

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____ )	
In the Matter of )	
DONALD V. WATKINS, SR. )	NOTICE OF INTENTION TO PROHIBIT
individually, and as an )	FROM FURTHER PARTICIPATION AND
institution-affiliated party of )	NOTICE OF ASSESSMENT OF CIVIL
ALAMERICA BANK )	MONEY PENALTY, FINDINGS OF FACT,
BIRMINGHAM, ALABAMA )	CONCLUSIONS OF LAW, ORDER TO
(Insured State Nonmember Bank) )	PAY AND NOTICE OF HEARING
_____ )	
	FDIC-17-0154e
	FDIC-17-0155k

The Federal Deposit Insurance Corporation ("FDIC") has determined that Donald V. Watkins, Sr. ("Respondent"), individually, and as institution-affiliated party of Alamerica Bank, Birmingham, Alabama ("Bank"), has directly or indirectly engaged or participated in violations of law and regulation, unsafe or unsound practices, and breaches of his fiduciary duty to the Bank; that as a result, the interests of the Bank's depositors have been prejudiced, and Respondent has received financial gain or other benefit; and, that such violations, unsafe or unsound practices, and breaches of fiduciary duties demonstrate Respondent's personal dishonesty and his willful and continuing disregard for the safety and soundness of the Bank.

The FDIC, therefore, institutes this proceeding pursuant to the provisions of 12 U.S.C. §1818(e) and the FDIC Rules of Practice and Procedure ("FDIC Rules"), 12 C.F.R. Part 308, for the purpose of determining whether an appropriate ORDER OF PROHIBITION FROM FURTHER PARTICIPATION ("ORDER OF PROHIBITION") should be issued against Respondent, prohibiting him from further participation in the conduct of the affairs of any insured depository institution or organization listed in 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 12 U.S.C. §1818(e)(7)(D).

The FDIC has further determined that Respondent engaged in violations of law and regulation, recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank, and breached his fiduciary duty to the Bank; and, that these violations, unsafe or unsound practices, and breaches of fiduciary duty were part of a pattern of misconduct by Respondent, and resulted in financial gain or other benefit to Respondent. The FDIC, therefore, also institutes this proceeding pursuant to the provisions of 12 U.S.C. §1818(i)(2)(B) and the FDIC Rules, 12 C.F.R. Part 308, for the assessment of a civil money penalty against Respondent.

In support thereof, the FDIC alleges as follows.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **JURISDICTION**

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of Alabama, having its principal place of business in Birmingham, Alabama.

2. The Bank was, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Federal Deposit Insurance Act (“Act”), 12 U.S.C. §§ 1811-1831aa, the FDIC Rules, 12 C.F.R. Chapter III; and the laws of the State of Alabama.

3. At all times pertinent to the charges herein, Respondent was Chairman of the Board of Directors (“Board”) of the Bank.

4. Respondent resigned as Chairman of the Board on January 30, 2014, but remained as a director. As of September 29, 2014, he was no longer a director on the Bank’s Board, but he

remained on the Board of the Bank's parent holding company. Respondent and his son are the majority shareholders of the holding company.

5. At all times pertinent to the charges herein, 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).

6. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

7. The FDIC is the "appropriate Federal banking agency" with respect to the Bank and this action within the meaning of 12 U.S.C. § 1813(q)(2).

8. At all times pertinent hereto, the Bank, Respondent, and all other officers and directors were subject to 12 C.F.R. Part 215, which established limits on loans to insiders ("Regulation O"). As Chairman of the Board, Respondent was an Executive Officer of the Bank for purposes of Regulation O.

#### NOMINEE LOANS

A. Loan A

9. On July 15, 2010, the Bank originated loan number [REDACTED]762 ("Loan A") in the amount of \$101,000 to R [REDACTED] A [REDACTED], Jr. who was a close friend of Respondent ("Borrower").

10. On July 16, 2010, Borrower issued check number [REDACTED] to D [REDACTED] W [REDACTED] P.C., Respondent's professional corporation (" [REDACTED] P.C."). The check was for \$100,000, all of the Loan A proceeds. The check was deposited into the [REDACTED] P.C. Bank account ("P.C. Account").

11. On May 6, 2011, the Bank modified Loan A and increased the loan amount by \$25,000. Borrower then issued check number [REDACTED] in the amount of \$20,000 to [REDACTED], P.C. The check was deposited into the P.C. Account, and \$20,000 was debited from Borrower's business account on May 11, 2011.

12. Respondent provided funds to Borrower to make two interest payments on Loan A. On August 24, 2011, Respondent issued check number [REDACTED] on the P.C. Account to Borrower in the amount of \$3,700, with a notation "Loan Repayment." On the same date, Borrower made an interest payment on Loan A in the amount of \$3,692.08. On February 29, 2012, Respondent transferred \$1,932 from his P.C. Account to the Borrower's Bank account. Borrower made an interest payment of \$1,932 to the Bank on the same day.

13. At all times relevant hereto, Respondent maintained a line of credit with the Bank with a limit of \$100,000. Prior to his receipt of proceeds from Loan A, the Respondent's total outstanding balance on the line of credit was approximately \$100,000.

14. Loan A was an "extension of credit" to Respondent for purposes of Regulation O, pursuant to 12 C.F.R. § 215.3(f), because the proceeds of the loan to Borrower were intended by both parties to be for, and were transferred to, Respondent.

15. When aggregated with Respondent's existing \$100,000 personal line of credit at the Bank, the \$100,000 extension of credit to Respondent on July 15, 2010, and the additional advance of \$20,000 on May 6, 2011, exceeded the \$100,000 lending limit in 12 C.F.R. § 215.5(c)(4) of Regulation O for "other purpose" loans to executive officers. Respondent violated Regulation O as of July 15, 2010, by causing or permitting the Bank to extend credit to him and for his benefit in excess of the limit on loans to an executive officer.

16. Respondent did not disclose to the Bank his interest in Loan A or that he would receive proceeds from Loan A. At the time, Respondent's failure to disclose his receipt of the proceeds: (a) violated 12 C.F.R. § 215.5(d) of Regulation O, which requires that an extension of credit to an executive officer must be reported to the bank's board of directors; and, (b) breached his fiduciary duty of candor to the Bank, however Loan A is not within the statute of limitations.

B. Loan B

17. On September 21, 2012, the Bank originated loan number [REDACTED] 860 ("Loan B") to [REDACTED] LLC of which Borrower was the sole member (the "LLC"). The LLC received loan proceeds totaling \$750,000.

18. Prior to the Bank disbursing the proceeds, Respondent knew that Borrower was seeking an extension of credit from the Bank, the proceeds of which would benefit Respondent.

19. On September 21, 2012, Borrower authorized wire transfers to four of Respondent's creditors in the amounts of \$488,408.52; \$21,832.80; \$12,883.65; and \$5,000.

20. On September 25, 2012, Borrower also transferred \$83,344 to Respondent's son's Bank account. Respondent's son, in turn, transferred \$76,794 of those funds to Respondent's P.C. Account on September 28, 2012. Finally, Borrower used \$128,667.37 of the Loan B proceeds to pay off Loan A.

21. Respondent provided funds to Borrower to make payments on Loan B. On October 15, 2012, the P.C. Account received a wire transfer of \$750,000 from an unrelated entity. Respondent wrote P.C. Account check number [REDACTED] in the amount of \$600,000 to Borrower. The check cleared the P.C. Account on October 18, 2012, three days after the \$750,000 deposit. Then, on October 19, 2012, Borrower wrote check number [REDACTED] for \$600,000 to the Bank for payment on Loan B.

22. Loan B was an “extension of credit” to Respondent for purposes of Regulation O, pursuant to 12 C.F.R. § 215.3(f), because the proceeds of the loan to Borrower were intended by both parties to be for, and were transferred to, Respondent.

23. Even without aggregating Respondent’s existing \$100,000 personal line of credit at the Bank, Loan B exceeded the \$100,000 lending limit in 12 C.F.R. § 215.5(c)(4) of Regulation O for “other purpose” loans to executive officers. Respondent violated Regulation O by causing or permitting the Bank to extend credit to him and for his benefit in excess of the limit on loans to an executive officer.

24. Respondent did not disclose to the Bank his interest in Loan B or that he would receive proceeds from Loan B. Respondent’s failure to disclose his receipt of the proceeds: (a) violated 12 C.F.R. § 215.5(d) of Regulation O, which requires that an extension of credit to an executive officer must be reported to the bank’s board of directors; and, (b) breached his fiduciary duty of candor to the Bank.

C. Loan C

25. On November 20, 2012, the bank originated loan number [REDACTED] 872 to Borrower’s LLC in the amount of \$151,759.50 (“Loan C”). Proceeds of \$150,000 were deposited into Borrower’s LLC Bank account.

26. On the same day, Borrower wrote check number [REDACTED] for \$150,000 to Respondent’s son. The check was deposited into the son’s Bank account.

27. On November 20, 2012, Respondent directly received \$3,000 of the Loan C proceeds from his son. On November 21 and November 23, 2012, Respondent’s son transferred \$5,000 and \$3,000 to Respondent’s P.C. Account.

28. On November 20 and November 21, 2012, Respondent's son used proceeds from Loan C to make at least four other transfers to Respondent's creditors on his behalf in the amounts of \$31,000, \$28,597, \$3,000, and \$5,100.

29. On January 24, 2013, Respondent wrote a check to Borrower for \$6,662.02 drawn on the P.C. Account. The check has the notation "partial loan repayment." On January 24, 2013, Borrower forwarded the same amount to the Bank to make interest payments on Loan B and Loan C. Credit slips dated January 24, 2013, reflect that \$5,625 was credited to Loan B and \$1,037.02 to Loan C.

30. Loan C was an "extension of credit" to Respondent for purposes of Regulation O, pursuant to 12 C.F.R. § 215.3(f), because the proceeds of the loan to Borrower were intended by both parties to be for, and were transferred to, Respondent.

31. When aggregated with Respondent's existing \$100,000 personal line of credit at the Bank, Loan C exceeded the \$100,000 lending limit in 12 C.F.R. § 215.5(c)(4) of Regulation O for "other purpose" loans to executive officers. Respondent violated Regulation O by causing or permitting the Bank to extend credit to him and for his benefit in excess of the limit on loans to an executive officer.

32. Respondent did not disclose to the Bank his interest in Loan C or that he would receive proceeds from Loan C. Respondent's failure to disclose his receipt of the proceeds: (a) violated 12 C.F.R. § 215.5(d) of Regulation O, which requires that an extension of credit to an executive officer must be reported to the bank's board of directors; and, (b) breached his fiduciary duty of candor to the Bank.

D. Loan D

33. On March 21, 2013, the Bank made loan number [REDACTED] 905 in the amount of \$100,000 to a company owned by Respondent's son ("Loan D"). The proceeds were deposited into the son's Bank account.

34. On the same day, Respondent's son transferred \$25,000 to Respondent's P.C. Account.

35. Loan D was an "extension of credit" to Respondent for purposes of Regulation O, pursuant to 12 C.F.R. § 215.3(f), because the proceeds of the loan to Respondent's son were transferred to Respondent.

36. When aggregated with Respondent's existing \$100,000 personal line of credit at the Bank, Loan D exceeded the \$100,000 lending limit in 12 C.F.R. §215.5(c)(4) of Regulation O for "other purpose" loans to executive officers. Respondent violated Regulation O by causing or permitting the Bank to extend credit to him and for his benefit in excess of the limit on loans to an executive officer.

37. Respondent did not disclose to the Bank his interest in Loan D or that he would receive proceeds from Loan D. Respondent's failure to disclose his receipt of the proceeds: (a) violated 12 C.F.R. § 215.5(d) of Regulation O, which requires that an extension of credit to an executive officer must be reported to the bank's board of directors; and, (b) breached his fiduciary duty of candor to the Bank.

**GROUNDS FOR SECTION 8(E) PROHIBITION ORDER**

38. As a result of Respondent's foregoing acts, omissions and/or practices, the Respondent has engaged and/or participated in violations of Regulation O and unsafe or unsound banking practices in connection with the Bank.

39. As a result of Respondent's foregoing acts, omissions and/or practices, the Respondent breached his fiduciary duty to the Bank.

40. As a result of Respondent's foregoing acts, omissions and/or practices, the Respondent exposed the Bank to increased risk of loss.

41. By reason of the violations, practices or breaches as specified in paragraphs 17 through 37, Respondent received a financial gain of at least \$800,000 in connection with Loans B, C, and D.

42. The foregoing acts, omissions and/or practices of the Respondent demonstrate a willful or continuing disregard for the safety or soundness of the Bank and/or evidence the Respondent's personal dishonesty.

**PRAYER FOR ORDER OF PROHIBITION**

The FDIC prays that the findings of fact and conclusions of law based upon the above NOTICE OF CHARGES FOR AN ORDER OF PROHIBITION be adopted in support of an ORDER OF PROHIBITION FROM FURTHER PARTICIPATION to be issued against Respondent.

**NOTICE OF ASSESSMENT**

43. Paragraphs 1 through 37 are re-alleged and incorporated herein by reference.

44. By reason of Respondent's acts, omissions and practices as alleged herein, he violated laws, recklessly engaged in unsafe or unsound practices, and breached his fiduciary duty to the Bank.

45. Respondent's violations, reckless unsafe or unsound practices, and breaches of fiduciary duty to the Bank were a part of a pattern of misconduct and resulted in pecuniary gain or other benefit to Respondent.

46. The allegations in paragraphs 1 through 37 constitute findings of fact and conclusions of law for purposes of this NOTICE OF ASSESSMENT and an ORDER TO PAY.

#### **ORDER TO PAY**

The FDIC has concluded that a civil money penalty should be assessed against the Respondent pursuant to 12 U.S.C. § 1818(i)(2) because Respondent violated laws, recklessly engaged in unsafe and unsound practices, and breaches of fiduciary duty, which violations, practices and breaches were part of a pattern of misconduct and resulted in pecuniary gain or other benefit to Respondent as set forth in the paragraphs 17 through 37, and re-alleged and incorporated by reference in the NOTICE OF ASSESSMENT. After taking into account the appropriateness of the penalties with respect to the size of financial resources and the good faith of the Respondent, the gravity of the violations, reckless unsafe or unsound practices and/or breaches of fiduciary duty, and such other matters as justice may require, it is hereby ORDERED that: (1) a penalty of \$70,000 be, and hereby is, assessed against Respondent and, (2) the effective date of this ORDER TO PAY be, and hereby is, stayed until twenty (20) days after the date of service of the NOTICE OF ASSESSMENT and ORDER TO PAY, during which time the Respondent may file a Request for Hearing on the allegations in the NOTICE OF

ASSESSMENT and file an Answer to the allegations in the NOTICE OF ASSESSMENT pursuant to 12 U.S.C. § 1818(i)(2)(H), and 12 C.F.R. § 308.19.

If Respondent intends to contest the NOTICE OF CHARGES FOR A PROHIBITION ORDER (“NOTICE OF CHARGES”), Respondent must file an Answer to the allegations in the NOTICE OF CHARGES within twenty (20) days of service of the NOTICE OF CHARGES. Failure to file an Answer to the allegations in the NOTICE OF CHARGES within the 20-day period shall constitute a waiver of the right to appear and contest the allegations contained in the NOTICE OF CHARGES and shall, upon the FDIC’s motion, cause the Administrative Law Judge or the FDIC to find the facts in the NOTICE OF CHARGES to be as alleged and to issue an ORDER OF PROHIBITION FROM FURTHER PARTICIPATION against Respondent.

If the Respondent intends to contest the NOTICE OF ASSESSMENT and ORDER TO PAY, within twenty (20) days of the service of the NOTICE OF ASSESSMENT and ORDER TO PAY, during which time the ORDER TO PAY is stayed, Respondent must file (1) a Request for Hearing on the allegations in the NOTICE OF ASSESSMENT, and (2) an Answer to the allegations in the NOTICE OF ASSESSMENT.

**Filing an Answer to the allegations in the NOTICE OF ASSESSMENT without filing a clear and unambiguous Request for Hearing on the allegations in the NOTICE OF ASSESSMENT will not preserve the Respondent’s right to contest the NOTICE OF ASSESSMENT and ORDER TO PAY.**

**If the Respondent fails to file a request for a hearing within twenty (20) days of service of this NOTICE OF ASSESSMENT, the penalty assessed against the Respondent, pursuant to this ORDER TO PAY, will be final and unappealable and shall be paid within sixty (60) days after the date of the NOTICE OF ASSESSMENT.**

An original and one copy of the answer, request for hearing and all other documents to be filed or served in this proceeding must be filed in writing with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, Virginia 22226-3500, pursuant to section 308.10 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Respondent is encouraged to also file any answer and request for hearing electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov).

Also, copies of all documents filed in these proceedings shall be served upon the Executive Secretary, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W. Room F-1058, Washington, D.C. 20429-9990; A.T. Dill III, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429-9990; and Andrea Fulton Toliver, Regional Counsel, Atlanta Regional Office, Federal Deposit Insurance Corporation, 10 Tenth Street, N.W., Suite 800, Atlanta, Georgia 30309-3906.

### **NOTICE OF HEARING**

If Respondent timely files and Answer to the allegations in the NOTICE OF CHARGES, a hearing will be held in Birmingham, Alabama, within sixty (60) days from the date of service of the NOTICE OF CHARGES on Respondent, or on such date and at such place as the parties to this proceeding and the Administrative Law Judge appointed to hear the matter may agree. The purpose of the hearing will be for the taking of evidence on the allegations to determine whether a permanent order should be issued pursuant to 12 U.S.C. § 1818(e) to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization listed in 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 12 U.S.C. § 1818(e)(7)(D).

If Respondent timely (1) files a Request for Hearing on the allegations in the NOTICE OF ASSESSMENT and (2) files an ANSWER to the allegations in the NOTICE OF

ASSESSMENT, evidence shall also be taken at the hearing on the allegations to determine whether the ORDER TO PAY assessed against Respondent pursuant to 12 U.S.C. §1818(i)(2) should be sustained.

The hearing will be held before an Administrative Law Judge to be appointed by the OFIA pursuant to 5 U.S.C. § 3105. The hearing will be public, and in all respects will be conducted in compliance with the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedures Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308.

Pursuant to delegated authority.

Dated at Washington, D.C., this 15<sup>th</sup> day of December, 2017.

/s/

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Patricia A. Colohan  
Associate Director  
Division of Risk Management Supervision