



{{7-8-05 p.A-3303}}

[¶5,277] **In the Matter of Randolph W. Lenz, J. Donald Weand, Jr., Marcial Cuevas, Jack W. Dunlap, Steven B. Levine, Timothy S. Reed, Brian A. Marks, and Marshall C. Asche, Connecticut Bank of Commerce, Stamford, Connecticut**, Docket Nos. 02-174e, 02-158e, 02-160c&b, 02-161c&b, 02-175k, 02-176k, 02-177k, 02-178k, 02-179k, 02-180k, 02-181k, 02-182k (1-14-04). (*This order, only as pertaining to J. Donald Weand, was terminated by order of the FDIC dated 7-8-05; see ¶16,428.*)

FDIC reverses stay issued by administrative law judge, allowing FDIC administrative enforcement proceeding pursuant to section 8 of the Federal Deposit Insurance Act, 12 U.S.C. §1818, against former officers and directors of Connecticut Bank of Commerce, Stamford, Connecticut, to proceed. FDIC found the burden on respondent of facing parallel proceedings did not warrant a stay. Respondent's motion for reconsideration was denied.

[.1] Rehearing—Standard for reconsideration

**In the Matter of
RANDOLPH W. LENZ,
J. DONALD WEAND, JR.,
MARCIAL CUEVAS,
JACK W. DUNLAP,
STEVEN B. LEVINE,
TIMOTHY S. REED,
BRIAN A. MARKS, and
MARSHALL C. ASCHE,
individually and as former institution-affiliated parties of
CONNECTICUT BANK OF COMMERCE
STAMFORD, CONNECTICUT
(Insured State Nonmember Bank in Receivership)**

FDIC-02-174e

FDIC-02-158e

FDIC-02-160c&b

FDIC-02-161c&b

FDIC-02-175k

FDIC-02-176k

FDIC-02-177k

FDIC-02-178k

FDIC-02-179k

FDIC-02-180k

FDIC-02-181k

FDIC-02-182k

DECISION AND ORDER ON MOTION FOR RECONSIDERATION

Before the Executive Secretary of the Federal Deposit Insurance Corporation ("FDIC"), pursuant to authority delegated by the FDIC Board of Directors ("Board") under 12 C.F.R §308.102b(2)(ii), is a Motion, dated December 10, 2003, by Respondent Steven B. Levine ("Levine") for Reconsideration in Regard to Ruling of Executive Secretary on FDIC's Petition for Interlocutory Review of Order Staying These Proceedings ("Motion for Reconsideration").

The Motion for Reconsideration was filed by Respondent Levine following the issuance, on December 4, 2003, of a Decision and Order on Interlocutory Review ("Order on Interlocutory Review") which reversed a stay order previously issued by Administrative Law Judge Ann Z. Cook ("ALJ") on August 5, 2003. The ALJ had issued the stay order pursuant to motions filed by Respondent Levine and co-respondent Randolph W. Lenz ("Lenz"). On December 19, 2003, FDIC Enforcement Counsel ("Enforcement Counsel") submitted an Opposition to Respondent Levine's Motion for Reconsideration of Decision and Order On Interlocutory Review of Stay Order ("Opposition Motion").

The underlying matter involves an FDIC administrative enforcement proceeding pursuant to section 8 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. §1818, against former officers and directors of Connecticut Bank of Commerce, Stamford, Connecticut ("Bank"), which was closed by Connecticut bank regulators on June 26, 2002, with the FDIC being appointed as receiver. Specifically, as to Levine, the FDIC alleged unsafe or unsound practices, breaches of fiduciary duties, or violations by him in connection with his responsibilities as a member of the Bank's board, and assessed a civil money penalty against him in the amount of \$500,000 pursuant to section 8(i) of the FDI Act, 12 U.S.C. §1818(i).

Levine argues in support of his Motion for Reconsideration that the Executive Secretary failed to address in the Order on Interlocutory Review the arguments presented by Levine in favor of staying the proceedings. Levine had offered two arguments in his submission opposing Enforcement Counsel's petition for interlocutory review of the stay order. He contended that (1) Lenz's and co-respondent J. Donald Weand, Jr.'s ("Weand") potential invocation of their Fifth Amendment privileges in the face of possible criminal proceedings would hinder his defense and somehow deprive him of his own constitutional rights, and (2) the FBI's seizure of Lenz's records deprived Levine of access to those documents for use in his own defense. Levine's claim that he needs access to the seized documents and Lenz's and Weand's testimony is based on his assertion that he and Lenz do not have commonality of interests in this proceeding because he too was allegedly defrauded by Lenz.
[{{4-30-04 p.A-3304}}](#)

[.1] Because the FDIC Rules of Practice and Procedure do not contemplate reconsideration of interlocutory decisions, it is reasonable to look for guidance to the analogous Federal Rule of Civil Procedure which is, in this case, Rule 59(e).¹ Reconsideration pursuant to Rule 59(e) is an extraordinary action committed to the discretion of the court. *Firestone v. Firestone*, 76 F. 3d 1205, 1208 (D.C. Cir. 1996) (*per curiam*). Reconsideration pursuant to rule 59(e) is dependent on the finding of one of three major factors: (1) an intervening change in controlling law; (2) the availability of new evidence (not available previously); and (3) the need to correct clear error (of law) or prevent manifest injustice. See *Virgin Atlantic Airways, Ltd v. National Mediation Board*, 956 F. 2d 1245, 1255 (2nd Cir. 1992). In contrast, "reconsideration is not appropriate where a party is simply attempting to reargue factual or legal assertions contained in [its] original pleadings." *Natural Resources Defense Council v. EPA*, 705 F. Supp. 698, 700 (D.D.C. 1989), *vacated on other grounds*, 707 F. Supp. 3 (D.D.C. 1989).

Levine, in this instance, is trying to make just such a reargument because contrary to his assertion, the Order on Interlocutory Review addressed and rejected each of his two arguments in support of the stay order. See Order on Interlocutory Review at 7-8. Moreover, Levine does not in his Motion for Reconsideration

establish any of the three critical elements justifying reconsideration. Rather, citing scant legal authority and offering no convincing reason, Levine, unhappy with the Order on Interlocutory Review, now seeks a decision more to his liking.

The Board does not retreat from our earlier opinion regarding the utter lack of merit to Levine's claim that his constitutional rights will be violated if this administrative proceeding moves forward, and this view applies to the possibility of Weand's as well as Lenz's invocation of their Fifth Amendment rights. Order on Interlocutory Review at 8 n.1. Likewise, the Board remains unconvinced that the FBI's seizure of Lenz's records poses a sufficient hardship to Levine as to justify a stay. As the Board noted, Lenz has access to the seized documents via arrangement with FBI staff. Order on Interlocutory Review at 8. Levine, who could have sought access to the documents in question from Lenz, apparently has not done so. Opposition Motion at 5 n.3. Nor has there been any showing that Levine has sought access from the FBI.

Because Levine's submission does not demonstrate any of the three threshold requirements that would warrant reconsideration and in fact does nothing more than reiterate his previous arguments, his motion is denied. As noted in the Order on Interlocutory Review, the parties are not foreclosed from "seeking a stay of this matter at a later point should the criminal investigation progress in such a way, or any other new circumstances arise, that would warrant additional consideration." Order on Interlocutory Review at 11.

Accordingly, it is hereby ORDERED and DECREED that Respondent Levine's Motion for Reconsideration is DENIED.

Pursuant to delegated authority, upon the advice and recommendation of the Deputy General Counsel (Litigation).

Dated at Washington, D.C., this 14th day of January, 2004.

¹ Rule 59(e) provides: **Motion to Alter or Amend Judgment.** Any motion to alter or amend a judgment shall be filed no more than 10 days after entry of the judgment. F.R. Civ. P. 59(e).