

**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 KENNETH L. COLEMAN,) Former Employee,) PNC Bank, Pittsburgh, Pennsylvania,) and Mellon Bank, N.A.,) Pittsburgh, Pennsylvania) <hr/>)	
)	DOCKET NO. OCC-AA-EC-04-43

ORDER OF PROHIBITION

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against KENNETH L. COLEMAN ("Coleman"), a former employee and institution-affiliated party, as defined in Section 3(u) of the FDI Act (12 U.S.C § 1813(u)), of PNC Bank, Pittsburgh, Pennsylvania and Mellon Bank, N.A., Pittsburgh, Pennsylvania.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

1. In the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the Act (12 U.S.C. § 1818(e)(7)(B)), Coleman is hereby prohibited:

(a) from 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, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;

(b) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));

(c) from violating any voting agreement previously approved by any Federal banking agency; or

(d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), 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. Any violation of this Order shall separately subject Coleman to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).

3. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

This Order shall become effective at the expiration of thirty days after service is made.

By Order of the Board of Governors, this 1st day of March 2005.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board

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 November 22, 2004, the OCC served upon Respondent a Notice of Intention to Prohibit Further Participation and Notice of Charges for Restitution (“Notice”) that sought, *inter alia*, an order of prohibition against Respondent based on his actions of stealing funds while employed by PNC and Mellon. Specifically, the Notice alleged that while employed by PNC, Respondent stole funds on October 14, 1999, November 26, 1999, and December 1, 1999 by inflating the amount of customer deposits and subsequently depositing the surplus amount into his own account. After Respondent paid partial restitution to PNC in the amount of \$979.77, PNC currently maintains an outstanding loss of \$1,590.23. The Notice further alleged that while employed by Mellon, Respondent stole \$810 in cash after processing a combined check and cash transaction. Mellon maintains a loss of \$810 as the result of Respondent’s action.

The Notice directed Respondent to file an answer within 20 days and warned that failure to do so would constitute a waiver of his right to appear and contest the allegations. The record shows that the Respondent received service of the Notice. Nonetheless, Respondent failed to file an answer within the 20-day period.

On or about January 3, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default. The motion was served on Respondent in accordance with the OCC’s rules, but he did not respond to it. Finally, on or about January 4, 2005, the ALJ issued an Order to Show Cause, which was mailed to the address at which Respondent had received the Notice. The order

provided Respondent until January 21, 2005 to file an answer to the Notice and show good cause for failing to do so previously. The ALJ subsequently amended that order, providing Respondent until January 28, 2005 to respond. The amended order also was sent to the address at which Respondent had received the Notice. Respondent ignored the Order to Show Cause and has never filed an answer to the Notice.

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.*

In this case, Respondent failed to file an answer despite notice to him 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 on four separate occasions between October 14, 1999 and February 29, 2000, Respondent stole funds from PNC and Mellon, respectively, while he was processing transactions as part of his employment at each of these banks. Respondent received a total of \$3,380 as a result of his actions. After Respondent partially paid restitution to PNC Bank, PNC maintains a loss of \$1,590.23 and Mellon maintains a loss of \$810.

This conduct by Respondent meets all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It is a violation of law, breach of fiduciary duty, and an unsafe or unsound practice for a bank employee to steal funds from the bank at which he is employed. Respondent's action caused gain to himself, as well as loss to each of the banks. Finally, such actions also exhibit personal dishonesty. 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 1st day of March 2005.

**BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM**

(signed)

Jennifer J. Johnson
Secretary of the Board