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[¶11,332A] **In the Matter of John M. Dudley, Phenix-Girard Bank, Phenix City, Alabama**, Docket No. 96-102k (8-19-96).

Respondent agrees to pay civil money penalty assessed by the FDIC in the amount of \$10,000. This was an uncontested notice and became a final order by operation of law.

In the Matter of

JOHN M. DUDLEY,
individually, and as an institution-affiliated party of
PHENIX-GIRARD BANK
PHENIX CITY, ALABAMA

(Insured State Nonmember Bank)

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING

FDIC-96-102k

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY

The Federal Deposit Insurance Corporation ("FDIC") is of the opinion that John M. Dudley ("Respondent"), individually and as an institution-affiliated party of Phenix-Girard Bank, Phenix City, Alabama ("Bank"), has violated the prior approval and terms and creditworthiness provisions of sections 22(h)(2) and (3) of the Federal Reserve Act, as amended, 12 U.S.C. §§ 375b(2) and (3), and sections 215.4(a) and (b), and section 215.6 of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), as amended, 12 C.F.R. §§ 215.4(a) and (b), and § 215.6, promulgated thereunder and made applicable to insured State nonmember banks pursuant to section 18(j)(2) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1828(j)(2), and section 337.3(b) of the Rules and Regulations of the FDIC, 12 C.F.R. § 337.3(b).

Wherefore, the FDIC hereby issues this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY AND NOTICE OF HEARING ("NOTICE OF ASSESSMENT") pursuant to the provisions of section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2), and Part 308 of the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. In support thereof, the FDIC finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. GENERAL

1. The Bank is and was, at all times pertinent to the charges herein, a corporation existing and doing business under the laws of the State of Alabama, having its principal place of business in Phenix City, Alabama. The Bank is and was, at all times pertinent to the charges herein, an insured State nonmember bank subject to the Act, 12 U.S.C. §§ 1811-1831u, the FDIC's Rules and Regulations, 12 C.F.R. Chapter III, and the laws of the State of Alabama.

2. At all times pertinent to the charges herein, Respondent John M. Dudley was a "director" and an "executive officer" of the Bank within the meaning of sections 215.2(d) and 215.2(e), respectively, of Regulation O, 12 C.F.R. §§ 215.2(d) and 215.2(e), and was an "institution-affiliated party" of the Bank within the meaning of sections 3(u) and 8(i)(2) of the Act, 12 U.S.C. §§ 1813(u) and 1818(i)(2).

3. At all times pertinent to the charges herein, Respondent owned or controlled Phenix Lumber Company, Phenix City, Alabama ("Phenix Lumber Company"), a "related interest" of Respondent John M. Dudley within the meaning of section 215.2(n) of Regulation O, 12 C.F.R. § 215.2(n).

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4. At all times pertinent to the charges herein, Respondent John M. Dudley and his related interest Phenix Lumber Company were each an "insider" of the Bank as that term is defined in section 215.2(h) of Regulation O, 12 C.F.R. § 215.2(h).

5. Pursuant to section 3(v) of the Act, 12 U.S.C. § 1813(v), the term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

6. The FDIC has jurisdiction over the Respondent, the Bank and the subject matter of this proceeding.

B. VIOLATIONS OF THE PRIOR APPROVAL AND TERMS AND CREDITWORTHINESS PROVISIONS OF REGULATION O

7. During the period 1993 - 1994, the Bank extended credit to Leslie Dudley Greene, the daughter of Respondent John M. Dudley, on three occasions in the cumulative amount of \$755,075.

8. The first of the extensions of credit described in paragraph 7 hereof which the Bank made to Leslie Dudley Greene was evidenced by a loan note (no. 2084) and originated on January 29, 1993, in the principal amount of \$230,025, for a term of 90 days, with an original maturity date of April 29, 1993. The entire proceeds of this extension of credit were deposited to the account of Phenix Lumber Company at the Bank. This extension of credit was renewed without principal reduction on five occasions during the period 1993 - 1994. All interest payments on the loan were made by Phenix Lumber Company. The extension of credit finally matured on September 1, 1994, and was fully paid by Phenix Lumber Company on September 8, 1994.

9. The extension of credit made by the Bank to Leslie Dudley Greene in the amount of \$230,025 described in paragraph 8 hereof was past due and was carried by the Bank in a delinquent status for a period of 16 days during the period April 30 - May 17, 1993, and was past due and carried by the Bank in a delinquent status for another period of 16 days during the period February 15 - March 3, 1994.

10. The next extension of credit described in paragraph 7 hereof which the Bank made to Leslie Dudley Greene was evidenced by loan note (no. 21420) and originated on August 12, 1993, in the principal amount of \$345,025, for a term of 90 days with an original maturity date of November 10, 1993. The entire proceeds of this extension of credit were deposited to the account of Phenix Lumber Company at the Bank. This extension of credit was renewed on three occasions without principal reduction during the period 1993 - 1994. All interest payments on the loan were made by Phenix Lumber Company. The extension of credit finally matured on September 1, 1994, and was fully paid by Phenix Lumber Company on September 8, 1994.

11. The extension of credit made by the Bank to Leslie Dudley Greene in the amount of \$345,025 described in paragraph 10 hereof was past due and was carried by the Bank in a delinquent status for a period of 22 days during the period February 8 - March 3, 1994.

12. The last extension of credit described in paragraph 7 hereof which the Bank made to Leslie Dudley Greene was evidenced by loan note (no. 21786) and originated on January 19, 1994, in the principal amount of \$180,025, for a term of 60 days with an original maturity date of March 21, 1994. The entire proceeds of this extension of credit were deposited to the account of Phenix Lumber Company at the Bank. The extension of credit was renewed on three occasions without principal reduction during 1994. All interest payments on the loan were made by Phenix Lumber Company. The extension of credit finally matured on September 1, 1994, and was fully paid by Phenix Lumber Company on September 8, 1994.

13. The extension of credit made by the Bank to Leslie Dudley Greene in the amount of \$180,025 described in paragraph 12 hereof was past due and was carried by the Bank in a delinquent status for a period of 40 days during the period July 21 - August 30, 1994.

14. The entire proceeds of the extensions of credit described in paragraphs 7-13 hereof, in the cumulative amount of \$755,075, were not transferred by the Bank to Leslie Dudley Greene but, rather, were transferred by the Bank directly to and used by Respondent John M. Dudley and his related business interest, Phenix Lumber Company.

15. Pursuant to section 215.3(f) of Regulation O, 12 C.F.R. § 215.3(f), the extensions of credit made by the Bank to Leslie Dudley Greene described in paragraphs 7-14 hereof are attributable to Respondent John

[{{10-31-00 p.C-4248.1}}](#) M. Dudley because all of the proceeds thereof were transferred to and used by Respondent John M. Dudley and his related interest, Phenix Lumber Company, for his tangible economic benefit.

16. Respondent John M. Dudley caused or permitted the Bank to make the extensions of credit to his daughter, Leslie Dudley Greene, described in paragraphs 7-15 hereof, and to transfer the entire proceeds of the extensions of credit to him and to his related interest, Phenix Lumber Company, for his tangible economic benefit.

17. Each of the extensions of credit made by the Bank to Leslie Dudley Greene described in paragraphs 7-16 hereof was not repaid by Leslie Dudley Greene but, rather, each extension of credit was fully repaid by John M. Dudley and his related business interest, Phenix Lumber Company.

18. Section 215.4(a) of Regulation O, 12 C.F.R. § 215.4(a), provides that:

[N]o [bank] may extend credit to any insider of the bank . . . unless the extension of credit is made on substantially the same terms (including interest rates and collateral) as, and follows credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by [Regulation O] and who are not employed by the Bank; and . . . [d]oes not involve more than the normal risk of repayment or present other unfavorable features.

19. Each of the extensions of credit made by the Bank to Leslie Dudley Greene described in paragraphs 7-17 hereof, which is attributable to Respondent John M. Dudley, was not made on substantially the same terms and followed less stringent underwriting procedures than extensions of credit made by the Bank to persons that are not covered by Regulation O and not employed by the Bank and involved more than the normal risk of repayment and presented other unfavorable features as a result to the following factors:

(1) The extensions of credit were unsecured;

(2) The nominee borrower, Leslie Dudley Greene, did not have the financial capability to pay the interest charges and to repay the principal amount of the extensions of credit;

(3) The extensions of credit were not supported by documentation sufficient to permit the Bank adequately to analyze the credit quality of the transactions; and

(4) The extensions of credit were made on a "nominee" or "accommodation" basis for the benefit of the recipient, Phenix Lumber Company, the name of which business entity did not appear in the Bank's records and to which the Bank may have been unwilling or unable to grant direct credit.

20. Section 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), provides in pertinent part that:

[N]o [bank] may extend credit . . . to any insider of the bank . . . in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of \$25,000 or 5 percent of the [bank's] unimpaired capital and unimpaired surplus, unless . . . [t]he extension of credit has been approved in advance by a majority of the entire board of directors of the bank; . . . [a]nd the interested party has abstained from participating directly or indirectly in the voting.

The Bank's lending limit pursuant to section 215.4(b)(1) of Regulation O, 12 C.F.R. § 215.4(b)(1), was \$401,850.

21. Section 215.4(b)(2) of Regulation O, 12 C.F.R. § 215.4(b)(2), further provides that:

[I]n no event may a [bank] extend credit to any insider of the bank . . . in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds \$500,000, except by complying with the requirements of this paragraph [215.4(b)].

Section 337.3(b) of the FDIC's Rules and Regulations, 12 C.F.R. § 337.3(b), contains this same prohibition.

22. The following extensions of credit made by the Bank to Leslie Dudley Greene described in paragraphs 7-17 hereof, the proceeds of which were transferred to and used by Respondent John M. Dudley and his related interest, Phenix Lumber Company, were not approved in advance by a majority of the Bank's board of directors, with the interested party abstaining from the voting, at a time when the aggregate amount of the Bank's extensions of credit attributable to Respondent John M. Dudley equaled or exceeded the sum of \$500,000:

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(1) The four renewals of the \$230,025 extension of credit which occurred on August 16 and November 15, 1993, and March 3 and June 2, 1994, respectively;

(2) The origination of the \$345,025 extension of credit which occurred on August 12, 1993, and the three renewals of the extension of credit which occurred on November 10, 1993, and March 3 and June 2, 1994, respectively; and

(3) The origination of the \$180,025 extension of credit which occurred on January 19, 1994, and the three renewals of the extension of credit which occurred on March 21, May 21, and August 30, 1994, respectively.

23. Respondent John M. Dudley participated as a director in the approval by the Bank's board of directors of the \$180,025 extension of credit on January 19, 1994, described in paragraph 12 hereof, at a time when he knew that he and his related interest would receive the use and benefit of the proceeds of the extensions of credit.

24. As a consequence of the extensions of credit described in paragraphs 7-23 hereof, which Respondent John M. Dudley caused or permitted the Bank to make directly and indirectly to or for his tangible economic benefit, Respondent John M. Dudley violated and caused the Bank to violate the prior approval and terms and creditworthiness provisions of sections 22(h)(2) and (3) of the Federal Reserve Act, 12 U.S.C. §§ 375b(2) and (3), and sections 215.4(a) and (b) of Regulation O, 12 C.F.R. §§ 215.4(a) and (b). Furthermore, as a consequence of the extensions of credit described in paragraphs 7-23 hereof, Respondent John M. Dudley knowingly received the proceeds of extensions of credit by the Bank to his daughter, Leslie Dudley Greene, in a manner and under circumstances not authorized by Regulation O in violation of section 215.6 of Regulation O, 12 C.F.R. § 215.6.

ORDER TO PAY

By reason of the violations set forth in paragraphs 7-23 of the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent John M. Dudley pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalty with respect to the size of financial resources and the good faith of the Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, it is:

ORDERED, by reason of the violations set forth in paragraphs 7-24 hereof, that a penalty of \$10,000.00 be, and hereby is, assessed against Respondent John M. Dudley, pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

FURTHER ORDERED that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to the Respondent until twenty (20) days after the date of receipt of the NOTICE OF ASSESSMENT by the Respondent, during which time the Respondent may file an answer and request a hearing pursuant to section 8(i)(2)(H) of the Act, 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19. An original and one copy of the answer, any such request for a hearing, and all other documents in this proceeding must be filed in writing with the Office of Financial Institution Adjudication, 1700 G Street, N.W., Washington, D.C. 20552, pursuant to section 308.10 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Also, copies of all papers filed in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; upon Arthur L. Beamon, Associate General Counsel, Compliance and Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and upon the Regional Counsel (Supervision), Federal Deposit Insurance Corporation, Atlanta Regional Office, 1201 West Peachtree Street, N.E., Suite 1600, One Atlantic Center, Atlanta, Georgia 30309-3449.

If the Respondent fails to file a request for a hearing within twenty (20) days from the date of receipt of this NOTICE OF ASSESSMENT, the penalty assessed against the Respondent, pursuant to this ORDER TO PAY, will be final and shall be paid within sixty (60) days after the date of receipt of this NOTICE OF ASSESSMENT.

NOTICE OF HEARING

IT IS FURTHER ORDERED that, if the Respondent requests a hearing with respect to the charges alleged in the NOTICE OF ASSESSMENT, the hearing shall commence one hundred and twenty (120) days from the date of receipt of this NOTICE OF [{{10-31-00 p.C-4248.3}}](#) ASSESSMENT at Opelika, Alabama, or at such other date or place upon which the parties to this proceeding and the Administrative Law Judge mutually agree.

The hearing will be public and will be conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831u, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The exact time and location of the hearing will be determined by the Administrative Law Judge.

In the event the Respondent requests a hearing, the Respondent shall file an answer to the charges in this NOTICE OF ASSESSMENT within twenty (20) days after the date of receipt of the NOTICE OF HEARING in accordance with section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

Failure of the Respondent to request a hearing shall render the civil money penalty assessed in this NOTICE OF ASSESSMENT final and unappealable pursuant to section 8(i)(2)(E)(ii) of the Act, 12 U.S.C. § 1818(i)(2)(E)(ii), and section 308.19(c)(2) of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19(c)(2).

Pursuant to delegated authority.

Dated at Washington, D.C., this 19th day of August, 1996.