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[¶12,265] In the Matter of James R. Peacock, Sr., The Commercial Bank of Volusia County, Ormond Beach, Florida, Docket No. 04-073e, 04-074k (9-2-04).

Respondent is prohibited from participating in the conduct of affairs of, or exercising voting rights in, any insured institution without the prior written approval of the FDIC. Respondent agrees to pay civil money penalty assessed by the FDIC in the amount of \$12,500.

[.1] Prohibition, Removal, or Suspension—Prohibition From—Participation in Conduct of Affairs

[.2] Prohibition, Removal, or Suspension—Prohibition From—Voting Rights, exercise of

**In the Matter of
JAMES R. PEACOCK, SR.
individually and as an institution-affiliated party of
THE COMMERCIAL BANK OF VOLUSIA COUNTY
ORMOND BEACH, FLORIDA
(Insured State Nonmember Bank)
ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND AN ORDER
TO PAY CIVIL MONEY PENALTY**

FDIC-04-073e

FDIC-04-074k

JAMES R. PEACOCK, SR. ("Respondent") has been advised of the right to receive a NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION ("NOTICE") and a NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW ("NOTICE OF ASSESSMENT") issued by the Federal Deposit Insurance Corporation ("FDIC") detailing the unsafe or unsound banking practices, violations of law and/or breaches of fiduciary duty for which an ORDER OF PROHIBITION FROM FURTHER PARTICIPATION and an ORDER TO PAY A CIVIL MONEY PENALTY may be issued, and has been further advised of the right to a hearing on the alleged charges under sections 8(e) and 8(i) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §§1818(e) and 1818(i), and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308. Having waived those rights, Respondent entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND AN ORDER TO PAY A CIVIL MONEY PENALTY ("CONSENT AGREEMENT") with a representative of the Legal Division of the FDIC, whereby solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices, violations of law and/or breaches of fiduciary duty, Respondent consented to the issuance of an ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND AN ORDER TO PAY A CIVIL MONEY PENALTY ("ORDER") by the FDIC.

The FDIC considered the matter and determined it had reason to believe that:

(a) Respondent recklessly engaged or participated in the unsafe or unsound banking practices and/or engaged or participated in violations of law and/or breaches of fiduciary duty set forth in paragraph 3 of the CONSENT AGREEMENT as an institution-affiliated party of The Commercial Bank of Volusia County, Ormond Beach, Florida ("Bank");

(b) By reason of such unsafe or unsound banking practices, violations of law and/or breaches of fiduciary duty, the Bank has suffered or will probably suffer financial loss or other damage, the interests of the Bank's depositors have been or could be prejudiced, and/or Respondent received financial gain or other benefit; and

(c) Such unsafe or unsound banking practices, violations of law and/or breaches of fiduciary duty involved personal dishonesty on the part of the Respondent or demonstrated Respondent's willful and/or continuing disregard for the safety or soundness of the Bank.

The FDIC further determined that such unsafe or unsound banking practices, violations of law and/or breaches of fiduciary duty demonstrated Respondent's unfitness to serve as a director, officer, person participating in the conduct of the affairs or as an institution-affiliated

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party of the Bank, any other insured depository institution, or any other agency or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. §1818(e)(7)(A).

Therefore, after taking into account the CONSENT AGREEMENT; the appropriateness of the civil money penalty with respect to the financial resources and good faith of Respondent; the gravity of the breaches of fiduciary duty or unsafe or unsound banking practices or violations of law by Respondent; the history of previous breaches of fiduciary duty or unsafe or unsound banking practices or violations of law by Respondent; and such other matters as justice may require, the FDIC accepts the CONSENT AGREEMENT and issues the following:

ORDER OF PROHIBITION FROM FURTHER PARTICIPATION AND ORDER TO PAY A CIVIL MONEY PENALTY

1. Respondent is hereby, without the prior written approval of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. §1818(e)(7)(D), prohibited from:

[.1] (a) participating in any manner in the conduct of the affairs of any financial institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. §1818(e)(7)(A);

[.2] (b) soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent or authorization with respect to any voting rights in any financial institution enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. §1818(e)(7)(A);

(c) violating any voting agreement previously approved by the appropriate Federal banking agency; or

(d) voting for a director, or serving or acting as an institution-affiliated party.

2. IT IS HEREBY FURTHER ORDERED that by reason of the unsafe or unsound banking practices, violations of law and/or breaches of fiduciary duty set forth in paragraph 3 of the CONSENT AGREEMENT, a penalty of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) be, and hereby is, assessed against Respondent. Respondent shall pay the civil money penalty to the Treasury of the United States; and Respondent is prohibited from seeking or accepting indemnification from any insured depository institution for the civil money penalty assessed and paid in this matter.

3. This ORDER will become final and effective upon its issuance by the FDIC. The provisions of this ORDER will 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 FDIC.

Pursuant to delegated authority.

Dated this 2nd day of September, 2004.

Last
Updated legal@fdic.gov
4/16/2005