM/Debit card ending 25744 to withdraw \$600 from Customer's Account.

9. Upon information and belief, from July 22, 2018 through September 24, 2018, Respondent made 41 unauthorized transactions using the ATM/Debit card ending 25744 to withdraw a total of \$11,384.79 from Customer's Account, including the aforementioned ATM withdrawal on August 30, 2018.

10. On October 4, 2018, an ATM/Debit card ending 58398 was issued in the name of Customer and linked to Customer's Account, without Customer's knowledge or authorization.

11. On November 8, 2018, ATM surveillance cameras captured Respondent using the ATM/Debit card ending 58398 to withdraw \$600 from Customer's Account.

12. Upon information and belief, from October 18, 2018 through December 12, 2018, Respondent made 36 unauthorized transactions using the ATM/Debit card ending 58398 to withdraw a total of \$11,008.96 from Customer's Account, including the aforementioned ATM withdrawal on November 8, 2018.

13. On October 4, 2018, an ATM/Debit card ending 71927 was issued in the name of

Customer and linked to Customer's Account, without the Customer's knowledge or authorization.

14. Upon information and belief, from October 8, 2018 through October 15, 2018, Respondent made 16 unauthorized transactions using the ATM/Debit card ending 71927 to withdraw a total of \$1,283.43 from Customer's Account.

15. On or about December 13, 2018, Customer entered the Bank at the Fort Worth, Texas branch to report that funds were missing from her account. Respondent told Customer that too much time had passed to recover the missing funds, but he would still put in a claim for her. Respondent never put in a claim for Customer's missing funds.

16. On May 24, 2019, the Bank terminated Respondent for reasons unrelated to this matter.

17. On March 9, 2020, Customer filed a claim with the Bank alleging fraudulent withdrawals on her account; she subsequently amended the claim to include additional alleged fraudulent withdrawals.

18. Upon receipt of Customer's claim, the Bank commenced an investigation, and a bank employee identified Respondent in the August 30, 2018 and November 8, 2018 ATM surveillance photos.

19. From July 22, 2018 through December 12, 2018, there were 93 unauthorized transactions from the three ATM/debit cards linked to Customer's Account totaling \$23,677.18.

20. The Bank reimbursed Customer for the unauthorized transfers which occurred during all times pertinent to this proceeding, resulting in a loss to the Bank in the amount of \$23,677.18.

III. Conclusions of Law

21. Based on the misconduct described above, Respondent recklessly engaged and participated in unsafe or unsound practices in connection with the Bank under 12 U.S.C. § 1818(e) and (i)(2).

22. As a Community Banking Branch Banker III, Respondent owed fiduciary duties of care and loyalty to the Bank.

23. Respondent's acts, omissions, and practices described above were breaches of Respondent's fiduciary duties under 12 U.S.C. § 1818(e) and (i)(2).

24. Respondent's practices and breaches described above resulted in more than a minimal loss, and the likelihood of more than a minimal loss or other damage, to the Bank under 12 U.S.C. § 1818(e) and (i)(2).

25. Respondent's unsafe or unsound practices and breaches of fiduciary duties described above resulted in Respondent's financial gain under 12 U.S.C. § 1818(e) and (i)(2).

26. Respondent's practices and breaches described above prejudiced or could have prejudiced the interests of a Bank depositor under 12 U.S.C. § 1818(e).

27. Respondent's unsafe or unsound practices and breaches of fiduciary duties described above demonstrate Respondent's personal dishonesty under 12 U.S.C. § 1818(e).

28. Respondent's unsafe or unsound practices and breaches of fiduciary duties described above demonstrate Respondent's willful or continuing disregard for the safety and soundness of the Bank under 12 U.S.C. § 1818(e).

29. Respondent's practices and breaches described above were part of a pattern of misconduct under 12 U.S.C. § 1818(i)(2).

30. Respondent was unjustly enriched through his misconduct under 12 U.S.C. § 1818(b)(6).

ORDER TO PAY

Based on the above Findings of Fact and Conclusions of Law, the FDIC determined that Respondent's unsafe or unsound practices and breaches of fiduciary duties merit a civil money penalty. After taking into account the appropriateness of the penalty with respect to the following mitigating factors under 12 U.S.C. § 1818(i)(2)(G): size of the Respondent's financial resources and good faith, the gravity of the violations, the history of previous violations, and such other matters as justice may require, it is:

ORDERED that by reason of Respondent's unsafe or unsound practices and breaches of fiduciary duties listed above, a \$70,000 penalty is assessed against Hector Hugo Gutierrez, Jr., under 12 U.S.C. § 1818(i)(2).

FURTHER ORDERED that the Order to Pay is stayed until 20 days after the date of service of this Notice of Assessment to allow Respondent time to object to the Order to Pay. If Respondent wants to object to the Order to Pay, Respondent must formally request a hearing in writing within 20 calendar days after service of this Notice of Assessment, as explained at 12 U.S.C. § 1818(i)(2)(H). Respondent may object to the Order to Pay by requesting a hearing in a formal Answer, as specified in 12 C.F.R. § 308.19. **If Respondent fails to request a hearing to object to the Order to Pay within 20 calendar days from the date of service of this Notice of Assessment, the penalty assessed against Respondent will be final and unappealable under 12 U.S.C. § 1818(i)(E)(ii)**

and 12 C.F.R. § 308.19(c)(2), and must be paid within 60 calendar days after the date of service of this Notice of Assessment.

NOTICE OF HEARING

Respondent must file an Answer to object to the Notice of Charges within 20 days from the date of service under 12 C.F.R. § 308.19. Respondent may file one document containing both the Answer to the Notice of Charges, and a request for hearing on the Order to Pay. The hearing will be held before an Administrative Law Judge (ALJ) assigned by Office of Financial Institution Adjudication (OFIA) under 5 U.S.C. § 3105. The hearing on the Notice of Charges will begin on a date set by the ALJ in Charlotte, North Carolina, or in another location set by the ALJ. The hearing will be public and conducted in accordance with 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and 12 C.F.R. Part 308, subparts A and B.

An original and one copy of all papers filed in this proceeding must be served upon OFIA, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, in the manner specified at 12 C.F.R. § 308.10. Also, copies of all papers filed in this proceeding must be served upon the following: FDIC Administrative Officer, 550 17th Street, N.W., Washington, D.C. 20429; Seth P. Rosebrock, Assistant General Counsel, and Frank C. Salamone, Senior Counsel, Enforcement Section, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429; and Regional Counsel Patrice R. Walker, FDIC, Atlanta Regional Office, Ten 10th Street, Suite 900, Atlanta, Georgia 30309. Respondent is encouraged to file any subsequent documents electronically with OFIA at ofia@fdic.gov.

PRAYER FOR RELIEF

The FDIC prays that an Order of Prohibition from Further Participation under 12 U.S.C. § 1818(e), an Order to Pay in the amount of \$70,000 and assessed under 12 U.S.C. § 1818(i)(2), and an Order of Restitution in the amount of \$23,677.18 and assessed under 12 U.S.C. § 1818(b)(6) be issued against Hector Hugo Gutierrez, Jr.

Issued under delegated authority.

Dated: July 21 _____, 2023.

/s/ _____
Doreen Eberley
Director
Division of Risk Management Supervision