

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 October 3, 2002, the OCC issued a Notice initiating an enforcement action that sought, *inter alia*, an order of prohibition due to Respondent's actions in stealing over \$40,000 from the Bank over a three-year period.¹ 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 Respondent acknowledged

¹ The Notice also sought an order requiring Respondent to make restitution to the Bank under 12 U.S.C. § 1818(b)(6)(A). The OCC has statutory authority to issue a final decision with respect to this requested relief.

receipt of the Notice. Nonetheless, Respondent failed to file an answer within the 20-day period. A second copy of the Notice was served on October 25, 2002, and received by Respondent on October 30, 2002. The ALJ served an Order Setting Telephone Conference on November 13, 2002, which was received at Respondent's residence on November 14, 2002. Respondent did not, however, participate in the telephone conference call established by the Order. On November 21, 2002, Respondent was served with Enforcement Counsel's Motion for Entry of an Order of Default, but did not respond to it. On November 25, 2002, Respondent received service of an Order to Show Cause directing her to submit an answer by December 10, 2002, and demonstrate good cause for not having done so previously. That Order, too, was ignored. Respondent 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 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 repeatedly stole cash from the Bank's teller drawers over a three-year period. She also made fraudulent entries in the Bank's books and records to reverse overdrafts to her account at the Bank. Together, these thefts totaled over \$40,000.

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 and to falsify bank records. 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 Feburary, 2003.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed) Jennifer J. Johnson

Jennifer J. Johnson
Secretary of the Board

