

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of:)

JOHN C. PONTE,)
an institution-affiliated party of)

INDEPENDENCE BANK)
EAST GREENWICH, RHODE ISLAND)

(INSURED STATE NONMEMBER BANK))

Respondent's NMLS UI# N/A)

DECISION AND ORDER DENYING
PETITION FOR MODIFICATION AND
STAY OF ORDER FOR RESTITUTION

FDIC-22-0143b

STATEMENT OF THE CASE

INTRODUCTION

On April 24, 2026, John C. Ponte (Respondent or Ponte), through a letter (Petition) addressed to the Regional Director of the New York Regional Office and the FDIC Board of Directors via the FDIC's Administrative Officer, petitioned the Federal Deposit Insurance Corporation (FDIC) for written consent to a modification of the Order for Restitution dated October 15, 2024, and for a stay of the FDIC's enforcement and collection efforts as to that Order.¹

BACKGROUND

From 2017 to 2019, Respondent, as a referral agent for Independence Bank, East Greenwich, Rhode Island (Bank), originated potential loan applications for the benefit of the Bank. In February

¹ Although the title of Respondent's Petition states it is a request for relief from both his Order of Prohibition from Further Participation (docket number FDIC-22-0109e (Prohibition Order)) and Order of Restitution (docket number FDIC-22-0143b), the Petition does not request relief from the Prohibition Order and, therefore, the FDIC does not discuss the Prohibition Order in this Decision and Order. Moreover, Respondent filed a substantially similar request on April 15, 2026, with the Office of Financial Institution Adjudication (OFIA) (and served the FDIC's Administrative Officer, among others). This Decision and Order addresses that earlier filing and the latter Petition as a combined filing, since they are substantively similar.

2023, the FDIC issued a Notice of Charges (Notice) against Respondent and other individuals. The Notice alleged that Respondent had engaged in a pattern of misconduct while he was an institution-affiliated party (IAP) of the Bank, a depository institution regulated by the FDIC. Specifically, the Notice alleged, among other things, that Respondent, as sole owner and managing member of Ponte Investments, LLC, acted as the primary originator of potential loan applications for the Bank through its U.S. Small Business Administration (SBA) loan program, made “bridge loans” (interim financing) to borrowers without documenting the extensions in material submitted to the Bank, and collected “at least \$326,000”² in impermissible fees to small-business borrowers. After pre-hearing discovery, the FDIC alleged that Ponte had charged at least \$4.5 million in impermissible fees through Ponte Investments.³ The Notice sought the issuance of an Order of Prohibition under 12 U.S.C. § 1818(e) and an Order for Restitution under 12 U.S.C. § 1818(b) against Respondent. Throughout the enforcement proceeding and at all times since the FDIC issued the Orders, Respondent was represented by counsel.⁴

Respondent approached the FDIC to discuss settlement the weekend before the projected nine-day hearing was scheduled to begin. The parties negotiated over the course of the weekend and agreed to settle the matter on October 15, 2024, the first scheduled day of the hearing. Respondent and the FDIC negotiated and executed a Stipulation and Consent to the Issuance of an Order of Prohibition from Further Participation (Consent Agreement) on that same date. Respondent and the FDIC also negotiated the language of a proposed Prohibition Order and Order for Restitution on that same date. In the Consent Agreement, Respondent waived the right to “present defenses to any

² Notice ¶ 107.

³ See FDIC’s Pre-Hearing Statement at 8 (Sept. 11, 2024).

⁴ Respondent filed several motions and other documents in the enforcement proceeding to challenge the FDIC’s Notice. See, e.g., “Respondent, John C. Ponte’s Motion to Stay Administrative Enforcement Proceeding” (Mar. 10, 2023), *denied by* Administrative Law Judge (ALJ) Order No. 7 (Mar. 23, 2023); “Respondent, John C. Ponte’s Motion for Summary Disposition” (Mar. 12, 2024), *denied by* ALJ Order No. 32 (June 10, 2024); “Respondent, John C. Ponte’s Pre-Hearing Submission” (Sept. 11, 2024).

allegations in the Notice[.]” and “a hearing on any allegations in the Notice[.]”⁵

On October 15, 2024, the FDIC issued the Order of Prohibition under 12 U.S.C. § 1818(e) and the Order for Restitution under 12 U.S.C. § 1818(b), in accordance with the terms of the Consent Agreement. The Order of Prohibition and Order for Restitution became final and effective on October 15, 2024. The Order for Restitution, among other things, directs Respondent to “pay restitution of \$1,000,000, in the time and manner set forth in the Consent Agreement, to reimburse parties (not including the Bank) the FDIC determines to be affected by [Respondent’s] conduct.” The FDIC identified 1,435 small businesses that had been harmed by the Respondent’s misconduct to receive this restitution. The Consent Agreement specifies that the “first payment will be due immediately and will be in the amount of \$326,000.”⁶

Respondent timely made that first payment. The Order for Restitution—cross-referencing the terms of the Consent Agreement—requires Respondent to pay the balance of \$674,000 by October 15, 2025. Respondent failed to pay the outstanding balance of \$674,000 by that date. On October 16, 2025, Respondent informed the FDIC that he would not be making the outstanding restitution payment. To date, Respondent has not made that second restitution payment, and many of the impacted small-business borrowers have yet to receive the amount of restitution to which they are entitled under the Order for Restitution. The Order for Restitution remains effective, outstanding, and enforceable under 12 U.S.C. § 1818(i)(1).

By letter dated April 24, 2026, Respondent petitioned the FDIC for written consent to a modification of the Order for Restitution. In the Petition, Respondent seeks to modify the Order for Restitution to remove the provision restricting Respondent from “seeking or accepting indemnification from the Bank or from any other insured depository institution for the restitution

⁵ Consent Agreement ¶ 7.

⁶ *Id.* ¶ 4.

paid under the terms of this Order or any other expenses, including attorney fees and disbursements incurred by the Respondent, in connection with this matter.” Respondent also asks the FDIC to stay enforcement and collection of the Order for Restitution.

Respondent argues in his Petition that the requested relief is appropriate because of certain sworn statements obtained in an unrelated state-court proceeding between Respondent and the Bank and other parties.⁷ The statements in question focus on the Bank’s awareness of Respondent’s extension of bridge loans to borrowers and the Bank’s communications to Respondent as to the permissibility of those loans. In Respondent’s view, those statements materially conflict with earlier sworn statements given by those same witnesses in 2021 and 2022 during the FDIC’s investigation into misconduct involving the Bank’s SBA loan program. Those alleged inconsistencies, Respondent claims, undermined the factual predicates of the FDIC’s Order for Restitution.

FINDINGS OF FACT

The FDIC finds that the evidence is insufficient to support the requested relief and that Respondent has not articulated an appropriate basis for modifying the Order for Restitution or staying the enforcement of and collection on that Order.

First, as a matter of fairness, Respondent agreed to pay \$1,000,000 in restitution to small-business borrowers that he harmed. The FDIC finds no reason why these harmed borrowers should have to continue to wait to receive the balance of Respondent’s negotiated settlement. Respondent voluntarily entered into the Consent Agreement but refused to make the second payment of \$674,000 in restitution—which was due on October 15, 2025—and filed his Petition six months after that due date. Respondent’s arguments are essentially an attempt to re-litigate the facts underpinning the Consent Agreement, rather than introducing new information, as discussed further

⁷*Ponte v. Indep. Bank*, No. KC 2023-0536 (R.I. Super. Ct.).

below.

Second, Respondent seeks release from the Order for Restitution’s restriction on “seeking or accepting indemnification from the Bank or from any other insured depository institution for the restitution paid under the terms of this Order or any other expenses, including attorney fees and disbursements incurred by the Respondent, in connection with this matter.”⁸ Because Ponte has refused to pay the majority of the restitution, he has not even fully complied with the very term from which he seeks release (“restitution paid under the terms of this Order”). To the extent that Respondent requests the ability to seek indemnification as to his first restitution payment, the FDIC finds—for the reasons stated elsewhere in this Decision and Order—that such relief is not warranted. Moreover, the Bank entered into a separate, later settlement with the FDIC in which the Bank agreed to pay \$3.5 million in restitution for the impermissible fees that were collected by the Bank in connection with SBA loans.⁹ That settlement, like Ponte’s settlement, prohibited the Bank from seeking indemnification. Unlike Ponte, the Bank fully complied with the terms of its settlement.

Third, by executing the Consent Agreement—with the advice of counsel—Respondent waived the right to present defenses to the FDIC’s allegations in the underlying enforcement action and the right to a hearing on those allegations. At that hearing, as noted in the FDIC’s Pre-Hearing Statement, the FDIC was planning to seek at least \$4.5 million in restitution.¹⁰ Respondent could have called witnesses in support of his defenses and questioned the veracity of FDIC and other

⁸ (Emphasis added.)

⁹ *In re Indep. Bank*, FDIC-23-0046b (Jan. 14, 2025) (Bank’s Order for Restitution). In the Bank’s Order for Restitution, the FDIC alleged that the Bank had

violated . . . (SBA) regulations and Section 5 of the FTC Act, 15 U.S.C. § 45, by charging fees in connection with its SBA lending program that were prohibited by applicable SBA regulations. Respondent omitted material information when it engaged in SBA lending without disclosing that it was charging fees that were prohibited by applicable SBA regulations[.]

Bank’s Order for Restitution at 1. As a result of that misconduct, alleged the FDIC, the Bank “was unjustly enriched.” *Id.* at 2.

¹⁰ FDIC’s Pre-Hearing Statement at 9.

witnesses through cross-examination, including the witnesses that he now claims have provided inconsistent testimony to the FDIC. Respondent waived those rights and, in exchange, reduced his potential liability by at least \$3.5 million, thereby receiving considerable benefit from settlement. The Consent Agreement bars Respondent's ability to challenge the truthfulness or consistency of those witnesses' statements.¹¹

Fourth, the allegedly faulty witness-statements cited by Respondent that occurred during the FDIC's investigation have no bearing on the legal elements for the issuance of the Order for Restitution. Respondent argues that recent witness statements establish that the Bank was aware of Respondent's extension of bridge loans to borrowers and misled him about the permissibility of such loans. But this is not the first time that Respondent has raised this argument. In his response to the Notice, Respondent said that the Bank had knowledge of the bridge loans. The ALJ considered and rejected Respondent's argument that his culpability hinged on the Bank's knowledge of his activities.¹² Had Respondent chosen to continue litigating the case, he could have challenged the ALJ's ruling before the FDIC's Board and, if necessary, before the U.S. Courts of Appeals for the First or D.C. Circuits.

Here, the Order for Restitution was solely based on Respondent charging impermissible fees to small-business borrowers, and the restitution will flow to these harmed businesses. The bridge loans formed a separate basis of misconduct. Even if, for the sake of argument, certain witnesses had

¹¹ See *Puerto Rico Dairy Farmers Ass'n v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014) (noting that there is a "strong public policy in favor of settlements, particularly in very complex and technical regulatory contexts" (citation and quotation marks omitted)); *Taylor v. Gordon Flesch Co.*, 793 F.2d 858, 863 (7th Cir. 1986) ("[A] party to a settlement cannot avoid the agreement merely because he subsequently believes the settlement is insufficient." (citation omitted)); *Schneider v. Dumbarton Devs., Inc.*, 767 F.2d 1007, 1015 (D.C. Cir. 1985) ("Settlement agreements are in high judicial favor. . . . [and] such an agreement voluntarily entered into cannot be repudiated by either party and will be enforced summarily by the court." (citations omitted)).

¹² See ALJ Order No. 9 at 12-13 (Apr. 4, 2023) (Granting in Part and Denying in Part Enforcement Counsel's Motion to Strike Respondent Ponte's Affirmative Defenses) ("[I]t is no defense to say that Respondent Ponte's actions were in conformance with Bank policy if the policy itself constituted actionable misconduct and it can be shown that Respondent Ponte acted with a culpable state of mind.")

provided inconsistent testimony with respect to the Bank’s awareness of the bridge loans in question, that awareness has no bearing on the permissibility of the fees charged by the Respondent. Furthermore, the statute under which the Order for Restitution was issued—12 U.S.C. § 1818(b)(6)(A)(i)—does not contain a scienter requirement. Rather, that statute authorizes the issuance of an order for restitution when—as here—an IAP such as Respondent has violated a regulation¹³ and received unjust enrichment in connection with that violation. The bridge loans and Respondent’s (or the Bank’s) knowledge of the permissibility of such loans—or the fees assessed in connection with those loans—are therefore irrelevant to the legal question of whether Respondent charged impermissible fees to small-business borrowers.¹⁴ (And, as noted above, the Bank agreed to pay \$3.5 million in restitution due to allegedly similar misconduct—charging and receiving impermissible fees on SBA loans.) Respondent does not dispute that he received the excess fees in question. Nor does he dispute that the ALJ determined that Respondent’s charging of those excess fees “constitute[s] *prima facie* violations of the SBA fee regulations . . . and Respondent Ponte participated in those violations, whether by personally signing the documents in question or as principal of Ponte Investments pursuant to the definition of ‘violation’ in 12 U.S.C. § 1813(v).”¹⁵ Accordingly, had the enforcement litigation proceeded to an evidentiary hearing, there is a significant likelihood that Respondent would have been liable for restitution in an amount in excess of the settlement his attorney negotiated with the FDIC in lieu of that hearing.

Fifth, the documentary evidence, by itself, establishes that the fees Respondent charged to

¹³ The FDIC alleged that Ponte violated SBA regulations (13 C.F.R. § 120.221 and 13 C.F.R. § 103.5) by charging improper fees and by failing to properly document the fees charged. *See* ALJ Order No. 41 at 40-43 (Aug. 8, 2024) (Granting in Part and Denying in Part Enforcement Counsel’s Motion for Summary Disposition) (discussing the FDIC’s allegations).

¹⁴ *Id.* at 56 (“[A]ny argument that Ponte Investments relied on [legal] opinions (or, for that matter, on the Bank’s allegedly tacit approval of the fees charged by Ponte Investments) speaks at most to the issue of culpability, rather than as to whether the fee practices in question violated SBA regulations. As noted, the undersigned finds that they did . . .”).

¹⁵ *Id.* at 54 (footnotes omitted).

borrowers constituted *prima facie* violations of applicable regulations. The enforcement action against Ponte was based on numerous documents that demonstrated that Ponte violated SBA regulations for personal gain.

The ALJ stated,

What has been established beyond dispute on the present factual record, however, is this: Respondent Ponte personally emailed at least four preapproval letters to SBA Loan Applicants that reflected between 3% and 4% in fees to be paid to Ponte Investments along with a separate business analysis fee of between \$1,395 and \$1,995. For each of these loans, Ponte Investments completed an SBA Form 159, three of which were signed by Respondent Ponte, which stated that only 2% in fees had been charged to that Applicant.¹⁶

As noted above, the ALJ determined that those facts amounted to *prima facie* violations of the SBA fee regulations and that Respondent had participated in those violations.¹⁷ In reaching this conclusion, the ALJ cited only to documentary evidence and said: “[the fact] that fees were charged in excess of 2% is alone enough to constitute a violation, but Respondent Ponte is welcome to further develop his argument at hearing and during the post-hearing briefing . . .”¹⁸ Respondent chose not to develop his argument at hearing and instead waived it by signing the Consent Agreement. Accordingly, substantial evidence exists independent of any testimony to establish Ponte’s misconduct and liability under 12 U.S.C. § 1818(b) for the issuance of the Order for Restitution.

Lastly, the materials submitted with the Petition do not show that Bank witnesses provided materially inconsistent sworn testimony to the FDIC during its investigation. The excerpts cited by Respondent are highly selective, and Respondent has omitted portions of the witnesses’ testimony in which they sought to clarify the differences between statements made on different occasions.

¹⁶ *Id.* (footnotes omitted).

¹⁷ *Id.*

¹⁸ *Id.* at 54 n.229.

Reviewing the record as a whole, the FDIC does not find any material inconsistency in the Bank witness sworn statements that would necessitate a modification of the Order for Restitution.

DECISION AND ORDER

The FDIC routinely includes restrictions on indemnification in its enforcement orders to prevent respondents from evading the consequences of their misconduct by foisting their financial obligations onto others. Respondent's Order for Restitution contains such a restriction, and the Respondent has articulated no valid basis to remove it from the Order. There is also no cogent reason to halt the FDIC's enforcement and collection efforts concerning the Order for Restitution, and no reason that the harmed small-business borrowers should have to wait longer to receive compensation, particularly given Respondent's willful refusal to comply with the terms of the negotiated Consent Agreement. Accordingly, upon review of the record as a whole and for the reasons explained above, the FDIC declines to modify the Order for Restitution or to stay enforcement and collection of the outstanding balance of restitution, and the Petition is **denied**.

Issued under delegated authority.

Date: May 11, 2026.

/s/

Nicholas F. Ties
Acting Associate Director
Division of Risk Management Supervision