

[{{12-31-03 p.A-3295}}](#)

[¶5275] In the Matter of Susan E. Maddocks, International Bank of Commerce, Laredo, Texas,
Docket Nos. 00-005e, 00-092k (10-7-03).

The Board of Directors of the FDIC issued an order of prohibition and civil money penalty against Susan E. Maddocks, in the amount of \$15,000.

[.1] Default Judgment—Entry of Order

Respondent's default constitutes consent to entry of an order of prohibition as well as a Civil Money Penalty assessment and waiver of her right to contest the allegations.

[.2] Civil Money Penalties (CMP)—Amount of penalty—Statutory factors

The amount of any penalty is determined by statutory factors.

[.3] Prohibition, Removal, or Suspension—Bank Affairs, conduct of denied

Respondent is prohibited from participating in any manner in any conduct of the affairs of any insured depository institution, agency or organization.

[.4] Prohibition, Removal, or Suspension—Voting rights, exercise denied

Respondent is prohibited from exercising voting rights.

**In the Matter of
SUSAN E. MADDOCKS
institution-affiliated party of
INTERNATIONAL BANK OF COMMERCE
LAREDO, TEXAS
(Insured State Nonmember Bank)
DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION AND ASSESSMENT OF
CIVIL MONEY PENALTY**

FDIC-00-005e;

FDIC-00-092k

I. STATEMENT OF THE CASE

This matter is before the Board of Directors ("Board") following the issuance on April 10, 2003, of a Recommended Order of Default ("Recommended Decision") by Administrative Law Judge Ann Z. Cook ("ALJ"). The ALJ recommended that Susan E. Maddocks ("Respondent") be subject to an order of prohibition pursuant to section 8(e) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. §1818(e), and that a civil money penalty ("CMP") be imposed against her pursuant to section 8(i) of the [{{12-31-03 p.A-3296}}](#)

FDI Act, 12 U.S.C. §1818(i), in the amount of \$15,000.

This is an uncontested proceeding. The record shows that Respondent received actual notice by personal service of the charges against her as set forth in the FDIC's Notice of Intention to Prohibit from Further Participation and Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice"). Respondent failed to enter an appearance, file an answer to charges, request a hearing, respond to an Order to Show Cause or file exceptions to the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision, as supplemented, and issues an Order of Prohibition and Assessment of Civil Money Penalty against Respondent.

BACKGROUND

On December 19, 2002, the FDIC issued the Notice against Respondent pursuant to sections 8(e) and 8(i) of the FDI Act, 12 U.S.C. §§ 1818(e) and (i)(2). Respondent, a collections teller at the International Bank of Commerce, Laredo, Texas ("Bank"), was charged with engaging in unsafe and unsound banking practices which caused losses to the Bank. In addition, the Notice charged that by engaging in the unsafe and unsound banking practices described therein, Respondent demonstrated personal dishonesty and/or willful or continuing disregard for the safety and soundness of the Bank. Specifically, the Notice charged that during the periods September through November 1998, Respondent engaged in a series of sham transactions which benefited certain Bank customers who operated used car businesses. Respondent's alleged misconduct, which involved more than 70 transactions and resulted in losses to the Bank in excess of \$1 million, included issuing unfunded cashiers checks, honoring checks from customers who she knew had insufficient funds to cover the amounts in questions, and releasing title to 62 vehicles knowing that payment for the vehicles was not sufficiently funded.¹ Notice ¶¶ 15-38.

The FDIC employed the services of a process server, Larry Sparkman ("Sparkman"), to effect service of the Notice on Respondent. On January 24, 2003, Sparkman personally served Respondent at her residence. Enf. Brief, Exh. A. The Notice directed Respondent to file an answer and request for a hearing within twenty days from the date of service, as required by section 308.19 of the FDIC's Rules of Practice and Procedure ("FDIC's Rules"), 12 C.F.R. §308.19. Respondent's answer and request for hearing were due on or before February 13, 2003. Respondent never responded in any manner to the Notice. R.D. at 1.

On March 7, 2003, FDIC Enforcement Counsel ("Enforcement Counsel") moved, pursuant to section 308.19 of the FDIC's Rules, for Entry of Default Judgment ("Enforcement Counsel's Motion").² Respondent again failed to respond. On March 11, 2003, the ALJ issued an Order to Show Cause ("Show Cause Order") directing that Respondent respond to the Notice by April 2, 2003 and to show good cause for having failed to do so previously. The Show Cause Order also provided that unless Respondent submitted a response by the April 2, 2003 deadline, a default order would be entered against her granting the relief requested in the Notice.³ In the absence of a response to any of these documents, the ALJ, on April 10, 2003, granted Enforcement Counsel's Motion and issued the Recommended Decision.

Discussion

The Board concurs in and adopts the ALJ's Recommended Decision, as supplemented by the discussion below. The record reflects that Respondent received actual notice of the proceedings through personal service of the Notice. Although she was served personally, she failed to respond to the Notice, to Enforcement Counsel's Motion and to the

¹ Citations to the record shall be as follows:

Notice — "Notice ¶ ____"

Recommended Decision — "R.D. at ____"

FDIC Enforcement Counsel's Brief in Support of Motion for Default Judgment — "Enf. Brief, Exh. ____".

² Section 308.19(c)(1) of the FDIC's Rules provides that when a respondent fails to timely answer a notice, Enforcement Counsel may move for entry of default judgment which shall be issued by the ALJ upon a finding that no good cause has been shown. Section 308.19(c)(2) of the FDIC's Rules provides, in connection with CMP proceedings, that unless a respondent files a request for a hearing within 20 days of service of the notice, the assessment is final and unappealable.

³ Enforcement Counsel's Motion and the ALJ's Show Cause Order were served on Respondent at her personal residence, thus satisfying the requirements of the FDIC's Rules governing method of service upon a party who has not entered an appearance. 12 C.F.R. §308.11(b) and (c)(2).
[{{2-29-04 p.A-3297}}](#)

Show Cause Order. As described in the record, her conduct clearly indicates an intentional and willful disregard of the FDIC's procedural requirements. As such, default judgment is warranted. *In the Matter of*

Raymond M. Phillips, FDIC Enforcement Decisions and Orders, ¶ 5232, A-2759 (1996), 1996 WL 281984, at *2; *In the Matter of Hiram L. Fong*, FDIC Enforcement Decisions and Orders, ¶ 5230, at A-2749 (1995), 1995 WL 810685, at *2.

[.1] Respondent's default constitutes consent to entry of an order of prohibition as well as a CMP assessment and a waiver of her right to contest the allegations in the Notice under section 308.19 of the FDIC's Rules. *In the Matter of Kevin L. Jensen*, FDIC Enforcement Decisions and Orders ¶ 5240, A-2808 (1996), 1996 WL 768366, at *4.⁴ Moreover, because Respondent has failed to file exceptions to the Recommended Decision pursuant to section 308.39 of the FDIC's Rules, 12 C.F.R. §308.39, she is now barred from challenging any aspect of the ALJ's Recommended Decision, including the CMP assessment. *In the Matter of Chul Song*, FDIC Enforcement Decisions and Orders, ¶ 5214, A-2445 (1994), 1994 WL 328058, at *2; *In the Matter of Kevin L. Jensen*, ¶ 5240, A-2808 (1996), 1996 WL 768366, at *4; *In the Matter of Raymond M. Phillips*, ¶ 5232, A-2759 (1996), 1996 WL 281984, at *2.

[.2] After reviewing the record in this case, the Board has determined that the Recommended Decision should be supplemented with respect to the CMP assessment. Because the Recommended Decision did not address specifically the factors set forth in the statute governing assessment of civil money penalties, the Board will briefly do so now. In determining the amount of any penalty, section 8(i)(2)(G) of the FDI Act, 12 U.S.C. §1818(i)(2)(G), requires consideration of the size of financial resources and good faith of the person charged; the gravity of the violations; the history of previous violations; and such other matters as justice may require. As for the size of Respondent's financial resources, Respondent has not offered any materials to assist the agency in its determination. Regarding the "good faith" factor above, the uncontested findings of fact set forth in the Notice demonstrate that Respondent over a two-month period in 1998 engaged in dozens of transactions constituting unsafe and unsound business practices and showing her personal dishonesty and/or willful or continuing disregard for the safety and soundness of the bank. Notice ¶¶ 15-38. The repeated nature of Respondent's misconduct, accompanied by her failure to present any explanation for her actions, precludes a finding that she acted in good faith. As is clear from the record, the gravity of Respondent's misconduct was serious enough to cause losses to the Bank in excess of \$1 million. Notice ¶ 40. Although the record does not indicate a history of prior misconduct, the serious nature of Respondent's activities is such that the Board concludes that a CMP far in excess of the \$15,000 assessed would have been justified in light of the factors specified by the statute, and so adopts the \$15,000 CMP actually assessed here.

Conclusion

After a thorough review of the record in this proceeding, the Board, for the reasons set forth above, adopts the Recommended Decision as supplemented, incorporates herein the Findings of Fact and Conclusions of Law set forth in the Notice and issues the following order implementing its decision.

ORDER TO PROHIBIT

The Board of the FDIC, having considered the entire record of this proceeding and finding that Respondent Susan E. Maddocks, formerly employed as a collections clerk by the Bank, engaged in unsafe or unsound banking practices causing financial loss to the Bank, and that her actions involved personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank, hereby ORDERS and DECREES that:

[.3] 1. Susan E. Maddocks shall not participate in any manner in any conduct of the affairs of any insured depository institution, agency or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. ⁴ This case clearly is distinguishable from *Amberg, et al. v. FDIC*, 934 F.2d 681 (5th Cir. 1991), and *Oberstar v. FDIC*, 987 F.2d 494 (8th Cir. 1992), in which default judgments were overturned where the courts found that respondents' failure to comply with the FDIC's Rules was merely technical and that the respondents had taken steps indicating an intention to contest the charges against them. Here, no intention to contest or otherwise comply with the procedural requirements has been shown by Respondent and, as such, a default order is appropriate.

{{2-29-04 p.A-3298}}

§1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. §1818(e)(7)(D).

[.4] 2. Susan E. Maddocks shall not solicit, procure, transfer, attempt to transfer, vote, or attempt to

vote any proxy, consent or authorization with respect to any voting rights in any financial institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. §1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. §1818(e)(7)(D).

3. Susan E. Maddocks shall not violate any voting agreement with respect to any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. §1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. §1818(e)(7)(D).

4. Susan E. Maddocks shall not vote for a director, or serve or act as an institution-affiliated party, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. §1813(u), of any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. §1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. 1818(e)(7)(D).

5. This ORDER shall be effective thirty (30) days from the date of its issuance.

ORDER TO PAY CIVIL MONEY PENALTY

The Board, having considered the entire record in this proceeding, and taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of Respondent, the gravity of the violations and such other matters as justice may require, hereby ORDERS and DECREES that:

1. A civil money penalty is assessed against Susan E. Maddocks in the amount of \$15,000 pursuant to 12 U.S.C. §1818(i).

2. This ORDER shall be effective and the penalty shall be final and payable thirty (30) days from the date of its issuance.

The provisions of these ORDERS will remain effective and in force except to the extent that, and until such time as, any provision of these ORDERS shall have been modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED that copies of this Decision and Orders shall be served on Susan E. Maddocks, Enforcement Counsel, the ALJ, and the Banking Commissioner for the State of Texas.

By direction of the Board of Directors.

Dated at Washington, D.C., this 7th day of October, 2003.