FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of ANAIZA MORALES Individually and as an institution-affiliated party of INTERNATIONAL BANK OF COMMERCE LAREDO, TEXAS (INSURED STATE NONMEMBER BANK)	)	DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION FDIC-15-0005e

I. INTRODUCTION

This matter is before the Board of Directors (Board) of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on April 23, 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 Anaiza Morales (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 5.

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 the Notice at her place of incarceration. Respondent did not file an Answer to the charges in the Notice, and Enforcement Counsel filed a 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 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] At all times pertinent to the charges, Respondent was an employee of International Bank of Commerce, Laredo, Texas (Bank). Notice at ¶¶ 1-5. As such, Respondent was an institution-affiliated party pursuant to section 3(u) of the FDI Act, as that term is defined in 12 U.S.C. § 1813(u).

Respondent's Misconduct

Respondent worked for lending officers and prepared loan documents for Bank officer signatures. The Notice alleges that from at least January 2013 to July 2014, Respondent misused her position at the Bank by executing unauthorized loans and advances. Respondent falsified Bank records and forged loan documents in order to execute and conceal her misconduct. Respondent diverted the proceeds of the unauthorized loans and advances for her own benefit. The amount of loss suffered by the Bank as a result of Respondent's misconduct was at least $192,797.84. R.D. at 2-3; Notice at ¶¶ 8-11.

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[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).

On February 3, 2016, Respondent pled guilty to conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 1344 and 1349, based on the unauthorized loans and advances. On January 27, 2017, she was sentenced to twenty-seven months imprisonment at a federal prison in Bryan, Texas and ordered to pay restitution in the amount of $219,720.11. R.D. at 3; Notice at §§ 12-13.

FDIC Enforcement Proceeding

Service of the Notice

On August 14, 2017, the FDIC served the Notice by certified mail to Respondent at the federal prison in Bryan, Texas. 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.[3] On March 7, 2018, the FDIC moved for the entry of an order of default pursuant to 12 C.F.R. § 308.19. On April 2, 2018, the ALJ issued an Order to Show Cause directing that Respondent show good cause why a default judgment should not be granted. Although both were properly served on Respondent, she failed to respond either to the Default Motion or the Order to Show Cause. R.D. at 1-2.

On April 23, 2018, the ALJ granted the FDIC's Default Motion and issued the Recommended Decision which was served on Respondent. *Id.* Respondent filed no exceptions to the Recommended Decision.

[3] Although Respondent sent a letter to Enforcement Counsel explaining that she could not appear at a hearing due to her incarceration, she did not file the letter with the ALJ at the Office of Financial Institutions Adjudication, and it contained no response to the substantive charges against her. Therefore, the letter cannot be construed as satisfying the requirement to file an answer. *See* 12 C.F.R. § 308.19(b).

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. The Board is satisfied that the Respondent was properly served by certified mail at her place of incarceration. R.D. at 1; *see* 12 C.F.R. § 308.11(b)(3); *Dusenbery v. United States*, 534 U.S. 161, 172-73 (2002) (holding that the mailing of service of process to a prisoner's place of incarceration is an appropriate method of service reasonably calculated to apprise of the pendency of an action). Accordingly, under 12 C.F.R. § 308.19(c), Respondent has waived her right to contest the allegations in the Notice.

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.[4] R.D. at 2-3. Specifically, Respondent engaged in misconduct, including violations of law and unsafe and unsound practices, 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 conceal her actions. R.D. at 2-3. The effects prong is met because Respondent received a direct financial benefit of at least $192,797.84, which also caused damage or other loss to the Bank. R.D. at 2-3. Respondent's culpability is evident as she pled guilty to the felony offenses of conspiracy to commit bank fraud in connection with the same misconduct. R.D. at 2; Notice ¶ 12. Respondent's conduct involved multiple instances of deliberate deception and personal dishonesty, thus exhibiting a willful and continuing disregard for the Bank's safety and soundness.

The uncontested allegations are supported by ample evidence of violations of law and unsafe and unsound banking practices warranting prohibition. *See Matter of Skabardonis,* FDIC-

[4] 12 U.S.C. § 1818(e)(1).

13-0444e, 2016 WL 8201948, at *1, *5 (May 10, 2016) (bank employee who embezzled funds from customer accounts and stole a customer's identity engaged in dishonest behavior, unsafe and unsound banking practices, and breach of fiduciary duty); *see also Matter of 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 previously, adopts the Recommended Decision subject to the clarifications set forth herein, and issues the following order of prohibition.

ORDER TO PROHIBIT

The Board, having considered the entire record of this proceeding, finds that Respondent Anaiza Morales, 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. Anaiza Morales 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. Anaiza Morales 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. Anaiza Morales 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. Anaiza Morales 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 Anaiza Morales, 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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