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[¶5131] **Docket No. FDIC-88-178k and FDIC-88-179k (Consolidated) (2-7-89).**

Civil money penalties assessed against Respondent individually and as an executive officer, director, principal shareholder, person participating in the conduct of Bank's affairs and acquiring person of bank for violations of federal laws and regulations such as acquiring 88.6% of Bank's stock without prior written notice to FDIC, engaging in covered transactions in which Respondents personally derived economic benefits, and extending credit to related interests of Bank's parent holding company.

[.1] Practice and Procedure—Answer—Failure to Answer

Failure of a party to file an Answer to Notice of Assessment was deemed a waiver of rights to appear and contest the allegations of the Notice of Hearing and authorizes the ALJ to find the facts to be as alleged in the notice and to file a recommended decision.

[.2] Civil Money Penalties—Factors Determining Liability—Failure to Comply with Change in Bank Control Act

Civil money penalties may be imposed where Respondent willfully failed to file Notice of Acquisition of Control, as required by statute.

[.3] Regulation O—Section 23A—Civil Money Penalties Imposed for Violations

Extensions of credit to Respondent and/or his related interests violated Regulation O because such extensions of credit exceeded the allowable percentages of capital and surplus of Bank, were not made on terms and conditions that were consistent with safe and sound banking practices, involved more than the normal risk of repayment, were not approved in advance by a majority of the board of directors, and exceeded the Bank's lending limit.

**In the Matter of
* * *, Individually and as an Executive
Officer, a Director, a Person Participating
in the Conduct of the Affairs, and as an
Acquiring Person of * * * BANK**

**(Insured State Nonmember Bank—In
Liquidation)
DECISION AND ORDER**

This proceeding, brought by the Federal Deposit Insurance Corporation ("FDIC"), seeks civil money penalties of * * * ("Respondent"), individually, and as an executive officer, a director, a person participating in the conduct of the affairs, and as an acquiring person of * * * Bank * * * (the "Bank"), pursuant to sections 7(j)(16) and 18(j)(4) of the Federal Deposit Insurance Act (the "FDI Act"), 12 U.S.C. §§1817(j)(16) and 1828(j)(4).

On August 19, 1988, Respondent was issued two Notices of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, and Notices of Hearing ("Notices") by the FDIC. One Notice alleged violations of section 7(j)(16) of the Change in Bank Control Act, 12 U.S.C. §1817(j)(16), arising from Respondent's acquisition of 88.6 percent of the voting shares of the Bank's stock without prior written notice to the FDIC.

The second Notice, issued under section 18 of the FDI Act, alleged violations of, *inter alia*, section 23A of the Federal Reserve Act. 12 U.S.C. §371c. This Notice indicated that Respondent caused the Bank to engage in a series of six (6) "covered transactions" in which Respondent personally derived tangible economic benefit.¹ Most of the assets, loan pools, etc. involved in the "covered transactions" were classified "loss" by FDIC examiners. This Notice (at 3–8) also detailed various extensions of credit to related interests of the Bank's parent holding company, in violation of section 23A(a) of the Federal Reserve Act, 12 U.S.C. §371c(a), and which were not in compliance with Regulation O of the Board

¹ The Notice under section 18(j)(4) of the FDI Act (at 3–4) described six transactions in which Respondent received the use of \$4,583,701. "Covered transactions" within the context of 12 U.S.C.

§371c(b)(7) refers to either a purchase of assets from an affiliate of the Bank or an extension of credit by the Bank to an affiliate.

{{4-1-90 p.A-1410}} of Governors of the Federal Reserve System, 12 C.F.R. §215. Respondent made extensions of credit that were each in excess of 10 percent of the capital stock of the Bank, without proper documentation, prior board approval, or any evidence of proper credit analysis.

Each Notice stated that, pursuant to section 308.06 of the FDIC's Rules and Regulations, Respondent must file an answer within twenty (20) days of receipt of the Notice. Although a request for hearing was received by the FDIC, Respondent has not filed an answer. At no time has Respondent sought leave to file a late answer or made any other effort to respond to either Notice.

[.1] Because a request for hearing was received, this proceeding was assigned to an Administrative Law Judge ("ALJ") who issued a November 4, 1988, decision, pursuant to section 308.06(d) of FDIC's Rules of Practice and Procedures,² recommending that civil penalties be assessed against Respondent.

The Board of Directors of the FDIC ("Board") has reviewed the record, including the ALJ's recommended decision, and concludes that the ALJ's findings of fact and conclusions of law are correct. Accordingly, the Board adopts the ALJ's Recommended Decision and incorporates it herein by reference. The Board therefore enters the Order set forth below.

ORDER

IT IS HEREBY ORDERED that, by reason of the violations set forth above, civil money penalties be, and hereby are, assessed against * * * in the amounts of: (1) \$460,000 pursuant to section 7(j)(16) of the FDI Act, 12 U.S.C. §1817(j)(16); and (2) \$2,028,000 pursuant to section 18(j)(4) of the FDI Act, 12 U.S.C. §1828(j)(4).

IT IS FURTHER ORDERED, that * * * pay the assessed civil money penalties upon receipt of this Order.

By direction of the Board of Directors.

Dated at Washington, D.C., this 7th day of February, 1989.

In the Matter of

* * *, Individually and as an Acquiring Person, an Executive Officer, a Director and a Principal Shareholder of * * *

BANK

(Insured State Nonmember Bank In Liquidation)

RECOMMENDED DECISION

CHARNO. *Administrative Law Judge:*

On August 19, 1988, the Federal Deposit Insurance Corporation (FDIC) issued two Notices of Assessment of Civil Money Penalty against * * * (Respondent) pursuant to Sections 7(j)(16) and 18(j)(4) of the Federal Deposit Insurance Act (Act), 12 U.S.C. §§1817(j)(16) and 1828(j)(4), and Part 308 of the FDIC Rules and Regulations. 12 C.F.R. Pt. 308. On August 22, 1988, Respondent filed timely requests for hearing with respect to both Notices but did not thereafter file an Answer to either Notice. I therefore make the following findings of fact in conformity with 12 C.F.R. §308.06(d).

FINDINGS OF FACT

A. General Findings

1. At all times pertinent to these proceedings, * * * Bank * * * (Bank) was a corporation existing and doing business under the laws of the State of * * *, having its principal place of business in * * *.

2. At all times pertinent to these proceedings, the Bank was an insured State nonmember bank, subject to the Act, 12 U.S.C. §§1811-1831d, the Rules and Regulations of the FDIC, 12 C.F.R. Ch. III, and the laws of the State of * * *.

B. Findings in Docket No. FDIC-88-178k

3. Prior to May 27, 1987, * * *, a onebank holding company wholly owned by * * *, owned approximately 2,215 shares of common stock of the Bank (Bank Stock), representing approximately 88.6 percent of the Bank's total outstanding voting stock.

4. On January 27, 1986, * * * executed a promissory note to * * * Bank of * * *, * * *, for the amount of \$100,000, due and payable on July 31, 1986. Said note was secured by the 2,215 shares of Bank Stock

described in Paragraph 3 above.

² Section 308.06(d) provides:

Effect of failure to answer. 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 notices 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.

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5. As of May 27, 1987, the promissory note described in Paragraph 4 above was past due and in default.

6. On or about May 27, 1987, Respondent purchased the past due note described in Paragraphs 4 and 5 above from * * *. Respondent knew, or should have known, that said note was seriously delinquent.

7. On or about May 28, 1987, approximately one day after acquiring the promissory note described in Paragraphs 4 and 5 above, Respondent foreclosed on the Bank Stock securing said note, thereby acquiring 2,215 shares of stock of the Bank, representing approximately 88.6 percent of the Bank's outstanding voting stock.

8. On at least three other occasions prior to his acquisition of the promissory note described in Paragraphs 4 and 5 above, Respondent filed or attempted to file with the Federal Reserve Bank of * * * a Notice of Acquisition of Control pursuant to 12 U.S.C. §1817(j) for control of * * *. Respondent therefore had knowledge or reason to know of the notice and other requirements of Section 7(j) of the Act, 12 U.S.C. §1817(j), prior to his acquisition of control of the Bank on May 28, 1987.

9. No Notice of Acquisition of Control was filed with the FDIC prior to Respondent's foreclosure on the Bank stock on May 28, 1987, as required by Section 7(j)(1) of the Act, 12 U.S.C. §1817(j)(1).

10. On June 16, 1987, the FDIC's * * * Regional Office sent a written request to the Respondent to file a Notice of Acquisition of Control pursuant to the requirements of Section 7(j) of the Act, 12 U.S.C. §1817(j). On July 13, 1987, forty-seven (47) days after Respondent acquired control of the Bank, Respondent filed a Notice of Acquisition which was unacceptable because it was materially incomplete.

C. Findings in Docket No. FDIC-88-179k

11. On or about May 28, 1987, Respondent acquired over 80 percent of the common stock of the Bank.

12. On or about May 28, 1987, Respondent was elected president of the Bank and appointed to the board of directors of the Bank, and served in those capacities throughout all times pertinent to this proceeding.

13. At all times pertinent to this proceeding, Respondent exercised a controlling influence over the management and policies and practices of the Bank, including extensions of credit, investments and purchases of assets by the Bank.

14. At all times pertinent to this proceeding, and in addition to his ownership interest in the Bank, Respondent was the majority shareholder and chief executive officer of * * *.

15. At all times pertinent to this proceeding, (1) * * *, also doing business as * * *, and (2) * * * also doing business as * * *, were wholly-owned subsidiaries of * * *.

Additionally, * * * Corporation owned all of the outstanding stock of * * *, and its subsidiary, * * *, also doing business as * * *.

16. At all times pertinent to this proceeding, Respondent was chief executive officer of * * *, * * *, * * *, * * *, * * *, * * *, and * * *.

17. (a) On or about June 8, 1987, Respondent caused or permitted the Bank to purchase without recourse a real estate loan pool from * * * for \$1,533,000. The entire real estate loan pool was classified "Loss" by the FDIC in its examination of the Bank as of July 10, 1987. At least \$125,000 of the proceeds of this transaction were transferred to and/or used directly by Respondent for his personal tangible economic benefit.

(b) On or about June 10, 1987, Respondent caused or permitted the bank to purchase without recourse a real estate loan pool from * * * for \$1,773,333.30. At least \$1,700,000 of the proceeds of this transaction were transferred to and/or used directly by Respondent for his personal tangible economic benefit.

(c) On or about June 16, 1987, Respondent caused or permitted the Bank to purchase without recourse an installment loan pool from * * * for \$955,000. The entire installment loan pool was classified "Loss" by the FDIC in its examination of the Bank as of July 10, 1987. At least \$879,000 of the proceeds of this transaction were transferred to and/or used directly by Respondent for his personal tangible economic benefit.

(d) On or about June 26, 1987, Respondent caused or permitted the Bank to purchase without recourse a real estate loan pool from * * * for \$1,624,500. All of the proceeds of this transaction were transferred to and/or used directly by the Respondent for his personal tangible economic benefit.

(e) On or about June 9, 1987, Respondent caused or permitted the Bank to purchase without recourse time-share contracts in a resort project near * * *, from * * * for \$932,011. All of the purchased time-share contracts were classified "Loss" by the FDIC in its examination of the Bank as of July 10, 1987. At least \$105,201 of the proceeds of this transaction were transferred to and/or used directly by the Respondent for his personal tangible economic benefit.

(f) On or about June 29, 1987, Respondent caused or permitted the Bank to extend credit in the amount of \$150,000 to * * *. This loan was classified "Loss" by the FDIC in its examination of the Bank as of July 10, 1987. All of the proceeds of this transaction were transferred to and/or used directly by the Respondent for his personal tangible economic benefit.

18. The Bank's records contained no documentation or other written evidence necessary to analyze the credit quality of each transaction described in paragraph 17(a) through 17(f) above (The Transactions), including notes or other evidence of indebtedness, any evidence of underlying collateral or its value, and any financial information on the borrowers indicating their ability to repay.

19. During the time of The Transactions, the capital stock and surplus of the Bank did not exceed \$264,000.

CONCLUSIONS OF LAW

1. The FDIC has jurisdiction over the Bank, the Respondent, and the subject matter of these proceedings.

2. Respondent is an acquiring person within the meaning of Section 7(j) of the Act, 12 U.S.C. §1817(j).

3. The acquisition of the Bank Stock described in paragraph 7 of the Findings of Fact constituted an acquisition of control within the meaning of Sections 7(j)(1) and 7(j)(8)(B) of the Act, 12 U.S.C. §§1817(j)(1) and 1817(j)(8)(B).

[.2] 4. The acquisition of control of the Bank by Respondent described in the Findings of Fact constitutes a willful violation by Respondent of Section 7(j)(i) of the Act, 12 U.S.C. §1817(j)(1), and Section 303.4 of the FDIC Rules and Regulations, 12 C.F.R. §303.4, which require that the FDIC be furnished prior written notification of an intent to acquire control of a State nonmember bank which is insured by the FDIC.

5. Section 23A of the Federal Reserve Act, 12 U.S.C. §371c, is made applicable to insured State nonmember banks by Section 18(j)(1) of the Act, 12 U.S.C. §1828(j)(1).

6. Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. Pt. 215, is 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.

7. For all times pertinent to this proceeding, Respondent was a "principal shareholder" of the Bank within the meaning of Section 215.2(j) of Regulation O, 12 C.F.R. §215.2(j).

8. As a result of the relationships to Respondent described in paragraphs 14 through 16 of the Findings of Fact, * * *, * * *, and * * * were:

(a) "related interests" of Respondent within the meaning of Section 215.2(k) of Regulation O, 12 C.F.R. §215.2(k); and

(b) "affiliates" of the Bank within the meaning of Section 23A(b)(1)(C)(i), 12 U.S.C. §371c(b)(1)(C)(i).

9. All of The Transactions were "covered transactions" within the meaning of 12 U.S.C. §371c(b)(7), in that each transaction was either a purchase of assets from an affiliate of the Bank or an extension of credit by the Bank to an affiliate of the Bank.

10. At the time of The Transactions, the Bank's applicable 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), was ten percent of the Bank's paid-in capital and surplus, as set forth in Section 48.24, subd. 4 of the * * * Statutes Annotated, which equaled approximately \$26,400 as of March 31, 1987.

11. Each of The Transactions were "extensions of credit" to Respondent and/or his related interests within the meaning of Section 215.3 of Regulation O, 12 C.F.R. §215.3.

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[.3] 12. By reason of each of The Transactions, Respondent, within the meaning of Section 18(j)(4)(A), 12 U.S.C. §1828(j)(4)(A), violated the following provisions of Section 23A of the Federal Reserve Act, 12 U.S.C. §371c:

(a) Section 23A(a)(1)(A) of the Federal Reserve Act, 12 U.S.C. §371c(a)(1)(A), which restricts covered transactions with any affiliates of the Bank to an aggregated amount of not more than ten percent of capital stock and surplus of the Bank. Each of The Transactions exceeded ten percent of the capital stock and surplus of the Bank, which at the time of the Transactions equaled approximately \$26,400.

(b) Section 23A(a)(1)(B) of the Federal Reserve Act, 12 U.S.C. §371c(a)(1)(B), which restricts covered transactions with all affiliates of the Bank to an aggregated amount of not more than 20 percent of the capital stock and surplus of the Bank. The Transactions, individually and in the aggregate, exceeded 20 percent of the capital stock and surplus of the Bank, which at the time of The Transactions equaled approximately \$52,800.

(c) Section 23A(a)(4) of the Federal Reserve Act, 12 U.S.C. §371c(a)(4), which requires that any transactions between affiliates and the Bank be on terms and conditions that are consistent with safe and sound banking practices. By reason of paragraph 18 of the Findings of Fact, The Transactions were not made on terms and conditions that are consistent with safe and sound banking practices.

13. By reason of The Transactions, Respondent, within the meaning of Section 18(j)(4)(A) of the Act, 12 U.S.C. §1828(j)(4)(A), violated the following provisions of Regulation O, 12 C.F.R. Pt. 215:

(a) Section 215.4(a)(2) of Regulation O, 12 C.F.R. §215.4(a)(2), which requires that extensions of credit to executive officers, directors, or principal shareholders of banks not involve more than the normal risk of repayment or present other unfavorable features. By reason of paragraph 18 of the Findings of Fact, each of The Transactions constituted an extension of credit to Respondent and/or his related interests which involved more than the normal risk of repayment.

(b) Section 215.4(b)(1) of Regulation O, 12 C.F.R. §215.4(b)(1), which requires prior approval of a majority of the Bank's board of directors to extend credit to an executive officer, director, or principal shareholder of the Bank when the aggregate extensions of credit to the person and his related interests exceed the higher of \$25,000 or five percent of the Bank's capital and unimpaired surplus. At the time of each of The Transactions, five percent of the Bank's capital and unimpaired surplus equaled approximately \$13,200. Each of The Transactions exceeded \$25,000 and none were approved in advance by a majority of the entire board of directors of the Bank.

(c) Section 215.4(c) of Regulation O, 12 C.F.R. §215.4(c), which requires that extensions of credit to executive officers, directors, or principal shareholders of the Bank and their related interests, when aggregated, not exceed the lending limit of the Bank specified in Section 215.2(f) of Regulation O, 12 C.F.R. §2145.2(f). Each of The Transactions exceeded the Bank's legal lending limit to an individual and his related interests, which at the time of the transactions was approximately \$26,400.

Upon the foregoing findings of fact and conclusions of law, I hereby issue the following recommended order:

ORDER TO PAY

IT IS ORDERED that, by reason of the violations set forth above, civil money penalties be, and hereby are, assessed against * * * in the amounts of (1) \$460,000 pursuant to Section 7(j)(16) of the Act, 12 U.S.C. §1817(j)(16), and (2) \$2,028,000 pursuant to Section 18(j)(4) of the Act, 12 U.S.C. §1828(j)(4).

IT IS FURTHER ORDERED that * * * pay the assessed civil money penalties upon receipt of the final Order to Pay issued by the FDIC.

Done at Washington, D.C., this 4th day of November, 1988.