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{{5-31-92 p.A-1821}}

[¶5170] In the Matter of J.J. Silagy, The Olla State Bank, Olla, Louisiana, Docket No. FDIC-89-144k (10-22-91).

Board assesses civil money penalty of $10,000 against bank director for participating in violations of the FDI Act and Regulation O in the extension of credit to a fellow director.

[.1] Directors —Duties and Obligations —Regulation O
An officer is charged with knowing what the Regulation O limit on loans to insiders is.

[.2] Regulation O —Extension of Credit —Purchase of Nonperforming Asset
The purchase of a nonperforming asset, which is of no benefit to the bank but helps an officer-director avoid foreclosure, is an extension of credit to that insider.

In the Matter of
J.J. SILAGY, Individually and as a
Director of The Olla State Bank
Olla, Louisiana
(Insured State Nonmember Bank)
DECISION AND ORDER
FDIC-89-144k

This proceeding was initiated on September 28, 1989, pursuant to the Federal Deposit Insurance Corporation's ("FDIC") Notice Of Assessment Of Civil Money Penalties, Findings of Fact and Conclusion of Law, Order to Pay, and Notice of Hearing ("Notice") against J.J. Silagy, individually and as a director of The Olla State Bank, Olla, Louisiana. The Notice alleged, *inter alia*, that Respondent J.J. Silagy violated sections 215.2(f), 215.4(a), and 215.4(c) of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. §§215.2(f), 215.4(a), and 215.4(c), and sections 22(h)(1) and 22(h)(3) of the Federal Reserve Act ("the Act"), 12 U.S.C. §§375b(1) and (3), and that a civil money penalty should be assessed against Respondent Silagy under section 18(j)(4) of the Federal Deposit Insurance Act (the "FDI Act"), 12 U.S.C. §1828(j)(4). The proposed amount of the penalty against Respondent Silagy was $10,000. Respondent requested a hearing.

A hearing was held before Administrative Law Judge James L. Rose ("ALJ") on January 28 and 29, 1991. On July 3, 1991, the ALJ issued his Recommended Decision and proposed Order concluding that a civil money penalty of $10,000 should be imposed upon Respondent Silagy.

Both the FDIC Enforcement Counsel and Respondent Silagy filed exceptions to the ALJ's Recommended Decision and proposed Order. The Board of Directors ("Board") of the FDIC has reviewed the Recommended Decision and the record. Based upon that review and a consideration of the exceptions, it appears that the Respondent's exceptions are without merit because they are not supported by the weight of the evidence. The Board concludes that the ALJ's Recommended Decision is supported by substantial evidence and that he fully considered all the statutory factors in determin- {{5-31-92 p.A-1822}}ing the amount of the assessed penalty. The Board, therefore, adopts and incorporates herein by reference the ALJ's Recommended Decision and concludes that a civil money penalty of $10,000 should be imposed upon Respondent Silagy.

ORDER

The Board of the FDIC, have considered the entire record in this proceeding, including the ALJ's Recommended Decision dated July 3, 1991, and the exceptions of the parties thereto, makes the following findings. The Board finds on the record before it that Respondent J. J. Silagy caused, brought about, participated in, counseled, or aided or abetted violations of section 22(h) of the Act, 12 U.S.C. §375b, and sections 215.2(f), 215.4(a), and 215.4(c) of Regulation O, 12 C.F.R. §§215.2(f), 215.4(a), and 215.4(c).

ACCORDINGLY, IT IS HEREBY ORDERED, that by reason of the violations set forth above, a civil money penalty in the amount of $10,000 is hereby assessed against Respondent J. J. Silagy pursuant to section 18(j)(4) of the FDI Act, 12 U.S.C. §1828(j)(4).

IT IS FURTHER ORDERED, that this ORDER shall be effective, and the penalty ordered shall be final and payable, twenty (20) days from the date of this ORDER. The provisions of this ORDER shall remain

effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the Board.

By direction of the Board of Directors.

Dated at Washington, D.C., this 22nd day of October, 1991.

/s/ Hoyle L. Robinson
Executive Secretary

RECOMMENDED DECISION

In the Matter of
J.J. Silagy
The Olla State Bank
Olla, Louisiana
James L. Rose, Administrative Law Judge:

Statement of the Case

This matter was tried before me at Shreveport, Louisiana, on January 28 and 29, 1991, upon a Notice of Assessment of Civil Money Penalties against J.J. Silagy, and others.

Following the hearing, Counsel for the FDIC and the Respondent submitted extensive briefs, reply briefs, and by leave of the undersigned, supplemental briefs.

Upon the record as a whole, including my observation of the witnesses and briefs and arguments of counsel, I hereby issue the following findings of fact, conclusions of law and recommended order:

I. The Facts

The Respondent, J.J. Silagy, had been a member of the Board of Directors of the Olla State Bank (herein the Bank) since 1974. He also was a paid consultant for the Bank. Along with the other directors he was assessed a civil money penalty in connection with the Bank's purchase of a credit to the Central Bank of Louisiana from W. Scott Maxwell, approved on January 13, 1988, and originating on January 18, in the amount of $557,464.85.

At the time of Board approved the purchase of this credit, Maxwell was the Vice-President of the Bank's holding company and was Vice-Chairman of the Bank's Board of Directors, in both of which positions he was, the parties agree, an executive officer of the Bank within the meaning of 12 C.F.R. §215.2(d).

In essence, the FDIC contends that by purchasing the Central Bank credit, the Bank extended Maxwell's aggregate debt to more than $1 million and far in excess of the Bank's legal lending limit as set forth in 12 C.F.R. §§215.2(f) and 215.4(c), which at the material time was approximately $403,800.

Silagy agrees that if the purchase of Maxwell's note from Central Bank is considered an extension of credit, such exceeded the legal lending limit (though contending the aggregate would have been just $875,000), but argues: (1) this was not an extension of credit and (2) even if it was, pursuant to Section 215.3(a)(6), it was an increase in indebtedness advanced by the Bank "for its own protection" and according not subject to the limitations of Regulation O. On brief, Counsel for the Respondent further argued that buying the note was not an extension of credit pursuant to Section 215.3(b)(4)(ii) since it was an "indebtedness to (the) bank for the purpose of protecting the bank against loss. . .." (On this issue the FDIC was permitted to file a supplemental brief and the Respondent a reply.)

Silagy testified that at the Board of Directors meeting on January 5, 1988, Max- {{12-31-91 p.A-1823}}well sought to borrow $50,000 in order to pay interest on his debt with Central Bank. At that time Silagy, as well, presumably, as other members of the Board of Directors, realized that Maxwell was having cash flow difficulties. However, Silagy testified this did not mean, in his opinion, that Maxwell was having financial problems. (T. 161)

Then at the January 13 Board meeting, it was discussed that Central Bank was about to foreclose on the collateral securing the note, on which the Bank had a second mortgage securing Maxwell's various credits with the Bank totaling in excess of $300,000. This collateral was Maxwell's personal residence and 95 acres of land to be developed as part of a residential tract subdivided in 2-acre lots. Silagy testified that the Bank's President, Dan Bower, told them the value of Maxwell's collateral exceeded one million dollars (T. 128), however, he also testified that he thought value "was just above the value of the first mortgage position." (T. 196) The later is consistent with FDIC Ex. 20 in which the net collateral value pledged by Maxwell is put at $512,730.

Silagy testified that in his opinion foreclosure by Central Bank would totally diminish the collateral, thus

leaving the Bank without any security to cover its credits to Maxwell. Therefore at the January 13 Board meeting he argued for and moved that the Bank purchase the credit from Central Bank and thereby obtain a first position on the collateral.

II. Analysis and Concluding Findings

> In pertinent part, 12 U.S.C. §375b reads:
>
> (1) No member bank shall make any loan or extension of credit in any manner to any of its executive officers . . . 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 or person . . . would exceed the limits on loans to a single borrower established by section 84 of this title. For purposes of this paragraph, the provisions of section 84 of this title shall be deemed to apply to a State member bank as if such State member bank were a national banking association.
>
> (3) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors . . . unless such loan or extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

These provisions of the Federal Reserve Act are implemented by Regulation O, 12 C.F.R. Part 215. Further, 12 U.S.C. §1828(j) (4)[1]provides for imposition of a civil money penalty where a bank director has been involved in violating Section 375b and Regulation O.

The FDIC alleged in its civil money penalty assessment that the purchase of Maxwell's Central Bank note was an extension of credit to an executive officer in excess of the limits allowed by Regulation O, in that adding this $557,000 to his existing debt at the Bank brought the aggregate to more than one million dollars (which included a continuing guarantee on a debt of his father of about $195,000 which he subsequently relinquished, reducing the aggregate to about $875,000). The Bank's lending limit was about $405,000 at the time.

In addition, the FDIC alleged that his extension of credit involved more than normal risk of repayment in violation of Section 375b(3) and Section 215.4(a)(1). Therefore, Silagy should be assessed a civil money penalty due to his active participation in the transaction.

The Respondent's principal argument is that by purchasing this credit the Bank simply sought to "shore up its collateral." Therefore, the transaction was not an extension of credit by application of Section 215.3(b) (4)(ii).

In sum, the Respondent contends than under the following facts, purchase of the note was not an extension of credit, was made to prevent losses to the Bank and was a prudent decision: Maxwell has a note for about $534,000 which was 90 days past due and Central Bank was about to foreclose, the effect of which would be to force a sale of the collateral on which the Bank had a sec-

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[1]Section 18(j)(4) of the Act was amended by section 907(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, 466 (1989). The amendments are prospective and do not affect application of the civil money penalty assessed here based on pre-FIRREA activity.

{{12-31-91 p.A-1824}}ond position. Though the collateral was appraised at more than one million dollars, for security purposes its value was about $512,000. Selling the collateral, along with the attendant sheriff's costs and attorney fees would leave nothing. In that event the Bank would have no security for more than $300,000 of direct indebtedness Maxwell had with the Bank. However, Maxwell did have other assets and therefore was considered capable of servicing the Central Bank credit as well as the other debt, if just given time. Therefore, to protect the Bank's security interest for the $300,000, Silagy thought it a good idea to buy the $544,000 note. (He did not consider having Maxwell pledge any of his other assets.)

The problem with Silagy's line of reasoning is that he testified (and the evidence shows) that the collateral was not even sufficient to cover the credit to Central Bank. Thus purchasing the note, even though the Bank obtained a first position, would do nothing to increase its security for the other debt. That is, purchase of a credit funded at $557,000 collateralized by about $512,000 worth of real property could not conceivably advance the Bank's position vis-a-vis the other credit Maxwell already had with the Bank. No doubt avoiding foreclosure would save fees and whatever discount is inherent in a distress sale. But such hardly justifies buying a nonperforming credit. Though the Bank's second position was elevated to a first, the cost was a $557,000 note more than 90 days in arrears. It is difficult to understand how such would protect the Bank from losses.

Beyond that, if Silagy's testimony is accepted, the Bank was not in imminent danger of suffering loss on Maxwell's credits. Silagy testified that Maxwell was current on his credits with the Bank and had sufficient assets to service this debt. Thus even if Maxwell's house and other land was sold, such would not have implied that the Bank would have to take losses. In short, even if the collateral on which the Bank had a second mortgage ceased to exist, the Bank would lose only a relatively inferior security interest but not potentially suffer losses on its Maxwell credits.

However, I do not accept Silagy's testimony concerning Maxwell's ability to service his debts with the Bank. At the examination as of October 23, 1987, Maxwell had direct debt of $312,000, of which $255,000 was classified as doubtful. The Examiner concluded that the "borrowers (Maxwell and his father) do not appear to have the cash flow to service" the debt. Silagy incredibly testified that while he knew Maxwell was having cash flow problems, such did not, in his opinion, suggest that he was in financial difficulty. This makes no sense. Indeed, the fact that Silagy knew that Maxwell was about to have his house foreclosed and needed to borrow $50,000 to pay interest on the Central Bank note certainly suggested that Maxwell was having general difficulty servicing his debts.

Inasmuch as the Bank could not actually have protected itself from losses by purchasing the credit, the purchase did not come within Section 215.3(b)(4)(ii). It was therefore an extension of credit to an executive officer within the meaning of Regulation O. Since the parties agree that adding this $557,000 to Maxwell's other credits made the aggregate exceed the limits of Section 375b(1) and Regulation O, I must conclude that the Bank through authorization of its Board of Directors violated Section 375b(1) and Regulation O.

Silagy's activity as an integral part of the decision to purchase this credit made him accountable and liable for imposition of a civil money penalty.

Silagy testified that he and other Board members were advised by then President Dan Bowker that the purchase of this credit would not be violative of any of the federal or state lending limit statutes.

He testified that the lending limit issue was raised at the January 13 Board meeting and they were told there was no problem. (T. 167) In the Board minutes Bowker is reported to have said he "understood" the lending limit was 50 percent of capital and surplus which made it about $900,000 and purchase of the Central Bank credit would bring Maxwell's aggregate to $875,000. (FDIC Ex. 17)

Although members of a board of directors are charged with knowing a reasonable amount about banking proscriptions, directors are entitled to rely on the technical expertise of the executive officers of the bank when making decisions. *E.g., Briggs v. Spaulding*, 141 U.S. 132 (1891).

[.1**]** Nevertheless, insider transactions are so serious and have had such a devastating effect on the banking industry, I conclude that if board members know nothing else, {{12-31-91 p.A-1825}}they know that Section 375b and Regulation O limits the amount which can be loaned to an executive officer. If Silagy did not know that the limit was an aggregate amount in excess of 15 percent of the bank's unimpaired capital and surplus, he was charged with finding out. I conclude that Bowker's statement was insufficient, primarily because it was so far off and "understood" was equivocal. If Bowker had simply miscalculated the lending limit, such would have been a technical matter on which board members could reasonably rely. But such was not the case. The calculation of the Bank's unimpaired capital and surplus was accurate. The percentage which Bowker is reported to have thought could be lent to an executive officer was not, nor was his statement reported in such a way that a reasonable person would rely on it. See *Fitzpatrick v. FDIC*, 765 F. 2d 569 (6th Cir. 1985) for a director's duty to investigate the propriety of an insider transaction such as the one here.

Further, Bowker testified in his deposition (Jt. Ex. 4 at 109) that he did not believe Maxwell could service all his debt, a conclusion also set forth in the examination report presented to all directors on December 16, 1987. In essence Silagy argues that he could rely on Bowker for lending limit advice but need not rely on his opinion as to whether Maxwell could repay the debt. I find this picking and choosing of advice to rely on unacceptable.

Beyond the lending limit, purchase of the Central Bank credit clearly involved more than normal risk of repayment within the meaning of Section 215.4(a)(1). The credit was nonperforming. At a minimum Maxwell was known to be having cash flow problems. Under such circumstances, buying a credit for $557,000 was certainly risky.

Examiner Larry Denton testified that the transaction in issue here "involved more than a normal degree of risk . . ." (T. 35) Review Examiner H. Lee Birdsell had the same opinion. (T. 76)

In making predictive judgments concerning the weakness in a credit, the opinion of an examiner for the FDIC must be given deference. *Sunshine State Bank v. FDIC*, 783 F.2d 1580 (11th Cir. 1986). The facts on which such an opinion is based can be tested for accuracy. And the opinion must reasonably flow from the facts. But unless it is shown that an examiner's predictive judgment is outside the "zone of reasonableness", it must be accepted.

The opinions of Denton and Birdsell are reasonable and based on facts which I accept concerning

Maxwell's general inability to service his debt. Even the Respondent admitted Maxwell was having cash flow problems.

I conclude that buying Maxwell's Central Bank credit involved more than the normal amount of risk of repayment, and therefore was violative of Section 375b(3) and Section 215.4(a)(1).

[.2**]** From all these facts the conclusion is inescapable that the Bank's purchase of the Central Bank credit was primarily an attempt to help Maxwell avoid foreclosure on his home and other land. Clearly he benefited from the transaction. And he was an insider. This precisely the type of risk to a bank's assets with 12 U.S.C. §375b and Regulation O seek to prevent.

Finally, counsel for the Respondent argues that the FDIC should be estopped from bringing this action since it could have acted in accordance with remedies considered after the examination of October 1987. Had the FDIC done so, presumably the Board would not have voted to purchase the Central Bank credit and Silagy would not be subject to a civil money penalty.

There is no claim that Silagy relied to his detriment on some representation by agents of the FDIC. Further, as a general rule, an agency cannot be estopped from preforming its regulatory functions by acts (or omissions) of its employees. *Office of Personnel Management v. Richmond*, ____ U.S. ____, 110 S.Ct. 2465 (1990). I therefore reject the Respondent's estoppel argument.

III. Assessment

As written, and applicable, at the time of the events in this matter, 12 U.S.C. §1828(j) (4) (as to non-member state banks) provided that a civil money penalty assessment could be levied against one violating Section 375b of not more than $1,000 for each day the violation occurred. In determining how much of an assessment to levy, the FDIC is to consider five factors: size of the financial resources of the person charged, his good faith, gravity of the violation, history of previous violations, and such other matters as justice may require.

{{12-31-91 p.A-1826}}
A. *Financial Resources*

The parties stipulated that the financial resources of the Respondent is not an issue here—that he has sufficient resources to pay an assessment of $10,000.

B. *Good Faith*

In support of his good faith argument, the Respondent testified that he did not know of the Regulation O limit and that Bowker told the directors there was no problem with lending limits. Even crediting this testimony, I do not believe the Respondent did enough. First, as noted above, the Respondent cannot pick and choose among the opinions of management of which to place his reliance, at least absent some persuasive reason. There is no reasonable basis on this record to conclude that Silagy could rely on Bowker on the limit question but ignore him on the issue of whether Maxwell could service the debt.

This was clearly an insider transaction. The Bank was going to put out $557,000 so that Maxwell would not have his house foreclosed. The collateral was questionable and the argument that somehow the Bank's collateral position would be improved was illusory. On these facts I conclude that the Respondent is not entitled mitigation of a penalty based on good faith.

C. *Gravity of the Violation*

"Problem banks and insider abuses have been virtually synonymous. Nothing appears more often on the fever charts of sick financial institutions than self-dealing ailments." H.R.Rep. No. 1383, 95th Cong., 2d Sess. 10–12, *reprinted in* 1978 U.S.Code Cong. & Ad. News 9273.

The Bank's overextension of credit to Maxwell, one of its executive officers, caused substantial loss. Thus, at the examination as of August 18, 1988 (FDIC Ex. 20), $127,000 of Maxwell's debt had been charged off on June 24. Of the remaining, the Examiner found $513,000 was substandard and $207,000 a loss. This amount of loss to the Bank, much of which resulted directly from the Central Bank credit, made the violation here grave.

D. *History of Previous Violations*

At the examination as of October 1987 (FDIC Ex. 19), Regulation O violations as to Maxwell and his father were noted. At the FDIC meeting with the board on December 16, 1987, this was discussed. Yet less than a month later, the Respondent and the board embarked on a course of action which would

again violate the insider lending proscriptions. There was a history, and it was recent, such was at least sufficient so that this would not be a factor to mitigate the assessment.

E. *Other Factors as Justice May Require*

There are no additional factors which I believe would tend to lower the amount assessed in the Notice.
With due consideration to the five statutory factors, and the entire record in this matter, I conclude that the assessment of $10,000 is appropriate and will so recommend to the FDIC Board.
Upon the foregoing I hereby recommend adoption of the following:

FINDINGS OF FACT

1. At all times material the Bank was a corporation existing and doing business under the laws of the State of Louisiana, having its principal place of business of Olla, Louisiana. It was insured by the FDIC and not a member of the Federal Reserve. (JE-1, No. 8)
2. The Bank was a subsidiary of Olla Bancshares, Inc., Olla, Louisiana ("Bancshares"), a one-bank holding company which owned 92.8 percent of its voting stock. (JE-1, Nos. 8, 17)
3. Since 1974 and at all time material, the Respondent was a member of the board of directors of the Bank. (T. 139, 141; JE-1, No. 15)
4. At all times material W. Scott Maxwell was a member of the board of directors of the Bank and was Vice-President of Bancshares. (JE-1, Nos. 9 and 10)
5. At all times material W. Scott Maxwell served on the loan committee, executive committee and retirement committee of the Bank. Between February 2, 1988 and May 1, 1988, he was vice-chairman of the board of directors of the Bank. (JE-1, No. 10; FDIC-3; FDIC-4)
6. At the 1987 examination, $255,000 of W. Scott Maxwell's $312,000 outstanding direct debt was classified "Doubtful" due to its more than normal risk of repayment. (JE-1, No. 18; FDIC-19, p. 6-a)
7. Collateral for W. Scott Maxwell's classified debt included a second mortgage covering his residence and a 91-acre tract of {{12-31-91 p.A-1827}}undeveloped land. The first mortgage on those properties was held by Central Bank, Monroe, Louisiana ("Central Bank"), as collateral for a note in the amount of $500,000 dated May 15, 1986. (JE-4, p. 35–36; FDIC-19, p. 2-a-4; FDIC-39)
8. The 1987 examination disclosed that W. Scott Maxwell has a high volume of debt at various financial institutions and did not appear to have the cash flow to properly service his debt at the Bank. Additionally, his assets were over-valued, appraisals on the real estate securing his debt contained unrealistic assumptions and the collateral was of questionable value with the Bank's equity position uncertain. (FDIC-19, pp. 1-a-2, 2-a-4 through 2-a-6)
9. The 1987 report of examination recommended that the Bank obtain an outside MAT appraisal on the collateral securing the W. Scott Maxwell debt to determine the Bank's equity position and that the Bank seek additional collateral to protect it from loss.
10. The 1987 examination cited three violations of Regulation O involving W. Scott Maxwell, including loans to W. Scott Maxwell and his father containing preferential terms in violation of Section 215.4(a) Regulation O based on the rate of interest charged and the collateral taken. The examination noted that the loans were apparently made due to the Maxwells' positions at the Bank without regard to his repayment ability or collateral values. A separate violation of Section 215.4(a) of Regulation O was also cited in connection with W. Scott Maxwell's purchase of a bank-owned automobile for less than half of its market value. In connection with these violations, it was noted that civil money penalties of up to $1,000 for every day the violation continues could be assessed for violation of Regulation O. (FDIC-19, pp. 6-a through 6-a-2)
11. Following the 1987 examination, the Bank's board of directors made provisions to increase the interest rates on the loans to W. Scott Maxwell and his father which had been cited as preferential and in violation of Section 215.4(a) of Regulation O. The directors also required W. Scott Maxwell to make additional payments on the automobile which he had purchased from the Bank for less than market value. (T. 78)
12. At its meeting of December 9, 1987, the Bank's board of directors approved a $10,000 overline for W. Scott Maxwell on the condition that he pay 10 percent per year principal and interest and that he not borrow any more until he had reduced his debt for two years or by 20 percent. W. Scott Maxwell also agreed to put up additional collateral but never did. (FDIC-6)
13. The Respondent attended a December 16, 1987, board meeting which was held at the Commissioner's Office in Baton Rouge, Louisiana with representatives of the State and the FDIC for the purpose of discussing the findings of the 1987 examination of the Bank. The apparent violations of Regulation O, problems and criticisms with the extensions of credit of W. Scott Maxwell cited in the 1987 Report of Examination, and the possibility of civil money penalties were subjects of discussion at this

meeting. (JE-3, Nos. 1–4; FDIC-7)

14. On January 5, 1988, the Bank's loan committee considered a request by W. Scott Maxwell for a $50,000 loan to pay interest on his loan at Central Bank. The loan committee told Maxwell that the loan would have to be presented to the Bank's board of directors. (JE-4, pp. 17–18; S-2)

15. At a January 13, 1988, meeting of the Bank's board of directors, the Respondent advocated in favor of extending additional credit to W. Scott Maxwell through the purchase of his existing note from Central Bank. The Respondent had personal knowledge that W. Scott Maxwell was experiencing cash flow problems which would require liquidation of assets in order to meet his obligations at Central Bank. (T. 163–164, 187, 194; FDIC-8)

16. Due to the fact that Central Bank planned to foreclose on the collateral securing W. Scott Maxwell's debt at the institution, the board of directors was considering a proposal to purchase Maxwell's outstanding note from Central Bank. (JE-4, p. 38; FDIC-8)

17. The Respondent did not make any independent inquiry to determine if Regulation O restrictions applied to the Bank's purchase of W. Scott Maxwell's note even though he was aware of the Regulation O violations concerning W. Scott Maxwell loans from his review of the 1987 examination and prior meeting with FDIC examiners. (T. 168, 185; FDIC-8; FDIC-19)

18. At the board meeting of January 13, 1988, the Respondent reviewed the 1987 ap- {{12-31-91 p.A-1828}}praisals on the collateral pledged to W. Scott Maxwell's debt and though they contained obvious errors, he relied on their contents in casting his vote. The Respondent also failed to question the values assigned in the appraisal even though he was aware of the previous criticisms of the examiners concerning the assigned collateral values. (T. 173–174, 185–186)

19. At the January 13 meeting, a vote was taken on the proposal to purchase the note from Central Bank. The Respondent voted in favor of the proposal which was approved in a unanimous vote. (T. 164; JE-1, No. 19; JE-4, p. 108; FDIC-8)

20. On January 18, 1988, the Bank purchased W. Scott Maxwell's note from Central Bank and received an assignment. As further evidence of the debt owed to the Bank by W. Scott Maxwell, the Bank's documentation in conjunction with the transaction included a "Combination Disclosure Statement and Negotiable Paper" dated January, 18, 1988, and signed by W. Scott Maxwell, for the loan amount of $557,464.85. The total amount of the note was $557,464.85 which included $534,147.70 paid on Olla State Bank to Central Bank on behalf of W. Scott Maxwell, $5.00 notary fee, and $23,312.45 in finance charges. (JE-3, Nos. 5, 6; FDIC-21)

21. Prior to January 18, 1988, the total of all extensions of credit to W. Scott Maxwell by the Bank was $305,063. In addition, a $195,000 continuing guaranty on the line of credit to his father, M.W. Maxwell was held by the Bank in its files. (JE-3, No. 9)

22. As a result of the Bank's purchase of his note from Central Bank, outstanding extensions of credit by the Bank to W. Scott Maxwell was approximately $1,057,000. This amount represented 39 to 40 percent of the Bank's capital and surplus and undivided profits. (T. 73, 79)

23. The Respondent did not personally benefit from the Bank's purchase of the Central Bank note.

24. At the examination as of August 1988, $207,000 of the loans to W. Scott Maxwell were classified as "Loss", which did not include over $100,000 of his debt which the Bank had charged off on June 24, 1988. (FDIC-20, pp. 1-a-6, 2-a-14)

25. Whether characterized as a loan or the purchase of an extension of credit, in purchasing the Central Bank credit the Bank advanced funds to W. Scott Maxwell in an amount which exceeded the value of the collateral received and sustained loss as a result. (T. 35, 58)

26. The Bank did not adequately protect itself by purchasing W. Scott Maxwell's note from Central Bank and in fact, the Bank increased its exposure and incurred additional loss. At the time of the January transaction, W. Scott Maxwell had no repayment ability. Also, since most undeveloped land was selling at between $500 to $1,000 an acre at the time, the value of the collateral was much less the amount of the transaction. (T. 35–36)

27. The January transaction involved more than the normal risk of repayment because at the time of the January transaction, W. Scott Maxwell's financial condition was deteriorating and the value of the collateral was much less than the amount of the transaction. (T. 35)

28. The Bank suffered an additional $94,000 loss as a result of the January transaction. (T. 75–76, 83–84)

29. Based upon the Bank's total equity capital and reserves of $2,692,000 as reported in the Bank's Consolidated Report of Condition as of December 31, 1987, the Bank's Regulation O lending limit, as of January 18, 1988, was $403,800. (T. 74)

30. Apparent violations of Regulation O cited in the 1986 and 1987 reports of examination constitutes a history of previous violations, which had been transmitted to the Board as recently as December 1987. (T. 79)

31. The January transaction represented about 20 percent of the Bank's unimpaired capital and surplus, and the amount of the Bank's total debt outstanding to W. Scott Maxwell after the January transaction, was 39 to 40 percent of the Bank's unimpaired capital and surplus, and exposed the Bank to more loss and was a contributing factor to the Bank's failure. Thus, the violation was grave. (T. 79–80)

CONCLUSIONS OF LAW

1. At all times pertinent to the proceeding, the Bank was an insured state nonmember bank subject to the Act, 12 U.S.C. §§1811, *et seq.*, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III and the laws of the state of Louisiana.

2. The FDIC has jurisdiction over the Bank, the Respondent and the subject matter of this proceeding. {{4-30-92 p.A-1829}}

3. Under Section 18(j) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j), the FDIC has authority to impose civil money penalties for violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 215.

4. At all times pertinent to this proceeding, Respondent was a "director" of the Bank within the meaning of section 215.2(c) of Regulation O, 12 C.F.R. §215.2(c).

5. At all times pertinent to this proceeding, W. Scott Maxwell as a "director" of the Bank within the meaning of Section 215.2(c) and an "executive officer" of the Bank within the meaning of Section 215.2(d) of Regulation O, 12 C.F.R. §§215.2(c) and 215.2(d).

6. The January transaction constitutes an "extension of credit" to W. Scott Maxwell within the meaning of Section 215.3 of Regulation O, 12 C.F.R. §215.3.

7. The January transaction was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Sections 215.4(c) and 215.2(f) of Regulation O, 12 C.F.R. §§215.2(f) and 215.4(c) in that it was an extension of credit which exceeded the Bank's lending limit.

8. The January transaction was made in violation of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and in violation of Section 215.4(a) of Regulation O, 12 C.F.R. §215.4(a), in that it was an extension of credit involving more than the normal risk of repayment and presenting other unfavorable features.

9. The Respondent caused, brought about, participated in, counseled, or aided or abetted violations of 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).

10. The Respondent caused, brought about, participated in, counseled, or aided or abetted violations of Section 22(h) of the Federal Reserve Act, 12 U.S.C. §375b, and Section 215.4(c) and 215.2(f) of Regulation O, 12 C.F.R. §§215.4(c) and 215.2(f).

11. A civil money penalty is warranted against Respondent assessed in accordance with the statutory considerations of the size of financial resources, good faith of the Respondent, history of previous violations, gravity of violations and such other matters as justice may require as set forth in Section 18(j)(4) of the Act, 12 U.S.C. §1828(j)(4).

12. A civil money penalty of $10,000 is appropriated for the Respondent's participation in violations of Section 22(h) of the Federal Reserve Act and Regulation O.

Upon the foregoing findings and conclusions, it is hereby, recommended that the Board of Directors of the FDIC enter the following:

ORDER TO PAY CIVIL MONEY PENALTIES

IT IS HEREBY ORDERED THAT a civil money penalty of $10,000 be, and the same hereby is, assessed against J.J. Silagy, pursuant to section 18(j)(3) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j)(3).

IT IS FURTHER ORDERED THAT, this Order shall be effective and the Civil Money Penalty ordered shall be final and payable twenty (20) days from the date of this Order. The provisions of this Order shall remain effective and enforceable except to the extent that, and until such time as, any provision of this Order shall have been modified, terminated, suspended or set aside by the Board.

Dated at Washington, D.C. this 3rd day of July, 1991.

/s/ James L. Rose
Administrative Law Judge