FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of VICTORIA L. METZ, Individually and as a former institution-affiliated party of COLONY BANK FITZGERALD, GEORGIA (Insured State Nonmember Bank)	DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION FDIC-13-185e

I. INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on July 25, 2016, of a Recommended Decision on Default ("Recommended Decision" or "R.D.") by Administrative Law Judge Christopher B. McNeil ("ALJ"). The Recommended Decision includes an order that would permanently bar Victoria L. Metz ("Respondent") from the banking industry pursuant to section 8(e) of the Federal Deposit Insurance Act ("FDI Act"), unless the FDIC consents to her further participation. R.D. at 12-13.

This is an uncontested proceeding. The record shows that Respondent was served notice of the charges against her at her place of incarceration. The charges are set forth in the FDIC's Notice of Intention to Prohibit from Further Participation ("Notice"). Respondent did not file an Answer to the charges in the Notice or respond to Enforcement Counsel's Motion for Entry of an Order of Default ("Default Motion") or the ALJ's Order to Show Cause. R.D. at 2-3. Respondent filed no exceptions to the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order to Prohibit against Respondent.

II. BACKGROUND

On April 29, 2016, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act.[1] Respondent, an institution-affiliated party pursuant to section 3(u) of the FDI Act,[2] served as a teller at Colony Bank during the period charged in the Notice. Notice at ¶¶ 2-3. Colony Bank is headquartered in Fitzgerald, Georgia ("Bank"). Notice ¶ 1.

Respondent's Misconduct

The Notice alleged that between April 5, 2012 and May 9, 2012, Respondent embezzled approximately $31,079 in United States government funds by facilitating the negotiation of ten United States Treasury checks for the benefit of persons other than the true owner of the checks. Respondent also engaged in aggravated identity theft by possessing and using means of identification of other persons (their names and signatures) to facilitate the embezzlement. Respondent acted willfully in the commission of these felony offenses. Notice at ¶¶ 5-60.

On January 16, 2013, Respondent was found guilty of the felony offenses of embezzlement of government property and aggravated identity theft by a jury empaneled in the United States District Court for the Middle District of Georgia. *Id.* On April 25, 2013, Respondent was sentenced to four years' imprisonment followed by three years' supervised release, and ordered to make restitution to the Bank in the amount of $79,361. Notice at ¶ 7.

FDIC Enforcement Proceeding

Service of the Notice

On or about May 3, 2016, the Assistant Executive Secretary of the FDIC mailed the Notice by certified mail to Respondent at her place of incarceration, FCI Marianna, Federal Correctional Institution (Marianna Prison) in Marianna, Florida. R.D. at 1. Service of the Notice

[1] 12 U.S.C. § 1818(e).
[2] *Id.* § 1813(u).

was ineffective, however, because the street address for the prison was used rather than the required post office box address. R.D. at 1 & n.3. On May 17, 2016, the Executive Secretary of the FDIC again mailed the Notice by certified mail to Respondent at Marianna Prison, this time using the prison's post office box address. R.D. at 2 & n.6. The U.S. Postal Service Certified Mail Receipt showed that this second mailing of the Notice was delivered successfully. R.D. at 2 & n.6.

Respondent's Default

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. Respondent failed to file an answer. R.D. at 2.

On June 22, 2016, 36 days after effecting service of the Notice upon Respondent, the FDIC moved for the entry of an order of default pursuant to 12 C.F.R. § 308.19. FDIC Enforcement Counsel served the Default Motion on Respondent at the Marianna Prison by certified mail, using the required post office box address. R.D. at 2 & n. 11. The U.S. Postal Service tracking documentation reflected the successful delivery of the Default Motion. R.D. at 2 & n.12.

On June 23, 2016, the ALJ issued an Order to Show Cause directing that Respondent appear on or before July 19, 2016 and show good cause why a default judgment should not be granted. The Order to Show Cause was served on Respondent by certified mail. R.D. at 2-3 & n. 13, 14. Respondent failed to respond to the Default Motion or otherwise appear to show good cause why a default judgment should not be granted. R.D. at 3.

On July 25, 2016, the ALJ granted the FDIC's Default Motion and issued the Recommended Decision, which was served on Respondent by certified mail. R.D. at 18.

Respondent filed no exceptions to the Recommended Decision.

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision with the following minor correction. In his Recommended Decision, the ALJ found service of the Notice proper pursuant to 12 C.F.R. §§ 308.11(b) and 308.18(a).[3] Section 308.11(b) addresses the service of papers upon a party who has already appeared at a proceeding. Here, service of the Notice took place before Respondent appeared (R.D. at 1-2) – indeed, Respondent never appeared – and therefore 12 C.F.R. § 308.11(c)(2), not § 308.11(b), applies.

Section 308.11(c)(2) provides that the Notice may be served, among other ways, by registered or certified mail addressed to the party's last known address or by any other method reasonably calculated to give actual notice. Here, the FDIC sent the Notice to Respondent by certified mail at her place of incarceration, Marianna Prison, which was her last known address. Although the first attempt at service was unsuccessful, the second mailing of the Notice complied with the U.S. Bureau of Prisons' instructions for sending correspondence to inmates housed at the Marianna Prison and the Notice was delivered. The U.S. Supreme Court has held that the mailing of service of process to a prisoner's place of incarceration was an appropriate method of service reasonably calculated to apprise of the pendency of an action. *Dusenbery v. United States*, 534 U.S. 161, 172-73 (2002) (citations omitted). Accordingly, the Board agrees with the ALJ's finding that Respondent was properly served with the Notice. R.D. at 3-4.

The Board also agrees with the ALJ's finding 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.[4] R.D. at 12. Specifically, the Board observes that Respondent engaged in misconduct by exploiting her position at the Bank to embezzle

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[3] 12 C.F.R. § 308.18(a) requires the Executive Secretary to serve the Notice upon the respondent, but does not specify the manner of service.

[4] 12 U.S.C. § 1818(e)(1).

government funds by negotiating U.S. Treasury checks for the benefit of persons other than the true owners of the checks and by using someone else's identity without permission. R.D. at 5-12. The effects prong is met because Respondent received a direct financial benefit of approximately $15,000, consisting of a portion of the funds she embezzled, and Respondent caused damage or other loss to the Bank.[5] R.D. at 12; Notice ¶¶ 5-61. Respondent's culpability is evident as she was convicted for the felony offenses of embezzling government property and aggravated identity theft.[6] *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.

The uncontested allegations establish ample evidence of violations of law and unsafe and unsound banking practices. *See In the Matter of Despina Skabardonis*, FDIC-13-444e, FDIC Enforcement Decision and Order, 2016 WL 4379105, at *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); *see also Lance E. Bauer*, FDIC-11-21e, FDIC Enforcement Decision and Order, 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). Respondent's misconduct warrants a permanent bar from the banking industry. *See In the Matter of Despina Skabardonis*, 2016 WL 4379105 at *5-6 (prohibition of bank employee who embezzled funds); *In the Matter of Lance E. Bauer*, 2012 WL 7152170 at *3 (same); *In the Matter of Leann Bennett*, FDIC-02-206e, FDIC Enforcement Decision and Order, 2004 WL 2185944, at *2 (Aug. 16, 2004) (same).

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[5] *See United States of America v. Metz*, Case No. 1:12-cr-00022-WLS-TQL, Docket No. 50 (M.D. Ga. May 5, 2013) (Judgment in a Criminal Case). The criminal judgment reflects that the Bank suffered a loss of $79,361, and Respondent was ordered to make restitution to the Bank in that amount.

[6] *Id.*

Because Respondent failed to file an Answer to the Notice, she waived her right to appear and contest the allegations in the Notice. 12 C.F.R. § 308.19(c)(1); *see also In the Matter of Lance E. Bauer*, 2012 WL 7152170 at *3; *In the Matter of Arlene Shih*, FDIC-10-335e, FDIC Enforcement Decision and Order, 2011 WL 2574393, at *4 (May 10, 2011); *In the Matter of Leann Bennett*, 2004 WL 2185944 at *3. Accordingly, the final order issued by the Board, which is based upon a failure to answer, "is deemed to be an order issued upon consent." 12 C.F.R. § 308.19(c)(1). Respondent's failure to appear at the hearing described in the Notice similarly results in Respondent being deemed to have consented to the issuance of an order of prohibition. 12 U.S.C. § 1818(e)(4). Moreover, pursuant to 12 C.F.R. § 308.39(b), Respondent's failure to file exceptions to the Recommended Decision is deemed to be a waiver of any objections to the Recommended Decision. *In the Matter of Lance E. Bauer*, 2012 WL 7152170 at *3; *In the Matter of Arlene Shih*, 2011 WL 2574393 at *4; *In the Matter of Leann Bennett*, 2004 WL 2185944 at *3.

IV. CONCLUSION

After a thorough review of the uncontested record in this proceeding, the Board, for the reasons set forth above, adopts the Recommended Decision subject to the clarifications set forth herein, incorporates herein the Findings of Fact and Conclusions of Law set forth in the Notice, and issues the following order implementing its decision.

ORDER TO PROHIBIT

The Board, having considered the entire record of this proceeding, finds that Respondent Victoria L. Metz, formerly employed by Colony Bank, Fitzgerald, Georgia, engaged in violations of law and unsafe and unsound banking practices for which she received personal financial gain and caused a loss to the Bank. 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. Victoria L. Metz 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 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. Victoria L. Metz 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. Victoria L. Metz 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. Victoria L. Metz 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 Order to Prohibit from Further Participation shall be served on Victoria L. Metz, FDIC Enforcement Counsel, the ALJ, and the Commissioner of the Georgia Department of Banking and Finance.

By direction of the Board of Directors.

Dated at Washington, D.C., this 21st day of February, 2017.

/s/
Robert E. Feldman
Executive Secretary

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