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[¶8007] **In the Matter of W. Scott Maxwell, Dan M. Bowker, James C. Amberg, Robert Ray Carroll, Roscoe P. Steen, J. J. Silagy, W. M. Causey, Billy Ray Whitehead, and Benny Zeagler, Docket No. FDIC-89-144k (3-27-90)..**

Board grants FDIC Enforcement Counsel's request for special permission to appeal and motion to stay proceedings before ALJ, so Board can consider issues of first impression under revised FDIC Rules.

[.1] Practice and Procedure—Interlocutory Appeals—Special Permission

Board has discretionary authority to grant interlocutory appeals when it finds important questions of law and policy issues of general application, and prejudice to a party is likely unless the Board quickly decides the appeal.

[.2] Practice and Procedure—Interlocutory Appeals—Standards

Issues of first impression under revised FDIC Rules, and an ALJ Decision which calls into question the proper application of several rules, are matters of general import and appropriately considered in an interlocutory review.

[.3] Practice and Procedure—Interlocutory Appeals—Stay of ALJ Proceedings

A stay of proceedings before an ALJ is warranted where results of an appeal pending before the Board could have a significant effect on the outcome of the ALJ proceedings.

**In the Matter of
W. SCOTT MAXWELL, individually
and as an executive officer of Olla
Bancshares, Inc., and
as a director and executive officer, and
DAN M. BOWKER, individually and as
an executive officer, and
JAMES C. AMBERG, ROBERT RAY
CARROLL, ROSCOE P. STEEN, J.J.
SILAGY, W.M. CAUSEY, BILLY
RAY WHITEHEAD, and BENNY
ZEAGLER, individually and as directors of
THE OLLA STATE BANK
OLLA
LOUISIANA
(Insured State Nonmember Bank)
DECISION AND ORDER
GRANTING A STAY
AND GRANTING SPECIAL
PERMISSION TO APPEAL**

DECISION

This matter is before the Board of Directors (the "Board") of the Federal Deposit Insurance Corporation (the "FDIC") on the request of FDIC enforcement counsel for special permission to appeal and on FDIC enforcement counsel's motion to stay proceedings in this matter. Enforcement counsel seeks a stay of the proceedings before the Administrative Law Judge ("ALJ") pending review before the Board of its request for special permission to appeal the ALJ's denial of the FDIC's motion for entry of default orders against W. Scott Maxwell, Dan M. Bowker, James C. Amberg, Robert Ray Carroll, Roscoe P. Steen, W.M. Causey, Billy Ray Whitehead, and Benny Zeagler ("Respondents").

I. BACKGROUND

The basis for the FDIC's motions for entry of default orders was the alleged failure of Respondents to file timely answers to the FDIC's Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice"), as required by section 308.21(a) of the FDIC Rules of Practice and Procedures ("Rules").¹ 12 C.F.R. § 308.21(a). The ALJ issued two

separate "Decisions and Orders" which denied the FDIC's motions as to these eight Respondents, finding in each case either that the answer was in fact timely filed or that good cause existed for the failure to file in a timely fashion. FDIC enforcement counsel sought special permission to appeal from these two orders.

¹ The Notice alleged 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, which have been made applicable to insured state nonmember banks.

² A ninth Respondent, J.J. Silagy, is not involved in the motion for default proceedings.

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Simultaneously with its request to specially appeal, enforcement counsel filed a motion to stay the proceedings pursuant to 308.31(c) of the Rules, 12 C.F.R. § 308.31(c), on the grounds that the appeal was meritorious and that, if a stay were not granted, the FDIC would be severely prejudiced by being needlessly compelled to litigate the administrative action. The hearing in this matter has been scheduled for April 2, 1990.

For reasons which follow, the Board finds merit to enforcement counsel's request for special appeal of the ALJ's Decisions and Orders denying its motions for entry of default orders and, accordingly, grants the FDIC's request for special permission to appeal. The Board has determined to take the matters raised in the special appeal under further advisement and will issue a separate decision fully addressing the merits of the appeal in the near future.

However, because the administrative hearing is imminent, and the hearing could be effected by the results of the special appeal pending before the Board, a stay of the proceedings before the ALJ is appropriate to enable the Board to decide the issues raised in the appeal. Accordingly, the Board grants FDIC enforcement counsel's motion to stay proceedings.

II. A SPECIAL APPEAL IS WARRANTED

Section 308.31(a)(1) of the Rules, 12 C.F.R. § 308.31(a)(1), states, in pertinent part, that:

Rulings or orders by an administrative law judge may not be appealed to the Board prior to submission of the record to the Board pursuant to the provisions of § 308.42, *unless the Board, in its sole discretion, grants special permission to appeal.* [Emphasis added.]

[.1] The grant of an interlocutory appeal is an extraordinary action to be taken by the Board only in limited circumstances. Section 308.31(a)(2), 12 C.F.R. § 308.31(a)(2), provides that special permission to appeal a ruling or order will only be granted if the appeal involves an important, unresolved issue of general application that the Board should immediately decide, or where clear error is involved in the proceedings below and a party is likely to be prejudiced unless the Board immediately decides the appeal. Furthermore, prior Board decisions have also established that such appeals may be granted:

(1) where issues of first impression are involved; (2) where significant policy considerations are raised; or (3) where there exists a substantial danger of irreparable harm to a party. FDIC-85-87k, 2 P-H FDIC Enf. Dec. § 5095 (1987); FDIC-85-326b, 2 P-H FDIC Enf. Dec. § 5070 (1986); FDIC 85-83k, Board Dec. (Dec. 9, 1985).

[.2] The Board finds that the ALJ's Decision raises important questions of law and involves policy issues of general application. It addresses the question whether the unsupported assertion by a Respondent that he previously filed an answer, standing alone, is sufficient to withstand a motion for entry of default and whether a letter from a Respondent which does not comport with the literal requirements of the FDIC Rules, but which is timely filed with the FDIC's Executive Secretary and responds to the charges of a Notice, may constitute an answer. These issues are matters of first impression under the revised FDIC Rules.

The Board also finds that the ALJ's Decision calls into question the proper application of several of the Rules, and also the extent to which the ALJ is bound by the Rules.

There is an important public interest in the proper interpretation and application of the Rules. They are necessary to the efficient and orderly operation of the FDIC's administrative processes, and to insure that incorrect interpretations or applications of the Rules will not lead to illogical or unjust results.

For these reasons, the Board chooses to exercise its discretion under section 308.31(a)(1) of the FDIC Rules and permit interlocutory review of the FDIC's motions for entry of default orders.

III. A STAY IS WARRANTED

[.3] Section 308.31(c), 12 C.F.R. 308.31(c), of the FDIC Rules provides, in pertinent part:

The Board or the administrative law judge may...order a stay upon a finding on the record that the party aggrieved by the appealing ruling or order has shown a substantial likelihood of success before the Board on the merits of the interlocutory appeal and that substantial hardship or injustice is likely to result if a stay is not granted...

In its request for special permission to appeal the denial of its motions for entry of [{{9-30-91 p.I-23}}](#) default orders, FDIC enforcement counsel advanced several grounds challenging the findings of the ALJ, including that: (1) there was insufficient evidence in the administrative record to find that Respondent Maxwell had filed a timely answer; (2) the ALJ exceeded his authority in allowing late answers to be filed once assessment of civil money penalties had become final and unappealable as provided in the FDIC Rules; and (3) the reasons proffered by counsel for Respondents Amberg, Carroll, Steen, Causey, Whitehead, and Zeagler for her failure to file timely answers did not constitute good cause under the Rules.

The Board finds that the issues raised in the interlocutory appeal are important enough to warrant a full discussion in a separate decision and the Board has therefore taken the matters raised in the appeal under advisement. Since results of the appeal pending before the Board could significantly affect proceedings before the ALJ and the imminency of the hearing date may not permit sufficient time for the issues on appeal to be fully addressed by the Board, administrative economy requires that a stay be granted. Furthermore, all parties could be adversely affected if made to proceed to the hearing prematurely.

Accordingly, the Board finds that a stay of the proceedings before the ALJ is warranted.

IV. CONCLUSION

The Board finds that: (1) the request for special appeal raises important issues of first impression and involving important policies which should be decided; and (2) the imminency of the hearing on the merits before the ALJ requires that a stay be granted pending the Board's decision of the special appeal.

IT IS HEREBY ORDERED, that

1. FDIC enforcement counsel's request for special permission to appeal pursuant to section 308.31 of the FDIC Rules is GRANTED.

2. FDIC enforcement counsel's motion to stay the proceedings before the ALJ ending review of the special appeal is GRANTED.

By direction of the Board of Directors.

Dated at Washington, D.C., this 27th day of March, 1990.

/s/ Hoyle L. Robinson

Executive Secretary