

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of)	NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, NOTICE OF CHARGES FOR AN ORDER FOR RESTITUTION, NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, NOTICE OF HEARING, AND PRAYER FOR RELIEF FDIC-23-0007e FDIC-23-0096b FDIC-23-0095k
Derrick Alan Smith, an institution-affiliated party of)	
Branch Banking and Trust Company n.k.a. Truist Bank, Charlotte, North Carolina)	
(Insured State Nonmember Bank))	
Respondent's NMLS UI# 1799263)	
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The Federal Deposit Insurance Corporation (FDIC) determined that Derrick Alan Smith (Respondent) was a Community Banking Branch Banker at Branch Banking and Trust Company n.k.a. Truist Bank, Charlotte, North Carolina (Bank), and an institution-affiliated party (IAP) of the Bank. Respondent, directly or indirectly, violated laws and recklessly engaged in unsafe or unsound practices in connection with the Bank between April 23, 2019 and October 7, 2019. Respondent's violations and practices caused the Bank to suffer financial loss, and Respondent to receive financial gain. Respondent's violations and practices 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 \$24,315.00 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 \$35,000 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 at the Bank, and continued to serve in that capacity from 2017 until he was terminated in 2019.

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).

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

¹On December 6, 2019, BB&T Corporation merged with SunTrust Banks, Inc., Atlanta, Georgia. The resultant bank named itself Truist Bank with its principal place of business in Charlotte, North Carolina.

II. Respondent's Misconduct

6. On September 9, 2019, a \$3,100 cash withdrawal using a counter check was processed in the name of a Bank customer (Customer No. 1) linked to Customer No. 1's account ending in 19687 (Customer No. 1's Account), without Customer No. 1's knowledge or authorization.

7. On September 10, 2019, Customer No. 1 informed Bank management that he did not conduct the transaction. In response, Bank management initiated an investigation.

8. Bank surveillance video confirmed that Respondent processed the counter check.

9. On October 8, 2019, a Bank investigator interviewed Respondent regarding the counter check in question (the First Interview). During the First Interview, Respondent admitted to processing the counter check without the accountholder's consent and withdrawing \$3,100 in cash from Customer No. 1's Account.

10. In addition to admitting to processing an unauthorized counter check in the amount of \$3,100 on September 9, 2019, during the First Interview, Respondent admitted to processing three additional unauthorized counter checks from Customer No. 1's Account on July 5, 2019 in the amount of \$1,300; July 19, 2019 in the amount of \$1,400; and August 26, 2019 in the amount of \$2,900. Thus, from July 5, 2019 to September 9, 2019, Respondent processed four counter checks totaling \$8,700 from Customer No. 1's Account without Customer No. 1's knowledge or authorization.

11. The Bank paid Customer No. 1 the full amount of the unauthorized withdrawals, \$8,700.

12. Respondent's misconduct with respect to Customer No. 1's Account resulted in loss

to the Bank in the amount of \$8,700 and financial gain to Respondent in the same amount.

13. During the First Interview, Respondent also admitted to processing unauthorized cash withdrawals via counter checks from two additional customer accounts at the Bank – an account ending in 81325 (Customer No. 2's Account); and an account ending in 38584 (Customer No. 3's Account).

14. Respondent admitted that between April 23, 2019 and October 7, 2019, Respondent processed 10 counter checks from Customer No. 2's Account without the Bank customer's knowledge or authorization. Respondent admitted to processing unauthorized counter checks from Customer No. 2's Account on April 23, 2019 in the amount of \$1,865.15; May 23, 2019 in the amount of \$900; May 29, 2019 in the amount of \$1,500; June 6, 2019 in the amount of \$1,500; June 18, 2019 in the amount of \$800; July 5, 2019 in the amount of \$850; July 19, 2019 in the amount of \$600; August 26, 2019 in the amount of \$1,300; September 20, 2019 in the amount of \$800; and October 7, 2019 in the amount of \$500.

15. The Bank paid Customer No. 2 the full amount of the unauthorized withdrawals, \$10,615.15.

16. Respondent's misconduct with respect to Customer No. 2's Account resulted in loss to the Bank in amount of \$10,615.15 and financial gain to Respondent in the same amount.

17. Respondent also admitted during the First Interview that on October 1, 2019, Respondent processed one counter check in the amount of \$4,500 from Customer No. 3's Account without the knowledge or authorization of Customer No. 3.

18. The Bank paid Customer No. 3 the full amount of the unauthorized withdrawal, \$4,500.

19. Respondent's misconduct with respect to Customer No. 3's Account resulted in loss to the Bank in the amount of \$4,500 and financial gain to Respondent in the same amount.

20. During a subsequent October 11, 2019, interview by the Bank investigator, Respondent also admitted that on June 10, 2019, Respondent processed one \$500 counter check from an account ending in 58314 (Customer No. 4's Account) without the Bank customer's knowledge or authorization.

21. The Bank paid Customer No. 4 the full amount of the unauthorized withdrawal, \$500.

22. Respondent's misconduct with respect to Customer No. 4's Account resulted in loss to the Bank in the amount of \$500 and financial gain to Respondent in the same amount.

23. In total, Respondent embezzled customer funds across 16 separate transactions from four different customer accounts over a six-month period.

24. Two of the four accounts were held jointly by two individuals, so there were six harmed customers. At the time of the first unauthorized transaction for the relevant accounts, three customers were in their 60s and two customers were in their 90s.

25. On October 8, 2019, Respondent's employment with the Bank was terminated.

26. On November 2, 2019, Respondent was arrested and charged with four counts of felony forgery under the Code of Laws of South Carolina, § 16-13-10. Respondent entered a guilty plea to three counts of misdemeanor forgery, § 16-13-10(C), on October 14, 2021.

27. The Bank has reimbursed all affected customers for the unauthorized cash withdrawals conducted by Respondent, resulting in loss to the Bank in the amount of \$24,315.15.

III. Conclusions of Law

28. Based on the misconduct described above, Respondent violated laws and regulations, including S.C. Code Ann. § 16-13-10, under 12 U.S.C. § 1818(e) and (i)(2).

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

30. Respondent's violations and practices described above resulted in financial loss to the Bank under 12 U.S.C. § 1818(e). Such loss constitutes more than a minimal loss for purposes of 12 U.S.C. § 1818(i)(2).

31. Respondent's violations and practices described above resulted in Respondent's financial gain under 12 U.S.C. § 1818(e) and (i)(2).

32. Respondent's violations and practices described above demonstrate Respondent's personal dishonesty under 12 U.S.C. § 1818(e).

33. Respondent's violations and practices described above demonstrate Respondent's willful or continuing disregard for the safety and soundness of the Bank under 12 U.S.C. § 1818(e).

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

35. Respondent was unjustly enriched through his misconduct and his violations and practices involved a reckless disregard for the law 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 violations and practices 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 violations and practices listed above, a \$35,000 penalty is assessed against Derrick Alan Smith, 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 NE, 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 \$35,000 and assessed under 12 U.S.C. § 1818(i)(2), and an Order of Restitution in the amount of \$24,315.00 and assessed under 12 U.S.C. § 1818(b)(6) be issued against Derrick Alan Smith.

Issued under delegated authority.

Dated: April 18, 2024.

/s/
Doreen R. Eberley
Director
Division of Risk Management Supervision