

**FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.**

In the Matter of:)	
)	DECISION AND ORDER TO
)	PROHIBIT FROM FURTHER
DIANA YATES,)	PARTICIPATION AND ASSESSMENT
Individually and as a former Institution-)	OF CIVIL MONEY PENALTY
Affiliated Party of)	
)	FDIC-14-0213e
THE BANK OF OSWEGO)	FDIC-14-0217k
LAKE OSWEGO, OREGON)	
(Insured State Nonmember Bank))	
)	

I. INTRODUCTION

This matter is before the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC”) on remand from the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”) following its decision in *Yates v. FDIC*, No. 19-71853, 2022 WL 16916364 (9th Cir. Nov. 14, 2022). The Ninth Circuit remanded this enforcement proceeding to the Board to reconsider the Board’s Decision and Order after taking into account one additional fact that the Board did not have before it when the Decision and Order was issued—specifically, the fact that on October 8, 2021, the Ninth Circuit vacated Respondent’s criminal convictions “on which the Board and the FDIC partially relied.” *Yates*, 2022 WL 16916364, at *1; see *United States v. Yates*, 16 F.4th 256, 262 (9th Cir. 2021).

A. Procedural History

This remand follows the appeal by Diana Yates (“Respondent” or “Yates”) of the Board’s Decision and Order to Prohibit from Further Participation and Assessment of Civil Money Penalty (“Decision and Order”) dated July 16, 2019, and issued pursuant to section 8(e) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1818(e). The Decision and Order removed Respondent from banking and prohibited her from participating in the conduct of the

affairs of any insured depository institution. The Decision and Order also imposed a \$175,000 civil money penalty on Respondent pursuant to section 8(i) of the FDI Act, 12 U.S.C. § 1818(i). Having carefully reconsidered the entire record before the Board in light of the vacatur of Respondent's criminal convictions, including the additional briefing submitted by the parties, the Board finds that Yates was properly held in default and that she failed to show good cause to set aside the default—primarily because she did not assert a meritorious defense to the FDIC's charges. For these reasons, as well as the additional reasons discussed below, the Board issues against Respondent an Order of Prohibition and Order to Pay a Civil Money Penalty ("CMP") in the amount of \$175,000.

II. BACKGROUND

On June 8, 2015, the FDIC issued a Notice of Intention to Prohibit from Further Participation, Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice") against Respondent pursuant to sections 8(e) and 8(i) of the FDI Act.¹ Respondent, an institution-affiliated party ("IAP") pursuant to section 3(u) of the FDI Act,² was employed as the Chief Financial Officer ("CFO") of The Bank of Oswego ("Bank"), Lake Oswego, Oregon during the period charged in the Notice. Notice ¶ 4.

The Notice alleged that from July 2010 through her resignation in March 2012, Respondent:

- 1) approved the use of \$675,000 in Bank funds to imprudently pay for a customer's wire transfer and then facilitated a \$1.7 million loan to cover the transfer;
- 2) aided and abetted an improper straw buyer transaction involving a buyer's purchase of property held in the Bank's Other Real Estate Owned ("OREO") account;

¹ 12 U.S.C. § 1818(e), (i).

² *Id.* § 1813(u).

- 3) failed to protect the Bank's collateral position and failed to disclose material changes in loan terms to Bank Management; and
- 4) mishandled the sale of OREO Property.

Id. ¶¶ 9-20, 21-52, 53-79, 80-121. To conceal this misconduct, the Notice alleged that Respondent made misrepresentations to FDIC examiners, manipulated bank records, and caused the Bank to file false call reports. *Id.* Respondent resigned as CFO in March 2012. *Id.* ¶ 4. After her departure, the Bank retained the services of independent auditors and attorneys to investigate Respondent's actions. *Id.* ¶ 122. The Bank paid \$272,870 in costs related to the investigation. *Id.* ¶¶ 123-24.

The Notice was served on Respondent and her attorneys on or about June 10, 2015. On June 24, 2015, Respondent was indicted in the United States District Court for the District of Oregon on charges of conspiring to commit bank fraud and making false bank entries, reports, and transactions. *See* Indictment, *United States v. Yates*, No. 3:15-cr-00238 (D. Or. June 24, 2015), ECF No. 1 ("*Yates* (D. Or.)").

On June 26, 2015, Respondent requested an extension of time to answer the Notice. The Administrative Law Judge ("ALJ") granted Respondent's extension request but noted that: "[t]his extension applies only to Respondent's Answer to the Notice of Charges. It does not extend the time for filing a request for hearing." Order Granting Respondent's Motion for Extension of Time to File an Answer at 1, June 29, 2015. On July 27, 2015, the date the Answer was due, Respondent moved to stay the proceeding in light of her indictment and arrest. On August 12, 2015, the ALJ granted the stay with respect to the prohibition proceeding, but denied a stay as to the CMP assessment because Respondent had not made a timely request for a hearing. Respondent sought interlocutory review of the August 12 Order from the FDIC Board,

which was granted on March 17, 2016. Pursuant to delegated authority, the Executive Secretary reversed the ALJ but cautioned Respondent and her counsel that they “are expected to timely read and comply with all orders issued in these proceedings and that their failure to do so could result in adverse consequences.” Decision and Order on Motion for Interlocutory Review at 8, *In the Matter of Diana Yates*, FDIC 14-0217k (Mar. 17, 2016) (“Decision & Order on Interlocutory Review”). The ALJ accordingly issued a revised stay order on March 17, 2016, to include both the prohibition and CMP proceedings.

While the stay remained in place, this matter was reassigned to ALJ Christopher B. McNeil pursuant to a July 2018 Resolution of the FDIC Board of Directors. On November 29, 2017, Ms. Yates was convicted of multiple federal-bank-fraud crimes in the United States District Court for the District of Oregon.³ On October 9, 2018, ALJ McNeil issued an Order to Show Cause Regarding Stayed Proceedings directing the parties to show cause for a continuation of the stay. The Order to Show Cause was served on the parties electronically consistent with FDIC operating rules for enforcement proceedings. Both parties responded. Enforcement counsel advocated for lifting the stay. Respondent argued that the stay should remain in place pending an appeal of the conviction. On November 6, 2018, the ALJ issued an Order lifting the stay. Reassignment Review, Decisions Upon Reconsideration, and Order Vacating Stays (“Order Vacating Stays”), Nov. 6, 2018. The Order Vacating Stays instructed that Respondent’s deadline for filing an Answer was November 27, 2018.⁴ Respondent failed to file an Answer by that date. Order Upon Respondent’s Default (“Default Order” or “D.O.”) at 1, Jan. 29, 2019.

³ Respondent’s convictions were vacated by the Ninth Circuit on October 8, 2021. See *United States v. Yates*, 16 F.4th 256, 262 (9th Cir. 2021).

⁴ Order Vacating Stays at 10.

On December 10, 2018, the ALJ issued an Order to Show Cause Upon Default (“Order to Show Cause”), directing the parties to respond by January 10, 2019, and show cause why the enforcement action should not proceed with a finding that the Respondent had defaulted. Order to Show Cause at 1.

Respondent first filed a Motion seeking Reconsideration of the Order Vacating Stays on December 21, 2018, 11 days after the Order to Show Cause was issued. The ALJ denied that Motion on January 7, 2019. On January 10, 2019, Respondent filed a Response and Opposition to the Order to Show Cause attaching a proposed Answer containing only general denials. Also on January 10, 2019, the FDIC filed a request that a default entry be issued pursuant to 12 C.F.R. § 308.19(c)(1). D.O. at 1.

On January 29, 2019, the ALJ issued an Order Upon Respondent’s Default, followed by the Recommended Decision (“R.D.”) on January 30, 2019, finding that Respondent had failed to demonstrate good cause for her failure to timely file an Answer. D.O. at 9-10, 11. The matter then proceeded before the Board. After briefing, on July 16, 2019, the Board issued a Final Decision substantively agreeing with the ALJ’s determination that Respondent had failed to file an Answer and failed to demonstrate good cause for doing so.⁵

Respondent timely appealed both her criminal conviction and the Board’s Decision and Order to the Ninth Circuit. The appeal of the enforcement matter was held in abeyance and then administratively closed pending a decision in Respondent’s criminal appeal. On October 8, 2021, the Ninth Circuit issued a decision in Respondent’s criminal appeal, vacating the

⁵ The ALJ’s January 30, 2019 Recommended Decision Upon Respondent’s Default, incorporated herein by reference, devotes not one sentence to a discussion of Respondent’s criminal case or conviction, which was subsequently vacated. The Board’s Decision and Order does briefly mention the criminal case and Respondent’s conviction, but the fact of the conviction did not have anything to do with the “good cause” test in determining whether failure to file a timely answer should be excused, nor was it relied upon to show Respondent lacked a meritorious defense. *See, e.g.*, Decision and Order to Prohibit (“July 16 Decision & Order”) at 4, 8, July 16, 2019 (references to Respondent’s criminal convictions).

conviction and remanding for a potential retrial. *See Yates*, 16 F.4th at 256, 275.⁶ By its unpublished Memorandum decision filed November 14, 2022, the Ninth Circuit remanded the enforcement case to the FDIC Board with a narrow instruction for reconsideration. On January 6, 2023, the Ninth Circuit issued its mandate returning jurisdiction to the Board.

III. DISCUSSION

After a careful reconsideration of the entire record, the arguments presented below, the vacatur of Yates' criminal convictions by the Ninth Circuit, and the briefing of the parties on remand, the Board finds that the conclusions it reached in its July 16 Decision and Order are appropriate.

Good Cause

The FDIC's Rules provide that the failure to file a timely answer constitutes a waiver of a Respondent's right to appear and contest the allegations in the notice and provides grounds for entry of an order of default absent a showing of good cause: "[u]pon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent." 12 C.F.R. § 308.19(c); *see, e.g., In the Matter of Lance E. Bauer*, No. FDIC-11-21e, 2012 WL 7152170, at *3 (Oct. 9, 2012); *In the Matter of Arlene Shih*, No. FDIC-10-335e, 2011 WL 2574393, at *4 (May 10, 2011); *In the Matter of Leann Bennett*, No. FDIC-02-206e, 2004 WL 2185944, at *3 (Aug. 16, 2004). To determine whether good cause is shown, the Board looks to the same factors that generally

⁶ On March 24, 2022, on remand to the district court, the district court entered an order accepting Respondent's guilty plea to a misdemeanor charge in the criminal case. Plea Petition & Order Entering Plea ("Guilty Plea") at 10, *United States v. Yates*, No. 3:15-CR-00238-SI-2 (D. Or. Mar. 24, 2022), ECF No. 1199. Admissions in Respondent's Guilty Plea track facts alleged on one of the claims at issue in this enforcement proceeding.

govern setting aside a default judgment under Federal Rules of Civil Procedure 60(b): “1) prejudice to the plaintiff, 2) merits of the defendant’s asserted defense and 3) the culpability of [the] defendant’s conduct.” *See Amberg v. FDIC*, 934 F.2d 681, 686 (5th Cir. 1991) (citation omitted); *Franchise Holding II, LLC v. Huntington Rest. Grp., Inc.*, 375 F.3d 922, 925-26 (9th Cir. 2004). As the Ninth Circuit has repeatedly reaffirmed, “[t]his standard . . . is disjunctive, such that a finding that any one of these factors is true is sufficient reason for the district court to refuse to set aside the default.”⁷

With respect to culpability, Respondent argues that her failure to file a timely Answer should be excused because it was not willful and her attorneys did not have actual notice of the Order Vacating Stays in time to file a timely Answer. Respondent’s Exceptions to Recommended Decision (“Exceptions”) at 18-19, Mar. 1, 2019. She argues that her attorneys did not consent to service by solely electronic means and that her attorneys did not see the email containing the Order Vacating Stays until the deadline for answering had passed. *See, e.g., Yates Response to FDIC Briefing on Remand* at 10-11, Apr. 10, 2023.

The Board finds no merit in Respondent’s challenge to the method of service. Respondent’s attorney asserted that she had no record or memory of consenting to service from the ALJ exclusively by electronic means. D.O. at 5, 7. A June 10, 2015 Order, however, informed the parties that, pursuant to 12 C.F.R. § 308.10(b)(4), electronic filings were required unless a party certified that it was incapable of electronic filing. Notice of Designation and Order Requiring Electronic Filing at 1, June 15, 2015. Neither Respondent nor her attorneys ever made such a certification, and all parties actively engaged in a multi-year practice entirely using electronic communication to and from the Office of Financial Institution Adjudication

⁷ *See, e.g., United States v. Aguilar*, 782 F.3d 1101, 1105 (9th Cir. 2015) (citation omitted).

(“OFIA”). D.O. at 5. Indeed, the October 9, 2018 Order to Show Cause for lifting the stay was served on the parties by electronic mail. Respondent’s Counsel received the Order and timely responded to it with a brief that was filed and served on the ALJ and the parties by electronic mail. Respondent’s contention that she did not consent to electronic service is not supported by the record.

Respondent’s attorneys’ excuses for failing to see the email containing the Order Vacating Stays similarly beg credulity. Counsel asserts that the Order was found in her deleted email folder unopened only after she received the Show Cause Order. D.O. at 5. Counsel further asserts that she relied on her associates to notify her of filings, but because they were not copied on the email containing the Order Vacating Stays, she was unaware of it. *Id.* at 10-11.

Respondent also asserts that the other two attorneys copied on the email containing the Order Vacating Stays no longer represented her at that time, and that the attorneys who replaced them did not receive the Order because they had not yet submitted their Notices of Appearance. *Id.* at 5-6. As with Counsel’s deletion of the email containing the Order Vacating Stays, Respondent describes the failure of her attorneys to file their Notices of Appearance promptly as inadvertent. *Id.* at 6.

We agree with the ALJ’s conclusion that these errors on the part of Respondent’s counsel, even if not willful, do not support a finding of good cause to relieve Respondent from her default. As the ALJ found, Respondent’s counsel failed to take “even modest measures to be aware of transmissions from the tribunal,” and, when considered in context, appear to indicate that Respondent’s primary purpose was to delay the proceedings. D.O. at 8.

In addition, even after December 10, 2018, when Respondent claims that she first became aware of the November 27 deadline to file her Answer, she did not act expeditiously to cure her default. Instead, she moved for reconsideration of the Order Vacating Stays arguing that the ALJ lacked authority to lift the stay. *Id.* at 10. Only when the Motion for Reconsideration was denied did she file an Answer—one month after she discovered that it was already two weeks late.

In her April 10, 2023, Response to FDIC’s Briefing on Remand, Respondent argues that the circumstances here constitute mere negligent mistakes, rather than willfulness, and that the balance of equities favors her, given the severe professional and financial consequences of default. While the Board acknowledges the gravity of the consequences for Respondent, her conduct illustrates a troubling pattern that cannot be condoned. Indeed, on interlocutory review, Respondent was specifically admonished to “timely read and comply with all orders issued in these proceedings” and was warned that “failure to do so could result in adverse consequences.” Decision & Order on Interlocutory Review at 8. In this context, Respondent’s failure to ensure that all correspondence from the ALJ was read and complied with is not excusable.

The Board also finds that Respondent’s claim that she has a meritorious defense does not support granting her relief from default. A meritorious defense is provided when “there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default.” *Haw. Carpenters’ Tr. Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986). The defaulting defendant’s burden “is not extraordinarily heavy,” but they must “allege sufficient facts that, if true, would constitute a defense.” *United States v. Signed Personal Check No. 730 of Yurban S. Mesle*, 615 F.3d 1085, 1094 (9th Cir. 2010) (citation omitted). “[C]onclusory statements that a dispute existed” or a “general denial without facts to support it is not enough to

justify vacating a default or default judgment.” *Franchise Holding II, LLC*, 375 F.3d at 926.

Rather, “[t]o justify vacating the default judgment, . . . [Yates] had to present the [Board] with specific facts that would constitute a defense.” *Id.*

Respondent’s proffered Answer provides only general denials to the allegations in the notice of charges and asserts that they were “based solely upon evidence adduced or arguments made on the record, by Yates’s counsel at her criminal trial,” *see* Yates’ Answer and Affirmative Defenses at 1, Jan. 10, 2019—evidence and arguments that resulted in her conviction. Although the Board acknowledges that Respondent’s conviction was subsequently vacated, the Answer nevertheless contains no specific facts indicating that she had a meritorious defense to the charges asserted in the civil enforcement action, which materially differ from those asserted in the criminal proceeding.⁸ Indeed, it contained no specific facts. The Ninth Circuit has held that where, as here, there is “no showing of a meritorious defense[,] . . . it would have been an abuse of discretion to set aside the entry of default.” *Haw. Carpenters’ Tr. Funds*, 794 F.2d at 513. Similarly, the Ninth Circuit recently held in *Delgado v. Dempsey’s Adult Care Home, LLC* that the defendants failed to establish a meritorious defense when they summarily argued that the plaintiff was an independent contractor without factual support. No. 22-15176, 2023 WL 3034263, at *1 (9th Cir. Apr. 21, 2023).⁹ The defendant had failed to put forth any factual support for its argument that any of the multiple factors courts considered in assessing

⁸ On April 10, 2023, together with her Response to FDIC Briefing on Remand, Respondent filed a newly minted Answer and Affirmative Defenses to the Notice. Nothing in the Ninth Circuit’s remand for reconsideration, however, gives Yates the right to file a new answer at this late date. Nor does the remand for reconsideration require the Board to consider Yates’ new answer.

⁹ *See Madsen v. Bumb*, 419 F.2d 4, 6 (9th Cir. 1969) (holding that district court had not erred in declining to vacate default judgment when defendant offered “mere general denial without facts to support it”).

independent contractor status were satisfied. Therefore, the defendant had failed to establish a meritorious defense. *Delgado*, 2023 WL 3034263, at *1.¹⁰

The conclusion that Yates lacks a meritorious defense is not altered by the fact that her criminal conviction was subsequently vacated and remanded. *First*, the Yates criminal case concerned whether she violated a federal criminal statute, whereas this civil enforcement proceeding concerns whether she engaged in unsafe and unsound practices in conducting the affairs of the Bank and breached fiduciary duties. *Second*, the government’s legal theories that were rejected by the Ninth Circuit in Yates’ criminal appeal — that accurate though misleading statements on call reports could be “false” under the federal bank fraud statute and that Yates acted for the purpose of maintaining her salary¹¹ — were not included in the notice of charges in this civil enforcement proceeding. Moreover, the legal theory that underlies all charges in this enforcement proceeding — that Yates diverted the Bank’s funds for unauthorized purposes — was explicitly approved by the Ninth Circuit.¹²

Respondent also relies on two cases in which Board default judgments were overturned on appeal. Both are distinguishable. In both *Amberg v. FDIC*, 934 F.2d 681 (5th Cir. 1991), and *Oberstar v. FDIC*, 987 F.2d 494 (8th Cir. 1993), hearings were timely requested, but the answers were late. *Amberg*, 934 F.2d at 686; *Oberstar*, 987 F.2d at 504. Here, the Board had already given Respondent the benefit of the doubt once before when she missed the deadline for

¹⁰ Compare *Delgado*, 2023 WL 3034263, at *1; *Bizar v. Dee*, 618 F. App’x 913, 915-16 (9th Cir. 2015) (denying all allegations from the plaintiff’s complaint is an unsubstantiated general denial and does not constitute a meritorious defense); with *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 98 (2d Cir. 1993) (finding that Fuchs, a *pro se* litigant who failed to respond to Enron’s second amended complaint, provided evidence beyond a conclusory denial to support setting aside the entry of default. Fuchs provided an affidavit and deposition testimony by an individual familiar with the transaction at issue that supported Fuchs’ defense that he was not aware that the transaction was illicit.).

¹¹ See *Yates*, 16 F.4th at 264-270.

¹² *Id.* at 268 (“the fraudulent diversion of a bank’s funds for unauthorized purposes certainly could be the basis for a conviction”).

requesting a hearing. She was specifically warned then to read and comply with all future orders in a timely fashion or be subject to the consequences. Decision & Order on Interlocutory Review at 8. Evidence of a prompt effort to comply, which the courts in *Amberg* and *Oberstar* found significant, also is not present here. In those cases, the delay was deemed minimal, and the answers were filed before the FDIC moved for entry of a default judgment. *See Amberg*, 934 F.2d at 682, 686; *Oberstar*, 987 F.2d at 499. In contrast, Respondent failed to file any answer for more than six weeks after she was notified that it was late. Instead of acting promptly after the Order to Show Cause Upon Default was issued, Respondent chose to challenge the lifting of the stay. Only after that motion was decided did she file an answer. This choice, when viewed against the historical background of this proceeding, shows a degree of strategic decision-making and calculated disregard for the FDIC's rules that distinguishes this case from *Amberg* and *Oberstar*.

Finally, Respondent's briefing on remand renews her affirmative defenses of unclean hands and failure to state a claim upon which relief may be granted.¹³ An unclean hands defense is unavailing against a government agency¹⁴ and a general statement of no claim is belied by the detail set forth in the Notice and R.D. The affirmative defenses offer no support to Respondent's position on remand.

In light of Respondent's culpability and failure to identify sufficient facts to establish a meritorious defense, the Board concludes that entry of a default judgment is appropriate.

¹³ Yates Response to FDIC Briefing on Remand at 9-10.

¹⁴ *CFTC v. Kraft Foods Grp., Inc.*, 195 F. Supp. 3d 996, 1009 (N.D. Ill. 2016) (“[W]hether the affirmative defense of unclean hands may be asserted against a government agency in an enforcement action to protect the public interest, the great weight of authority shows that it may not.”) (collecting cases).

Prohibition Order

The Board agrees with the ALJ's conclusion that the undisputed facts in the Notice, none of which are predicated on the criminal conviction, establish the required elements for prohibition under section 8(e) of the FDI Act—misconduct, effects, and culpability. 12 U.S.C. § 1818(e)(1). Specifically, the Notice alleges that Respondent, as an IAP of the Bank, engaged in misconduct by approving the use of \$675,000 in Bank funds to imprudently pay for a customer's wire transfer; facilitating a \$1.7 million loan to cover the imprudent transfer; aiding and abetting an improper straw buyer transaction involving the buyer's purchase of the property held in the Bank's OREO account; failing to protect the Bank's collateral position and failing to disclose material changes in loan terms to Bank management; and mishandling the sale of OREO property. These acts constituted multiple violations of law and/or regulations, unsafe or unsound banking practices, and breaches of fiduciary duty to the Bank. R.D. at 11. This misconduct also caused damage or other loss to the Bank, and the interests of the Bank's depositors have or could have been prejudiced. *Id.* Respondent's conduct involved multiple instances of deliberate deception and personal dishonesty, thus exhibiting a willful and continuing disregard for the Bank's safety and soundness and establishing culpability. *Id.* at 2, 11.¹⁵ Accordingly, the Board finds that the uncontested allegations in the Notice support entry of a prohibition order against Respondent.

¹⁵ See also R.D. at 1: "Between July 2010 and March 2012, Respondent approved the use of \$675,000 in Bank funds to imprudently pay for a customer's wire transfer, then facilitated a \$1.7 million loan to cover the transfer; she aided and abetted an improper straw buyer transaction involving the buyer's purchase of the property held in the Bank's Other Real Estate Owned (OREO) account, in violation of 12 C.F.R. § 362.3; she caused the Bank to file false call reports in violation of 12 U.S.C. § 1817(a); she failed to protect the Bank's collateral position and failed to disclose material changes in loan terms to Bank management; and she mishandled the sale of OREO property, made misrepresentations to FDIC examiners, and manipulated bank records."

CMP Assessment

CMPs are imposed to “serve as deterrents to violations of laws, rules, regulations and orders of the agencies.” *Long v. Bd. of Governors of Fed. Reserve Sys.*, 117 F.3d 1145, 1154 (10th Cir. 1997) (citation omitted). The Notice seeks a CMP of \$175,000, and the Board agrees that such a penalty is appropriate.

The Board finds that a second tier CMP is warranted in this case. A second tier CMP may be imposed against a party who (1) commits any violation of law, regulation, or certain orders or written conditions imposed by regulators; (2) recklessly engages in an unsafe or unsound practice in conducting the affairs of the institution; or (3) breaches any fiduciary duty, and whose “violation, practice, or breach . . . is part of a pattern of misconduct;” “causes or is likely to cause more than a minimal loss” to the institution; or “results in pecuniary gain or other benefit” to the party. 12 U.S.C. § 1818(i)(2)(B).

Based on the allegations in the Notice, the Board finds that Respondent engaged in violations of law and/or regulations, reckless unsafe or unsound practices, and breaches of fiduciary duty that constituted a pattern of misconduct and caused more than a minimal loss to the Bank. The circumstances support assessment of a \$175,000 CMP.

IV. CONCLUSION

For the reasons set forth above, the Board adopts the Recommended Decision, incorporates herein the Findings of Fact and Conclusions of Law set forth in the Notice, and issues the following orders implementing its decision.

ORDER TO PROHIBIT

The Federal Deposit Insurance Corporation (“FDIC”) Board of Directors (“Board”), having considered the entire record of this proceeding, finds that Respondent Diana Yates, formerly employed by The Bank of Oswego, Lake of Oswego, Oregon, engaged in violations of law and unsafe and unsound banking practices for which the Bank suffered financial loss. 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. Diana Yates 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 Federal Deposit Insurance Act (“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. Diana Yates 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. Diana Yates 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. Diana Yates 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 Orders shall be served on Counsel for Respondent Diana Yates, FDIC Enforcement Counsel, the Administrative Law Judge, and the Administrator of the Oregon Division of Financial Regulation.

By Order of the Board of Directors.

Dated at Washington, D.C., this 20th day of December, 2023.

/s/
Executive Secretary

ORDER TO PAY CIVIL MONEY PENALTY

The Federal Deposit Insurance Corporation (“FDIC”) Board of Directors, having considered the entire record in this proceeding, hereby ORDERS and DECREES that:

1. A civil money penalty is assessed against Diana Yates in the amount of \$175,000 pursuant to 12 U.S.C. § 1818(i).
2. This ORDER shall be effective and the penalty shall be final and payable thirty (30) days from the date of its issuance.

The provisions of these ORDERS will remain effective and in force except to the extent that, and until such time as, any provision of these ORDERS shall have been modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED that copies of this Decision and Orders shall be served on Counsel for Respondent Diana Yates, FDIC Enforcement Counsel, the Administrative Law Judge, and Administrator of the Oregon Division of Financial Regulation.

By Order of the Board of Directors.

Dated at Washington, D.C. this 20th day of December, 2023.

/s/
Executive Secretary