

{{9-30-91 p.A-1656}}

[¶5163A] **In the Matter of Frederick M. Pfeiffer, Docket No. FDIC-87-61e(2-28-91).**

FDIC denies request that Respondent be permitted to return to banking prior to expiration of three-year prohibition period. Respondent must show good cause, with substantive facts or new information, for FDIC to determine that early return is warranted.

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[.1] Prohibition, Removal or Suspension—Application for Reemployment—Burden of Proof

Respondent must show new information for FDIC to determine that his early return to banking is warranted. Absent a showing of good cause, maintenance of public confidence in the banking system and the regulatory process mandates that a prohibition be served in its entirety.

**In the Matter of
FREDERICK M. PFEIFFER
PIGEON FALLS STATE BANK
PIGEON FALLS, WISCONSIN
(Insured State Nonmember Bank)
DECISION AND ORDER
DENYING REQUEST FOR
APPROVAL OF SERVICE AS
BANK EMPLOYEE**

STATEMENT OF THE CASE

On September 18, 1990, Frederick M. Pfeiffer ("Pfeiffer"), a former officer and director of the Pigeon Falls State Bank, Pigeon Falls, Wisconsin ("Bank"), applied for permission from the Federal Deposit Insurance Corporation ("FDIC") to return to banking as proposed in the September 7, 1990 letter of Mr. James G. Sneer, President of Farmers State Bank of Mountain Lake, Mountain Lake, Minnesota ("Farmers Bank"). This application arises under section 8(j) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(j).

Background

Following the issuance of a Notice of Intention to Remove From Office and to Prohibit From Further Participation ("Notice") against Pfeiffer and against George B. Sletteland ("Sletteland") (collectively "Respondents"), a hearing was held on the Notice. A Recommended Decision was issued by the Administration Law Judge ("ALJ") on December 28, 1987. After considering the Recommended Decisions, the Board of Directors of the FDIC ("Board") concluded that the remedies recommended by the ALJ were not appropriate. Specifically, the Board stated that:

the ALJ's proposed remedy for Respondent Pfeiffer inadequately reflects the serious nature of his actions and the severity of the threat to the Bank.... While the evidence establishes that Respondent Pfeiffer's involvement in the extensions of credit to IDF aided in the violations of the state lending limit statute, breached his fiduciary duty, and represented a willful and a continuing disregard for the safety and soundness of the Bank which resulted in personal financial gain and thus warrants his removal under 8(e), Respondent Pfeiffer's conduct was different from that of Respondent Sletteland. The record indicates that Respondent Pfeiffer was dominated by Respondent Sletteland, that he acted at Sletteland's command, that he had a lesser financial stake in IDF and had a lesser degree of involvement in the IDF transactions. Respondent Pfeiffer's lesser culpability leads us to conclude that a term removal of three years is just.

A Decision and Order ("Order"), pursuant to section 8(e)(1) of the Act, 12 U.S.C. § 1818(e)(1), was issued by the Board on April 25, 1988, removing Pfeiffer from his positions as officer and director of the Bank and prohibiting him from participating in the conduct of the affairs of the Bank or any other FDIC-insured institution for a period of three years from the effective date of the Order (June 1, 1988).

The Application

By letter dated September 7, 1990, Mr. James G. Sneer, President of Farmers Bank, requested that Respondent Pfeiffer be allowed to return to banking prior to the June 1, 1991 expiration of the three-year prohibition period. Specifically, Mr. Sneer attested to the good character and banking experience of Mr. Pfeiffer and proposed to hire Mr. Pfeiffer.

By letter dated September 13, 1990, the Regional Director ("Supervision") of the FDIC's Kansas City Regional Office ("Regional Director") notified Mr. Sneer that his letter "does not appear to add any substantive facts or new information which would indicate a reappraisal of the case, or of the term of removal, is warranted." The Regional Director solicited additional facts and new information, as well as the submission of a Financial Report from Mr. Pfeiffer.

By letter dated September 18, 1990, which [{{9-30-91 p.A-1656.2}}](#) was accompanied by a completed Financial Report, Respondent Pfeiffer formally applied for written permission to re-enter banking prior to expiration of the three-year prohibition period.

FINDINGS OF FACT

Initially, Mr. Sneer indicates that Mr. Pfeiffer would be starting "in a bank that we are attempting to acquire in Fairmont, Minnesota." Thus, the proposed position does not currently exist, and, indeed, it is not certain that the proposed position will exist prior to expiration of the prohibition period. Regarding the duties of the proposed position, Mr. Sneer only states that Mr. Pfeiffer would be a "junior officer" responsible for correcting "any deficiencies" in bank operations. Finally, after stating that Mr. Pfeiffer would have "no responsibility regarding decisions on loans or overdrafts," two sentences later Mr. Sneer inconsistently states that "I would require Mr. Pfeiffer to consult with me personally should he be in a position of loan or overdraft responsibility."

Based on the above, it is apparent that there is no guarantee that the proposed position will exist prior to June 1, 1991, and the record does not contain a complete and detailed description of the proposed duties of Mr. Pfeiffer. Nevertheless, taking the facts in the light most favorable to the applicant, the Board concludes for purposes of this application that Mr. Pfeiffer is seeking permission to be employed at an FDIC-insured bank as a junior officer with no authority regarding loans and overdrafts.

DECISION

[.1] Upon review of the record as a whole, the Board finds that Mr. Pfeiffer has failed to present any sufficient evidence or persuasive argument warranting FDIC approval of his return to banking prior to the expiration of the three-year prohibition period specified in the Order.

Mr. Pfeiffer's application specifies certain information he wishes to be considered by the FDIC. Such information includes alleged bank personnel disagreement with the prohibition time period, the alleged positive effect on Mr. Pfeiffer of removal of his dependency on bank income, the ALJ's initial six-month recommendation and completion of more than three-quarters of the longer period imposed, and Mr. Sneer's attestation to Mr. Pfeiffer's honesty and management ability.

Contrary to Mr. Sneer's characterization that "Mr. Pfeiffer has been vindicated by the Administrative Courts," the board previously found that Respondent Pfeiffer participated in a violation of Wisconsin law, breached his fiduciary duty, and derived personal financial gain, all of which constituted a willful and continuing disregard for the safety and soundness of the Bank. Based upon all of the evidence, the Board rejected the ALJ's six-month recommendation and found that a three-year prohibition period would be "just." Neither the alleged bank personnel disagreement nor the completion of a major portion of the three-year period imposed argues for reduction of a prohibition period specifically found to be "just." Absent a showing of good cause, maintenance of public confidence in the banking system and the regulatory process mandates that the prohibition period be served in its entirety.

As noted above, the Board considered mitigating factors in determining that the appropriate remedy for Respondent Pfeiffer was a term removal of three years. While the alleged elimination of the financial reasons for the offending conduct (i.e., dependency on bank income) and attestations of honesty and management ability may indicate that Mr. Pfeiffer could render valuable service to the banking industry in the future, such evidence, in our view, provides no reasons to shorten the prohibition period imposed because of Mr. Pfeiffer's offending conduct at the Bank. Thus, upon consideration of all record evidence, the FDIC finds that there has been no demonstration that the return of Respondent Pfeiffer to banking prior to June 1, 1991, is warranted. On the contrary, it appears that such early return would be likely to undermine public confidence in the banking system and the regulatory process.

Accordingly, the application dated September 18, 1990, is hereby denied.

By direction of the Board of Directors.

Dated at Washington, D.C. this 28th day of February, 1991.

/s/ Hoyle L. Robinson

Executive Secretary

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