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

In the Matter of **CAROL ALLEN**, individually, a former institution-affiliated party of FARMERS & MERCHANTS BANK, Baldwyn, Mississippi, a state member bank.	Docket Nos. 18-028-E-I 18-028-CMP-I 18-028-B-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 ("Board") seeks to prohibit Respondent Carol Allen ("Respondent") from further participation in any manner in the affairs of an insured depository institution based on actions she took while serving as a teller and vault custodian of the Marietta branch for Farmers & Merchants Bank ("FMB" or "Bank"), Baldwyn, Mississippi, a state member bank. The Board has also assessed a civil monetary penalty and seeks restitution for losses Respondent caused to FMB.

This proceeding comes before the Board in the form of an Order Granting Enforcement Counsel's Motion for Entry of Default with proposed findings of fact and conclusions of law ("Recommended Decision") by Administrative Law Judge ("ALJ") C. Richard Miserendino. 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 of Prohibition, Restitution, and Civil Monetary Penalty.

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, the respondent is deemed to have waived the right to appear and contest the allegations in the notice. 12 C.F.R. § 263.19(a), (c). Upon motion by enforcement counsel for entry of an order of default, and a finding by an ALJ that "no good cause has been shown for the 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.* § 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.*

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).

In addition, the FDI Act sets forth the basis upon which a federal banking agency may issue against a bank employee an order of prohibition from further participation in banking. The Board must make three findings: (1) the respondent violated a law or regulation, engaged in an

unsafe or unsound practice in connection with any insured depository institution or business institution, or breached a fiduciary duty; (2) the conduct had a specified effect, including financial loss to the institution or gain to the respondent; and (3) the respondent's conduct involved 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). Restitution may also be ordered if the respondent was unjustly enriched in connection with the violation or practice. *Id.* § 1818(b)(6)(A). Finally, a civil monetary penalty may be levied, with the first tier penalty assessed against those who violate any law or regulation not to exceed $10,067 "for each day during which such violation" occurred. *Id.* § 1818(i)(2)(A); 12 C.F.R. § 263.65. If a respondent fails to request a hearing within 20 days, "the notice of assessment constitutes a final and unappealable order." 12 U.S.C. § 1818(i)(2)(E), (H); 12 C.F.R. § 263.19(c)(2).

B. Jurisdiction

FMB is 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 a teller and vault custodian of the Bank during the period relevant to the Board's Notice of Intent to Prohibit, Notice of Intent to Issue a Cease and Desist Order Requiring Restitution or Reimbursement, and Notice of Assessment of a Civil Money Penalty Pursuant to Section 8 of the Federal Deposit Insurance Act, as Amended (the "Notice"), Respondent was an institution-affiliated party as defined in section 3(u) of the FDI Act and subject to the Board's enforcement authority under section 8(e) of the FDI Act. *See* 12 U.S.C. §§ 1813(u), 1818(e). Accordingly, the Board has jurisdiction as to Respondent.[1]

[1] Respondent's reported filing of Chapter 13 bankruptcy does not affect the Board's jurisdiction

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). Enforcement Counsel issued the Notice on August 19, 2019, and served it on Respondent by a variety of methods. First, on August 20, 2019, Enforcement Counsel attempted to serve the Notice on Respondent by sending it via United States Postal Service registered mail to Respondent's home address. Second, on September 12, 2019, Enforcement Counsel served the Notice on Respondent via FedEx to Respondent's home address, which Respondent received the next day. Finally, on September 17, 2019, Enforcement Counsel served the Notice personally on Respondent at her home through a process server.[2]

The Notice informed Respondent that with respect to the prohibition and restitution actions, she was "directed to file an answer . . . within 20 days of the service of this Notice, as provided by section 263.19 of the Rules of Practice, 12 C.F.R. § 263.19," and that her "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 Notice also informed Respondent that with respect to the assessment of a civil monetary penalty, "[p]ursuant to section

in this matter. *See Bd. of Governors of the Fed. Res. Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 42 (1991) (holding that "the specific preclusive language in 12 U.S.C. § 1818(i)(1) . . . is not qualified or superseded by the general provisions governing bankruptcy proceedings"); 12 U.S.C. § 1818(i)(1) ("[E]xcept as otherwise provided . . . no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order."); 11 U.S.C. § 362(b)(4) (filing a bankruptcy petition does not operate as a stay against an action by a governmental unit "to enforce such [unit's] police or regulatory power").

[2] Enforcement Counsel also served the Notice via electronic mail and registered mail to the business address of Respondent's counsel, who had agreed to accept service after failed settlement negotiations with the Board. Upon learning that Respondent was no longer represented by counsel in this proceeding, Enforcement Counsel took the additional step of serving Respondent with the Notice via a process server.

8(i)(2)(E)(ii) of the FDI Act, 12 U.S.C. § 1818(i)(2)(E)(ii), if a hearing is not requested within 20 days of service, the penalty assessment becomes a final and unappealable order."

Respondent did not file an answer or otherwise respond to the Notice. Accordingly, on October 15, 2019—28 days after the latest conceivable date of service—Enforcement Counsel filed a Motion for Entry of Default ("Default Motion"), a copy of which was served by FedEx overnight delivery upon Respondent. The Default Motion reiterated that Respondent's failure to file an answer or request a hearing constituted a waiver of her right to appear and contest the allegations of the Notice and the civil monetary penalty. Respondent failed to oppose or file any response to the motion.

On November 13, 2019, the ALJ issued an order granting Enforcement Counsel's Default Motion and recommending that the Board issue a final decision containing the relief sought in the Notice. This Recommended Decision expressly found that service was sufficient, that Respondent waived her right to appear and contest the Notice, and that the uncontested allegations of the Notice met the standards for a prohibition order under section 8(e) of the FDI Act. Moreover, the ALJ concluded that Respondent was unjustly enriched in connection with her violations of law and unsafe or unsound banking practices and that her misconduct involved a reckless disregard for the law, thereby satisfying the restitution prerequisites set forth in section 8(b)(6)(A) of the FDI Act.

D. Respondent's Actions

The Notice alleges that Respondent violated the law and engaged in unsafe or unsound banking practices, that she received financial gain or benefit and FMB suffered loss or other damage, and that the misconduct involved personal dishonesty or a willful and continuing disregard for the Bank's safety and soundness. In her role as a teller and vault custodian for the

Bank until her termination in April 2018, Respondent engaged in self-dealing by embezzling money from FMB's Marietta branch vault and from customer certificates of deposit ("CDs"). Respondent then deposited embezzled cash into her accounts, as well as those owned by her husband and daughter.

Specifically, Respondent admitted to FMB's management that over the course of years she took $100 and $20 bills from the center of straps of cash stored in the vault and replaced them with $1 bills.[3] She also removed cash from Federal Reserve bags and resealed them in order to make it appear as if they had not been opened. An auditor's review comparing the Bank's general ledger to the cash in the vault revealed a $247,976 shortfall. In addition, FMB determined that from February 2, 2006, to April 4, 2018, Respondent withdrew $193,345 (and subsequently repaid $94,300) from twenty-five customer CDs without authorization. To conceal her unauthorized withdrawals, Respondent sometimes altered customer CD statements and withheld account notices from customers. FMB returned to customers the missing net amount of $99,045, as well as $5,264.27 in lost interest. As a result of Respondent's actions, FMB lost at least $352,285.09, of which only $332,020.82 was recouped from FMB's insurance carrier and proceeds from the Employee Profit Sharing Plan that Respondent surrendered as partial restitution.

II. DISCUSSION

Respondent failed to file an answer to the Notice or request a hearing despite proper service by various methods and notice to her of the consequences of such failure. She also

[3] Respondent reported her wrongdoing after the Marietta branch could not honor a customer's request for $9,500 in loan proceeds to be paid in large denominations of cash because the vault contained an insufficient number of large bills due to Respondent's misconduct.

failed to respond to Enforcement Counsel's Default Motion. Respondent's failure to file an answer constitutes a default. *See* 12 C.F.R. § 263.19(c)(1)-(2).

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), as well as entry of a restitution order under 12 U.S.C. § 1818(b)(6). Respondent's actions violated the law and contravened safe and sound banking practices. *See, e.g.*, 18 U.S.C. § 656 (prohibiting employees of Federal Reserve member banks from embezzling or misapplying the moneys of such banks); *id.* § 1005 (prohibiting individuals from making false entries in any book, report, or statement of Federal Reserve member banks); Miss. Code Ann. §§ 97-23-19, 97-23-25 (Mississippi law prohibiting any person from embezzling the property of others). Her actions reflected personal dishonesty and a reckless disregard to the safety and soundness of FMB, resulting in financial loss to the Bank and unjust enrichment to Respondent.

The Board further finds that since no hearing was timely requested as to the Notice, the Notice constitutes a final and unappealable Order of Assessment of a Civil Monetary Penalty. 12 U.S.C. § 1818(i)(2)(E), (H); 12 C.F.R. § 263.19(c)(2). Because the 60 days permitted in the Notice for remittance of the penalty have since elapsed, the penalty is due and collectible.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order of Prohibition, Restitution, and Civil Monetary Penalty.

By Order of the Board of Governors, this 30th day of January, 2020.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

/s/
Ann E. Misback
Secretary of the Board