FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of LANCE E. BAUER, Individually and as an Institution-affiliated party of THE PARK BANK MADISON, WISCONSIN (Insured State Nonmember Bank)	DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION FDIC-11-21e

I. INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on June 28, 2012, of a Recommended Decision on Default ("Recommended Decision" or "R.D.") by Administrative Law Judge C. Richard Miserendino ("ALJ"). The ALJ recommended that Lance E. Bauer ("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). The ALJ's recommendation was based on undisputed findings that Respondent engaged in misconduct while he served as an assistant bank manager of the Sun Prairie Branch of The Park Bank, Madison, Wisconsin ("Bank"). The Recommended Decision included an order that would permanently bar Respondent from the banking industry unless the FDIC consented to his further participation.

This is an uncontested proceeding. The record shows that Respondent was served notice of the charges against him as set forth in the FDIC's Notice of Intention to Prohibit from Further Participation and Notice of Hearing ("Notice"). R.D. at 1. Respondent failed to respond to the charges included in the Notice, to Enforcement Counsel's Motion for Entry of Order of Default

("Default Motion"), and to an Order to Show Cause ("Show Cause Order") issued by the ALJ. R.D. at 1-2. He also failed to file exceptions to the Recommended Decision. For the reasons discussed below, the Board affirms the Recommended Decision and issues an Order of Prohibition against Respondent.

II. BACKGROUND

On March 19, 2012, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e). The Notice sought Respondent's prohibition from the banking industry based on charges that he engaged in wrongful activity in August 2009 while employed by the Bank. Notice at ¶ 5-8. At all times, Respondent was an institution-affiliated party pursuant to 12 U.S.C. § 1813(u). Notice at ¶ 3; R.D. at 3. The Notice charged that Respondent engaged in unsafe and unsound practices, acts of personal dishonesty and breaches of fiduciary duty as an employee of the Bank. Further, by reason of Respondent's unsafe or unsound practice the Bank suffered financial loss, while the Respondent received financial gain. Notice at ¶ 12-14; R.D. at 4.

Specifically, the Notice charged that on or about August 24, 2009, Respondent liquidated a certificate of deposit ("CD") in the amount of $227,764.54 owned by a Bank customer and then issued, to himself, a Bank cashier's check in the same amount. Notice at ¶ 6; R.D. at 3. Three days later, Respondent deposited the CD proceeds into his personal account at JP Morgan Chase, Madison, Wisconsin. Between August 2009 and November 2010, Respondent spent all but $2,000 of the misappropriated proceeds. Notice at ¶ 7-8; R.D. 3-4.

On or about November 10, 2010, Respondent was indicted in the United States District Court, Western District of Wisconsin on charges of embezzlement. Respondent was convicted on April 25, 2011 and sentenced to 30 months imprisonment to be followed by three years of supervised release and ordered to pay restitution. *See United States v. Lance Bauer,* 10-CR-170 (W.D. Wis.). Notice at ¶¶ 9-11; R.D. at 4.

On March 21, 2012, pursuant to section 308.11(b) and 308.18(a) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. §§ 308.11(b), 308.18(a) ("FDIC Rules"), FDIC served the Notice by first class U.S. mail on Respondent at the Federal Correctional Institution at Oxford, Wisconsin ("FCI-Oxford") where, according to the Federal Bureau of Prisons Inmate Locator, Respondent was an inmate. R.D. at 1. The Notice directed Respondent to file an answer within twenty (20) days from the date of service, as required by FDIC Rule 308.19, 12 C.F.R. § 308.19. Notice at ¶ 17.

On May 11, 2012, Enforcement Counsel moved for an order of default pursuant to FDIC Rule 308.19(c)(1), 12 C.F.R. § 308.19(c)(1). The motion included an accompanying affidavit from Enforcement Counsel attesting that she had verified Respondent's inmate status and address at FCI-Oxford. Enforcement Counsel subsequently attested the Default Motion was sent to Respondent via U.S. mail at FCI-Oxford. R.D. at 1.

Before the ALJ ruled on Enforcement Counsel's motion for default, his staff independently verified that Respondent was incarcerated at FCI-Oxford and that FDIC had sent his mail to the correct address. Specifically, the ALJ stated that "[o]n May 16, 2012, Respondent orally confirmed that he was aware that the FDIC had instituted prohibition proceedings against him, that he had a limited time in which to respond, and that FDIC Enforcement Counsel was seeking the entry of an Order of Default against him." R.D. at 2.

The following day, May 17, 2012, the ALJ issued a Show Cause Order directing Respondent to appear and show good cause why a default judgment should not be granted. In accordance with FDIC Rule 308.11(b)(2), 12 C.F.R. § 308.11(b)(2), the Show Cause Order was served on Respondent at FCI-Oxford by UPS Overnight Delivery. R.D. at 2. Despite the fact that Respondent was aware of the proceedings and aware that a response was time sensitive, Respondent did not answer, appear, or show good cause for not filing an answer. In sum, Respondent did not participate in any manner in these proceedings. R.D. at 1-2.

In the absence of any response, the ALJ granted Enforcement Counsel's Default Motion and issued the Recommended Decision on June 28, 2012. The Recommended Decision was sent to Respondent at FCI-Oxford via UPS Overnight Delivery on the same day. R.D. at 6.

III. DISCUSSION

The Board concurs in and affirms the ALJ's Recommended Decision. The record reflects that Respondent received notice of the proceedings in accordance with the applicable regulation, FDIC Rule 308.11, 12 C.F.R. § 308.11, when the Notice was mailed by first class mail to FCI-Oxford on March 21, 2012. R.D. at 1. Although he was served, he failed to respond. Respondent also failed to respond to both Enforcement Counsel's Default Motion and the ALJ's Show Cause Order, despite being served with copies in accordance with FDIC Rule 308.11, 12 C.F.R. § 308.11. R.D. at 1-2. In addition, although Respondent was properly served in accordance with the FDIC regulation, the ALJ took the additional step of verifying that Respondent was incarcerated at FCI-Oxford and that Respondent knew and understood that he would be subject to a default judgment unless he filed a timely response. R.D. at 2.

The Board agrees with the ALJ's finding that the undisputed facts in the Notice satisfy the three standards—misconduct, culpability, and effect—necessary to sustain a prohibition under section 8(e) of the FDI Act, 12 U.S.C. § 1818(e). R.D. at 2. Specifically, the Board observes that Respondent engaged in misconduct by exploiting his management position at the Bank, deliberately and deceptively taking advantage of the Bank's and the CD owner's trust. As the uncontested facts demonstrate, Respondent embezzled $227,764.54 from the Bank. He did so by liquidating a Bank customer's CD, using the proceeds to fund a Bank cashier's check issued to himself, and depositing the funds into his personal account at another bank. Moreover, the effects prong is satisfied because Respondent received a direct personal benefit. By the time he was indicted fourteen months later, Respondent had spent all but $2,000 of the misappropriated funds. Finally, Respondent's culpability is evident as the embezzlement involved deliberate deception and personal dishonesty. R.D. 2-4. Accordingly, Respondent's intentional criminal conduct establishes ample evidence of dishonest behavior, unsafe and unsound banking practice, and breaches of fiduciary duty. *See In the Matter of Arlene Shih*, FDIC-10-335e, FDIC Enforcement Decision and Order, 2011 WL 2574393, at *4 (May 10, 2011) (holding that bank employee who drew $1,000,000 against borrowers' credit line for personal use engaged in unsafe and unsound banking practice and breached her fiduciary duty).

This type of activity clearly warrants a permanent bar from the industry and, in this case, default judgment is appropriate. *In the Matter of Brenda J. Vikre*, FDIC-07-252e, FDIC Enforcement Decision and Order, 2009 WL 2477750, at *3 (June 23, 2009) (prohibition of bank employee who posted fictitious cash and check deposit transactions to her personal account); *In the Matter of Alex P. Majka*, FDIC-05-142e, FDIC Enforcement Decision and Order, 2007 WL 4698593, at *2 (October 16, 2007) (prohibition of bank employee who cashed, or instructed subordinates to cash, dishonored checks at the Bank); *In the Matter of Leann Bennett*, FDIC-02-206e, FDIC Enforcement Decision and Order, 2004 WL 2185944, at *2 (August 16, 2004) (prohibition of bank employee who embezzled funds). Respondent's default constitutes consent to entry of an order of prohibition and a waiver of his right to contest the allegations in the Notice under FDIC Rule 308.19(c)(1). *In the Matter of Brenda J. Vikre*, at *3; *In the Matter of Alex P. Majka*, at *3; *In the Matter of Leann Bennett*, at *3. Moreover, Respondent's failure to file exceptions to the Recommended Decision pursuant to FDIC Rule 308.39, 12 C.F.R. § 308.39, must be deemed a waiver of any objections to the ALJ's Recommended Decision. *In the Matter of Brenda J. Vikre*, at *3; *In the Matter of Alex P. Majka*, at *3; *In the Matter of Leann Bennett*, at *3.

IV. CONCLUSION

After a thorough review of the uncontested record in this proceeding, the Board, for the reasons set forth above, affirms the Recommended Decision, 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 finds that Respondent Lance E. Bauer, formerly employed by the Bank, engaged in unsafe or unsound banking practices in violation of his fiduciary duty, and caused financial loss to the Bank. The Board further finds that Respondent's actions involved personal dishonesty. The Board hereby ORDERS and DECREES that:

1. Lance E. Bauer 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. § 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).
2. Lance E. Bauer 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. Lance E. Bauer 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. Lance E. Bauer 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 service upon Respondent.

SO ORDERED.

IT IS FURTHER ORDERED, that copies of this DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION shall be served on Lance E. Bauer, Enforcement Counsel, the ALJ, and the Secretary of the Wisconsin Department of Financial Institutions.

By direction of the Board of Directors.

Dated at Washington, D.C. this 9th day of October, 2012.

/s/
Robert E. Feldman
Executive Secretary

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