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{{3-31-91 p.A-1607}}

[¶5161] **In the Matter of W. Scott Maxwell, The Olla State Bank, Olla, Louisiana, Docket No. FDIC-89-144k (1-15-91).**

Board holds Respondent in default and orders civil money penalty; Respondent failed to respond to an Order requiring him to submit evidence that he had filed and served an answer to the notice of assessment.

[.1] Civil Money Penalty — Answer

Where FDIC Enforcement Counsel and FDIC Executive Secretary have not received copies of Respondent's alleged answer, and Respondent fails to provide evidence of his attempts to file and serve an answer, the entry of a default order is appropriate.

**In the Matter of
W. SCOTT MAXWELL, individually
and as an executive officer of Olla
Bancshares, Inc., and as a director
and executive officer of
THE OLLA STATE BANK
OLLA, LOUISIANA
(Insured State Nonmember Bank)**

DECISION

The matter before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is a proceeding for a civil money penalty against W. Scott Maxwell ("Respondent"), individually and as an executive officer of Olla Bancshares, Inc., and as a director and executive officer of The Olla State Bank, Olla, Louisiana ("Bank"). Respondent failed to properly file an Answer, in accordance with section 308.21(a) of the FDIC's Rules of Practice and Procedures, 12 C.F.R. § 308.21(a), within 20 days of receipt of the Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice") initiating this proceeding.

Administrative Law Judge James L. Rose ("ALJ") issued a recommended decision denying a Motion for Default Order because Respondent asserted that he had attempted to file an Answer. The FDIC Board remanded this matter for further evidence of the Respondent's attempts to file an Answer. On July 5, 1990, the ALJ issued an Order to the Respondent requiring the submission of competent evidence that he filed and served or attempted to file and serve an Answer as required by § 308.21(a) of the FDIC's Rules of Practice and Procedures. 12 C.F.R. § 308.21(a). Respondent failed to respond to the ALJ's Order. The ALJ's recommended decision of October 1, 1990, concludes that Respondent is in default and urges the FDIC Board to order a civil money penalty. The Board agrees with the ALJ's recommended decision and incorporates it herein by this reference.

FACTUAL BACKGROUND

On September 28, 1989, a Notice was served on W. Scott Maxwell and other directors and executive officers of the Bank.¹ The Notice alleged violations of section 22(h) of the Federal Reserve Act, 12 U.S.C. § 375b, and Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. Part 214.² Respondent Maxwell, an attorney licensed in the State of Louisiana, was a director of the Bank. As of February 2, 1988, he served as vice-chairman of the board of directors of the Bank. Respondent was also vice-president of the Bank's holding company. The Notice describes two extensions of credit to Respondent alleged to violate Regulation O.

First, on January 18, 1988, the Bank extended a credit of \$557,464.85 to Respondent bringing the aggregate total of his line of credit to \$1,057,527.95. At the time the credit was extended, the Bank's lending limit, under sections 215.2(f) and 215.4(c) of Regulation O, 12 C.F.R. §§ 215.2(f) and 215.4(c), was 15 percent of the Bank's un-

¹ The Notice named the following Respondents: W. Scott Maxwell, executive officer of Olla Bancshares, Inc., and a director and executive officer; Dan W. Bowker, executive officer; and James C. Amberg,

Robert Ray Carroll, Roscoe P. Steen, J.J. Silagy, W.M. Causey, Billy Ray Whitehead, and Benny Zeagler, directors of the Bank.

² These provisions apply to insured state nonmember banks by operation of section 18(j)(2) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1828(j)(2), and section 337.3 of the FDIC's Rules and Regulations. 12 C.F.R. § 337.3.

[{{3-31-91 p.A-1608}}](#) unimpaired capital and surplus, or \$403,800. Therefore, the extension of credit exceeded the Bank's lending limit. The aggregate extensions of credit to Respondent at this time (\$557,464.85) represented 39.3 percent of the Bank's total equity capital and reserves as of December 31, 1987. Respondent's ability to repay the extensions of credit involved more than the normal risk of repayment in violation of section 215.4(a) of Regulation O, 12 C.F.R. § 215.4(a), since \$255,000 of the outstanding debt had been classified doubtful on October 23, 1987.

Second, on March 15, 1988, the Bank extended to Respondent a credit of \$875,000. At the time the credit was extended, the Bank's lending limit, under sections 215.2(f) and 215.4(c) of Regulation O, 12 C.F.R. §§ 215.2(f) and 215.4(c), was 15 percent of the Bank's unimpaired capital and surplus, of \$403,800. Therefore, the extension of credit exceeded the Bank's lending limit. Respondent's ability to repay the credit involved more than the normal risk of repayment in violation of section 215.4(a) of Regulation O, 12 C.F.R. § 215.4(a), since this extension of credit included the renewal of two prior extensions of credit to Respondent previously classified doubtful.³

*RESPONDENT'S FAILURE TO
ANSWER NOTICE*

The record indicates that Respondent received the Notice on October 4, 1989. He filed a request for hearing by letter of October 20, 1989. Respondent allegedly stated in a November 7, 1989, letter to the ALJ that he had attempted to file an Answer dated October 18, 1989, which was enclosed.⁴ However, FDIC Enforcement Counsel and the FDIC Executive Secretary have not received any further correspondence from Respondent since the October 20, 1989 letter request for hearing.

[.1] Following the FDIC Board decision of June 26, 1990 on Motions for Default Orders as to several Respondents, this matter as to Respondent was remanded to an ALJ. Pursuant to the Board's ruling, the ALJ issued a July 5, 1990 Order directing Respondent to supply competent evidence, such as mail receipts or an affidavit, that he filed and served or attempted to file and serve an Answer to the Notice. By recommended decision of October 1, 1990, the ALJ stated that Respondent failed to respond to the Order. The ALJ concluded that the Board agrees, that entry of a default Order is appropriate. Accordingly, the Board issues the following Order assessing a civil money penalty in the amount of \$150,000.

*ORDER TO PAY CIVIL MONEY
PENALTY*

IT IS HEREBY ORDERED, that a penalty of \$150,000 be, and the same hereby is, assessed against W. Scott Maxwell, pursuant to Section 18(j)(4) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(j)(4).

IT IS FURTHER ORDERED, that the penalty shall be final and payable 20 days from the date of this Order. The provisions of this Order shall 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 Board.

By direction of the Board of Directors

Dated at Washington, D.C. this 15th day of January, 1991.

**In the Matter of
W. SCOTT MAXWELL, individually
and as an executive officer of Olla
Bancshares, Inc., and as a director
and executive officer of
THE OLLA STATE BANK
OLLA, LOUISIANA
(Insured State Nonmember Bank)**

RECOMMENDED DECISION OF

ADMINISTRATION LAW JUDGE

On July 5, 1990, pursuant to an Order of the FDIC Board, the undersigned issued an Order directing the Respondent, W. Scott Maxwell, within 15 days, to submit competent evidence that he filed and served or attempted to file and serve an answer to the FDIC's Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing, in accordance with the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.01, *et seq.*

The Respondent failed to respond to said Order. Upon motion of counsel for the FDIC,

³ The two extensions of credit previously classified "doubtful" as of October 23, 1987 were in the amounts of \$42,387.36 and \$212,06.61.

⁴ The Office of Executive Secretary has no record of this November 7, 1989 letter or the alleged October 18, 1989 Answer.

{{4-30-91 p.A-1609}}it is hereby found that the Respondent failed, within the stated time, to submit competent evidence that he filed and served or attempted to file and serve an answer as required by § 308.21(a) of the FDIC Rules of Practice and procedure. Accordingly,

I hereby conclude that the Respondent, W. Scott Maxwell, is in default and that the FDIC's motion for entry of a default order against him should be granted, and find:

1. That W. Scott Maxwell has failed to file an answer within 20 days of service of the FDIC's Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing, and is deemed to have waived his rights to appear and contest the allegations of fact and the request for relief; and

2. The assessment of a civil money penalty against the Respondent is now final and unappealable pursuant to 12 C.F.R. § 308.21(d)(1), and thus W. Scott Maxwell shall pay a civil money penalty of \$150,000.

Upon the foregoing findings and conclusions, it is hereby recommended that the FDIC Board enter the following:

*ORDER TO PAY CIVIL MONEY
PENALTY*

The Board of Directors of the FDIC having considered the entire record in this proceeding concludes that a penalty of \$150,000 be, and the same hereby is, assessed against W. Scott Maxwell, pursuant to 18(j)(4) of the Federal Reserve Act, 12 U.S.C. § 1828(j)(4).

IT IS FURTHER ORDERED that the penalty order shall be final and payable 20 days from the date of this Order. The provisions of this Order shall 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 Board.

Dated, Washington, D.C. October 1, 1990.