

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

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**ON CERTIFICATION OF THE DEPARTMENT )  
OF THE TREASURY-- OFFICE OF THE )  
COMPTROLLER OF THE CURRENCY )**

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**In the Matter of a Notice to )  
Prohibit Further Participation )  
Against Garfield C. Brown, Jr., ) DOCKET NO. OCC-AA-EC-03-11**

)

**Former Employee, )  
MELLON BANK, N.A. )  
PITTSBURGH, PENNSYLVANIA )**

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**FINAL DECISION**

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act (“the FDI Act”) in which the Office of the Comptroller of the Currency of the United States of America (“OCC”) seeks to prohibit the Respondent, Garfield C. Brown, Jr. (“Respondent”), from further participation in the affairs of any financial institution because of his conduct as an employee of Mellon Bank, N.A., Pittsburgh, Pennsylvania (the “Bank”), a national bank. 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 June 3, 2003, the OCC issued a Notice initiating an enforcement action that sought, *inter alia*, an order of prohibition against Respondent for his participation in processing three cash advances for an acquaintance, totaling \$15,000, knowing that his acquaintance presented false identification to obtain the cash advances. The Notice further alleges that Respondent recorded inaccurate identification information on the cash advance slips completed for these transactions, and that the Respondent received \$500 from his acquaintance for his participation in these cash advances.<sup>1</sup> 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 received service of the Notice. Nonetheless, Respondent failed to file an answer within the 20-day period.

On or about July 24, 2003, 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 July 29, 2003, Respondent received service of an Order to Show Cause directing him to submit an answer by August 13, 2003, and to demonstrate good cause for not

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

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 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 or about July 30, 1998, Respondent processed for his acquaintance two cash advances against a credit card, each in the amount of \$3,500, knowing that the driver's license presented by his acquaintance matched neither the name of the acquaintance, nor the name of the cardholder against which the cash advance was taken. Additionally, on or about August 5, 1998, Respondent processed for the same acquaintance another cash advance in the amount of \$8,000 against a different credit card, after the acquaintance presented the same driver's license that was used for identification in the July 30, 1998 transactions. The Notice alleges and the Board finds that on both occasions, Respondent recorded inaccurate identification information on Bank

records, at the request of his acquaintance, and that Respondent received \$500 from his acquaintance for his participation in these cash advance transactions. The Bank reimbursed the cardholders who were wrongfully charged, and thereby suffered a loss of \$15,000.

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 breach of fiduciary duty and an unsafe or unsound practice for a bank employee to give bank funds to a person the bank employee knows is not entitled to receive such funds, to accept identification documents that the bank employee knows do not belong to a customer requesting a bank transaction, and to record inaccurate information on bank records. Respondent's action caused gain to himself, as well as loss to the Bank. Finally, such actions, along with Respondent's acceptance of \$500 for his involvement in this fraudulent scheme, 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 21st day of November 2003.

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

Jennifer J. Johnson (signed)  
Jennifer J. Johnson  
Secretary of the Board

