

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

	)	
In the Matter of	)	DECISION AND ORDER
	)	TO PROHIBIT FROM
BRENDA J. VIKRE,	)	FURTHER PARTICIPATION
	)	
Individually and as an	)	
Institution-affiliated party of	)	
	)	FDIC-07-252e
Commonwealth Co-operative Bank	)	FDIC-08-016k
Boston, Massachusetts	)	
	)	
(Insured State Nonmember Bank)	)	
	)	

I. INTRODUCTION

This matter is before the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC”) following the issuance on March 4, 2009, of a Recommended Decision on Default (“Recommended Decision” or “R.D.”) by Administrative Law Judge C. Richard Miserendino (“ALJ”). The ALJ recommended that Brenda J. Vikre (“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 Respondent 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 personally served with notice of the charges against her 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 (“Notice”). R.D. at 1. Respondent failed to enter an appearance, file an answer to the charges included in the Notice, request a hearing, or respond to an Order to Show Cause issued by the ALJ. R.D. at 1. Respondent also failed to file exceptions to the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order of Prohibition against Respondent.

II. BACKGROUND

On August 29, 2008, the FDIC issued the Notice 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 Notice, served as the treasurer and chief executive officer (“CEO”) of Commonwealth Co-operative Bank, Boston, Massachusetts (“Bank”) and was an institution-affiliated party pursuant to 12 U.S.C. § 1813(u). Respondent remained in those positions until November 14, 2005, when her employment was terminated. Notice at ¶¶ 2-3.

The Notice charged Respondent with engaging and participating in unsafe and unsound banking practices and breaches of fiduciary duty as a result of which she received a financial gain and the Bank suffered a loss. The Notice also alleged that Respondent demonstrated personal dishonesty and willful or continuing disregard for the safety and soundness of the Bank. Notice at ¶¶ 22-24. The Notice included an Order to Pay directing that Respondent pay a \$75,000 CMP. Notice at ¶¶ 30-31.

Specifically, the Notice charged that on multiple occasions between September 15, 2003 and August 11, 2005, Respondent posted to her personal account at the Bank

fictitious cash and check deposit transactions. Notice at ¶¶ 5, 7-8 and Exhibit A.

Because of her status at the Bank, Respondent was assigned a teller identification number and was able to post transactions from a terminal located at her desk. She was able also, by virtue of her positions, to make the fictitious deposits after regular Bank hours so that she avoided the scrutiny of other Bank employees. Notice at ¶¶ 9-11.

For each of the 15 deposits described in Exhibit A of the Notice as “check deposits” Respondent, instead of actually depositing a check, simply made a false entry on the Bank’s computer system indicating that she had deposited a check. Respondent did not create deposit slips or copies of any of the so-called “check deposits” as was the normal routine for check deposits at the Bank. Similarly, for each of the 16 “cash deposits” listed in Exhibit A, Respondent, instead of actually depositing cash, made false entries on the Bank’s computer system indicating that she had deposited cash and further failed to create deposit slips for any of these transactions. She concealed the shortages that resulted from her fictitious deposits by posting them to the Bank’s Items-in-Transit account. Notice at ¶¶ 13-16, 19; R.D. at 3-5.

Respondent received the proceeds from her fictitious deposits and used them to cover checks for her personal expenses. Had she not done so, her Bank account would have been overdrawn. Notice at ¶¶ 17-18.; R.D. at 5. All told, Respondent made 31 fictitious deposits totaling \$62,630. As a result of her conduct which is uncontroverted, Respondent was financially enriched in that amount and the Bank suffered commensurate losses. Notice at ¶ 23; R.D. at 6.

On September 30, 2008, a Deputy Sheriff from the Norfolk County Sheriff’s Office, Braintree, Massachusetts, personally served Respondent with the Notice at her

parents' house. FDIC Enforcement Counsel's ("Enforcement Counsel's") Motion for Entry of Order of Default at ¶¶ 2-3.¹ The Notice 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. Notice at ¶ 34. The Notice also provided that unless Respondent specifically requested a hearing within 20 days of service, the Notice of Assessment of Civil Money Penalty would become final and due within 60 days. Notice at ¶ 32. Respondent never responded in any manner to the Notice. R.D. at 1.²

On January 16, 2009, Enforcement Counsel moved, pursuant to section 308.19 of the FDIC's Rules, for Entry of Order of Default.³ On the same day, the ALJ issued an Order to Show Cause ("Show Cause Order") directing that Respondent respond to the Notice by February 5, 2009, and to show good cause why default judgment should not be granted. Enforcement Counsel's Motion for Entry of Order of Default and the ALJ's Show Cause Order were served on Respondent but she did not respond to either the

¹ Enforcement Counsel initially served Respondent by both U.S. mail and by Federal Express at her last known address. The Notice sent by U.S. Mail was never returned and is, therefore, presumed to have been delivered. The Federal Express tracking information indicates that the Notice was delivered, but that no signature was obtained. Enforcement Counsel's Motion for Entry of Order of Default at 2. The record indicates that all subsequent pleadings and orders were served on Respondent at her parents' address which is where she had been personally served with the Notice. The Board finds that such service was appropriate and consistent with Rule 308.11(c)(2)(v) of the FDIC's Rules of Practice which states that service shall be made by any "method reasonably calculated to give actual notice." 12 C.F.R. § 308.11(c)(2)(v).

² After Respondent was personally served, a lawyer contacted Enforcement Counsel on Respondent's behalf but he never entered an appearance in this action or filed a response to the Notice or any other type of responsive pleading. Although Respondent's lawyer discussed with Enforcement Counsel possible settlement of the charges, he did not respond to Enforcement Counsel's written request for sworn financial statements or to subsequent follow-up telephone messages from Enforcement Counsel. Enforcement Counsel's Motion for Entry of Order of Default ¶¶ 4-5.

³ 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.

motion or to the order. R.D. at 1. In the absence of any response, the ALJ, on March 4, 2009, granted Enforcement Counsel's motion and issued the Recommended Decision which was served on Respondent at her parents' address by Federal Express Overnight Delivery. R.D. at 7.

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 Notice at her parents' house. Although she was personally served with the Notice, she failed to respond. Respondent also failed to respond to both Enforcement Counsel's Motion for Entry of Order of Default and to the Show Cause Order even though she was served with copies in accordance with section 308.11 of the FDIC Rules of Practice. 12 C.F.R. § 308.11. As such, 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, namely the repeated misuse of her position as an officer of the Bank to deliberately convert \$62,630 of Bank funds for her own benefit evidences personal dishonesty and willful or continuing disregard for the safety and soundness of the Bank. This type of misconduct clearly warrants a permanent bar from the industry and, in this case, default judgment is appropriate. *In the Matter of Alex P. Majka*, 2007 WL 4698593 (FDIC) at *2; *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 her right to contest the allegations in the Notices under section 308.19(c)(1). *In the Matter of Alex P. Majka*, at *3; *In the Matter of Leann Bennett*, at *3; *In the Matter of Susan E. Maddocks*; *In the Matter of Kevin L. Jensen*, 1996 WL 768366 (FDIC) at *4.⁴ 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 ALJ's Recommended Decision. *In the Matter of Alex P. Majka*; *In the Matter of Leann Bennett*; *In the Matter of Susan E. Maddocks*; *In the Matter of Kevin L. Jensen*; *In the Matter of Raymond M. Phillips*.

In addition, 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); *In the Matter of Alex P. Majka*; R.D. at 6. 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 the \$75,000 assessment is reasonable. R.D. at 2.

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

⁴ This case clearly is distinguishable from *Amberg 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.

the Findings of Fact and Conclusions of Law set forth in the Notice and issues the following order implementing its decision.

ORDER TO PROHIBIT

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

1. Brenda J. Vikre 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. Brenda J. Vikre 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. Brenda J. Vikre 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. Brenda J. Vikre 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 copies of this Decision and Order to Prohibit From Further Participation shall be served on Brenda J. Vikre, Enforcement Counsel, the ALJ, and the Commissioner of the Massachusetts Division of Banks.

By direction of the Board of Directors.

Dated at Washington, D.C. this 23rd day of June, 2009.

/s/
Robert E. Feldman
Executive Secretary

(SEAL)