

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

	)	
In the Matter of	)	
	)	
Alex P. Majka,	)	
	)	DECISION AND ORDER
Individually and as an	)	TO PROHIBIT FROM
Institution-affiliated party of	)	FURTHER PARTICIPATION
	)	
Lincoln Park Savings Bank	)	
Chicago, Illinois	)	FDIC-05-143k
	)	FDIC-05-142e
(Insured State Nonmember Bank)	)	
	)	

I. STATEMENT OF THE CASE

This matter is before the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) following the issuance on May 25, 2007, of a Recommended Decision on Default (Recommended Decision or R.D.) by Administrative Law Judge Ann Z. Cook (ALJ). The ALJ recommended that Alex P. Majka (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 found that he was subject to a final and unappealable civil money penalty (CMP) assessment pursuant to 12 U.S.C. § 1818(i)(2) and 12 C.F.R. § 308.19(c)(2).

This is an uncontested proceeding. The record shows that Respondent was served at his home address on November 3, 2006, with notice of the charges against him as set forth in the FDIC's Notice of Intention to Prohibit from Further Participation, and Notice

of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, and Notice of Hearing (Notices). R.D. at 1. Respondent failed to enter an appearance, file an answer to charges, request a hearing, respond to an Order to Show Cause or file exceptions to the Recommended Decision. R.D. at 2. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order of Prohibition against Respondent.

II. BACKGROUND

On August 16, 2006, the FDIC issued the Notices against Respondent pursuant to sections 8(e) and 8(i) of the FDI Act, 12 U.S.C. §§ 1818(e) and (i). Respondent, at all times pertinent to the charges in the Notices, served as controller of Lincoln Park Savings Bank, Chicago, Illinois (Bank) and was an institution-affiliated party pursuant to 12 U.S.C. § 1813(u). Notices ¶ 4. He remained in that position until October 19, 2004, when his employment was terminated. Notices ¶ 3.

The Notices charged Respondent with engaging and participating in unsafe and unsound banking practices and breaches of fiduciary duty. The Notices also alleged Respondent demonstrated personal dishonesty and willful or continuing disregard for the safety and soundness of the Bank. Notices ¶¶ 13-15. The Notices included an Order to Pay directing that Respondent pay a \$10,000 CMP.

Specifically, the Notices charged that during the period July 24, 2004, through October 18, 2004, Respondent cashed 35 checks at the Bank that were drawn on his personal account at Glenview State Bank, Glenview, Illinois (Glenview). Each of the 35 checks was subsequently dishonored by Glenview. According to the Notices, 21 of the checks were dishonored for insufficient funds and returned to the Bank but rather than

returning the proceeds of the funds to the Bank, Respondent instructed a subordinate to apply the returned checks to “Accounts Receivable” account on the Bank’s general ledger. Three of the 35 checks dishonored by Glenview were returned to the Bank stamped “Refer to Maker.” Again, rather than returning the proceeds to the Bank, Respondent had a subordinate apply the returned checks to the “Accounts Receivable” account. The final 11 of the 35 checks were dishonored by Glenview because Respondent’s account there had been closed. Yet again, Respondent ordered a subordinate to apply the proceeds to the “Accounts Receivable” account. All told, Respondent cashed 35 dishonored checks at the Bank totaling \$72,700. Notices ¶¶ 6-7. As a result of his conduct which is uncontroverted, Respondent was financially enriched and the Bank suffered losses. Notices ¶ 9.

On November 3, 2006, after the Notices were issued, FDIC Enforcement Counsel (Enforcement Counsel) served copies via Federal Express at 3004 N. Hamlin, Chicago Illinois, Respondent’s last known address (N. Hamlin). Z. Majka signed the Federal Express tracking sheet for the Notices. Records of the Cook County Recorder of Deeds and the Cook County Assessor’s office show that the N. Hamlin property is owned by Alex and Zofia Majka. Enforcement Counsel sent correspondence and additional copies of the Notices to Respondent at N. Hamlin via regular mail and certified mail return receipt requested. Because the certified mail was never signed for, it was returned by the U.S. Postal Service but the regular mail was never returned. FDIC’s Motion for Default Judgment ¶¶ 2-4. The Notices directed Respondent to file an answer and request for a hearing within twenty days from the date of service, as required by section 308.19 of the

FDIC's Rules of Practice and Procedure (FDIC Rules), 12 C.F.R. § 308.19. Respondent never responded in any manner to the Notices. R.D. at 2.

On March 13, 2007, Enforcement Counsel moved, pursuant to section 308.19 of the FDIC's Rules, Motion for Entry of Order of Default judgment (Enforcement Counsel's Motion).¹ Respondent again failed to respond. On March 29, 2007, the ALJ issued an Order to Show Cause (Show Cause Order) directing that Respondent respond to the Notices by April 20, 2007, and to show good cause for having failed to do so previously. The Show Cause Order also provided that unless Respondent submitted a timely response, a recommended decision would issue granting the relief sought in the Notices. R.D. at 2. In accordance with section 308.11(b) of the FDIC's Rules, 12 C.F.R. § 308.11(b), Enforcement Counsel's Motion was served on Respondent by UPS overnight delivery service and first class mail and the ALJ's Show Cause Order was served on Respondent by Federal Express and first class mail, all to the N. Hamlin address. In the absence of a response to any of these documents, the ALJ, on May 25, 2007, granted Enforcement Counsel's Motion and issued the Recommended Decision which was served on Respondent at the N. Hamlin address by Federal Express. R.D. at 2.

III. Discussion

The Board concurs in and adopts the ALJ's Recommended Decision. The record reflects that Respondent received actual notice of the proceedings through service of the Notices at N. Hamlin, his last known address. Although Federal Express records indicate

¹ Section 308.19(c)(1) of the FDIC's Rules provides that when a respondent fails to timely answer a notice, Enforcement Counsel may move for entry of default judgment which shall be issued by the ALJ upon a finding that no good cause has been shown.

that the Notices were received and signed for, Respondent failed to respond to the Notices. Respondent also failed to respond to both Enforcement Counsel's Motion and to the Show Cause Order even though he was served with copies of the pleadings at his N. Hamlin address in accordance with FDIC Rules.

As described in the uncontested allegations in the Notices, Respondent's conduct clearly indicates an intentional and willful disregard of the FDIC's procedural requirements. In addition, the serious nature of Respondent's uncontested misconduct which included his converting \$72,700 of Bank funds for his own use evidences personal dishonesty and willful or continuing disregard for the safety and soundness of the Bank clearly warrants a permanent bar from the industry. As such, default judgment is warranted. *In the Matter of Leann Bennett*, 2004 WL 2185944 (FDIC) at *2; *In the Matter of Susan E. Maddocks*, 2003 WL 22829735 (FDIC) at *3; *In the Matter of Raymond M. Phillips*, 1996 WL 281984 (FDIC) at *2; *In the Matter of Hiram L. Fong*, 1995 WL 810685 (FDIC), at *2.

Respondent's default constitutes consent to entry of an order of prohibition and a waiver of his right to contest the allegations in the Notices under section 308.19(c)(1). *In the Matter of Leann Bennett*, *Id.* at *3; *In the Matter of Susan E. Maddocks*, *Id.*; *In the Matter of Kevin L. Jensen*, 1996 WL 768366 (FDIC), at *4.² Moreover, Respondent's failure to file exceptions to the Recommended Decision pursuant to section 308.39 of the FDIC's Rules, 12 C.F.R. § 308.39, must be deemed a waiver of any objections to the

² This case clearly is distinguishable from *Amberg, et al. v. FDIC*, 934 F. 2d 681 (5th Cir. 1991), and *Oberstar v. FDIC*, 987 F. 2d 494 (8th Cir. 1992), in which default judgments were overturned where the courts found that respondents' failures to comply with the FDIC's Rules was merely technical and that the respondents had taken steps indicating an intention to contest the charges against them. Here, no intention to contest or otherwise comply with the procedural requirements has been shown by Respondent and, as such, a default order is appropriate.

ALJ's Recommended Decision. *In the Matter of Leann Bennett, Id.*; *In the Matter of Susan E. Maddocks, Id.*; *In the Matter of Kevin L. Jensen, Id.*; *In the Matter of Raymond M. Phillips, Id.*.

Moreover, as the ALJ noted, Respondent's failure to request a hearing with respect to 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. 12 U.S.C. § 1818(i)(2) and 12 C.F.R. § 308.19(c)(2). R.D. at 2. Based on the serious nature of the charges in the Notices, which Respondent has not challenged, the Board agrees with the ALJ that a CMP is warranted and concludes that a \$10,000 assessment is reasonable. R.D. at 4.

V. Conclusion

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

ORDER TO PROHIBIT

The Board of the FDIC, having considered the entire record of this proceeding and finding that Respondent Alex P. Majka, formerly employed as controller by the Bank, engaged in unsafe or unsound banking practices causing financial loss to the Bank, breaches of fiduciary duty, and that his actions involved personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank, hereby ORDERS and DECREES that:

1. Alex P. Majka 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. Alex P. Majka 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. Alex P. Majka 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. Alex P. Majka 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 thirty (30) days from the date of its service upon Respondent.

IT IS FURTHER ORDERED, that a copy of this Decision and Order shall be served on Alex P. Majka, Enforcement Counsel, the ALJ, and the Secretary of the Illinois Department of Financial and Professional Regulation.

By direction of the Board of Directors.

Dated at Washington, D.C. this 16th day of October, 2007.

Robert E. Feldman
Executive Secretary