

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

In the Matter of

Fred Daibes

Institution-Affiliated Party of
Mariner's Bancorp

Docket Nos. 19-002-G-1

Consent Notice of Suspension and
Prohibition Issued Pursuant to Section
8(g)(1)(A) of the Federal Deposit
Insurance Act, as amended

WHEREAS, pursuant to Section 8(g)(1)(A) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. § 1818(g)(1)(A)), the Board of Governors of the Federal Reserve System (the "Board of Governors") issues this consent Notice of Suspension and Prohibition pursuant to Section 8(g)(1)(A) of the FDI Act (the "Consent Notice") against Fred Daibes ("Daibes" or "Respondent"), an institution-affiliated party ("IAP") of Mariner's Bancorp ("Mariner's"), a bank holding company, as defined in Sections 3(u) and 8(b)(3) of the FDI Act (12 U.S.C. 1812(u) and 1818(b)(3)), headquartered in Edgewater, New Jersey.

WHEREAS, on October 30, 2018, a federal grand jury in the United States District Court for the District of New Jersey charged Respondent and an accomplice by indictment with one count conspiracy to misapply bank funds and to make false entries to deceive a financial institution and the FDIC, five counts of misapplying bank funds, six counts of making false entries to deceive a financial institution and the FDIC, and one count of causing reliance on a false document to influence the FDIC in violation of 18 U.S.C. §§ 371, 656, 982(a)(2), 1005, 1007, and 2. *See United States v. Daibes, et. al.*, No. 2:2018cr00655 (N.D.N.J. Oct. 30, 2018) (the

“Indictment”). Each of these offenses is punishable by imprisonment for a term exceeding one year.

WHEREAS, the charges in the Indictment concern, among other things, the activity of Respondent between January 2008 and December 2013. Respondent was the founder and Chairman of the Board of Directors of Mariner’s Bancorp and the former CEO and Chairman of Mariner’s Bank (the “Bank”). During the relevant time period, Mariner’s was subject to federal banking regulations that placed limits on the amount of money that the Bank could lend to a single borrower (the “Lending Limits”).

WHEREAS, the Indictment charges that in about January 2008 to December 2013, Daibes and others orchestrated a nominee loan scheme designed to circumvent the Lending Limits by ensuring that millions of dollars in loans made by the Bank (the “Nominee Loans”) flowed from the nominees to Daibes, while concealing Daibes’ beneficial interests in those loans from both the Bank and the FDIC. Daibes recruited nominees to make materially false and misleading statements and material omissions to the Bank to obtain the Nominee Loans, including by concealing that Daibes was the true beneficiary. After receiving the proceeds of the Nominee Loans, the nominees distributed these monies to Daibes. Daibes and the nominees also failed to disclose to the Bank that, in certain instances, Daibes pledged the collateral for the Nominee Loans, while in other cases, he arranged to make both the interest and principal payments on the Nominee Loans. After the FDIC began an investigation into one of the Nominee Loans, Daibes and others created and submitted to the FDIC a backdated sales contract to conceal the true nature of the Nominee Loans.

WHEREAS, the Board of Governors is of the opinion or has reasonable cause to believe that Respondents’ continued service or participation in the conduct of the affairs of Mariner’s or

any relevant depository institution, as defined in section 8(g)(1)(E) of the FDI Act, 12 U.S.C. § 1818(g)(1)(E), posed, poses, or may pose a threat to the interests of depositors of Mariner's or the Bank, or threatened, threatens, or may threaten to impair public confidence in Mariner's or the Bank.

WHEREAS, by affixing his signature hereunder, Daibes has consented to the issuance of this Consent Notice by the Board of Governors, has agreed to comply with each and every provision of this consent notice, and has waived any and all rights he might otherwise have pursuant to 12 U.S.C. § 1818 or 12 C.F.R. Part 263, or otherwise: (a) to an informal hearing before the Board of Governors pursuant to Section 8(g)(3), 12 U.S.C. § 1813(g)(3), and Subpart D of the Rules of Practice, 12 C.F.R. § 263.73; (b) to obtain judicial review of this Consent Notice or any provision hereof; and (c) to challenge or contest in any manner the basis, issuance, validity, effectiveness or enforceability of this Consent Notice or any provisions hereof.

NOW THEREFORE, the Board of Governors hereby orders, pursuant to section 8(g)(1)(A) of the FDI Act, 12 U.S.C. § 1818(g)(1)(A), that:

1. Daibes is hereby suspended and prohibited from participating in any manner in the conduct of the affairs of any insured depository institution, holding company thereof, foreign bank, or any institution specified in section 8(e)(7)(A) of the FDI Act, 18 U.S.C. § 1818(e)(7)(A).

2. The suspension and prohibition set forth above shall remain in effect until the Indictment (or any superseding complaint, information, or indictment containing charges of a similar nature) is finally disposed of or until modified, suspended, or terminated by the Board of Governors.

3. A copy of this Consent Notice shall be served upon Mariner's and the Bank.

4. Any violation of this Consent Notice shall subject Daibes to sanctions under section 8 of the FDI Act (12 U.S.C. § 1818).

5. All communication regarding this Notice shall be addressed to:

a. Richard M. Ashton
Deputy General Counsel
Board of Governors of the Federal Reserve System
20th & C Sts., NW
Washington, DC 20551

b. Fred Daibes
c/o Lawrence S. Lustberg, Esq.
Gibbons P.C.
1 Gateway Center
Newark, N.J. 07102
LLustberg@gibbonslaw.com

6. This Consent Notice shall not bar, estop, or otherwise prevent the Board of Governors or any other U.S. federal or state agency or department from taking any other action affecting Daibes or Mariner's.

By order of the Board of Governors of the Federal Reserve System, effective this 29th
day of January, 2019.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: /s/ Fred Daibes
Fred Daibes

By: /s/ Ann E. Misback
Ann E. Misback
Secretary of the Board