

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision (“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. section 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 CFR 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. section 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 CFR 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 CFR 19.19(c)(1) and 263.19(c)(1).

B. Procedural History

On August 31, 2005, the OCC served upon Respondent a Notice of Intention to Prohibit Further Participation 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. The Notice directed Respondent to file a written answer within 20 days of the date of service of the Notice in accordance with 12 CFR 19.19(a) and (b), and warned that failure to do so would constitute a waiver of his right to appear and contest the allegations. The Notice was served in accordance with the OCC rules by overnight delivery, and was signed for by an individual named “Moseri.” In addition, on September 22, 2005, the OCC served the notice upon Respondent’s relative and co-resident, Jane Moseri, at Respondent’s personal residence. Nonetheless, Respondent failed to file an answer within the 20-day period or thereafter.

On November 23, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default against Respondent. On November 29, 2005, the ALJ issued an Order to Show Cause, providing Respondent until December 19, 2005, to file an answer to the Notice and to show good cause for having failed to do so previously. To date, Respondent has not filed any reply to the Order to Show Cause or answered the Notice.

C. Respondent’s Actions

The Notice alleges that Respondent was employed as a collections officer for Bank. His sole responsibility was to help Bank collect funds from delinquent credit card accountholders by

telephoning customers whose accounts were on a Bank-generated list of delinquent accounts. Respondent had no responsibility over non-delinquent accounts, nor did he have permission to view or alter any information contained in the records of non-delinquent accountholders. Nonetheless, Respondent improperly viewed the personal account records of more than six hundred customers whose accounts were non-delinquent. Further, during the period August - September 2000, Respondent improperly viewed and altered the personal account records of at least eleven additional customers whose accounts were also non-delinquent. These alterations, detailed in the ALJ's Recommended Decision, included changing the address and telephone number of non-delinquent accounts to Respondent's personal residence and other addresses, the issuance and activation of new cards to some of those accounts, and illegitimate charges to two of those cards totaling \$1,359.74.

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 CFR 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 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. section 1818(e). It was a breach of fiduciary duty, unsafe and unsound practice, and violation of law or regulation, for Respondent to view non-delinquent credit card account holder information; alter account addresses and telephone numbers in such accounts; and request (or cause to be requested) new or replacement credit cards to be issued to some of the altered accounts. Respondent's actions resulted in loss to the Bank and financial gain to the Respondent, in that he incurred (or caused to be incurred) illegitimate charges totaling at least \$1,359.74 on two of the altered 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 23rd day of March, 2006.

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

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

**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 Oyeacholem Moseri,) DOCKET NO. OCC-AA-EC-05-72
)
)
Former Employee,)
First North American National Bank)
Kennesaw, Georgia (Closed))
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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. section 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 OYEACHOLEM MOSERI ("Moseri"), a former employee and institution-affiliated party, as defined in Section 3(u) of the FDI Act (12 U.S.C. section 1813(u)), of First North American National Bank, Kennesaw, Georgia.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. section 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 FDI Act (12 U.S.C. section 1818(e)(7)(B)), Moseri 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. section 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. section 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. section 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. section 1818(e)(7)(A)).

2. Any violation of this Order shall separately subject Moseri to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. section 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 23rd day of March, 2006.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Robert deV. Frierson
Deputy Secretary of the Board