FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of LAUREN MELISSA MCDIVITT, as an institution-affiliated party of INSOUTH BANK BROWNSVILLE, TENNESSEE (INSURED STATE MEMBER BANK)	NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND NOTICE OF HEARING FDIC-17-0042e

The Federal Deposit Insurance Corporation ("FDIC") has determined that LAUREN MELISSA MCDIVITT ("Respondent"), an institution-affiliated party of INSOUTH BANK, Brownsville, Tennessee ("Bank"), has directly or indirectly participated or engaged in violations of laws and regulations, unsafe or unsound banking practices, and/or acts, omissions, or practices that constitute breaches of her fiduciary duties as a management employee of the Bank; that the Bank suffered financial loss and Respondent received a financial gain or other benefits as a result of such violations, practices and/or breaches of fiduciary duty; and that such violations, practices, and breaches of fiduciary duties demonstrate Respondent's personal dishonesty or willful or continuing disregard for the safety or soundness of the Bank.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against Respondent pursuant to the provisions of 12 U.S.C. §1818(e), prohibiting Respondent from further participation in the conduct of the affairs of the Bank, or 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 12 U.S.C. §1818(e)(7)(D).

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NOTICE OF HEARING ("NOTICE ") pursuant to the provisions of 12 U.S.C. §1818(e), and the FDIC's Rules of Practice and Procedure ("FDIC Rules") 12 C.F.R. Part 308, and alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

1. At all times pertinent to the charges herein, the Bank was a corporation existing and doing business under the laws of the State of Tennessee, having its principal place of business in Brownsville, Tennessee.

2. At all times pertinent to the charges herein, the Bank was an insured state nonmember bank, as defined in 12 U.S.C. §1813(e) and as such is subject to the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §1811 *et seq*., the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of Tennessee.[1]

3. At all times pertinent to the charges herein, the Respondent was an employee of the Bank. She was hired by the Bank in 1995, and remained employed by the Bank until December 29, 2016.

4. During her employment with the Bank, Respondent served in various positions and capacities including Branch Head Teller, Customer Service Supervisor, and the Branch Administrator or Manager of the Atoka, Tennessee branch of the Bank.

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1. Effective as of April 16, 2018, the Bank became a member of the Federal Reserve System. This change in the Bank's status has no effect on FDIC's jurisdiction over Respondent.

5. 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 the purposes of 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

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

Description of Misconduct

7. On or about December 29, 2017, while Respondent was away from the Bank on vacation, two customers came into the Bank's Atoka, Tennessee branch to obtain a year end print-out of their account. The customers immediately noticed that their account balance was not correct.

8. The Bank initiated an investigation which revealed several unauthorized cash withdrawals from the account which had been processed by the Respondent, without the knowledge or consent of the customers.

9. The Bank widened its investigation to discover additional withdrawals and transfers from this and other accounts, all of which had been processed by Respondent.

10. Also on December 29, 2017, the Bank attempted to contact Respondent by telephone, but could not reach her. In a text message to Respondent, the Bank asked her to return to the Bank to "sort everything out." Respondent replied by text, stating: "Unfortunately there isn't anything to sort out. It is what it seems and it is not the only one. I have lost count over the years...I can't apologize enough."

11. Respondent then resigned from her employment with the Bank, and stated that she would put her keys and her company cell phone in the Bank's after-hours deposit box.

12. On December 30, 2017, the Bank began a more comprehensive audit which ultimately revealed that since 2006 at least $888,470 had been withdrawn or otherwise

transferred by Respondent without the customers' authorization or consent, in approximately 334 transactions involving at least 14 different customers' accounts.

13. The Bank's audit report also revealed that approximately $291,056 of the total funds involved were withdrawn or transferred by Respondent between August 1, 2013 and December 29, 2016, or within the five year statute of limitations imposed by 28 U.S.C. §2462.

14. The $291,056 in transfers or withdrawals made by Respondent within the past five years were accomplished through approximately 105 transactions, involving at least 13 different customers' accounts, all without the customers' authorization, knowledge or consent.

15. The Bank's investigation also revealed that Respondent transferred the funds she had withdrawn without authorization, and deposited those funds into accounts owned by her mother, or into fictitious accounts that Respondent had created in her mother's name, without her mother's knowledge or consent. The fictitious accounts were actually owned and controlled by Respondent.

16. Respondent then withdrew the deposited funds, in cash or by check card, thereby converting the embezzled funds to Respondent's own personal use.

17. The Bank reimbursed any losses that had been incurred by the customers, plus accrued interest, causing a loss to the Bank of approximately $888,470.

Background

18. In 2006, Respondent was promoted to the position of Branch Head Teller and Customer Service Supervisor which provided her the opportunities to exploit and violate her management position with the Bank by, among other things, initiating electronic account statements for customers or putting customer account statements "on hold" without the customers' knowledge or consent.

19. Respondent was also promoted to the position of "Branch Administrator," the *defacto* branch manager, a position which increased her discretion and authority within the Bank.

20. From 2006 through 2016, Respondent placed some customer account statements on hold without the customers' knowledge or consent, created fraudulent account statements to replace the statements that she had placed on hold, and inflated the interest rates on the fraudulent statements to discourage the customers from closing or moving the accounts.

21. The fraudulent statements created by Respondent reflected accrued interest at unauthorized rates, and did not reflect Respondent's unauthorized withdrawals or transfers.

22. Respondent also made internal transfers between accounts of various customers to conceal or cover for amounts she had taken from one customer's account and transferred to other customers' accounts, without authorization from the customers.

23. As the Branch Head Teller, Customer Service Supervisor or Branch Administrator, it was not unusual for Respondent to personally meet with customers to address and try to resolve any problems or issues that arose with customers' accounts, thereby providing Respondent with additional opportunities to take advantage of her position of trust and confidence with the Bank and to conceal her wrongful conduct.

24. On January 6, 2017, Respondent confessed to the local police that she had wrongfully taken the funds, that she was not certain of the total amount involved but the amount probably exceeded $500,000, and that she could not recall the names of all of the customers involved.

25. Respondent stated that there were files on Respondent's computer that would reflect the customers' names, accounts, amounts, and the false account statements she had sent to the customers.

Criminal Prosecution and Judgment

26. On July 31, 2017, a criminal Information was filed in the United States District Court for the Western District of Tennessee, Case 2:17-cr-20242-SHL, asserting one count of Bank Embezzlement in violation of 18 U.S.C. §656.

27. The Information is based on the same essential facts as are described in paragraphs 7 through 25 above, including that Respondent was employed by InSouth Bank, that between 2006 and December 2016, with intent to injure and defraud InSouth Bank, Respondent did "embezzle and willfully misapply moneys in the amount of $888,470 which said moneys belonged to and had been intrusted (sic) to the custody and care of InSouth [Bank]."

28. On August 28, 2017, Respondent signed a Plea Agreement ("Plea Agreement"), whereby, among other things, Respondent plead guilty to the one-count Information which charged her with embezzlement and misapplication of $888,470, in violation of 18 U.S.C. §656, and Respondent agreed to pay restitution to InSouth Bank as well as any other identifiable victims who may have suffered losses as a result of Respondent's criminal conduct.

29. By signing the Plea Agreement, Respondent also agreed that she would not "become or continue serving as an officer, director, employee, or institution-affiliated party…or participate in any manner in the conduct of the affairs of any institution or agency" as specified in 12 U.S.C. §1818(e)(7)(A), without the prior written approval of the appropriate federal financial institution regulatory agency as defined in 12 U.S.C. §1818(e)(7)(D).

30. On December 13, 2017, a Judgment was filed in the above referenced criminal case adjudicating Respondent guilty of Bank Embezzlement, in violation of 18 U.S.C. §656; sentencing Respondent to thirty-three months incarceration, plus probation for three years; and ordering Respondent to pay $947,951 in restitution to the Bank.

CONCLUSIONS OF LAW

31. By means of the Respondent's foregoing acts, omissions and/or practices, Respondent has violated laws, rules or regulations as described above.

32. 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.

33. As a result of the Respondent's foregoing acts, omissions and/or practices, the Respondent has breached her fiduciary duties owed to the Bank.

34. As a result of the violations, practices or breaches as specified in paragraphs 7 through 25 above, the Bank suffered a financial loss or other damages of at least $291,056 within the past five years.

35. As a result of the violations, practices or breaches as specified in paragraphs 7 through 25 above, Respondent received financial gains or other benefits of at least $291,056 within the past five years.

36. The acts, omissions and/or practices of the Respondent as described in paragraphs 7 through 25 above, evidence the Respondent's personal dishonesty and/or demonstrate a willful or continuing disregard for the safety or soundness of the Bank.

PRAYER FOR ORDER OF PROHIBITION

Based on the Respondent's acts, omissions, practices and breaches described above, the FDIC requests an Order to Prohibit Respondent from participating, in any manner, in the conduct of the affairs of the Bank, or any other insured depository institution, organization or agency specified in 12 U.S.C. §1818(e)(7)(A), without the prior written consent of the FDIC and such other appropriate Federal financial institutions regulatory agency, as defined in 12 U.S.C. §1818(e)(7)(D).

NOTICE OF HEARING

Notice is hereby given that a hearing shall commence sixty (60) days from the date of service of this NOTICE upon the Respondent, or on such other date as may be set by the Administrative Law Judge assigned to hear this matter, in Jackson, Tennessee, or at such other place as the parties to this proceeding and the Administrative Law Judge may agree, for the purpose of taking evidence on the charges described herein, in order to determine whether a permanent order should be issued to prohibit the Respondent from further participation in the conduct of the affairs of the Bank or any insured depository institution or organization enumerated in 12 U.S.C. § 1818(e)(7)(A), without the prior permission of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. §1818(e)(7)(D).

The hearing will be public, and in all respects will be conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811 – 1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC Rules, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge appointed by the Office of Financial Institution Adjudication ("OFIA") pursuant to 5 U.S.C. §3105. The exact time and precise location of the hearing will be determined by the Administrative Law Judge.

Respondent is hereby directed to file an Answer to this NOTICE within twenty (20) days from the date of service of the NOTICE, as provided by 12 C.F.R. 308.19. An original and one copy of all papers filed in this proceeding shall be served upon 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 OFIA at ofia@fdic.gov. Copies of all papers filed in this proceeding shall also be served upon: (a) the

Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (F-1058), Washington, D.C. 20429; (b) A.T. Dill, III, Assistant General Counsel, Federal Deposit Insurance Corporation, 550 17th Street, N.W., MB 3030, Washington, D.C. 20429; and (c) Stephen C. Zachary, Regional Counsel, Federal Deposit Insurance Corporation, 1601 Bryan Street, Dallas, Texas 75201.

Failure to file an Answer within the 20-day time period described above shall constitute a waiver of the right to appear and contest the allegations contained in this NOTICE, and shall, upon the FDIC's motion, cause the Administrative Law Judge and/or the FDIC to find the facts in this NOTICE to be true as alleged, and to issue appropriate Orders.

Pursuant to delegated authority.

Dated this 20th day of July, 2018.

/s/
Patricia A. Colohan
Associate Director
Division of Risk Management Supervision