UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

In the Matter of CHRISTOPHER ASHTON, A former institution-affiliated party of BARCLAYS BANK PLC London, England, a foreign Bank	)	Docket Nos. 16-015-E-I 16-015-CMP-I

FINAL DECISION

This Final Decision resolves administrative proceedings pursuant to the Federal Deposit Insurance Act ("the FDI Act") initiated by the Board of Governors of the Federal Reserve System (the "Board") against Christopher Ashton ("Respondent"), a former institution-affiliated party of Barclays Bank PLC (the "Bank"). The two actions seek relief in the form of an assessment of a civil money penalty in the amount of $1,200,000 and an order of prohibition that would prohibit Respondent from participating in any manner in the affairs of an insured depository institution without the approval of the appropriate supervisory agencies.

The proceeding comes to the Board in the form of a Recommended Decision on Default ("Recommended Decision") by Administrative Law Judge C. Richard Miserendino (the "ALJ"). Upon review of the Recommended Decision and the administrative record, the Board declares the Notice of Assessment of a Civil Money Penalty, issued on June 30, 2016, to constitute a final order of assessment, and issues the attached Order of Prohibition against Respondent.

I. STATEMENT OF THE CASE

A. Statutory and Regulatory Framework

The Board's regulations governing administrative hearings specify that if a respondent does not file an answer within 20 days of service of the notice of intent to prohibit, the respondent is deemed to have waived the right to appear and contest the allegations in the notice. 12 C.F.R. § 263.19(c)(1). Upon motion by enforcement counsel for entry of an order of default, and a finding by the administrative law judge that "no good cause has been shown for failure to file a timely answer," the regulations direct the administrative law judge to file with the Board a recommended decision containing the findings and relief sought in the notice. 12 C.F.R. § 263.19(c)(1). Any final order issued by the Board based on the failure to answer is deemed to have been issued upon consent. *Id.*

In a civil money penalty case, a respondent seeking to contest the charges must not only file an answer, but must also file a request for a hearing within 20 days of the issuance of the notice of assessment. 12 U.S.C. § 1818(i)(2)(H); 12 C.F.R. § 263.19(a). If a hearing is not requested within 20 days after issuance of the notice of assessment, the FDI Act provides that "the assessment shall constitute a final and unappealable order." 12 U.S.C. § 1818(i)(2)(E)(ii); *see* 12 C.F.R. § 263.19(c)(2).

The FDI Act provides that any service required or authorized to be made by the Board under that Act may be made by registered mail, or "in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide." 12 U.S.C. § 1818(*l*). The Board's regulations provide that service of a notice may be accomplished by any of a number of methods: by personal service, by delivery to a person of suitable age and discretion at the party's residence, by registered or certified mail addressed to the party's last

known address, or by "any other method reasonably calculated to give actual notice." 12 C.F.R. § 263.11(c)(2).

The FDI Act also sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: (1) that the respondent engaged in identified misconduct, including a violation of law or regulation, an unsafe or unsound practice, or a breach of fiduciary duty; (2) that the conduct had a specified effect, including financial loss to the institution or gain to the respondent; and (3) that the respondent's conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution. 12 U.S.C. § 1818(e)(1)(A)-(C).

B. Jurisdiction

The Bank is a foreign bank as defined in section 1(b)(7) of the International Banking Act, 12 U.S.C. § 3101(7), that conducts operations in the United States through various offices and subsidiaries, including a branch in New York, New York. The Board is the appropriate federal banking agency with supervisory responsibility over the Bank under section 3(q) of the FDI Act, 12 U.S.C. § 1813(q). As a senior officer at the Bank during the period relevant to the Notices, Respondent was an institution-affiliated party as defined by sections 3(u) and 8(b)(4) of the FDI Act, 12 U.S.C. §§ 1813(u) and 1818(b)(4), and subject to the Board's enforcement authority under section 8 of the FDI Act, 12 U.S.C. § 1818. Accordingly, the Board has jurisdiction to assess civil money penalties and an order of prohibition against Respondent.

C. Service and Default

"In cases of default, it is particularly important to ensure that service of papers meets the minimum standards of due process." *Walter C. "Charlie" Cleveland*, 91 Fed. Res. Bull. 523,

523 n.1 (2005). Accordingly, in addition to the procedural history relating to the default proceedings, the facts relating to service are set out in detail below.

1. Initial Service of the Notice

Upon issuance of the Notice of Intent to Prohibit and Notice of Assessment of a Civil Money Penalty ("Notice"), Enforcement Counsel requested service under the Hague Convention for Service Abroad of Judicial or Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (the "Hague Convention"),[1] at a United Kingdom ("U.K.") address listed as Respondent's home address in a personnel file provided by the Bank, Respondent's former employer; the address also came up in web searches. Declaration of Patrick M. Bryan ¶ 2 ("Bryan Declaration"). The U.K. Central Authority under the Hague Convention confirmed that it served the papers on July 27, 2016, in compliance with applicable rules of civil procedure. Ex. B. to Bryan Decl. In an order issued September 14, 2016, the ALJ stated that a person claiming to be the owner of the property listed in the Board's certificate of service had contacted OFIA and said that Respondent had sold the property three years earlier and had not resided there since. Sept. 14 Order at 2.

Enforcement Counsel and others made therefore made additional attempts to communicate with Respondent or his attorneys about this proceeding. Notice of this action was sent to Guy Petrillo, whom Respondent's former employer had identified as his U.S. Counsel. Bryan Decl. ¶ 3. Enforcement Counsel sent the Notice and other filings in this matter by e-mail to Mr. Petrillo on August 25, 2016, and resent the Notice to him by mail and e-mail on September 12, 2016. *Id.* ¶¶ 3, 7. On August 26, 2016, Mr. Petrillo orally confirmed that he

---

[1] The Hague Convention may be used to serve "extrajudicial documents emanating from authorities . . . of a contracting state." *Id.* art. 17.

represented Respondent for purposes of this proceeding, and Enforcement Counsel subsequently forwarded additional filings to him. *Id.* ¶ 4. Mr. Petrillo indicated that he was in touch with Respondent on the matter, emailing Enforcement Counsel that Respondent had not received the Notice by mail, but subsequently stated that although he had had "discussions about the matter" with Respondent, he did not "inten[d] to enter a notice of appearance." Ex. D to Bryan Decl.

The Board issued a press release about this proceeding on August 29, 2016, with a web link to the Notice, and international media outlets reported on it. Bryan Decl. ¶¶ 5-6; Ex C. to Bryan Decl.; Federal Reserve Board Announces It Will Seek $1.2 Million Fine and Permanent Ban on Employment in the Banking Industry Against Foreign Exchange (FX) Trader (Aug. 29, 2016), https://www.federalreserve.gov/newsevents/pressreleases/enforcement20160829a. The press reports noted that Respondent could request a formal hearing or otherwise challenge the Board's actions. Ex. C. to Bryan Decl. at 1, 5, 9.[2] They also indicated that Sara George, a U.K. attorney representing Respondent, had responded to questions from the press by stating that "Mr. Ashton does not wish to comment on the allegations." *Id.* at 9.[3]

Enforcement Counsel also sought an alternate address for Respondent from Mr. Petrillo, Bryan Decl. ¶ 8, but this effort did not bear fruit. On September 20, 2016, the Bank provided an address for Respondent at 2 Fernlea Place, Billericay. Bryan Decl. ¶ 10. Public land records confirmed that the property was owned by Respondent together with Kelly-Jane Ashton, and listed it as their address. Ex. A to Enforcement Counsel's Status Report Regarding Title Search

---

[2]At least one article provided the docket numbers for the proceeding. *Id.* at 9.

[3]Enforcement Counsel sent Ms. George, Respondent's attorney, a copy of the Notice and other filings by e-mail and registered mail on September 19, 2016. Bryan Decl. ¶ 9. She responded by e-mail on September 21, 2016, stating "[w]e have no instructions to accept service on behalf of [Respondent]." *Id.*

for Respondent at 1 (listing Respondent and Ms. Ashton "of 2 Fernlea Place, Billericay" as the owners). Enforcement Counsel served the Notice and other filings at this address by registered mail, Bryan Decl. ¶ 10, and also retained a process server, who on October 7, 2016, visited the property and was met by a woman who claimed to be Respondent's wife. Statement of Martyn Kemp ¶¶ 2-3. She claimed that she resided at the property but that Respondent did not, and when told that the process server had documents "relating to the USA Federal Reserve," she exclaimed "[w]e're fighting that." *Id.* ¶¶ 3-4. The process server left copies of the Notice and other filings in this proceeding in the letterbox at the address. *Id.* ¶ 6.

2. Default Proceedings

The Notice had warned Respondent that he had to file an answer within 20 days of issuance and service of the Notice, and that his failure to do so would constitute a waiver of his right to contest the allegations in the Notice, in which case the facts may be found as alleged in the Notice and the resulting final order deemed to be issued by consent. Notice ¶ 54. The Notice also notified Respondent of the assessment of the penalty against him, demanded payment of the penalty within 60 days, and warned him that while he had an opportunity to request a hearing concerning the assessment, such a request must be filed within 20 days of issuance and service of the Notice. Notice ¶¶ 59-63.

On October 28, 2016, Enforcement Counsel moved for entry of an order of default. On November 18, 2016, the ALJ ordered Respondent to show cause by December 30, 2016, for his failure to answer and for "why a default judgment should not be granted." Order to Show Cause at 1. OFIA served the order at the Fernlea Place address by several means, including under the Hague Convention, and received notice from the U.K. Central Authority dated December 13, 2016, that Respondent was no longer there and his whereabouts were unknown. Ex. B to

Recommended Decision. Enforcement Counsel's motion, which had been mailed, was also returned unclaimed after being forwarded to another address. Enforcement Counsel's Third Status Report Regarding Efforts to Locate Respondent ("Third Status Report") at 1-2. Land records confirmed that Respondent and Kelly-Jane Ashton acquired a new property at Ramsden Park Road, Billericay, on October 27, 2016, and listed it as their address. Ex. A to Third Status Report at 1, 2.

OFIA subsequently re-served the Order to Show Cause at the Ramsden Park Road address by United Parcel Service ("UPS"), which reported delivery on December 23, 2016. Recommended Decision at 4. OFIA also engaged a process server, who on January 4, 2017, rang the bell of the residence, was observed by a child in the house who then appeared to be called away, and subsequently put the Order to Show Cause in the mailbox of the residence. Ex. C to Recommended Decision ¶¶ 2, 3, 6. In addition, OFIA sought service through the U.K. Central Authority under the Hague Convention, which served the papers by "posting them through the defendant's letterbox" on January 27, 2017. Ex. D to Recommended Decision.

On February 17, 2017, the ALJ granted Enforcement Counsel's motion for default, entered the Recommended Decision, including Recommended Findings of Facts and Conclusions of Law, and referred the record of the proceeding to the Board for Final Decision. The ALJ expressly found that Enforcement Counsel's efforts at service were reasonable and adequate and thus satisfied both due process and the Board's rules, and that Respondent failed to answer, request a hearing, or show good cause for these failures. Recommended Decision at 4-6.

As with the Order to Show Cause, OFIA served the Recommended Decision by UPS, through the U.K. Central Authority under the Hague Convention, and by private process server. *Id.* at 10.

D. Respondent's Actions

The Notice alleges that Respondent engaged in misconduct that constituted unsafe and unsound banking practices and breaches of fiduciary duty and that involved personal dishonesty and a willful and continuing disregard for the safety and soundness of the Bank. Notice ¶¶ 44-51. Specifically, Respondent was a currency trader at the Bank on the Foreign Exchange (FX) Spot Desk in London. *Id.* ¶ 6. While serving in this capacity, from 2010 through 2013, Respondent participated in private electronic chat rooms on a nearly daily basis with FX traders at competitor banks, including traders in the United States, in order to obtain an unfair advantage over other market participants and their own clients. *Id.* ¶ 9. Respondent and other participants discussed and coordinated price spreads to quote to customers, and agreed to coordinate trading to influence benchmark currency rates, which are based on trades executed at a fixed period of time each day. *Id.* ¶¶ 10-12. Because clients often place orders to buy or sell currency "at the fix rate" in advance, by manipulating the rate, a trader can ensure that the rate at which he buys and sells prior to establishment of the fix rate for the day is lower or higher, respectively, than the fix rate, thereby assuring a profit. *Id.* ¶ 13. The Notice gives examples of instances when Respondent and other traders shared their expected trading positions and agreed to increase or avoid trades close to the time of the fix in order to affect the fix rate. *Id.* ¶¶ 17-21, 24-27, 30-35, 37-40. In the process, Respondent disclosed client information, including client identities and rates specified in client stop/loss orders, in contravention of the Bank's internal policies. *Id.* ¶¶ 36-38, 41. Respondent's actions increased the Bank's exposure and caused a loss when he

was unable to sufficiently affect the fix rate, *id.* ¶¶ 30-33, and purposely forced clients who had submitted stop/loss orders out of their position, *id.* ¶ 36-38.

Respondent made use of code words when disclosing confidential information such as client identities in chat rooms, in an apparent attempt to conceal his actions. *Id.* ¶ 41. When the Bank questioned him at length about his chat room activities in 2012, he did not disclose his use of the chat rooms to collude with others or engage in manipulative trading. *Id.* ¶ 42. These actions displayed personal dishonesty.

Respondent benefited from these actions because they helped him meet revenue targets, which increased his bonuses, and led in part to two promotions within the Bank. *Id.* ¶¶ 43-44. His conduct also harmed the Bank by subjecting it to financial loss and legal and reputational risk. *Id.* ¶ 45. On May 20, 2015, the Bank pled guilty to violating the Sherman Act, 15 U.S.C. § 1, entered into a consent order with the Board for unsafe and unsound practices based in part on Respondent's conduct, and settled related actions with the Commodities Futures Trading Commission, the New York State Department of Financial Services, and the U.K. Financial Conduct Authority, ultimately paying $2.4 billion in criminal and civil fines in connection with the conduct described herein. *Id.* ¶¶ 46-47. It also faced multiple suits, including a class action complaint settled in 2015 for $384 million that referenced Respondent's actions and quoted from the chat rooms in which he had participated. *Id.* ¶ 47. The Bank also incurred significant fees and costs to investigate the conduct of its FX traders, including Respondent. *Id.* ¶ 48.

II. DISCUSSION

The record before the Board demonstrates all the prerequisites to default established by the Constitution, statute, and regulation. As a preliminary matter, the Board determines that Respondent was properly served. The Board's rules expressly permit service by "registered . . .

mail to the person's last known address" or "any other method reasonably calculated to give actual notice." 12 C.F.R. § 263.11(c)(2)(iv)-(v).

Further, service on Respondent also comported with constitutional due process, which requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (citations omitted). If attempts to provide such notice are made, actual notice is not required, nor are "heroic" efforts to provide notice. *Jones v. Flowers*, 547 U.S. 220, 241 (2006) (citations omitted). As a general rule, mailed notice is reasonably calculated to provide actual notice. *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988) (citations omitted). Courts have found comparable means of delivery just as sufficient for due process purposes. *E.g.*, *Mennonite Bd. of Missions v. Adams*, 462 U.S 791, 800 (1983) ("Notice by mail *or other means as certain to ensure actual notice* is a minimum constitutional precondition.") (emphasis added); *Garcia v. Meza*, 235 F.3d 287, 290 (7th Cir. 2000) (notice by Federal Express adequate unless returned unclaimed).

The Board finds that the efforts to give Respondent notice of this proceeding may fairly be described as "heroic," and exceeded the requirements of the Board's rules and constitutional due process. Thus, the present finding that service was adequate in this proceeding in no way implies that these heroic efforts were necessary here or would be necessary in other proceedings.

In addition to attempted service at the first address, Respondent was served by registered mail and delivery of papers by a process server to a second address provided by the Bank, and listed as his address in public land records (the Fernlea Place address). While those papers may have arrived at the address after Respondent no longer lived there, the process server's statement

discussed above (quoting Respondent's wife saying "We're fighting that") indicates that Respondent was familiar with the Board's proceeding. *Jones* indicates that such notice to a current occupant, particularly one related to a defendant, suffices even if a defendant has stopped residing at the address. 547 U.S. at 234-35. The Board adopts the ALJ's findings that the second address was Respondent's last known address and that service by mail to this address was effective on September 21, 2016. Recommended Decision at 5, 6. Alternatively, it finds that service was also effectively made when the process server spoke with Respondent's wife and delivered the Notice to this address on October 7, 2016.

Furthermore, notice of the proceeding was sent in three different ways by OFIA to a third address (the Ramsden Park Road address), at a property that public land records had indicated had been recently acquired by Respondent, and which was listed as his address in such records. Courts have held that where attempted service appears to have failed, a search of public records, such as land records, represents a "reasonably diligent attempt" to locate an appropriate new address for notice. *E.g., Akey v. Clinton Cty., N.Y.*, 375 F.3d 231, 236-37 (2d Cir. 2004) (citing cases). Thus, the notice given to Respondent at either the second or the third address satisfied due process.

Alternatively, the Board adopts the ALJ's finding that the record indicates that two attorneys representing Respondent, as well as his wife, had actually discussed this proceeding with Respondent, Recommended Decision at 5, 6, 6 n.4, confirming that further "heroic" efforts at notice were uncalled for. Furthermore, in the unlikely event that the extensive and reasonable efforts to locate Respondent did not actually succeed in finding his correct address, due process permits notice by publication, as occurred here. *Cf. Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972) ("[N]otice by publication is not sufficient with respect to an individual whose name and

address are known or easily ascertainable."). Accordingly, the Board adopts the ALJ's finding that publication of the Notice was reasonably calculated to notify Respondent about the existence of this action. Recommended Decision at 5. Further, the Board concurs with the ALJ's conclusion that Enforcement Counsel's efforts to serve Respondent were reasonably calculated to give Respondent actual notice of this proceeding and were adequate service in light of the circumstances of this case. *Id.* at 6.

In this case, having been given adequate notice of the proceeding, Respondent failed to file an answer to the Notice, or to request a hearing, and also failed to respond to the ALJ's Order to Show Cause. Respondent has also not filed any exceptions to the Recommended Decision. Because Respondent failed to request a hearing, the Notice of Assessment is now final and unappealable. 12 U.S.C. § 1818(i)(2)(E)(ii), 1818(i)(2)(H); 12 C.F.R. § 263.19(c)(2). With respect to the Notice of Intent to Prohibit, Respondent's default requires the Board to consider the allegations in the Notice as uncontested. The allegations in the Notice, described above, meet all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e), in that Respondent engaged in unsafe or unsound practices and breaches of fiduciary duty that resulted in financial gain to him and to financial loss to the Bank, and his conduct demonstrated personal dishonesty and a willful and continuing disregard for the safety or soundness of the Bank.

Accordingly, the Board adopts the ALJ's recommended findings and conclusions as its Final Findings of Fact and Conclusions of Law, and orders the issuance of the attached Order of Prohibition. The Board further declares that since no hearing has been timely requested as to the Notice, the Notice constitutes a final and unappealable Order of Assessment. Because the 60 days permitted in the Notice for remittance of the penalty have since elapsed, the penalty is collectible immediately.

CONCLUSION

For the foregoing reasons, the Board declares that the Notice constitutes a final Order of Assessment. The Board further orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors this 19 day of May, 2017.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Ann E. Misback
Secretary of the Board