

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

In the Matter of:	)	
	)	DECISION AND ORDER ON DEFAULT
	)	TO REMOVE AND PROHIBIT FROM
MARTIN FERNANDEZ, JR.,	)	FURTHER PARTICIPATION
Individually and as a former Institution-	)	
Affiliated Party of	)	
	)	FDIC-23-0118e
INTERNATIONAL BANK OF	)	
COMMERCE	)	
LAREDO, TEXAS	)	
(Insured State Nonmember Bank)	)	
	)	

I. INTRODUCTION

This matter is before the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC”) following an Order of Default and Recommended Decision for Prohibition from Further Activities (“Recommended Decision” or “*R.D.*”) by Administrative Law Judge C. Scott Maravilla (“ALJ”) issued on September 18, 2024, pursuant to section 8(e) of the Federal Deposit Insurance Act (“FDI Act”).¹ The Recommended Decision removes Martin Fernandez, Jr. (“Respondent”) from the banking industry and prohibits him from participating in the conduct of the affairs of any insured depository institution.

This is an uncontested proceeding. The record shows that Respondent was served notice of the charges against him by personal delivery to his residence. The charges are set forth in the FDIC’s Notice of Intention to Prohibit from Further Participation, Findings of Fact and Conclusions of Law, Notice of Hearing, and Prayer for Relief (“Notice”). Respondent did not file an Answer to the charges in the Notice, request a hearing, or respond to Enforcement Counsel’s Motion for Entry of an Order of Default (“Default Motion”). For the reasons

¹ 12 U.S.C. § 1818(e)

discussed below, the Board adopts the Recommended Decision and issues an Order to Prohibit against Respondent.

II. BACKGROUND

On June 24, 2024, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act.² Respondent, an institution-affiliated party (“IAP”) pursuant to section 3(u) of the FDI Act,³ was employed as an International Sales Representative at the International Bank of Commerce, Laredo, Texas, during the period charged in the Notice. *Notice* ¶ 1.

The Notice alleges that from July 2018 through his resignation in August 2021, Respondent made unauthorized transfers of approximately \$123,563 from customer accounts to three known associates of Respondent. Respondent, on or about July 18, 2019, assisted a customer of the Bank in opening a new account at the Bank and assisted the customer in transferring funds from their previously existing account into the new account. On or about July 19 through November 29, 2019, Respondent initiated multiple unauthorized transfers from the newly opened customer account to a known associate. Between approximately January 10, 2020, and March 31, 2020, Respondent initiated multiple unauthorized transfers from the new customer account to a second known associate. Between approximately July 20, 2020, and August 12, 2021, Respondent initiated multiple transfers from another customer account to a third known associate. *Id.* ¶¶ 6-13. On October 19, 2023, Respondent entered a guilty plea in the District Court of Webb County, Texas, to one count of third degree felony theft⁴ based on the misconduct just summarized. *Id.* ¶ 16.

² *Id.*

³ *Id.* § 1813(u).

⁴ Texas Penal Code 31.03(e)(5), Theft of Property \$30,000 or more but less than \$150,000.

The Notice was served on Respondent via personal delivery to his residence in Laredo, Texas, on July 11, 2024. On August 2, 2024, Enforcement Counsel filed a Default Motion pursuant to Section 308.19(c)(1) of the Rules of Practice and Procedure of the FDIC as Respondent had not filed an Appearance or Answer to the Notice within 20 days of service.⁵ On September 18, 2024, the ALJ issued the Order of Default and Recommended Decision for Prohibition from Further Activities finding that Respondent had failed to demonstrate good cause for his failure to timely file an Answer and that Respondent's misconduct merits an order of prohibition. *R.D.* at 1-3.

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. The Board agrees with the ALJ's findings that the undisputed facts in the Notice satisfy the three standards necessary to sustain a prohibition order under section 8(e) of the FDI Act – misconduct, effects, and culpability.⁶ *R.D.* at 2-3.

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.⁷ Respondent never filed an answer to the Notice, although personal service was completed to his home. *R.D.* at 1-2. Therefore, the Board agrees that Respondent waives his right to appear and contest the allegations in the Notice.

⁵ 12 C.F.R. §308.19(c)(1).

⁶ 12 U.S.C. §1818(e)(1).

⁷ 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).

Prohibition Order

The Board agrees with the ALJ's conclusion that the undisputed facts in the Notice establish the required elements for prohibition under section 8(e) of the FDI Act—misconduct, effects, and culpability.⁸ Specifically, the Notice alleges that Respondent, as an IAP of the Bank, engaged in misconduct by transferring more than \$123,563 from customers' accounts to accounts of known associates without the knowledge or authorization of the customers. *R.D.* at 2. These acts satisfy the misconduct element because they constitute multiple violations of law and/or regulations and unsafe or unsound banking practices. *R.D.* at 3. The Bank reimbursed its customers for the unauthorized transfers made by its employee, causing more than \$123,563 in loss to the Bank, and the interests of the Bank's depositors were prejudiced by this misconduct, thereby satisfying the effects element. *Id.* Respondent's conduct also involved multiple instances of deliberate deception and personal dishonesty, thus exhibiting willful and continuing disregard for the Bank's safety and soundness and establishing culpability. *Id.* Accordingly, the Board finds that the uncontested allegations in the Notice and Recommended Decision support entry of a prohibition order against Respondent.

IV. CONCLUSION

For the reasons set forth previously, 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 order implementing its decision.

⁸ 12 U.S.C. § 1818(e)(1).

ORDER TO PROHIBIT

The Federal Deposit Insurance Corporation (“FDIC”) Board of Directors (“Board”), having considered the entire record of this proceeding, finds that Respondent Martin Fernandez, Jr., formerly employed by the International Bank of Commerce, Laredo, Texas, 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 willful and continuing disregard for the Bank’s safety and soundness. The Board hereby ORDERS and DECREES that:

1. Martin Fernandez, Jr. 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 institution’s 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. Martin Fernandez, Jr. 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 institution’s 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. Martin Fernandez, Jr. 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 institution's 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. Martin Fernandez, Jr. 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 Respondent Martin Fernandez, Jr., FDIC Enforcement Counsel, the Administrative Law Judge, and the Commissioner of the Texas Department of Banking.

By Order of the Board of Directors.

Dated at Washington, D.C., this 17th day of January 2025.

/s/
Debra A. Decker
Executive Secretary