

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of)

JEFFREY S. FORTNEY,)

individually, and as a former)
institution-affiliated party)
of)

COMMERCIAL BANK OF OAK GROVE,)
MO.)

OAK GROVE, MISSOURI)

(INSURED STATE NONMEMBER BANK))

RESPONDENT'S NMLS UI# N/A)

NOTICE OF CHARGES FOR AN ORDER
TO CEASE AND DESIST
FDIC-18-0094b

and

NOTICE OF ASSESSMENT AND
ORDER TO PAY
FDIC-18-0050k

The Federal Deposit Insurance Corporation (FDIC) has determined that Jeffrey S. Fortney (Respondent) was President, Cashier, and a Director of Commercial Bank of Oak Grove, MO., Oak Grove, Missouri (Bank) and, as such, an institution-affiliated party of the Bank. The FDIC has further determined that Respondent engaged in unsafe or unsound practices and acts, omissions, or practices that constitute breaches of his fiduciary duty to the Bank; that Respondent recklessly engaged in unsafe or unsound practices; and that the recklessly unsafe or unsound practices and breaches of fiduciary duty were part of a pattern of misconduct.

The FDIC therefore institutes this combined proceeding to:

(1) determine whether an order to cease and desist should be issued against Respondent under 12 U.S.C. § 1818(b)(1); and

(2) assess a civil money penalty against Respondent under § 1818(i)(2).

The FDIC issues this NOTICE OF CHARGES FOR AN ORDER TO CEASE AND DESIST (NOTICE OF CHARGES) under 12 U.S.C. § 1818(b) and 12 C.F.R. Part 308, and this NOTICE OF ASSESSMENT and ORDER TO PAY under 12 U.S.C. § 1818(i)(2) and 12 C.F.R. Part 308. In support thereof, the FDIC alleges as follows:

NOTICE OF CHARGES

Jurisdiction

1. At all relevant times, the Bank was a corporation existing and doing business under the laws of the State of Missouri, having its principal place of business in Oak Grove, Missouri.
2. At all relevant times, the Bank was an insured State nonmember bank, subject to the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1831aa, 12 C.F.R. Part 308, and the laws of the State of Missouri.
3. In 2001, Respondent began his employment with the Bank as Cashier. On or about January 12, 2010, Respondent was appointed President, Cashier, and a Director of the Bank and continued to serve in those capacities at all relevant times.
4. At all relevant times, Respondent was an “institution-affiliated party” of the Bank under 12 U.S.C. § 1813(u) and for purposes of 12 U.S.C. §§ 1818(b)(1) and 1818(i)(2).
5. At all relevant times, the FDIC was the “appropriate Federal banking agency” of the Bank under 12 U.S.C. § 1813(q).
6. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

Findings of Fact

7. Respondent engaged in unsafe or unsound practices and breached his fiduciary duties to the Bank by failing to properly manage and reconcile the Bank's correspondent account, misstating the balance in the correspondent account and the Bank's capital in the Bank's records, and providing altered documents to examiners in order to conceal the failures.

8. Respondent became President and Cashier of the Bank in 2010. As President, he served as the senior management officer responsible for the Bank's daily operations. Respondent abruptly left the Bank premises on October 31, 2016 during an examination conducted by the Missouri Division of Finance (MDOF). He did not return, and he resigned at the Bank's request on November 21, 2016.

9. The Bank maintained a correspondent account with UMB Bank, National Association (UMB).¹

10. At all relevant times, Respondent was solely responsible for managing, reviewing, and reconciling the Bank's correspondent account with UMB (UMB account).

11. After Respondent left the Bank premises on October 31, 2016, other Bank officers searched his office and found altered UMB account statements in Respondent's office bearing various dates from December 20, 2011 through September 30, 2015.

12. The statements had been altered by changing the beginning and ending balances.

¹ "Banks use correspondent banks to provide certain services that can be performed more economically or efficiently because of the correspondent bank's size or geographic location. ... [C]orrespondent banks can act as clearinghouses, facilitating the transfer of checks and other cash items among their correspondent banking customers. Besides clearing local and out-of-state cash items, correspondent banks also perform such services as processing daily cash letters, funding over-line loan requests for customers, performing information technology (IT) and payroll services, exchanging foreign currency, and providing financial advice in specialized areas." *Introduction to Bank Accounting*, Correspondent Banking Services, Federal Deposit Insurance Corporation, June 2008, p. 6.

13. Upon further investigation, Bank management determined that the UMB account balance in the Bank's general ledger (G/L) was significantly greater than the actual balance of the UMB account.

14. Despite being solely responsible for managing, reviewing, and reconciling the UMB account, Respondent repeatedly failed to reconcile the UMB account entry on the Bank's G/L with the actual balance of the UMB account.

15. As a result of Respondent's failures, the Bank found that its UMB G/L account was out of balance by approximately \$250,211.48 as of December 31, 2012; \$444,205.36 as of December 31, 2013; \$449,230.53 as of December 31, 2014; and \$469,434.04 as of September 30, 2016.

16. To bring the correspondent account back into balance, the Bank charged off \$469,434.04 on January 9, 2017 and an additional \$47,628.42 on June 23, 2017.

17. Because the G/L balance of the Bank's UMB account was inaccurate, the Bank's capital was routinely misstated in the Bank's records.

18. Examiners determined from reviewing examination work papers that, to conceal the misstatements on the Bank's G/L, Respondent had provided altered UMB documents to bank examiners during two bank examinations.

19. Respondent provided an altered UMB account statement, dated March 31, 2014, and an altered verification letter from UMB, dated May 14, 2014, to State examiners during the June 2, 2014 MDOF examination, which showed that the Bank had \$439,930.82 more on account at UMB than the actual balance.

20. Respondent provided an altered UMB account statement, dated September 30, 2015, to FDIC examiners during the November 9, 2015 examination, which showed that the Bank had \$554,945.11 more on account at UMB than the actual balance.

Conclusions of Law

21. Respondent, beginning in at least 2013 and continuing through September of 2016, engaged in unsafe or unsound practices by:

- (a) failing to properly manage, review, and reconcile the Bank's UMB account;
- (b) misstating the balance of the UMB account and the Bank's capital in the Bank's records; and
- (c) providing altered documents to bank examiners in order to conceal his failure to properly manage, review, and reconcile the UMB account.

22. Based on the Findings of Fact and Conclusions of Law in support of this NOTICE OF CHARGES, there are sufficient grounds for the issuance of an Order to Cease and Desist against Respondent under 12 U.S.C. § 1818(b)(1).

Prayer for Order to Cease and Desist

The FDIC prays that an Order to Cease and Desist under 12 U.S.C. § 1818(b)(1) be issued against Respondent in substantially the form attached hereto as Attachment A, requiring Respondent to: (1) cease and desist from the unsafe or unsound practices alleged above, and (2) take affirmative action to avoid the recurrence of the unsafe or unsound practices in the future.

ACTION REQUIRED TO CONTEST THE NOTICE OF CHARGES

Under 12 C.F.R. § 308.19, if Respondent wants to contest this NOTICE OF CHARGES, Respondent must file an Answer to the allegations in this NOTICE OF CHARGES within twenty (20) calendar days of service of this NOTICE OF CHARGES. Failure to file an Answer to the

allegations in this NOTICE OF CHARGES within the 20-day period shall result in a waiver of Respondent's right to appear and contest this NOTICE OF CHARGES and may result in a default order under 12 C.F.R. § 308.19(c). If a default order is issued, the administrative law judge (ALJ) shall recommend to the FDIC Board of Directors that Respondent's failure to submit an Answer to the allegations in this NOTICE OF CHARGES be deemed a consent to an Order to Cease and Desist based on the Findings of Fact and Conclusions of Law above in support of this NOTICE OF CHARGES.

NOTICE OF ASSESSMENT

Jurisdiction

23. Paragraphs 1 through 6 are re-alleged and incorporated herein by reference.

Findings of Fact

24. Paragraphs 7 through 20 are re-alleged and incorporated herein by reference.

Conclusions of Law

25. By failing to properly manage, review, and reconcile the Bank's UMB account and misstating the balance of the UMB account and the Bank's capital in the Bank's records, Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

26. By failing to properly manage, review, and reconcile the Bank's UMB account, misstating the balance of the UMB account and the Bank's capital in the Bank's records, and providing altered documents to bank examiners, Respondent breached his fiduciary duties to the Bank.

27. Respondent's recklessly unsafe or unsound practices and breaches of fiduciary duties, conducted on multiple occasions over a period of years, were part of a pattern of misconduct.

ORDER TO PAY

Based on the Findings of Fact and Conclusions of Law in support of this NOTICE OF ASSESSMENT, the FDIC concluded that Respondent's reckless engagement in unsafe or unsound practices and breaches of fiduciary duty merit a penalty under 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalty with respect to the size of Respondent's financial resources, the gravity of Respondent's misconduct, Respondent's history of previous misconduct, if any, and such other matters as justice may require, it is:

ORDERED that, by reason of Respondent's recklessly unsafe or unsound practices and breaches of fiduciary duty set forth in this NOTICE OF ASSESSMENT, a penalty in the amount of \$15,000.00 is hereby assessed against Jeffrey S. Fortney under 12 U.S.C. § 1818(i)(2) (ORDER TO PAY); and it is

FURTHER ORDERED that the effective date of the ORDER TO PAY is stayed until twenty (20) calendar days after the date of service of this NOTICE OF ASSESSMENT and ORDER TO PAY.

**ACTION REQUIRED TO CONTEST THE NOTICE
OF ASSESSMENT AND ORDER TO PAY**

Under 12 U.S.C. § 1818(i)(2)(H) and 12 C.F.R. § 308.19, if Respondent wants to contest this NOTICE OF ASSESSMENT and ORDER TO PAY, within twenty (20) calendar days of service of this NOTICE OF ASSESSMENT and ORDER TO PAY, Respondent must file **both**:

- (1) a Request for Hearing on this NOTICE OF ASSESSMENT; **and**
- (2) an Answer to the allegations in this NOTICE OF ASSESSMENT.

Filing an Answer to the allegations in this NOTICE OF ASSESSMENT, or filing an Answer to the allegations in the companion NOTICE OF CHARGES, without filing a clear and unambiguous Request for a Hearing on this NOTICE OF ASSESSMENT will not preserve Respondent's right to contest this NOTICE OF ASSESSMENT and ORDER TO PAY.

If Respondent fails to file a Request for Hearing on this NOTICE OF ASSESSMENT within twenty (20) calendar days of service, the penalty assessed against Respondent under the ORDER TO PAY will be final and unappealable under 12 U.S.C. § 1818(i)(2)(E)(ii) and 12 C.F.R. § 308.19(c)(2) and shall be paid within sixty (60) calendar days after the date of service of this NOTICE OF ASSESSMENT.

PLACE AND MANNER OF FILING

All documents filed in these proceedings must be filed with the Office of Financial Institution Adjudication (OFIA), ofia@fdic.gov, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA, 22226-3500, in the manner specified under 12 C.F.R. § 308.10. Also, copies of all documents filed in these proceedings shall be served upon: the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Room F-1058, Washington, D.C. 20429; A. T. Dill III, Assistant General Counsel, Enforcement Section, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and Edward G. Lanning, Regional Counsel, Federal Deposit Insurance Corporation, Kansas City Regional Office, 1100 Walnut Street, Suite 2100, Kansas City, Missouri 64106.

OPPORTUNITY FOR HEARING

Any hearing requested will be held before an ALJ assigned by OFIA under 5 U.S.C. § 3105. The hearing will be open to the public, unless the FDIC determines that an open hearing

would be contrary to the public interest, and in all respects will be conducted in compliance with the provisions 12 U.S.C. §§ 1811-1831aa and 12 C.F.R. Part 308. The hearing will be held in Kansas City, Missouri within sixty (60) calendar days from the date of service of this NOTICE OF CHARGES on Respondent, or on such other date and at such other place designated by the ALJ.

The purpose of the hearing will be for the taking of evidence on the allegations in this NOTICE OF CHARGES to determine whether an Order to Cease and Desist should be issued against Respondent in substantially the form attached hereto as Attachment A.

If Respondent timely files (1) a Request for Hearing on this NOTICE OF ASSESSMENT and (2) an Answer to the allegations in this NOTICE OF ASSESSMENT, evidence on the allegations shall also be taken at the hearing to determine whether the ORDER TO PAY assessed against Respondent should be sustained. The hearing on this NOTICE OF ASSESSMENT may be consolidated with the hearing on this NOTICE OF CHARGES and evidence may be taken at the hearing on the allegations in both Notices.

Pursuant to delegated authority.

Dated this 25th day of October 2018.

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