

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of)	
	)	NOTICE OF INTENTION TO
	)	REMOVE FROM OFFICE AND
CORNELIUS CAMPBELL BURGESS,	)	PROHIBIT FROM FURTHER
Individually and as an institution-affiliated party of	)	PARTICIPATION AND
HERRING BANK	)	NOTICE OF ASSESSMENT OF
AMARILLO, TEXAS	)	CIVIL MONEY PENALTY,
(INSURED STATE NONMEMBER BANK)	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW, ORDER
	)	TO PAY, AND NOTICE OF
	)	HEARING
)	
	)	FDIC-14-0307e and
	)	FDIC-14-0308k

The Federal Deposit Insurance Corporation ("FDIC") has determined that Cornelius Campbell Burgess ("Respondent"), individually, as an officer, director, and institution-affiliated party of Herring Bank, Amarillo, Texas ("Bank"), engaged or participated in unsafe or unsound banking practices, committed or engaged in acts, omissions, or practices which constitute breaches of his fiduciary duties to the Bank, and/or violated law or regulation; that the Bank suffered financial loss and Respondent received financial gain or other benefit as a result of such practices, breaches of fiduciary duties and/or violations; and that such practices, breaches of fiduciary duties and/or violations demonstrate Respondent's personal dishonesty or willful or continuing disregard for the safety or soundness of the Bank.

The FDIC has also determined that Respondent's reckless unsafe or unsound practices, breaches of fiduciary duties and/or violations of law or regulation were part of a pattern and practice of misconduct that resulted in pecuniary gain or other benefit to Respondent and/or

caused or was likely to cause more than a minimal loss to the Bank.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate ORDER OF REMOVAL FROM OFFICE AND PROHIBITION FROM FURTHER PARTICIPATION ("ORDER OF REMOVAL AND PROHIBITION") should be issued against Respondent pursuant to the provisions of 12 U.S.C. § 1818(e), removing Respondent from office and prohibiting him 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 consent of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. § 1818(e)(7)(D).

Further, the FDIC institutes this proceeding for the assessment of civil money penalties pursuant to the provisions of 12 U.S.C. § 1818(i)(2)(A) and (B) against Respondent.

The FDIC hereby issues this NOTICE OF INTENT TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION ("NOTICE TO REMOVE AND PROHIBIT") pursuant to the provisions of 12 U.S.C. § 1818(e) and this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("NOTICE OF ASSESSMENT") pursuant to 12 U.S.C. § 1818(i) and 12 C.F.R. Part 308 and alleges as follows:

FINDINGS OF FACT

Jurisdiction and Background

1. At all times pertinent to the charges herein, the Bank was a corporation existing and doing business under the laws of the State of Texas, having its principal place of business in

Amarillo, Texas.

2. At all times pertinent to the charges herein, the Bank has been an insured State nonmember bank, as defined in 12 U.S.C. § 1813(e)(2) and, as such, is subject to the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1811 et seq., the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of Texas.

3. At all times pertinent to the charges herein, Respondent was an institution-affiliated party of the Bank as that term is defined in 12 U.S.C. § 1813(u).

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

5. The FDIC is the “appropriate Federal banking agency” with respect to the Bank within the meaning of 12 U.S.C. § 1813(q)(2).

6. The Bank is wholly-owned by Herring Bancorp, Inc., Amarillo Texas (“HBI”).

7. The Burgess family owns or controls approximately 80 percent of the outstanding stock of HBI.

8. The members of the Bank’s Board of Directors (“Board”), which includes Respondent, his father and sister, collectively own 58 percent of HBI’s voting stock. Respondent’s father, Charles Coney Burgess, was at all times relevant to this action, Chairman of the Board and Chairman of the Board of Directors of HBI.

9. Respondent is HBI’s Vice Chairman and President.

10. Respondent joined the Bank in 1992.

11. In 2002, the Bank appointed Respondent as its Chief Executive Officer and

President.

12. At all times pertinent to the charges herein, Respondent held the positions of President, Chief Executive Officer, and director at the Bank until his resignation on April 2, 2012, as President and until his June 19, 2012 resignation as Chief Executive Officer.

13. Respondent remains a current director on the Bank's Board and an officer for HBL.

***Respondent's Unsafe or Unsound Expense Reimbursement Practice
and Breaches of Fiduciary Duty***

14. Between November 2009 through April 2012 (the "Relevant Period"), Respondent repeatedly engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank by causing the Bank to pay his personal expenses, including the expenses of his girlfriend Susan Taylor ("Taylor"), who was not a Bank employee, without full and truthful disclosure to, or informed approval from the Board.

15. During the Relevant Period, Respondent repeatedly used multiple Bank-owned credit and debit cards issued in his name, Taylor's name, and in the name of other Bank employees (collectively "Bank-Owned Cards") to pay for his and Taylor's personal expenses, which were charged to the Bank without adequate or truthful support for the business nature of the expenses.

16. Until at least July 28, 2011 Respondent routinely did not retain sales receipts for the charges he made on his Bank-Owned Cards, retaining receipts for only about 10 percent of his charges (by dollar volume).

17. More often than not, Respondent failed altogether to document or otherwise

evidence the propriety of his charges; and what documentation he did provide was false, misleading, vague or incomplete, and as such, unreliable and effectively useless in allowing the Bank, its auditors, or examiners, to ascertain whether Respondent's charges were for legitimate business purposes, or for personal purposes.

18. The Bank paid for all of Respondent's expenses that were charged on the Bank-Owned Cards issued to him, non-employee Taylor, and other Bank employees, including those incurred for his personal benefit.

19. During the Relevant Period, Respondent routinely used the Bank's cash-out tickets, at his discretion, to withdraw Bank cash without maintaining any receipts or providing adequate or truthful support for the business nature of the expenses.

20. To cause the Bank pay for his personal expenses, Respondent self-approved, and instructed employees to reimburse, his expenses or pay his Bank-Owned Card charges without sufficient support for the business nature of the expenses or prior approval from the Bank.

21. By way of example only and without any limitation, in email exchanges dated February 19 and 20, 2008, between Bank employees Althea White and Angela Davis, Ms. Davis noted that "I have the stub part of bill but I have no clue what was bought."

22. In response, Ms. White explained, "I am not allowed to give you the top part."

23. Ms. White went on to explain, "Campbell said that he and [Senior Vice President of Operations] Scarlett [Blair] worked it out where you just pay the bill. He doesn't want that information to leave the floor."

24. The email went on to state that "[h]e said to get with Scarlett [Blair] and see how

to pay them.”

25. During the Relevant Period, Respondent also made false or misleading entries in records provided to the Bank in order to portray legitimate business purposes for his personal charges.

26. During the Relevant Period, Respondent misled the FDIC, Texas Department of Banking (“TDOB”), and the Bank’s Board about his misuse of Bank-Owned Cards, the number of Bank-Owned Cards in his name, and Taylor’s expenses and her Bank-Owned Card.

27. Respondent’s consistent use of Bank-Owned Cards and cash withdrawals during the Relevant Period to fund personal expenses, and his deliberate failure to maintain meaningful documentation of his expenses both were unsafe or unsound banking practices and breaches of his fiduciary duty to the Bank.

28. To the extent that the Bank’s payment of these personal charges and subsequent reimbursement by Respondent could be characterized as loans, Respondent violated Regulation O.

29. Following are examples of some, but not all of Respondent and Taylor’s personal charges on Bank-Owned Cards.

30. On December 24, 2009, Christmas Eve, Respondent charged \$1,600 to a Bank-Owned Card for a purchase at Diamond Creations in New York City.

31. Diamond Creations is a New York jeweler.

32. The Bank paid the Diamond Creations charge in December 2009.

33. The January 2010 Bank-Owned Card statement claims the business purpose of the

purchase to be “business development.”

34. Respondent did not reimburse the Bank for the Diamond Creation expense until over two years after the Bank paid the charge.

35. On February 11, 2011, Respondent charged \$420 to a Bank-Owned Card for 12 “buddy training” sessions at Amarillo Athlete.

36. The Bank paid the Amarillo Athlete charge.

37. A notation on the credit card statement states that the charge was “for Susan Taylor.”

38. The February charge is one of ten Amarillo Athlete charges on Bank-Owned Cards issued to Respondent or Taylor incurred in 2011. Many of the receipts carry the notation for “CCB” - Respondent Cornelius Campbell Burgess – and “Susan Taylor”.

39. The Bank paid Amarillo Athlete charges totaling \$3,570.

40. On August 12, 2010, Respondent charged \$169 on one of his Bank-Owned Cards for textbooks shipped to Taylor Burgess, Respondent’s son.

41. The September 2010 Visa Statement notates “supplies,” but the invoice states “Biology... Geometry... [and] World History... Textbooks.”

42. The Bank paid the charge in September 2010.

43. On November 18, 2010, Respondent charged \$800 to one of his Bank-Owned Cards for “Google *Ross Koplin.”

44. The Visa statement provided by Respondent reflects a notation for the charge of “Business development.”

45. The Bank paid the charge.

46. Ross Koplin is a Colorado criminal defense attorney who specializes in motor vehicle offenses.

47. After the Bank paid Koplin, the Bank also paid \$175.28 for a Colorado traffic ticket. Thus, it appears that the payment to Koplin was for legal services relating to the Colorado traffic ticket and not a business development expense.

48. On at least five occasions before July 28, 2011, Taylor accompanied Respondent on Bank travel at Bank expense. On those five occasions, Taylor's travel expenses were charged on a Bank-Owned Card, and the notation on the Visa statement falsely noted that travel was for "CCB" – Respondent Cornelius Campbell Burgess.

49. On each occasion, there were two identical charges on Bank-Owned Cards for airfare.

50. On each occasion, one ticket was for Respondent and one ticket was for Taylor.

51. The travel charges occurred during 2010 and were dated June 14, 23, and 24 and July 7, and 9.

52. The Bank paid those travel charges.

53. On many other occasions, Taylor accompanied Respondent on Bank-related travel and Respondent or another Bank employee charged Taylor's travel expenses to a Bank-Owned Card.

54. Respondent made numerous charges on Bank-Owned Cards from late 2009 (that the Bank paid in January 2010) through 2011 to Raffkinds, an Amarillo clothing store, totaling

over \$1,600.

55. On the Visa statements most of the Raffkinds charges were unannotated, but a few had the notation "stationery supplies."

56. The Bank paid the Raffkinds charges.

57. Other examples of expenses with notations containing the questionable nature of a Bank expense include, but are not limited to: \$733 at TJ Maxx; \$1,130 and \$1,641, respectively, to World Market and United Supermarkets (including charges for items such as toothpaste, uncooked meat, eggs, produce, and wine); over \$6,600 for expenses relating to 12 trips to Chattanooga, Tennessee, where Respondent's son, Taylor Campbell, attended boarding school; over \$11,000 in charges to Tranzon Auction Resolutions; in 2010 and 2011, 17 purchases from Worley Auction and Appraiser totaling over \$57,191; over \$426 in animal care products and services (including veterinary services and a dog leash); a \$1,650 charge from what appears to be Scholastic Tours; and products and services relating to Respondent's home.

58. Although there are only a few receipts from Tranzon and Worley, receipts that do exist describe a variety of expenses that do not appear to be legitimate business expenses, such as a stereo receiver, outdoor furniture, and outdoor fireplaces.

59. The Bank paid all of the charges described above.

The 2010 Bank Examination

60. On December 13, 2010, the FDIC began an examination of the Bank ("2010 Examination"). The 2010 Examination resulted in a downgrade in the Management component from 2 to 3 due to, among other things, a lack of control over Respondent's expenses and an

inadequate Conflicts of Interest Policy.

61. Specifically, the 2010 Examination found the Bank's ratio of noninterest expense to average assets was 4.13 percent, which placed the Bank in the 92nd percentile of its peer group. The Bank's high noninterest expenses are attributable, at least in part, to the Bank's uncontrolled expense spending, including expenses the Respondent incurred or were incurred on his behalf.

62. On February 24, 2011, the FDIC and the TDOB met with the Board to discuss the findings of the 2010 Examination ("February 24, 2011 Meeting").

63. During the February 24, 2011 meeting, the FDIC and the TDOB informed the Bank's Board that Respondent obtained \$38,800 for unsubstantiated expenses using cash-out tickets in 2010 while using seven Bank-Owned Cards for various purchases.

64. The FDIC and the TDOB also informed the Board that they should immediately place controls on Respondent's expenses, order a forensic audit on expenses from 2008 through 2010, promptly obtain reimbursement for all 2010 cash-out tickets without receipts to support the business purpose of such expenses, and obtain reimbursement for any employee expenses incurred for the employee's personal benefit.

65. On March 8, 2011, Respondent met with the FDIC.

66. Respondent stated during the March 8, 2011 meeting that because he could not locate receipts for the cash-out tickets, the \$38,800 in cash-out tickets would be added to his 2010 W-2 as income for that year.

67. Also, during the meeting on March 8, 2011, Respondent promised to implement all 2010 examination recommendations, including controls on Respondent's expenses.

Taylor's Bank-Owned Card

68. On March 21, 2011, Respondent arranged for the issuance of a Bank-Owned Card to Taylor, a non-Bank employee.

69. Taylor's application for her Bank-owned credit card includes the notation that she was the "Senior V P of Assistants" for the Bank.

70. The Bank's Human Resources Department subsequently confirmed to FDIC examiners that Taylor was never a Bank employee.

71. At all times pertinent to this proceeding, Bank policy limited the issuance of Bank-Owned Cards to full time Bank employees with a business need for a credit card.

72. Initially, Taylor's Bank-Owned Card had a credit limit of \$5,000.

73. In consecutive months, Taylor's Bank-Owned Card's credit limit was raised to \$7,500 and then to \$15,000, with no apparent Board or Bank supervisor approval or oversight.

74. On March 22, 2011, Bank Senior Vice President Scarlett Blair ("Blair") informed the Board in writing that Respondent planned to cancel four of his Bank-Owned Cards.

75. Blair's letter regarding the planned cancellations did not inform the Board of issuance of Taylor's Bank-Owned Card or her application with the false information regarding her employment by the Bank as a Senior Vice President of Assistants.

76. Expenses charged on Taylor's Bank-Owned Card totaled approximately \$48,000 during 2011 and \$9,000 in 2012 before it was deactivated in April 2012.

The June 2011 Memorandum of Understanding

77. On June 14, 2011, a Memorandum of Understanding ("MOU") between the Bank,

the FDIC, and the TDOB became effective.

78. MOU Provision #3 required a forensic audit for the period 2008 through 2010 that identified and totaled non-Bank related expenses incurred by the Bank on behalf of any employee and required the Board to submit to the FDIC and the TDOB a record of full reimbursement by the employee for any non-Bank expenses.

79. During a Board meeting held on July 28, 2011, the Board conducted its first review of Respondent's expenses.

80. During a related July 28, 2011 Executive Board session and in response to a question whether a Bank-Owned credit card had been issued to Taylor, Respondent answered "No".

81. Respondent knew or should have known that Taylor obtained and was using a Bank-Owned Card.

82. At the meeting, Blair explained to the Board outside of Respondent's presence that Respondent made personal charges on Bank-Owned Cards "to test the Bank's payment card system[,] but "reimburses the bank for all personal charges."

83. Respondent made minimal reimbursement of personal charges (approximately \$4,000) before the FDIC and the TDOB demanded repayment of all non-Bank expenses.

84. Repayments that Respondent made prior to the FDIC and the TDOB's demand for full reimbursement represented a small fraction of non-Bank expenses Respondent charged on Bank-Owned Cards.

85. During the July 28, 2011 Board Executive Session, Blair discussed several credit

card charges made by Respondent that appeared to be personal in nature.

86. One such charge involved one of Respondent's many trips to Chattanooga, Tennessee, purportedly for a student credit card program.

87. Respondent's trips to Chattanooga, Tennessee corresponded to times when Respondent's son attended school in Chattanooga, Tennessee.

88. Respondent and/or a subsidiary of HBI controlled by the Burgess family, Financial Payments, reimbursed the Bank for a fraction of the charges incurred on trips to Chattanooga.

89. Blair explained that the "health and fitness" entries on Respondent's credit card statements were Bank expenses because "CEO Burgess [has] tremendous pain in his neck and back" and the expenditures were for "a masseuse and trainer."

90. Blair did not explain that the "health and fitness" expenses paid by the Bank were, at least in part, for the benefit of Taylor.

91. The Executive Board also discussed, outside of Respondent's presence, authorizing payment of Respondent's Executive MBA program ("EMBA"), although by this time Respondent had been charging the expenses to the Bank (totaling more than \$100,000), including Taylor's expenses in accompanying Respondent, for over 13 months.

92. After Respondent returned to the Board meeting, the Board asked why he had travelled to Singapore in July 2011 for his EMBA.

93. Respondent explained that the travel to the school's Singapore campus was a requirement of his EMBA. Respondent did not explain a side trip from the EMBA required

Singapore trip that he and Taylor took in July 2011 to Hanoi, Vietnam, that cost the Bank at least \$1,672.

94. Likewise, Respondent never told the Board that in August 2011, after an EMBA-required trip to the school's London campus, he and Taylor were planning a side trip to Paris that ultimately cost the Bank at least \$1,278.

95. At the July 28, 2011 meeting, the Board also raised the issue of having an assistant accompany Respondent on travel at Bank's expense.

96. Respondent explained that he needed an assistant (i) to organize the roughly 150 emails he received daily (thereby exposing a non-Bank employee to Bank business); (ii) to bring to his "attention matters that [sic] needing his immediate attention"; and (iii) to be able to discuss Bank matters in real time with someone who knew what was going on because of the time lag with Amarillo and his demanding school day.

97. Respondent did not disclose that his "assistant" was his girlfriend Taylor.

98. Contrary to his statement to the Bank's Board claiming that Taylor's expenses were justified as necessary business expenses, Respondent subsequently explained to the FDIC and the TDOB in February 2012 that the Bank had a policy of paying travel expenses for a significant other who accompanied a Bank employee on legitimate business travel.

99. Respondent did not produce this purported policy in response to FDIC and TDOB requests, and later retracted his statement that the Bank had such a policy.

100. During the July 28, 2011 meeting, Respondent told the Board that the University of Chicago paid for EMBA lodging.

101. Respondent and/or Taylor repeatedly used Bank-Owned Cards to pay for lodging while attending EMBA courses.

102. The Bank routinely paid these EMBA lodging charges.

103. At the conclusion of the July 28, 2011 meeting, without reviewing or evaluating any of Respondent's actual expenses based on the business or personal nature of each expense, the Board: (1) approved a 2011 expense budget of \$127,000 for Respondent by annualizing his year-to-date expenses; (2) retroactively approved all of Respondent's 2011 Bank-Owned Card expenses; (3) retroactively approved EMBA-related expenses that the Bank paid over the prior 13 months; (4) retroactively approved Taylor's travel expenses as the Bank-related expenses of an assistant; and (5) directed Respondent to abstain from making personal purchases on Bank-Owned Cards.

104. There is no indication in the Board minutes that Respondent's father, Chairman of the Board, recused from the vote.

105. Despite the Board's directive, Respondent continued to make personal charges on Bank-Owned Cards.

The Padgett, Stratemann & Co. Forensic Audit

106. On August 8, 2011, the Board retained Padgett, Stratemann & Co. ("PSC") to conduct the forensic audit required by MOU Provision #3.

107. At a September 20, 2011 Executive Board Meeting, the minutes state "certain business related expenses relating to Mr. Campbell Burgess were not adequately documented and in some cases the Bank's files did contain appropriate records and receipts supporting the

business related use of such expense advances. The Board acknowledges that such expense advances were made exclusively for business-related purpose, however, because certain of these business-related expenses were not adequately documented, Mr. Campbell Burgess has agreed to remit \$73,900 to the Bank.”

108. The Board never approved the addition of \$38,800 to Respondent’s 2010 income in lieu of his repayment of his 2010 cash advances.

109. At a November 1, 2011 Board meeting with the FDIC and the TDOB, Respondent stated that he repaid all cash advances for 2008 and 2009 obtained through cash-out tickets totaling \$73,900 and that he claimed the \$38,800 of 2010 cash advances as income on his 2010 W-2.

110. During a December 19, 2011 conference call with the FDIC and the TDOB, the Bank’s MOU Compliance Committee noted that the PSC forensic audit had been delayed by a lack of adequate documentation for 2008 through 2010 expenses.

111. On January 25, 2012, the Bank received a draft forensic audit from PSC (“Draft PSC Audit”) which found, among other things, Respondent directly charged a total of \$476,814 to the Bank, including \$330,855 on 12 Bank-Owned credit cards, \$33,259 on Bank-Owned debit cards, and \$112,700 using cash-out tickets from 2008 through 2010.

112. The Draft PSC Audit further found that Respondent produced receipts for only \$33,388 of the \$476,814 of expenses to support such expenses as legitimate Bank expenses.

113. The Draft PSC Audit determined that \$18,866 of credit card charges, which were made by or on behalf of Respondent, had an available receipt to support non-bank expenses; that

\$327,273 of Respondent's debit and credit card charges lacked receipts; and listed \$149,598 of direct credit and debit charges of Respondent without receipts as "questionable."

114. The Draft PSC Audit found that an additional \$467,268 was charged on Bank-Owned Cards of other employees, including Respondent's Bank assistants, and that many of these charges relate to Respondent.

115. Unlike Respondent's direct charges on Bank-Owned Cards issued to Respondent, the majority of the charges on Bank-Owned Cards issued to other Bank employees included receipts.

116. Many of these receipts for charges on Bank-Owned Cards issued to other Bank employees show that the expenses benefited Respondent and not the Bank.

117. On February 1, 2012, the Board ratified Respondent's charges from 2008 through 2010 as "business expenses" based on: (i) two letters from Doug Conder ("Conder"), a certified public accountant who also served as CPA for Respondent and HBI, and who was a tenant of HBI, opining that the absence of receipts supporting a business purpose had survived IRS scrutiny and recommending that the Board retroactively approve Respondent's expenses "unless [the Board] had reason to believe otherwise"; and (ii) a memorandum from Blair acknowledging a small number of personal charges (\$4,695.22) on Respondent's Bank-Owned Cards that were within the "normal range of error" and stating that all remaining charges were business in nature, and complied with the expense policy in effect when they were made.

118. On February 1, 2012, the Board also passed a resolution that in the future no expense will be reimbursed if it is not accompanied by a receipt.

119. There is no indication in the Board minutes that Respondent's father, Chairman of the Board, recused from the vote.

120. On February 1, 2012, in accordance with Blair's memorandum, Respondent reimbursed \$4,695.22 to the Bank.

The 2012 Bank Examination

121. At the February 13, 2012 joint examination of the Bank ("2012 Examination"), the Bank's management component was downgraded from a 3 to a 4 because of, among other things, the Board's continued lack of controls over Respondent's expenses, including the issuance of a Bank-Owned Card to non-employee Taylor, and continued failure to conduct a line item analysis of Respondent's expenses and obtain full reimbursement for non-Bank expenses, as required by MOU Provisions #3.

122. The 2012 Examination also noted that Taylor's credit card charges were shown under Respondent's expenses – rather than identifying Taylor's Bank-Owned Card charges separately – in monthly expense reports that the Board reviewed.

123. On April 2, 2012, without reviewing the nature of Respondent's individual expenses as required by MOU Provision #3, the Board once again retroactively approved all expenses of Respondent from 2008 through 2010 shown in the draft forensic audit after reviewing new IRS analyses by Conder and tax attorney Bill Hoy ("Hoy"), plus the prior recommendations of Conder and Blair.

124. Hoy opined regarding the sufficiency of the Bank's expense reimbursement "system" for IRS purposes, concluding that the "system" was sufficient for IRS purposes.

125. Conder opined that the Bank's reimbursement of expenses without receipts was not a GAAP violation.

126. There is no indication in the Board minutes that Respondent's father, Chairman of the Board, recused from the vote.

127. On April 2, 2012, based on a management study that recommended the position of Chief Executive Officer and President be split into two positions, Respondent resigned as Bank President.

128. On April 12, 2012, PSC issued its final forensic audit report.

129. The final PSC report concluded that approximately \$235,000 out of approximately \$330,000 of Respondent's charges on Bank-Owned Cards were supported by "Other Documentation Per Bank Policy." PSC based its conclusion on the Board's February 1 and April 2, 2012 retroactive approvals of Respondent's 2008-2010 expenses. "However, because receipts were not available for these disbursements and because such expenses can be considered bank expenses, [PSC was] unable to concretely identify that these expenses were either bank or non-bank expenses."

130. On May 7, 2012, the Board met at the TDOB office with the FDIC and TDOB to discuss the findings of the Joint TDOB-FDIC 2012 Examination.

131. During this meeting, the FDIC noted that the 2012 Examination uncovered Taylor's Bank-Owned Card, her credit card application, and several overseas air fare charges.

132. Also during the May 7, 2012 meeting, Respondent told regulators and the Board that he thought Taylor had a personal credit card instead of a Bank-Owned Card.

133. The TDOB and the FDIC recommended that the Board review Respondent's expenses prior to 2008 and through 2012, and that Respondent promptly reimburse the Bank for all non-Bank related expenses.

134. On June 19, 2012, Respondent resigned as Chief Executive Officer of the Bank but remained on the Board. He also resigned from all Board committees.

135. On July 20, 2012, the TDOB and the FDIC jointly notified the Board, in writing, that all non-Bank expenses paid on behalf of Respondent during his tenure at the Bank should be promptly reimbursed.

The Bank's Settlement with Respondent

136. On October 30, 2012, the Board authorized new directors Robert Templeton ("Templeton") and William McKinney ("McKinney") to resolve Respondent's expense issues and negotiate with Respondent regarding any required payment.

137. After reviewing Respondent's expenses, including the \$149,598 identified by PSC as "questionable," directors Templeton and McKinney determined that approximately \$180,000 in expenses warranted reimbursement to the Bank.

138. On December 7, 2012, directors Templeton and McKinney reached a signed settlement agreement with Respondent to reimburse the Bank an additional \$238,650 for expenses that Respondent charged and the Bank paid from 2005 through 2012.

139. On December 7, 2012, Respondent paid the Bank \$238,650, bringing his total reimbursement to the Bank to \$319,505 between October 2011 and December 7, 2012.

CONCLUSIONS OF LAW

140. Paragraphs 1 through 139 are re-alleged and incorporated herein by reference.

141. By reason of Respondent's foregoing acts, omissions and practices, Respondent has recklessly engaged in unsafe or unsound practices.

142. As a result of the foregoing acts, omissions, or practices, Respondent has breached his fiduciary duty as an officer and director of the Bank.

143. To the extent that the Bank's payment of Respondent's personal charges and subsequent reimbursement by Respondent could be characterized as loans, Respondent violated Regulation O.

144. Regulation O requires that loans to Bank insiders be extended "on substantially the same terms (including interest rates and collateral) as, and following credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by [Regulation O] and who are not employed by the bank." 12 C.F.R. § 215.4(a).

145. Because the Bank did not make comparable loans to non-Bank employees at that time, Respondent's personal charges and cash withdrawals were extensions of credit by the Bank made on preferential terms and therefore violated Regulation O.

146. As a result of Respondent's foregoing acts, omissions, or practices and breaches of fiduciary duties, the Bank suffered losses.

147. As a result of his foregoing acts, omissions, or practices and breaches of fiduciary duties, Respondent received financial gain or other benefit.

148. Respondent's foregoing acts, omissions, or practices demonstrate a willful or continuing disregard for the safety or soundness of the Bank and personal dishonesty.

**NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

149. Paragraphs 1 through 148 are restated and incorporated herein by reference and constitute FINDINGS OF FACT AND CONCLUSIONS OF LAW for the purposes of this NOTICE OF ASSESSMENT.

150. By reason of the allegations contained herein, Respondent has recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank within the meaning of 12 U.S.C. § 1818(i)(2)(B)(i)(II).

151. By reason of the allegations contained herein, Respondent has breached his fiduciary duties to the Bank within the meaning of 12 U.S.C. § 1818(i)(2)(B)(i)(III).

152. To the extent that the Bank's payment of Respondent's personal charges and subsequent reimbursement by Respondent could be characterized as loans, Respondent violated Regulation O. Therefore, Respondent has violated law or regulation within the meaning of section 8(i)(2)(A)(i) of the Act, 12 U.S.C. § 1818(i)(2)(A)(i).

153. By reason of the allegations contained herein, Respondent's practices and breaches are part of a pattern of misconduct within the meaning of 12 U.S.C. § 1818(i)(2)(B)(ii)(I).

154. By reason of the allegations contained herein, Respondent's practices and breaches resulted in pecuniary gain or other benefit within the meaning of 12 U.S.C. § 1818(i)(2)(B)(ii)(III).

155. By reason of the allegations contained herein, Respondent's practices and breaches resulted in more than a minimal loss to the Bank within the meaning of 12 U.S.C. §

1818(i)(2)(B)(ii)(II).

156. By reason of the allegations contained herein, Respondent made or caused to be made false entries in the Bank's books and records within the meaning of 12 U.S.C. §

1818(i)(2)(B)(ii)(II).

157. By reason of the allegations contained herein, Respondent concealed material facts from bank regulatory authorities within the meaning of 12 U.S.C. § 1818(i)(2)(B)(ii)(II).

ORDER TO PAY

158. By reason of Respondent's reckless engagement in unsafe or unsound practices, breaches of fiduciary duties, and/or violations of law or regulation, which were part of a pattern of misconduct that resulted in pecuniary gain or other benefit to him and more than a minimal loss to the Bank, as set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to 12 U.S.C. §§ 1818(i)(2). After taking into account the appropriateness of the penalty with respect to the size of Respondent's financial resources and good faith, the gravity of the practices and breaches, the history of previous unsafe or unsound practices or breaches of fiduciary duties, and other matters as justice may require, it is:

ORDERED, that by reason of the reckless unsafe or unsound practices, breaches of fiduciary duties, and/or violations of law or regulation which were part of a pattern of misconduct that resulted in pecuniary gain or other benefit to Respondent, a penalty be and hereby is assessed against Respondent pursuant to 12 U.S.C. § 1818(i)(2) in the amount of \$200,000, and

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby

is, stayed until 20 days after the date of receipt of the NOTICE OF ASSESSMENT by Respondent, during which time Respondent may file an answer and request a hearing pursuant to 12 U.S.C. § 1818(i)(2)(H) and 12 C.F.R. § 308.19.

OPPORTUNITY FOR HEARING

159. Notice is hereby given that a hearing shall commence at Amarillo, Texas, sixty (60) days from the date of service of this NOTICE OF INTENT TO REMOVE AND PROHIBIT upon Respondent, or at such place or on such date as the parties to this action and the Administrative Law Judge appointed to hear this matter may agree, for the purpose of taking evidence on the charges herein specified, in order to determine whether a permanent order should be issued to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization enumerated in 12 U.S.C. § 1818(e)(7)(A) without the prior permission of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. § 1818(e)(7)(D).

WITH RESPECT TO THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, RESPONDENT MUST SPECIFICALLY REQUEST A HEARING WITHIN 20 DAYS PURSUANT TO 12 U.S.C. § 1818(i)(2)(H) AND 12 C.F.R. § 308.19. IF RESPONDENT FAILS TO FILE A REQUEST FOR A HEARING WITHIN 20 DAYS OF THE SERVICE OF THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY ON HIM, THE PENALTY ASSESSED AGAINST HIM PURSUANT TO THE ORDER TO PAY WILL BE FINAL AND SHALL BE PAID WITHIN 60 DAYS AFTER THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY IS SERVED ON HIM.

160. The hearing will be public and in all respects conducted in accordance with the provisions of the Act, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105.

161. An original and one copy of all papers filed in this proceeding shall be served upon the Office of Financial Institution Adjudication ("OFIA"), 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, Virginia, 22226-3500 pursuant to 12 C.F.R. § 308.10. Copies of all papers filed in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (F-1058), Washington, D.C. 20429; A. T. Dill, III, Assistant General Counsel, Federal Deposit Insurance Corporation, 550 17th Street, N.W., MB 3020, Washington, D.C. 20429; and upon Stephen C. Zachary, Regional Counsel (Supervision), Federal Deposit Insurance Corporation, 6060 Primacy Parkway, Memphis, Tennessee 38119. Pursuant to 12 C.F.R. § 308.10(b)(4), all documents required to be filed, excluding documents produced in response to a discovery request pursuant to Part 308.25 and Part 308.26, shall be filed electronically with OFIA. Respondent is hereby directed to file any answer electronically with OFIA at ofia@fdic.gov. Failure to answer within the 20-day time period shall constitute a waiver of the right to appear and contest the allegations contained in the NOTICE OF ASSESSMENT and NOTICE OF INTENT TO REMOVE AND PROHIBIT and shall, upon the FDIC's motion, cause the Administrative Law Judge or the FDIC to find the facts in these Notices to be true as alleged and to issue appropriate ORDERS.

PRAYER FOR RELIEF

WHEREFORE, the FDIC prays for issuance of the ORDER TO PAY in the form detailed in paragraph 158 above against Respondent; for issuance of an ORDER OF REMOVAL FROM OFFICE AND PROHIBITION FROM FURTHER PARTICIPATION against Respondent; and for such other relief as justice may require.

Pursuant to delegated authority.

Dated at Washington, D.C., this 21st day of November, 2014.

/s/

Christopher J. Newbury
Associate Director
Division of Risk management Supervision