

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

_____)	
In the Matter of)	DECISION AND ORDER TO
)	PROHIBIT FROM FURTHER
ANTONIETA DE LA CRUZ,)	PARTICIPATION
Individually and as an institution-)	
affiliated party of)	
INTERNATIONAL BANK OF COMMERCE,)	FDIC-15-0006e
LAREDO, TEXAS)	
(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 April 27, 2018, of a Recommended Decision on Default (Recommended Decision or R.D.) by Administrative Law Judge C. Richard Miserendino (ALJ). The Recommended Decision includes a proposed order that would permanently bar Antonieta De La Cruz (Respondent) from the banking industry pursuant to section 8(e) of the Federal Deposit Insurance Act (FDI Act), unless the FDIC consents to her further participation. R.D. at 4-5.

This is an uncontested proceeding. The charges are set forth in the Notice of Intention to Prohibit from Further Participation (Notice). The record establishes that FDIC made multiple efforts to serve the Notice in accordance with the FDIC Rules of Practice and Procedure, 12 C.F.R. §§ 308.11(b) and 308.18(a) and that Respondent was personally served with the Notice on or about December 18, 2017. She did not, however, file an Answer to the charges in the Notice or respond to FDIC Enforcement Counsel's Motion for Entry of an Order of Default (Default Motion). The ALJ issued an Order to Show Cause directing Respondent to explain her failure to respond and why a default judgment should not be entered against her. R.D. at 1-2.

When Respondent failed to respond to the Order to Show Cause, the ALJ issued the Recommended Decision concluding that the uncontested facts supported an order of prohibition. Respondent filed no file exceptions to the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order to Prohibit against Respondent.¹

II. PROCEDURAL HISTORY AND BACKGROUND

On August 7, 2017, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act.² Respondent, an institution-affiliated party pursuant to section 3(u) of the FDI Act,³ was employed by the International Bank of Commerce (Bank) at its headquarters in Laredo, Texas from January 2013 until she was terminated in July 2014. Notice at ¶¶ 1-5.

Respondent's Misconduct

Respondent worked for lending officers and prepared loan documents for Bank officer signatures. The Notice alleges that while she was employed at the Bank between January 2013 and July 2014, Respondent misused her position by executing unauthorized loans and advances. Respondent diverted the proceeds for her own benefit and concealed her conduct by falsifying Bank records and forging documents. Notice at ¶¶ 8-10. The amount of loss suffered by the Bank as a result of Respondent's conduct was at least \$192,797.84.

¹ Although the U.S. Supreme Court's recent decision in *Lucia v. SEC*, No. 17-130 (June 21, 2018), invalidated an enforcement decision of the U. S. Securities and Exchange Commission because the administrative law judge who conducted the hearing was not properly appointed under the Appointments Clause of the U.S. Constitution, we need not address whether *Lucia* applies here. Respondent waived any objection she might have had to the proceeding based on the appointment of the FDIC's ALJ by failing to raise it before the agency. *See Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 878-79 (1991) (errors regarding appointment of agency officials are "nonjurisdictional"); *see also, e.g., In re DBC*, 545 F.3d 1373, 1377-81 (Fed. Cir. 2008) (holding that Appointments Clause issue was waived by failing to raise it before the agency).

² 12 U.S.C. § 1818(e).

³ *Id.* § 1813(u).

On January 4, 2016, based on the same misconduct alleged in the Notice, Respondent pled guilty to conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 1344 and 1349; bank fraud, in violation of 18 U.S.C. §§ 2 and 1344; and theft, embezzlement, or misapplication by a bank employee in violation of 18 U.S.C. § 656. On January 27, 2017, she was sentenced to 27 months imprisonment at a federal prison in Aliceville, Alabama and ordered to pay restitution in the amount of \$219,720.11. R.D. at 2; Notice at §§ 12-13.

FDIC Enforcement Proceeding

Service of the Notice

On August 14, 2017, the FDIC attempted to serve the Notice on Respondent by certified mail at the federal prison in Aliceville, Alabama where she served her sentence. R.D. at 1. Respondent did not respond to the Notice. After several attempts to serve the Notice by certified mail, the FDIC retained a private process server who personally served the Notice on Respondent on December 18, 2017 at an address in San Antonio, Texas that was on file with the federal prison. R.D. at 1.

Respondent's Default

The Notice directed Respondent to file an Answer within 20 days from the date of service, as required by 12 C.F.R. § 308.19. Notice at 5. Respondent failed to file an Answer. R.D. at 1. On March 7, 2018, the FDIC filed the Default Motion pursuant to 12 C.F.R. § 308.19. R.D. at 2. On April 2, 2018, the ALJ issued an Order to Show Cause directing that Respondent show good cause as to why a default judgment should not be granted. *Id.* Although both were properly served on Respondent, she failed to respond to either the Default Motion or the Order to Show Cause. R.D. at 1-2.

On April 27, 2018, the ALJ granted the FDIC's Default Motion and issued the Recommended Decision, which was served on Respondent by UPS Next Day air and via a process server. R.D. at 6. Respondent did not file exceptions to the Recommended Decision.

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. The record establishes that Respondent was personally served with the Notice but failed to file an Answer. Accordingly, under 12 C.F.R. § 308.19(c), Respondent has waived her right to contest the allegations in the Notice.

The Board also 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.⁴ R.D. at 2-4. Specifically, Respondent engaged in misconduct by exploiting her position at the Bank to execute unauthorized loans and advances, which were diverted to her own use. Respondent falsified Bank records and forged loan documents to hide her misconduct. R.D. at 2-3. The effects prong is met because Respondent's misconduct resulted in a direct financial benefit to her, and caused damage or other loss to the Bank in the amount of at least \$192,797.84 R.D. at 2. Respondent's conduct involved her engaging in multiple instances of deliberate deception and personal dishonesty, including deliberately executing unauthorized loans and advances; falsifying Bank records; and forging loan documents in order to conceal her misconduct.⁵ *Id.* Respondent's culpability is evident as she pled guilty to the felony offenses. The repeated nature of Respondent's misconduct over a period of 18 months also exhibits a willful and continuing disregard for the Bank's safety and soundness.

⁴12 U.S.C. § 1818(e)(1).

⁵*Id.*

The uncontested allegations establish ample evidence of unsafe and unsound banking practices warranting prohibition. See *Matter of Skabardonis*, FDIC-13-444e, 2016 WL 8201948, at *5-6 (May 10, 2016) (bank employee who embezzled funds from customer accounts); see also *Bauer*, FDIC-11-21e, 2012 WL 7152170, at *3 (Oct. 9, 2012) (bank employee who embezzled funds from bank engaged in dishonest behavior, unsafe and unsound banking practice and breach of fiduciary duty); *Matter of Bennett*, FDIC-02-206e, 2004 WL 2185944, at *2 (Aug. 16, 2004) (prohibiting bank employee who embezzled funds).

Because Respondent failed to file an Answer to the Notice, she waived her right to appear and contest the allegations in the Notice. 12 C.F.R. § 308.19(c)(1); see also *Bauer*, 2012 WL 7152170 at *3; *Matter of Shih*, FDIC-10-335e, 2011 WL 2574393, at *4 (May 10, 2011); *Bennett*, 2004 WL 2185944 at *3. Accordingly, the final order issued by the Board, which is based upon a failure to answer, “is deemed to be an order issued upon consent.” 12 C.F.R. § 308.19(c)(1). Moreover, pursuant to 12 C.F.R. § 308.39(b), Respondent’s failure to file exceptions to the Recommended Decision is deemed to be a waiver of any objections to the Recommended Decision. *Bauer*, 2012 WL 7152170 at *3; *Shih*, 2011 WL 2574393 at *4; *Bennett*, 2004 WL 2185944 at *3.

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, and issues the following order implementing its decision.

ORDER TO PROHIBIT

The Board, having considered the entire record of this proceeding, finds that Respondent Antonieta De La Cruz, formerly employed by International Bank of Commerce, Laredo, Texas, engaged in violations of law and unsafe and unsound banking practices 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. Antonieta De La Cruz 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. Antonieta De La Cruz 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. Antonieta De La Cruz shall not violate any voting agreement previously approved by the appropriate Federal banking agency 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. Antonieta De La Cruz 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 immediately.

SO ORDERED.

IT IS FURTHER ORDERED that copies of this Decision and Order to Prohibit from Further Participation shall be served on Antonieta De La Cruz, FDIC Enforcement Counsel, the ALJ, and the Commissioner of the Texas Department of Banking.

By order of the Board of Directors.

Dated at Washington, D.C. on July 19, 2018.

/s/

Valerie Best
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