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[¶5258] **In the Matter of Carol J. Redman individually and as an institution-affiliated party of Mitchell County Bank, Simpson, Kansas (f/k/a/ Farmers State Bank of Simpson, Simpson, Kansas). (Insured State Nonmember Bank) FDIC Docket Nos. 99-042ej, 96-132e (6-25-99).**

FDIC Board determined that Respondent had failed to meet the burden needed to obtain consent to become an institution-affiliated party after a 1996 Order of Prohibition because she did not demonstrate her fitness to participate, or that her participation would not pose a risk to the safety and soundness of the bank or erode public confidence. Respondent's request for permission to seek employment with bank holding company subsidiaries was denied. *(This decision was affirmed by the United States Court of Appeals for the Seventh Circuit.)*

[.1] Modification of Order—Rehabilitation

In determining whether to grant an application to modify an order, evidence of respondent's rehabilitation since the offending conduct resulting in the Order of Prohibition must be shown.

[.2] Modification of Order—Relevant Findings—Condition of Bank

Respondent's removal did not relate to the condition of the Bank, but to her fiduciary duties, so whether the Bank's condition improved under her stewardship is irrelevant.

[.3] Modification of Order—Relevant Findings—Geographic Changes

Order of Prohibition is industry-wide and Respondent's argument that there would be no erosion of public confidence because she is moving from Kansas to Oregon is irrelevant.

[.4] Prohibition, Removal or Suspension—Benefit

Although the FDIC evidencing non-monetary benefit is sufficient to support an Order, acquiring de facto control of a bank through misrepresentations clearly benefited Respondent.

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[.5] Modification of Order—Restricting Employment Opportunities

Orders of Prohibition have the effect of restricting employment, but for the FDIC to consider a modification of the Order based on that fact the Respondent must demonstrate sufficient evidence of rehabilitation.

[.6] Modification of Order—Rehabilitation

Respondent must provide evidence of complete rehabilitation before the FDIC will allow her to modify the Order of Prohibition to allow employment at another financial institution.

[.7] Modification of Order—Employment would erode public confidence

Respondent's conduct violated the law in addition to being an unsafe and unsound practice for the Bank, so there is no evidence that an environment where Respondent has greater supervision could adequately reduce the risk to the institution, and in addition, Respondent's employment would erode the public confidence in the banking system and regulatory process.

**In the Matter of
CAROL J. REDMAN,
individually and as institution-affiliated party of
MITCHELL COUNTY BANK
SIMPSON, KANSAS
(f/k/a FARMERS STATE BANK OF
SIMPSON), SIMPSON, KANSAS
(Insured State Nonmember Bank)
DECISION AND ORDER DENYING
APPLICATION TO MODIFY ORDER
OF PROHIBITION FROM FURTHER
PARTICIPATION
FDIC-99-042ej
FDIC-96-132e
(Case number of underlying removal action)**

STATEMENT OF THE CASE

Introduction

On November 18, 1998, Carol Redman ("Respondent"), by letter ("Application") addressed to the San Francisco Regional Office of the Federal Deposit Insurance Corporation, made application to the Federal Deposit Insurance Corporation ("FDIC") for written consent to a modification of the Order of Prohibition from Further Participation ("Order of Prohibition") "to permit employment with certain bank holding company subsidiaries ... [and] certain FDIC banks, savings associations or credit unions in positions not to exceed nonexecutive management roles." This application arises under section 8(e)(7)(B) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e)(7)(B), and section 8(j) of the Act, 12 U.S.C. § 1818(j).

Background

Respondent served as one of two active officers and as director of Mitchell County Bank (f/k/a Farmers State Bank), Simpson, Kansas ("Bank") from January 4, 1995 through April 12, 1996. Respondent was also a twenty-four percent owner of the Bank, along with her husband.

An investigation of Respondent and her husband and their financial condition indicated that Respondent and her husband (the "Redmans") had made false statements regarding their financial condition in their change in control application to the Board of Governors of the Federal Reserve System (the "FRB"). Specifically, the Redmans stated in their application that they had no outstanding debt and had surplus cash of \$82,000. However, an investigation disclosed that the Redmans had applied for a \$20,000 loan from a credit union on the day that they executed the change-in-control application and that they had received proceeds from two accommodation loans.

Based upon this investigation, the FDIC accepted Respondent's stipulation to the issuance of an Order of Prohibition that Respondent signed on November 18, 1996. On March 19, 1997, the FDIC issued the Order against Respondent pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e). The Order of Prohibition prohibits Respondent from participating in the conduct of the affairs of the Bank or any other FDIC insured institution without the prior written consent of the FDIC and the appropriate Federal banking regulator pursuant to 12 U.S.C. § 1818(e)(7)(B).

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The Application

By letter dated November 18, 1998, Respondent made application to the FDIC for written consent to a modification of the Order of Prohibition. By her application, Respondent sought permission to seek "employment with certain bank holding company subsidiaries ... [and] certain FDIC banks, savings associations or credit unions in positions not to exceed non-executive management roles." In support of her application to serve in these positions, Respondent stated that due to the limited nature of the positions that she was seeking, and the greater separation of functions present in larger banks, she would not be able to pose a risk to an institution's safety and soundness.

The San Francisco Regional Office requested additional information from Respondent to support her application. Respondent provided a detailed response on January 4, 1999, in which she set forth the nature of the positions that she is seeking and the institutions with which he wishes to affiliate, her fitness to participate in an insured depository institution and the risk her participation presents to an insured depository institution. On February 25, 1999, Respondent supplied additional information concerning her explanation of her conduct leading to her stipulation and the issuance of an Order of Prohibition.

FINDINGS OF FACT

In her application for modification of the Order of Prohibition, Respondent set forth several grounds for requesting such relief. Primarily, Respondent asserted that "the intent of the Order has been realized and partial rehabilitation of the Respondent has occurred. In support of this, Respondent stated that since November 1997 she held positions with a large publicly traded corporation. Specifically, Respondent explained in her January 4, 1999 letter that she has worked as "a trusted executive assistant" for a large corporation and that her job duties entail having a high level of financial knowledge and trusted interaction with the general public. Respondent stated that she is also required to be in compliance with federal and state regulations and company internal guidelines and procedures.

Second, Respondent stated that the institutions she identified in her January letter as those where she would be interested in working are larger and have a greater separation of functions than Mitchell County Bank where the conduct occurred. Respondent asserted that she is seeking a position in these institutions where she would have only a "nonexecutive management" role and would not have any direct significant loan authority.

Next, Respondent stated that she has ten years of experience in the banking industry and has the necessary qualifications to work for an insured depository institution. She stated that the Bank actually

improved under her and her husband's stewardship and that she received no personal gain from the conduct that resulted in the Order of Prohibition.

She also stated that the Order of Prohibition has significantly restricted Respondent's employment options. Because Respondent now lives and works in an area that is far removed from Kansas, Respondent believes that there is little likelihood of an erosion in public confidence in any institution that would employ her since her order of prohibition would not be a matter of public knowledge.

The FDIC, however, finds that these reasons are either not relevant to the consideration of the Application or that the facts do not support these contentions.

[.1] Respondent's assertion that she has been partially rehabilitated and that her current position requires a high level of financial knowledge, interaction with the public, and compliance with federal and state regulation and internal company guidelines and procedures is not supported by specific evidence. Respondent has failed to provide concrete evidence demonstrating how she has been rehabilitated or how her work duties evidence rehabilitation.

[.2] Respondent's assertions that she has the necessary qualifications to work for an insured depository institution, that she has ten years of experience in the financial industry field and that the Bank purportedly improved under the Redmans' stewardship are not relevant to her application for modification of her Order of Prohibition. What is relevant in determining whether to grant an application to modify an order of prohibition is whether a respondent has provided evidence of his rehabilitation since the offending conduct occurred for which such an order issued. Respondent has failed to provide such evidence. While Respondent points to her experience in the financial industry [{{10-31-99 p.A-3089}}](#)field as evidence to support modification of the Order, this experience mostly predates her removal and therefore is not relevant. If anything, Respondent's long experience tends to show that she should have been aware of the legal requirements in seeking to acquire control of a bank as well as the safe and sound banking practices involved in making loans and been more diligent in complying with those requirements and practices.

[.3] Further, Respondent's assertion that the Bank's condition purportedly improved under the Redmans' stewardship is also not relevant. Respondent's removal did not relate to the Bank's condition, but rather to Respondent's discharge of her fiduciary duties. Arguably, if the Redmans had been permitted to remain at the Bank for a longer period of time, the Bank's condition may have deteriorated given the unsafe and unsound banking practices in which they were engaging at the very beginning of their tenure at the Bank. In determining whether to modify an order of prohibition, the FDIC must evaluate whether there is evidence of rehabilitative acts since the issuance of the order of prohibition that justify its modification. As such, the Bank's condition at the time of the issuance of the Order against Respondent is not relevant to this Application.

Respondent contends that due to the limited nature of the positions that she is seeking, and the greater separation of functions present in larger banks, she would not pose a threat to the safety and soundness of an insured depository institution. This argument is speculative at best. The FDIC does not have a concrete situation, either as to a position that Respondent has obtained or to an institution that wishes to employ Respondent, to evaluate this statement. As such, there is no evidence to support Respondent's assertion.

[.4] Respondent's contention that there is no danger of an erosion of public confidence because of her move from Kansas to central Oregon is also not relevant. Accepting Respondent's position would require the FDIC to place more weight on the Respondent's geographic location than on true rehabilitation. Adopting such a position would quickly render the industry-wide ban of section 8(e) a nullity.

[.5] Respondent's assertion that she did not receive any benefit from the conduct that resulted in the Order of Prohibition is not supported by FDIC case law. Benefit can be non-monetary and, further, certain transactions such as nominee loans constitute a benefit to the individual. Further, as a result of the misrepresentations in the change in control application, the Redmans were able to acquire *de facto* control of the Bank — a clear benefit to the Redmans. See *Hendrickson v. Federal Deposit Insurance Corporation*, 113 F. 3d 98, 103 (7th Cir. 1997).

[.6] Finally, the FDIC recognizes that the entry of a prohibition Order, as in this case, always has the effect of restricting a Respondent's employment opportunities. The FDIC has taken this factor into consideration in prior cases, but only at such time as a respondent has demonstrated sufficient evidence of rehabilitation. See, e.g., *In the Matter of Douglas A. Winter*, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 1680, TC-379 (1977).

The FDIC finds that, taking the facts in the most favorable light to Respondent, Respondent has not

shown the concrete and ascertainable facts that would permit the FDIC to find that Respondent has been rehabilitated. Indeed, Respondent herself only claims "partial rehabilitation." Respondent would have the FDIC use this partial rehabilitation as a basis for permitting Respondent's re-entry into banking so that she can then demonstrate complete rehabilitation. It would be an unwarranted risk to the safety and soundness of insured depository institutions for the FDIC to modify a prohibition order without assurances that rehabilitation is complete.

DECISION AND ORDER

Upon review of the record as a whole, the FDIC finds that Respondent has failed to present any evidence or persuasive argument which meets the burden for obtaining consent from the FDIC to become an institution-affiliated party pursuant to section 8(e)(7)(B) of the Act, 12 U.S.C. § 1818(e)(7)(B). Section 8(e)(7)(B) of the Act states in pertinent part:

(7) INDUSTRYWIDE PROHIBITION.—

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating [{{10-31-99 p.A-3090}}](#) in the conduct of the affairs of an insured depository institution, such party receives the written consent of —

(i) the agency that issued such order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party, subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent.

12 U.S.C. § 1818(e)(7)(B).

To meet this burden, Respondent must demonstrate: (1) her fitness to participate in any manner in the conduct of the affairs of an insured depository institution; (2) that her participation would not pose a risk to the institution's safety and soundness; and (3) that her participation would not erode public confidence in the institution. 12 C.F.R. § 303.275(e); see *In the Matter of Charles E. Floyd*, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5177, A-1976 (1992); *In the Matter of Frederick M. Pfeiffer*, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5193A, A-1656; Docket No. FDIC-83-153e, FDIC ENFORCEMENT DECISIONS AND ORDERS Par. 5117, A-1303 (1988).

[.7] The arguments that Respondent has produced to support her application principally rely on her assertions that a change in location of employment or a changed environment by seeking employment in large banks will prevent Respondent from posing a threat to the safety and soundness of an insured depository institution. However, the FDIC can not rely on such speculative evidence when the safety and soundness of insured depository institutions is at risk. Respondent must demonstrate complete rehabilitation so that the FDIC will not need to rely on changed conditions of employment or changed location of employment as the sole bulwark against a repetition of misconduct.

Banking depends upon the commitment to the highest standards of fiduciary duty long required by law for bankers. See *Briggs v. Spaulding*, 141 U.S. 132 (1891); Docket No. 85-291k, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5072, A-964, A-975; Docket No. 85-356e, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5112, A-1228, A-1235; See also American Bankers Association, Focus on the Bank Director, 97-125 (1984); Schlichting, Rice & Cooper, Banking Law, 6.04 (1984). Making false statements of material fact in an application to acquire control of an insured depository institution does not demonstrate the qualities required by the law to participate in an insured depository institution. See *In the Matter of Michael D. McCormick*, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5212, A-2409, 2411 (1994).

[.8] Respondent proposes to be employed by "certain bank holding company subsidiaries ... [and] certain FDIC banks, savings associations or credit unions in positions not to exceed nonexecutive management roles." While Respondent contends that such positions would provide adequate supervision by their very nature, the FDIC has no specific situation to evaluate with respect to this contention. As such, Respondent's contention is speculative at best. Moreover, Respondent's conduct at the Bank did not demonstrate just poor judgment or limited skills. Respondent engaged in violations of law, as well as unsafe and unsound practices. Therefore, the FDIC finds that there is no evidence that a controlled environment could be created which would adequately reduce the risk to the safety and soundness of an insured depository institution that might employ Respondent, and further that Respondent's service would erode public confidence in the banking system and the regulatory process.

Accordingly, the application dated November 18, 1998 is hereby denied.
Pursuant to delegated authority.

Dated at Washington, D.C. this 25th day of June, 1999.

Mark S. Schmidt
Associate Director
Division of Supervision

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