

**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)	
)	
In the Matter of a Notice to Prohibit Further)	
Participation Against)	
)	
BRIAN BONETTI,)	DOCKET NO. OCC-AA-EC-04-68
)	
Former Sales and Service Representative,)	
National City Bank, Cleveland, Ohio)	
)	

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, Brian Bonetti (“Respondent”), from further participation in the affairs of any financial institution based on actions he took while employed at National City Bank, Cleveland, Ohio (the “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. 12 U.S.C. §1818(e)(4).

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 intention 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). If the respondent does not file an answer within the time provided, the respondent waives his or her right to appear and contest the allegations in the notice, and Enforcement Counsel may file a motion for entry of an order of default. *See* 12 C.F.R. § 19.19(c)(1) and 263.19(c)(1). Upon a finding that no good cause has been shown for the failure to file a timely answer, the ALJ shall file with the Comptroller and the Board a recommended decision containing the findings and the relief sought in the notice. *Id.*

B. Procedural History

On February 3, 2005, the OCC served upon Respondent a Notice of Intention to Prohibit Further Participation, Notice of Charges for Issuance of an Order to Cease and Desist for Restitution and Notice of Assessment of a Civil Money Penalty (“Notice”) that sought, *inter alia*, an order of prohibition against Respondent based on his conduct while employed at the Bank. Specifically, the Notice alleged that Respondent, as a sales and service representative for the Bank, diverted portions of customer loan proceeds on thirteen home equity loans that Respondent made, authorized and/or booked, by issuing checks from the loan proceeds to make payments on his own credit card accounts (or accounts for which he was an authorized user) and payments on a loan in the name of related persons, or by depositing checks into accounts that were owned or controlled by Respondent. The Notice further alleges that Respondent falsified internal loan documents to hide from the Bank the fact that he was charging customers broker fees that exceeded the Bank’s broker fee cap and gave customers misleading

HUD-1 Settlement Statements that masked the broker fees charged. In addition, the Notice alleged that Respondent's violations caused loss to the Bank in the approximate amount of \$84,970.00

The Notice directed Respondent to file a written answer within twenty days from the date of service of the Notice in accordance with 12 C.F.R. §19.19(a) and (b), and that failure to answer within this time period "shall constitute a waiver of the right to appear and contest the allegations contained in the Notice, and shall, upon the OCC's motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice to be as alleged." The Notice was served in accordance with OCC rules, via overnight delivery and first class U.S. mail. The record shows that Respondent was also personally served on February 26, 2005. Nonetheless, Respondent failed to file an answer within the 20-day period or thereafter.

On June 3, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default against Respondent. On the same day, the ALJ issued an Order to Show Cause, providing Respondent until June 20, 2005, to file an answer to the Notice and to show good cause for having failed to do so previously. The Order to Show Cause, which was served upon Respondent by Federal Express and first class mail, also provides that if Respondent fails to submit an answer and to show good cause by the June 20 deadline, "the relief requested in the Notice will be recommended." To date, Respondent has not filed any reply to the Order to Show Cause or answered 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 the instant matter, Respondent failed to file an answer to the Notice 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 allegations in the Notice, described above, meet all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It was a breach of fiduciary duty, conflict of interest, unsafe and unsound practice, and violation of law, for Respondent to divert portions of customer loan proceeds on thirteen home equity loans without the customers' knowledge, consent, or approval; falsify internal loan documents in order to hide from the Bank the fact that he was charging customers broker fees that exceeded the Bank's broker fee cap; and give customers misleading HUD-1 Settlement Statements that masked the broker fees charged. Respondent's actions also resulted in loss to the bank in the amount of approximately \$89,740.00

and financial gain to Respondent, in that he diverted loan proceeds by issuing checks to make payment on his own credit card accounts or to be deposited into his own accounts. Finally, such actions also exhibit personal dishonesty and willful disregard for the safety and soundness of the Bank. 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 20th day of September 2005.

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

(signed)

Jennifer J. Johnson
Secretary of the Board

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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 BRIAN BONETTI ("Bonetti"), a former employee and institution-affiliated party, as defined in Section 3(u) of the FDI Act (12 U.S.C § 1813(u)), of National City Bank, Cleveland, Ohio.

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)), Bonetti 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 ;

(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.

2. Any violation of this Order shall separately subject Bonetti 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 20th day of September 2005.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board