

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

---

In the Matter of	)
	) NOTICE OF INTENTION TO
	) PROHIBIT FROM FURTHER
KENNETH E. HAGGARD and	) PARTICIPATION, NOTICE OF
MARYANN TOMCZYK,	) ASSESSMENT OF CIVIL MONEY
individually, and as institution-	) PENALTIES, FINDINGS OF
affiliated parties of	) FACT, CONCLUSIONS OF LAW,
	) ORDER TO PAY, AND NOTICE
MIAMI VALLEY BANK	) OF HEARING
LAKEVIEW, OHIO	)
	) FDIC-09-545e & FDIC-09-547k
(Insured State Nonmember Bank,	)
in receivership)	)

---

The Federal Deposit Insurance Corporation ("FDIC") has determined that Kenneth E. Haggard and Maryann Tomczyk ("Respondents"), individually and as institution-affiliated parties of Miami Valley Bank, Lakeview, Ohio ("Bank"), have each directly or indirectly participated or engaged in unsafe or unsound banking practices, breaches of their fiduciary duties, and violations of laws, rules, and regulations; that as a result of the practices, breaches of fiduciary duty, and violations, the Respondents have received financial and pecuniary gain or other benefit; that the Bank has suffered financial loss or other damage; that the interests of its depositors have been prejudiced; that the practices, breaches of fiduciary duty, and violations were part of a pattern of misconduct; and that such practices, breaches of fiduciary duty, and violations evidence the Respondents' personal dishonesty and demonstrate their willful or continuing disregard for the safety or soundness of the Bank.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether appropriate orders should be issued against the Respondents under the provisions of section 8(e)

and 8(i)(2) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. §§ 1818(e) & 1818(i)(2), prohibiting the Respondents from further participation in the conduct of the affairs of the Bank, and any other insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D), and ordering them to pay civil money penalties.

The FDIC hereby issues this:

(a) NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e) and the FDIC’s Rules of Practice and Procedure (“FDIC’s Rules”), 12 C.F.R. Part 308; and

(b) NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER TO PAY (“NOTICE OF ASSESSMENT”), pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B), and the FDIC’s Rules, 12 C.F.R. Part 308.<sup>1</sup>

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **JURISDICTION AND BACKGROUND**

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of Ohio, having its principal place of business at Lakeview, Ohio. The Bank was, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of Ohio.

---

<sup>1</sup> The NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION and the NOTICE OF ASSESSMENT are collectively referred to in this document as the “NOTICE.”

2. At all times pertinent to this proceeding, Respondent Haggard owned 100% of the Bank's voting stock, and Respondent Tomczyk was Chairman of the Bank's board of directors.

3. At all times pertinent to this proceeding, the Respondents were "institution-affiliated parties" as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

4. The FDIC has jurisdiction over the Bank, the Respondents, and the subject matter of this proceeding.

5. At all times pertinent to the charges herein, Respondent Haggard owned 80% of MVB Mortgage Corporation, Southfield, Michigan ("MVB Mortgage"). Respondent Tomczyk owned 10% of MVB Mortgage and served as its President. MVB Mortgage was an "affiliate" of the Bank, as that term is used in sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c & 371c-1.

6. At least until 2006, MVB Mortgage was primarily in the business of originating and selling conforming FHA and VA mortgages and was funded through a line of credit from National City Bank, Cleveland, Ohio.

7. As reflected in the Bank's December 31, 2006, Call Report, the Bank's reported "total assets," as defined in 12 C.F.R. section 325.2(v) ("total assets") equaled \$167,626,000, and the Bank's Tier 1 or "Core Capital," as defined in 12 C.F.R. section 325.2(t) ("Tier 1 Capital") equaled \$13,155,000.

8. As detailed in Paragraphs 14 through 47 below, from October 2005 through March 2007, the Respondents caused the Bank to purchase an excessive volume of subprime mortgages originated by a single mortgage company, Investaid Corporation ("Investaid"). The

Respondents used their controlling influence at the Bank to effectuate these transactions even after they were aware that Investaid was having difficulty selling a large volume of past due subprime mortgages. After Investaid became an affiliate of the Bank in October 2006, these purchases violated multiple restrictions of section 23A(a)(1) of the Federal Reserve Act, 12 U.S.C. § 371c. In March 2007, the Respondents further violated multiple restrictions of sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c & 371c-1, by causing the Bank to purchase over \$23 million of additional Investaid loans, many of which were nonperforming, from MVB Mortgage, another Bank affiliate.

### **MORTGAGE WAREHOUSE FINANCING**

9. For a number of years prior to its failure, the Bank engaged in the business of mortgage warehouse financing. The Bank would make short-term purchases of individual residential mortgage loans from a variety of mortgage lenders. The loans would then be re-sold to end purchasers, typically within a period of 30 to 60 days.

10. The Bank did not intend to keep these loans on its books indefinitely. The mortgage lenders who sold the loans to the Bank sought investors to permanently acquire the mortgage loans.

11. The transactions had the effect of providing liquid funds to the mortgage lenders and provided the Bank with interest income.

12. At all times pertinent to the charges herein, the Respondents exercised a controlling influence over the management, policies and practices of the Bank, including the Bank's mortgage warehouse financing program.

13. One mortgage lender whose loans the Bank purchased was Investaid Corporation (“Investaid”). Investaid specialized in originating subprime mortgage loans. The Bank had made short-term purchases of Investaid originated loans since at least the 1990s.

**MORTGAGE WAREHOUSE FINANCING LEADS TO AN EXCESSIVE  
CONCENTRATION OF INVESTAID ORIGINATED LOANS**

14. Beginning in the fourth quarter of 2005, the Respondents caused the Bank to rapidly increase the volume of subprime mortgage loans it purchased from Investaid.

15. Over the next eighteen months, Investaid-originated loans purchased by the Bank and held pending sale increased as follows:

DATE	VOLUME FUNDED	PERCENTAGE OF TIER 1 CAPITAL
9/30/2005	\$8,927,032	60%
12/31/2005	\$26,694,188	203%
3/31/2006	\$40,541,020	278%
6/30/2006	\$40,302,155	274%
9/30/2006	\$28,711,766	197%
12/31/2006	\$52,534,773	399%

16. The large volume of Investaid-originated loans held at the Bank was the combined result of the Bank’s aggressive purchasing of loans from Investaid as well as the inability of Investaid to sell the loans to secondary market investors due to declining liquidity of the subprime loan market.

17. Throughout the period from September 2005 through March 2007, the Bank performed little or no underwriting of the Investaid originated loans either prior to or following the Bank’s acquisition of the loans.

18. Exceptions from normal warehousing procedures were granted for purchases of Investaid-originated loans. Investaid was given leeway regarding how long its loans could

remain on the Bank's books before being sold to an end purchaser and the volume limit on loans the Bank would acquire.

19. Throughout the period from September 2005 through March 2007, the Respondents were aware of the condition of loans which Investaid had originated and was marketing to investors.

20. The Respondents were aware that the loans which Investaid had originated and was marketing to investors were increasingly past due. Beginning in mid-2006, the volume of Investaid loans pending sale which were past due, by 30 days or more, rose rapidly.

DATE	APPROXIMATE VALUE OF MORTGAGE LOANS PAST DUE
3/31/06	\$1,285,186
6/30/06:	\$5,809,736
9/29/06:	\$11,932,348
12/29/06:	\$20,160,092

21. Throughout the period from April 2006 through March 2007, the Respondents were aware that a significant and growing volume of loans which Investaid had originated and was marketing to investors were becoming 90 or more days past due ("nonperforming loans").

DATE	APPROXIMATE VALUE OF NONPERFORMING LOANS	APPROXIMATE VALUE OF NONPERFORMING SECONDS
6/30/06:	\$1,542,816	\$681,177
9/29/06:	\$4,995,136	\$2,576,118
12/29/06:	\$9,204,203	\$5,036,997
3/30/07:	\$14,027,216	\$7,209,718

**CONCENTRATION OF INVESTAID ORIGINATED LOANS BECOMES  
INCREASINGLY RISKY AFTER INVESTAID BECOMES AN AFFILIATE OF THE  
BANK**

22. In February 2006, Respondent Haggard purchased a 15% interest in the voting stock of Investaid, and Respondent Tomczyk purchased a 5% interest. On or about October 17, 2006, Respondent Tomczyk acquired another 10% of the outstanding stock of Investaid.

23. As of October 17, 2006, Respondent Haggard had provided nearly \$5,000,000 of personal loans to or for the benefit of Investaid. These loans consisted of an approximately \$1 million unsecured personal line of credit to Investaid to finance its operations and approximately \$4 million to finance a special purpose entity's purchase of subordinate securities in a securitization of loans originated by Investaid.

24. At or about this time, Respondents began directing the management and operations of Investaid and continued to do so until Investaid ceased business on or about March 16, 2007.

25. On or about October 17, 2006, Investaid was an "affiliate" of the Bank, as that term is defined in section 23A(b)(1) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(1), by virtue of Respondent Haggard's and Tomczyk's control of Investaid, as the term "control" is defined in section 23A(b)(3)(A)(i) of the Federal Reserve Act, 12 U.S.C. § 371c(b)(3)(A)(i).

26. The Bank continued to purchase the vast majority of the loans which Investaid originated from October 17, 2006 through March 16, 2007, even after Investaid became an affiliate of the Bank.

27. As of October 17, 2006, the volume of Investaid loans purchased by the Bank and held pending sale equaled approximately \$45,320,942. This volume exceeded 10% of the Bank's Tier I capital which was reported as of September 30, 2006 as approximately \$14,574,000.

**RESPONDENTS CAUSED MVB MORTGAGE TO PURCHASE INVESTAID-ORIGINATED LOANS FROM THE BANK**

28. Throughout the period from April 2006 to March 2007, the Respondents were aware that Investaid loans, and in particular its subprime second mortgage loans, were becoming increasingly difficult for Investaid to sell to end investors.

29. The Respondents were also aware that by September 30, 2006, the volume of nonperforming loans originated by Investaid that had not yet been sold to end investors substantially exceeded Investaid's capitalization.

30. Notwithstanding this knowledge, the Respondents continued to cause the Bank to purchase loans from Investaid without performing meaningful loan review.

31. Beginning in April 2006, through their control of MVB Mortgage, Respondents caused MVB Mortgage, a Bank affiliate, to purchase past due Investaid-originated loans (along with current loans) from the Bank.

32. As a result of the purchases described in paragraph 31, the Bank was able to continue reporting a low volume of past due loans on its Call Reports.

33. Beginning in April 2006, when MVB Mortgage purchased Investaid loans from the Bank, these transactions were recorded by both the Bank and MVB Mortgage as sales of the loans to MVB Mortgage.



34. The Investaid loans acquired by MVB Mortgage were disproportionately delinquent when compared to the Investaid loans retained in the Bank's portfolio.

35. Between April 2006 and March 2007, MVB Mortgage purchased over \$66 million of Investaid loans from the Bank and other sources.

36. Between April 2006 and March 2007, MVB Mortgage re-sold approximately \$41 million of those loans to end investors through sales arranged by Investaid.

#### **MVB MORTGAGE'S LINE OF CREDIT AT NATIONAL CITY BANK**

37. MVB Mortgage financed its purchases of Investaid loans from the Bank by drawing funds from National City Bank, from which it had a line of credit. MVB Mortgage pledged the purchased loans as collateral on the line of credit.

38. Respondent Haggard guaranteed MVB Mortgage's line of credit at National City Bank.

39. National City Bank agreed to the pledging of subprime loans on the line of credit, under the following conditions:

- No more than twenty percent of the maximum limit on the line of credit could be secured by subprime loans at any one time;
- Only loans secured by first mortgages were eligible as collateral;
- Only loans to borrowers having FICO scores of 580 to 620 were eligible as collateral;
- and
- MVB Mortgage must own the loans in question.

40. Beginning in May 2006, MVB Mortgage violated the first three of these conditions. The violations went undetected by National City Bank until February or March 2007.

## **THE MARCH 2007 TRANSACTION**

41. In or about March 2007, National City Bank discovered that MVB Mortgage violated numerous requirements under its line of credit agreement with MVB Mortgage.

National City Bank initially demanded that the line of credit be paid off in full.

42. MVB Mortgage did not have the resources to repay the line.

43. On or about March 20, 2007, the Respondents participated in two conference calls with the Bank's non-management directors to persuade them to vote in favor of a transaction by which the Bank would acquire from MVB Mortgage all of its remaining Investaid loans. In return for this purchase, MVB Mortgage would receive cash and mortgage loans of a generally better quality than the Investaid loans ("March 2007 transaction").

44. The Bank's board of directors voted 4-2 in favor of the March 2007 transaction, with the Bank's President and its Chief Financial Officer voting against.

45. On March 27, 2007, the Bank and MVB Mortgage executed the March 2007 transaction. MVB Mortgage sold the Bank Investaid loans totaling approximately \$23,075,752. Sixty-four percent of these loans were second mortgages, 69% were past due 30 days or more, and 43% were past due 120 days or more.

46. In exchange, the Bank gave MVB Mortgage approximately \$6,991,071 cash and approximately \$16,084,681 in mortgage loans. All of these loans were first mortgages, 30% were past due 30 days or more, and 6% were past due 120 days or more. The March 2007 transaction equaled approximately 175% of the Bank's Tier 1 capital.

47. On or about October 4, 2007, the Bank was closed by the Department of Financial Institutions for the State of Ohio. The FDIC was appointed receiver for the Bank.

**VIOLATIONS OF LAW OR REGULATION, UNSAFE  
OR UNSOUND PRACTICES, AND BREACHES OF FIDUCIARY DUTY**

48. By reason of Respondents' acts, omissions, and practices described in paragraphs 1-47 above, Respondents have, directly or indirectly, violated the law, recklessly engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank.

49. By reason of Respondents' violations, unsafe or unsound practices, and breaches of fiduciary duties, the Bank has suffered, or was likely to suffer, financial loss and other damage; the interests of the Bank's depositors have been or could be prejudiced; the Respondents have received financial gain or other benefit; and the violations, practices, and breaches of fiduciary duty were part of a pattern of misconduct.

50. The unsafe or unsound practices and breaches of fiduciary duties committed by the Respondents involve personal dishonesty and demonstrate a willful or continuing disregard for the safety and soundness of the Bank.

**ORDER TO PAY**

By reason of the conduct and actions set forth in the NOTICE, the FDIC has concluded that a civil money penalty should be assessed against Respondents Kenneth E. Haggard and Maryann Tomczyk pursuant to section 8(i)(2) of the Act, 12 U.S.C. §1818(i)(2). After taking into account the appropriateness of the penalty with respect to the size of Respondents' financial resources, the gravity of the violations, the history of Respondents' previous violations, if any, the amount of loss suffered by the Bank and such other matters as justice may require, it is ORDERED, that by reason of the conduct and actions set forth in paragraphs 14 through 47, above, a penalty of \$250,000 be, and hereby is, assessed against each of the Respondents pursuant to section 8(i)(2) of the Act, 12 U.S.C. §1818(i)(2).

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to the Respondents until 20 days after the date of receipt of the NOTICE by the Respondents, during which time the Respondents may file an answer and request a hearing pursuant to section 8(i)(2)(H) of the Act, 12 U.S.C. §1818(i)(2)(H), and section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. §308.19. If the Respondents fail to file a request for a hearing within 20 days from the date of receipt of this NOTICE, the penalty assessed against the Respondents, pursuant to this ORDER TO PAY, will be final and shall be paid within 60 days after the date of receipt of this NOTICE.

#### NOTICE OF HEARING

Notice is hereby given that a hearing shall commence sixty (60) days from the date of service of this NOTICE upon the Respondents, or on such date as may be set by the Administrative Law Judge assigned to hear this matter at Columbus, Ohio or at such other place as the parties to this proceeding and the Administrative Law Judge may agree, for the purpose of taking evidence on the charges herein specified, in order to determine whether a permanent order should be issued to prohibit the Respondents from further participation in the conduct of the affairs of the Bank and any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior permission of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D), and if requested, for the further purpose of determining whether a civil money penalty should be assessed against the Respondents pursuant to section 8(i)(2) of the Act, 12 U.S.C. §1818(i)(2).

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559,

and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The Administrative Law Judge will determine the exact time and precise location of the hearing.

Respondents are hereby directed to file an answer to the NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION within twenty (20) days from the date of service, as provided by section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19. An original and one copy of all papers filed in this proceeding shall be served upon the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500. Respondents are encouraged to file any answer and request for a hearing electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. Copies of all papers filed in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, A.T. Dill III, Assistant General Counsel, Legal Division, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D. C. 20429, and Timothy E. Divis, Regional Counsel, Federal Deposit Insurance Corporation, 300 South Riverside Plaza, Suite 1700, Chicago, Illinois 60606.

Pursuant to delegated authority.

Dated at Washington, D.C., this 26<sup>TH</sup> day of February, 2010.

\_\_\_\_\_/s/  
Patricia A. Colohan  
Associate Director