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{{6-30-97 p.A-2804}}

[¶5240] In the Matter of Kevin L. Jensen, State Bank of Springfield, Springfield, Minn., Nos. FDIC-93-240e and FDIC-93-241k (12-3-96)

In uncontested proceeding, FDIC issues order of prohibition and assesses civil money penalty against respondent who engaged in unsafe and unsound banking practices and breached his fiduciary duty by making self-serving and abusive insider loans for his own financial gain.

[.1] Answer—Failure to File—Prohibition, Removal, or Suspension

Respondent who failed to answer charges, enter an appearance, seek an extension of time, request a hearing, oppose FDIC counsel's motion for summary disposition, or file exception to administrative law judge's recommended decision clearly demonstrated an intentional disregard of, or willful failure to follow, the FDIC's procedural requirements.

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[.2] Answer—Failure to File—Prohibition, Removal, or Suspension

By failing to answer charges, respondent waived his right to contest the allegations in the Notice under Section 308.19(c) of the FDIC Rules of Practice and Procedure.

[.3] Hearings—Request for—Failure to Request

Because respondent failed to request a hearing in civil-money-penalty proceeding, the motive of assessment constitutes a final unappealable order. A timely request for a hearing in a civil-money proceeding is a statutory prerequisite to any further review of the proceeding.

[.4] Practice and Procedure—Recommended Decisions—Failure to File Exceptions

Respondent's failure to file exceptions to administrative law judge's recommended decision pursuant to 12 C.F.R. § 308.39 must be deemed a waiver of any objection to the ALJ's recommended decision.

[.5] Summary Judgment—Evidence Held Sufficient

Evidence on the record fully supports the granting of the FDIC's motion for summary disposition and the issuance of a prohibition order and assessment of a civil money penalty.

In the Matter of
KEVIN L. JENSEN,
individually, and as an officer,
director, person participating
in the conduct of the affairs, and
institution-affiliated party of;
STATE BANK OF SPRINGFIELD
SPRINGFIELD,MINNESOTA
(Insured State Nonmember Bank— in Receivership)
DECISION AND ORDER
FDIC-93-240e
FDIC-93-241k

INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance of an Order Granting FDIC's Motion For Summary Disposition and Decision Recommending Order Prohibiting Respondent and Assessing A $125,000 Civil Money Penalty ("Recommended Decision" or "R.D.") by Administrative Law Judge Walter J. Alprin ("ALJ") dated July 22, 1996.

This is an uncontested proceeding. The record shows that Kevin L. Jensen ("Respondent"), formerly president and a director of the State Bank of Springfield, Springfield, Minnesota ("Bank"), received actual notice of the charges against him. Nevertheless, he failed to file an answer to the charges or request a hearing to object to the assessment of civil money penalties. Upon an unopposed motion for summary disposition filed by the FDIC, and having found that the Respondent failed to file an answer, request a hearing, or oppose the motion for summary disposition, the ALJ granted the FDIC's motion and, based

upon that failure, and upon the Respondent's unsafe and unsound banking practices, breaches of fiduciary duty, and personal dishonest acts, recommended that the Respondent be prohibited from participating in any manner in the conduct of the affairs of any federally insured depository institution or organization enumerated in section 8(e)(7)(A) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1818(e) (7)(A). The ALJ also issued a recommended order that the Respondent pay $125,000 in civil money penalties under 12 U.S.C. §§ 1818(i) and 1828(j).

Following a thorough review of the entire record, the Board affirms and incorporates herein the Recommended Decision. There is sufficient evidence in the record for the issuance of a prohibition order and civil money penalty assessment and, because the Respondent failed to request a hearing, the order assessing a civil money penalty of $125,000 is final and unappealable under 12 U.S.C. § 1818(i)(2)(e)(ii).

BACKGROUND

On February 18, 1994, the FDIC served a Notice of Intention To Prohibit From Fur- {{6-3097 p.A-2806}}ther Participation and a Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice") on Respondent. Respondent was charged with engaging in violations of law or regulations, unsafe or unsound banking practices, breaches of fiduciary duty, and personal dishonesty in connection with the Bank for violating section 23A of the Federal Reserve Act ("Act"), made applicable to the Bank by section 18(j)(1) of the FDI Act, 12 U.S.C. § 1828(j)(1), and section 22(h) of the Act and Regulation O of the Board of Governors of the Federal Reserve System, made applicable to the Bank by section 18(j)(2) of the FDI Act, 12 U.S.C. § 1828(j)(2), and section 337.3 of the FDIC Rules and Regulations, 12 C.F.R. § 337.3, respectively.[1] The Notice alleged that the Respondent's acts caused a financial loss to the bank, and/or prejudice to the interests of the Bank's depositors, involved personal dishonesty, and constituted a willful or continuing disregard for the safety and soundness of the Bank.[2]

The Notice was served on Respondent by U.S. Postal Service Overnight Express Mail, return receipt requested, on February 18, 1994, at 2100 East Cliff, Apt. 107A, Burnsville, Minnesota, 55337. Respondent signed the return receipt which indicated that he had received the Notice, and it was returned to the Office of Financial Institution Adjudication. Respondent did not file an answer nor did he enter an appearance, request an extension of time, file a request for a hearing, or participate in this proceeding in any manner.

On February 25, 1994, the Certificate of Service for the Notice was sent to the same address via first class mail. Exhibit One to FDIC's Brief. It was not returned, so it is reasonable to conclude that it was received by the Respondent.

Later attempts to serve Respondent with copies of correspondence to the Office of Financial Institution Adjudication from Enforcement Counsel, mailed in October 1995 and in March 1996 were returned with notations of "don't live here" and "Attempted—Not Known—Return to Sender." Exhibit Two to FDIC's Brief.

On May 8, 1996, the FDIC filed a motion for summary disposition and served the Respondent by first class mail at the same address. On June 6, 1996, Enforcement Counsel advised the Court that the U.S. Attorney's Office had a more current address for Respondent, and the motion would be served again to that address. The FDIC served the motion for summary disposition, proposed recommended decision, brief and affidavit to the Respondent at P.O. Box 611, Marshall, Minnesota, by certified mail with return receipt requested. The Respondent signed for the above-referenced documents and, in a telephone conversation with the Enforcement Counsel, on June 10, 1996, confirmed receipt of the above-described material. R.D. at pg. 4. Despite his actual receipt of the motion, the Respondent failed to file any opposition, timely or otherwise.

On July 22, 1996, the ALJ issued the Recommended Decision, which concluded that Respondent, a president and member of the Bank's board of directors, and as a principal shareholder and institution-affiliated party, engaged in unsafe and unsound banking practices and breached his fiduciary duty by making self-serving and abusive insider loans for his own financial gain. R.D. at pgs. 14-16; 19-21; 23-26. The ALJ found that these practices and breaches by Respondent evidenced his willful and continuing disregard for the safety and soundness of the Bank, and resulted in financial loss to the Bank and detriment to the interests of the Bank's depositors. R.D. at pgs. 27-28.

Accordingly, the ALJ recommended that the Board issue a final order under section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), prohibiting Respondent from participating in the affairs of federally insured financial institutions enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), and to assess a civil money penalty of $125,000 against the Respondent under 12 U.S.C. §§ 1818(i) and 1828(j). Because the Respondent failed to request a hearing, the ALJ noted that the assessment was a final

[1] Because the Respondent's acts were prior to certain prospective amendments of these regulations, the charges in the Notice were based on the regulations found in the 1992 edition of the C.F.R.

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[2] Respondent caused sixteen extensions of credit to be made to two companies, concealing the fact that they were affiliated parties, and concealing his own interest in the companies. This caused the Bank to be in violation of its state lending limit as to one of those borrowers by $3,904. The Respondent also made other loans without securing proper collateral, and without assessing the financial viability of the borrower, causing a loss to the Bank of $477,000. R.D. at pgs. 24–26. One of those loans was to himself, causing a loss of $43,000. R.D. at pg. 26.
{{6-30-97 p.A-2807}}and unappealable order, under 12 U.S.C. § 1818(i)(2)(e)(ii). Neither party filed exceptions to the ALJ's Recommended Decision.

DISCUSSION

This is an uncontested proceeding. The record shows that the Respondent received actual notice of the charges against him, as evidenced by his signature on the return receipt for the Overnight Express package to Burnsville, Minnesota, containing a copy of the Notice. Exhibit One to FDIC's Brief. The Notice advised the Respondent of the requirement that he file an answer within 20 days, and that failure to request a hearing in the civil money penalty proceeding renders the civil money penalty assessment final and unappealable. Nonetheless, the Respondent failed to file an answer, seek an extension of time, or request a hearing. The record shows that the Respondent also received actual notice of the motion for summary disposition, brief, affidavit, and the proposed recommended decision and orders, as evidenced by his signature on a return receipt for the package, which was mailed to a Marshall, Minnesota, address. The Respondent also confirmed to the Enforcement Counsel in a telephone conversation that he had received the material. R.D. at pg. 4. Apparently, the Respondent had moved after the Notice was served, and had done nothing to notify either the Office of Financial Institution Adjudication or Enforcement Counsel of his new address. Through diligent efforts, the Enforcement Counsel was able to find his new address and have him served with the motion papers.

Despite receiving actual notice of the motion for summary disposition, and the proposed recommended decision, the Respondent again failed to file an opposition or any response whatsoever to defend himself. Although other earlier documents apparently did not reach the Respondent after he moved, the Board finds that the Respondent was not prejudiced.[3] The Respondent was served with the Notice, which states the charges against him in detail, and advises him of the time within which to file an answer and request a hearing, and with the motion for summary disposition, brief, affidavit, and proposed recommended decision and orders, and thus had ample opportunity to respond to the charges against him had he so desired.

[.1**]** Notwithstanding his actual receipt of these documents, Respondent failed to answer, failed to enter an appearance, failed to seek an extension of time, failed to request a hearing, failed to oppose the motion for summary disposition, and has failed to file exceptions to the Recommended Decision. Respondent's conduct clearly demonstrates an intentional disregard of, or willful failure to follow, the FDIC's procedural requirements. *See In the Matter of Raymond M. Phillips, The Greenville Banking Company, Greenville, Georgia*, FDIC-94-208e, 1 P-H FDIC Enf. Dec., ¶5232, at A-2759 (April 23, 1996); *In the Matter of Hiram L. Fong, Liberty Bank, Honolulu, Hawaii*, FDIC-94-81e, 1 P-H FDIC Enf. Dec., ¶5230, at A-2749 (December 7, 1995); *In the Matter of Harold Dean Ingram, First State Bank, Elmore City, Oklahoma*, FDIC-92-343k, 2 P-H FDIC Enf. Dec. ¶5217, at A-2471 (August 2, 1994); *In the Matter of Billy Gene Humphrey, Jr., Bay City Bank & Trust Co., Bay City, Texas*, FDIC-93-55e, 2 P-H Enf. Dec. ¶5207, at A-2346 (November 23, 1993); *In the Matter of George W. Glover*, FDIC-93-54e, 2 P-H FDIC Enf. Dec. ¶5206, at A-2343 (November 23, 1993).

[.2,.3,.4**]** By failing to answer, Respondent has waived his right to contest the allegations in the Notice under section 308.19(c) of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19(c). Moreover, because the Respondent failed to request a hearing in the civil money penalty proceeding, the notice of assessment constitutes a final unappealable order. A timely request for a hearing in the civil money proceeding is a statutory prerequisite to any further review of the proceeding. Sections 8(i)(2)(e)(ii) and 8(i)(2)(h) of the FDI Act, 12 U.S.C. § 1818(i)(2)(e)(ii) and § 1818(i) (2)(h). The Eighth Circuit has held that a civil money penalty is final and unappealable when a respondent fails to request a hearing, or when a respondent makes an untimely request. *Kronholm v. FDIC*, 915 F.2d 1171 (8th Cir. 1990). In making this determination, the Court acknowledged its lack of subject matter jurisdiction, and stated that "...Congress has expressly indicated,

[3] Copies of correspondence to the Office of Financial Institution Adjudication from Enforcement Counsel mailed to the Respondent in October 1995 and March 1996 were returned to the sender with notations of "don't live here" and "Attempted—Not Known—Return to Sender."
{{6-30-97 p.A-2808}}through section 1818(i)(2)(e)(ii), its intent to prohibit judicial review of a civil money penalty absent an administrative hearing."[4] Additionally, the Respondent's failure to file Exceptions to the Recommended Decision pursuant to 12 C.F.R. § 309.39 must be deemed a waiver of any objection to the ALJ's Recommended Decision. *See In the Matter of In Chul Song, Empire State Bank, New York, New York*, FDIC-92-140e, FDIC-92-350k, 2 P-H FDIC Enf. Dec. P 5214, at A-2444.

[.5**]** The ALJ reviewed the evidence submitted, including the affidavit of the Examiner-In-Charge of the Bank, who attested to the truth and accuracy of the facts set forth in the Notice. The ALJ found that Respondent violated regulations and laws, breached his fiduciary duty to the Bank, and committed unsafe and unsound banking practices for his own financial gain, which resulted in loss to the Bank and evidenced the Respondent's personal dishonesty and/or willful or continuing disregard for the safety or soundness of the Bank. The ALJ also found that the Respondent had failed to answer the charges against him and failed to request a hearing to contest the civil money penalty assessment, despite actual notice. The Board finds that the evidence on the record fully supports the granting of the FDIC's motion for summary disposition and the issuance of a prohibition order and assessment of a civil money penalty of $125,000 against the Respondent.

CONCLUSION

After a thorough review of the record in this proceeding, and for the reasons set forth above, the Board finds that an Order of Prohibition and the assessment of a civil money penalty of $125,000 are warranted against the Respondent. Accordingly, the Board affirms the Recommended Decision of the ALJ and issued the following order implementing its Decision.

ORDER

The Board of Directors of the FDIC, having considered the entire record of this proceeding, finds that the Respondent, Kevin L. Jensen, as president and director of the Bank, violated laws and regulations, breached his fiduciary duty to the Bank, and committed unsafe and unsound banking practices for his own financial gain, which resulted in loss to the Bank and evidenced his personal dishonesty and/or willful or continuing disregard for the safety or soundness of the Bank. The Board also finds that the Respondent failed to answer the charges against him and failed to request a hearing to contest the civil money penalty assessment of $125,000. Due to his failure to request a hearing, the assessment is final and unappealable. It is hereby ORDERED and DECREED that:

1. Kevin L. Jensen is assess and shall pay a civil money penalty in the amount of $125,000 under 12 U.S.C. § 1818(i) and 1828 (j) to the Treasury of the United States.

2. Kevin L. Jensen is prohibited from seeking or accepting indemnification from any insured depository institution or affiliate (i) for the civil money penalty assessed and paid in this matter, or (ii) for any expenses, including attorneys' fees and disbursements, incurred by him in connection with this matter.

3. Kevin L. Jensen is, without prior written approval 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), prohibited from:

(a) participating in any manner in the conduct of the affairs of any financial institution or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818 (e)(7)(A);

(b) soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent or authorization with respect to any voting rights in any financial institution enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A);

(c) violating any voting agreement previously approved by the appropriate Federal banking agency; or

(d) voting for a director, or serving or acting as an institution-affiliated party.

IT IS FURTHER ORDERED, that this Or-

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[4] In *Oberstar v. FDIC*, 987 F.2d 494, 503 (8th Cir. 1993), the Eighth Circuit held that where the respondent had requested a hearing, but had filed a late answer to the notice of assessment, the FDIC could not enter a default order. Here Respondent not only failed to request a hearing but he also failed to file any papers, late or otherwise. Based on *Kronholm*, a reviewing court would lack the power to exercise judicial review because Congress has made it clear, through § 1818(i)(2)(e)(ii), that a respondent's failure to request a hearing results in the civil money penalty assessment becoming final and unappealable.

{{6-30-97 p.A-2809}}der shall become effective and the penalty shall be final and payable ten days after its issuance. The provisions of the ORDER will 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 FDIC.

By direction of the Board of Directors.

Dated at Washington, D.C., this 3rd day of December, 1996.

ORDER GRANTING FDIC'S MOTION FOR SUMMARY DISPOSITION AND DECISION RECOMMENDING ORDER PROHIBITING RESPONDENT AND ASSESSING A $125,000 CIVIL MONEY PENALTY

In the Matter of
KEVIN L. JENSEN,
individually, and as an officer,
director, person participating
in the conduct of the affairs, and
institution-affiliated parties of;
STATE BANK OF SPRINGFIELD
SPRINGFIELD,MINNESOTA
(Insured State Nonmember Bank— in Receivership)
FDIC-93-240e
FDIC-93-241k
(7-22-96)

Walter J. Alprin Administrative Law Judge

I. SUMMARY DISPOSITION

A. Background

On February 18, 1994, the Federal Deposit Insurance Corporation ("Agency") served a Notice of Intention To Prohibit From Further Participation and a Notice of Assessment of Civil Money Penalties ("Notices") on Respondent Kevin L. Jensen ("Respondent").[1] Enforcement Counsel charge Respondent, an officer, director, and person participating in the conduct of the affairs of State Bank of Springfield, Springfield, Minnesota ("Bank"), with engaging in violations of law or regulations and unsafe or unsound banking practices in connection with the Bank. Respondent is charged with committing or engaging in acts, omissions or practices which constitute breaches of his fiduciary duties to the Bank, which resulted in either gain to Respondent or financial loss to the Bank, or prejudice to the interests of the Bank's depositors, and which involved Respondent's personal dishonesty and/or willful or continuing disregard for the safety or soundness of the Bank.

Respondent failed to file an answer or request a hearing. Based on Respondent's default, pursuant to 12 C.F.R. 308.19(c), the allegations in the Notices are deemed uncontested and the Civil Money Penalty Order automatically becomes a final and unappealable order. Accordingly, Enforcement Counsel filed a Motion for Summary Disposition.

B. Standard For Summary Disposition

In a motion for summary disposition, the movant has the burden of proving that no genuine issues of material fact exist necessitating a hearing. A "genuine" issue of fact can be supported by evidence and has been interpreted as "triable," "substantial," or "real." Courts are reluctant to grant motions for summary dispositions when central issues of intent, good-faith, or credibility are involved.[2]

The Uniform Rules of Practice and Procedure adopt the same showing necessary as the Federal Rules of Civil Procedure. Uniform Rule 29 states that the Administrative Law Judge shall recommend that the Board issue a final order granting a motion for summary disposition after review of all evidentiary materials when:

1) there is no genuine issue as to any material fact; and
2) the moving party is entitled to a decision in its favor as a matter of law. 12 U.S.C. § 263.29(a).

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[1] The Notices also contained charges against Respondents Glen J. Schmitz and Paul P. Jensen who have since settled with the agency.

See Miller v. Federal Deposit Ins. Corp., 906 F.2d 972, 974 (4th Cir. 1990) ("Summary judgment is seldom appropriate in cases where in particular states of mind are decisive elements of a claim or defense"). *See also Reserve Supply Corp. v. Owens-Corning Fiberglass Corp.* 971 F.2d 37, 42 (7th Cir. 1992); *International Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257 (5th Cir. 1991), *cert. denied*. 112 S.Ct. 936 (1992).

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C. Motion for Summary Disposition

On May 18, 1996, FDIC filed a Motion for Summary Disposition and served Respondent Jensen by first class mail at 2100 East Cliff, Apartment 107A, Burnsville, Minnesota 55337. On June 6, 1996, FDIC Enforcement Counsel advised the Court that the U.S. Attorney's Office had a more current address for Respondent and the motion was going to be served again at the newly provided address. Accordingly, on June 10, 1996, FDIC served the motion for summary disposition, proposed recommended decision, brief and affidavit, and correspondence with the undersigned, to Kevin Jensen at P.O. Box 611, Marshall, Minnesota by first class mail with return receipt requested. Respondent signed for the above-referenced documents and in a telephone conversation with Enforcement Counsel John Oldenburg on June 10, 1996, confirmed receipt of the material. Yet, Respondent failed to oppose the motion. Accordingly, the Motion for Summary Disposition is hereby granted.

II. RECOMMENDED DECISION

A. Summary of Recommendation

Based upon Respondent's failure to file an Answer or a request for hearing, and further failure to oppose Enforcement Counsel's Motion for Summary Disposition, the undersigned issues the following Recommended Decision. An appropriate order should be issued against Respondent under section 8(e) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e), prohibiting Kevin L. Jensen from further participation in the conduct of the affairs of any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A). In addition, Respondent is subjected to an order to pay, under 12 U.S.C. §§ 1818(i), in the amount of $125,000 for failure to request a hearing.

B. Jurisdiction, Definitions, And Facts

1. The Bank was a corporation existing and doing business under the laws of the State of Minnesota until it was closed by the State Bank Commissioner of July 17, 1992. At all times pertinent to the charges herein, the Bank had its principal place of business in Springfield, Minnesota, was an insured State nonmember bank, and was 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, rules and regulations of the State of Minnesota.

2. Section 23A of the Federal Reserve Act, 12 U.S.C. §§ 371c ("Section 23A"), is made applicable to the Bank by section 18(j)(1) of the Act, 12 U.S.C. § 1828(j)(1).

3. Section 22(h) of the Federal Reserve Act, 2 U.S.C. § 375b, and Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. 215 ("Regulations O"),[3] are made applicable to the Bank 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,[4]. respectively.

4. At all times pertinent to the charges herein, approximately 91 percent of the Bank's issued and outstanding stock was owned by Springfield State Bancorporation, a one-bank holding company.

5. At all times pertinent to the charges herein, Glen J. Schmitz ("Schmitz") (i) owned approximately 52 percent of the issued and outstanding shares of Springfield State Bankcorporation; (ii) until his resignation in April of 1991, served as a director of the Bank, and was chairman of the Bank's board of directors; and (iii) by reason of the admissions as to items 5(i) and 5(ii), individually, and/or jointly with Respondent K. Jensen, exercised a controlling influence over the management, practices, and policies of the Bank.

6. At all times pertinent to the charges herein, Respondent: (i) owned approximately 15.1 percent of the issued and outstanding shares of Springfield State Bancorporation; (ii) until his resignation in April 1991, served as a director of the Bank and was president of the Bank, and (iii) by rea-

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[3] Regulation O was amended effective May 18, 1992, 57 Fed. Reg. 22, 417 (1992) (codified as amended at 12 C.F.R. Part 215 (1993)). The amendments to this part are, 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 this proceeding are to be found in the 1992 edition of the C.F.R.

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[4] Section 337.3 of the FDIC's Rules and Regulations was amended by 57 Fed. Reg. 7647 (1992) (codified as amended at 12 C.F.R. § 337.3(a) (1993)) (subsequently this amendment was corrected at 57

Fed. Reg. 28,457 (1992)), and was also amended by 57 Fed. Reg. 17,847 (1992) (codified as amended at 12 C.F.R. § 337.3(c) (1993)). The amendments to this section were effective May 19, 1992, and May 28, 1992, respectively; however, they are, for the most part, prospective, and do not form the basis for the cause of action in this case. Therefore, all citations to this section pertinent to this proceeding are be found in the 1992 edition of the C.F.R
{{6-30-97 p.A-2811}}son of the admissions of items 6(i) and 6(ii), individually and/or jointly exercised a controlling influence over the management, practices, and policies of the Bank.

7. Respondent K. Jensen was at all times pertinent to the charges herein:

(a) a director and executive officer of the Bank within the meaning of section 215.2(c) and (d) of Regulation O, 12 C.F.R. § 215.2(c) and (d);
(b) a principal shareholder of the Bank within the meaning of section 215.2(j) of Regulation O, 12 C.F.R. § 215.2(j), except for purposes of section 215.4(c) of Regulation O, 12 C.F.R. § 215.4(c), due to the population of Springfield, Minnesota;
(c) a person participating in the conduct of the affairs of the Bank; and
(d) since August 8, 1989, an institution-affiliated party within the meaning of section 3(u)(1) and (3) of the Act, 12 U.S.C. § 1813(u)(1) and (3).

8. At all times pertinent to the charges herein, until his resignation in November 1990, Paul P. Jensen was senior assistant vice president for the Bank in charge of loans.

9. Although not discovered until on or about July 20, 1990, from on or about September 1, 1986, through July 20, 1989:

(a) Schmitz and Respondent K. Jensen:
(i) each controlled 25 percent of the issued and outstanding shares of Great Northern Investment Company ("GNIC"); and
(ii) were each one of the four directors of GNIC until February 25, 1989; and
(b) GNIC was an affiliate of the Bank within the meaning of section 23A(b)(1), 12 U.S.C. § 371c(b)(1), and a "related interest" of both Schmitz and Respondent within the meaning of section 215.2(k) of Regulation O, 12 C.F.R. § 215.2(k).

10. At all times pertinent to the charges herein:

(a) Schmitz and Respondent each owned 39 percent of the issued and outstanding shares of the State Bank of Redwood, Redwood Falls, Minnesota, ("Redwood Falls Bank"), and were officers and directors of the Redwood Falls Bank; and
(b) the Redwood Falls Bank was an affiliate of the Bank within the meaning of section 23A(b)(1), 12 U.S.C. (b)(1).

11. Although not discovered until on or about March 8, 1991, during the years 1986, 1987, 1988, and 1989:

(a) Respondent owned 50 percent of the issued and outstanding shares of Sanborn Oil, Inc. ("Sanborn Oil"); and
(b) Sanborn Oil was an affiliate of the Bank within the meaning of section 23A(b)(1), 12 U.S.C. § 371c(b)(1), and a "related interest" of Respondent within the meaning of section 215.2(k) of Regulation O, 12 C.F.R. § 215.2(k).

12. During the periods alleged hereafter, 15 percent and 5 percent of the Bank's unimpaired capital and unimpaired surplus ("UC & S"), for purposes of establishing the Bank's lending limit within the meaning of sections 215.2(f) and 215.4(c) of Regulation O, 12 C.F.R. §§ 215.2(f) and 215.4(c), and the need for prior board approval under section 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), were:

Time Period	UC&S	15 Percent of UC&S	5 Percent of UC&S
April 1, 1987-June 30, 1987	$5,989,000	$898,350	$299,450
October 1, 1987-December 31, 1987	$6,221,000	$933,150	$311,050
January 1, 1988-March 31, 1988	$6,243,000	$936,450	$312,150
April 1, 1988-June 30, 1988	$5,585,000	$837,750	$279,250
July 1, 1988-September 30, 1988	$5,769,000	$865,350	$288,450
October 1, 1988-December 31, 1988	$6,052,000	$907,800	$302,600
January 1, 1989-March 31, 1989	$5,838,000	$875,700	$291,900
April 1, 1989-June 30, 1989	$5,958,000	$893,700	$297,900

13. At all times pertinent to the charges herein, the Bank's lending limit under Minn. Stat. Ann. § 48.24, Subdivision 1 (West 1988), was 20 percent of the Bank's capital actually paid in and its actual surplus of $3,550,000, or $710,000.

14. As used herein, pursuant to section 3(v) of the Act, 12 U.S.C. § 1813(v), the term "violation" includes, without limitation, any action (alone or with others) for or toward causing, bringing about, participating in, counseling or aiding or abetting a violation.

15. At all times pertinent to the charges {{6-30-97 p.A-2812}}herein, the Bank was subject to an order to cease and desist issued by the Commissioner of Commerce for the State of Minnesota, effective February 17, 1989 ("1989 State Order").

16. At all times pertinent to the charges herein, the FDIC was the "appropriate Federal banking agency" within the meaning of section 3(q)(3) of the Act, 12 U.S.C. § 1813 (q)(3), and has jurisdiction over the Bank, the Respondents and the subject matter of this proceeding.

C. Violations of Law, Regulations and Order, Unsafe or Unsound Practices, and Breaches of Fiduciary Duty

The GNIC Transactions

17. From October 27, 1986, to and including August 18, 1988, Schmitz and Respondent made, and/or caused or permitted the Bank to make, eleven extensions of credit to GNIC, an affiliate of the Bank and their related interest. The eleven extensions of credit were made pursuant to notes #29330 dated October 27, 1986; #29352 dated November 6, 1986; #29990 dated October 15, 1987; and #30001 dated October 21, 1987. Notes #29352 and #30001 provided that: (a) principal and interest were payable on demand, and (b) future advances were at the complete discretion of the Bank. Accordingly, in addition to the initial advances, each of six subsequent advances and one instance of capitalizing accrued unpaid interest under note #29352 constituted separate extensions of credit to GNIC.

18. The Bank's eleven extensions of credit to GNIC were as follows:

(a) $4,500, under note #29330, on October 27, 1986;
(b) $460,325, under note #29352, on November 6, 1986, resulting in: (i) a cumulative outstanding balance to GNIC of $44,825; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $599,120 and $812,245, respectively;
(c) $20 under note #29352, on November 12, 1986, resulting in: (i) a cumulative outstanding balance to GNIC of $464,845; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $599,120 and $812,245, respectively;
(d) $30,000, under note #29352, on June 30, 1987, resulting in: (i) a cumulative outstanding balance to GNIC of $344,586; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $466,568 and $726,162, respectively;
(e) $36,000, under note #29990, on October 15, 1987, resulting in: (i) a cumulative outstanding balance to GNIC of $308,904; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $430,886 and $730,481, respectively;
(f) $405,000, under note #30001, on October 22, 1987, resulting in: (i) a cumulative outstanding balance to GNIC of $713,904; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $835,886 and $1,135,480, respectively;
(g) $40,012, under note #29352, on March 15, 1988, resulting in (i) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $630,150 and $975,703, respectively;
(h) $17,288, by capitalizing accrued unpaid interest into the principal balance under note #29352 on March 22, 1988, resulting in: (i) a cumulative outstanding balance to GNIC of $551,438; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $647,438 and $992,991, respectively;
(i) $38,000, under note #29352, on June 14, 1988, resulting in: (i) a cumulative outstanding balance to GNIC of $260,412; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $366,412 and $701,209, respectively;
(j) $64,212, under note #29352, on July 27, 1988, resulting in: (i) a cumulative outstanding balance to GNIC of $246,803; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $342,803 and $706,896, respectively; and
(k) $349,597, under note #29352, on August 18, 1988, resulting in: (i) a cumulative outstanding balance of credit to GNIC of $582,879; and (ii) cumulative outstanding balances to Schmitz and Respondent and their related interests, including GNIC, of $678,879 and $1,039,001, respectively.

19. At all times pertinent to the charges {{6-30-97 p.A-2813}}herein, the extensions of credit under promissory notes #29352 and #30001 were collateralized by: (i) GNIC equipment, and (ii) certain loans of

failed insured depository institutions purchased by GNIC from the FDIC. Section 23A(c), 12 U.S.C. § 371c(c), prescribes certain minimum collateral requirements for loans to affiliates and provides that "low quality assets." as defined in Section 23A(b)(1), 12 U.S.C. § 371c(b)(10), are not acceptable collateral. Immediately before the extensions of credit to GNIC, the cumulative balances under promissory notes #29352 and #30001 were $462,001, $502,013, and $191,746, respectively, and the estimated market value of acceptable collateral for each cumulative balance was only $160,104, $156,244, and $159,456. Accordingly, each extension of credit was, for the purposes of Section 23A, made on an unsecured basis.

20. At the times pertinent to the charges:

(a) Respondent was the loan officer for the extensions of credit to GNIC. He executed the Officers' Questionnaires in connection with examinations of the Bank as of February 29, 1988, October 21, 1988, and May 22, 1989. In response to question 25 in each Officer's questionnaire, he failed to disclose the affiliate relationship of GNIC to the Bank.

(b) Schmitz and Respondent failed to make any disclosure to the Bank of their respective interests in GNIC and affirmatively concealed such relationship by failing to disclose it on their financial statements, dated February 29, 1988, and February 28, 1989, for Schmitz, and June 5, 1987, and September 1, 1988, for Respondent, submitted to the Bank in connection with certain extensions of credit from the Bank.

21. By reason of the above, Respondent committed, and/or caused or permitted the Bank to commit, violations of section 23A(c), 12 U.S.C. § 371c(c) in that each extension of credit alleged to GNIC was made on an unsecured bases, and, accordingly, failed to satisfy any of the required collateral requirements prescribed in Section 23A(c).

22. By reason of the above, Respondent committed, and/or caused or permitted the Bank to commit, violations of Section 23A(a)(1)(A), 12 U.S.C. § 371c(a)(1)(A), in that each extension of credit, when aggregated with the amount of all other extensions of credit to GNIC, exceeded 10 percent of the Bank's capital stock and surplus for those dates of $622,000 and $577,000, respectively.

23. By reason of the above, Respondent committed, and/or caused or permitted the Bank to commit, violations of:

(a) sections 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), in that, each extension of credit to GNIC, a related interest of Respondent, was in an amount that, when aggregated with the amount of all other extensions of credit to Respondent and his related interests; (i) exceeded the higher of $25,000 or 5 percent of the Bank's unimpaired capital and surplus and (ii) was made without the prior approval of the board of directors;

(b) section 215.4(b)(1), in that, each extension of credit to GNIC, a related interest of Respondent, when aggregated with the amount of all other extensions of credit to Respondent and his related interests; (i) exceeded $500,000, and (ii) was made without the prior approval of the board of directors; and

(c) section 215.4(c) of Regulation O, 12 C.F.R. 4(c), in that each extension of credit to GNIC, a related interest of Respondent, when aggregated with the amount of all other extensions of credit to Respondent and his related interests, exceeded the applicable lending limit prescribed in section 215.2(f) of Regulation O, 12 C.F.R. 2(f), of 15 percent of the Bank's unimpaired capital and surplus.

24. By reason of the above, Respondent violated, and/or caused or permitted the Bank to violate, section 215.7 of Regulation O, 12 C.F.R. § 215.7, in that he failed to disclose to the Bank his interest in GNIC and thereby caused or permitted the Bank to fail to maintain in its records that GNIC was a related interest.

25. By reason of the above, Respondent violated and/or caused or permitted the Bank to violate Minn. Stat. Ann. § 48.24, Subdivision 1 (West 1988), in that the Bank's extension of credit to GNIC, when aggregated with the amount of all other extensions of credit to GNIC, exceeded the Bank's state legal lending limit of $710,000, alleged in paragraph 15, by $3,904.

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The Sanborn Oil Transactions

26. Respondent extended, and/or caused or permitted the Bank to extend, credit to Sanborn Oil, as follows:

(a) on or about December 23, 1985, by issuing an irrevocable letter of credit of $25,000 ("Sanborn Letter #1"), with a 1-year term and automatically renewable unless terminated by the Bank with 60

days' prior written notice. Sanborn Letter #1 was renewed on October 24 in each of the following years: 1986, 1987, 1988, and 1989;
(b) on or before November 6, 1986, by issuing an irrevocable letter of credit of $30,000 ("Sanborn Letter #2"), with a 6-month term and automatically renewable unless terminated by the Bank with 30 days' prior written notice. Sanborn Letter #2 was renewed on April 6 and October 7 in each of the following years: 1987, 1988, and 1989. There was no record of any credit review of Sanborn Letter #2 and no other Bank record of it; and examiners did not discover Sanborn Letter #2 until the state examination of March 8, 1991;
(c) on or about September 3, 1987, by issuing another irrevocable letter of credit ("Sanborn Letter #3") of $40,000, with a 1-year term; and
(d) on or about August 12, 1988, by issuing another irrevocable letter of credit ("Sanborn Letter #4") of $40,000, with a 2-year term.

27. In addition to the letters of credit referred to above, Sanborn Oil had other extensions of credit at the Bank of $250,171, plus accrued unpaid interest of $8,803. On or about March 1, 1989, Respondent consolidated and renewed, and/or caused or permitted the Bank to consolidate and renew, the $250,171, and added the $8,803 of accrued unpaid interest to the principle for a new balance of $258,974 ("Sanborn March 1989 Credit").

28. As a result of the above, the aggregate amount of extensions of credit to Respondent and his related interest, including Sanborn Oil, were as follows:

(a) on November 6, 1986, $812,245, including Sanborn Letter #2;
(b) on April 6, 1987, $708,754, including Sanborn Letter #2;
(c) on September 3, 1987, $711,895, including Sanborn Letter #3;
(d) on October 7, 1987, $694,587, including Sanborn Letter #2;
(e) on October 24, 1987, $1,135,411, including Sanborn Letter #1;
(f) on April 6, 1988, $794,720, including Sanborn Letter #2;
(g) on August 12, 1988, $693,025, including Sanborn Letter #4;
(h) on October 7, 1988, $965,206, including Sanborn Letter #1;
(i) on October 24, 1988, $965,206, including Sanborn Letter #1;
(j) on March 1, 1989, $734,970, including Sanborn March 1989 Credit; and
(k) on April 6, 1989, $732,861, including Sanborn Letter #2.

29. Respondent failed to make any disclosure to the Bank of his interest in Sanborn Oil and affirmatively concealed his interest by:

(a) executing the Officer's Questionnaires in connection with examinations of the Bank as of February 29, 1988, October 21, 1988, and May 22, 1989, and failing to disclose the affiliate relationship of Sanborn Oil to the Bank in response to question 25 of each questionnaire; and
(b) failing to disclose his interest in Sanborn Oil on his financial statements of June 5, 1987, and September 1, 1988, submitted to the Bank in connection with certain extensions of credit from the Bank.

30. By reason of the above, Respondent committed, and/or caused or permitted the Bank to commit, violations of:

(a) section 215.4(a)(2) of Regulation O, 12 C.F.R. § 215.4(a)(2), in that Sanborn Letter #2, as alleged in paragraph 29(b), involved more than the normal risk of repayment and presented other unfavorable features because of the failure to maintain any and/or adequate documentation in the Bank's records of the initial transaction and subsequent renewals;
(b) section 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), in that each extension of credit to Sanborn Oil, a related interest of Respondent, was in an amount that, when aggregated with the amount of all other extensions of credit to Respondent and his related interests: (i) exceeded the higher of $25,000 or 5 percent of the Bank's unimpaired capital and surplus and (ii) was made without the prior approval of the board of directors;
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(c) section 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), in that each extension of credit to Sanborn Oil, a related interest of Respondent, was in an amount that, when aggregated with the amount of all other extensions of credit to Respondent and his related interests: (i) exceeded $500,000, and (ii) was made without the prior approval of the board of directors;
(d) section 215.4(c) of Regulation O, 12 C.F.R. § 215.4(c), in that each extension of credit to Sanborn Oil, a related interest of Respondent, alleged in items 31(e), 31(h), and 31(i) was in an

amount that, when aggregated with the amount of all other extensions of credit to Respondent and his related interests, exceeded the applicable lending limit prescribed in section 215.2(f) of 15 percent of the Bank's unimpaired capital surplus alleged in paragraph 14;
(e) section 215.7 of Regulation O, 12 C.F.R. § 215.7, in that Respondent failed to disclose to the Bank his interest in Sanborn Oil and thereby caused or permitted the Bank to fail to maintain any record that Sanborn Oil was his related interest; and
(f) Section 23A(a)(4), 12 U.S.C. § 371c(a) (4), in that the Sanborn Letters of Credit alleged in paragraph 29 and the Sanborn March 1989 Credit alleged in paragraph 30 were not made under conditions consistent with safe and sound banking practices by reason of Respondent: (i) concealing from the board of directors and other management of the Bank his financial and ownership interest in Sanborn Oil and improperly using the credit facilities of the Bank to advance his own personal financial interest; and (ii) engaging in selfserving and abusive lending practices which exposed the Bank to possible loss due to the lack of any documentation and credit review or analysis of the Bank's extensions of credit under Sanborn Letter #2.

The Eisel's Inc. Transactions

During the period covered by the Notice herein,

(a) As of October 21, 1987, the Redwood Falls Bank, an affiliate of the Bank had loans to Eisel's Inc. of approximately $185,000, which were adversely classified "Substandard." On the same date, Respondent caused or permitted the Bank to make, loans totaling $180,000 to Eisel's Inc. The loans were secured by inventory, accounts receivable, and equipment of Eisel's Inc. and were guaranteed by the owner of Eisel's Inc., Rich Eisel. Approximately $162,000 of the loan proceeds was used to reduce an outstanding loan of Eisel's Inc. at Redwood Falls Bank, Respondent knew when the loan was made and subsequently that $162,000 of the loan proceeds was used to reduce an outstanding loan of Eisel's Inc. at Redwood Falls Bank.
(b) The $180,000 loan to Eisel's Inc. was made without adequate or appropriate loan documentation, including among other things: (i) current financial information on Eisel's Inc., including its ability to repay; (ii) documentation on the collateral, including: (A) a description and aging of any accounts receivable pledged, and (B) evidence of the Bank's security interest in the equipment, including lien searches and UCC filing statements; and (iii) financial information, including a proper statement, from Mr. Eisel to support his guarantee.
(c) As of February 29, 1988, the loans to Eisel's Inc. were adversely classified $60,000 "Substandard" and $120,000 "Doubtful," and on or about June 30, 1989, $173,327 of these loans were charged off by the Bank. The loans resulted in loss to the Bank, seriously prejudiced the interests of its depositors, and contributed to the Bank's closing.
(d) In addition to the foregoing, as a result of the transactions alleged in paragraph 34(a), Respondent purchased, and/or caused or permitted the Bank to purchase, indirectly through the lending function, without any legal obligation or other legitimate basis to do so, loans or portions of loans of Eisel's Inc. totaling approximately $162,000 from the Bank's affiliate, Redwood Falls Bank. The loans or portions of loans purchased from Redwood Falls Bank were "low quality assets," within the meaning in Section 23A(b)(10), 12 U.S.C. § 371c(b)(10), in that the loans or portions thereof were adversely classified "Substandard" at Redwood Falls Bank when purchased.

32. By reason of the above, Respondent committed, and/or caused or permitted the Bank to commit, violations of:
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(a) Section 23A(a)(3), 12 U.S.C. § 371c(a) (3), in that the Bank purchased a "lowquality asset," within the meaning of Section 23A(b)(10), 12 U.S.C. § 371c(b)(10), from its affiliate, Redwood Falls Bank; and
(b) Section 23A(a)(4), 12 U.S.C. § 371c(a) (4), in that the covered transactions alleged in paragraph 34(a) were not made, for the reasons alleged in paragraph 34, on terms and conditions consistent with safe and sound banking practices.

33. During the period covered by the Notice herein:

(a) In addition to the foregoing, from January 1988 through May 1988, Respondent made, and/or caused or permitted the Bank to make, additional loans to Eisel's Inc. of approximately $98,000. Further, in July 1988, through December 1988, Respondent made, and/or caused or permitted the Bank to make, loans in the form of Letters of Credit to Certified International Corporation ("CIC") of

$150,000, and a loan to CIC's president, ***, of $50,000 purportedly to assist Eisel's Inc. in improving its business respects and thereby assisting it in meeting its obligations to the Bank. In fact, both CIC and *** were out-of-territory borrowers. Additionally, the loan to *** was unsecured when made. The loans to CIC were inadequately secured by third mortgages on rental properties located in Georgia. The Bank failed to obtain any appraisals on the properties. Eventually, the *** loan was secured by the same inadequate security as the CIC loan.

(b) As of May 22, 1989, the loans of $98,000 to Eisel's Inc. were adversely classified "Loss," and the loan to *** was adversely classified $50,000 "Doubtful." On or about June 30, 1990, in addition to charge offs alleged in paragraph 34(c), the Bank also charged off the approximately $98,000 in loans to Eisel's Inc. bringing the total charge offs respecting Eisel's Inc. to approximately $284,000. By October 26, 1990, the loan to CIC was adversely classified $100,000 "Doubtful" and $50,000 "Loss." These loans resulted in loss to the Bank, seriously prejudiced the interests of the depositors, and contributed to the Bank's closing.

34. During the period covered by the Notice herein:

(a) On or about May 20, 1990, Respondent made, and/or caused or permitted the Bank to make, an unsecured seven-year loan to himself of $50,562, to refinance three existing demand notices of his at the Bank. The loan called for principal payments of $800 a month with any unpaid principal due in two years, carried an interest rate of 11 percent payable annually.

(b) The current documentation in the Bank's records supporting the loan was Respondent's financial statement dated September 1, 1989, and "budget estimate" dated May 20, 1990, both of which were seriously flawed. The financial statement: (i) listed 10,000 bushels of corn allegedly valued at $20,000, which in fact had been sold by his father prior to May 20, 1990, with his father retaining the proceeds therefrom; (ii) listed a $30,000 receivable, $25,000 of which was rent owed to Respondent by his father over several years and was

(c) As of the date of the loan, the Bank's loan policy provided that unsecured loans were to be made to only "those customers whose character and capacity to repay has been firmly established and proven, provided the purpose of the loan and source of repayment are clearly understood and repayment can be accomplished within six months" and "should not normally" exceed 150 percent of the borrower's monthly take-home pay. As of May 20, 1990, 150 percent of Respondent's monthly takehome pay of $10,500 was $15,750.

(d) The loan was adversely classified $48,000 "Substandard" as of July 20, 1990, and $43,000 "Loss" as of July 19, 1991. Accordingly, the loan exposed the Bank to risk of loss, seriously prejudiced its depositors, and contributed to the Bank's closing on July 17, 1992.

35. By reason of the above, Respondent committed, and/or caused or permitted the Bank to commit, violations of:

(a) section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), in that the loan to Respondent was not made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the Bank with other persons not covered by Regulation O and not employed by the Bank, because it: (i) contravened the Bank's loan policy; and (ii) the loan documentation was deficient or inadequate; and

(b) section 215.4(a)(2) of Regulation O, {{4-30-97 p.A-2817}}12 C.F.R. § 215.4(a)(2), in that the loan to Respondent involved more than the normal risk of repayment and/or presented other unfavorable features including, but not limited to, that the available documentation for the loan did not support the repayment terms or making the loan on an unsecured basis.

D. Conclusions

36. By reason of the above, Respondent engaged in unsafe or unsound practices and breaches of fiduciary duty to the Bank, including, without limitation, self-serving and abusive insider practices engaged in for his own financial gain to the detriment of the Bank.

37. By reason of the violations, unsafe or unsound practices and breaches of fiduciary duty involving, among other things, selfserving and abusive practices, the Bank suffered financial loss and/or substantial financial loss or other detriment and/or the interests of the Bank's depositors were or could have been seriously prejudiced or prejudiced.

38. The violations, unsafe or unsound practices, and breaches of fiduciary duty, evidence Respondent's personal dishonesty and/or willful or continuing disregard for the safety or soundness of the Bank. Accordingly, based upon the above findings, a Prohibition Order is Recommended against Respondent pursuant to 8(e) of the Act, 12 U.S.C. § 1818(e).

39. By reason of the fact that Respondent failed to request a hearing or answer the charges, and based upon the above-referenced uncontested violations and unsafe and unsound practices, and breach of fiduciary duty, a civil money penalty is assessed in the amount of $125,000 under sections 8(i) and/or 18(j) of the Act, 12 U.S.C. §§ 1818(i) and 1828(j) (Supp. I 1989).

Dated this 22nd day of July, 1996.