

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

| | |
|--|----------------------------------|
| _____) | |
| In the Matter of:) | NOTICE OF INTENTION TO PROHIBIT |
| | FROM FURTHER PARTICIPATION, |
| | AND NOTICE OF ASSESSMENT OF |
| RICHARD G. ROBERTS and) | CIVIL MONEY PENALTIES, FINDINGS |
| CHARLES T. LARSSON,) | OF FACT AND CONCLUSIONS OF |
| individually and as institution-affiliated) | LAW, ORDER TO PAY, and NOTICE OF |
| parties of) | HEARING |
| |) |
| |) |
| NEW MILLENNIUM BANK) | FDIC-11-542e |
| NEW BRUNSWICK, NEW JERSEY) | FDIC-12-138k |
| |) |
| |) |
| | FDIC-11-541e |
| | FDIC-12-139k |
| (INSURED STATE NONMEMBER BANK)) | |
| _____) | |

The Federal Deposit Insurance Corporation (“FDIC”) has determined that Richard G. Roberts (“Roberts”) and Charles T. Larsson (“Larsson”) (collectively “Respondents”), individually, and as institution-related parties of New Millennium Bank, New Brunswick, New Jersey (“Bank”), have directly or indirectly participated in or engaged in unsafe or unsound banking practices, and/or acts, omissions or practices which constitute breaches of their fiduciary duty as officers of the Bank; that as a result of such conduct, the Bank has suffered financial loss or other damage; and that such practices and/or breaches of fiduciary duty demonstrate the Respondents’ willful or continuing disregard for the safety or soundness of the Bank.

Further, the FDIC has determined that Respondents’ reckless unsafe or unsound practices and/or breaches of their fiduciary duty were part of a pattern of misconduct and/or caused or were likely to cause more than a minimal loss to the Bank.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against each Respondent under the provisions of section 8(e)

of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(e), prohibiting each Respondent from further participation in the conduct of the affairs of the Bank, and any other insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other 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).

Further, the FDIC institutes this proceeding for the assessment of civil money penalties pursuant to the provisions of section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e) and this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING (“NOTICE OF ASSESSMENT”) pursuant to section 8(i) of the Act, 12 U.S.C. § 1818(i), and Part 308 of the FDIC’s Rules of Practice and Procedure, 12 C.F.R. Part 308, and alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Allegations

A. Preliminary Allegations Regarding the Bank

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of New Jersey, having its principal place of business at New Brunswick, New Jersey.

2. The Bank has been, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1813y, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of New Jersey.

B. Preliminary Allegations Regarding the Respondents

Richard G. Roberts

3. From December 11, 2001 until February 2008, Roberts served as a branch manager at the Bank. Beginning in early 2002, Roberts was the branch manager at the Bank's branch located in New Brunswick, New Jersey. As a branch manager, Roberts was responsible for overseeing the daily operations of the branch, including reviewing internal reports and making daily overdraft and uncollected funds decisions.

4. From February 2008 until November 12, 2008, Roberts served as the Bank Secrecy Act ("BSA") officer. As a BSA officer, Roberts' responsibilities included updating the Bank's BSA/AML policies and procedures and ensuring that the Bank was in compliance with BSA regulations and requirements including filing Suspicious Activity Reports ("SARs").

5. On November 12, 2008, Roberts was terminated by the Bank for "misconduct/violation of company policy."

Charles T. Larsson

6. Beginning on August 26, 2002, Larsson served as Vice-President and commercial lending officer in the New Brunswick branch of the Bank. Beginning in February 2003 through January 2010, Larsson was a Senior Vice-President and senior lending officer at the Bank.

7. As the senior lending officer, Larsson's responsibilities included supervising loan department employees, coordinating loan activities, managing the loan portfolio and recommending loan objectives. Larsson also attended meetings of the Bank's credit and loan committee and recommended loans that he had reviewed to that committee.

8. In January 2010, Larsson was terminated by the bank for "misconduct/violation of company policy."

Respondents are Institution-Affiliated Parties

9. At all times pertinent to the charges herein, each Respondent was an “institution-affiliated party” as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

C. Jurisdiction

10. The FDIC has jurisdiction over the Bank, Respondents, and the subject matter of this proceeding pursuant to section 3(q)(3) of the Act, 12 U.S.C. § 1813(q)(3).

II. Respondents’ Activities with Respect to a Bank Customer’s Check Kiting Caused Losses

A. Summary of Misconduct

11. Although Respondents knew, or should have known, that a Bank customer (the “Customer”) was check kiting continuously at the Bank for at least a two year period between August 2006 and August 2008, the Respondents failed to take any action to stop the Customer’s illegal activities.

12. The Respondents’ failure to stop the Customer’s check kiting caused the Bank to sustain losses of approximately \$839,400 and other damage, as well as a risk of loss.

B. The Customer’s Account Activity

13. Between August 2006 and July 2008, the Customer deposited checks into his various accounts and wrote checks on his account on an almost daily basis.

14. Between August 2006 and July 2008, the Customer’s various accounts appeared regularly on the Bank’s daily uncollected and overdraft reports (collectively, the “Reports”),

which tracked negative balances in specific customer accounts due to withdrawals that exceeded available funds in the customers' accounts.

15. More particularly, in August 2006, the Customer deposited checks into his various accounts totaling approximately \$900,000; approximately the same amount in checks was withdrawn from the Customer's various accounts. For the next two years, the amounts of the Customer's check deposits and withdrawals increased.

16. By July 2008, the Customer's monthly deposited checks totaled approximately \$19 million dollars; approximately the same amount in checks was withdrawn from the Customer's accounts.

17. Between August 2006 and July 2008, the Customer's deposits totaled \$154 million, with a concomitant amount in withdrawals.

18. In 2006 and 2007, the Customer reported income to the Bank of approximately \$183,000 and \$100,000, respectively, from his tax consulting business and real estate properties.

19. In August 2008, another senior employee at the Bank returned unpaid the Customer's checks, which caused the Customer's check kiting activities to stop, and as a result, the Bank sustained approximately \$839,400 in losses from the Customer's check kiting activities.

20. On December 7, 2011, the Customer pled guilty to bank fraud in United States District Court, District of New Jersey, by knowingly and intentionally devising a scheme and artifice to defraud the Bank through check kiting, during the period of June 2006 through August 2008.

C. Roberts' Misconduct

21. Roberts suspected that the Customer was check kiting as early as 2002.

22. Since 2002, Roberts was responsible for reviewing the Reports, which tracked negative balances in specific customer accounts due to withdrawals that exceeded available funds in the customers' accounts.

23. On April 9, 2005, Roberts was aware that the Customer had an overdraft in his personal account, and had deposited into his brother's Bank account a check for \$19,740 written on the Customer's business account, followed immediately by a deposit in the Customer's business account of a check for \$19,740 written on his brother's Bank account.

24. From at least August 2006 through August 2008, the Customer maintained an increasing amount of uncollected and overdraft balances in almost all of his accounts at the Bank. In August 2006, the total combined uncollected and overdraft balance in the customer's accounts was approximately \$46,000; in September 2007, the combined total increased to approximately \$300,000; and by August 2008, the combined uncollected and overdrawn balance had grown to approximately \$900,000.

25. From May 2007 through August 2008, Roberts recommended/approved payment of the Customer's debits despite the increasing uncollected and overdraft balances in one or more of the Customer's accounts.

26. Roberts was responsible for inputting receipt of customer deposits to cover uncollected and overdraft balances into the Bank's system. Roberts's input into the Bank system was used to generate the Reports. Roberts was required to post any customer deposits received after 1 p.m. to the following day's deposits.

27. From May 2007 to May 2008, the Reports showed that approximately 45% of the deposited checks were posted to the Customer's accounts after the deadline of 1 p.m. By repeatedly posting the Customer's checks on the same day despite missing the 1 p.m. deadline, Roberts improperly credited availability of the funds to the Customer's accounts.

28. From January 2006 through August 2008, the Customer's accounts appeared regularly on a daily Bank report entitled the "*****" ("Kiting Report"). Roberts's name was listed on the Kiting Report as the reviewer.

29. In February 2008, Roberts was informed by another Bank employee that the Customer was check kiting at the Bank.

30. In February 2008, Roberts became the BSA officer, but did not file, or caused to be filed, a SAR regarding the Customer's check kiting activities.

31. On July 28, 2008, as the BSA officer, Roberts reviewed the Customer's application to open yet another account at the Bank. Despite acknowledging that he knew that the customer was check kiting at the Bank, Roberts approved the new account application. Within days after opening, the Customer's new account developed uncollected and/or overdrawn balances of approximately \$26,000.

D. Larsson's Misconduct

32. In February 2005, Larsson was aware that the Customer had uncollected balances in his accounts for the past six months, and that the negative balances came from using his Bank accounts to repay his Bank loans.

33. From February 2003 through March 2008, the Bank approved many loans to the Customer. Larsson recommended approval of several of these loans despite loan documents that noted that the purpose for the loans was to cover the Customer's overdrafts and/or that the Customer had been in overdraft status for the prior 12 months.

34. In March 2005, Larsson recommended that a \$150,000 line of credit be extended to the Customer to, among other things, pay off a prior loan and to "clear up the outstanding overdrafts."

35. In April 2005, Larsson was aware that the Customer had an overdraft in his personal account, and had deposited into his brother's Bank account a check for \$19,740 written on the Customer's business account, followed immediately by a deposit in the Customer's business account of a check for \$19,740 written on his brother's Bank account.

36. In April 2005, Larsson updated the Bank's policy in response to the Customer's overdraft issues in several accounts, which caused the Bank to return \$48,000 in checks that had been presented for payment.

37. In April 2005, Larsson approved removal of a hold on the Customer's account and paid the Customer's overdrafts.

38. In April 2005, Larsson was aware of the Customer's growing overdraft balances and began maintaining a spreadsheet updating the monthly overdraft balances in the Customer's numerous accounts ("Spreadsheet"). The Spreadsheet started with the Customer's five accounts in August 2004 and ended with 14 of his accounts in August 2008.

39. In December 2005, Larsson recommended that a \$1 million loan be extended to the Customer despite noting that the loan was to cover existing lines of credit and that the Customer had overdrafts for the "past 12 months."

40. On or about May 2006, Larsson began reviewing the Reports, which tracked negative balances in specific customer accounts due to withdrawals that exceeded available funds in the customers' accounts.

41. From at least August 2006 through August 2008, the Customer maintained an increasing amount of uncollected and overdraft balances in almost all of his accounts at the Bank. In August 2006, the total combined uncollected and overdraft balance in the customer's accounts was approximately \$46,000; in September 2007, the combined total increased to

approximately \$300,000; and by August 2008, the combined uncollected and overdrawn balance had grown to approximately \$900,000.

42. From May 2007 through August 2008, Larsson approved payment of the Customer's debits despite the increasing daily uncollected and overdraft balances in one or more of the Customer's accounts.

43. In November 2007, Larsson recommended that the Bank extend the maturity date on an earlier \$450,000 loan to the Customer despite noting that, "the guarantor and his affiliated interests maintain 9 accounts with an average overdrawn balance of \$27,000."

44. In November 2007, according to the Spreadsheet, the overdrawn balance in the Customer accounts totaled more than \$300,000.

45. In March 2008, Larsson recommended that the Bank extend a \$90,000 loan to the Customer despite noting the increasing daily uncollected and overdraft balances in one or more of the Customer's accounts.

46. In March 2008, according to the Spreadsheet, the overdrawn balance in the Customer's accounts totaled approximately \$600,000.

E. Respondents' Misconduct Caused Bank to Sustain Actual Losses and Risk of Loss

47. By reason of Respondents' unsafe and unsound practices and breaches of their fiduciary duty in failing to stop the Customer's illegal activities from at least August 2006 through August 2008, the Bank suffered financial loss and other damage, as well as risk of loss.

48. In August 2008, the Bank stopped the Customer's check kiting activities and subsequently sustained over \$839,000 in losses from the Customer's illegal activities.

49. As of December 2011, the Bank has foreclosed on the collateral and written off losses from the loans extended to the Customer that had been recommended by Larsson.

III. Grounds for Section 8(e) Prohibition Order

50. As a result of the Respondents' foregoing acts, omissions and/or practices, the Respondents have engaged and/or participated in unsafe or unsound banking practices in connection with the Bank.

51. As a result of the Respondents' foregoing acts, omissions and/or practices, Respondents breached their fiduciary duty to the Bank.

52. By reason of the practices or breaches alleged herein, the Bank has suffered financial loss and other damage, as well as risk of loss.

53. The acts, omissions and/or practices of the Respondents alleged herein demonstrate a willful or continuing disregard for the safety or soundness of the Bank.

IV. Grounds for Section 8(i)(2) Second Tier Civil Money Penalty

54. As a result of the foregoing facts and conclusions, the Respondents recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

55. Further, as a result of the foregoing facts and conclusions, the Respondents breached their fiduciary duty to the Bank.

56. Further, as a result of the foregoing facts and conclusions, the Respondents' reckless unsafe or unsound practices and/or breaches of fiduciary duty to the Bank constituted a pattern of misconduct.

57. Further, as a result of the foregoing facts and conclusions, the Respondents' reckless unsafe or unsound practices and/or breaches of fiduciary duty to the Bank caused more than a minimal loss, as well as a risk of loss, to the Bank

ORDER TO PAY

By reason of the reckless, unsafe or unsound practices and/or breaches of fiduciary duty set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against each Respondent pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalties with respect to the size of financial resources and the good faith of each Respondent, the gravity of the reckless, unsafe or unsound practices and/or breaches of fiduciary duty, and such other matters as justice may require, it is:

ORDERED, that by reason of the reckless, unsafe or unsound practices and/or breaches of fiduciary duty set forth in paragraphs 1 through 57 hereof, a penalty of \$15,000 be, and hereby is, assessed against Roberts pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2); and a penalty of \$20,000 be, and hereby is, assessed against Larsson 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 each Respondent until 20 days after the date of receipt of the NOTICE OF ASSESSMENT by each such Respondent, during which time each such 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's Rules of Practice and Procedure, 12 C.F.R. § 308.19.

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

NOTICE OF HEARING

IT IS FURTHER ORDERED, that, if either Respondent requests a hearing with respect to the charges alleged in this NOTICE OF ASSESSMENT and NOTICE OF PROHIBITION, the hearing shall commence sixty (60) days from the date of receipt of this NOTICE OF ASSESSMENT and NOTICE OF PROHIBITION at New Brunswick, New Jersey, or at such other date or place upon which the parties to this proceeding and the Administrative Law Judge may agree. The purpose of the hearing will be for the taking of evidence on the charges, findings and conclusions stated herein in order to determine: (1) whether a permanent order should be issued to prohibit the Respondents from further participation in the conduct of the affairs of the Bank and any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior permission 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); and (2) whether the FDIC's ORDER TO PAY should be sustained.

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831y, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC's 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 precise location of the hearing will be determined by the Administrative Law Judge.

In the event either Respondent requests a hearing, such Respondent is hereby directed to file an answer to this NOTICE OF PROHIBITION and NOTICE OF ASSESSMENT within 20 days from the date of service as provided by section 308.19 of the FDIC's 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, 3501 N. Fairfax Dr., Suite VS-D8116, Arlington, Virginia 22226-3500, pursuant to section 308.10 of the FDIC's 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, A. T. Dill, III, Assistant General Counsel, Legal Division, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, and upon David A. Schecker Acting Regional Counsel, New York Regional Office, Federal Deposit Insurance Corporation, 350 Fifth Avenue, Suite 1200, New York, New York, 10118.

PRAYER FOR RELIEF

The FDIC prays for relief in the form of the issuance of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) against Roberts and Larsson; and an Order to Pay Civil Money Penalty pursuant to 12 U.S.C. § 1818(i) in the amount of \$15,000 against Roberts; and an Order to Pay Civil Money Penalty pursuant to 12 U.S.C. § 1818(i) in the amount of \$20,000 against Larsson.

Pursuant to delegated authority.

Dated at Washington, D.C., this 23 day of May 2012

/s/
Serena L. Owens
Associate Director
Division of Risk Management Supervision