

**FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.**

In the Matter of:)	
)	
JEFFREY S. FORTNEY, Individually, and)	DECISION AND ORDER TO
as a Former Institution-Affiliated Party of)	CEASE AND DESIST
)	
COMMERCIAL BANK OF OAK GROVE,)	FDIC-18-0094b
MO, OAK GROVE, MISSOURI)	FDIC-18-0050k
(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 of a Recommended Decision on Default (“Recommended Decision or R.D.”) by Administrative Law Judge Christopher B. McNeil (“ALJ”). The Recommended Decision includes a proposed order requiring Jeffrey S. Fortney (“Respondent”) to cease and desist unsafe or unsound practices pursuant to section 8(b) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1818(b).

This is an uncontested proceeding. The charges are set forth in the FDIC’s Notice of Charges for an Order to Cease and Desist and Notice of Assessment and Order to Pay (“Notice”). The record shows that Respondent was personally served with the Notice at his residence. Respondent, however, filed no Answer to the Notice, and FDIC Enforcement Counsel moved for entry of an order of default. The ALJ issued an Order to Show Cause directing Respondent to explain his failure to respond and why a default judgment should not be entered against him. R.D. 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 to cease and desist and the civil money penalty (“CMP”) sought. Respondent filed no exceptions to

the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order to Cease and Desist.

II. BACKGROUND

On October 25, 2018, the FDIC issued the Notice against Respondent pursuant to sections 8(b) and 8(i) of the FDI Act.¹ At all times pertinent to the charges, Respondent was employed by the Commercial Bank of Oak Grove, MO. (“Bank”), Oak Grove, Missouri, as President, Cashier, and Director. R.D. 7. As such, Respondent was an institution-affiliated party, as that term is defined in section 3(u) of the FDI Act.² R.D. 7.

Respondent’s Misconduct

Respondent became President and Cashier of the Bank in 2010. *Id.* at 8. As President, he served as the senior management officer for the Bank’s daily operations, including managing, reviewing and reconciling the Bank’s correspondent account. 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 resigned at the Bank’s request on November 21, 2016. *Id.*

After his departure, other Bank officers searched Respondent’s office and found altered account statements for the Bank’s correspondent account at UMB Bank, National Association (“UMB”). *Id.* The statements had been altered by changing beginning and ending balances. 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. *Id.*

The Notice alleges that 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. R.D. 7. Because of Respondent’s failures, the Bank found that its UMB

¹ 12 U.S.C. § 1818(b), (i).

² *Id.* § 1813(u).

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

Examiners determined from reviewing examination work papers that, to conceal the misstatements on the Bank's G/L, Respondent also had provided altered UMB documents to bank examiners during two bank examinations. Respondent provided an altered UMB account statement, dated March 31, 2014, and an altered verification letter from UMB, dated May 14, 2014, to MDOF 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. *Id.* 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. *Id.*

FDIC Enforcement Proceeding

On November 29, 2018, the FDIC, via a process server, personally served the Notice on Respondent at his residence. R.D. 5.

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(a). Notice 5-6; R.D. 3. Respondent failed to file an answer. R.D. 4. The Notice also directed Respondent to file an answer and request a hearing within 20 days from the date of service if he wanted to contest the Notice of Assessment and Order to Pay. Notice 7-8; R.D. 3. Respondent failed to file an answer or request a hearing.

The FDIC moved for entry of an order of default pursuant to 12 C.F.R. § 308.19(c). R.D.

5. On January 28, 2019, the ALJ issued an Order to Show Cause directing Respondent to show good cause why a default judgment should not be granted. *Id.* at 1-2. Respondent failed to respond to the Order to Show Cause. *Id.* at 2.

On February 19, 2019, the ALJ granted the FDIC's Default Motion and issued the Recommended Decision. Respondent filed no exceptions to the Recommended Decision.

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. The ALJ found and the record reflects that Respondent was properly served by personal service at his residence. R.D. 5; *see* 12 C.F.R. § 308.11(c)(2). Respondent did not respond to the Notice. Under 12 C.F.R. § 308.19(c)(1), Respondent's failure to file an answer waived his right to contest the allegations in the Notice. Accordingly, a default judgment is appropriate.

The Board further agrees with the ALJ's finding that the undisputed facts in the Notice support the entry of a cease and desist order under section 8(b) of the FDI Act³ because Respondent engaged in unsafe or unsound practices in conducting the business of the Bank. R.D. 7-9. An unsafe or unsound banking practice is one that is "contrary to generally accepted standards of prudent operation" whose consequences are an "abnormal risk of loss or harm" to a bank. *Michael v. FDIC*, 687 F.3d 337, 352 (7th Cir. 2012) (citation omitted); *see also Matter of Seidman*, 37 F.3d 911, 932 (3d Cir. 1994) ("imprudent act" posing an "abnormal risk of [financial] loss or damage to an institution, its shareholders, or the agencies administering the insurance funds" is an unsafe and unsound practice (citation omitted)). Respondent's failure to properly manage and reconcile the Bank's correspondent account, which led to inaccurate reporting of the Bank's capital in the Bank's records, Respondent's alteration of documents

³12 U.S.C. § 1818(b)(1).

provided to examiners, and charge-offs of over \$500,000 to bring the correspondent account back into balance, clearly meets this standard.

In addition, Respondent's failure to request a hearing with respect to the CMP renders the Order to Pay included in the Notice a final and unappealable order under both the FDI Act and FDIC Regulations. 12 U.S.C. § 1818(i)(2); 12 C.F.R. § 308.19(c)(2). Based on the serious nature of the charges in the Notice, which Respondent has not challenged, the Board agrees with the ALJ that a CMP is warranted and concludes that the \$15,000 assessment is reasonable.

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 CEASE AND DESIST

The Respondent, Jeffrey S. Fortney, is hereby ordered to cease and desist from engaging in unsafe or unsound banking practices and to take affirmative action, as follows:

1. In the event that Respondent's duties as an employee of an insured depository institution involve the administration or reconciliation of any accounts held by the institution, Respondent shall: (a) ensure that all accounts are properly and accurately administered and reconciled on a timely basis; (b) ensure that an accurate report of the account balances, transactions, and reconciliations are presented to the institution's Chief Executive Officer, Chief Financial Officer, or a designee; and (c) communicate accurate information about all accounts, including known deficiencies, to regulators, auditors, management, the institution's Board of Directors, and all other relevant parties.

2. In the event Respondent's duties as an employee of an insured depository institution involve creating or compiling the institution's records or reports, Respondent shall: (a) ensure that all of the records and reports are accurate; and (b) provide the reports and records for review to the institution's Chief Executive Officer, Chief Financial Officer, or a designee.

3. Whenever Respondent is employed by an insured depository institution or otherwise becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall: (a) not commit or participate in any unsafe or unsound practice; and (b) become familiar with, and adhere to, the written policies and procedures of the institution with which Respondent is or may become affiliated. In the event that Respondent is affiliated with an insured depository institution with written policies that are more stringent than the provisions of the Order, Respondent shall adhere to the written policies and procedures of the institution.

4. For any insured depository institution of which Respondent is an institution-affiliated party, Respondent shall, within ten (10) calendar days of the effective date of the Order, provide

a copy of the Order to: (a) the Chairman of the Board of Directors; or (b) the senior executive manager who has supervisory authority over Respondent.

5. Before accepting any position that would cause Respondent to become an institution-affiliated party, Respondent shall provide a copy of the Order to: (a) the Chairman of the Board of Directors of the insured depository institution; or (b) the senior executive manager of the insured depository institution who has hiring authority in regard to Respondent's employment or who is expected to have supervisory authority over Respondent.

6. Within ten (10) calendar days of satisfying the requirements of paragraphs 4 or 5, Respondent shall provide a written certification of Respondent's compliance to the Regional Director of the FDIC's Kansas City Regional Office.

7. If Respondent believes that the provisions of the Order have been fulfilled, Respondent may request that the Order be terminated by submitting a letter with supporting documentary evidence to the Regional Director of the FDIC's Kansas City Regional Office. The FDIC will consider the submission and may request such additional information or documentation as it, in its sole discretion, may deem necessary in order to review the submission. The decision to deny the request and retain the Order as is, modify it, or terminate it is at the FDIC's sole discretion.

8. The Order is effective upon issuance. The provisions of the Order remain effective and enforceable for a period of five (5) years except to the extent that any provision is modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED that copies of this Decision and Order shall be served on Jeffrey S. Fortney, FDIC Enforcement Counsel, the ALJ, and the Commissioner of the Missouri Division of Finance.

By direction of the Board of Directors.

Dated at Washington, D.C. this 20th day of August, 2019.

/s/

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation

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