

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

In the Matter of:)	
)	DECISION AND ORDER OF DEFAULT
DERRICK ALAN SMITH,)	TO PROHIBIT FROM FURTHER
an Institution-Affiliated Party of)	PARTICIPATION, RESTITUTION,
)	AND ASSESSMENT OF CIVIL MONEY
BRANCH BANKING AND TRUST)	PENALTY
n.k.a TRUIST BANK)	FDIC-23-0007e
CHARLOTTE, NORTH CAROLINA)	FDIC-23-0096b
(Insured State Nonmember Bank))	FDIC-23-0095k
)	

I. INTRODUCTION

This matter is before the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) following the issuance on March 31, 2025, of an Order of Default and Recommended Decision for Prohibition from Further Activities, Restitution, and Assessment of Civil Monetary Penalty (Recommended Decision or R.D.) by Administrative Law Judge C. Scott Maravilla (ALJ). The ALJ recommends that Derrick Alan Smith (Respondent) be subject to an order of prohibition pursuant to section 8(e) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1818(e), be ordered to pay \$24,315 in restitution pursuant to section 8(b)(6) of the FDI Act, 12 U.S.C. § 1818(b)(6), and be assessed a civil monetary penalty of \$35,000 pursuant to section 8(i) of the FDI Act, 12 U.S.C. § 1818(i).

This is an uncontested proceeding. The charges are set forth in the FDIC’s Notice of Intention to Prohibit from Further Participation, Notice of Charges for an Order of 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 (Notice). The record shows that Respondent was served with the Notice by certified mail to four of his last known addresses. The record also

shows that a process server was successful in serving Respondent's father at Respondent's last known address. However, Respondent's father informed the process server that Respondent no longer lived at that address and refused to provide a new address for Respondent. Respondent did not file an Answer to the charges in the Notice, nor did he request a hearing on the assessment of a civil money penalty. FDIC Enforcement Counsel filed a Motion for Entry of an Order of Default (Default Motion). For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order to Prohibit, an Order of Restitution, and an Order to Pay Civil Money Penalty.

II. BACKGROUND

On April 18, 2024, the FDIC issued the Notice against Respondent pursuant to sections 8(b), 8(e), and 8(i) of the FDI Act. At all times pertinent to the proceeding, Respondent was an employee of Branch Banking and Trust Company n.k.a. Truist Bank, Charlotte, North Carolina (Bank). Notice ¶ 3. As such, Respondent was an institution-affiliated party (IAP) pursuant to section 3(u) of the FDI Act, as that term is defined in 12 U.S.C. § 1813(u).

A. Respondent's Misconduct

From April 23 to October 7, 2019, Respondent took advantage of his employment at the Bank to steal \$24,315 from four customer accounts by fraudulently cashing 16 counter checks. The Bank later became aware of Respondent's conduct after a Bank customer (Customer 1) reported an unauthorized withdrawal of \$3,100 from his account that occurred on September 9, 2019. The Bank determined from video surveillance footage that Respondent cashed the \$3,100 counter check.

On October 8, 2019, the same date that his employment with the Bank was terminated, Respondent admitted in an interview with a Bank investigator that he had processed the \$3,100

counter check without the account owner's consent. Respondent also admitted to processing three additional counter checks against Customer 1's account, bringing the total unauthorized withdrawals from Customer 1's account to \$8,700. Respondent further admitted to forging counter checks to withdraw money from the accounts of three additional customers (Customer 2, Customer 3, and Customer 4). Specifically, from April 23 to October 7, 2019, Respondent used 10 counter checks to withdraw a total of \$10,615 from Customer 2's account. On October 1, 2019, Respondent processed a counter check to withdraw \$4,500 from Customer 3's account. On October 11, 2019, in a second interview with a Bank investigator, Respondent admitted that, on June 10, 2019, he had processed a counter check for \$500 from Customer 4's account without consent.

In total, Respondent admitted to processing 16 counter checks totaling \$24,315 without consent from any of the four Customers. Respondent's conduct affected six individuals, five of whom were over the age of 60, because two of the affected accounts were held by two joint account owners. The Bank reimbursed the affected accounts in the same amounts as Respondent's unauthorized and fraudulent withdrawals, resulting in a loss to the Bank and a gain to Respondent in that amount.

On November 2, 2019, Respondent was arrested and charged with four counts of forgery, a felony, in violation of S.C. Code Ann. § 16-13-10. On October 14, 2021, Respondent pleaded guilty to three counts of forgery, a misdemeanor, in violation of S.C. Code Ann. § 16-13-10(C).

B. FDIC Enforcement Proceeding

On or about April 22, 2024, the Notice was served by U.S. Certified Mail to Respondent at four of his last known addresses. R.D. at 1-2. 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. Notice at 8.

Respondent failed to file an Answer. R.D. at 1-2. The Notice also instructed Respondent that the Order to Pay was stayed until 20 days after the date of service to afford him the opportunity to object to the Order to Pay. Notice at 8. The Notice explained that an objection must be made through a written request for a hearing within 20 calendar days of service. *Id.* Respondent failed to request a hearing on the civil money penalty assessment. R.D. at 4.

On March 6, 2025, FDIC Enforcement Counsel filed the Default Motion pursuant to 12 C.F.R. § 308.19(c). R.D. at 1.

On March 31, 2025, the ALJ issued the Recommended Decision, recommending that Respondent be prohibited from future banking activities, be ordered to pay \$24,315 in restitution, and be assessed a \$35,000 civil monetary penalty. R.D. at 6. 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 Respondent was properly served with the Notice by certified mail at four of his last known addresses. R.D. at 1-2; *see* 12 C.F.R. § 308.11(b)(4). Accordingly, under 12 C.F.R. § 308.19(c), because Respondent failed to respond, he has waived his right to contest the allegations in the Notice.

The Board agrees with the ALJ's findings 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—an order of restitution under section 8(b) of the FDI Act, and a second-tier civil money penalty under section 8(i) of the FDI Act. R.D. at 5. First, the ALJ found that Respondent engaged in misconduct demonstrated by his guilty plea to misdemeanor forgery under South Carolina law and that his underlying conduct constitutes

unsafe and unsound practices by using forged counter checks to withdraw \$24,315 from the accounts of Bank customers without permission. Second, the ALJ found that because the Bank reimbursed the affected Bank customers, the effect of Respondent's misconduct was a financial loss to the Bank in the amount of \$24,315, the same amount as Respondent's pecuniary gain. Third, the ALJ found that Respondent was culpable because he admitted personal dishonesty in forging counter checks to the Bank.

The uncontested allegations are supported by ample evidence of unsafe and unsound banking practices warranting prohibition. This evidence and prior Board decisions justify prohibition. *See In re Skabardonis*, FDIC-13-0444e, 2016 WL 8201948, at *1, *5 (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); *In re 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); *In re Bennett*, FDIC-02-206e, 2004 WL 2185944, at *2 (Aug. 16, 2004) (prohibiting bank employee who embezzled funds).

The Board also agrees with the ALJ's finding that a \$24,315 order of restitution is warranted based on the uncontested facts. In particular, the ALJ found that Respondent's violations of 12 U.S.C. § 1818(e) and (i)(2) and South Carolina law by forging counter checks to make unauthorized withdrawals from the accounts of elderly bank customers led to his unjust enrichment in the amount of \$24,315. Because the Bank reimbursed its customers for the amounts stolen from their accounts, the restitution is owing to the Bank.

The Board also agrees with the ALJ's finding that the imposition of a \$35,000 civil money penalty is warranted under both FDIC regulations and the uncontested facts. First, FDIC

regulations provide that “[i]f respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order of the Board of Directors without further action by the ALJ.” 12 C.F.R. § 308.19(c)(2). The regulation is consistent with the FDI Act, which provides that if a hearing is not requested on a civil money penalty assessment, “the assessment shall constitute a final and unappealable order.” 12 U.S.C. § 1818(i)(2)(E)(ii). Respondent did not request a hearing or otherwise respond to the Notice. In doing so, Respondent declined to provide any information on mitigating factors, such as his financial resources, good faith, the gravity of the violation, history of previous violations, or such other matters as justice may require. *See* 12 U.S.C. § 1818(i)(2)(G). Second, the uncontested facts demonstrate that Respondent recklessly engaged in unsafe and unsound banking practices and that Respondent fraudulently cashed the counter checks resulting in his own pecuniary gain, not as a one-time offense, but as part of an established pattern of misconduct over a period of six months, targeting mainly elderly Bank customers.

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 to Prohibit, Order of Restitution, and Order to Pay Civil Money penalty.

ORDER TO PROHIBIT

The Federal Deposit Insurance Corporation (FDIC) Board of Directors (Board), having considered the entire record of this proceeding, finds that Respondent Derrick Alan Smith, formerly employed by Branch Banking and Trust n.k.a. Truist Bank, Charlotte, North Carolina (Bank), engaged in unsafe and unsound banking practices for which the Bank suffered financial loss corresponding to Respondent's pecuniary gain. The Board further finds that Respondent's actions involved personal dishonesty on the part of Respondent, and hereby ORDERS and DECREES that:

1. Derrick Alan Smith shall not participate in any manner in any conduct of the affairs of any insured depository institution, credit union, 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. Derrick Alan Smith 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 insured depository institution, credit union, 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. Derrick Alan Smith shall not violate any voting agreement previously approved by the appropriate Federal banking agency with respect to any insured depository institution, credit union, 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. Derrick Alan Smith 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, credit union, 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).

5. This ORDER shall be effective immediately.

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

SO ORDERED.

IT IS FURTHER ORDERED that copies of this Decision and Order shall be served on Respondent Derrick Alan Smith, FDIC Enforcement Counsel, the Administrative Law Judge, and the Commissioner of the North Carolina Office of the Commissioner of Banks.

By Order of the Board of Directors.

Dated at Washington, D.C., this 26th day of September, 2025.

/s/
Debra A. Decker
Executive Secretary

ORDER OF RESTITUTION

The Federal Deposit Insurance Corporation (FDIC) Board of Directors (Board), having considered the entire record of this proceeding, and taking into account the appropriateness of restitution, hereby ORDERS and DECREES that:

1. Derrick Alan Smith shall make restitution in the amount of \$24,315 to Branch Banking and Trust Company n.k.a. Truist Bank pursuant to 12 U.S.C. § 1818(b)(6).
2. This ORDER shall be effective and restitution shall be final and payable thirty (30) days from the date of its issuance.

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

IT IS FURTHER ORDERED that copies of this Decision and Order shall be served on Respondent Derrick Alan Smith, FDIC Enforcement Counsel, the Administrative Law Judge, and the Commissioner of the North Carolina Office of the Commissioner of Banks.

By Order of the Board of Directors.

Dated at Washington, D.C., this 26th day of September, 2025.

/s/ _____
Debra A. Decker
Executive Secretary

ORDER TO PAY CIVIL MONEY PENALTY

The Federal Deposit Insurance Corporation (FDIC) Board of Directors (Board), having considered the entire record of this proceeding, and taking into account the appropriateness of the penalty with respect to the mitigating factors set forth in 12 U.S.C. § 1818(i)(2)(G) including the size of the financial resources and good faith of Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, hereby ORDERS and DECREES that:

1. A civil money penalty is assessed against Derrick Alan Smith in the amount of \$35,000 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 this ORDER will remain effective and in force except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED that copies of this Decision and Order shall be served on Respondent Derrick Alan Smith, FDIC Enforcement Counsel, the Administrative Law Judge, and the Commissioner of the North Carolina Office of the Commissioner of Banks.

By Order of the Board of Directors.

Dated at Washington, D.C., this 26th day of September, 2025.

/s/
Debra A. Decker
Executive Secretary