



U.S.C. § 5313(a), by failing to file and/or causing the Bank to fail to file currency transaction reports (“CTRs”), and 31 U.S.C. § 5318(g) by failing to file and causing the Bank to fail to file suspicious activity reports (“SARs”).

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate ORDER OF REMOVAL FROM OFFICE AND PROHIBITION FROM FURTHER PARTICIPATION should be issued against the Respondent under the provisions of 12 U.S.C. § 1818(e), prohibiting the Respondent 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 section 12 U.S.C. § 1818(e)(7)(D);

The FDIC hereby issues this:

NOTICE OF INTENTION TO REMOVE FROM OFFICE AND TO PROHIBIT FROM FURTHER PARTICIPATION (“NOTICE”) pursuant to 12 U.S.C. § 1818(e), and 12 C.F.R. Part 308; and alleges as follows:

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

##### A. Preliminary Allegations

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

2. The Bank has been, at all times pertinent to this proceeding, an insured State nonmember bank, as defined in 12 U.S.C § 1813 and as such is subject to 12 U.S.C. §§ 1811-1831aa, 12 C.F.R. Chapter III; and the laws of the State of West Virginia.

3. At all times pertinent to the charges herein, Respondent was an "institution-affiliated party" 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).

4. At all times pertinent to the charges herein, the Bank is and has been subject to the Bank Secrecy Act ("BSA"), 31 U.S.C. 5311 *et seq.*, as implemented by 31 C.F.R. Part 1010; 12 C.F.R. Part 353; and 12 C.F.R. Part 326.

5. At all times pertinent to the charges herein, Respondent was the Bank's BSA Officer, responsible for coordinating and monitoring the Bank's day-to-day compliance with the BSA, including but not limited to determining whether CTRs and SARs should be filed as required by the BSA and 12 C.F.R. Parts 326 and 353.

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

B. Respondent's Misconduct

7. As set forth in more detail below, between September 2008 and June 2012, Respondent failed to file or caused or permitted the Bank to fail to file approximately 320 CTRs of deposit or withdrawal transactions aggregating more than \$10,000 by [REDACTED], [REDACTED] all in violation of the BSA.

8. As set forth in more detail below, between September 2008 and June 2012, Respondent failed to file or caused or permitted the Bank to fail to file approximately 17 SARs of transactions by [REDACTED] that involved potential money laundering or violations of the BSA, all in violation of BSA and 12 C.F.R. § 353.3(a)(4).

9. As set forth in more detail below, between January and September 2013, Respondent failed to file or caused or permitted the Bank to fail to file SARs and/or CTRs and

failed to investigate, monitor, and/or perform enhanced due diligence in connection with at least four other accountholders, all in violation of the BSA and/or 12 C.F.R. § 353.3(a)(4).

C. [REDACTED]

10. Between 2008 and 2012, [REDACTED], a West Virginia limited liability corporation engaged in the business of leasing employees to coal mines, engaged in structuring at least \$9 million by requesting advances on its line of credit at the Bank, which were funded by cashier's checks in amounts just under \$10,000, payable to [REDACTED] employees or other individuals who agreed to appear at the Bank and cash the cashier's checks. The cash was later brought back to [REDACTED] office to be used to pay cash payroll.

11. [REDACTED] sent advance request forms to the Bank prior to the structured cash withdrawals, so the Bank could prepare the cash ahead of time. The Bank would then prepare cashier's checks in the names of the identified individual or individuals and pre-count the requested cash. When an individual or individuals from [REDACTED] appeared at the teller window, a Bank representative presented them with the cashier's check in the individual's name. The check was immediately endorsed and the individual was given the pre-counted cash.

Despite numerous occasions when multiple individuals appeared at the same teller window at the Bank to endorse cashier's checks that aggregated more than \$10,000, the Bank routinely failed to file a CTR, as required by the BSA.

12. This procedure was established by Bank Branch Manager Alan Darrin McCormick ("McCormick").

13. A Federal criminal investigation determined that the cash structured out of the Bank by [REDACTED] was used to pay the company's payroll in cash, therefore avoiding the

payment of employment taxes and also to make bribe payments in connection with its failure to pay workers' compensation insurance premiums.

14. Respondent was aware of the [REDACTED] structured transactions but failed to file or caused the Bank to fail to file CTRs and/or SARs facilitating [REDACTED] and its employees in structuring in violation of the BSA and 12 C.F.R. Part 353.

15. As a result of Respondent's failure to ensure that CTRs were filed, the Bank has suffered a loss of \$4.5 million in forfeiture to the DOJ and the IRS and CMPs to the FDIC and FinCEN.

D. The Salvage Dealer

16. Between January 2013 and September 2013, a Bank customer engaged in dealing scrap metal ("Salvage Dealer") made cash withdrawals from his personal deposit account of approximately \$147,900 and cash withdrawals from his business deposit account of approximately \$391,789. These withdrawals, each in an amount under \$10,000, appeared to be designed to evade BSA reporting requirements.

17. Respondent failed to file a SAR on the suspicious activity within 30 days after the initial detection of facts that may constitute a basis for filing a SAR in violation of 12 C.F.R. §§ 353.3(a)(4)(ii) and (b).

18. Although Respondent had identified the Salvage Dealer as a high risk account, he failed to investigate and/or monitor the high volume of cash activity.

E. The Doctor

19. During 2012, approximately \$310,000 in cash (as compared to \$72,000 in checks) was deposited into the business account of a physician at the Bank. Despite no apparent business

reason for the level of cash deposits, Respondent failed to file or caused the Bank to fail to file a SAR, in violation of 12 C.F.R. § 353.3(a)(4)(iii).

20. The doctor's deposit account records contained information that another financial institution had closed the doctor's account for inappropriate activity.

21. The doctor was not a resident of West Virginia.

22. Despite this information, Respondent failed to monitor the account for suspicious activity or to perform enhanced due diligence.

F. The Lumber Company

23. At all times pertinent to the charges herein, the Bank had a customer that processed timber and manufactured wood-related products ("Lumber Company").

24. The Lumber Company had a business deposit account at the Bank. Generally, the account activity appeared consistent with its business operations.

25. However, between January 2013 and September 2013, the Lumber Company issued 28 checks totaling \$142,218 to one individual.

26. The individual cashed all of the checks at the Bank.

27. None of the checks met the threshold for filing CTRs.

28. The check cashing transactions appeared to be designed to evade BSA reporting requirements.

29. Respondent was aware that the individual was the subject of law enforcement inquiries.

30. Respondent did not conduct enhanced due diligence to understand the nature of the check cashing activity.

31. Respondent failed to file a SAR on the activity within 30 days after the initial detection of facts that may constitute a basis for filing a SAR, in violation of 12 C.F.R. §§ 353.3(a)(4)(ii) and (b).

32. Between January 2013 and September 2013, the Lumber Company issued 41 checks totaling \$111,091 to a second individual.

33. The second individual cashed all of the checks at the Bank.

34. None of the checks met the threshold for filing CTRs.

35. Respondent did not conduct enhanced due diligence to understand the nature of the check cashing activity.

36. The check cashing transactions appeared to be designed to evade BSA reporting requirements.

37. Respondent failed to file a SAR on the activity within 30 days after the initial detection of facts that may constitute a basis for filing a SAR, in violation of 12 C.F.R. §§ 353.3(a)(4)(ii) and (b).

G. Security Firm

38. At all times pertinent to the charges herein, the Bank had a customer that provided contract security at area coal facilities and other businesses ("Security Firm").

39. Between April 2013 and August 2013, the owner of the Security Firm cashed 41 checks drawn on the Security Firm's account totaling \$166,400.

40. Respondent knew that the Security Firm was on the Bank's high-risk customer list and was the subject of a law enforcement subpoena.

41. The check cashing transactions appeared to be designed to evade BSA reporting requirements and had no apparent business purpose.

42. However, Respondent did not conduct enhanced due diligence to understand the nature of the check cashing activity.

43. Respondent failed to file a SAR within 30 days after the initial detection of facts that may constitute a basis for filing a SAR, in violation of 12 C.F.R. §§ 353.3(a)(4)(ii), (iii) and (b).

H. Grounds for Section 8(e)(1) Prohibition Order

44. As a result of the Respondent's foregoing acts, omissions and/or practices, the Respondent has violated and has caused the Bank to violate the BSA, including 31 U.S.C. §§ 5313(a), 5318(g) and 5324; 31 C.F.R. §§ 1010.310, 1010.311, 1010.313(b), 1010.314(a) and 1010.320; and 12 C.F.R. § 353.3(a)(4).

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

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

47. By reason of the violations, practices or breaches as specified in paragraphs 7 through 43, the Bank has suffered or will probably suffer financial loss or other damage.

48. By reason of the violations, practices or breaches as specified in paragraphs 7 through 43, the interests of the Bank's depositors have been or could have been prejudiced.

49. The acts, violations, omissions and/or practices of the Respondent as set forth in paragraphs 7 through 43 demonstrate a willful or continuing disregard for the safety or soundness of the Bank and/or evidence the Respondent's personal dishonesty.

I. Grounds for Section 8(e)(2) Order

50. Respondent has violated and/or has caused the Bank to violate 31 U.S.C. §§ 5313(a), 5318(g) and 5324 and such violations were not inadvertent or unintentional.

51. Respondent had knowledge that an institution-affiliated party of the Bank, McCormick, violated 31 U.S.C. § 5324 and took no action to stop or prevent the recurrence of the violation.

NOTICE OF HEARING

Notice is hereby given that a hearing will be held in Charleston, West Virginia and will commence 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.

The purpose of the hearing will be for the taking of evidence on the charges, findings, and conclusions specified in the NOTICE and to determine whether a permanent order should be issued to remove Respondent from office and 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).

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 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.

The Respondent is directed to file an answer to this NOTICE within twenty (20) days from the date of service, as provided by section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

An original and one copy of the answer 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 12 C.F.R. § 308.10. Respondent is encouraged to also file any answer electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov).

Copies of all papers filed or served in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429-9990; A.T. Dill, Assistant General Counsel, Enforcement Section, Legal Division, 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.E., Suite 800, Atlanta, Georgia 30309-3906.

PRAYER FOR RELIEF

The FDIC prays for relief in the form of issuance of an ORDER OF REMOVAL AND PROHIBITION pursuant to 12 U.S.C. § 1818(e) against Respondent.

Pursuant to delegated authority.

Dated at Washington, D.C., this 26<sup>th</sup> day of February, 2016.

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/s/  
Christopher J. Newbury  
Associate Director  
Division of Risk Management Supervision

## ORDER TO REMOVE AND PROHIBIT

The Board, having considered the entire record of this proceeding finds that Respondent Robert Michael Brewer, employed by Bank of Mingo, Williamson, West Virginia, engaged in violations of law, unsafe and unsound banking practices and breaches of his fiduciary duty as an officer of the Bank evidenced by willful and continuing disregard for the safety and soundness of the Bank as a result of which the Bank suffered loss or other damage. The Board hereby ORDERS and DECREES that:

1. ROBERT MICHAEL BREWER, is hereby removed from office and, without the prior written approval 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), prohibited from:
  - (a) participating in any manner in the conduct of the affairs of any financial institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A);
  - (b) soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent or authorization with respect to any voting rights in any financial institution enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A);
  - (c) violating any voting agreement previously approved by the appropriate Federal banking agency; or
  - (d) voting for a director, or serving or acting as an institution-affiliated party.

2. This ORDER will become effective upon its issuance by the FDIC. The provisions of this ORDER will remain effective and enforceable except to the extent that, and until such time as any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED, that copies of this DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION shall be served on Robert Michael Brewer, Enforcement Counsel, the ALJ and the Commissioner, West Virginia Division of Financial Institutions.

By direction of the Board of Directors,

Dated at Washington, D.C. this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Robert E. Feldman  
Executive Secretary

(SEAL)