

{{4-1-90 p.A-662}}

[¶5051] **FDIC Docket No. FDIC-85-54k (9-23-85).**

FDIC entered an order to pay a civil money penalty against a bank director who failed to answer a Notice of Assessment. The director's failure to answer is deemed an admission of the allegations in the Notice of Assessment.

[.1] Civil Money Penalties—Notice of Assessment—Time to Answer

The FDIC's Rules of Practice and Procedures provide that every party to a proceeding shall file an answer with the Executive Secretary within 20 days after service of the notice of hearing upon the party afforded the hearing.

{{4-1-90 p.A-663}}

[.2] Civil Money Penalties—Notice of Assessment—Failure to Answer

Failure of a party to file an answer within the time provided is deemed a waiver of the right to appear and contest the allegations of the notice of hearing.

**In the Matter of * * * ,
INDIVIDUALLY AND AS A
DIRECTOR OF * * * BANK (INSURED
STATE NONMEMBER BANK)**

**DECISION AND ORDER TO PAY
CIVIL MONEY PENALTY
FDIC-85-54k**

In a proceeding in which Respondent * * * failed to answer, the Administrative Law Judge recommended assessment of a civil money penalty in the amount of \$2,000, pursuant to Section 18(j)(3) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(j)(3)). (See Recommended Decision and Order dated June 30, 1985.)

The Board hereby adopts the Administrative Law Judge's Recommended Decision and incorporates it by reference herein.

IT IS ORDERED that, by reason of the transactions and violations set forth in the Notice of Assessment, a penalty of \$2,000 be, and hereby is, assessed against * * * pursuant to section 18(j)(3) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(j)(3)).

IT IS FURTHER ORDERED, that * * * pay the civil money penalty assessed upon issuance of this final order by the Board of Directors of the FDIC.

By direction of the Board of Directors.

Dated at Washington, D.C., this 23rd day of September 1985.

/s/ Hoyle L. Robinson

Executive Secretary

RECOMMENDED DECISION

FDIC-85-54k

DECIDED: JUNE 30, 1985

* * *

Assistant General Counsel

* * *

Acting Regional Counsel/Supervision

* * *

Regional Attorney/Supervision

Attorneys for:

Federal Deposit Insurance Corporation

* * *

Attorney for:

Respondent * * *

By: Richard A. Mueller
Administrative Law Judge

Statement of the Case

This proceeding was initiated pursuant to section 18(j)(3) of the Federal Deposit Insurance Act ("Act") (12 U.S.C. § 1828(j)(3)). A written Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, and Order to Pay ("Notice of Assessment") was issued by direction of the Board of Review, acting under authority delegated by the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"), on March 6, 1985. The Notice of Assessment ordered that a civil money penalty be assessed against * * * ("Respondent") in the amount of \$2,000 and ordered payment thereof. The Notice of Assessment was issued under the provisions of the Act (12 U.S.C. §§ 1811— 1831) and the FDIC's Rules of Practice and Procedures (12 C.F.R. Part 308).

Statement of Facts

By letter dated March 15, 1985, and received by the Office of the Executive Secretary of the FDIC on March 25, 1985, Respondent filed a request for hearing on the charges in the Notice of Assessment pursuant to section 308.69 of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.69).

On April 15, 1985, the FDIC issued and served upon Respondent a Notice of Hearing ordering the tentative date for a hearing on or about May 24, 1985, and directing Respondent to file an answer to the Notice of Assessment within 20 days pursuant to section 308.06 of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.06). No answer as required by section 306.06(a) of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.06(a)) was filed.

On June 12, 1985, a prehearing conference was convened in * * * Participants were the legal representatives of the FDIC and Respondent, and the Administrative Law Judge. At the conclusion of the meeting, * * *, Esq., on behalf of Respondent, withdrew the request for hearing in this matter.

[{{4-1-90 p.A-664}}](#)

Conclusions of Law

[1,.2] Section 308.06(a) of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.06(a)) provides in part that "every party to a proceeding shall file an answer with the Executive Secretary within 20 days after service of the notice of hearing upon the party afforded the hearing...."

Section 308.06(b) of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.06(b)) provides that "An answer filed under this section shall specifically admit, deny, or state that the party lacks sufficient information to admit or deny each allegation. A statement of lack of information shall have the effect of a denial. When a party intends to deny part of an allegation, that part shall be denied and the remainder specifically admitted. Any allegation not denied shall be deemed admitted."

Respondent failed to file an answer as required by the above provision. By such omission to act, therefore, Respondent is deemed to have admitted the allegations set forth in the Notice of Assessment pursuant to section 308.06(b) of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.06(b)). Section 308.06(d) of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.06(d)) states the disposition appropriate to the circumstances of this case:

Failure of a party to file an answer required by this section within the time provided shall be deemed a waiver of the right to appear and contest the allegations of the notice of hearing and shall authorize the administrative law judge, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Executive Secretary a recommended decision containing such findings and appropriate conclusions. (12 C.F.R. § 308.06(d)).

The Notice of Hearing incorporates by reference the Notice of Assessment. These two notices are attached as the Appendix to this Recommended Decision and are incorporated by reference into the Statement of Facts herein.

Recommended Order

After taking into account the appropriateness of the penalties with respect to Respondent's financial resources and good faith, the gravity of his violations, the history of his previous violations, and such other matters as justice may require, and in view of the findings of fact and conclusions of law, it is

recommended that the FDIC issue the following:

IT IS ORDERED that, by reason of the transactions and violations set forth in the Notice of Assessment, a penalty of \$2,000 be, and hereby is, assessed against * * *, pursuant to section 18(j)(3) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(j)(3)).

IT IS FURTHER ORDERED, that * * * pay the civil money penalty assessed upon issuance of this final order by the Board of Review of the FDIC, pursuant to delegated authority.

Dated June 30, 1985, at * * *

Respectively submitted,

/s/ Richard A. Mueller

Administrative Law Judge

**NOTICE OF ASSESSMENT OF CIVIL
MONEY PENALTIES, FINDINGS OF
FACT AND CONCLUSIONS OF LAW,
AND ORDER TO PAY**

FDIC-85-54k

*NOTICE OF ASSESSMENT OF CIVIL
MONEY PENALTIES*

The Federal Deposit Insurance Corporation ("FDIC") is of the opinion that * * * (hereinafter collectively referred to as the "Resposndents"), individually, and as directors and officers of * * * Bank, * * * ("Bank"), have violated section 22(h) of the Federal Reserve Act, as amended (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) as promulgated thereunder and made applicable to insured State non-member banks by section 18(j)(2) of the Federal Deposit Insurance Act ("Act")(12 U.S.C. § 1828(j)(2)) and section 337.3(a) of the FDIC's Rules and Regulations (12 C.F.R. § 337.3(a)). The FDIC issues this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER TO PAY ("NOTICE OF ASSESSMENT") under the provisions of section 18(j)(3) of the Act (12 U.S.C. § 1828(j)(3)) and the FDIC's Rules of Practice and Procedures (12 C.F.R. Part 308). In support thereof, the FDIC finds and concludes as follows:

{{4-1-90 p.A-665}}

*FINDINGS OF FACT AND
CONCLUSIONS OF LAW*

1. The Bank is a corporation existing and doing business under the laws of the State of * * * having its principal place of business in * * *. The bank is and was, at all times pertinent to this proceeding, an insured State nonmember bank subject to the Act (12 U.S.C. §§ 1811-1831d) and the Rules and Regulations of the FDIC (12 C.F.R. Chapter III). * * * are and were, at all times pertinent to this proceeding, "directors" of the Bank. * * * and * * * are and were, at all times pertinent to this proceeding, "executive officers" of the Bank as defined in Regulation O. The FDIC has jurisdiction over each Respondent and the subject matter of this proceeding.

2. On December 14, 1983, a loan of \$80,000 was made to * * * representing renewal of a previous loan having a remaining balance of \$75,000, plus interest accrued thereon. The board of directors of the Bank approved the loan at its December 13, 1983 meeting at which all directors were present. Collateral for the loan was a residence purchased for \$58,000 by * * * on or about December 12, 1983. The loan represented 137.9% of the purchase price of the underlying collateral, bears interest at a fixed rate of 13%, and matures in 20 years with annual principal and interest payments. Respondents, by making and approving such loan, violated section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 215.4(a) of Regulation O (12 C.F.R. § 215.4(a)) because such extension of credit 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. Further- more, such extension of credit involved more than the normal risk of repayment.

3. On December 14, 1983, a loan of \$35,000 was made to Bank Teller * * *. The board of directors approved the loan at its December 13, 1983 meeting at which all directors were present. The loan represented 100% of the purchase price of the underlying collateral, bears interest at a fixed rate of 13% and matures in 10 years with principal and interest payments due annually. * * * purchased the residence from a third party, who in turn, purchased, for \$59,500, the former residence of * * *. The proceeds of the \$35,000 loan to * * * were deposited directly to the account of * * *. The \$35,000 loan was made, in part, for * * * tangible economic benefit. Respondents, by making and/or approving such loan, violated section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 215.4(a) of Regulation O (12 C.F.R. §

215.4(a)) because such extension of credit 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. Furthermore, such extension of credit involved more than the normal risk of repayment.

4. Respondents * * * each participated in the transactions described in paragraphs 2 and 3 in violation of section 215.4(a) of Regulation O as applied to insured State nonmember banks by section 18(j)(3)(A) of the Act (12 U.S.C. § 1828(j)(A)).

ORDER TO PAY

After taking into account the appropriateness of the penalties with respect to the financial resources and good faith of * * *, the gravity of the violations of each Respondent, the history of previous violations of each Respondent, and such other matters as justice may require, it is:

ORDERED, that, by reason of the transactions and violations set forth in paragraphs 2 and 3 above, a penalty of \$1,000.00 be, and hereby is, assessed against * * *; a penalty of \$2,000.00 be, and hereby is, assessed against * * *; a penalty of \$20,000.00 be, and hereby is, assessed against * * *, a penalty of \$2,000.00 be, and hereby is, assessed against * * *; a penalty of \$2,000.00 be, and hereby is, assessed against * * *; and a penalty of \$2,000.00 be, and hereby is, assessed against * * *, pursuant to section 18(j)(3) of the Act.

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed until ten (10) days after the date of receipt of the NOTICE OF ASSESSMENT by each Respondent, during which time Respondents * * *, or any of them, may each request a hearing pursuant to section 308.69 of the FDIC's Rules of Practice and Procedures (12 C.F.R. [{{4-1-90 p.A-666}}](#) § 308.69). Any such request for a hearing must be filed in writing with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

The Executive Secretary shall order a hearing to commence within sixty (60) days after receipt of a request for a hearing. If any Respondent fails to file a request for a hearing, the penalty assessed against such Respondent pursuant to this ORDER TO PAY shall be paid within sixty (60) days of the date of issuance of this NOTICE OF ASSESSMENT. Within twenty (20) days after receipt of NOTICE OF ASSESSMENT, any Respondent requesting a hearing shall file an answer to the charges in this NOTICE OF ASSESSMENT as provided for in section 308.06 of the Rules of Practice and Procedures of the FDIC (12 C.F.R. § 308.06).

By direction of the Board of Review, pursuant to delegated authority.

Dated at Washington, D.C., this 6th day of March, 1985.

/s/ Margaret M. Olsen

Deputy Executive Secretary

NOTICE OF HEARING FDIC-85-54k

WHEREAS, on March 6, 1985, the Board of Review of the Federal Deposit Insurance Corporation ("FDIC") issued a Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, and Order to Pay ("Notice of Assessment") under section 18(j)(3) of the Federal Deposit Insurance Act ("Act") (12 U.S.C. § 1828(j)(3)) against * * * individually, and as directors of the * * * Bank, * * *; and

WHEREAS, by letter dated March 15, 1985, received by the Office of the Executive Secretary of the FDIC on March 25, 1985, Respondent * * * filed a request for a hearing on the charges in the Notice of Assessment pursuant to section 308.69 of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.69);

NOW, THEREFORE, in accordance with section 308.71 of FDIC's Rules and Regulations (12 C.F.R. § 308.71), it is hereby ordered that a hearing with respect to the charges in the Notice of Assessment shall commence on or about May 24, 1985, at * * *. The hearing will be conducted in accordance with the provisions of the Act, the Administrative Procedure Act (5 U.S.C. §§ 500–576), and FDIC's Rules of Practice and Procedures (12 C.F.R. Part 308). The hearing is to be held before an Administrative Law Judge to be appointed by the U.S. Office of Personnel Management pursuant to 5 U.S.C. § 3344. The exact time and address of the hearing will be determined by the Administrative Law Judge. The nature of the hearing, the legal authority and jurisdiction for the hearing, and the matters of fact or law constituting the grounds for the hearing are set forth in detail in the Notice of Assessment and are incorporated herein by reference.

Respondent * * * is hereby directed to file an answer to the Notice of Assessment within 20 days of his receipt of this Notice of Hearing in accordance with section 308.06 of FDIC's Rules of Practice and Procedures (12 C.F.R. § 308.06).

Dated: April 15, 1985

/s/ Margaret M. Olsen
Deputy Executive Secretary

Last Updated 6/6/2003

legal@fdic.gov