

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

ON CERTIFICATION OF THE DEPARTMENT)
OF THE TREASURY-- OFFICE OF THE)
COMPTROLLER OF THE CURRENCY)
)
In the Matter of a Notice to)
Prohibit Further Participation)
Against MARIAN L. BUTLER,)
)
Former Employee,)
CoreStates Financial (now First Union))
PHILADELPHIA, PENNSYLVANIA)
_____)

DOCKET NO. OCC-AA-
EC-02-07

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act ("FDI Act") in which the Office of the Comptroller of the Currency of the United States of America ("OCC") seeks to prohibit the Respondent, Marian L. Butler ("Respondent"), from further participation in the affairs of any financial institution because of her conduct as an employee of CoreStates Financial (now First Union) (the "Bank"), a national banking association. Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition.

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision of Administrative Law Judge Ann Z. Cook (the “ALJ”), and orders the issuance of the attached Order of Prohibition.

I. STATEMENT OF THE CASE

A. Statutory and Regulatory Framework

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges. 12 U.S.C. § 1818(e)(4). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. *Id.*; 12 C.F.R. § 263.40.

The FDI Act 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).

An enforcement proceeding is initiated by filing and serving on the respondent a notice of intent to prohibit. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice. 12 C.F.R. §§ 19.19(a) and 263.19(a). Failure to file an answer constitutes a waiver of the respondent's right to contest the allegations in the notice, and a final order may be entered unless good cause is shown for failure to file a timely answer. 12 C.F.R. §§ 19.19(c)(1) and 263.19(c)(1).

B. Procedural History

On August 6, 2002, the OCC issued a Notice initiating an enforcement action that sought an order of prohibition due to Respondent's actions in stealing between \$10,000 and \$15,000 from the Bank while working in the cash processing unit. The Notice directed Respondent to file an answer within 20 days, and warned that failure to do so would constitute a waiver of her right to appear and contest the allegations. The record shows that the OCC made numerous efforts to serve the Notice on Respondent. The initial copy of the Notice was mailed certified mail, return receipt requested, on August 7, 2002, but the receipt was never returned. A second

copy of the Notice was served on Respondent by overnight delivery on September 11, 2002. The courier service returned the package as "refused" by the addressee. A process server was dispatched to Respondent's address on September 21, 2002, but was told that there was no one by Respondent's name at that address. On October 1, 2002, Enforcement Counsel sent two more copies to Respondent's home address, one by certified mail, return receipt requested, and one by courier, this time not indicating that the package was from the OCC. Although no return receipt was returned for the copy sent by certified mail, an individual with Respondent's last name signed for the couriered copy on October 4, 2002.¹ Nonetheless, Respondent failed to file an answer within the 20-day period specified in that copy of the Notice. On November 27, 2002, the ALJ issued an Order to Show Cause directing Respondent to submit an answer by December 16, 2002, and demonstrate good cause for not having done so previously. The record reflects that the Order was delivered by courier to Respondent's address and signed for on December 2, 2002. Respondent did not respond to the Order to Show Cause and has never filed an answer to the Notice.

¹ The person who signed for the package did not provide a first name.

II. DISCUSSION

The OCC'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. § 19.19(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.

The record establishes that the OCC used methods "reasonably calculated to give actual notice" in its efforts to notify Respondent of the pendency of this case. 12 C.F.R. § 19.11(c)(2)(v). Nonetheless, Respondent failed to file an answer despite notice to her of the consequences of such failure, and also failed to respond to 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 Notice alleges, and the Board finds, that Respondent stole between \$10,000 and \$15,000 in cash from the Bank while

working as a temporary employee in the cash processing unit.² This conduct meets all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It is a violation of law and an unsafe or unsound practice for a bank employee to steal bank funds. Respondent's actions caused gain to herself as well as loss to the Bank. Finally, Respondent's actions involved personal dishonesty in taking property not her own. The requirements for an order of prohibition having been met, the Board has determined that such an order will issue.

CONCLUSION

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

By Order of the Board of Governors, this 13 day of February, 2003.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

(signed) Jennifer J. Johnson

Jennifer J. Johnson
Secretary of the Board

² Respondent was an employee of Manpower Temps, and was contracted from Manpower Temps to work at the Bank. The Board finds that this qualifies her as an institution-affiliated party within the meaning of 12 U.S.C § 1818(u)(1), in that she was an "employee . . . of, or agent for, an insured depository institution."