

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of )

DAVID CRUSE, )  
individually, and as an )  
institution-affiliated party of )

GOREVILLE STATE BANK )  
GOREVILLE, ILLINOIS )

(INSURED STATE NONMEMBER BANK) )

Merged into, and now known as )

REGIONS BANK )  
BIRMINGHAM, ALABAMA )

(STATE MEMBER BANK) )  
\_\_\_\_\_

DECISION AND ORDER  
APPROVING APPLICATION  
TO MODIFY ORDER  
OF PROHIBITION FROM  
FURTHER PARTICIPATION

FDIC-94-1e

FDIC-08-110e&j

Introduction

On March 9, 2008,<sup>1</sup> David Cruse ("Respondent"), through a letter ("Application") addressed to the Regional Director of the San Francisco Regional Office of the Federal Deposit Insurance Corporation, made application to the Federal Deposit Insurance Corporation ("FDIC") for written consent to a modification of an Order of Prohibition from Further Participation entered against him ("Order of Prohibition") to become a "Home Loan Consultant" at Countrywide Bank, FSB, Alexandria, Virginia ("Bank"), an institution regulated by the Office of Thrift Supervision ("OTS").<sup>2</sup> This application arises under section 8(e)(7)(B) of the Federal

<sup>1</sup> Respondent had previously contacted the Chicago Regional Office of the FDIC by letter dated February 12, 2008, requesting a modification of the Order of Prohibition. After making certain revisions to his request and providing additional supporting information, Respondent filed the current application with the San Francisco Regional Office (the appropriate regional office to receive the application) on March 9, 2008.

<sup>2</sup> By separate letter dated March 9, 2008, Respondent also sought the permission of the OTS for his proposed position at the Bank.

Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e)(7)(B), and section 8(j) of the Act, 12 U.S.C. § 1818(j).

### Background

Respondent served as a vice president of Goreville State Bank, Goreville, Illinois (now known as Regions Bank, Birmingham, Alabama). During his tenure as a vice president at Goreville State Bank, Respondent diverted credit life insurance payments in the amount of \$2,150 that were due to Goreville State Bank customers and deposited the funds to his own account. As a result of this misconduct, on December 7, 1993, Respondent stipulated to the issuance of the Order of Prohibition. Respondent also made full restitution to the Bank and its customers. On January 31, 1994, the FDIC issued the Order of Prohibition pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e). The Order of Prohibition prohibited Respondent from participating in the conduct of the affairs of the Bank or any other FDIC insured institution without the prior written consent of the FDIC and the appropriate Federal banking regulator pursuant to 12 U.S.C. § 1818(e)(7)(B).

### The Application

By letter dated March 9, 2008, Respondent made application to the FDIC for written consent to a modification of the Order of Prohibition. The application requests the FDIC's permission for Respondent to be employed by the Bank in the position of "Home Loan Consultant" which is described in more detail hereinafter, but which primarily involves various administrative duties early in the home loan origination process.

Beginning in April of 2005, Respondent became a "Home Loan Consultant" for Countrywide Home Loans in Brentwood, Tennessee, an affiliate of the Bank. Respondent's job duties as a "Home Loan Consultant" included consulting potential borrowers regarding appropriate home loan programs, accepting loan applications, entering applications into the company's system, and participating in business development activities.

Due to a corporate reorganization and the resulting integration of Countrywide Home Loans into the Bank, Respondent's position was transferred to the Bank as of January 1, 2008, and was thereafter subject to the industry-wide prohibition of section 8(e)(7)(A) of the Act. Respondent was placed on administrative leave on December 24, 2007. He subsequently applied to resume his duties as a "Home Loan Consultant" as an employee of the Bank. Respondent's immediate supervisor at Countrywide Home Loans will continue as his supervisor at the Bank and has written the FDIC in support of Respondent's application. Respondent's supervisor notes that Respondent's duties will be limited to those that he performed at Countrywide Home Loans, described as follows:

- Consulting potential borrowers regarding appropriate single and multi-family loan programs and processes, including conforming and non-conforming residential loans, FHA and VA loans.
- Accepting loan applications and entering into system.
- Mr. Cruse will have lending authority. Lending authority is elevated to underwriters and management. All applications and supporting documentation is processed and approved by management and underwriters.
- All credit documentations, disclosures and other forms are sent directly to the underwriter/loan specialists for verification.
- Business development activities including assisting in preparing and participating in real estate professional/broker/builder functions, and maintaining contact with real estate professionals to inform them of loan products and services offered by Countrywide.

Respondent's supervisor confirms that Respondent will not handle checks, cash or other similar monetary instruments, and will not originate or transact credit insurance.

## FINDINGS OF FACT

Respondent asserts that he has been successfully employed for over fourteen years since the Order of Prohibition was issued in both the automobile and home loan industries, and has consistently received positive performance evaluations and exhibited a high degree of integrity.

Respondent states that from 1993 to 2004, he worked in Franklin, Tennessee, in a variety of positions for PRIMUS Automotive Financial Services (“PRIMUS”), a division of Ford Motor Credit, including eight years of increasing responsibility as a credit analyst. Respondent received positive evaluations during his tenure at PRIMUS. He left his position at PRIMUS when his job was transferred out of state.

In April of 2005, Respondent took the position of “Home Loan Consultant” with Countrywide Home Loans. Respondent notes that for nearly three years he performed the exact duties of the position for which he seeks the modification. Respondent’s immediate supervisor indicates that during Respondent’s employment at Countrywide Home Loans, he has received excellent evaluations, exhibited high integrity, provided good customer service, and shown a continuing commitment to volunteer work in the community. Based on the evidence presented, Respondent asserts that he has shown sufficient evidence of rehabilitation to warrant the requested modification of the Order of Prohibition.

Respondent and the Bank have also noted that the duties of the position requested pursuant to the modification are very limited in scope, and he will be subject to close supervision. As a “Home Loan Consultant,” Respondent will engage in only the duties described above and will have no lending authority. Respondent will not be handling cash, checks or other similar financial instruments. Furthermore, all credit documentation will be verified by another employee of the Bank. Finally, the Respondent will be bonded to the same degree as other “Home Loan Consultants.” Therefore, Respondent and the Bank assert that there will be sufficient safeguards and controls in place in connection with Respondent’s activities.

In addition, Respondent has received written approval from the Office of Thrift Supervision as the primary Federal financial institutions regulatory agency of the Bank. Finally, Respondent notes that he was 30 years old and therefore relatively young at the time of the misconduct, and he has since expressed remorse.

### DECISION AND ORDER

Section 8(e)(7)(B) of the Act states in pertinent part:

(7) INDUSTRYWIDE PROHIBITION.--

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.--If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of --

- (i) the agency that issued such order; and
- (ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party, subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent.

12 U.S.C. § 1818(e)(7)(B).

To meet this burden, Respondent must demonstrate: (1) his fitness to participate directly or indirectly in the conduct of the affairs of an insured depository institution; (2) that his participation would not pose a risk to the institution's safety and soundness; and (3) that his participation would not erode public confidence in the institution. See: In the Matter of Charles E. Floyd, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5177, A-1976 (1992); In the Matter of Frederick M. Pfeiffer, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5163A, A-1656; Docket No. FDIC-83-153e, FDIC ENFORCEMENT DECISIONS AND ORDER Par. 5117, A-1303 (1988).

The FDIC finds that Respondent has presented sufficient evidence to obtain a limited modification of the Order of Prohibition. The FDIC bases its decision on the following: the Respondent's age when the misconduct occurred; the fourteen-year period of time that has

elapsed since the Order of Prohibition was issued; the Respondent's consistent high level of work performance during the past fourteen years; the fact that for nearly three years the Respondent has been successfully performing the exact duties for which he is seeking a modification of the Order of Prohibition; the support of his immediate supervisor and the Bank, and the assurances of safeguards and controls in connection with Respondent's duties, including the fact that he will have no lending authority and will not handle cash, checks, or similar instruments; and, Respondent's remorse for his prior misconduct.

Respondent is reminded, however, that the misconduct underlying the Order of Prohibition was extremely serious, and that banking depends upon the commitment to the highest standards of fiduciary duty long required by law for bankers. See: Briggs v. Spaulding, 141 U.S. 132 (1891); Docket No. 85-291k, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5072, A-964, A-975; Docket No. 85-356e, FDIC ENFORCEMENT DECISIONS AND ORDERS, Par. 5112, A-1228, A-1235; See Also: American Bankers Association, *Focus on the Bank Director*, 97-125 (1984); Schlichting, Rice & Cooper, *Banking Law*, 6.04 (1984).

Accordingly, the application dated March 9, 2008, is hereby approved for Respondent to serve as an employee of Countrywide Bank, FSB, Alexandria, Virginia, in the manner hereafter described. The consent so granted for Respondent to serve as an employee of the Bank is limited solely to participation in the conduct of the duties of a Home Loan Consultant that Respondent previously engaged in while employed as a Home Loan Consultant by Countrywide Home Loans and does not constitute consent to engage in any other conduct not specifically authorized by this order which may violate the Order of Prohibition or Section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A). Any change in Respondent's position or duties at the Bank, or Respondent's employment by any other insured depository institution, will require prior written approvals by the FDIC and by the appropriate financial institutions regulatory agency of a new request for modification of the Order of Prohibition.

IT IS HEREBY ORDERED, that the Order of Prohibition from Further Participation issued against Respondent David Cruse on January 31, 1994, under Docket Number FDIC-94-1e, be, and hereby is, modified, for good cause shown, to allow the Respondent to serve as an employee of Countrywide Bank, F.S.B., Alexandria, Virginia, in the limited capacity of a Home Loan Consultant, subject to the limitations described above.

Pursuant to delegated authority.

Dated at Washington, D.C., this 19<sup>th</sup> day of February, 2009.

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Serena L. Owens  
Associate Director  
Division of Supervision and Consumer Protection