

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

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In the Matter of	)	DECISION AND ORDER TO
	)	PROHIBIT FROM FURTHER
DESPINA SKABARDONIS	)	PARTICIPATION
Individually and as a former institution-	)	
affiliated party of	)	
	)	FDIC-13-0444e
FIRST CENTRAL SAVINGS BANK	)	FDIC-13-0443k
GLEN COVE, NEW YORK	)	
	)	
(Insured State Nonmember Bank)	)	
_____	)	

**I. INTRODUCTION**

This matter is before the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC”) following the issuance on January 8, 2016 of a Recommended Decision on Default (“Recommended Decision” or “R.D.”) by Administrative Law Judge C. Richard Miserendino (“ALJ”). The Recommended Decision included an order that would permanently bar Despina Skabardonis (“Respondent”) from the banking industry, pursuant to section 8(e) of the Federal Deposit Insurance Act (“FDI Act”)<sup>1</sup>, unless the FDIC consented to her further participation. The ALJ also found that Respondent was subject to a final and unappealable civil money penalty (“CMP”) of \$195,000 pursuant to section 8(i)(2)(E)(ii) of the FDI Act<sup>2</sup>, and Rule 308.19(c)(2) of the FDIC’s Rules of Practice (“FDIC Rules”).<sup>3</sup> R.D. at 3-4.

This is an uncontested proceeding. The record shows that Respondent was served notice of the charges against her as set forth in the FDIC’s Notice of Intention to Prohibit from Further

<sup>1</sup>12 U.S.C. § 1818(e).

<sup>2</sup>12 U.S.C. § 1818(i)(2)(E)(ii).

<sup>3</sup>12 C.F.R. § 308.19(c)(2).

Participation, Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing (“Notice”). R.D. at 1-2. Respondent did not file an Answer to the charges in the Notice or respond to either Enforcement Counsel’s Motion for Entry of an Order of Default (“Default Motion”), or the subsequent Order to Show Cause (“Show Cause Order”) issued by the ALJ. R.D. at 1-2. Respondent also failed to file exceptions to the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order of Prohibition against Respondent.

## **II. BACKGROUND**

On December 30, 2013, the FDIC issued the Notice against Respondent pursuant to sections 8(e) and 8(i) of the FDI Act.<sup>4</sup> Respondent, an institution-affiliated party pursuant to section 3(u) of the FDI Act<sup>5</sup>, served as a teller and/or supervisor at First Central Savings Bank, Glen Cove, New York (“Bank”), during the period charged in the Notice. Notice at ¶ 3.

### *Respondent’s Misconduct*

The Notice alleged that from on or about January 9, 2009 until on or about December 29, 2009, Respondent embezzled approximately \$119,202 by engaging in unauthorized cash and ATM withdrawals from four Bank customers’ accounts and by forging the customers’ signatures on checks that were used to pay Respondent’s debts. Respondent also used someone else’s identity without their permission to open an account that was used to funnel some of the embezzled proceeds. Notice at ¶¶ 6-11. Specifically, the Notice charged the following:

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<sup>4</sup>12 U.S.C. §§ 1818(e) & (i).

<sup>5</sup>12 U.S.C. § 1813(u).

*Customer A*

From on or about January 9, 2009 until on or about February 28, 2009, Respondent made five unauthorized cash withdrawals, totaling \$9,800, on the checking account of Customer A. The unauthorized cash withdrawals occurred as follows: January 9, 2009 (\$2,000), February 10, 2009 (\$2,000), February 13, 2009 (\$2,000), February 25, 2009 (\$1,800), and February 28, 2009 (\$2,000). Respondent also closed Customer A's account without authorization. Notice at ¶ 7.

*Customer B*

On or about April 14, 2009, Respondent opened a savings account for Customer B. Around the same date, she opened a checking account in Customer B's name without Customer B's authorization. On or about April 24, 2009, Respondent transferred \$60,000 from Customer B's savings account to the unauthorized checking account that Respondent opened under Customer B's name. Respondent then changed Customer B's mailing address without Customer B's authorization and ordered two debit cards that were mailed to the branch where she worked. On or about September 23, 2009, Respondent transferred an additional \$9,500 from Customer B's savings account to the checking account that Respondent opened under Customer B's name. From April 24, 2009 to October 19, 2009, \$69,500 was withdrawn via non-bank ATMs from the checking account that Respondent opened under Customer B's name. Notice at ¶ 8.

*Customer C*

During 2009, Respondent embezzled approximately \$35,402 from Customer C by conducting the following unauthorized transactions: On or about October 2, 2009, Respondent ordered checks on the checking account of Customer C and had them delivered to the branch where she worked. Checks from Customer C's account were used to pay Respondent's bills. On or about October 6, 2009, Respondent, without authorization, closed an IRA account that

belonged to Customer C. Around the same date, she opened a savings account in Customer C's name also without authorization. The proceeds of the closed account were deposited into the savings account that Respondent controlled. Notice at ¶ 9.

*Customer D*

On or about November 16, 2009, Respondent ordered checks on the account of Customer D that were delivered to the branch where Respondent worked. On or about December 11, 2009, a check in the amount of \$2,300 and a check in the amount of \$2,200 made payable to Customer D were drawn on the account. The proceeds of these checks were then deposited into the accounts of Customer C and Customer E and used by Respondent to pay her credit card bills. Notice at ¶ 10.

*Customer E*

On or about October 6, 2009, Respondent used Customer E's identity to open an account without Customer E's authorization. On the same date, Respondent changed Customer E's address to the branch address where she was working at the time. Respondent also ordered a debit card, which was mailed to the branch where she worked. On or about October 22, 2009, Respondent ordered checks for the account in Customer E's name which were delivered to the branch where she worked. Respondent used this account to funnel some of the embezzled proceeds. Notice at ¶ 11.

*Respondent Becomes a Fugitive*

In January 2010, Respondent was arrested in Queens County, New York and charged with several counts of embezzlement and identity theft related to accounts of Bank customers. Declaration of Senior Attorney Jose Rivas in Support of Motion for Entry of Order of Default ("Rivas Dec."), at ¶ 6. After making several appearances in her criminal case, Respondent failed

to appear for a plea hearing set for September 28, 2010. Rivas Dec. at ¶¶ 9, 12. Respondent has been a fugitive since that date. Rivas Dec. at ¶ 13.

*FDIC Enforcement Proceeding*

*Service of the Notice*

On or about December 31, 2013, the Executive Secretary of the FDIC issued the Notice by certified mail to Respondent's last-known address: 19-19 24 Ave., Apartment R204, Astoria, New York 11102 (the "19-19 Address") – the address that she had provided to the criminal court<sup>6</sup> and her address on file with the Bank. See Rivas Dec. at ¶¶ 6-7, 10, 12, 23. The December 31, 2013 mailing was returned to the FDIC as undelivered with no forwarding address. Rivas Dec. at ¶ 23.

After the Notice was returned, FDIC Enforcement Counsel took multiple steps to locate and serve Respondent. On or about January 27, 2014, Enforcement Counsel searched for information about Respondent on the LexisNexis database, using her social security number and date of birth. Although the resulting three reports did not provide new address information, they listed several email addresses. The FDIC attempted to contact Respondent at all of these email addresses, but each email was returned undelivered. Rivas Dec. at ¶ 24. Another LexisNexis database search on May 27, 2015 yielded no new address information for Respondent. Rivas Dec. at ¶ 25.

Meanwhile, on or about May 12, 2015, Enforcement Counsel requested in writing that the United States Postal Service provide any new address information for Respondent, and followed up with written requests to local United States Postmasters on or about June 4, 2015.

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<sup>6</sup>Respondent provided the criminal court with an address of 19-19 24 Ave., Queens, New York. According to local convention, 19-19 24 Ave., Queens, New York and 19-19 24 Ave., Astoria, New York are interchangeable. Default Motion at 4 n.1; Rivas Dec. at ¶ 8.

The Postal Service, however, was unable to provide any new address information for Respondent. Rivas Dec. at ¶ 26.

Enforcement Counsel then obtained address information for Respondent's two adult sons and, on or about June 16, 2015, sent the Notice to Respondent in care of each of them – by regular mail and by certified mail, return receipt requested – to their respective home and work addresses. The return receipt for the Notice sent to the work address of Respondent's son Stamatis Bisiotis (“Bisiotis”), was signed and received by the FDIC. Rivas Dec. at ¶¶ 27-30. Then, on or about June 22, 2015, Undisputed Legal, Inc., a professional process service firm retained by Enforcement Counsel, personally served the Notice upon Bisiotis at his work address. Rivas Dec. at ¶ 31.<sup>7</sup>

Also on or about June 22, 2015, Bisiotis contacted Enforcement Counsel, confirmed he was Respondent's son, but stated that he had not been in contact with Respondent for a few years and did not know her current address. When asked if the 19-19 Address was Respondent's last known address, Bisiotis responded something to the effect of “that it sounds about right.” Bisiotis also provided Enforcement Counsel with an email address where he had last contacted Respondent. The FDIC sent emails to Respondent at that email address (which misspelled Respondent's last name) and a similar email address (using the correct spelling of her last name) but both emails were returned as undelivered. Rivas Dec. at ¶¶ 32-33.

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<sup>7</sup>The record is silent as to whether the FDIC was able to deliver the Notice to Respondent's other son.

On or about July 21, 2015, Enforcement Counsel retained Undisputed Legal, Inc. to conduct a "skip-trace" of Respondent to locate her. The "skip-trace" produced no new address information for Respondent. Rivas Dec. at ¶ 34.<sup>8</sup>

On or about November 5, 2015, the FDIC conducted a Google search and found that in 2014, an entity named Sleepy's, LLC had reported to the New York State Comptroller unclaimed funds for Respondent. Sleepy's, LLC had listed the 19-19 Address as Respondent's address. Rivas Dec. at ¶ 35.

*Respondent's Default*

The Notice directed Respondent to file an answer and request for a hearing within twenty days from the date of service, as required by FDIC Rule 308.19.<sup>9</sup> The Notice also provided that unless Respondent timely requested a hearing, the CMP assessment would become final and due within sixty days. Notice at 7. Respondent never responded to the Notice. R.D. at 2 n.1.

On November 24, 2015, after taking what appear to be exhaustive steps to serve Respondent as described above, Enforcement Counsel moved for the entry of an order of default pursuant to FDIC Rule 308.19. Enforcement Counsel served the Default Motion on Respondent by regular and certified mail, in care of Bisiotis at his home address. Default Motion at 14. On December 18, 2015, the ALJ issued the Show Cause Order directing that Respondent appear and show good cause why default judgment should not be granted, on or before January 5, 2016. The Show Cause Order was served on Respondent by UPS Next Day Delivery at the 19-19 Address and in care of Bisiotis at his home address. Show Cause Order at 2. In the absence of any response, on January 8, 2016, the ALJ granted Enforcement Counsel's motion and issued the

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<sup>8</sup>"Skip-tracing is the process of developing new telephone, address, job or asset information on a customer, or verifying the accuracy of such information." *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1040 n.1 (9<sup>th</sup> Cir. 2012).

<sup>9</sup>12 C.F.R. § 308.19.

Recommended Decision, which was served on Respondent by UPS Next Day Delivery in care of Bisiotis at his home address. R.D. at 8.

### III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision.

The Board agrees with the ALJ's finding that the FDIC served the Notice using methods reasonably calculated to provide Respondent with actual notice, and thereby satisfied the requirements of the FDIC Rules and due process. R.D. at 1-2. The Board also agrees with the ALJ that "[t]o hold otherwise would be to allow the Respondent's flight from justice, and continuing fugitive status, to thwart the FDIC's ability to perform its regulatory duties." R.D. at 3.

FDIC Rule 308.11 provides that the Notice may be served, among other ways, "[b]y registered or certified mail addressed to the party's last known address;" and "[b]y any other method reasonably calculated to give actual notice."<sup>10</sup> Here, the FDIC used both methods. First, the FDIC attempted to serve Respondent via certified mail at the 19-19 Address, her last known address. When the certified mailing was returned marked undelivered, FDIC staff took many steps to try to find Respondent before locating, and personally serving the Notice on her son. The ALJ correctly found that in the circumstances of this proceeding, service on Respondent's adult son was reasonably calculated to give Respondent actual notice.

The Board agrees with the ALJ that service in this case was consistent with due process which – like the FDIC Rules – does not require that Respondent receive actual notice of this proceeding. *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (citing *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)). Instead, "due process requires the government to provide 'notice

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<sup>10</sup>12 C.F.R. § 308.11(c)(2)(iv) & (v).

reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Jones*, 547 U.S. at 226 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Where, as here, mailed notice is returned unclaimed, “the [government] must take additional reasonable steps to attempt to provide notice . . . if it is practicable to do so.” *Jones*, 547 U.S. at 225. The ALJ correctly found that after the certified mailing of the Notice to the 19-19 Address was returned, the Enforcement Counsel took additional reasonable steps to locate and serve Respondent, including conducting internet searches, ordering a skip-trace, sending emails and seeking assistance from the United States Postal Service. FDIC staff also went so far as to find, contact, and personally serve the Notice on Respondent’s adult son.

Moreover, 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.<sup>11</sup> R.D. at 4-6. Specifically, the Board observes that Respondent engaged in misconduct by exploiting her position at the Bank to embezzle funds from customer accounts and steal another person’s identity as part of her embezzlement scheme. The effects prong is met because Respondent received a direct financial benefit of approximately \$119,202 from the funds she embezzled, and also caused damage or other loss to the Bank. Respondent’s culpability is evident as the embezzlement involved multiple instances of deliberate deception and personal dishonesty, and spanned nearly a year, exhibiting a willful and continuing disregard for the Bank’s safety and soundness. The uncontested allegations establish ample evidence of violations of law, unsafe and unsound banking practice and a breach of fiduciary duty. *See In the Matter of Lance E. Bauer*, FDIC-11-21e, FDIC Enforcement Decision

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<sup>11</sup>12 U.S.C. § 1818(e)(1).

and Order, 2012 WL 7152170, at \*3 (Oct. 9, 2012) (bank employee who embezzled funds from bank by liquidating customer's CD to fund cashier's check to himself engaged in dishonest behavior, unsafe and unsound banking practice and breach of fiduciary duty).

Respondent's misconduct clearly warrants a permanent bar from the banking industry and, in this case, default judgment is appropriate. *In the Matter of Lance E. Bauer*, at \*3 (prohibition of bank employee who embezzled funds); *In the Matter of Arlene Shih*, FDIC-10-335e, FDIC Enforcement Decision and Order, 2011 WL 2574393, at \*4 (May 10, 2011) (prohibition of bank employee who drew against borrowers' credit line for personal use); *In the Matter of Leann Bennett*, FDIC-02-206e, FDIC Enforcement Decision and Order, 2004 WL 2185944, at \*2 (Aug. 16, 2004) (prohibition of bank employee who embezzled funds).

Under FDIC Rule 308.19(c)(1)<sup>12</sup>, Respondent's default constitutes consent to entry of an order of prohibition and a waiver of her right to contest the allegations in the Notice. *In the Matter of Lance E. Bauer*, at \*3; *In the Matter of Arlene Shih*, at \*4; *In the Matter of Leann Bennett*, at \*3.<sup>13</sup> Moreover, pursuant to FDIC Rule 308.39<sup>14</sup>, Respondent's failure to file exceptions to the Recommended Decision must be deemed a waiver of any objections to the Recommended Decision. *In the Matter of Lance E. Bauer*, at \*3; *In the Matter of Arlene Shih*, at \*4; *In the Matter of Leann Bennett*, at \*3.

In addition, Respondent's failure to request a hearing with respect to the CMP renders the Order to Pay included in the Notice a final and unappealable order under section 8(i)(2)(E)(ii) of

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<sup>12</sup>12 C.F.R. § 308.19(c)(1).

<sup>13</sup>This case is clearly distinguishable from *Amberg v. FDIC*, 934 F.2d 681 (5<sup>th</sup> Cir. 1991), and *Oberstar v. FDIC*, 987 F.2d 494 (8<sup>th</sup> Cir. 1992), in which default judgments were overturned. In those cases, the courts found that respondents' failure to comply with the FDIC Rules was merely technical and that the respondents had taken steps indicating an intention to contest the charges against them. Here, in contrast, Respondent has not shown any intention to contest the charges or otherwise comply with the procedural requirements. As such, a default judgment is appropriate.

<sup>14</sup>12 C.F.R. § 308.39.

the FDI Act<sup>15</sup> and FDIC Rule 308.19(c)(2).<sup>16</sup> Accordingly, the CMP assessed against Respondent in the amount of \$195,000.00 is due and payable immediately pursuant to FDIC Rule 308.133(a)(1).<sup>17</sup>

#### IV. CONCLUSION

After a thorough review of the uncontested record in this proceeding, the Board, for the reasons set forth above, adopts the Recommended Decision, incorporates herein the Findings of Fact and Conclusions of Law set forth in the Notice, and issues the following order implementing its decision.

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<sup>15</sup>12 U.S.C. § 1818(i)(2)(E)(ii).

<sup>16</sup>12 C.F.R. § 308.19(c)(2).

<sup>17</sup>12 C.F.R. § 308.133(a)(1).

## ORDER TO PROHIBIT

The Board, having considered the entire record of this proceeding, finds that Respondent Despina Skabardonis, formerly employed by First Central Savings Bank, Glen Cove, New York, engaged in violations of law, unsafe and unsound banking practices and breaches of her fiduciary duty for which she 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. Despina Skabardonis 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 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. Despina Skabardonis 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. Despina Skabardonis shall not violate any voting agreement 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. Despina Skabardonis 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 thirty (30) days from the date of its service upon Respondent.

SO ORDERED.

IT IS FURTHER ORDERED that copies of this Decision and Order to Prohibit From Further Participation shall be served on Despina Skabardonis, Enforcement Counsel, the ALJ, and the Superintendent of the New York State Department of Financial Services.

By direction of the Board of Directors.

Dated at Washington, D.C., this 21st day of June, 2016.

/s/ \_\_\_\_\_  
Robert E. Feldman  
Executive Secretary

(SEAL)

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