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

In the Matter of **JACOB H. GOLDSTEIN**, individually, a former institution-affiliated party of NBRS Financial, Rising Sun, Maryland, a former state member bank	Docket No. 18-006-E-I

FINAL DECISION

This Final Decision resolves an administrative proceeding pursuant to the Federal Deposit Insurance Act ("FDI Act") in which the Board of Governors of the Federal Reserve System seeks to prohibit Respondent Jacob H. Goldstein ("Respondent") from further participation in any manner in the affairs of an insured depository institution based on actions he took while president, chairman, chief executive officer ("CEO") and chief lending officer of NBRS Financial ("NBRS" or "Bank"), Rising Sun, Maryland, a former[1] state member bank.

This proceeding comes before 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 issues this Final Decision adopting the Recommended Decision and orders issuance of the attached Order to Prohibit the Respondent.

[1] The Maryland Office of the Commissioner of Financial Regulation closed the Bank in October 2014 and the FDIC was appointed receiver.

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 a 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 an 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. *Id.* Any final order issued by the Board based on the failure to answer is deemed to have been issued upon consent. *Id.*

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 office or 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

Until its closure in October 2014, the Bank was a state member bank subject to the Board's supervision and regulation. Accordingly, the Board is the appropriate agency to bring charges against former institution-affiliated parties of the Bank. 12 U.S.C. § 1813(q)(3)(A). As president, chairman and CEO of the Bank during the period relevant to the Notice, Respondent was an institution-affiliated party as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and subject to the Board's enforcement authority under section 8(e) of the FDI Act, 12 U.S.C. § 1818(e). Accordingly, the Board has jurisdiction to issue an order of prohibition against Respondent.[2]

C. **Service and Default**

The Board's Notice of Intent to Prohibit ("Notice") was issued on February 5, 2018, and was served on Respondent by a variety of methods. "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). The Board's rules permit service of a notice, *inter alia*, "[b]y personal service," "by delivery to a person of suitable age

[2] In a *sua sponte* order, the ALJ raised the issue of whether the general federal 5-year statute of limitations for imposing a "fine, penalty, or forfeiture," 28 U.S.C. § 2462, made this action untimely. The order and Enforcement Counsel's responsive brief were served on the Respondent, who did not respond. Because the statute of limitations is an affirmative defense which must be "set forth" in a respondent's answer, 12 C.F.R. § 263.19(b), the Board finds that Respondent's failure to file an answer waives any argument he may have had under section 2462. *See Canaday v. SEC*, 230 F.3d 362 (D.C. Cir. 2000).

and discretion at the physical location where the individual resides or works" or "[b]y any other method reasonably calculated to give actual notice." 12 C.F.R. § 263.11(c)(2).

On February 6, 2018, the day after the Notice was issued, enforcement counsel served a copy, by FedEx overnight delivery, on the Respondent at a Baltimore address owned by his wife. FedEx tracking confirmation showed that the Notice was left at the front door of that address. The next day, a commercial process server personally served a copy of the Notice upon the Respondent at that address. In addition to service by two separate methods, the Board issued a press release announcing the proceeding, and two separate news outlets, one national and one in Cecil County, Maryland, where the Bank was located, published articles relating to the Notice.

The Notice informed the Respondent that he was "directed to file an answer … within 20 days of the service of this Notice, as provided by section 19 of the Rules of Practice, 12 C.F.R. § 263.19," and that his "failure … to file an answer … within the time provided herein shall constitute a waiver of [Respondent's] right to appear and contest the allegations of this Notice."

The Respondent did not file an answer, or otherwise respond to the Notice. Accordingly, on April 24, 2018, more than 60 days after service was effectuated, Enforcement Counsel filed the Default Motion, a copy of which was served by FedEx overnight delivery upon the Respondent. The Default Motion again informed the Respondent that his failure to file an answer constituted "a waiver of his right to appear and contest the allegations" of the Notice. Respondent did not oppose or otherwise respond to the Default Motion.

On May 22, 2018, the ALJ issued an Order to Show Cause requiring the Respondent, on or before June 6, 2018, to appear and show good cause why a timely answer was not filed and why a default judgment should not be entered against him. The Order to Show Cause was served upon the Respondent by UPS Next Day Air Delivery, and contained both the ALJ's street and

email address and instructions for responding. Respondent did not respond to the Order to Show Cause.

On June 11, 2018, the ALJ issued the Recommended Decision recommending that the Board issue a final decision on default permanently prohibiting Respondent from the banking industry based on his failure to file an answer or otherwise appear in response to the Notice. The Recommended Decision expressly found that service was sufficient, that Respondent waived his right to appear and contest the Notice by failing to answer, and that the uncontested allegations of the Notice meet the standards for a prohibition order under section 8(e) of the FDI Act.

D. Respondent's Actions

The Notice alleges that Respondent engaged in misconduct that constituted unsafe and unsound practices, violations of law, and breaches of fiduciary duty, that he received financial gain or benefit and Bank suffered loss or other damage, and that the misconduct involved personal dishonesty or a willful and continuing disregard for Bank's safety and soundness. In particular, in his role as the Bank's president, chairman, CEO, and chief lending officer until his resignation in February 2012, Respondent engaged in self-dealing by improperly obtaining loans for his own personal benefit and by withholding material information from the Bank's board of directors. Specifically, in May 2010, the Bank approved a $250,000 loan to the son of a board member ostensibly for investment in a real estate partnership. In actuality, Respondent asked the individual to obtain the loan for Respondent's personal use and benefit and promised the individual that he would repay the loan. The loan proceeds were in fact disbursed to, and used for, Respondent's personal benefit. Respondent did not disclose to the Bank's board that he was the true beneficial owner of the loan, did not recuse himself from voting to approve the loan, and participated in several subsequent discussions of the loan, including an increase in the balance

and extension of the maturity date, without disclosing his beneficial interest. In addition to this loan, in April 2008 Respondent participated in a board meeting at which a $100,000 loan to a company in which Respondent owned a one-sixth interest was approved, and actively participated in management of the loan, without disclosing his interest to the Bank's board.

Respondent's actions contravened safe and sound banking practices and breached his fiduciary duty to the Bank. In addition, his actions caused the Bank to violate banking regulations governing extensions of credit to insiders, 12 C.F.R. § 215 and to operate in an unsafe and unsound manner, because he did not disclose to the Bank that the loans in question were for his benefit. His dominant influence over the bank's operations also, according to the Notice, "undermined the effectiveness of key control functions and limited the Bank's ability to overcome its deteriorating financial condition." The Bank was closed in October 2014 due to its poor financial condition. Finally, Respondent's actions resulted in personal gain or other benefit to him and showed personal dishonesty and willful and continuing disregard for the Bank's safety and soundness.

II. DISCUSSION

The Board's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the Rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the notice." 12 C.F.R. § 263.19(c). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file ... a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to file a timely answer is deemed to be issued by consent. *Id.*

In this case, Respondent failed to file an answer to the Notice despite proper service by two different methods and notice to him of the consequences of such failure, and also failed to respond to enforcement Counsel's Default Motion and the ALJ's Order to Show Cause. Respondent's failure to file an answer constitutes a default.

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). It was a breach of fiduciary duty, unsafe and unsound practice, and violation of regulation for Respondent to approve and manage loans that benefitted him without disclosing his interest in those loans and other material information to the Bank's board and to accept and use the proceeds of those loans for his own benefit. Respondent's actions resulted in financial gain or other benefit to the Respondent, in that he used the proceeds for his own purposes. Such actions exhibit both personal dishonesty and a willful and continuing disregard for the safety and soundness of the Bank.

Accordingly, the requirements for an order of prohibition have been met and the Board hereby issues such an order.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors, this 16th day of August, 2018.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Ann E. Misback
Secretary of the Board

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In the Matter of **JACOB H. GOLDSTEIN**, individually, a former institution-affiliated party of NBRS Financial, Rising Sun, Maryland a former state member bank	Docket No. 18-006-E-I

ORDER OF PROHIBITION

1. The Respondent, Jacob H. Goldstein, is hereby prohibited, without the prior written approval of the Board of Governors, and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D), from:

a. participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), including, but not limited to, any insured depository institution or any holding company of an insured depository institution, or any subsidiary of such holding company, or any foreign bank or company to which subsection (a) of 12 U.S.C. § 3106 applies and any subsidiary of such foreign bank or company;

b. soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent, or authorization with respect to any

voting rights in any financial institution enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A);

c. violating any voting agreement previously approved by the appropriate Federal banking agency; or

d. voting for a director, or serving or acting as an institution-affiliated party, as defined in sections 3(u) and 8(b)(3) of the FDI Act, 12 U.S.C. §§ 1813(u) and 1818(b)(3), such as an officer, director or employee, in any institution described in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A).

2. This Order will become effective upon issuance. The provisions of this Order will remain effective and enforceable except to the extent that, and until such time as, any provisions have been modified, terminated, suspended or set aside by the Board of Governors.

By Order of the Board of Governors, this 16th day of August, 2018.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Ann E. Misback
Secretary of the Board