

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of)	AMENDED NOTICE OF INTENTION TO
KENNETH E. HAGGARD and)	PROHIBIT FROM FURTHER
MARYANN TOMCZYK,)	PARTICIPATION, AMENDED NOTICE OF
individually, and as institution-)	ASSESSMENT OF CIVIL MONEY
affiliated parties of)	PENALTIES, FINDINGS OF
MIAMI VALLEY BANK)	FACT, CONCLUSIONS OF LAW,
LAKEVIEW, OHIO)	ORDER TO PAY, AND NOTICE
(Insured State Nonmember Bank,)	OF HEARING
in receivership))	FDIC-09-545e & FDIC-09-547k
)	

The Federal Deposit Insurance Corporation ("FDIC") determined that Kenneth E. Haggard and Maryann Tomczyk ("Respondents"), individually and as institution-affiliated parties of Miami Valley Bank, Lakeview, Ohio ("Bank"), have each directly or indirectly participated or engaged in unsafe or unsound banking practices, breaches of their fiduciary duties, and violations of laws, rules, and regulations; that as a result of the practices, breaches of fiduciary duty, and violations, the Respondents have received financial and pecuniary gain or other benefit; that the Bank has suffered financial loss or other damage; that the interests of its depositors have been prejudiced; that the practices, breaches of fiduciary duty, and violations were part of a pattern of misconduct; and that such practices, breaches of fiduciary duty, and violations evidence the Respondents' personal dishonesty and demonstrate their willful or continuing disregard for the safety or soundness of the Bank.

The FDIC, therefore, instituted this proceeding for the purpose of determining whether appropriate orders should be issued against the Respondents under the provisions of section 8(e)

and 8(i)(2) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. §§ 1818(e) & 1818(i)(2), prohibiting the Respondents 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), and ordering them to pay civil money penalties.

The FDIC hereby issues this:

(a) AMENDED NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, pursuant to 12 C.F.R. § 308.20(a) amending the NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION issued on March 5, 2010 pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e) and the FDIC’s Rules of Practice and Procedure (“FDIC’s Rules”), 12 C.F.R. Part 308; and

(b) AMENDED NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER TO PAY, pursuant to 12 C.F.R. § 308.20(a) amending the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER TO PAY ISSUED ON March 5, 2010 pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B), and the FDIC’s Rules, 12 C.F.R. Part 308.¹

¹ The NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION and the NOTICE OF ASSESSMENT are collectively referred to in this document as the “NOTICE.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JURISDICTION AND BACKGROUND

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

2. At all times pertinent to this proceeding, Respondent Haggard owned 100% of the Bank's voting stock, and Respondent Tomczyk was Chairman of the Bank's board of directors.

3. At all times pertinent to this proceeding, the Respondents were "institution-affiliated parties" 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).

4. The FDIC has jurisdiction over the Bank, the Respondents, and the subject matter of this proceeding.

5. At all times pertinent to the charges herein, Respondent Haggard owned 80% of MVB Mortgage Corporation, Southfield, Michigan ("MVB Mortgage"). Respondent Tomczyk owned 10% of MVB Mortgage and served as its President. MVB Mortgage was an "affiliate" of the Bank, as that term is used in sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c & 371c-1.

6. As reflected in the Bank's December 31, 2006, Call Report, the Bank's reported "total assets," as defined in 12 C.F.R. section 325.2(v) ("total assets") equaled \$167,626,000, and

the Bank's Tier 1 or "Core Capital," as defined in 12 C.F.R. section 325.2(t) ("Tier 1 Capital") equaled \$13,155,000.

7. As detailed in Paragraphs 13 through 44 below, from at least September 2006 through March 2007, the Respondents caused the Bank to purchase an excessive volume of subprime mortgages originated by a single mortgage company, Investaid Corporation ("Investaid"). After Investaid became an affiliate of the Bank in October 2006, these purchases violated multiple restrictions of section 23A of the Federal Reserve Act, 12 U.S.C. § 371c. In March 2007, the Respondents further violated multiple restrictions of sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c & 371c-1, by causing the Bank to purchase over \$23 million of additional Investaid loans, many of which were nonperforming, from MVB Mortgage, another Bank affiliate.

MORTGAGE WAREHOUSE FINANCING

8. For a number of years prior to its failure, the Bank engaged in the business of mortgage warehouse financing. The Bank would make short-term purchases of individual residential mortgage loans from mortgage lenders. The loans would then be re-sold to end purchasers, typically within a period of 30 to 60 days.

9. The Bank did not intend to keep these loans on its books indefinitely. The mortgage lenders who sold the loans to the Bank sought investors to permanently acquire the mortgage loans.

10. The transactions had the effect of providing liquid funds to the mortgage lenders and provided the Bank with interest income.

11. By at least September 2006 through March 2007, the Respondents exercised a controlling influence over the management, policies and practices of the Bank, including the Bank's mortgage warehouse financing program.

12. One mortgage lender whose loans the Bank purchased was Investaid Corporation ("Investaid"). Investaid specialized in originating subprime mortgage loans.

**MORTGAGE WAREHOUSE FINANCING LEADS TO AN EXCESSIVE
CONCENTRATION OF INVESTAID ORIGINATED LOANS**

13. By at least September 2006, the Respondents caused the Bank to rapidly increase the volume of subprime mortgage loans it purchased from Investaid.

14. The volume of Investaid-originated loans purchased by the Bank and held pending sale increased as follows:

DATE	VOLUME FUNDED	PERCENTAGE OF TIER 1 CAPITAL
9/30/2006	\$28,711,766	197%
12/31/2006	\$52,534,773	399%

15. The large volume of Investaid-originated loans held at the Bank was the combined result of the Bank's aggressive purchasing of loans from Investaid as well as the inability of Investaid to sell the loans to secondary market investors due to declining liquidity of the subprime loan market.

16. From at least September 2006 through March 2007, the Bank performed little or no underwriting of the Investaid originated loans either prior to or following the Bank's acquisition of the loans.

17. Exceptions from normal warehousing procedures were granted for purchases of Investaid-originated loans. Investaid was given leeway regarding how long its loans could

remain on the Bank's books before being sold to an end purchaser and the volume limit on loans the Bank would acquire.

18. By at least September 2006 through March 2007, the Respondents were aware of the condition of loans which Investaid had originated and was marketing to investors.

19. By at least September 2006 through March 2007, the Respondents were aware that the loans which Investaid had originated and was marketing to investors were increasingly past due.

DATE	APPROXIMATE VALUE OF MORTGAGE LOANS PAST DUE
9/29/06:	\$11,932,348
12/29/06:	\$20,160,092

20. By at least September 2006 through March 2007, the Respondents were aware that a significant and growing volume of loans which Investaid had originated and was marketing to investors were becoming 90 or more days past due ("nonperforming loans").

DATE	APPROXIMATE VALUE OF NONPERFORMING LOANS	APPROXIMATE VALUE OF NONPERFORMING SECONDS
9/29/06:	\$4,995,136	\$2,576,118
12/29/06:	\$9,204,203	\$5,036,997
3/30/07:	\$14,027,216	\$7,209,718

**CONCENTRATION OF INVESTAID ORIGINATED LOANS BECOMES
INCREASINGLY RISKY AFTER INVESTAID BECOMES AN AFFILIATE OF THE
BANK**

21. As of September 2006, Respondent Haggard owned a 15% interest in the voting stock of Investaid, and Respondent Tomczyk owned a 5% interest. On or about October 17, 2006, Respondent Tomczyk acquired another 10% of the outstanding stock of Investaid.

22. As of October 17, 2006, Respondent Haggard had provided nearly \$5,000,000 of personal loans to or for the benefit of Investaid. These loans consisted of an approximately \$1 million unsecured personal line of credit to Investaid to finance its operations and approximately \$4 million to finance a special purpose entity's purchase of subordinate securities in a securitization of loans originated by Investaid.

23. At or about this time, Respondents began directing the management and operations of Investaid and continued to do so until Investaid ceased business on or about March 16, 2007.

24. On or about October 17, 2006, Investaid was an "affiliate" of the Bank, as that term is defined in section 23A(b)(1) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(1), by virtue of Respondent Haggard's and Tomczyk's control of Investaid, as the term "control" is defined in section 23A(b)(3)(A)(i) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(3)(A)(i).

25. The Bank continued to purchase the vast majority of the loans which Investaid originated from October 17, 2006 through March 16, 2007, even after Investaid became an affiliate of the Bank.

26. As of October 17, 2006, the volume of Investaid loans purchased by the Bank and held pending sale equaled approximately \$45,320,942. This volume exceeded 10% of the Bank's capital stock plus surplus which was reported as of September 30, 2006 as approximately \$15,259,000. All asset purchases from Investaid after October 17, 2006 violated the restrictions of 23A of the Federal Reserve Act, 12 U.S.C. § 371c(b)(1).

**RESPONDENTS CAUSED MVB MORTGAGE TO PURCHASE INVESTAID-
ORIGINATED LOANS FROM THE BANK**

27. From at least September 2006 to March 2007, the Respondents were aware that Investaid loans, and in particular its subprime second mortgage loans, were becoming increasingly difficult for Investaid to sell to end investors.

28. The Respondents were also aware that by September 30, 2006, the volume of nonperforming loans originated by Investaid that had not yet been sold to end investors substantially exceeded Investaid's capitalization.

29. Notwithstanding this knowledge, the Respondents continued to cause the Bank to purchase loans from Investaid without performing meaningful loan review.

30. By at least September 2006, through their control of MVB Mortgage, Respondents caused MVB Mortgage, a Bank affiliate, to purchase past due Investaid-originated loans (along with current loans) from the Bank.

31. As a result of the purchases described in paragraph 30, the Bank was able to continue reporting a low volume of past due loans on its Call Reports.

32. By at least September 2006, when MVB Mortgage purchased Investaid loans from the Bank, these transactions were recorded by both the Bank and MVB Mortgage as sales of the loans to MVB Mortgage.

33. The Investaid loans acquired by MVB Mortgage were disproportionately delinquent when compared to the Investaid loans retained in the Bank's portfolio.

MVB MORTGAGE'S LINE OF CREDIT AT NATIONAL CITY BANK

34. MVB Mortgage financed its purchases of Investaid loans from the Bank by drawing funds from National City Bank, from which it had a line of credit. MVB Mortgage pledged the purchased loans as collateral on the line of credit.

35. Respondent Haggard guaranteed MVB Mortgage's line of credit at National City Bank.

36. National City Bank agreed to the pledging of subprime loans on the line of credit, under the following conditions:

- No more than twenty percent of the maximum limit on the line of credit could be secured by subprime loans at any one time;
 - Only loans secured by first mortgages were eligible as collateral;
 - Only loans to borrowers having FICO scores of 580 to 620 were eligible as collateral;
- and
- MVB Mortgage must own the loans in question.

37. By at least September 2006, MVB Mortgage was in violation of the first three of these conditions. The violations went undetected by National City Bank until February or March 2007.

THE MARCH 2007 TRANSACTION

38. In or about March 2007, National City Bank discovered that MVB Mortgage violated numerous requirements under its line of credit agreement with MVB Mortgage. National City Bank initially demanded that the line of credit be paid off in full.

39. MVB Mortgage did not have the resources to repay the line.

40. On or about March 20, 2007, the Respondents participated in a conference call with the Bank's non-management directors to persuade them to vote in favor of a transaction by which the Bank would acquire from MVB Mortgage all of its remaining Investaid loans. In return for this purchase, MVB Mortgage would receive cash and mortgage loans of a generally better quality than the Investaid loans ("March 2007 transaction").

41. The Bank's board of directors voted 4-2 in favor of the March 2007 transaction, with the Bank's President and its Chief Financial Officer voting against.

42. On March 27, 2007, the Bank and MVB Mortgage executed the March 2007 transaction. MVB Mortgage sold the Bank Investaid loans totaling approximately \$23,075,752. Sixty-four percent of these loans were second mortgages, 69% were past due 30 days or more, and 43% were past due 120 days or more.

43. In exchange, the Bank gave MVB Mortgage approximately \$6,991,071 cash and approximately \$16,084,681 in mortgage loans. All of these loans were first mortgages, 30% were past due 30 days or more, and 6% were past due 120 days or more. The March 2007 transaction exceeded 10% of the Bank's capital stock plus surplus which was reported as of December 31, 2006 as approximately \$14,024,000.

44. On or about October 4, 2007, the Bank was closed by the Department of Financial Institutions for the State of Ohio. The FDIC was appointed receiver for the Bank.

**VIOLATIONS OF LAW OR REGULATION, UNSAFE
OR UNSOUND PRACTICES, AND BREACHES OF FIDUCIARY DUTY**

45. By reason of Respondents' acts, omissions, and practices described in paragraphs 1-44 above, Respondents have, directly or indirectly, violated the law, recklessly engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank.

46. By reason of Respondents' violations, unsafe or unsound practices, and breaches of fiduciary duties, the Bank has suffered, or was likely to suffer, financial loss and other damage; the interests of the Bank's depositors have been or could be prejudiced; the Respondents have received financial gain or other benefit; and the violations, practices, and breaches of fiduciary duty were part of a pattern of misconduct.

47. The unsafe or unsound practices and breaches of fiduciary duties committed by the Respondents involve personal dishonesty and demonstrate a willful or continuing disregard for the safety and soundness of the Bank.

ORDER TO PAY

By reason of the conduct and actions set forth in the AMENDED NOTICE, the FDIC has concluded that a civil money penalty should be assessed against Respondents Kenneth E. Haggard and Maryann Tomczyk pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalty with respect to the size of Respondents' financial resources, the gravity of the violations, the history of Respondents' previous violations, if any, the amount of loss suffered by the Bank and such other matters as justice may require, it is ORDERED, that by reason of the conduct and actions set forth in paragraphs 13 through 44, above, a penalty of \$250,000 be, and hereby is, assessed against each of the Respondents pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

NOTICE OF HEARING

Notice is hereby given that a hearing will be held in Columbus, Ohio in accordance with the Court's Order dated April 15, 2010 for the purpose of taking evidence on the charges herein specified, in order to determine 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 if requested, for the further purpose of determining whether a civil money penalty should be assessed against the Respondents pursuant to section 8(i)(2) of the Act, 12

U.S.C. §1818(i)(2).

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

Respondents are hereby directed to file an answer to this AMENDED NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION within ten (10) days from the date of service, as provided by section 308.20 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.20.

Pursuant to delegated authority.

Dated at Washington, D.C., this 17th day of June, 2010.

/s/

Serena L. Owens
Associate Director