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[¶5202] **In the Matter of Veil David DeVillier, First Acadiana Bank, Eunice, Louisiana, Docket No. FDIC-92-24k (9-7-93).**

FDIC Board accepts ALJ's recommendation and assesses \$15,000 civil money penalty against former officer and director for multiple and serious Regulation O violations.

[.1] Regulation O — Overdrafts

Frequent, significant overdrafts on three checking accounts amounted to unauthorized loans in violation of Regulation O.

[.2] Regulation O — Loans to Relatives

Loans to respondent's family members found to be for the benefit of respondent, since a portion of the proceeds was deposited in respondent's account, and there was no evidence of the relatives' obligation to repay respondent for monies he had given them over many years.

[.3] Regulation O — Personal Loan

Personal loan in excess of Regulation O lending limits, at a time when respondent was writing numerous overdrafts and was unable to pay existing loans, entailed more than the normal risk of repayment.

[.4] Regulation O — Advance Rent Payment

Payment in advance by bank to respondent of ten months rent for office space was an extension of credit in the form of unearned compensation.

[.5] Civil Money Penalty — Losses to Bank

Though loans violated Regulation O and the bank suffered losses, there was no showing that the loans caused the losses; therefore the amount of loss is not a factor in setting the amount of civil money penalty.

[.6] Civil Money Penalty — Good Faith

Where respondent engaged in numerous violations, but his failure to comply with regulations was caused more by his inability to pay (due to combined business and personal misfortunes) than by unwillingness to comply, penalty should not be increased or decreased by the presence or absence of good faith.

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[.7] Civil Money Penalty — Ability to Pay

A penalty of \$15,000 is appropriate for respondent who was formerly a millionaire but now has low net worth and a salary of \$56,000.

**In the Matter of
VEIL DAVID DEVILLIER,
individually
and as chief executive officer,
president, director, and person
participating in the conduct of the
affairs of,
FIRST ACADIANA BANK
EUNICE, LOUISIANA
(Insured State Nonmember Bank — In Receivership)
DECISION AND ORDER
ON CIVIL MONEY
PENALTY PROCEEDING
FDIC-92-24k**

INTRODUCTION

This is a proceeding initiated by the Federal Deposit Insurance Corporation ("FDIC") on June 9, 1992,

seeking to assess a civil money penalty against Veil David DeVillier ("Respondent"), former chief executive officer, president, and director of First Acadiana Bank, Eunice, Louisiana ("Bank"), in receivership.

The alleged misconduct, which occurred during a one-year period, includes multiple instances of exceeding the Bank's lending limit and failure to secure prior board approval for certain loans and other transactions involving more than the normal risk of repayment or features unfavorable to the Bank, in violation of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. Part 215.²

Administrative Law Judge Arthur L. Shipe ("ALJ") held a hearing in this matter on January 12 and 13, 1993, in Shreveport, Louisiana. In his Recommended Decision³ issued on April 30, 1993, the ALJ concluded that Respondent had committed most of the charged violations. After consideration of mitigating factors, the ALJ recommended a substantially reduced assessment of \$15,000.

DISCUSSION

After a thorough review of the record in this proceeding, the Board of Directors ("Board") of the FDIC agrees with the ALJ's findings, including the recommended civil money penalty assessment, and adopts and incorporates herein by reference the ALJ's Recommended Decision, with one modification.⁴

CONCLUSION AND ORDER

Accordingly, the Board of Directors of the FDIC, having considered the entire record in this proceeding, taking into account the

¹ The proceeding also sought to impose the following civil money penalties against additional Respondents Whitney Ardoin, \$10,000; Eddie Brown, Sr., \$10,000; Michael Dupre, \$10,000; Bruce Brown, \$10,000; Joseph C. Sattler, \$15,000; James F. Dupre, \$10,000; Charles Aguiard, \$5,000; Brian N. Heinen, \$10,000; Rodney E. Landreneau, Jr. \$5,000; and Grady B. Lowe, \$10,000. Final settlements were entered on March 19, 1993 in amounts ranging from \$2,500 to \$7,500 against all Respondents, except for Grady B. Lowe, who failed to respond to the Notice.

² Respondent allegedly violated the following sections: 12 C.F.R. § 215.2(f), 215.4(b), 215.4(c), and 215.4(d).

³ Citations to the record of this proceeding shall be as follows:
Hearing transcripts, "Tr. at ____."
FDIC Exhibits, "FDIC Ex. at ____."

⁴ The Board has only one major point of disagreement with the Recommended Decision. The ALJ concluded that an October 13, 1988, loan of \$30,000 to Respondent was not shown to have been for his benefit and was therefore not a violation of Regulation O. Based on a review of the record, the Board must conclude that the ALJ was in error. The undisputed evidence shows that Respondent was already indebted to the Bank on October 13, 1988, for more than \$600,000. The record also establishes that the Bank's lending limit on that date was \$363,000 (15 percent of the unimpaired capital and surplus of \$2,420,000 on September 30, 1988). FDIC Ex. 2 at 6-A-4; FDIC Ex. 68. The evidence further establishes that Respondent was the loan officer (FDIC Ex. 20), and that the proceeds of the loan were deposited in an account of Respondent's law firm (FDIC Ex. 21; FDIC Ex. 22), to cover a \$26,275 overdraft created by a transfer to Respondent's personal checking account the day before. Tr. 139-42; FDIC Ex. 78; FDIC Ex. 81. From this evidence there can be no doubt that the loan was in violation of Regulation O when made, or that Respondent received a benefit regardless of any alleged purpose to benefit or any alleged benefit received by the Bank. Therefore, the Board rejects the ALJ's analysis and conclusion set forth on page 13 of his Recommended Decision and finds that the October 13, 1988, loan of \$30,000 was an additional violation of Regulation O.

{{11-30-93 p.A-2293}}appropriateness of the penalty with respect to the size of financial resources and good faith of Respondent, the gravity of the violations, and such other matters as justice may require, it is hereby

ORDERED that by reason of his multiple and serious violations of Regulation O, as set forth above, the Respondent is assessed a civil money penalty of \$15,000.

IT IS FURTHER ORDERED, that the Order shall be effective and the penalty shall be final and payable twenty (20) days from the date of this Order. The provisions of this Order shall remain effective and

enforceable except to the extent that, and until such time as, any provision of this Order shall have been modified, terminated, suspended or set aside by the Board.

IT IS FURTHER ORDERED, that the Executive Secretary, or his designee, is instructed to execute and serve copies of this Decision and Order on counsel for all parties, the Administrative Law Judge, and the Commissioner of Financial Institutions for the State of Louisiana.

By direction of the Board of Directors.

Dated at Washington, D.C. this 7th day of September, 1993.

/s/ Hoyle L. Robinson

Executive Secretary

RECOMMENDED DECISION

**In the Matter of
Veil David DeVillier, individually
and as Chief Executive Officer,
President, Director, and person
participating in the conduct and
the affairs of,
First Acadiana Bank
Eunice, Louisiana
(Insured State Nonmember Bank—In Receivership)
Arthur L. Shipe, Administrative Law Judge:**

This proceeding was instituted on June 9, 1992, by the issuance of a Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing.

The Notice named ten respondents. one respondent failed to answer the Notice, rendering the penalty assessment final as to him. The proceeding has been continued pending final settlement as to eight other Respondents. Thus, the proceeding has gone forward as to one Respondent, Veil David DeVillier, hereinafter referred to as the Respondent.

The Notice alleges violations by Respondent of 12 U.S.C. §375b, and Regulation O (12 C.F.R. §215), promulgated thereunder, which provisions apply to insured State nonmember banks by Section 18(j)(2) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(j)(2) (1987), and Section 337.3 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.3. The Notice assesses respondent a civil money penalty in the amount of \$508,717 pursuant to 12 U.S.C. §1828(j)(4) (1987).

Oral hearings were held in the proceeding on January 12 and 13, 1993, in Shreveport, Louisiana. Post-hearing briefs were filed by both parties, and FDIC filed a reply brief.

Based upon the entire record, including the exhibits and testimony and my observation of the witnesses' demeanor at the hearing, the following Discussion of Facts and Law, Findings of Fact, Conclusions of Law, and Order, are entered.

DISCUSSION OF FACTS AND LAW

The Respondent is 58 years old. He holds three degrees from Louisiana State University (LSU), the B.A., M.A., and J.D. He practiced law from 1960 to 1989. In addition to the practice of law, he has been active in the alumni affairs of LSU, in bar associations, in public economic development agencies, and other civic groups. He has served on corporate boards of directors, including bank boards.

He was a co-founder in 1965 of the First Acadiana Bank in Eunice, Louisiana, and served on its board of directors and as its president until 1989.

Respondent's 1988 federal tax return shows adjusted gross income of \$92,603. An unaudited financial statement, dated September 1, 1988, indicates a new worth of \$1,767,661. However, about this time his financial circumstances reversed. A financial statement, dated October 1, 1989, shows a net worth of \$834,426. In a letter to the FDIC regional director written in October 1989, Respondent states that his sole source of income at that time was the sale of unpledged assets, and that his law practice was losing money. The practice was later closed

[{{11-30-93 p.A-2294}}](#) and the office fixtures and books were sold to satisfy creditors.

Respondent had resigned his positions with the Bank in July 1989. The Bank was closed as insolvent by state regulators in December 1989, and the FDIC was appointed as its receiver.

At the present time, Respondent has a nominal, or negative, net worth, but he is employed by LSU as an assistant to the chancellor at a salary of approximately \$56,000.

The Respondent's personal finances were enmeshed with the Bank's activities. The transactions in issue in this proceeding are, in my opinion, largely explained, but not justified, by the reversal in Respondent's financial condition.

There are four areas of transactions in contention here. The first relates to checking accounts held by Respondent. The second concerns loans made to Respondent's relatives, his mother and brother, allegedly for Respondent's benefit. A third type of transactions involves loans to him, and his related interests. The fourth disputed area of transactions is based on the prepayment of rent by the Bank for the lease of office space from the Respondent.

Preliminarily, as a backdrop to the discussion that follows, and as more fully set forth in the Findings of Fact below, Respondent's outstanding debt at the Bank during the time involved here far exceeded the applicable loan limit. Section 215.2(f) defines this limit as 15 percent of the bank's unimpaired capital and unimpaired surplus for loans not fully secured with an additional 10 percent for loans "fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan."

The Respondent argued in his response to the 1989 FDIC Report of Examination that the additional 10 percent limitation applied to his loans, but that position is not pressed here. The examiners, in 1988 and 1989, found Respondent's loans to be undercollateralized, and in his calculation purporting to remove an apparent violation of lending limits in September 1988, the 15 percent limit was used. It is concluded that the 15 percent limit applied to Respondent's loans, and that it was exceeded at the time involved here.

CHECKING ACTIVITY

The Respondent held three checking accounts at the Bank, a personal account, a law firm account, and a trust account for the law firm. These accounts were for all practical purposes treated by Respondent and the bank as one personal account. During the period in question, all of these checking accounts became overdrawn at various times; hundreds of checks were presented when there were insufficient funds for payment. In numerous instances purported deposits were made in, and accredited to, one overdrawn account with checks written on other overdrawn accounts. That this practice occurred has been well established and is unrefuted.

The Bank's fee for presentation of insufficient funds checks was \$10.00 for most customers. Respondent was either charged no fee or was assessed \$2.50, purportedly on the ground that he fell into the category of "employee" for which there was an exception to the Bank's \$10.00 charge.

FDIC enforcement contends that Respondent's checking activity violated various provisions of Regulation O, including Section 215.4(d), which reads as follows:

"No member bank may pay an overdraft of an executive officer or director of the bank on an account at the bank, unless the payment of funds is made in accordance with (1) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (2) a written, preauthorized transfer of funds from another account of the account holder at the bank. This prohibition does not apply to payment of inadvertent overdrafts on an account in an aggregate of \$1,000 or less: Provided, (1) The account is not overdrawn for more than 5 business days, and (2) the member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances."

Initially, Respondent disputes the allegation that an extension of credit was granted to him in connection with his checking activity because he claims that with one exception, the checks were not cleared until covering funds were deposited, however, as indicated, the deposited "funds" frequently consisted of checks on other overdrawn accounts.

Respondent also argues that his overdrawn checks were subject to the second [{{11-30-93 p.A-2295}}](#) exemption in Section 215.4(d) referring to "a written, preauthorized transfer of funds from another account." In support of this claim he refers to signature cards giving a named bank employee authority to sign checks for his various checking accounts. Thus, presumably, when an uncovered check was presented for payment this employee could draw funds from another account for deposit in the account on which the check was drawn.

It seems doubtful that these signature cards constitute the written, preauthorization contemplated by the rule, and in any event, as stated, in many instances no actual funds were transferred.

Respondent's activity does not fall within the inadvertent exception of the considered provision since it was so extensive as to preclude any claimed lack of knowledge, and exceeded in the aggregate \$1,000. Respondent notes that it was not shown that he signed the checks in question. However, they were signed by persons upon his authority, and he is, accordingly, liable for their issuance.

[.1] Therefore, it is concluded that Respondent's check writing activity did result in the payment of overdrafts in violation of Section 215.4(d), as alleged.

FDIC enforcement further contends that Respondent violated Section 215.4(d) because he was either assessed no charge for his overdraft checks, or was assessed only \$2.50 while the normal overdraft charge of the Bank was \$10.00. Respondent clearly received preferential treatment in the matter of overdraft charges, but it is not so clear that this activity is covered by this rule. It requires that proper fees be charged on inadvertent overdrafts to bring them into that exception of the rule, but otherwise it seems that the preferential assessment of fees is extraneous to the rule. Therefore, this allegation is not sustained.

It is claimed that Respondent's checking activity also violated the lending limits established in Section 215.2(f) and 215.4(c) of Regulation O. As discussed, loans to Respondent, and his related interests, during this time greatly exceeded applicable lending limits. In view of the conclusion that his checking activity entailed the extension of credit, that activity increased the amount by which his indebtedness exceeded the lending limits. Therefore, it is found that the checking activity violated Sections 215.2(f) and 215.4(c).

It is further alleged that the described overdrafts resulted in extensions of credit that involved more than the normal risk of repayment as proscribed by Section 215.4(a)(2) of Regulation O. It is concluded that the activity itself establishes the lack of credit worthiness of Respondent, and proves the alleged violations of Section 215.4(a)(2).

FDIC enforcement alleges that the subject checking activity also violated Section 215.4(b) of Regulation O. This provision requires prior board approval of extensions of any credit to officers, with the officer abstaining, when that credit would increase the borrower's total indebtedness to an amount in excess of 5 percent of the Bank's unimpaired capital and unimpaired surplus. Since Respondent had credit exceeding that level throughout the period of time involved with the subject activity, and prior approval by the board was not obtained, Section 215.4(b) was violated.

LOANS TO RESPONDENT'S RELATIVES

[.2] On September 1, 1988, a loan was made by the Bank, with Respondent named as the loan officer, in the amount of \$40,000 to Hazel DeVillier, Respondent's mother. Of that amount, \$20,249 were deposited in Respondent's account. FDIC enforcement claims that the loan was, to that extent, made for Respondent's benefit, and thus was subject to the Regulation O requirements governing loans to officers.

Respondent contends that the proceeds of the loan received by him were made in repayment of amounts that his mother owed him. Respondent, along with two brothers, had over many years contributed to the support of his mother by paying her bills for car repairs, utilities, insurance, and by making mortgage and other loan payments. From time to time she gave notes evidencing the amounts received. However, there is no reason to believe that Mrs. DeVillier had any ability to pay off these notes, or that Respondent expected payment on them. Referring to the notes, he testified, "And I don't know if any of us ever kept them or did anything with them. I really don't know. But she kept the records, and she decided she wanted to turn around and pay us." Tr. 205.

Respondent analogizes the borrowing by [{{11-30-93 p.A-2296}}](#) his mother to that of a client borrowing money from the Bank to pay for services rendered by Respondent to the client. It is assumed that such a loan would not be made for Respondent's benefit though that is not certain. Tr. 97-98. In any event, there is a clear distinction between receiving payment for services performed in a business setting and receiving repayment of money contributed to the support of a relative with no likelihood or expectation of repayment.

Moreover, the record clearly establishes that Respondent made the payments on the questioned \$40,000 Bank loan. Included with checks evidencing Respondent's payments on behalf of Mrs. DeVillier are checks for monthly payments on the \$40,000 loan for September, November and December 1988, and January, February, March, April, May, June, and July 1989. Plainly, Respondent would not have made payments on a client's bank loan obtained to pay Respondent for services rendered to the client. (It is not understood how the claimed indebtedness evidenced by these payments justified the previously granted Bank loan.)

On May 31, 1989, a second loan was extended by the Bank to Mrs. DeVillier in the amount of \$25,000. Respondent also received the proceeds of this loan. Respondent states that he had no role in the processing of the second loan application, and that the application was filled out by his brother and signed by his mother. However, Respondent consented to be the loan officer of record, and accepted the proceeds of the loan. In these circumstances he cannot disclaim responsibility for the matter.

It is concluded that the \$40,000 loan was, in part, and the \$25,000 loan was entirely, made for the benefit of Respondent. This rendered the loans violative of Section 215.4(c) (establishing lending limits), Section 215.4(a)(2) (prohibiting insiders loans involving more than normal risk and other unfavorable

features), and Section 215.4(b) (requiring approval of certain loans to an insider by a majority of the entire board of directors).

[.3] On March 31, 1989, the Bank extended credit in the amount of \$18,000 to Joseph DeVillier, Respondent's brother. The proceeds of the loan, less a \$90.00-origination fee, were deposited in the brother's checking account on March 31, 1989. On that day the brother wrote a check on the deposited amount to Respondent, who then deposited the funds in his overdrawn personal checking account.

Respondent claims that this payment represented money owed to him by his brother from earlier transactions. However, again, it seems clear that there was no debt upon which repayment was required or expected. For example, Respondent in explanation of the origin of the claimed debt testified:

"[T]o the best of my recollection, I owned some stock in DeVillier Farms that I had loaned to my brother. And by loaning, I mean that I had given it to him, and he was going to pay me someday whenever he could or whenever he wanted to."

And he chose to pay me for the stock because we needed it, and so that was whatever amount it was. Tr. 209.

The remainder of his explanation is virtually incoherent, and does not in any case, establish the claimed debt.

It is, therefore, concluded that this loan was extended for Respondent's benefit, and is subject to the strictures governing insider bank loans. Because of Respondent's existing credit, this loan exceeded the lending limit of Section 215.4(c), and required prior board approval under Section 215.4(b), which was not accomplished.

PERSONAL LOANS

On October 13, 1988, a loan was extended to Respondent in the amount of \$30,000. Although it is evident that he obtained the immediate use of these funds, he denies that the loan was made for his benefit. He claims it was made to accommodate the Bank, and to keep it from having a large lawsuit placed against it. Tr. 213.

The minutes of the November 1988 Board of Directors make this reference to the loan:

The one Insider Transaction for the month involved a loan to DeVillier Law Office. The loan was an accommodation to assist a transaction beneficial to the bank and the money was necessary to complete the deal. Payment had been received in the amount of the loan but the draft had been forwarded for collection. Upon receipt of the money, the loan was paid in full.

That the note was quickly repaid is also indicated by the fact that it was not included among Respondent's loans sold by the FDIC receiver upon taking over the Bank.

Although what occurred with respect to this loan is not clear, it is concluded that it [{{11-30-93 p.A-2297}}](#) has not been shown to have been extended for Respondent's benefit.

On September 20, 1988, the Bank extended credit in the amount of \$350,000 to Respondent's law offices. The principal purpose of this credit was to rework existing loans already outstanding to Respondent, and his related interest. Proceeds from the loan in the amount of \$313,800 were used to pay off principal of existing loans, \$33,884.62 of the proceeds were used to pay accrued interest on those loans, and a \$100-extension fee was paid out of the loan proceeds, leaving \$2,215.38 of "unallocated" funds. FDIC Ex. 2 at 6-a. On October 13, 1988, another financial institution purchased a participation in the loan in the amount of \$150,000.

FDIC enforcement contends that this loan constituted "an extension of credit" within the meaning of Section 215.2(a), which reads, in part, as follows:

§215.3 Extension of credit.

(a) An extension of credit is a making or renewal of any loan, a granting of a line of credit, or an extending of credit in any manner whatsoever, and includes:

(6) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (i) accrued interest or (ii) taxes, insurance, or other expenses incidental to the existing indebtedness;

This loan for \$350,000, including the portion used to pay principal on existing loans, comes within the sweeping definition of "extension of credit" in Section 215.3(a), and subjects the loans to the restriction of Section 215.4(c) on lending limits, of Section 215.4(a)(2), prohibiting loans to officers and other insiders involving more than the normal risk of repayment, and of Section 215.4(b), requiring board prior approval

of certain loans.

The loan constituted an extension of credit in an amount in excess of the applicable lending limit, and in view of Respondent's writing uncovered checks at this time, as well as the criticized collateral for the loan, and Respondent's evident inability to pay interest on existing loans, the loan must also be deemed to have entailed more than the normal risk of repayment.

The loan was extended on September 30, 1988, but was not approved by the board until October 19, 1988. Thus, it did not receive prior approval as required by Section 215.4(b).

Respondent has argued that the proceeds of the loan, \$33,884.62, devoted to accrued interest on existing loans, the \$100 extension fee, and the \$2,215.38 on unallocated funds are subject to the exception to the credit extension under Section 215.3(a)(6) because these funds were allegedly extended for the "protection" of the Bank.

There is some basis for this contention. The payment of accrued interest, and the extension fee, may have facilitated the sale of a participation in the credit to another institution. Respondent states that the "unallocated" funds were needed to pay premiums on insurance for some of the Bank's collateral. An insurance premium notice is offered which is claimed to refer to a policy that included coverage on the collateral.

Respondent's contentions on these portions of the loan will be accepted, but it is not believed that this establishes that the entire loan was outside of the definition of an extension of credit.

OFFICE RENT

[.4] On February 14, 1989, Respondent received a payment of \$7,630 from the Bank representing ten months of rent for office space leased by the Bank from Respondent. There is no apparent purpose for this advance payment other than to provide Respondent with immediate cash. Therefore, the payment constituted an extension of credit in the form of unearned compensation within the specific terms of Section 215.3(a)(7).

In the circumstances of Respondent's credit on the date of this payment it also violated the lending limit of Section 215.4(c). Additionally, the advance did not receive prior approval of the board, and thus also violated Section 215.4(b).

PENALTIES

The statute governing civil money penalties that was effective when the alleged violations occurred, former 1828(j)(4)(A), authorized the imposition of penalties in amounts of up to \$1,000 per day for violation by bank directors, officers and principal shareholders of the statutory provisions and regulations applicable in this proceeding. Considering the number of violations established here, and the number of days involved, it is apparent that a massive penalty, apart from any mitigating factors, would be authorized by the statute.

The Notice instituting this proceeding assessed a penalty of \$508,717. As explained by an FDIC examiner, the elements of this assessment were derived as follows: \$10,000 for each of six alleged extensions of credit made after the July 1988 examination in which Regulation O violations were found; \$11,717 for lost income from unassessed checking overdraft fees; \$25,000 for the overdraft violations; and \$412,000 for losses allegedly incurred on Respondent's credits.

It should be noted, initially, that because of Respondent's present financial circumstances, an assessment for more than a fraction of this total amount would be a "paper judgment."

Although the considered violations are numerous, and very serious, there are other matters to be taken into account in arriving at an appropriate penalty.

The rationale for assessing that \$412,000 is that it represents restitution for losses incurred on Respondent's law office loans classified at the 1989 examination; \$350,000 were classified as loss, and \$124,000 as doubtful. One half of the latter figure was added to the first to arrive at the \$412,000 total. It is uncertain, however, what the actual loss was on these loans, either to the Bank, or its successor.

The American Security Bank purchased the notes owed by Respondent, and his law firm, reflecting a total due amount of \$647,492.57 in principal, and \$90,063.59 in interest. According to an instrument entitled "Partial Dation En Paiement" the purchasing bank settled with Respondent for partial payment based on the conveyance of collateral. The collateral was given a stipulated value of \$190,655.57. Respondent represented to the bank holder of the notes that this property had a value of at least \$750,000 when it was originally mortgaged or pledged to First Acadiana Bank.

The Partial Dation En Paiement granted Respondent a release on the indebtedness of \$250,850.89. The parties also agreed that the remaining balance due on the indebtedness is \$296,050, for which Respondent signed a new note, though apparently he is not personally liable thereon.

This is a complex instrument drawn under Louisiana law pursuant to negotiated terms. It is quite

possible that the figures stated therein are constructive and were not intended to reflect the difference between the face value of the notes and the amounts received in satisfaction thereof. Thus, while the instrument leaves no doubt that the Respondent's indebtedness has been discounted, the amount cannot be determined. Nor is there any showing as to the amount paid by the American Security Bank for the notes.

In addition to the uncertainty of the amount of losses incurred by the creditors on Respondent's loans, there is an absence of a nexus between those losses and the violations shown in this proceeding. These loans were extended to the Respondent, or renewed, in 1986, 1987, and 1989. The violations related to these loans concern the \$350,000-loan extended on September 30, 1988, which except for about \$2,000, consolidated existing loans, and covered accrued interest.

[.5] Although that loan has been found violative of various Regulation O provisions, it cannot be found that the violations were the cause of the losses. In fact, since the consolidated loan facilitated a sale of participation in the debt, it was beneficial to the Bank. It is concluded, therefore, that the losses on the loans to Respondent and his related interests should not be a significant factor in determining the amount of any penalty to be assessed. If these losses are excluded from consideration a substantial penalty would nevertheless be warranted in the absence of other mitigating circumstances.

[.6] One factor to be weighed in assessing penalties is the good faith of a Respondent. FDIC counsel argues that the record demonstrates a history of previous lending violations by Respondent, based on the 1988 Report of Examination. That Report noted that Respondent's loans exceeded the lending limit by \$68,700 caused by loans extended in later 1987 and early 1988. The September 30, 1988 loan was an unsuccessful endeavor to effect compliance with the lending limits. The violations continued, and were cited in the 1989 Report, and the new loan was cited for additional violations. Respondent's failure to effect compliance in view of later developments, was almost certainly caused more by his inability to pay or shift his debts than an unwillingness to attempt to comply with the lending regulations.

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FDIC enforcement contends that there is no showing that Respondent officially informed the other insiders that he was receiving a benefit from the loans to his mother and brother, to himself, and from the lease prepayment. Though it has been found that the loans to Respondent's relatives were for his benefit, and the claim that the loans reflected repayments of debts to him has been found unjustified, Respondent may have believed that the loans had a color of law under the desperate circumstances in which they occurred. The personal loan to himself has been excluded as one of his improper loans. The prepayment of rent was improper and was justified, but its benefit to him, and detriment to the Bank was nominal. It cannot be determined on this record what was disclosed to, or known by, the other insiders about any of these loans.

There has been no indication that Respondent has destroyed, fabricated or falsified documents to disguise or conceal the transactions in dispute. An experienced FDIC examiner, who has known Respondent from prior examinations, testified that he did not believe he had ever been misled by Respondent. Tr. 88, 92–93. It is my opinion that any penalty imposed should not be increased or decreased by the presence or absence of Respondent's good faith in relation to the violations in issue.

[.7] Section 1828(j)(4)(G) states that the size of the financial resources of the person charged shall be taken into account in setting an appropriate penalty. Respondent's assertions that he has virtually no assets does not seem to be disputed by FDIC enforcement, but they contend that Respondent's income warrants the imposition of a substantial penalty, though not necessarily of the amount suggested in the Notice. As stated, Respondent now draws a salary of about \$56,000. Tr. 248. In 1991 he reported an additional business income of \$24,235. He also reported losses for that year of over \$37,000. His reported adjusted gross income was \$1,888. Ex. FDIC 83. It is doubtful if the business income will be received in the future. Tr. 247.

Thus, Respondent's financial resources consist almost entirely of his salary. He is an individual 58 years old. He continues to contribute to the support of his mother, as well as a disabled sister. He is attempting to develop an educational fund for a grandson, whose mother, Respondent's daughter, is deceased.

Section 1828(j)(4)(G) also states that in determining the appropriateness of a penalty "such other matters as justice may require" shall be taken into account. It is concluded that justice requires that some consideration be given to the following matters.

The Respondent formerly has assets of several million dollars, and held a station in life reflective of his wealth. Tr. 177–183. His wealth is all gone. A large home was sold, and he now lives in an apartment. Tr. 184. During the time in issue here his wife, who suffers from lupus, was also undergoing treatment for cancer. On April 23, 1989, in the midst of his financial difficulties, and his wife's illnesses, one of his two daughters was killed in an automobile accident. It is believed that these matters should not be ignored in

meting out punishment to Respondent. He is a wounded man. Moreover, these matters cannot be separated from his conduct, his decisions, and his exercise of judgment reflected in the considered violations.

I conclude that an appropriate civil money penalty, in view of the gravity of the offenses, the size of Respondent's financial resources, and the other matters discussed, would be \$15,000.

FINDINGS OF FACT

1. Respondent is 58 years old. He holds a bachelor's degree in economics, and a master's degree in state and local government from Louisiana State University, as well as a law degree from the same university. He practiced law from 1960 to 1989. In addition to the practice of law, he has served on corporate boards of directors and as Chief Counsel for the Louisiana Oil and Gas Department. He has been active in various bar associations, in alumni affairs of his university, and has served as president of its alumni association. Tr. 176–179, 182; Ex. Resp. 2 (final attachment).

2. At all times relevant hereto, Respondent was the president and chief executive officer, as well as a director of the Bank. He resigned as president on July 15, 1989, and as director on August 1, 1989. Tr. 19–20, 232.

3. At all times relevant to this proceeding, First Acadiana Bank (the Bank) was a state nonmember bank insured by the FDIC. It [{{11-30-93 p.A-2300}}](#) was incorporated pursuant to the laws of Louisiana. Its principal place of business was in Eunice, Louisiana. Tr. 18–19.

4. The Bank was examined by a team of FDIC bank examiners ("the 1988 examination"), and a Report of Examination was prepared as of the close of business on July 22, 1988. Tr. 29; Ex. FDIC-1.

5. The 1988 examination cited a violation of Section 215.4(c) of Regulation O in that the extensions of credit to Respondent and his related interests were in excess of 15 percent of the applicable lending limit after September 1987. Ex. FDIC-1.

6. The 1988 examination cited a violation of Section 215.4(d) of Regulation O in that the Respondent was not charged an overdraft fee for one NSF check paid in October of 1987. Ex. FDIC-1.

7. The 1988 examination listed the extensions of credit of Respondent and his law firm for special mention because the credit was undercollateralized, and his debts had not been amortized in an acceptable manner. Ex. FDIC-1.

8. At the conclusion of the examination, Respondent attended a meeting on September 7, 1988, with representatives of the FDIC and the Louisiana Office of Financial Institutions in which the findings of the 1988 examination (including violations of Regulation O) were discussed in detail. Tr. 90–91; Ex. FDIC-1, p. 1-a-1.

9. During June 1989, the Bank was again examined by a team of FDIC bank examiners ("the 1989 examination"), and a Report of Examination was prepared as of the close of business on June 2, 1989. Tr. 30; Ex. FDIC-2.

10. During the course of the examination, the Bank examiners reviewed the deposit records of Respondent's three accounts— Account No. 0520117 (Respondent's personal checking account), Account No. 4114466 (Respondent's counselor-at-law trust account) and Account No. 4114532 (Respondent's law office account) for the period July 1988 through June 1989. Tr. 32–34, 118–119; Exs. FDIC-78, FDIC-79, FDIC-80.

11. During the course of the 1989 examination, the Bank examiners reviewed Bank records indicating that Respondent's name appeared on the Bank's NSF Report on a daily basis. Tr. 34.

12. Respondent's checks appearing on the Bank's NSF Report, were not returned but were held by Bank personnel until the Respondent (or his representative) was given the opportunity to cover the daily NSF items. Tr. 42, 121–122; Ex. FDIC-2, p. 6-a-6.

13. To "cover" NSF checks, Respondent (or his representative) frequently would write checks drawn on other accounts with insufficient funds. At some point, the overdrafts were resolved through a deposit either from the Bank's own funds, though extensions of credit, or from some other outside sources. Tr. 37, 131–132; Exs. FDIC-77, FDIC-81.a)

14. Checks secured with insufficient funds were passed between Respondent's two accounts—Account No. 0520117 and Account No. 4114532—on a daily basis from February 21, 1989, to March 31, 1989; and April 4, 1989, to June 1, 1989. Tr. 41; Exs. FDIC-77, FDIC-81.

15. Between July 1988 and June 1989, 1,401 individual NSF items were presented by Respondent to the Bank for a total dollar amount of \$1,194,883. Tr. 43; Ex. FDIC-2, p. 6-a-5.

16. The normal fee charged per NSF item to most customers of the Bank during this period was \$10.00. Tr. 44, 123; Ex. FDIC-2, p. 6-a-1.

17. Respondent failed to pay any fee for NSF checks drawn on any of the Respondent's three accounts prior to December 2, 1988. Tr. 43; Ex. FDIC-2, p. 6-a-1.

18. Commencing in December 1988, Respondent was charged a fee of \$2.50 for each NSF item. Tr. 43, Ex. FDIC-2, p. 6-a-1.

19. For Account No. 0520117 (personal checking account), 198 NSF items were presented totalling \$254,426.18 for which no fee was charged, and 411 NSF items were presented totalling \$416,991.92 for which a per item fee of \$2.50 was charged. Tr. 43–44, 127; Ex. FDIC-2, p. 6-a-1.

20. For Account No. 4114532 (law office account), 285 NSF items were presented totalling \$168,834 for which no fee was charged, and 506 NSF items were presented totalling \$449,280.61 for which a per item fee of \$2.50 was charged. Tr. 44, 127; Ex. FDIC-2, p. 6-a-1.

21. For Account No. 4114466 (law office trust account) one NSF item was presented totalling \$5,350.68 for which a per item fee

{{11-30-93 p.A-2301}} of \$2.50 was charged. Tr. 128; Ex. FDIC-2, p. 6-a-1.

22. Respondent's failure to pay the normal \$10.00 fee resulted in an approximate loss to the Bank of \$11,717. Tr. 46; FDIC-2, p. 6-a-1.

23. The dollar amount on which a lending limit is based, for purposes of Regulation O, is the amount of unimpaired capital and unimpaired surplus as reflected in the Bank's Consolidated Reports of Condition and Income which is filed at the end of each quarter. Tr. 48–49.

24. The Bank's unimpaired capital and surplus as reported on the Bank's Consolidated Reports of Condition and Income were as follows:

June 30, 1988 through September 29, 1988—	\$2,140,000
September 30 through December 30, 1988—	\$2,420,000
December 31, 1988 through March 30, 1989—	\$2,039,000
March 31, 1989 through December 30, 1989—	\$2,024,000

Exs. FDIC-2, p. 6-a-4, FDIC-67, FDIC-68, FDIC-69, FDIC-70.

25. Between June 30, 1988, and September 29, 1988, the Bank's lending limit under Sections 215.2(f) and 215.4(c) of Regulation O was 15 percent of the Bank's unimpaired capital and unimpaired surplus, or \$321,000. Tr. 49, 62; FDIC-67.

26. Between September 30, 1988, and December 30, 1988, the Bank's lending limit for purposes of Section 215.2(f) and 215.4(c) of Regulation O was 15 percent of the Bank's unimpaired capital and unimpaired surplus, or \$363,000.

27. Between December 31, 1988, and March 30, 1989, the Bank's lending limit for purposes of Sections 215.2(f) and 215.4(c) of Regulation O was 15 percent of the Bank's unimpaired capital and unimpaired surplus, or \$305,850. Tr. 50; Ex. FDIC-69.

28. Between March 31, 1989, and June 29, 1989, the Bank's lending limit for purposes of Section 215.2(f) and 215.4(c) of Regulation O was 15 percent of the Bank's unimpaired capital and unimpaired surplus, or \$303,600. Tr. 50; Ex. FDIC-70.

29. The personal checking account (Account No. 0520117) and the law office checking account (Account No. 4114532) were both used by Respondent interchangeably and for Respondent's personal benefit during the period of July 1988, to June 1989.

30. On September 1, 1988, the Bank extended credit in the name of Hazel DeVillier for an amount of \$40,000. Respondent is named as the loan officer on the loan. Tr. 51; Exs. FDIC-3 through 7, FDIC-2, p. 2-a-4, FDIC-4.

31. The proceeds of the \$40,000 extension of credit to Hazel DeVillier was disbursed as follows: \$19,750.92 was used to pay off an existing loan at the Bank in the name of Hazel DeVillier and \$20,249.08 was deposited in Account No. 4114466 (Respondent's trust account). Tr. 53–54, 225; Exs. FDIC-8, FDIC-9, FDIC-10, FDIC-11, FDIC-12.

32. Five checks totalling \$15,000 were subsequently written on Account No. 4114466 (Respondent's trust account) during September 1988, and distributed to Respondent through his personal checking account and/or his law office account. Tr. 55–56; Exs. FDIC-13, FDIC-14, FDIC-15, FDIC-16, FDIC-17.

33. Respondent made repayments to the Bank on the extension of credit identified in Finding 30 (Note No. 12507) in monthly amounts of \$426.57 by checks written from his personal account. Tr. 56–57, 105; Exs. Resp. 2 and FDIC-18.

34. Of the original extension of credit to Hazel DeVillier, \$20,429 was included in Respondent's line of credit and subject to adverse classification by the examiners at the examination as of June 2, 1989. Tr. 57–58; Ex. FDIC-2, p. 2-a-4.

35. The credit was not protected by the sound worth or paying capacity of either the person in whose name the credit was extended or the Respondent. The records from the Bank failed to disclose an income or a payment source that could support the proper amortization of credit. The application contained no financial information concerning Mrs. DeVillier. Tr. 58, 103; Exs. FDIC-2, pp. 6-a and 2-a-4, FDIC-4.

36. The benefit received by Respondent of the extension of credit to Hazel DeVillier on September 1, 1988, was not disclosed on the loan application. Tr. 60; Exs. FDIC-2, p. 6-a-2, FDIC-4.

37. The extension of credit to Hazel DeVillier was submitted to the Bank's board of directors for subsequent approval at the regular board meeting on October 19, 1988. The minutes of that meeting fail to indicate that Respondent was to receive any portion of the proceeds from the loan. Tr. 60–61; Exs. FDIC-2, p. 6-a-3, FDIC-19.

38. As of September 1, 1988, the total debt of Respondent and his related interests was in excess of \$760,000. Tr. 62; Ex. FDIC-2, p. 6-a-5.

39. On May 31, 1989, the Bank extended credit in the amount of \$25,000 in the name of Hazel Mary LeDoux (DeVillier). Tr. 64–65; Ex. FDIC-49.

40. The entire amount of the proceeds was deposited in Respondent's law office trust account at the Bank—Account No. 4114466. Tr. 65, 225; Exs. FDIC-50, FDIC-52.

41. On June 1, 1989, \$10,000 of the proceeds of the above extension of credit was transferred from the Respondent's law office trust account to his law office account— Account No. 4114532. Tr. 66; Ex. FDIC-53.

42. On May 31, 1989, \$8,800 of the proceeds of the described extension of credit was transferred by check from Respondent's law office account (Account No. 4114532) to Respondent's personal account (Account No. 0520117) to cure an overdraft in the personal account of \$6,428.78. Tr. 67–69; Ex. FDIC-62.

43. The proceeds of this credit were utilized in part to place positive balances in both Respondent's personal checking account (Account No. 0520117) and his law office checking account (Account No. 4114532) since both of the accounts were overdrawn at the time. Tr. 68–69; Ex. FDIC-81.

44. On June 2, 1989, \$1,000 of the proceeds of the \$25,000 extension of credit was transferred by check from Respondent's law office trust account to Respondent. Tr. 66; Ex. FDIC-54.

45. On June 2, 1989, \$1,800 of the proceeds of the extension of credit were transferred from Respondent's law office trust account for travelers checks for Respondent's trip to Europe for Respondent. Tr. 66; Ex. FDIC-55.

46. On June 5, 1989, \$200 of the proceeds of this extension of credit were transferred from Respondent's law office trust account to Respondent. Tr. 66; Ex. FDIC-56.

47. On June 5, 1989, \$296.35 of the proceeds of this extension of credit was transferred from Respondent's law office trust account to Central Bank of Birmingham for foreign currency for Respondent. Tr. 67; Ex. FDIC-57.

48. On June 7, 1989, \$1,100 of the proceeds of this extension of credit was transferred by check from Respondent's law office trust account to Respondent's law office account. Tr. 67; Ex. FDIC-58.

49. On June 7, 1989, \$3,000 of the proceeds of this extension of credit was transferred by check from Respondent's law office trust account to Respondent. Tr. 67; Ex. FDIC-59.

50. The extension of credit was not adequately protected by either the collateral or the repayment capacity of Hazel DeVillier or Respondent. Tr. 70; FDIC-2, p.6-a.

51. The extension of credit did not receive the prior approval of a majority of the board of directors of the Bank. This loan was listed and attached to the minutes of the meeting of the board of directors on June 13, 1989, as loans in excess of \$25,000 that had been extended during the prior month. Tr. 70–72; Exs. FDIC-2, p. 6-a-3; FDIC-64.

52. As of May 31, 1989, the total debt of Respondent and his related interests was in excess of \$650,000, an amount that far exceeded the applicable lending limit of \$303,600. Tr. 70–71; Ex. FDIC-2, pp. 6-a-4 and 6-a-5.

53. On September 30, 1988, the Bank extended credit in the amount of \$350,000 to the DeVillier Law Offices. Tr. 73; Exs. FDIC-2, FDIC-25, FDIC-26.

54. The extension of credit represented previously incurred debt of Respondent and his law firm with the Bank, capitalization of accrued interest, fees and an additional advance in the amount of \$2,215. Tr. 73; Exs. FDIC-27, FDIC-2, p. 6-a.

55. The Executive Committee of the Bank, on September 28, 1988, considered the proposed extension of credit by reviewing a loan commitment memorandum. The loan commitment memorandum failed to disclose that the extension of credit contained capitalized interest and additional monies for Respondent's use, failed to properly disclose the amount of a proposed participation [{{11-30-93 p.A-2303}}](#) by a second financial institution. The minutes of the meeting indicated that the other financial institution was committed to take a participation not less than \$150,000. The minutes did not indicate that any action or vote was taken on the proposal. Respondent was present at the meeting along with Whitney Ardoin, Joseph Sattler, Eddie Brown, Sr., and James Dupre (acting as loan officer). While all of these individuals were members of the board of directors, they did not constitute a majority of the board of directors. Tr. 74, 166–167, 224; Exs. FDIC-26, FDIC-29.

56. The loan when aggregated with the other outstanding credits to Respondent and his law office exceeded the amount that had been previously approved by the board of directors for these borrowers. Since the loan in question was to an insider (or to his interests), prior approval of the extension of credit was necessary. The loan was approved by a majority of the board of directors at a board meeting on October 19, 1988, subsequent to the Bank's actual extension of the credit. Tr. 78–79, 115–116; Exs. FDIC-19; FDIC-2; p. 6-a-2; FDIC-26.

57. A portion of the extension of credit, or \$150,000, was sold (or participated out) to another bank on October 13, 1988. Tr. 79, 223; Ex. FDIC-28.

58. The extension of credit was not well collateralized and the borrower displayed no ability to repay a debt of that amount. The extension of credit was adversely classified in the Report of Examination as of June 2, 1989. Tr. 76–78; Ex. FDIC-2, pp. 6-a-1, 2-a-4, 2-a-6; FDIC-30; FDIC-31.

59. On September 30, 1988, the total indebtedness for Respondent and his related interests was in excess of \$640,000. This amount greatly exceeded 15 percent of the Bank's unimpaired capital and unimpaired surplus (\$363,000) as of that date. Tr. 79; Ex. f-2, p. 6-a-5.

60. Criticism of Respondent's line of credit that appeared in the Report of Examination as of July 22, 1988, regarding credit quality was continued in the examination as of June 2, 1989. The overdrawn status of Respondent's accounts contained in the July 22, 1988 Report of Examination not only continued, but worsened by the time of the June 2, 1989, examination by the FDIC examiners. Tr. 80; Exs. FDIC-1; FDIC-2.

61. On February 14, 1989, Respondent received \$7,630.00 from the Bank which represented ten months of lease prepayments under a lease that was executed between the Bank and Respondent dated October 15, 1986. Tr. 85–86, 94; Exs. FDIC-32, FDIC-33, FDIC-34 and FDIC-35.

62. The proceeds of these lease prepayments were deposited into Respondent's personal account (Account No. 0520117) to cure overdrafts at the time in both his personal account and his law office account. Respondent deposited the check in his personal account even though the check was written out to the law office. Tr. 86; 144–145; Exs. FDIC-33, FDIC-81.

63. Respondent received the proceeds of the lease prepayment prior to receiving approval from a majority of the Bank's board of directors. Tr. 145–146.

64. As of February 14, 1989, the aggregate total of credit extended by the Bank to Respondent and his related interests exceeded the lending limit of \$303,850.00. Tr. 146; Ex. FDIC-2, p. 6-a-4.

65. On March 31, 1989, the Bank extended credit in the amount of \$18,000 in the name of Joseph DeVillier. Tr. 87; Ex. FDIC-40.

66. The Respondent (who was the borrower's brother) was named as loan officer in the transaction. Tr. 87; Exs. FDIC-40, FDIC-41, f-42.

67. The proceeds of the extension of credit (minus a \$90.00 origination fee) were deposited in the account of Joseph DeVillier (the customer) on March 31, 1989. On the same day, Joseph DeVillier wrote a \$17,910 check to Respondent who deposited the amount into his personal account (Account No. 0520117) to cover overdrafts in both his personal account and his law office account (Account No. 4114532). Tr. 87–89, 96, 147–148, 225–226, 246; Exs. FDIC-43, f-44, f-45, FDIC-46 and FDIC-81.

68. Respondent, as loan officer, failed to disclose the true purpose of the loan and failed to obtain approval of the extension of credit from a majority of the Bank's board of directors prior to the consummation of the extension of credit. Tr. 149.

69. On October 13, 1988, the Bank extended credit in the amount of \$30,000 to Respondent and DeVillier Law Offices. Mr. DeVillier acted as loan officer for this extension of credit. Tr. 139; Ex. FDIC-20.

70. The proceeds of the loan were deposited into the law office account at the Bank (Account No. 4114532) on October 13, 1988. Of the proceeds, \$27,275 were then transferred to his personal account (Account No. 0520117) to cover a \$25,000 check that Respondent had written on his personal account and was presented to the Bank on October 12, 1988, (the previous day) for payment. Tr. 139–141; Exs. FDIC-21, FDIC-22 and FDIC-81.

71. The minutes of the subsequent board of directors' meeting on November 16, 1988, made reference to this extension of credit to the DeVillier Law Offices and indicated that the credit was extended as an accommodation to assist a transaction beneficial to the Bank, and that the loan had been paid in full. Tr. 141–142; 158; Ex. FDIC-24.

72. The loan was not included among Respondent's notes when the Bank was closed in December 1989 and his loans were sold to another institution. Ex. FDIC-86.

73. Respondent's line of credit has never been repaid in full although a successor bank obtained a partial dation and permitted a portion of the debt to be forgiven. Tr. 252–256; Ex. FDIC-86.

74. The Respondent has virtually no assets at the present time. He draws a salary of about \$56,000 from his position as an assistant to the Chancellor of Louisiana State University. Tr. 183–184, 248; Ex. FDIC-83.

75. All facts referred to in the Discussion of Facts and Law, and not specifically stated herein, are hereby incorporated by reference as Findings of Fact.

CONCLUSIONS OF LAW

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of Louisiana.
2. At all times pertinent to this proceeding, the Bank was an insured state nonmember bank subject to the Act, 12 U.S.C. §1811, *et seq.*, and the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III.
3. The FDIC has jurisdiction over the Bank, the Respondent and the subject matter of this proceeding.
4. Under Section 18(j) of the Act, 12 U.S.C. §1828(j) (1987), the FDIC has authority to impose civil money penalties for violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b and Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 215.
5. During the period from July 1988 to June 1989, Respondent's NSF checks drawn on his two accounts resulted in overdrafts which exceeded \$1,000 and/or overdrafts outstanding more than five business days in violation of Section 215.4(d) of Regulation O, 12 C.F.R. §215.4(d).
6. The daily NSF items constituted extensions of credit to Respondent pursuant to Section 215.3 of Regulation O, 12 C.F.R. §215.3.
7. Respondent's activities in creating and/or extending the insufficient funds items were in violation of Section 215.4(a) of Regulation O, 12 C.F.R. §215.4(a), in that the items were not made on the same terms as those prevailing for other customers of the Bank and involved more than the normal risk of repayment and other unfavorable features.
8. Respondent's actions in creating and/or extending the insufficient funds items were in violation of Section 215.4(b) of Regulation O, 12 C.F.R. §215.4(b), in that the insufficient funds items did not receive prior approval from a majority of the entire board of directors of the Bank.
9. Respondent's actions in creating and/or extending the insufficient funds items were made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Sections 215.2(f) and 215.4(c) of Regulation O, 12 C.F.R. §§215.2(f) and 215.4(c), in that the insufficient funds items when aggregated with the amount of all other outstanding extensions of credit to Respondent and his related interests exceeded the Bank's lending limit.
10. The September 1, 1988 credit to Hazel M. DeVillier constitutes an "extension of credit" to Respondent within the meaning of Section 215.3 of Regulation O, 12 C.F.R. §215.3.
11. The September 1, 1988 extension of credit was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(a) of Regulation O, 12 U.S.C. §215.4(a), in that it was an extension of credit involving more than the normal risk of repayment and other unfavorable features.
12. The September 1, 1988 extension of credit to Hazel DeVillier was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(b) of Regulation O, 12 U.S.C. §215.4(b), in that extension of credit did not receive prior approval from a majority of the entire board of directors of the Bank.
13. The September 1, 1988 extension of credit was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Sections 215.2(f) and 215.4(c) of the Regulation O, 12 U.S.C. §§215.2(f) and 215.4(c), in that the extension of credit when aggregated with the amount of all other outstanding extensions of credit to Respondent and his related interests exceeded the Bank's lending limit.
14. With respect to the September 1, 1988 extension of credit to Hazel DeVillier, Respondent caused, brought about, participated in, counseled, or aided or abetted violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b and Section 215.2(f), 215.4(a), 215.4(b), 215.4(c) of Regulation O, 12 U.S.C. §§215.2(f), 215.4(a), 215.4(b), and 215.4(c).
15. The May 31, 1989 credit to Hazel DeVillier, constitutes an "extension of credit" to Respondent within the meaning of Section 215.3 of Regulation O, 12 C.F.R. § 215.3.
16. The May 31, 1989 extension of credit to Hazel DeVillier was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(a) of Regulation O, 12 C.F.R. §215.4(a), in that it was an extension of credit involving more than the normal risk of repayment and other unfavorable features.
17. The May 31, 1989 extension of credit to Hazel DeVillier was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(b) of Regulation O, 12 C.F.R. §215.4(b), in that the extension of credit did not receive prior approval from majority of the entire board of directors of the Bank.
18. The May 31, 1989 extension of credit to Hazel DeVillier was made in violation of Section 22(h) of

the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Sections 215.2(f) and 215.4(c) of Regulation O, 12 C.F.R. §§215.2(f) and 215.4(c), in that the extension of credit when aggregated with other outstanding credits to Respondent and his related interests exceeded the Bank's lending limit.

19. With respect to the May 31, 1989 extension of credit to Hazel DeVillier, Respondent caused, brought about, participated in, counseled, or aided or abetted violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and Sections 215.2(f), 215.4(b) and 215.4(c) of Regulation O, 12 C.F.R. §§215.4(a), 215.4(b) and 215.4(c).

20. The September 30, 1988 credit to DeVillier Law Offices constitutes an "extension of credit" as that term is defined in Section 215.3 of Regulation O, 12 C.F.R. §215.3.

21. The September 30, 1988 extension of credit to DeVillier Law Offices was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(a) of Regulation O, 12 C.F.R. §215.4(a), in that it was an extension of credit involving more than the normal risk of repayment and other unfavorable features.

22. The September 30, 1988 extension of credit to DeVillier Law Offices was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(b) of Regulation O, 12 U.S.C. §215.4(b), in that the extension of credit did not receive prior approval of the majority of the entire board of directors of the Bank.

23. The September 30, 1988 extension of credit to DeVillier Law Offices was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Sections 215.2(f) and 215.4(c) of Regulation O, 12 C.F.R. §§215.2(f) and 215.4(c), in that the extension of credit when aggregated with the other outstanding credits extended to Respondent and his related interests exceeded the Bank's lending limit.

24. With respect to the September 30, 1988 extension of credit to DeVillier Law Offices, Respondent caused, brought about, participated in, counseled or aided or abetted violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and Sections 215.2(f), 215.4(a), 215.4(b), and 215.4(c) of Regulation O, 12 C.F.R. §§ 215.2(f), 215.4(b) and 215.4(c).

25. The February 14, 1989 prepayment of rent for leased office space to DeVillier Law

[{{11-30-93 p.A-2306}}](#) Offices constitutes an "extension of credit" to Respondent within the meaning of Section 215.3 of Regulation O, 12 C.F.R. §215.3.

26. The February 14, 1989 prepayment of rent for leased office space to DeVillier Law Offices was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(b) of Regulation O, 12 C.F.R. §215.4(b), in that the extension of credit did not receive prior approval of a majority of the entire board of directors of the Bank.

27. The February 14, 1989 prepayment of rent for leased office space to DeVillier Law Offices was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Sections 215.2(f), and 215.4(c) of Regulation O, 12 C.F.R. §215.4(c), in that the extensions of credit to Respondent and his related interests exceeded the Bank's lending limit.

28. With respect to the February 14, 1989 prepayment of rent for leased office space to DeVillier Law Offices, Respondent caused, brought about, participated in, counseled or aided or abetted violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §§215.2(f), 215.4(b), and 215.4(c).

29. The March 31, 1989 extension of credit to Joseph DeVillier constituted an "extension of credit" to Respondent within the meaning of Section 215.3 of Regulation O, 12 C.F.R. §215.3.

30. The March 31, 1989 extension of credit to Joseph DeVillier was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(b) of Regulation O, 12 C.F.R. §215.4(b), in that the extension of credit did not receive prior approval of a majority of the entire board of directors of the Bank.

31. The March 31, 1989 extension of credit to Joseph DeVillier was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Sections 215.2(f) and 215.4(c) of Regulation O, 12 C.F.R. §§215.2(f) and 215.4(c), in that the extension of credit when aggregated with other outstanding credits extended to Respondent and his related interests exceeded the Bank's lending limit.

32. With respect to the March 31, 1989 extension of credit to Joseph DeVillier, Respondent caused, brought about, participated in, counseled or aided abetted violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and Sections 215.2(f), 215.4(b) and 215.4(c) of Regulation O, 12 C.F.R. §§215.4(b) and 215.4(c).

CONCLUSION

Based upon the foregoing Discussion of Facts and law, Findings of Fact, and Conclusions of Law, it is recommended that the attached order be adopted.

So Ordered, this 30th day of April, 1993.

PROPOSED ORDER

After taking into account the appropriateness of a penalty with respect to the size of the financial resources of Respondent, the good faith of Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require,

IT IS HEREBY ORDERED, that by reason of the violations set forth above, a penalty of \$15,000.00 be, and hereby is, assessed against Veil David DeVillier, pursuant to Section 18(j)(4) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j)(4).

IT IS FURTHER ORDERED, that the Order shall be effective and the penalty shall be final and payable twenty (20) days from the date of this Order. The provisions of this Order shall remain effective and enforceable except to the extent that, and until such time as, any provision of this Order shall have been modified, terminated, suspended or set aside by the Board.

By direction of the Board of Directors.

Dated at Washington, D.C., this ____ day of ____, 1993.