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{{10-31-99 p.C-4773}}

[¶11,641] **In the Matter of Herbert J. C. Kulow, Bank of Keystone, Keystone, Nebraska**, Docket Nos. 99-048e, 99-049k (8-4-99)

Respondent prohibited from participating in the conduct of affairs of, or exercising voting rights in, any insured institution without the prior written approval of the FDIC. Respondent assessed civil money penalty by the FDIC in the amount of \$2,500.

[.1] Prohibition, Removal or Suspension—Prohibition From—Participation in Conduct of Affairs

[.2] Prohibition, Removal or Suspension—Prohibition From—Voting Rights, Exercise of

[.3] Civil Money Penalty—Indemnification Prohibited

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**In the Matter of
HERBERT J.C. KULOW,
individually and as an
institution-affiliated
party of
BANK OF KEYSTONE
KEYSTONE, NEBRASKA
(Insured State Nonmember Bank)
ORDER OF PROHIBITION FROM
FURTHER PARTICIPATION
AND ORDER TO PAY
FDIC-99-048e
FDIC-99-049k**

Herbert J.C. Kulow ("Respondent") has been advised of his right to receive a NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION AND NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("NOTICE") issued by the Federal Deposit Insurance Corporation ("FDIC") detailing the unsafe or unsound banking practices and/or breaches of fiduciary duty for which a civil money penalty may be assessed against Respondent and an ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND ORDER TO PAY ("ORDER") may issue, and has been further advised of the right to a hearing on the charges under sections 8(e) and 8(i) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §§ 1818(e) and (i), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. Having waived those rights, Respondent entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND ORDER TO PAY ("CONSENT AGREEMENT") with a representative of the Legal Division of the FDIC, whereby, solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices and/or any breaches of fiduciary duty, Respondent consented to the issuance of an ORDER by the FDIC and consented and agreed to pay a civil money penalty in the amount of \$2,500 to the United States Treasury.

The FDIC considered the matter and determined it had reason to believe that:

- (a) Respondent has engaged or participated in unsafe or unsound banking practices and/or breaches of fiduciary duty as an institution-affiliated party of Bank of Keystone, Keystone, Nebraska ("Bank");
- (b) By reason of such practices and/or breaches of fiduciary duty, Respondent received financial gain or other benefit; and
- (c) Such practices and/or breaches of fiduciary duty involve personal dishonesty on the part of the Respondent and/or demonstrate Respondent's willful or continuing disregard for the safety or soundness of the Bank.

The FDIC further determined that the practices and/or breaches of fiduciary duty demonstrate Respondent's unfitness to serve as a director, officer, person participating in the conduct of the affairs or as an institution-affiliated party of the Bank, any other insured depository institution, or any other agency or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A).

With respect to the civil money penalty, the FDIC took into account the CONSENT AGREEMENT, the

appropriateness of the penalty with respect to the financial resources and good faith of Respondent, the gravity of the misconduct by Respondent, the history of previous misconduct by Respondent, and such other matters as justice requires.

The FDIC, therefore, accepted the CONSENT AGREEMENT, and issued the following:

*ORDER OF PROHIBITION
FROM FURTHER PARTICIPATION
AND ORDER TO PAY*

1. Herbert J.C. Kulow is hereby, without the 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 Act, 12 U.S.C. § 1818(e)(7)(D), prohibited from:

[.1] (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 Act, 12 U.S.C. § 1818(e)(7)(A);

[.2] (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
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(d) voting for a director, or serving or acting as an institution-affiliated party.

[.3] 2. IT IS FURTHER ORDERED that Herbert J.C. Kulow be, and hereby is, assessed and shall pay a civil money penalty in the amount of \$2,500 to the Treasury of the United States on the effective date hereof.

3. IT IS FURTHER ORDERED that Respondent is prohibited from seeking or accepting indemnification from any insured depository institution (i) for the civil money penalty assessed and paid in this matter, or (ii) for any expenses, including attorneys' fees and disbursements, incurred by Respondent in connection with this matter.

4. This ORDER will become effective ten (10) days after issuance. The provisions of this 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.

Pursuant to delegated authority.

Dated at Washington, D.C., this 4th day of August, 1999.