

{{10-31-94 p.A-2471}}

[¶5217] **In the Matter of Harold Dean Ingram, First State Bank, Elmore City, Oklahoma Docket No. FDIC-92-343k (8-2-94).**

FDIC Board grants enforcement counsel's request for a default order to pay civil money penalty. Respondent entered no reply to proper notice of the charges or to the show-cause order for default, so all charges were deemed admitted.

**[.1] Civil Money Penalty—Default Order**

**In the Matter of  
HAROLD DEAN INGRAM, individually, and as an  
institution-affiliated  
party of  
FIRST STATE BANK  
ELMORE CITY, OKLAHOMA  
(Insured State Nonmember Bank)  
DECISION AND ORDER TO PAY  
CIVIL MONEY PENALTY  
FDIC-92-343k**

*INTRODUCTION*

This is a proceeding initiated by the Federal Deposit Insurance Corporation ("FDIC") pursuant to a Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice") issued on February 1, 1993, seeking to assess a civil money penalty against Harold Dean Ingram ("Respondent") in the amount of \$15,000.00. The civil money penalty is sought pursuant to section 8(i)(2) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(i)(2) (the "Act"),<sup>1</sup> for Respondent's fail-

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<sup>1</sup> Section 8(i)(2) provides, in part, that an insured depository institution shall pay a civil money penalty not to exceed \$5,000.00 for each day during which continues a violation of "any written agreement between such depository institution and [the appropriate Federal banking] agency," 12 U.S.C. § 1818(i)(2)(A)(iv).

{{10-31-94 p.A-2472}}ure to comply with a Stipulation and Consent to the Issuance of an Order to Cease and Desist between the FDIC and the directors of First State Bank, Elmore City, Oklahoma (the "Bank"), including Respondent, entered into on or about May 14, 1991.<sup>2</sup>

On April 26, 1994, Administrative Law Judge Arthur L. Shipe (the "ALJ") issued a Recommended Decision on Default which the Board of Directors of the FDIC ("Board") adopts and incorporates by reference.<sup>3</sup>

*BACKGROUND*

The Notice served February 2, 1993, on Respondent directed that he file an Answer and Request for Hearing within 20 days, as required by both the Act and the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19(a). To date Respondent has filed neither an Answer nor a Request for Hearing.

[.1] On August 13, 1993, FDIC Enforcement Counsel requested that this matter be certified to the Board for a determination that the penalty assessed in the Notice constituted a final and unappealable judgment. Respondent made no reply to the FDIC request. On September 22, 1993, the ALJ issued an Order to Show Cause why the FDIC's motion for a final and unappealable assessment should not be granted. Respondent filed no reply to the Show Cause Order, and made no reply to FDIC Enforcement Counsel's Motion for Entry of Order of Default.

*DISCUSSION*

After a thorough review of the record in this proceeding, including the undisputed proposed findings of

fact and conclusions of law, the Board agrees with the ALJ's findings and conclusions regarding the alleged conduct and discussion of the statutory criteria for the assessment of an appropriate penalty. R.D. at 3-4.

Accordingly, the Board adopts and incorporates herein by reference the ALJ's Recommended Decision on Default and issues the following Order to Pay.

#### ORDER TO PAY

The Board, having considered the entire record in the proceeding, taking into account the 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 a civil money penalty is assessed against Respondent Harold Dean Ingram in the amount of \$15,000.00, pursuant to section 8(i) of the Act, 12 U.S.C. § 1818(i).

IT IS FURTHER ORDERED, that this 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 to Pay Civil Money Penalty on Mr. Ingram, counsel for the FDIC, the ALJ, and the Bank Commissioner for the State of Oklahoma.

By direction of the Board of Directors.

Dated at Washington, D.C., this 2nd day of August, 1994.

/s/ Leneta G. Gregorie

Acting Assistant Executive Secretary

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#### RECOMMENDED DECISION ON DEFAULT

**In the Matter of  
HAROLD DEAN INGRAM,  
Individually, and as  
an institution-affiliated  
party of  
First State Bank  
Elmore City, Oklahoma  
(Insured State Nonmember Bank)  
FDIC 92-343k  
ARTHUR L. SHIPE, Administrative Law Judge**

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<sup>2</sup> Respondent has been a director of the Bank since 1983 and the sole director since October 22, 1991. Although the record is vague as to the exact date, beginning in at least 1990 Respondent has been chairman of the board and president of the Bank.

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<sup>3</sup> Citation to the Recommended Decision is made as "R.D. at \_\_\_\_."

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#### Summary of Proceedings

This proceeding arises from a Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("the Notice"), issued by the Federal Deposit Insurance Corporation on February 1, 1993.

The action seeks to assess civil money penalties against the above Respondent, Harold Dean Ingram, pursuant to Section 8(i) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(i) ("the Act").

The Notice was served upon the Respondent on February 2, 1993, and directed that he file an appropriate Answer and Request for Hearing within 20 days, as required by both the Act and the applicable FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19(a). Respondent Ingram filed no Answer, nor did he file the required Request for Hearing.

Accordingly, Enforcement Counsel for the Federal Deposit Insurance Corporation ("FDIC") requested

on August 13, 1993, that this matter be certified to the Board of Directors for a determination that the penalty assessed in the Notice constituted a final and unappealable judgment. After the Respondent failed to reply to the FDIC request, I directed on September 22, 1993, that he show cause why the FDIC motion for a final and unappealable assessment should not be granted. Respondent Ingram filed no reply to my Show Cause Order.

On March 11, 1994, Enforcement Counsel then filed a Motion for Entry of Order of Default, accompanied by Proposed Findings of Fact and Conclusions of Law. Respondent Ingram again filed no reply to this pleading.

After careful consideration, and for the reasons set forth below, the FDIC Motion for Order of Default is hereby GRANTED, and I recommend that Respondent Ingram be assessed a final and unappealable civil money penalty in the amount of \$15,000.

#### Discussion

The FDIC Proposed Findings of Fact, which I adopt and incorporate by this reference, show that at all times pertinent to the charges herein, Respondent Ingram was a director and officer of the First State Bank, chairman of the Board, and hence an institution-affiliated party in this insured state nonmember bank, whose principal place of business is located in Elmore City, Oklahoma.

The Findings further demonstrate that Respondent Ingram repeatedly violated an outstanding Order to Cease and Desist, which Order was issued on June 17, 1991, by his failure to correct certain previously-cited violations of section 22(h) of the Federal Reserve Act, 12 U.S.C. § 375b, as well as the Board of Governor's implementing Regulation O, at 12 C.F.R. § 215; by his failure to submit written plans to the FDIC as required by the Order, concerning planned reductions in the classified assets held by the First Bank; and finally by his failure to file with the FDIC written plans, policies, procedures, and reports, all of which were required by various provisions of the Cease and Desist Order.

The affidavit of Assistant Regional Director Sidney M. Carroll, submitted in support the FDIC's request, demonstrates the satisfactory consideration of the appropriateness of the penalty with respect to the size of the financial resources and good faith of the Respondent, the gravity of the violations, the history of previous violations, the continuing nature of the violations, and such other matters as justice may require.

Accordingly, I adopt the FDIC Proposed Conclusions of Law, and recommend assessment of the proposed civil money penalty.

Dated this 26th day of April, 1994

/s/ Arthur L. Shipe

Administrative Law Judge

Date: April 26, 1994

**In the Matter of  
Harold Dean Ingram,  
individually and as  
an institution-affiliated  
party of  
First State Bank  
Elmore City, Oklahoma  
(Insured State Nonmember Bank)  
FDIC-92-343k**

FEDERAL DEPOSIT INSURANCE  
CORPORATION'S  
MOTION FOR ENTRY OF ORDER OR  
DEFAULT, PROPOSED  
FINDINGS OF FACT AND PROPOSED  
CONCLUSIONS OF LAW

Comes now Federal Deposit Insurance Corporation ("FDIC") and moves that an [{{10-31-94 p.A-2474}}](#) Order of Default be entered and that this matter be forwarded to the FDIC Board of Directors for entry of a final decision and order. FDIC would show the Administrative Law Judge as follows:

This matter was initiated by the issuance of a Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay and Notice of Hearing ("Notice") on February 1, 1993. Over 13 months have passed, and Respondent Harold Dean Ingram has yet to file an answer or any other pleading. A September 8, 1993 letter is the only written communication from Respondent Harold Dean Ingram. A Show Cause Order was issued September 22, 1993, ordering Respondent Harold Dean

Ingram to show cause why the FDIC request for a final and unappealable assessment should not be granted. Respondent Harold Dean Ingram did not respond to the Show Cause Order.

Pursuant to section 8(i)(2)(E) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(i)(2)(E), the assessment constitutes a final and unappealable order if a respondent does not request a hearing within 20 days after the issuance of the Notice. Notwithstanding this language in the statute, the Eighth Circuit Court of Appeals stated that the FDIC could not enter an order of default without reviewing the statutory factors set out in section 8(i)(2)(G) of the Act, 12 U.S.C. § 1818(i)(2)(G). *Oberstar v. FDIC*, 987 F.2d 494, 505 (8th Cir. 1993). The court analogized this to judgment by default in civil litigation where parties are "required to prove the amount of damages that should be awarded. See Fed. R. Civ. P. 55(b)(2)." FDIC therefore submits its proposed findings of fact and proposed conclusions of law.

#### I. Proposed Findings of Fact

1. Respondent Harold Dean Ingram ("Respondent Ingram") has been a director of First State Bank, Elmore City, Oklahoma ("Bank") since 1983, and he has been the sole director of the Bank since October 22, 1991.

2. Respondent Ingram has been the Chairman of the board of directors of the Bank and President from prior to 1990 to the present.

3. The directors of the Bank, including Respondent Ingram, signed and entered into a Stipulation and Consent to the Issuance of an Order to Cease and Desist ("Consent Agreement") on or about May 14, 1991.

4. Pursuant to the Consent Agreement, an Order to Cease and Desist ("Order") was issued against the Bank on June 17, 1991, and became effective June 27, 1991. The provisions of this Order were based on the results of an examination of the Bank as of November 23, 1990.

5. The Order contained the following provisions:

a. Paragraph 1 required the Bank to achieve and maintain adjusted primary capital equal to or greater than 7.5 percent of its adjusted total assets.

b. Paragraph 2 prohibited the Bank from declaring or paying cash dividends without the prior written consent of the Regional Director of the FDIC.

c. Paragraph 3(a) required the Bank to charge off all assets or portions of assets classified Loss and one-half of the assets classified Doubtful as of the FDIC examination of the Bank as of November 23, 1990.

d. Paragraph 3(b) required the Bank to, within 60 days, submit a written plan to the Regional Director of the FDIC to reduce the remaining assets classified Doubtful and Substandard as of November 23, 1990.

e. Paragraph 4 required the Bank to, prior to the end of each calendar quarter, have the board of directors of the Bank review the adequacy of the Bank's reserve for loan losses and include in the minutes of the board meetings the complete details of the review.

f. Paragraph 5(a) prohibited the Bank from extending any additional credit to or for the benefit of any borrower who had an extension of credit with the Bank classified Loss, either in whole or in part, and was uncollected, or to any borrower who was already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that had been charged off the books of the Bank and remained uncollected.

g. Paragraph 5(b) prohibited the Bank from extending any additional credit to or for the benefit of any borrower whose extension of credit was classified Doubtful and/or Substandard, either in whole or in part, and was uncollected, unless the Bank's board of directors had signed a [10-31-94 p.A-2475](#) detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. Such statement was to be placed in the minutes of the applicable board of directors' meeting.

h. Paragraph 6 required the Bank to have and retain qualified management.

i. Paragraph 7 required the Bank to, within 60 days, establish a committee of the board of directors of the Bank charged with the responsibility of ensuring that the Bank complied with the provisions of the Order.

j. Paragraph 8 required the Bank to, within 60 days, prepare a plan for submission to the shareholders at their next meeting to reorganize the board of directors so that at least 50 percent of the members of the board of directors were independent, outside directors.

k. Paragraph 9 required the Bank to, within 60 days, revise, adopt and implement written lending policies and procedures which were to include, at a minimum, ten provisions specified in the Order.

l. Paragraph 10 required the Bank to, within 60 days, establish a loan review committee to periodically review the Bank's loan portfolio and identify and categorize problem credits. The committee was to file a report with the board of directors of the Bank addressing four factors

specified in the Order.

m. Paragraph 11 required the Bank to eliminate and/or correct all violations of laws and/or regulations existing in the Bank as of November 23, 1990, and ensure future compliance with all applicable laws and regulations.

n. Paragraph 12 required the Bank to eliminate and/or correct all technical exceptions with regard to loan documentation existing in the Bank as of November 23, 1990.

o. Paragraph 13 required the Bank to, within 60 days, amend its written funds management policy and initiate the measures detailed in the policy. The new policy was to include, at a minimum, three provisions outlined in the Order.

p. Paragraph 15 required the Bank to, within 30 days after the end of each calendar quarter, furnish written progress reports to the FDIC's Regional Director detailing the form and manner of any actions taken to secure compliance with the Order and the results thereof.

6. At the FDIC examination of the Bank as of November 23, 1990, two loans to Respondent Ingram and four loans to the Bank's principal shareholder were cited as 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 ("Regulation O"), 12 C.F.R. Part 215<sup>1</sup>, promulgated thereunder and made applicable to insured State nonmember banks by section 18(j)(2) of the Act, 12 U.S.C. § 1828(j)(2), and section 337.3 of the FDIC Rules and Regulations, 12 C.F.R. § 337.3<sup>2</sup>

7. Two of the loans to the Bank's principal shareholder were renewed or extended on December 30, 1990.

8. As of the November 1, 1991 examination of the Bank, one loan to Respondent Ingram was again cited as a violation of Regulation O, and the four loans to the Bank's principal shareholder were again cited as violations of Regulation O. The four loans to the Bank's principal shareholder were from 82 to 184 days past due, and their balances had not changed.

9. On December 10, 1991, the Dallas Regional Office of the FDIC sent a letter to the Bank's board of directors, consisting solely of Respondent Ingram, advising him that the Dallas Regional Office was considering recommending that civil money penalties be assessed for the apparent violation of Regulation O, 12 C.F.R. Part 215, and for noncompliance with the Order.

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<sup>1</sup> Regulation O was amended effective May 18, 1992, 57 Fed. Reg. 22,417-26 (1992) (codified at 12 C.F.R. Part 215). The amendments to this part were, for the most part, prospective and do not form the basis for the cause of action in this case. Therefore, all citations to this part pertinent to violations of Regulation O occurring prior to May 18, 1992, are to be found in the 1992 edition of the Code of Federal Regulations.

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<sup>2</sup> Section 337.3 of the FDIC Rules and Regulations was amended by 57 Fed. Reg. 7,647-49 (1992) (codified at 12 C.F.R. § 337.3(a)) (subsequently this amendment was corrected at 57 Fed. Reg. 28,457 (1992)), and also amended by 57 Fed. Reg. 17, 847-51 (1992) (codified at 12 C.F.R. § 337.3(c)). The amendments to this part were effective May 18, 1992, and May 28, 1992, respectively; however, they are for the most part, prospective. Therefore, all citations pertinent to conduct occurring prior to May 18, 1992, are to be found in the 1992 edition of the Code of Federal Regulations.

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10. Respondent Ingram did not respond to the December 10, 1991 letter, and with the exception of the May 4, 1992 letter discussed herein, he has failed to submit information to the FDIC relative to the Bank's failure to address the violations of Regulation O or the violations of the Order.

11. The Dallas Regional Office of the FDIC wrote the Bank's principal shareholder on April 1, 1992, regarding his loans which were cited as being in violation of Regulation O.

12. The principal shareholder's attorney responded by letters dated April 14 and April 16, 1992, stating that the principal shareholder had never been informed that his loans were in violation of Regulation O.

13. By letter dated April 16, 1992, the principal shareholder sent a check in the amount of \$101,168.70 to the Bank to pay the four loans in full. Said check was received by the Bank and did pay all principal and accrued interest on the loans.

14. FDIC received a letter from Respondent Ingram dated May 4, 1992, wherein he stated that he initiated, pursuant to a power of attorney, the loans to the Bank's principal shareholder which were cited as violating Regulation O, 12 C.F.R. Part 215, and wherein he admitted that the past due status of the loans was due to his error.

15. As of the FDIC examination of the Bank as of November 1, 1991, the Bank has failed to comply with the Order as follows:

a. The minutes of the meetings of the Bank's board of directors did not include the details of a review of the adequacy of the Bank's allowance for loan and lease losses as required by paragraph 4 of the Order.

b. The Bank had failed to eliminate and/or correct all violations of laws and/or regulations as set forth in the November 23, 1990 Report of Examination as required by paragraph 11 of the Order. The Bank and Respondent Ingram failed to address the issue of the loans to the principal shareholder of the Bank which were cited as violations of Regulation O.

c. The Bank had not formulated or submitted a plan to the FDIC for the reduction of assets classified "Doubtful" or "Substandard" at the November 23, 1990 examination of the Bank as required by paragraph 3(b) of the Order.

d. The Bank had not documented in writing the reasons for extending credit to borrowers whose extensions of credit were classified at the November 23, 1990 examination of the Bank as required by paragraph 5(b) of the Order.

e. The Bank's written lending policies and procedures had not been revised to include all the provisions required by paragraph 9 of the Order.

f. The Bank's written funds management policy had not been revised to include all the provisions required by paragraph 13 of the Order.

g. The Bank had not filed quarterly written progress reports with the FDIC as required by paragraph 15 of the Order.

16. As of the October 16, 1992 FDIC examination of the Bank, the Bank continued to be in violation of the Order as specified in the preceding proposed finding of fact.

17. The Bank's failure to comply with the Order appears to have caused the Bank's condition to continue to deteriorate.

18. The Bank has no program in effect for compliance with the Order.

19. Respondent Ingram has demonstrated no intention to comply with the provisions of the Order.

20. Pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2), violations of the Order are subject to civil money penalties of up to \$5,000 for each day the violations continue.

21. In the present case, violations began, at a minimum, 60 days after the June 27, 1991 effective date of the Order<sup>3</sup>, or August 26, 1991.

22. The violation have continued to the present time. As of February 1, 1993, when the Notice was issued, the Bank and Respondent Ingram had been in violation of the Order for a period of 585 days.

23. Given Respondent Ingram's failure to file any of the reports required by the Order and his failure to comply with the Order as specified above, it appears that the violations are intentional or have been committed with a disregard of the Order.

24. Respondent Ingram's August 1, 1992

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<sup>3</sup> As is noted in proposed finding of fact 5, many provisions of the Order required action within 60 days after the effective date of the Order.

{{10-31-94 p.A-2477}} financial statement listed total assets in the amount of \$625,600 and total liabilities in the amount of \$123,400 resulting in a net worth of \$502,200.

25. Respondent Ingram's August 1, 1992 financial statement estimated his income for 1992 as follows:

Salary	\$22,500
Oil and Gas	23,000
Other	10,000
Total	\$55,500

26. The violations of Regulation O or violations of the Order were not concealed.

27. Respondent Ingram has not received any financial gain as a result of the violations of Regulation O or the violations of the Order.

28. As of September 25, 1991, the reports required to be filed by paragraph 15 of the Order were delayed because Respondent Ingram had recently had a heart attack.

29. Respondent Ingram returned to the Bank, but, as of August 12, 1993, the Bank had continued to fail to file the quarterly reports required by paragraph 15 of the Order.

30. Respondent Ingram was served with a copy of the Notice on or about February 5, 1993.

31. Respondent Ingram has not filed an answer or any other response to the Notice.

32. A Show Cause Order was issued on September 22, 1993, ordering Respondent to show cause within 20 days why the FDIC request for a final and unappealable assessment should not be granted.

33. Respondent Ingram has not filed any response to the Show Cause Order.

To the extent that any proposed finding of fact is deemed a conclusion of law, the FDIC requests that it be so regarded.

## II. Proposed Conclusions of Law

1. At all times pertinent to the charges herein, the Bank was an insured State nonmember bank subject to the Act, 12 U.S.C. §§ 1811-1831t, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of Oklahoma.

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

3. At all times pertinent to the charges herein, Respondent Ingram was a "director" of the Bank as that term is defined in section 215.2(c) of Regulation O, 12 C.F.R. § 215.2(c).

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

4. Pursuant to the provisions of section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2), the FDIC has authority to impose civil money penalties for violations of a final order.

5. The Order to Cease and Desist issued by the FDIC on June 17, 1991, was a final order.

6. Respondent Ingram "violated" the Order as that term is defined in section 3(v) of the Act, 12 U.S.C. § 1813(v).

14. A civil money penalty is warranted against Respondent Ingram in accordance with the statutory considerations of the size of financial resources, good faith, history of previous violations, gravity of violations and such other matters as justice may require as set forth in section 8(i)(2)(G) of the Act, 12 U.S.C. § 1818(i)(2)(G).

15. A civil money penalty of \$15,000 is appropriate for Respondent Ingram's violations of the Order to Cease and Desist.

To the extent that any proposed conclusion of law is deemed to be a finding of fact, the FDIC requests that it be so regarded.

## III. Conclusion

Wherefore, premises considered, FDIC requests that the Administrative Law Judge review the Affidavit of Sidney M. Carroll submitted with FDIC's Request for Certification to the Board of Directors, apply the statutory factors set out in section 8(i)(2)(G) of the Act, 12 U.S.C. § 1818(i)(2)(G), and issue a Recommended Decision adopting FDIC's proposed findings of fact and proposed conclusions of law and recommending that a civil money penalty be assessed Respondent Harold Dean Ingram in the amount of \$15,000.

Respectfully submitted,  
/s/ Terry G. Youngblood  
Counsel/Senior Litigator