

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____)	NOTICE OF INTENTION
In the Matter of)	TO PROHIBIT FROM FURTHER
SALVATORE DIBENEDETTO,)	PARTICIPATION, NOTICE OF
individually, and as an)	CHARGES, NOTICE OF
institution-affiliated party of)	ASSESSMENT OF CIVIL MONEY
ARCOLA HOMESTEAD SAVINGS BANK,)	PENALTIES, FINDINGS OF FACT,
ARCOLA, ILLINOIS)	CONCLUSIONS OF LAW,
(Insured State Nonmember Bank))	ORDER TO PAY, AND NOTICE
_____)	OF HEARING
	FDIC-14-0095e
	FDIC-14-0096k
	FDIC-14-0158b

The Federal Deposit Insurance Corporation ("FDIC") determined that Salvatore DiBenedetto ("Respondent"), individually and as an institution-affiliated party of Arcola Homestead Savings Bank, Arcola, Illinois ("Bank"), has directly or indirectly participated or engaged in unsafe or unsound banking practices; that as a result of the unsafe or unsound practices, Respondent has received financial gain or other benefit; that Respondent's actions were part of a pattern of misconduct; that the Bank suffered material losses; that such unsafe or unsound practices evidence the Respondent's personal dishonesty and demonstrate his willful or continuing disregard for the safety or soundness of the Bank; and that as a result of Respondent's unsafe or unsound practices, Respondent was unjustly enriched.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against Respondent under the provision of 12 U.S.C. § 1818(e), prohibiting him from further participation in the conduct of the affairs of the Bank and

any other 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); and determining whether an appropriate order should be issued against Respondent under the provisions of 12 U.S.C. § 1818(b)(6), requiring him to make restitution or provide reimbursement to the Bank. Further, the FDIC institutes this proceeding for the assessment of civil money penalties pursuant to the provisions of 12 U.S.C. § 1818(i)(2).

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, pursuant to 12 U.S.C. § 1818(e); NOTICE OF CHARGES pursuant to 12 U.S.C. § 1818(b)(6); and this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING pursuant to 12 U.S.C. § 1818(i)(2) (collectively, "NOTICE"), and the FDIC's Rules of Practice and Procedure ("FDIC's Rules"), 12 C.F.R. Part 308; and alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION AND BACKGROUND

1. At all times pertinent to this proceeding, the Bank was state chartered, existing and doing business under the laws of the State of Illinois, having its principal place of business in Arcola, Illinois. The Bank was, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of Illinois.

2. At all times pertinent to this proceeding, the Respondent participated in the affairs of the Bank. In early 2008, Respondent was affiliated with an entity known as X-Factor Equity,

LLC, which later changed its name to Avanti Equity Group (“X-Factor/Avanti”). In early 2008, X-Factor/Avanti entered into an informal relationship with the Bank whereby X-Factor/Avanti would procure and underwrite single family residential and commercial loans for the Bank.

3. Pursuant to that informal relationship and through his affiliation with X-Factor/Avanti, Respondent participated in the Bank’s lending process by underwriting loans to be funded by the Bank, providing information to be included in the Bank’s “Loan Request Summary” or providing an initial draft of the Loan Request Summary, and occasionally participating in Loan Committee deliberations.

4. In June of 2009, Respondent began processing underwriting loans for the Bank through a “streamlined system”. Pursuant to this “streamlined system”, Respondent participated in the Bank’s lending process as Respondent did all of the underwriting and the Bank simply funded the loan without any further review and upon receipt of a faxed package containing wire transfer instructions, loan application, note, HUD-1, and the first and last page of the mortgage.

5. During the course of Respondent’s and X-Factor/Avanti’s business relationship with the Bank, the Bank and Respondent agreed that Respondent would attend loan closings at the title company on behalf of the Bank.

6. During the course of Respondent’s and X-Factor/Avanti’s business relationship with the Bank, Respondent held himself out as an agent for the Bank. Respondent informed Bank borrowers that he was an agent of the Bank. Additionally, Respondent held himself out to the Bank’s title company as an individual with authority from the Bank to direct the application of loan proceeds.

7. At all times pertinent to this proceeding, Respondent was an “institution-affiliated party” (“IAP”) as that term is defined in 12 U.S.C. § 1813(u), and for purposes of 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

8. The FDIC has jurisdiction over the Respondent and the subject matter of this proceeding.

II. ALLEGATIONS

9. In or about February 2008, Respondent was introduced by a director of the Bank to the Bank’s Board of Directors (“Board”).

10. In June of 2008 and through his affiliation with X-Factor/Avanti, Respondent procured and underwrote single family residential and commercial loans for the Bank.

11. As of June of 2009 and through his affiliation with X-Factor/Avanti, Respondent procured and underwrote single family residential loans under a “streamlined system” in which Respondent underwrote loans for the Bank to fund without any further review, underwriting or approval by the Bank.

12. From June through July of 2009, Respondent underwrote, and presented to the Bank for funding, a series of at least three loans to “straw borrowers” in that the individuals presented as the borrowers were not intended to be the recipients of the funds. Additionally, the information Respondent presented to the Bank stated that the transaction was a refinance, although the ostensible borrower did not own the property.

13. At the time of the closing of these transactions, Respondent told the title company that he represented the Bank and he caused the loan proceeds to be applied contrary to the Bank’s instructions.

14. Respondent, by misrepresenting the transactions as refinancings and by applying the loan proceeds contrary to the Bank's instructions, increased the risk of loss to the Bank.

15. On or about June 17, 2009, and pursuant to the "streamlined system", the Bank agreed to fund a loan in the amount of \$225,000 that was referred to the Bank and underwritten by the Respondent. In the documents Respondent presented to the Bank, Respondent represented that the loan was for the benefit of borrower,*****. When the loan was closed and funded on or about July 14, 2009, borrower *****did not receive the benefit of the loan proceeds. Instead, contrary to the information provided to the Bank, Respondent caused approximately \$220,237 to be transferred to an account he controlled at another financial institution. The Bank subsequently wrote off this loan and incurred a loss on the loan totaling \$223,953.19.

16. On or about July 29, 2009, and pursuant to the "streamlined system", the Bank agreed to fund a loan in the amount of \$305,000 that was referred to the Bank and underwritten by the Respondent. In the documents presented to the Bank, Respondent represented that the loan was for the benefit of borrower,*****. When the loan was closed and funded on or about August 12, 2009, borrower***** did not receive the benefit of the loan proceeds. Instead, contrary to the information provided to the Bank, Respondent caused approximately \$274,453 to be transferred to an account he controlled at another financial institution. The Bank subsequently wrote off this loan and incurred a loss on the loan totaling \$303,883.12.

17. On or about July 30, 2009, and pursuant to the "streamlined system", the Bank agreed to fund a loan in the amount of \$282,000 that was referred to the Bank and underwritten by the Respondent. In the documents presented to the Bank, Respondent represented that the

loan was for the benefit of borrower,*****. When the loan was closed and funded on or about September 2, 2009, borrower***** did not receive the benefit of the loan proceeds. Instead, contrary to the information provided to the Bank, Respondent caused approximately \$132,099 to be transferred to an account controlled by Respondent. The Bank subsequently wrote off this loan and incurred a loss on the loan totaling \$279,953.19.

18. Respondent, by referring loans to the Bank in the name of straw borrowers, did not allow the Bank to properly assess the risk of making the loan as the Bank did not know the true circumstances of the loan or the creditworthiness of the true borrower.

19. On or about March of 2010, the Bank terminated its relationship with Respondent and X-Factor/Avanti.

20. On June 4, 2010, the Illinois Department of Financial and Professional Regulation closed the Bank and appointed the FDIC as Receiver.

III. GROUNDS FOR SECTION 8(E) PROHIBITION ORDER

21. By reason of Respondent's acts, omissions, and practices described in paragraphs 1 through 20 above, Respondent engaged in unsafe or unsound practices in connection with the Bank.

22. By reason of Respondent's acts, omissions, and practices described in paragraphs 1 through 20 above, Respondent knowingly or recklessly engaged in unsafe or unsound practices in connection with the Bank.

23. By reason of Respondent's unsafe or unsound practices, Respondent has received financial gain or other benefit. In addition, the unsafe or unsound practices were part of a pattern of misconduct.

24. By reason of Respondent's unsafe or unsound practices the Bank suffered financial loss.

25. The unsafe or unsound practices engaged in by Respondent involved personal dishonesty and demonstrate a willful or continuing disregard for the safety and soundness of the Bank.

IV. GROUNDS FOR SECTION 8(B)(6) ORDER FOR RESTITUTION

26. By reason of Respondent's acts, omissions, and practices described in paragraphs 1 through 25, above, Respondent engaged in unsafe or unsound practices in conducting the affairs of the Bank.

27. By reason of such unsafe or unsound banking practices, Respondent was unjustly enriched in the amount of \$626,789.

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER TO PAY; AND NOTICE OF HEARING

NOTICE OF ASSESSMENT

28. The FDIC incorporates the allegations of paragraphs 1 through 25 as FINDINGS OF FACT AND CONCLUSIONS OF LAW for purposes of this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES ("NOTICE OF ASSESSMENT") as fully set out herein.

29. By reason of the foregoing facts and conclusions as set out, above, the FDIC concludes that Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

30. By reason of the foregoing facts and conclusions as set out, above, the FDIC concludes that Respondent's reckless unsafe or unsound practices were part of a pattern of misconduct.

31. By reason of the foregoing facts and conclusions as set out, above, the FDIC concludes that Respondent's reckless unsafe or unsound practices caused more than minimal loss to the Bank and gain to Respondent.

ORDER TO PAY

32. By reason of Respondent's reckless unsafe or unsound practices in connection with the Bank that were part of a pattern of misconduct, and which caused more than minimal loss to the Bank and gain or other benefit to Respondent as set forth in the NOTICE OF ASSESSMENT, the FDIC concluded that a civil money penalty should be assessed against the Respondent pursuant to 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalties with respect to the size of the financial resources and good faith of the Respondent, the gravity of the reckless unsafe or unsound practices, the history of previous practices, and such other matters as justice may require, it is:

ORDERED that by reason of the reckless unsafe and unsound practices set forth in the NOTICE OF ASSESSMENT, a penalty of \$105,000 be, and hereby is, assessed against the Respondent pursuant to 12 U.S.C. § 1818(i)(2);

FURTHER ORDERED, that 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, during which time the Respondent may file an answer and request a hearing pursuant to 12 U.S.C. § 1818(i)(2)(h), and the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19.

33. The Respondent may request a hearing regarding this NOTICE OF ASSESSMENT and ORDER TO PAY. Such a request for a hearing must be made within twenty (20) days of service of the NOTICE OF ASSESSMENT, pursuant to 12 U.S.C. § 1818(i)(2)(h), and the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19. **If the**

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

34. In the event the Respondent requests a hearing, the Respondent shall also file an answer to the charges in the NOTICE OF ASSESSMENT within twenty (20) days of service of the NOTICE OF ASSESSMENT, in accordance with the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19.

NOTICE OF HEARING

35. Regardless of whether the Respondent requests a hearing on the NOTICE OF ASSESSMENT and ORDER TO PAY, notice is hereby given that a hearing will be held in Urbana, Illinois, commencing sixty (60) days from the date of service of the NOTICE, or on such date and at such place as may be set by the Administrative Law Judge appointed to hear the matter, for the purpose of taking evidence on the charges, findings, and conclusions specified in the NOTICE to determine: (1) whether a permanent order should be issued 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); (2) and whether an order should be issued requiring Respondent to pay restitution of \$626,789.

36. If the Respondent requests a hearing with respect to the charges specified in the NOTICE OF ASSESSMENT and ORDER TO PAY, evidence shall also be taken on the charges specified therein at the same time and place for the purpose of determining whether the Respondent shall be ordered to forfeit and pay a civil money penalty in accordance with 12 U.S.C. § 1818(i)(2).

37. 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 hearing will be public, and in all respects will be conducted in compliance with the Act, the Administrative Procedures Act, 5 U.S.C. §§ 551 - 559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308.

38. The Respondent is directed to file an answer to the NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION within twenty (20) days from the date of service, as provided in 12 C.F.R. § 308.19 of the FDIC Rules of Practice and Procedure.

39. All papers to be filed or served in this proceeding shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226-3500, pursuant to the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov.

40. Copies of all papers filed or served 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. 20429-9990; A.T. Dill, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; and Timothy E. Divis, Regional Counsel, Federal Deposit Insurance Corporation, 300 S. Riverside Drive, Suite 1700, Chicago, Illinois 60606.

PRAYER FOR RELIEF

41. 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 the Respondent; an ORDER TO PAY RESTITUTION pursuant to 12 U.S.C. § 1818(b)(6) requiring Respondent to pay restitution to

the FDIC, as Receiver of the Bank, in the amount of \$626,789; and an ORDER TO PAY CIVIL MONEY PENALTY pursuant to 12 U.S.C. § 1818(i) in the amount of \$105,000 against the Respondent.

Pursuant to delegated authority.

Dated at Washington, D.C., this 10th day of July, 2014.

/s/

Christopher J. Newbury
Associate Director