FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of HUAN DINH VO, Individually and as an institution-affiliated party of INTERNATIONAL BANK OF COMMERCE, LAREDO, TEXAS (Insured State Nonmember Bank)	DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION FDIC-16-0116e

I. INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on April 21, 2017, of a Recommended Decision on Default ("Recommended Decision" or "R.D.") by Administrative Law Judge C. Richard Miserendino ("ALJ"). The Recommended Decision includes an order that would permanently bar Huan Dinh Vo ("Respondent") from the banking industry pursuant to section 8(e) of the Federal Deposit Insurance Act ("FDI Act"), unless the FDIC consents to his further participation. R.D. at 5.

This is an uncontested proceeding. The record shows that Respondent was personally served the notice of the charges against him by hand delivery at his home address in Houston, Texas. R.D. at 1. The charges are set forth in the FDIC's Notice of Intention to Prohibit from Further Participation ("Notice"). Respondent did not file an Answer to the charges in the Notice or respond to Enforcement Counsel's Motion for Entry of an Order of Default ("Default Motion") or the ALJ's Order to Show Cause. R.D. at 1-2. Respondent filed no exceptions to the Recommended Decision. For the reasons discussed following, the Board adopts the Recommended Decision and issues an Order to Prohibit against Respondent.

II. PROCEDURAL HISTORY AND BACKGROUND

On November 17, 2016, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act.[1] Respondent, an institution-affiliated party as defined in section 3(u) of the FDI Act,[2] served as a Branch Manager at International Bank of Commerce (the "Bank") during the period charged in the Notice. Notice at ¶¶ 2-3. The Bank is headquartered in Laredo, Texas. Notice at ¶ 1.

Respondent's Misconduct

The Notice alleged that between July 3, 2012, and July 22, 2012, Respondent made 40 unauthorized withdrawals totaling more than $140,700 in cash from various Bank branch locations and converted this cash to his personal use. Notice at ¶ 5. Respondent also engaged in aggravated identity theft by misusing his position as Branch Manager to obtain key information regarding Bank customers (including their names, account numbers, birth dates, driver license numbers, signature cards, and other personally-identifying information). Respondent shared this improperly gained information with three co-conspirators and created fake forms of identification to make unauthorized withdrawals in various cities throughout south Texas. Respondent acted willfully in the commission of these felony offenses. Notice at ¶¶ 6-12.

On October 18, 2013, Respondent pled guilty to conspiracy to commit bank fraud, bank fraud, and aggravated identity theft as part of a plea agreement before the United States District Court for the Southern District of Texas. Notice at ¶¶ 11-12. On April 1, 2014, Respondent was sentenced to 51 months imprisonment and ordered to make restitution to the Bank in the amount of $140,700. Notice at ¶ 14.

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[1] 12 U.S.C. § 1818(e).

[2] *Id.* § 1813(u).

FDIC Enforcement Proceeding

Service of the Notice

On or about November 21, 2016, the Executive Secretary's office mailed the Notice by certified mail to Respondent at his place of incarceration, Federal Bureau of Prisons, Beaumont, Texas. R.D. at 1. The record is silent on whether that attempt at service was successful. On February 2, 2017, Enforcement Counsel retained a private process server who personally served Respondent by hand delivery at his residence in Houston, Texas. *Id.*

Respondent's Default

The Notice directed Respondent to file an Answer within 20 days from the date of service, as required by 12 C.F.R. § 308.19(a). Notice at 5. Respondent failed to file an Answer or request a hearing. R.D. at 1. On March 8, 2017, Enforcement Counsel moved for the entry of an order of default pursuant to 12 C.F.R. § 308.19(c)(1). FDIC Enforcement Counsel served the Default Motion on Respondent at his residence in Houston via UPS Next Day Air Delivery. R.D. at 1-2.

On March 30, 2017, the ALJ issued an Order to Show Cause directing that Respondent appear on or before April 17, 2017, and show good cause why a default judgment should not be entered. R.D. at 2. The Order to Show Cause was also served on Respondent by UPS Next Day Air Delivery. *Id.* On April 6, 2017, Respondent sent an email to the Office of Financial Institution Adjudication ("OFIA") acknowledging receipt of a parcel from OFIA and requesting legal advice regarding the Notice. OFIA responded on April 21, 2017, explaining that it does not provide legal advice and recommending that Respondent consult an attorney. R.D. at 2, n. 6.

Respondent failed to respond to the Default Motion or otherwise appear to show good cause why a default judgment should not be granted. R.D. at 2. On April 21, 2017, the ALJ granted the FDIC's Default Motion and issued the Recommended Decision, which was served on Respondent by UPS Next Day Air. R.D. at 6. Respondent did not file exceptions to the Recommended Decision.

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. Section 308.11(b) provides that Notice may be served, among other ways, by personal service, reliable commercial courier service, overnight delivery service, U.S. express mail, or first class registered or certified mail. Here, Respondent was properly served at his residence in Houston, Texas. R.D. at 2.

The Board agrees with the ALJ's finding that the undisputed facts in the Notice satisfy the three standards necessary to sustain a prohibition order under section 8(e) of the FDI Act – misconduct, effects, and culpability.[3] R.D. at 3. Specifically, Respondent engaged in misconduct by exploiting his position at the Bank to make unauthorized withdrawals, using Bank customers' key personal information to facilitate his embezzlement, and sharing that key information with his co-conspirators. R.D. at 3-4. The effects prong is met because Respondent received a direct financial benefit of approximately $140,700 in cash and Respondent caused damage or other loss to the Bank.[4] R.D. at 3-4; Notice ¶ 10. Respondent's culpability is evident as he pled guilty to one count of Conspiracy to Commit Bank Fraud, two counts of Bank Fraud, and one count of Aggravated Identity Theft.[5] R.D. at 4. Respondent's conduct involved multiple instances of deliberate deception and personal dishonesty, thus exhibiting willful and continuing disregard for the Bank's safety and soundness.

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[3] 12 U.S.C. § 1818(e)(1).

[4] *See United States of America v. Vo*, Case No. 4:13CR00047-001, Docket No. 4:13CR00407-003 (S.D. Tx. Mar. 28, 2014) (Judgment in a Criminal Case). The criminal judgment reflects that the Bank suffered a loss of $140,700, and Respondent was ordered to make restitution to the Bank in that amount.

[5] *Id.*

The uncontested allegations establish ample evidence of violations of law and unsafe and unsound banking practices. *See In the Matter of Despina Skabardonis,* 2016 WL 8201948, at *5 (FDIC May 10, 2016) (bank employee who embezzled funds from customer accounts and stole a customer's identity engaged in dishonest behavior, unsafe and unsound banking practices, and breach of fiduciary duty); *see also Lance E. Bauer*, 2012 WL 7152170, at *3 (FDIC Oct. 9, 2012) (bank employee who embezzled funds from bank engaged in dishonest behavior, unsafe and unsound banking practice, and breach of fiduciary duty). Respondent's misconduct warrants a permanent bar from the banking industry. *See In the Matter of Despina Skabardonis*, 2016 WL 8201948 at *5-6 (prohibition of bank employee who embezzled funds); *In the Matter of Lance E. Bauer*, 2012 WL 7152170 at *3 (same); *In the Matter of Leann Bennett*, 2004 WL 2185944, at *2 (FDIC Aug. 16, 2004) (same).

Because Respondent failed to file an Answer to the Notice, he waived his right to appear and contest the allegations in the Notice. 12 C.F.R. § 308.19(c)(1); *see also In the Matter of Lance E. Bauer*, 2012 WL 7152170 at *3; *In the Matter of Arlene Shih*, 2011 WL 2574393, at *4 (FDIC May 10, 2011); *In the Matter of Leann Bennett*, 2004 WL 2185944 at *3. Accordingly, the final order issued by the Board, which is based upon a failure to answer, "is deemed to be an order issued upon consent." 12 C.F.R. § 308.19(c)(1). Respondent's failure to appear at the hearing described in the Notice similarly results in Respondent being deemed to have consented to the issuance of an order of prohibition. 12 U.S.C. § 1818(e)(4). Moreover, pursuant to 12 C.F.R. § 308.39(b)(1), Respondent's failure to file exceptions to the Recommended Decision is deemed to be a waiver of any objections to the Recommended Decision. *In the Matter of Lance E. Bauer*, 2012 WL 7152170 at *3; *In the Matter of Arlene Shih*, 2011 WL 2574393 at *4; *In the Matter of Leann Bennett*, 2004 WL 2185944 at *3.

IV. CONCLUSION

After a thorough review of the record in this proceeding and given the Respondent's failure to answer or appear, the Board, for the reasons set forth above, adopts the Recommended Decision subject to the clarifications set forth herein, 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, having considered the entire record of this proceeding, finds that Respondent Huan Dinh Vo, formerly employed by International Bank of Commerce, Laredo, Texas ("Bank"), engaged in violations of law and unsafe and unsound banking practices for which he received personal financial gain and caused a loss to the Bank. The Board further finds that Respondent's actions involved personal dishonesty and willful and continuing disregard for the Bank's safety and soundness. The Board hereby ORDERS and DECREES that:

1. Huan Dinh Vo 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 Federal Deposit Insurance Act ("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. Huan Dinh Vo 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. Huan Dinh Vo shall not violate any voting agreement previously approved by the appropriate Federal banking agency 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. Huan Dinh Vo 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 immediately.

SO ORDERED.

IT IS FURTHER ORDERED that copies of this Decision and Order to Prohibit from Further Participation shall be served on Huan Dinh Vo, FDIC Enforcement Counsel, the ALJ, and the Commissioner of the Texas Department of Banking.

By direction of the Board of Directors.

Dated at Washington, D.C., this 14th day of November, 2017.

__________/s____________
Valerie J. Best
Assistant Executive Secretary

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