

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

_____)	
In the Matter of)	DECISION AND ORDER TO
)	PROHIBIT FROM FURTHER
SALVATORE DIBENEDETTO,)	PARTICIPATION AND ORDER TO
)	PAY RESTITUTION
Individually and as an)	
Institution-affiliated party of)	
)	
ARCOLA HOMESTEAD SAVINGS BANK)	
ARCOLA, ILLINOIS (In Receivership))	FDIC-14-0095e
)	FDIC-14-0096k
(Insured State Nonmember Bank))	FDIC-14-0158b
_____)	

I. INTRODUCTION

This matter is before the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC”) following the issuance on October 24, 2014, of a Recommended Decision on Default (“Recommended Decision” or “R.D.”) by Administrative Law Judge C. Richard Miserendino (“ALJ”). The ALJ recommended that Salvatore DiBenedetto (“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), and an order to make restitution in the amount of \$626,789 to the FDIC as Receiver for Arcola Homestead Savings Bank, Arcola, Illinois (“Bank”) pursuant to section 8(b) of the FDI Act, 12 U.S.C. § 1818(b).¹ The ALJ also found that Respondent was subject to a final and unappealable civil money penalty (“CMP”) assessment in the amount of \$105,000 pursuant to 12 U.S.C. § 1818(i)(2) and 12 C.F.R. § 308.19(c)(2). The ALJ’s recommendation was based on undisputed findings that Respondent had engaged in a series of

¹ On June 4, 2010, the Illinois Department of Financial and Professional Regulation closed the Bank and appointed the FDIC as Receiver. Notice at ¶ 20.

unsafe and unsound banking practices, individually and as an institution-affiliated party of the Bank.

For the reasons discussed following, the Board affirms the ALJ's findings and conclusions that the necessary elements are established in the record and warrant an order on default to prohibit under section 8(e) and to make restitution under 8(b) of the FDI Act.

II. BACKGROUND

On July 10, 2014, the FDIC issued a Notice of Intention to Prohibit From Further Participation, Notice of Charges, Notice of Assessment of Civil Money Penalties, Findings of Fact, Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice") against Respondent pursuant to sections 8(e), 8(b), and 8(i) of the FDI Act, 12 U.S.C. §§ 1818(e), (b) and (i). R.D. at 1. The Notice charges – and Respondent has not disputed – that during the time pertinent to this proceeding, Respondent was an institution-affiliated party as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i), and 8(j) of the FDI Act, 12 U.S.C. §§ 1818(e)(7), 1818(i), and 1818(j). Notice at ¶ 7. The Notice further alleges that Respondent knowingly or recklessly engaged in unsafe or unsound conduct that involved personal dishonesty and a willful disregard for the safety and soundness of the Bank, and that his conduct was part of a pattern of misconduct (¶¶ 21, 22, 23, 25); that Respondent received financial gain and the Bank suffered more than a minimal loss as a result of Respondent's unsafe or unsound practices (¶¶ 23, 31); and that as a consequence Respondent was unjustly enriched in the amount of \$626,789. Notice at ¶ 27. It directed Respondent to pay a CMP in the amount of \$105,000. *Id.* at ¶ 32.

Respondent was introduced to the Bank's Board of Directors on or about February 2008 by a Bank director. Notice at ¶ 9. In early 2008, Respondent commenced an informal

relationship with the Bank whereby he procured and underwrote single family residential loans for the Bank through his affiliation with a business identified as X-Factor/Avanti.² Notice at ¶¶ 10-11. As of June 2009, Respondent procured and underwrote loans under a “streamlined system” whereby the Bank funded loans presented by Respondent without further review, underwriting, or approval. Notice at ¶ 11.

During June and July 2009, Respondent presented three loans for refinancing properties owned by two separate borrowers. Notice at ¶ 12. The borrowers, however, were not the intended recipients of the funds and did not own the properties being refinanced. Notice at ¶ 12. At closing, Respondent caused the loan proceeds to be applied in a manner inconsistent with the Bank’s instructions. Notice at ¶ 13. In each instance, the Respondent caused some portion of the loan proceeds to be transferred to an account he controlled at another financial institution. Notice at ¶¶ 15-17.

On or about June 17, 2009, the Bank agreed to fund a loan of \$225,000 that Respondent had referred to the Bank. The loan was for the benefit of a purported borrower, not the Respondent. However, when the loan was closed and funded on July 14, 2009, the borrower did not receive the benefit of the loan proceeds. Instead, contrary to the Bank’s instructions, Respondent caused \$220,237 of the proceeds to be transferred to an account he controlled at another financial institution. The Bank wrote off the loan and incurred a loss totaling \$223,953.19. Notice at ¶ 15.

On or about July 29, 2009 and July 30, 2009, the Bank agreed to fund two more loans of \$305,000 and \$282,000 respectively for the benefit of a different borrower, not the Respondent. When the loans were closed and funded on August 12 and September 2, 2009, respectively, the

² X-Factor Equity, LLC, later changed its name to Avanti Equity Group. The Notice identifies this entity as X-Factor/Avanti. Notice at ¶ 2.

borrower did not receive the funds from either loan. Instead, Respondent caused a total of \$406,552 of these loan proceeds to be transferred to an account he controlled. The Bank wrote off both loans and incurred a total loss of \$583,836.31. Notice at ¶¶ 16-17.

In conducting these transactions, Respondent held himself out as an agent for the Bank and as an individual with authority to direct the application of loan proceeds to the title company. Notice at ¶ 6. The Bank was forced to write off each of the three loans and suffered a financial loss as a result of Respondent's unsafe and unsound conduct. Notice at ¶¶ 15-17. On or about March 2010, the Bank terminated its relationship with Respondent and X-Factor/Avanti. Notice at ¶ 19.

On July 10, 2014, the FDIC Office of Executive Secretary served the Notice upon Respondent by Certified Mail return receipt requested to Respondent's last known address in Frankfort, Illinois. R.D. at 1. The record shows that Josephine DiBenedetto accepted the Notice at 3:34 p.m. on July 17, 2014. *Id.* The Notice directed Respondent to file an answer and request a hearing within 20 days from the date of service, as required by section 308.19(a) of the FDIC's Rules of Practice and Procedure ("FDIC Rules"), 12 C.F.R. § 308.19(a). Respondent never responded in any manner to the Notice. R.D. at 1.

Failure to file an answer within the time provided constitutes a waiver of a respondent's right to appear and contest the allegations, and Enforcement Counsel may move for entry of a default. 12 C.F.R. § 308.19(c)(1). If the ALJ finds that no good cause has been shown for failure to file a timely answer, the ALJ shall file with the Board a recommended decision containing the findings and relief sought in the notice. The Board's final order is then deemed to be an order issued upon consent. 12 C.F.R. § 308.19(c)(1). In addition, if the respondent fails to

request timely a hearing in CMP proceedings, the notice of assessment constitutes a final and unappealable order. 12 C.F.R. § 308.19(c)(2). Notice at ¶¶ 32, 33.

On September 8, 2014, Enforcement Counsel moved for an order of default pursuant to FDIC Rule 308.19(c)(1). The Motion for Entry of Order of Default, supporting Declaration, and proposed Order to Show Cause (“Motion for Entry of Order of Default”) was served on Respondent’s last known address in Frankfort, Illinois, by overnight courier and by First Class Mail postage prepaid. R.D. at 2. On September 11, 2014, the ALJ issued an Order to Show Cause (“Show Cause Order”) directing Respondent to appear and show good cause why a default judgment should not be issued. R.D. at 2. The ALJ’s Show Cause Order was served on Respondent’s last known address in Frankfort, Illinois, by UPS Next Day Air Delivery. Respondent did not respond to either the motion for entry of default or the ALJ’s Order to Show Cause. R.D. at 2.

On October 1, 2014, Enforcement Counsel notified the ALJ that Respondent’s residence had changed. Respondent was booked into the DuPage County Jail, Wheaton, Illinois, on September 23, 2014. R.D. at 2.³ On October 24, 2014, the ALJ granted Enforcement Counsel’s Default Motion and issued the Recommended Decision. The Recommended Decision was delivered to Respondent’s Frankfort, Illinois, address and to his prison address via UPS Next Day Air Delivery. R.D. at 9.

III. DISCUSSION

³ The ALJ found that Respondent was booked into the DuPage County Jail on September 23, 2014, based on the DuPage County Sheriff’s Online Inmate Reference Information System. R.D. at 2.

The ALJ found and the record reflects that Respondent was properly served when the Notice was delivered to his last known residence in Frankfort, Illinois, and the FDIC received a return receipt showing that Josephine DiBenedetto accepted the documents at 3:34 p.m. on July 17, 2014. R.D. at 1. Respondent did not respond to the Notice. Respondent also failed to respond to Enforcement Counsel's Motion for Entry of Order of Default and the ALJ's Show Cause Order. The Notice, Motion for Entry of Order of Default, and Show Cause Order were all served in accordance with the FDIC's Rule governing service in enforcement proceedings, 12 C.F.R. § 308.11, and prior to Respondent's incarceration on September 23, 2014. R.D. 1-2.

The Board affirms the ALJ's findings that Respondent was properly served with the Notice, but that he failed to answer, appear, or show good cause for not filing an Answer. Further, the Board notes that Respondent did not file any exception to the ALJ's Recommended Decision. Under FDIC Rule 308.19(c)(1) Respondent has waived his right to appear and contest the allegations against him, and his default constitutes consent to entry of an order of prohibition and an order of restitution. R.D. at 2.⁴ Respondent's failure to file exceptions to the Recommended Decision pursuant to FDIC Rule 308.39⁵ must be deemed a waiver of any objections to the ALJ's Recommended Decision.⁶ Accordingly, a default judgment is appropriate.⁷ Finally, as the ALJ noted, Respondent's failure to request a hearing with respect to

⁴ 12 C.F.R. § 308.19(c)(1); *see, e.g., In the Matter of Patricia A. Amador*, 2014 WL 4640801 at *3 (FDIC); *In the Matter of Arlene Shih*, 2011 WL2574393 at *4 (FDIC); *In the Matter of Brenda J. Vikre*, 2009 WL 2477750 at *3 (FDIC); *In the Matter of Alex P. Majka*, 2007 WL 4698593 at *3 (FDIC); *In the Matter of Leann Bennett*, 2004 WL 2185944 at *3 (FDIC).

⁵ 12 C.F.R. § 308.39.

⁶ *See In the Matter of Patricia A. Amador*, at *3; *In the Matter of Arlene Shih*, at *4; *In the Matter of Alex P. Majka*, at *3; *In the Matter of Leann Bennett*, at *3.

⁷ *See, e.g., In the Matter of Patricia A. Amador*, at *3; *In the Matter of Arlene Shih*, at *4; *In the Matter of Alex P. Majka*, at *2; *In the Matter of Leann Bennett*, at *2.

the CMP renders the Order to Pay included in the Notice of Assessment a final and unappealable order under both the FDI Act and FDIC Regulations.⁸

The Board also agrees with the ALJ's findings that the undisputed facts in the Notice warrant a permanent bar from the industry and the imposition of a restitution order. The undisputed facts satisfy the three standards – misconduct, culpability, and effects – necessary to sustain a prohibition under section 8(e) of the FDI Act. The ALJ found, and the Board agrees that Respondent's actions (presenting false loan transactions to the Bank using straw borrowers) constituted *misconduct* – in the form of unsafe and unsound practices. Namely, Respondent prevented the Bank from properly assessing the riskiness of the loans or the creditworthiness of the true borrowers. R.D. at 5. Second, the loss to the Bank as a result of Respondent's unsafe and unsound conduct constituted *effect*. The Bank suffered a financial loss after writing off each of the loans. *Id.* Finally, the Respondent's *culpability* is evident, because each improper loan transaction involved deliberate deception and personal dishonesty. R.D. at 4-5.

Respondent's actions also meet the standards for imposing an order of restitution – in this case to the Receiver for the failed Bank – under section 8(b)(6)(A) of the FDI Act. Sections 8(b)(6)(A)(i)-(ii) of the FDI Act permit restitution when a party was unjustly enriched in connection with a violation or practice *or* the violation or practice involved a reckless disregard for the law or applicable regulations.⁹ Here, Respondent was unjustly enriched in the amount of \$626,789 because he improperly transferred proceeds from the three loans at issue to his personal account. In addition, Respondent repeated the same scheme at least three times over

⁸ 12 U.S.C. § 1818(i)(2) and 12 C.F.R. § 308.19(c)(2); *In the Matter of Patricia A. Amador*, at *3; *In the Matter of Arlene Shih*, at *4.

⁹ 12 U.S.C. § 1818(b)(6)(A)(i) – (ii).

two months, showing a reckless disregard for the Bank's safety and soundness, the law, and all applicable regulations. R.D. at 6.

Finally, the Board agrees with the ALJ that a CMP is warranted (R.D. at 7) and that the \$105,000 assessment is reasonable under the statute based on the same conduct warranting prohibition and restitution – namely, Respondent recklessly engaged in unsafe or unsound practices that resulted in pecuniary gain or other benefit for himself.¹⁰

IV. CONCLUSION

After a thorough review of the uncontested record in this proceeding, the Board, for the reasons set forth above, affirms the ALJ's Recommended Decision, incorporates herein the Findings of Fact and Conclusions of Law set forth in the Notice, and issues the following Orders implementing its decision.

ORDER TO PROHIBIT

The Board of the FDIC, having considered the entire record of this proceeding finds that Respondent Salvatore DiBenedetto, individually and as an institution-affiliated party of Arcola Homestead Savings Bank, Arcola, Illinois ("Bank"), engaged in unsafe or unsound banking practices that resulted in a financial loss to the Bank. Also, Respondent's unsafe and unsound conduct involved personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank. Respondent's actions resulted in financial gain or other benefit for Respondent. The Board hereby ORDERS and DECREES that:

1. Salvatore DiBenedetto 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

¹⁰ See 12 U.S.C. § 1818(i)(2)(B).

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. Salvatore DiBenedetto 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. Salvatore DiBenedetto shall not violate any voting agreement 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. Salvatore DiBenedetto shall not vote for a director, or serve or act as an officer, director, or employee of any financial institution 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. Salvatore DiBenedetto shall not 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).

6. This ORDER shall be effective thirty (30) days from the date of its service upon Respondent.

SO ORDERED.

ORDER TO PAY RESTITUTION

The Board of the FDIC, having considered the entire record of this proceeding finds that Respondent Salvatore DiBenedetto, individually and as an institution-affiliated party of Arcola Homestead Savings Bank, Arcola, Illinois ("Bank"), knowingly or recklessly engaged in unsafe or unsound banking practices that were part of a pattern of misconduct. Also, Respondent's unsafe and unsound conduct resulted in a loss to the Bank and a pecuniary gain for himself. The Board hereby ORDERS and DECREES that:

1. Salvatore DiBenedetto shall make restitution in the amount of \$626,789.00 to the FDIC as Receiver of the Bank. Remittance of the restitution payment shall be to the Federal Deposit Insurance Corporation, as Receiver of Arcola Homestead Savings Bank, and delivered to the Executive Secretary of the Federal Deposit Insurance Corporation, Washington, D.C.
2. This ORDER shall be effective thirty (30) days from the date of its service upon Respondent.

SO ORDERED.

IT IS FURTHER ORDERED that copies of this Decision and Order to Prohibit From Further Participation and Order to Pay Restitution shall be served on Salvatore DiBenedetto,

Enforcement Counsel, the ALJ, and the Illinois Department of Financial and Professional Regulation.

By direction of the Board of Directors..

Dated at Washington, D.C., this 17th day of February, 2015.

/s/

Robert E. Feldman
Executive Secretary

(SEAL)