

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of)	
)	
DAJANA SARAJLIC,)	DECISION AND ORDER TO
Individually and as an institution-)	PROHIBIT FROM FURTHER
affiliated party of)	PARTICIPATION
EVERETT CO-OPERATIVE BANK)	
EVERETT, MASSACHUSETTS)	FDIC-15-0138e
(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 17, 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 Dajana Sarajlic (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 8-9.

This is an uncontested proceeding. The charges are set forth in the FDIC's Notice of Intention to Prohibit from Further Participation (Notice). The record shows that Respondent was served with a notice of the charges against her at her last known address. Respondent did not file an Answer to the charges in the Notice, and Enforcement Counsel moved 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 exceptions to the Recommended Decision. For the reasons discussed

following, the Board adopts the Recommended Decision and issues an Order to Prohibit against Respondent.¹

II. PROCEDURAL HISTORY AND BACKGROUND

On August 22, 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 served as a customer service representative at Everett Co-Operative Bank (Bank) at its headquarters in Everett, Massachusetts from September 7, 2005, until her termination from employment on April 7, 2014. Notice at ¶ 1.

Respondent's Misconduct

The Notice alleges that between December 2013 and March 2014, Respondent misappropriated approximately \$35,271.60 through a series of unauthorized withdrawals from deposit accounts of deceased Bank customers. Notice at ¶ 2. Respondent retained all of the misappropriated funds for her personal benefit. *Id.* In early April 2014, Bank officials, after learning that one of the customers whose account had been debited had died five years earlier, began to investigate. On April 7, 2014, upon questioning from two Bank officers, Respondent admitted that she had misappropriated funds. That same day, she was terminated from the Bank. Notice at ¶¶ 40-42.

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).

FDIC Enforcement Proceeding

Service of the Notice

On or about August 24, 2017, the FDIC attempted to serve the Notice upon Respondent by Certified Mail—Return Receipt Requested, but was unsuccessful. R.D. at 1. The FDIC then enlisted the help of a Deputy in the Middlesex County Sheriff’s Office, who personally served Respondent on September 21, 2017. *Id.* Additionally, on August 24, 2017, a Notice of Designation and Order Requiring Electronic Filing was issued by the FDIC and served on Respondent by UPS Next Day Air. *Id.* The package was successfully delivered on August 28, 2017 according to UPS tracking information. *Id.*

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 ¶54. Respondent failed to file an Answer. R.D. at 1. On September 22, 2017, Respondent sent an email to the Office of Financial Institution Adjudication (OFIA) requesting “a hearing in regards to the notice” she received. R.D. at 1 & Exhibit B. The email, however, did not substantively respond to the charges against her and failed to comply with the service and filing requirements in the FDIC’s Uniform Rules of Practice and Procedure or the Notice of Designation and Order Requiring Electronic Filing. R.D. at 1. In a September 25, 2017, email response, OFIA advised Respondent that her request for a hearing was defective and provided her with copies of the FDIC Rules and Notice of Designation and Order Requiring Electronic Filing. R.D. at 1-2. Since then, Respondent has failed to contact OFIA or file an Answer to the Notice. R.D. at 2.

On February 28, 2018, the FDIC moved for entry of an order of default pursuant to 12 C.F.R. § 308.19. R.D. at 2. FDIC Enforcement Counsel served the Default Motion on

Respondent by electronic mail at the email address Respondent used to contact OFIA in September 2017. *Id.*

On March 16, 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.* The Order to Show Cause was served on Respondent by (1) UPS Next Day Air; (2) retaining a process server to effect service; and (3) electronic mail.⁴ *Id.* Respondent failed to respond to the Default Motion or the Order to Show Cause. *Id.*

On April 17, 2018, the ALJ granted the FDIC's Default Motion and issued the Recommended Decision, which was served on Respondent by certified mail. R.D. at 9,11. Respondent did not file exceptions to the Recommended Decision.

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. The Respondent was properly 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.⁵ R.D. at 8. Specifically, Respondent engaged in misconduct by exploiting her position at the Bank to misappropriate funds in deposit accounts owned by deceased account holders without permission. R.D. at 4-7. The effects prong is met

⁴ The ALJ notes that there were three unsuccessful attempts to deliver the Order to Show Cause to the Respondent, who was not available at the time of each of the deliveries attempted by UPS. R.D. at Exhibit D. Additionally, the process server's Affidavit of Service notes that they were unsuccessful in their attempt to serve Respondent three separate times on March 17, 2018. R.D. at Exhibit E. On the final attempt, the process server saw someone look out the window of the home, but that person did not answer the door to accept the Order. R.D. at Exhibit E. The process server then posted the Order to Show Cause on the front door. R.D. at Exhibit E.

⁵ 12 U.S.C. § 1818(e)(1).

because Respondent's misconduct resulted in a direct financial benefit to her of approximately \$35,271.60, and caused damage or other loss to the Bank in the amount of at least \$47,981.60, which included the funds the Bank used to reimburse the accounts and the amounts the Bank paid to consultants for forensic accounting services related to Respondent's misconduct. R.D. at 8. Respondent's culpability is evident as she engaged in multiple instances of deliberate deception and personal dishonesty, including deliberately withdrawing funds from Bank customer deposit accounts for her personal use; falsifying Bank records by forging signatures on Bank withdrawal documents; and making unauthorized entries in the Electronic Teller Platform System to remove an Account Lock-Out contrary to the Bank's policies, procedures, and practices.⁶ *Id.* The repeated nature of this misconduct over a period of time also exhibits a willful and continuing disregard for the Bank's safety and soundness.

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. §

⁶*Id.*

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 Dajana Sarajlic, formerly employed by Everett Co-Operative Bank, Everett, Massachusetts, engaged in 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. Dajana Sarajlic 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. Dajana Sarajlic 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. Dajana Sarajlic 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. Dajana Sarajlic 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 Dajana Sarajlic, FDIC Enforcement Counsel, the ALJ, and the Commissioner of the Massachusetts Division of Banks.

By order of the Board of Directors.

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

/s/

Valerie Best
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, F-1084
Washington, D.C. 20429
Email: vbest@fdic.gov Telephone: 202-898-3812