'

[¶5021]FDIC Docket No. FDIC-83-21k-B (1-9-84).

Civil money penalties assessed against directors and principal shareholders of insured state nonmember bank for violations of laws and regulations, exceeding the lending limits, and failure to take physical possession of collateral used to secure loans. FDIC assessed higher penalties for some directors than for others on the basis that these directors' positions as bank chairman and vice president, membership on the loan committee, and combined ownership of more than 50% of the bank's stock, conferred on them an additional measure of responsibility for monitoring the loan's compliance with the requirements of federal statutes and regulations.

[.1]Directors—Duties and Responsibilities to Officers—Delegation
Directors are expected to exercise reasonable diligence in carrying out their fiduciary duties, and may not delegate their full responsibility to officers of the bank.

[.2]Civil Money Penalties—Factors Determining Liability
Assessment of civil money penalties against bank directors is appropriate when directors admit knowledge of the facts on which the violations of laws or regulations are based.

[.3]Civil Money Penalties—Differing Penalties Assessed
Higher civil money penalties are supported for some directors when these directors are conferred with an additional measure of responsibility. Directors' positions as bank chairman and vice president, substantial stock ownership, membership on the loan committee, and connection with two separate affiliates whose loans were cited as being in violation of the same statute, support the imposition of higher penalties on these directors.

[.4]Loans—Collateral
The provision requiring that a loan be secured is for the purpose of protecting the bank against the possibility of a loss. In the case of a loan, the security is to insure the fulfillment of the obligation. In order to secure a loan, the collateral must be under the control of the bank, either actual or constructive, and give it priority over third parties.

[.5]Civil Money Penalties—Amount—Statutory Standard
Certain factors must be considered in determining an appropriate penalty, including the size of the financial resources, good faith of the insured bank or person charged, the gravity of the violation and the history of previous violations.

[.6]Directors—Duties and Responsibilites—Standard of Care
Directors of a bank are required to exercise ordinary care and prudence in the administration of the bank's affairs. They have a duty to manage the bank, and it is negligent to leave the management of its affairs entirely up to others.

In the Matter of * * *, individually and
as a director and principal shareholder of
*** * *, * * *, an insured State**
nonmember bank; and * * *, individually
and as a director and principal shareholder
of * * * * * *, an insured State
nonmember bank; and * * *, and * * *,
individually and as directors of * * *,
*** * *, an insured State nonmember bank.**

DECISION AND ORDER
FDIC-83-21k-B

Pursuant to its authority under section 18(j)(3) of the Federal Deposit Insurance Act (12 U.S.C. §1828

(j)(3), the Federal Deposit Insurance Corporation on February 7, 1983, issued a notice of assessment of civil money penalties against the above named parties alleging violations of sections 22(h) and 23A of the Federal Reserve Act, as amended (12 U.S.C. §§375b and 371c), and Regulation O of the Board of Governors of the Federal Reserve System (12 C.F.R. Part 215) by virtue of exceeding the lending limits approved by the Board of Directors and failing to comply with the collateral requirements of section 23a. On May 12, 1983, a hearing in the matter was

{{4-1-90 p.A-180}}held in * * *. Thereafter, the parties filed proposed findings of fact, proposed conclusions of law, proposed orders, briefs and reply briefs. The Administrative Law Judge filed his Recommended Decision and Order on September 22, 1983, upholding the FDIC's charges. The Administrative Law Judge ("ALJ") recommended reducing to $1,000 the $5,000 penalties assessed against * * * and * * *, but upheld the $1,000 penalties assessed against each of the other Respondents.

On September 18, 1981, Respondents, as directors of * * * Bank, * * * * * * ("* * *" or "the Bank"), approved[1] a $400,000 loan to * * * Company ("* * *"). Two of the respondent directors (* * * and * * *) are controlling shareholders in both * * * and * * * ; thus, * * * is an affiliate of * * *. At the May 24, 1982 examination of * * *, FDIC examiners cited this loan as violating section 23A of the Federal Reserve Act, 12 U.S.C. §371(c), in that it was not adequately secured by collateral of the type required by section 23A. At a June 8, 1982 meeting of * * * Board of Directors, FDIC examiners explained that the loan violated section 23A because the collateral purportedly securing the loan was not in * * * physical possession. During an October 14–15, 1982 visitation of * * * FDIC examiners discovered that the collateral was still not in * * * possession. The visitation further revealed that on several separate occasions the credit extended to * * * exceeded the $400,000 authorized by the * * * board, thus violating section 22(h) of the Federal Reserve Act (12 U.S.C. §375(b)) and Regulation O of the Board of Governors of the Federal Reserve System (12 C.F.R. Part 215). Despite FDIC warnings of a legal violation, Respondents failed to obtain physical possession of the collateral until December 16, 1982, after the FDIC had warned Respondents that civil money penalties were being considered.

[.1**]** Respondents do not deny that they had knowledge that stock purportedly securing the * * * line was being held by * * * to secure its own $375,000 loan to * * *. Neither do Respondents deny knowledge that * * *, also held a superior security interest of $500,000 in such stock. Several Respondents[2] merely allege that they relied upon the representations of Respondent * * * the President of * * *, who said he believed that the arrangements made to secure the * * * loan were legally sufficient. Respondents' alleged reliance upon the "legal advice" given by * * * was unjustified, in light of their awareness that the FDIC considered the * * * loan to violate section 23A. Directors are expected to exercise reasonable diligence in carrying out their fiduciary duties, and may not delegate their full responsibility to officers of the bank. *Heit v. Bixby*, 276 F. Supp 217 (E.D. Mo. 1967); *Gibbons v. Anderson*, 80 F. 345 (W.D. Mich. 1897).

Respondents' explanation for the several different occasions upon which the * * * line exceeded $400,000 is similarly unpersuasive. Permitting a "related interest" of "directors" and "principal shareholders"[3] to draw credit in excess of the amount authorized by the board, because it is believed that the debtor will subsequently obtain sufficient funds to eliminate such excess, does not excuse violations of the prior approval requirements of section 22(h) and Regulation O.

[.2**]** In light of previous violations in connection with loans to insiders, the Respondents admitted knowledge of the facts upon which the instant violations were based, and the duration of the instant violations after notice thereof by bank examiners, the FDIC concludes that the assessment of civil money penalties against Respondents is appropriate.

None of the Respondents have questioned the appropriateness of the penalties assessed with respect to their resources. The ALJ's Recommended Decision found that the $1,000 penalties assessed against Respondents * * * were appropriate under the circumstances. However, the ALJ recommended that the $5,000 penalties assessed against * * * and * * * be reduced to $1,000. The Recommended Decision stated that "The evidence does not indicate any extenuating circumstances or compelling reason as to why * * * and * * *

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[1] The * * * loan was first approved on July 31, 1981, in the amount of $750,000. The Board voted to reduce the credit and require that it be secured at the September, 1981 meeting. Hearing Exhibit 10 (the minutes of the September 18, 1981 board meeting) indicated that all Respondents except * * * * * * and * * * were present at the meeting. The minutes further state that "all present" voted on the * * * loan.

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[2] See statements of Respondents * * *, * * *, * * *, and * * * contained in FDIC Exhibit No. 19.

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[3] See definitions of these terms in Regulation O, 12 C.F.R. §§215.2(k), (c) and (j), respectively.
{{4-1-90 p.A-181}}should be assessed a higher penalty than the other directors." (Recommended Decision at p. 17).

[.3**]** The FDIC Board of Directors disagrees with and departs from the ALJ's Recommended Decision insofar as the latter states that there is no reason for assessing higher penalties against * * * and * * * than against the other Respondents. As demonstrated by the discussion below and the supplemental findings of fact made by the FDIC Board of Directors,[4]the record contains substantial evidence supporting higher penalties for these two respondents.
* * * and * * * positions as the Bank's Chairman and Vice President, respectively, as well as their membership on the * * * loan committee, conferred upon them an additional measure of responsibility for monitoring the loan's compliance with the requirements of federal statutes and regulations. Furthermore, the * * * family's substantial stock ownership in * * * provided * * * and * * * with an opportunity to control bank policy which was not shared by the other Respondents.

In addition, * * * and * * * together owned more than 50% of the stock of * * * Company, the recipient of the loan in question. It further appears that, at the time the credit was first extended, both * * * and * * * were officers and directors of * * *. These business and financial interests in * * * provided them with a significant incentive for ensuring that the * * * credit was initially extended, and later renewed.

And finally, it appears that another interest of * * * and * * * was involved in a section 23A violation as recently as one year prior to the extension of the * * * credit. The August 31, 1981 FDIC Report of Examination cited * * * for permitting * * * , a * * * affiliate, to co-sign a note without adequate collateral, in violation of section 23A. Both * * * and * * * were directors of * * *. The fact that * * * and * * * were connected with two separate affiliates whose loans were cited as being in violation of the very same statute within a relatively short period of time further supports the imposition of higher penalties upon these two Respondents.

Thus, the FDIC concludes that the $1,000 penalties assessed against Respondents * * * should be upheld, for reasons cited in the ALJ's opinion. The FDIC further concludes that the $5,000 penalties assessed against * * * and * * * should also be upheld, for reasons cited in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Accordingly, the Board of Directors adopts all the findings of fact of the ALJ numbered 1-32, and the bases therefor, as set forth in his Recommended Decision, which are hereby incorporated by reference as part of this decision. The Board of Directors further makes the following supplemental findings of fact:

33. * * * was Vice President of * * * Bank, and * * * was Chairman of the Board of Directors of * * *, at all times relevant to this action. (Ex. 5, p.B).

34. Both * * * and * * * were members of the * * * Loan Committee at all times relevant to this action. (Ex. 5, pp. B and B-2).

35. * * * and * * * each owned 1,030 shares of * * * stock at all times relevant to this proceeding. (Ex. 5, p. B). The * * * family owns 55% of * * * ' stock. (Ex. 15, p. 1-c).

36. As of August 31, 1981, * * * was a vice-president and director of * * * Company (Ex. 5, p. 17). At all times relevant to this action, * * * was both a director and officer of * * * Company. (Ex. 5, p. 17; Ex. 9, pp. 23 and 24). As of May 24, 1982, five of * * * eight directors were members of the * * * family who also owned * * * stock. (Ex. 15, p. 1-c). * * * and * * * owned over 50% of * * * stock at all times relevant to this proceeding (Tr. at 14).

37. The August 31, 1981 FDIC Report of Examination * * * cited the bank for violating the requirement in section 23A of the Federal Reserve Act, 12 U.S.C. §371c, that loans to affiliates be secured by adequate collateral. (Ex. 5, p. 1-c). The affiliate involved, * * * Company, had co-signed a note for an unsecured loan to a non-affiliate borrower. (Ex. 5, pp. 1-c, 16 and 17). The record shows that both * * * and * * * were directors of * * * Company at that time (Ex. 5, p. 17).

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[4] *See*"Findings of Fact and Conclusions of Law." *infra*.
{{4-1-90 p.A-182}}
The FDIC Board of Directors adopts all of the ALJ's conclusions of law, and the bases therefor, as set forth in his Recommended Decision, except conclusion of Law Number 4, which sets forth the amount of the penalties to be assessed against Respondents. The ALJ's conclusions of law 1-3, and the bases therefor, are hereby incorporated by reference as part of this decision. Additionally, for the reasons set forth in the foregoing FDIC decision and findings of fact, the FDIC Board of Directors has reached, and hereby adopts, the following Conclusion of Law Number 4:

4. The violations were of such gravity that civil money penalties of $1,000 each are warranted, pursuant to section 18(j)(3) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j)(3), against respondents * * * and * * * Civil money penalties of $5,000 each are warranted against Respondents * * * and * * *, in light of their control over * * * Bank, their interest in * * * Company and their connection with another * * * affiliate involved in a section 23A violation in the year preceding the instant violations.

FINAL ORDER TO PAY

After taking into account the appropriateness of the penalty with respect to the size of financial resources available to * * * , * * * , the gravity of the violations, the history of previous violations and such other matters as justice may require, it is:

ORDERED, that by reason of the violations found herein, a penalty of $5,000 each be and hereby is assessed against * * * and * * * individually, pursuant to the provisions of section 18(j)(3) of the Act, 12 U.S.C. 1828(j)(3).

FURTHER ORDERED, that by reason of the transactions and violations found herein, a penalty of $1,000 each be and hereby is assessed against * * * , and * * * , individually, pursuant to the provisions of section 18(j)(3) of the Act, 12 U.S.C. §1828(j)(3).

FURTHER ORDERED, that the civil money penalties set forth in this Order shall not be paid directly or indirectly by * * * Bank, but shall be paid directly by the individual against whom the penalty is assessed.

By order of the Board of Directors.

Dated at Washington, D.C., this 9th day of January, 1984.

/s/ Hoyle L. Robinson
Executive Secretary

FDIC-83-21k-B)

RECOMMENDED DECISION

Burroughs, Judge: The Federal Deposit Insurance Corporation ("FDIC") seeks civil monetary penalties against directors of the * * * ("* * *"), * * *, pursuant to the provisions of section 18(j)(3)(A) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §1828(j)(3)(A). The action results from a Report of Examination of * * * at the close of business on May 24, 1982, and a subsequent visitation on October 14–15, 1982, wherein it was determined that an extension of credit to * * * Company ("* * *") in the amount of $400,000 was in violation of sections 22(h) and 23A of the Federal Reserve Act, as amended 12 U.S.C. §§375b and 371c, respectively), and Regulation O of the Board of Governors of the Federal Reserve System (12 C.F.R. Part 215), promulgated pursuant to section 22(h) of the Federal Reserve Act. * * * is an affiliate of * * *. Shareholders who own or control a majority of the shares of * * * also directly or indirectly control * * *.

On February 7, 1983, the Board of Directors of the FDIC issued a Notice of Assessment of Civil Money Penalties assessing a $5,000 penalty against * * * and * * * and a penalty of $1,000 against * * * , individually. On February 24, 1983, a letter was received by the Executive Secretary of the FDIC from counsel for the directors advising that they desired a hearing pursuant to section 308.69(b) of the FDIC's Rules of Practice and Procedures. A hearing was held in * * *, on May 12, 1983.

* * * is an insured State nonmember bank. On July 31, 1981, the board of directors of * * * unanimously approved a $750,000 line of credit to * * *. Director * * * was absent and did not vote. Directors * * * and * * * abstained since they owned the majority of * * * stock. * * * served as director and chairman of the board of * * * . The meeting to approve the line of credit was called as a result of an oral request made by * * * . No loan application was filed by * * * prior to the approval on July 31, 1981 (Tr. 12–13).

A demand note for the amount of $400,000 was executed by * * * on behalf of * * * on August 4, 1981. The note makes no reference to security for the loan. Collat- {{4-1-90 p.A-183}}eral or the loan was to consist of an assignment of one-third interest in 270,100 shares of the * * *. The stock was owned by * * *, and * * *. A pledging agreement dated July 30, 1981, signed by * * * individually and as vice president of * * *, was given in connection with the loan.[1] The pledging agreement made no reference to * * * but stated that the stock was pledged "to secure the payment of all indebtedness, direct or contingent, now or hereafter owing the bank by the undersigned, or any of them." Possession of the stock was not physically delivered to * * *.

The stock referred to in the pledging agreement was in the possession of the * * * ("* * *") to secure a $375,000 loan made by * * *. The same stock was pledged to the * * *, ("* * *") to secure a loan of $500,000 made to * * *. There are also indications that the same stock was pledged to the * * * (Ex.K).

The directors of * * * were aware that the stock was in possession of * * * to secure a previous debt. They were also aware of the pledge to the * * * Bank. The marked value of the stock is unknown. Its book value was listed at $7.71 per share in the Report of Examination of * * * as of the close of business on May 24, 1982.

The 270,100 shares of stock of * * * consisted of certificate number 135 for 166,800 shares, certificate number 136 for 52,900 shares, and certificate number 137 for 50,400 shares. Certificate numbers 135 and 136 were owned by * * *. Certificate number 137 was owned by * * *. The stock was in the possession of * * *. By letter dated July 30, 1981, * * * , individually and as vice president of * * * , advised * * * to deliver the stock to * * * Bank when the debt at * * * was liquidated. The letter indicated that * * * Bank would receive it for * * *. The letter was duly noted by a representative of * * * and * * * , president of * * * , that they agreed to the terms of the letter. The letter makes no reference to the fact that the stock was also pledged to * * * Bank.

On September 18, 1981, the board of directors of * * * amended the line of credit approved for * * * on July 31, 1981, to reduce the amount to $400,000. Action was taken by the directors to lower the line of credit to $400,000 at the suggestion of one of the bank examiners during a September, 1981, examination, wherein it was determined the loan could not exceed $400,000. Directors attending and voting approval included * * *.

Director * * * was not present at the July 31, 1981, approval of the line of credit but voted in favor of the $400,000 extension of credit at the September 18, 1981, meeting.

On January 5, 1982, a new loan in the amount of $400,000 was made to * * * to pay out the line of credit that had been extended to it on August 4, 1981 (date of demand note). The extension of credit was made pursuant to the authorization of the board of directors meeting held on September 18, 1981. The loan was to be secured by the same stock in the * * *. As of January 5, 1982, the stock was still in the possession of * * * as security for the $375,000 loan from * * *. The stock was also pledged to secure a $500,000 debt to * * * Bank.

The * * *, by letter dated June 7, 1982, advised * * * that it held 270,100 shares of * * * as collateral on a debt of * * *. There is no reference to any of the stock being held for the benefit of * * * , or * * *. On June 8, 1982, the examiners discussed all matters in their report of examination as of the close of business on May 24, 1982, with the board of directors of * * *. All directors were present. The discussion included the loan to * * * and the fact that * * * did not have physical possession of the pledged stock. The examiners advised the directors that there was a violation of section 23A of the Federal Reserve Act (Tr. 33–34).

On June 9, 1982, a new loan was made to * * * to liquidate the January 5, 1982, loan. A demand note in the amount of $400,000 was given to * * *. The note states that its purpose was to "pay off previous note dated 1/5/82 in principal amount

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[1] The pledging agreement inadvertently refers to 269,900 shares of stock. Certificate number 136 was listed in the agreement as consisting of 52,700 shares, whereas it consisted of 52,900 shares. The total shares involved was 270,100. This is confirmed by the following: (1) letter dated July 30, 1981, to * * * from * * * (Ex. 9, pg. 25) shows certificate number 136 as consisting of 52,900 shares; (2) the letter dated November 22, 1982, from * * * , president of * * *, to * * * , president of * * * , confirms the stock held by * * * and shows certificate number 136 as containing 52,900 shares (Ex. 13); and (3) letter dated June 7, 1982, from * * * to Ms. * * *, vice president of * * *, states that * * * held 270,100 shares of * * * Bank as collateral (Ex. 18, pg. 18).

of $400,000." The note indicated that the loan was secured by stock assignments. The loan was made pursuant to the authorization of the board of directors voted at its September 18, 1981, meeting. The directors were aware that * * * did not have physical possession of the stock when the new loan was made (Tr. 34-35).

On September 15, 1982, * * * advised the Assistant Regional Director, FDIC, * * *, by letter that possession of the stock pledged for the * * * loan was forthcoming (Ex. 16). The board of directors, at a meeting held on October 13, 1982, approved a line of credit for * * * "in the amount of $400,000.00 from October 13, 1982 to the next board of directors meeting" (Ex. 17). * * * still had not obtained physical possession of stock to secure the loan. The * * * Bank remained in possession of the stock.

On October 14–15, 1982, FDIC examiner * * * visited * * * to ascertain if physical possession of the stock pledged for the * * * loan had been obtained by * * *. Physical possession had not been obtained. During the October 14-15, 1982 visit, it was discovered that the loan to * * * exceeded the $400,000 limit on eight different occasions during the period commencing on June 9, 1982, and ending on August 29, 1982. The loans to the extent they exceeded $400,000 were considered to have been made in violation of the provisions of section 215.4(b) of Regulation O (12 C.F.R. §215.4(b)) and section 22(h)(2) of the Federal Reserve Act (12 U.S.C. §375(b)(2)) in that they exceeded the maximum amount of credit authorized by the board of directors.

On December 7, 1982, counsel for the board of directors advised the FDIC Regional Director, * * * , that an assignment would be executed to * * * and the shares of stock of * * * would be physically held by * * * (Ex. 20). On December 16, 1982, 68,600 shares of the capital stock of * * * was assigned and delivered to * * * to collateralize the line of credit extended to * * *. The transferred stock consisted of certificate number 137 for 50,400 shares issued in the name of * * *, and certificate number 255 for 18,200 shares issued in the name of * * * (Ex. 22).

SECTION 23A

Section 23A of the Federal Reserve Act (12 U.S.C. §371c) requires that loans to affiliates be secured.[2] The FDIC submits that * * * did not have a perfected security interest in the assumed collateral for the following reasons:

(1) The note did not purport to be secured;

(2) The pledging agreement did not purport to pledge the security as collateral for the debt of * * * ;

(3) * * * which had possession of the stock certificates, had not agreed to act as agent for * * * and

(4) The first lienor (* * *) was not notified of the existence or amount of any security interest of * * *. The respondents argue that * * * held a valid, enforceable security interest in the stock pledged as collateral for the loan under Article 9 of the Uniform Commercial Code as enacted in * * * Rev. Stat. 355.9-101, *et seq*. They argue that the parties intended for a security interest to be created and thought they had complied with section 23A of the Federal Reserve Act.

[.4**]** Section 23A, while providing that the loan be secured by collateral, does not define when a loan is secured. The provision requiring that a loan be secured is for the obvious purpose of protecting the bank against the possibility of a loss. Something that is secure is generally regarded as free from loss. In the case of a loan, the security is to insure the fulfillment of the obligation.

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[2] Section 23A of the Federal Reserve Act (12 U.S.C. §371c) provides:

[E]ach loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of stocks, bonds, debentures, or other such obligations having a market value at the time of making the loan or extension of credit of at least 20 per centum more than the amount of the loan or extension of credit, or of at least 10 per centum more than the amount of the loan or extension of credit if it is secured by obligations of any State or of any political subdivision or agency thereof: *Provided*, That the provisions of this paragraph shall not apply to loans or extensions of credit secured by obligations of the United States Government, the Federal intermediate credit banks, the Federal land banks, the Federal Home Loan Banks, or the Home Owners' Loan Corporation, or by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal reserve banks. A loan or extension of credit to a director, officer, clerk, or other employee, or any representative of any such affiliate, shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of or transferred to the affiliate.

Section 23A was amended subsequent to the violations alleged in this proceeding. Banking Affiliates Act of 1982, Pub. L. No. 97–320, 96 Stat. 1515(1982), section 410 of the Garn-St. Germain Depository Institutions Act of 1982.

{{4-1-90 p.A-185}} In order to secure a loan, the collateral must be under the control of the bank, either actual or constructive, and give it priority over third parties. The issue is not simply the right between the two parties. The bank may have superior right as to the parties but an inferior right as to third parties. The bank must have a superior position to the collateral if the collateral is to insure against loss. Since * * * did not have physical possession, the question arises as to what right it had to the pledged collateral.

Section 9-204 of the Uniform Commercial Code as adopted in * * * Rev. Stat 355.9-204,[3] provides that a security interest will not attach until there is agreement that it attach, value is given and the debtor has rights in the collateral. There is no dispute that value was given. The FDIC submits that there was no agreement that the interest in the stock attach to the debt owed by * * * and that * * * had no right in the collateral. The demand note dated August 4, 1981, in the amount of $400,000 did not make reference to any security for the note. Assignments were executed on August 4, 1981, to transfer stock certificate numbers 135, 136 and 137 to * * *. The pledging agreement dated July 30, 1981, made no reference to a debt of * * *. The agreement indicated the stock was pledged to secure the payment of all indebtedness owed to "the bank by the undersigned". The agreement was executed by * * *, individually and as vice president of * * *. The demand notes executed on January 5, 1982, and June 9, 1982, when the loan was renewed, refer to stock assignments as security for the loan. There is no indication that a new pledging agreement was executed on behalf of * * *. The evidence as a whole would indicate that the parties intended for a security interest to attach; however, the pivotal point centers on the question of what rights

* * * had in the stock.

Section 9-203 of the Uniform Commercial Code as adopted in * * * Rev. Stat. §335.9-203[4] provides that a security interest is not enforceable against the debtor or third parties unless (a) the collateral is in the possession of the secured party, or (b) the debtor has signed a security agreement which contains a description of the collateral. The general rule is modified by * * * Rev. Stat. §355.9-304, which provides that a security interest in instruments, other than instruments that constitute part of chattel paper, can be perfected only by possession. This includes a security interest in stock. Possession is of the essence of a pledge of stock; without possession, no privilege can exist as against third parties. *See* 68 Am. Jur. 2d., *Secured Transactions*, §72. There is no dispute that * * * did not have physical possession of the stock; however, possession may be by the secured party himself or by an agent on his behalf. Under * * * Rev. Stat. 355.9-305,[5] the secured party is deemed to have possession if the stock is held by a bailee who received notification of the secured party's interest. Possession commences from the time the bailee receives notification of the secured party's interest.

By letter dated July 30, 1981, * * * advised * * * to deliver the stock held by it to the * * * Bank when the debts owed to * * * had been paid. The letter states that * * * Bank would receive it for * * *. The letter was agreed to by representatives of * * * and * * *, but there is no indication that it was agreed to by * * * Bank or that a copy of the letter was delivered to * * * Bank at any time prior to November, 1982. The stock was also pledged to * * * Bank, and there is no indication that they had agreed to hold the stock pledged to them as

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[3] * * * Stat. 335.9-204 provides:

(1) A security interest cannot attach until there is agreement (subsection(3) of * * * 355.1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

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[4] * * *. Stat. §355.9-203 provides, in pertinent part, as follows:

(1) Subject to the provisions of * * * 355.4-208 on the security interest of a collecting bank and * * * 355.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless

(a) The collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, . . .

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[5] * * * Rev. Stat. §355.9-305 provides:

A security interest in letters of credit and advices of credit (subsection (2)(a) of * * * 355.5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest . . . .

{{4-1-90 p.A-186}}security for * * *. There is no evidence that * * * Bank was advised that they were to hold the stock as bailee for * * *. It was not until November 17, 1982, that * * * Bank acknowledged that it had received a copy of the July 30, 1981, letter from * * * to * * *. At that time, * * * Bank wrote * * * agreeing to hold the stock to secure the debt of * * * Bank and the balance "for benefit of your Bank and the Bank * * * as their interest may appear" (Ex. K). Until the letter was written, there is no evidence that * * * regarded or intended * * * Bank to act as a bailee for its benefit.

There was no perfection by * * * of any security interest in the stock. While president * * * testified that he believed the bank had a perfected interest, good faith does not avail the pledgee in the absence of delivery, either actual or constructive. Possession by the pledgee, or control equivalent thereto, is indispensable to a pledge. In actuality, * * * had no control over the stock. * * * had agreed to deliver the stock to * * * Bank when debts due * * * had been satisfied. There was no type of binding agreement until November 17, 1982, that required * * * Bank to hold the stock for the benefit of * * *.

Even if the pledge of stock to * * * had been perfected, it is questionable if the interest of * * * in the stock was sufficient to secure the extension of credit. The same stock was pledged to * * * ($375,000 debt), * * * ($500,000 debt), the Bank * * * and to * * * $500,000 debt). * * * and * * * held superior position to the stock. The priority position and the amount of loan to the Bank * * * is not disclosed by the evidence. It is impossible to ascertain how much collateral would have been realized by * * * in the event there had been a default on the loans at the other banks. The book value of the stock on November 15, 1982, was $6.93 per share. The fair market value is unknown.

The extension of credit to * * * was not secured as required by Section 23A of the Federal Reserve Act.

REGULATION O

On June 9, 1982, August 10, 1982, and August 24–29, 1982,[6]the records show that the extensions of credit to * * * exceeded the $400,000 limit authorized by the board of directors. These extensions of credit violated section 22(h)(2) of the Federal Reserve Act, 12 U.S.C. §375b(2) (Supp. V, 1981)[7]and section 215.4(b) of Regulation O, 12 C.F.R. §215.4(b),[8]since the loans exceeded the maximum amount of credit authorized by the board of directors of * * *.

President * * * acknowledged that the records show excessive loans on the dates indicated but testified that the problem on

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[6] The records show a $420,803.61 outstanding balance on August 29, 1982, a Sunday. The bank was closed on that date.

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[7] Section 22(h)(2) of the Federal Reserve Act, 12 U.S.C. §375b(2) (Supp. V, 1981), provided, in part as follows:

No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such an executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive, director, or person or which is controlled by such executive officer, director, or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer, director, or person and to all companies controlled by such executive officer, director, or person and to all political or campaign committees the funds or services of which will benefit such executive officer, director, or person, or which are controlled by such executive officer, director, or person, would exceed $25,000, unless such loan, line of credit, or extension of credit is approved in advance by a majority of the entire board of directors with the interested party abstaining from participating directly or indirectly in the voting. (Footnote omitted.)

Section 22(h)(2) of the Federal Reserve Act was amended subsequent to the violations alleged. Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, §422, 96 Stat. 1469, 1522 (1982).

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[8] Section 215.4(b) of Regulation O provides:

(1) No member bank may extend credit or grant a line of credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit and lines of credit by the member bank to that person and to all related interests of that person, exceeds $25,000, unless (i) the extension of credit or line of credit has been approved in advance by a majority of the entire board of directors of the bank and (ii) the interested party has abstained from participating directly or indirectly in the voting.

(2) Approval by the board of directors under paragraph (b)(1) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of §215.4(a) above.

(3) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit

{{4-1-90 p.A-187}}June 9, August 10 and August 28, 1982, resulted from the deposits being made by * * * on those dates that were made too late to be credited to * * * account until the next day (Tr. 23–25). He testified that he was aware that deposits in excess of $194,000 had been made on June 9, 1982, too late to be credited to * * * account (Tr. 24). The records indicated deposits of $194,959.59 on June 10 (Ex. 11).

The deposits were made at a branch office of * * *. The last daily pickup at the branch office is 10:30 a.m. Deposits made at the branch office any time after the last pickup are not credited to a customer's account until the following day (Tr. 23–24). On August 28, a Saturday, the main bank office closed, but the branch office remained open until 6:00 p.m. (Tr. 25). * * * concedes that on August 24, 25, 26 and 27, 1982, there were no late deposits to * * * account and that there was a technical violation (Tr. 25-26). On those occasions, he contends that he knew the amount of $35,968 was to be credited to * * * account from a sale of property (Tr. 25). The sale had not been concluded and there was no additional deposit to be made on August 24, 25, 26 and 27, 1982. The violation is sustained.

PENALTY DETERMINATION

[.5**]** Section 18(j)(3)(A) of the Federal Deposit Insurance Act (12 U.S.C. §1828(j)(3)(A)) empowers the FDIC to impose civil penalties against any person participating in the conduct of the affairs of an insured nonmember bank who violates any provision of sections 23A of 22(h) of the Federal Reserve Act or any lawful regulation, such as Regulation O, promulgated pursuant to such authority.[9]Certain factors must be considered in determining an appropriate penalty. These factors specifically include the size of the financial resources, good faith of the insured bank or person charged, the gravity of the violation and the history of previous violations.[10]

Respondents contend they were unaware that they were in violation of section 23A of the Federal Reserve Act. All insist that the extensions of credit to * * * were made in good faith. Several of the directors submitted statements in December, 1982, to the FDIC indicating that they were advised by president * * * that the loan was secured and that everything was legal. For these reasons, it is argued that the penalties are inappropriate.

[.6**]** Directors of a bank are required to exercise ordinary care and prudence in the administration of the bank's affairs. *Briggs v. Spaulding*, 141 U.S. 132, 165–166. *Lane v. Chouning*, 610 F.2d 1385 (8th Cir. 1979). They have a duty to manage the bank and it is negligence to leave the management of its affairs entirely up to others. *See Heit v. Bixby*, 276 F. Supp. 217 (E.D. Mo. 1967). In *Atherton v. Anderson*, 99 F.2d 883, 888 (6th Cir. 1938), the court, in disposing of the argument by directors that they were uninformed of what was taking place, stated:

> Under the facts as stated and presently to be stated we do not think that appellants are justified in saying that they were uninformed of what was taking place. Directors of a national bank are not required to maintain a system of espionage over the acts and conduct of its officers. Briggs v. Spaulding, supra, 141 U.S. 132, at page 162, I1 S.Ct. 924, 35 L.Ed. 662. The business of a bank may be entrusted to them upon the assumption that they are honest and faithful but they are not to be regarded as infallible. Warner v. Penoyer, 2 Cir., 91 F. 597, 590, 592, 44 L.R.A. 761. As pointed in Gibbons v. Anderson, C.C., 80 F. 345, 349, it is not unusual for banks to meet disaster through the malfeasance of trusted officials. This is one of the dangers to be

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[9] Section 18(j)(3)(A) of the FDIC Act provides (12 U.S.C. §1828(j)(3)(A)):

Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such nonmember insured bank who violates any provision of section 371c or 375b of this title, or any lawful regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counsel, or aiding or abetting a violation.

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[10] Section 18(j)(3)(B) of the FDIC Act provides (12 U.S.C. §1828(j)(3)(B)):

In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

> apprehended and guarded against. For this reason the law requires and depositors have a right to expect that directors should retain and maintain a reasonable control and supervision over the affairs of the Bank, especially its larger and more important ones, to the end that they may keep themselves informed of its condition. Briggs v. Spaulding, supra; Bowerman v. Hamner, supra; Gibbons v. Anderson, supra; Warner v. Penoyer, supra; Wheeler v. Aiken County Loan & Savings Bank, C.C., 75 F. 781. In the discharge of this duty the directors are required not only in the observance of their official oath but by common law (Martin v. Webb, 110 U.S. 7, 15, 3 S.Ct. 428, 28 L.Ed. 49) to use ordinary diligence; and by ordinary diligence is meant, that degree of care demanded by the circumstances. They have their own responsibilities which they may not put aside.

The directors in *Heit v. Bixby, supra*, had contended that the president of the bank and the cashier had concealed the overdrafts from them. It is clear that the reliance by some of the directors upon the

representations of president * * * does not absolve them from the fiduciary duty bestowed upon them by having been elected as a director of the bank.

All of the directors were advised at the June 8, 1982, board of directors meeting that it was the FDIC's position that the extension of credit was not secured as required by section 23A of the Federal Reserve Act. In face of this knowledge, the loan was renewed on June 9, 1982, and October 13, 1982, without the stock being in the actual or constructive control of the bank. The record is void of any real effort being made by the board of directors to correct the violation until it appeared the FDIC might impose penalties. The record indicates that there was more indifference than good faith demonstrated by the directors.

Director * * * was absent and did not vote on the extension of credit at the July 31, 1981, meeting. He was present and did vote in favor of the extension of credit at the September 18, 1981, meeting. The fact that his vote in favor was made only after he was "assured by Mr. * * * this loan was well secured and legal" (Tr. 19, pg. 7), does not absolve him from the consequences of his vote.

While * * * and * * * abstaining from voting on the extension of credit, under section 18(j)(3)(A) of the FDIC Act, 12 U.S.C. §1828(j)(3)(A), they are considered to have violated the provisions of section 22(h), and 23A of the Federal Reserve Act. The term "violates" as used in section 18(j)(3)(A) includes any action of a director, among other persons, who causes or brings about a violation.

In determining the amount of penalty to be assessed, section 18(j)(3)(B) of the FDIC Act requires that consideration be given to the size of financial resources and good faith of the member bank or person charged, gravity of the violation, the history of previous violations and any other matters that justice may require. * * * has on two previous occasions been cited for violations of Regulation O and for a violation of 12 C.F.R. §337.3(b), concerning approval and disclosure of inside transactions.

The violations must be considered serious. The good faith of the directors, at best, is questionable. Even if one assumes they initially believed they were in compliance with section 23A, their inaction and indifference after June 8, 1982, casts considerable doubt upon their good faith. It appears that it was only the specter of penalties that brought quick action. Corrective action was not forthcoming until after the FDIC notified the directors that it was considering imposing civil penalties.

There is no evidence that the bank has suffered in any way from the extension of credit and there was no effort to conceal the violations. The directors voting approval of the extension of credit received no tangible benefit from their actions. The evidence does not indicate any extenuating circumstances or compelling reason as to why * * * and * * * should be assessed a higher penalty than the other directors. All of the directors were aware as to who had possession of the stock. There is no evidence that either * * * or * * * tried in any way to conceal facts from the board of directors.[11] The board of directors could have required possession of appropriate security prior to approval of the loan.

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[11] There are indications that the same stock had been pledged to the Bank, but the evidence is inconclusive as to whether * * * had concealed this fact from the board of directors of * * * .

After considering the factors specified by section 18(j)(3)(B) of the FDIC, a penalty of $1,000 for each of the directors is considered appropriate.

FINDINGS OF FACT

.1 * * * ("* * * , "), is a corporation existing and doing business under the laws of * * *. Its principal place of business is located in * * * . At all times relevant to this proceeding, it was an insured State nonmember bank (Admitted, Notice and Answer).

2. * * * and * * * were principal shareholders and directors of * * * , at all times relevant to this proceeding, within the definition of the terms "director" and "principal shareholder" set forth at sections 215.2(c) and (j) of Regulation O, respectively, 12 C.F.R. §§215.2(c) and (j) (Ex. 3, 5, 7; Tr. 10).

3. During all times relevant to this proceeding, * * * , * * * , and * * * were directors of * * * within the definition of the term "director" set forth at section 215.2(c) of Regulation O, 12, C.F.R. §215.2(c). (Admitted, Notice and Answer).

4. * * * ("* * *"), is a "related interest" of * * * and * * * as that term is defined in section 215.2(k) of Regulation O, 12 C.F.R. §215.2(k). * * * and * * * own a majority of the stock of * * * . * * * is an "affiliate" of * * * as defined by section 2(b) of the Banking Act of 1933, 12 U.S.C. §221a(b)(1976)(Tr. 10, 13–14).

5. Commencing with the examination of * * * by the FDIC as of the close of business February 11, 1979, FDIC examiners have cited * * * or individuals associated with it for violation of the following statutes and regulations governing transactions with insiders and affiliates:

> (a) As a result of an examination as of February 11, 1979, FDIC examiners cited * * * ; for violation of 12 C.F.R. §337.3(b)(1979) requiring prior approval of the bank's board of directors for certain transactions. The violation involved respondent * * * ; (Ex. 1, at 1-a; Ex. 2; Tr. 5–6).

(b) As a result of an examination as of March 24, 1980, FDIC examiners cited * * *, for violation of Regulation O involving respondent * * *; (Ex 3, at 1-6-2; Ex. 4; Tr. 7–8).

(c) As a result of an examination as of August 31, 1981, FDIC examiners cited * * * for violation of Regulation O (involving respondent * * *), and of section 23A of the Federal Reserve Act (Ex. 5, at 1-c; Ex. 6; Tr. 8–9).

6. On July 31, 1981, a special meeting of the board of directors of * * * was called to approve a line of credit of $750,000 as an insider loan for * * *. The loan was to be at prime rate and secured by stock and inventory. Directors * * * , * * * , and * * * voted unanimously to approve the loan. Directors * * * and * * * abstained from voting. Director * * * was not present at the meeting and did not vote (Ex. 8; Tr. 12, 15–16, 47).

7. No loan application was filed by * * * prior to the approval on July 31, 1981. The meeting to approve the line of credit was called as a result of an oral request for the loan made by * * * to * * * , president of * * * (Tr. 12–13, 14).

8. On August 4, 1981, a demand note in the amount of $400,000 was executed by * * * , as president of * * * , at the prime rate of interest (Ex. 9; Tr. 16). The note did not show the loan to be secured (Ex. 9).

9. The pledging agreement given to secure the loan stated, in part, as follows (Ex. 9 at page 19; Tr. 49);

> The undersigned hereby pledge/s to * * * , * * * all the property described below to secure the payment of all indebtedness, direct or contingent, now or hereafter owing the Bank by the undersigned, or any of them:
> *One-third Share of the following stock of * * * and Trust: Certificate #135 for 166,800 shares, Certificate #136 for 52,700 shares, and Certificate #137 for 50,400 shares:*

The agreement was executed by * * * individually and as vice president of * * *.

10. The directors of * * * were aware that the stock set forth in the pledging agreement was pledged to the * * * Bank of * * * to secure a loan by * * * in the amount of $375,000 (Ex. 9 at page 25; Tr. 18–19, 35–36, 59).

11. The stock pledged to the * * * Bank was also pledged to the * * * , for a loan to * * * in the amount of $500,000 (Tr. 71, 74–75).

12. On July 30, 1981, * * * individually and as vice president of * * * , wrote the following letter to the * * * Bank, * * * (Ex. 9 at page 25; Tr. 49):

> There has been pledged to you and you have possession of the following stock of the * * * , * * * , Certificate #135 for 166,800 shares, Certificate #136 for 52,900 shares, and Certificate #137 for 50,400 shares.
>
> This is to direct that you deliver said stock to * * * , 41101, when the debts now due to you have been paid. Said * * * will receive it for The * * * , 41164, and the undersigned, their successors and assigns, as their interests may appear.

The terms of the letter were agreed to by the * * * Bank on September 10, 1981. It was also agreed to by * * * on behalf of * * * (Ex. 9 at page 25; Tr. 49).

13. Part of the $400,000 line of credit was disbursed on August 4, 1981, before any stock was physically received by * * * to secure the loan (Tr. 16–18, 23).

14. On September 18, 1981, the board of directors of * * * amended the line of credit approved for * * * on July 31, 1981, to reduce the amount to $400,000 and to require that the loan be secured by stock (Ex. 10; Tr. 16, 20). The lowering of the line of credit to $400,000 was done at the request of one of the bank examiners (Tr. 48-49). The following directors were present: * * * , * * * and * * * . All of the directors present voted for approval (Ex. 10).

15. The loan to * * * was initially handled by * * * as a regular demand note but was later converted to a type of checking account because of the number of transactions (Ex. 12; Tr. 21–22).

16. On January 5, 1982, a new loan in the amount of $400,000 was made to * * * to pay out the line of credit that had been extended to it on August 4, 1981 (Ex. 12; Tr. 27). The new loan was to be secured by stock of * * * and * * *. The stock was not in the possession of * * * but was being held by the * * * as security for a loan from the * * * (Tr. 27, 28, 29). The loan was made pursuant to the authorization of the board of directors meeting held on September 18, 1981 (Tr. 27–28).

17. On January 9, 1982, * * * did not have physical possession of the stock that was to secure the $400,000 loan to * * * (Tr. 32, 35). The directors were aware that the stock was pledged to the * * * , * * * , to secure a loan for * * * (Tr. 35–36).

18. On June 7, 1982, the * * * wrote the following letter to Ms. * * *, vice president of * * * (Ex. 13 (last

page); Tr. 50):

> Per the phone request of Mr. * * * this serves as your notification that we hold 270,100 shares of * * * in certificates 135, 136, and 137 as collateral on Mr. * * * debt.

19. On June 8, 1982,[12] the bank examiners discussed all matters in their report of examination as of the close of business on May 24, 1982, including the loan to * * * . All directors were present at the meeting. The issue concerning the lack of physical possession of the pledged security was discussed at the meeting (Ex. 14, 15, at 1-a-1; Tr. 30, 32–33, 34, 36–37).

20. After the meeting on June 8, 1982, the directors were aware that the FDIC contended that there was a violation of section 23A of the Federal Reserve Act involving the loan to * * * (Tr. 34).

21. On June 9, 1982, a new loan in the amount of $400,000 was made to * * * to pay off the January 5, 1982, note. A demand note for the amount of $400,000 was given to * * *. The note indicates that the loan was secured by stock assignments (Ex. 13; Tr. 32). The loan was made pursuant to the authorization voted by the board of directors at its September 18, 1981, meeting (Tr. 32).

22. When the loan was renewed on June 9, 1982, * * * did not have the stock of * * * in its possession (Tr. 34–35).

23. On September 15, 1982, * * * still did not have possession of the stock pledged as security (Ex. 16; Tr. 37–38).

24. At the board of directors meeting held on October 13, 1982, a line of credit in the amount of $400,000 was approved for * * * (Ex. 17; Tr. 39–40). * * * still did not

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[12]The Report of Examination as of the close of business on May 24, 1982, contains a statement that all matters in the report were discussed at a board of directors meeting held on June 6, 1982 (Ex. 15 at page 1-a-1). The minutes of the board of directors meeting reflect that the meeting with the examiners was held on June 8, 1982 (Ex. 14). * * * president, * * * , testified that there was only one meeting (Tr. 36). The minutes of the meeting are considered reliable and reference to the June 6, 1982, meeting in the Report of Examination is considered to be an inadvertent reference. There is no dispute over the fact that the examiners discussed the report with the board of directors.

have the stock of * * * in its possession. (Tr. 40–41). All directors voted in favor of the loan except for * * * who was absent and * * * who abstained (Ex. 18).

25. On October 14–15, 1982, FDIC examiner * * * visited * * * to determine whether the bank had obtained the stock as security for the extension of credit to * * *. * * * had not secured physical possession of the stock (Ex. 18; Tr. 38–39).

26. During the October 14–15, 1982, visit, it was discovered that the line of credit exceeded the $400,000 limit of the revolving credit agreement on several different days (Ex. 18).

27. The liability ledger of the bank for * * * reflects the following outstanding balances on the dates indicated (Ex. 11; Tr. 22–23):

Date	**Outstanding Balance**
June 9, 1982	$402,848.47
August 10, 1982	$440,569.94
August 14, 1982	$412,434.48
August 25, 1982	$402,495.33
August 26, 1982	$405,945.97
August 27, 1982	$408,349.02
August 28, 1982	$420,803.61
August 29, 1982 (Sunday)	$420,803.61

28. Following the October 14-15, 1982, visit of examiner * * * to the bank, the FDIC advised the directors of the bank that it was considering the imposition of civil penalties against the directors (Tr. 43).

29. On November 17, 1982, * * * , vice president of the * * * , wrote the following letter to * * * president of * * * (Ex. K; Tr. 71–72):

> Please be advised our Bank is in receipt of a letter from * * * , whereby they agree to send stock pledged to them by * * * direct to our Bank after * * * (*sic*) debts have been paid to their Bank.
> This letter will serve as our agreement to hold the stock to secure our debt and the balance of the stock will be held for benefit of your Bank and The Bank * * * as their interest may appear.

30. On November 18, 1982, * * * , wrote the following letter to * * * (Ex. L; Tr. 72-73):

We furnish the following information at your request:

The present balance of * * * Loan's debt to our bank is Five Hundred Thousand ($500,000) dollars.

As you are aware, the debt is secured by the personal guarantee of * * * and a pledge of one-third of his stock in * * * Bank * * *.

31. By letter dated November 22, 1982, * * * , president of * * * , advised * * * president of * * * , that * * * and * * * owned the following stock in * * *.

Certificate Number	Shareholder	Number of Shares
120	* * *	500
135	* * *	166,800
136	* * *	52,900
137	* * *	50,400

The letter states that the book value of the stock on November 15, 1982, was $6.93 per share (Ex. 13).

32. On December 16, 1982, 68,600 shares of the capital stock of * * * Deposit was assigned and delivered to * * * to collateralize the line of credit extended to * * * (Ex. 22).

CONCLUSIONS OF LAW

1. Extensions of credit made on June 9, 1982, August 10, 24, 25, 26, 27, and 28, 1982, were made in violation of section 215.4(b) of Regulation O, 12 C.F.R. §215.4(b) in that they exceeded the maximum amount of credit authorized by the board of directors of * * * Bank.

2. The extensions of credit to * * * Company were made in violation of section 23A of the Federal Reserve Act, *prior to amendment*, 12 U.S.C. §371c (1976), in that they were not secured by the kind and amount of collateral required to be provided.

3. The violations occurred from the failure of the named directors to exercise ordinary care and prudence in the administration of the bank's affairs.

4. The violations were of such a gravity that the following civil monetary penalties are warranted pursuant to section 18(j)(3)(A) of the FDIC Act. 12 U.S.C. §1828(j)(3)(A):

Director	Monetary Penalty
* * *	$1,000
* * *	$1,000
* * *	$1,000
* * *	$1,000
* * *	$1,000
* * *	$1,000
* * *	$1,000
* * *	$1,000
* * *	$1,000
* * *	$1,000

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, it is RECOMMENDED that the following ORDER be entered by the Board:

ORDERED: 1. That, by reason of the violations determined against * * * and * * * , individually, a penalty of $1,000 is assessed against each of them pursuant to the provisions of section 18(j)(3)(A) of the Act, 12 U.S.C. §1828(j)(3)(A); and

2. That the civil monetary penalties assessed against each of the named individuals shall not be paid directly or indirectly by the * * * Bank but shall be paid directly by the individual against whom the penalty is assessed.

Dated this 22nd day of September, 1983.

/s/ James D. Burroughs
Judge
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