FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of	)	
	)	
ROBERT MICHAEL and GEORGE MICHAEL,	)	DECISION AND
	)	ORDER TO PROHIBIT FROM
individually, and as institution-affiliated	)	FROM FURTHER
parties of	)	PARTICIPATION AND
	)	ASSESSMENT OF CIVIL
CITIZENS BANK AND TRUST COMPANY	)	MONEY PENALTIES
OF CHICAGO	)	(CORRECTED)
CHICAGO, ILLINOIS	)	
	)	FDIC-03-106e
(Insured State Nonmember Bank)	)	FDIC-03-107k
	)	

I. INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on February 23, 2010, of a Recommended Decision ("Recommended Decision" or "R.D.") by Administrative Law Judge C. Richard Miserendino ("ALJ"). The ALJ recommended that the respondents, Robert Michael ("R. Michael") and George Michael ("G. Michael") (collectively referred to as "Respondents" or the "Michaels") each be subject to an order of prohibition pursuant to section 8(e) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1818(e), and assessed a civil money penalty ("CMP") pursuant to section 8(i) of the FDI Act, 12 U.S.C. § 1818(i). For the reasons discussed below, the Board adopts in full and affirms the Recommended Decision and issues an Order of Prohibition against both Respondents as well as a $100,000 CMP assessment against R. Michael and a $75,000 CMP assessment against G. Michael.

II. PROCEDURAL HISTORY

The FDIC initiated this action on October 31, 2006, when it issued against Respondents, individually, and as institution-affiliated parties of Citizens Bank and Trust Company of Chicago, Chicago, Illinois (the "Bank"), a Notice of Intention to Remove From Office and to Prohibit from Further Participation, and Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice"). During the pertinent time period, Respondents were directors and principal owners of the Bank. Notice ¶ 3; R.D. at 3. The Notice charged Respondents with engaging and participating in violations of law, unsafe and unsound banking practices and breaches of fiduciary duty. The Notice also alleged that Respondents acted recklessly, demonstrated personal dishonesty and willful or continuing disregard for the safety and soundness of the Bank and that they engaged in a pattern of misconduct from which they benefitted financially. The Notice included an Order to Pay. Notice ¶¶ 7-110; R.D. at 1-2.

Among other things, the Notice alleged that Respondents, on behalf of themselves and their related entities, arranged loans from the Bank for the purchase of a hotel and a commercial building without disclosing to the Bank's board their interest in the transactions. Such conduct, as alleged in the Notice, violated the insider and executive officer lending restrictions of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 215 ("Regulation O"). Notice ¶¶ 74-86, 95-99. The Notice also charged that Respondents acted recklessly and with personal dishonesty by double pledging Bank holding company stock to other banks in order to obtain personal loans for their investment activities. Notice ¶¶ 91-93.

On December 13, 2007, Respondents filed a timely Answer denying the material allegations in the Notice. R.D. at 1. Following extensive discovery, a six-day hearing on the merits of the charges was held in Chicago in October 2008. At the hearing, the ALJ received sworn testimony from both Respondents as well as from nine witnesses called by FDIC Enforcement Counsel ("Enforcement Counsel") and six witnesses called by Respondents. On December 29, 2009, the record was re-opened for one day to hold a hearing on limited issues that remained unresolved.

On February 23, 2010, the ALJ issued a 142-page Recommended Decision recommending that Respondents be removed from participation in the banking industry and that they pay CMPs as assessed in the Notice. Respondents, on March 3, 2010, moved for an extension of time within which to file exceptions to the Recommended Decision. On March 11, 2010, the FDIC Executive Secretary, pursuant to delegated authority under 12 C.F.R. § 308.102(b)(1), extended the deadline for filing exceptions until May 21, 2010. Respondents timely filed exceptions and Enforcement Counsel notified the Board that it did not intend to file exceptions. On June 1, 2010, pursuant to 12 C.F.R. § 308.40(c)(2), the FDIC Assistant Executive Secretary transmitted the record in the case to the Board for final decision.

III. FACTUAL OVERVIEW

Because the ALJ provided a lengthy, detailed and well-reasoned opinion with extensive citations to the record in support of his conclusions, the Board finds it unnecessary to reiterate in full the contents of the Recommended Decision. The discussion below, however, provides a brief overview highlighting certain aspects of Respondents' misconduct as alleged in the Notice, corroborated by supporting testimonial and documentary evidence, and recounted in the Finding of Facts ("FOF") found at Appendix A to the Recommended Decision. [1]

A. Background

The Respondents, who are brothers, were real estate investors and developers in and around Chicago, Illinois. Together they owned a variety of businesses including a real estate sales company, a real estate management company ("R&G Properties"), a food service company ("Ararat Company"), and a mortgage company. In 1999, the Respondents established and became principal shareholders of Citizens Financial Corporation ("CFC"), a bank holding company, with R. Michael serving as president. On January 31, 2000, Respondents opened the Bank which was wholly owned by CFC. R. Michael was the chairman of the Bank's board of directors ("board") and G. Michael held a seat on the board. R.D. at 3; FOF ¶¶ 16-21.

From nearly its inception, regulatory problems plagued the Bank. A March 31, 2000 FDIC Report of Examination ("ROE"), issued just two months after the Bank opened for business, criticized Bank management and found, among other things, that management had failed to properly underwrite and document loans in violation of Bank policy and FDIC regulations and that management had engaged in apparent violations of Regulation O. On May 25, 2000, the Illinois Office of Banks and Real Estate issued a

[1] The FOF includes detailed citations to the voluminous record which includes pleadings, deposition transcripts, trial transcripts and exhibits. The FOF are incorporated into the Recommended Decision (R.D. at 2, n.2) which the Board adopts in full. In the interest of efficiency and, except where otherwise noted, the Board, when referring herein to the FOF, cites only to the numbered paragraphs in the FOF ("FOF ¶ _") rather than to the underlying supporting evidentiary documents, transcripts, or stipulations.

cease and desist order against the Bank in which the FDIC concurred ("C&D Order"). The C&D Order directed that the Bank refrain from engaging in unsafe and unsound practices and approving loans to insiders without prior full disclosure. Despite the C&D Order and regulatory criticism, the cited violations persisted. During the FDIC's second examination of the Bank, in the fall of 2000, examiners again noted apparent lending and Regulation O violations. FOF ¶¶ 24-33.

Lending violations and prohibited insider transactions are also the focus of this proceeding. As described below, Respondents – over a period of nearly three years -- engaged in a series of interrelated and often covert transactions among themselves, their business entities, and at least one unwitting nominee. These transactions were funded by the Bank and other financial institutions, all of which were left uninformed of the true nature of Respondents' financial interest in the deals. The Recommended Decision describes with specificity each of the complicated and, in many cases, overlapping transactions that form the basis for the removal actions. This proceeding centers around two Bank loans and two double stock pledges involving entities and business transactions in which the Respondents had a financial interest. Although each transaction involved a variety of facts and players, large loans from the Bank and other lenders, multiple exchanges of commercial paper, and a series of conveyances and re-conveyances of property, viewed altogether, clear common elements emerge. In each case, Respondents exploited their positions as Bank directors, deliberately overstated the value of assets, and concealed their true financial interest to entice lenders and investors to fund their business ventures.

B. The Harvey Hospitality Transactions

During 2000 and 2001, the Respondents, for their own financial gain, orchestrated a scheme to purchase the Harvey Hotel ("the hotel"), a distressed property in need of substantial repairs, for the purpose of flipping it to a group of investors at an inflated price. After acquiring the property for approximately $2.58 million, Respondents, based on representations that the property was purchased for what they knew to be a fictitious price of nearly $4 million, arranged financing and obtained a series of loans from the Bank and other financial institutions to facilitate the acquisition and purported development of the hotel. Among other things, at R. Michael's prompting, Sunny Gabhawala ("Gabhawala"), a business associate and social acquaintance of the Respondents, arranged for his mother and brother to form a corporation, Big 2 Trading Company ("Big 2"), for the sole purpose of buying the hotel. When Big 2 was unable to obtain sufficient financing by the scheduled December 2000 closing date, Respondents, using the hotel as collateral, obtained a $1.4 million loan from First Bank and Trust Company ("First Bank loan"). After the Bank declined to lend them an additional $700,000 because of Regulation O prohibitions, Respondents obtained funding from United Trust Bank. The United Trust loan was secured by CFC stock certificates # 3 and # 20 and by a second lien on real property owned by Respondents. FOF ¶¶ 34-53.

The Harvey Hotel sale closed on December 20, 2000. Several transactions occurred at the closing. First, Big 2 bought the hotel and its associated personal property at a price of approximately $2.58 million. Then Big 2 quitclaimed the hotel personal property to the Respondents and deeded the hotel real property to a land trust of which the Respondents were the sole beneficiaries. The Respondents and First Bank, as trustee, pledged the hotel real estate to First Bank, the lender of the $1.4 million. Next, the Respondents executed an Installment Agreement for Deed ("Installment Agreement") and an Asset Purchase Agreement transferring the real and personal property to Harvey Hospitality, LLC, an investment group consisting of Big 2 and a group of New Jersey investors recruited by Gabhawala, for a total purchase price of $3.95 million. The Installment Agreement required Harvey Hospitality to pay Respondents approximately $60,600 per month beginning February 1, 2001, until final closing on April 2, 2001, at which point Harvey Hospitality would pay Respondents the balance of approximately $2.58 million. Finally, Respondents' food service business, Ararat, entered into a lease agreement to operate the hotel's banquet facilities. FOF ¶¶ 54-77.

Harvey Hospitality never paid any of the monthly installments and did not secure financing to close in April 2001. Faced with the prospect of being saddled with the hotel and unable to pay off the First Bank and United Trust loans -- both due in June 2001 -- the Respondents, without disclosing to the Bank their interest in the transaction, helped Harvey Hospitality secure a $2.9 million loan from the Bank. Among other things, the Respondents, in their capacity as directors of the Bank, signed, on May 7, 2001, a loan approval sheet formally approving a $2.9 million Bank loan to Harvey Hospitality to complete the purchase of the Harvey Hotel. The loan approval sheet contained a number of false and misleading statements, including a statement that Harvey Hospitality had already paid Respondents $3.95 million for the hotel and that the loan to value ratio was 73 percent. The loan approval sheet also failed to disclose that Harvey Hospitality was in default under the Installment Agreement. The loan was discussed at a May 31, 2001, Bank board meeting which Respondents attended. The record, however, is devoid of evidence demonstrating that the Respondents revealed to the board their interest in the transaction. FOF ¶¶ 78-96.

On June 27, 2001, the Bank issued the $2.9 million loan proceeds which Respondents then used to pay off the $1.4 million First Bank loan and pay down the United Trust Loan. Because they had modified and extended the United Trust loan, Respondents then arranged for United Trust to deposit in their R&G Properties' account at the Bank a $600,000 cashiers check. FOF ¶¶ 73-144. Portions of the $2.9 million loan were immediately participated out to four other financial institutions. Because the Respondents had misrepresented to the Bank the actual purchase price and value of the hotel, this caused the Bank to misrepresent both the price and value to the participating banks. FOF ¶¶ 145-146.

C. The Two Double Pledges

As discussed above, in late December 2000, Respondents pledged and tendered to United Trust two CFC stock certificates -- certificate # 3 and certificate # 20 -- as collateral for the $700,000 loan that they had obtained to purchase the Harvey Hotel. However, Respondents had previously, in June 1999, pledged and tendered CFC certificate # 3 to secure a personal loan in the amount of $600,000 from Mount Prospect National Bank ("Mount Prospect"). A year later, Respondents pledged the certificates as security for a second loan from Mount Prospect, this time in the amount of $300,000. Respondents renewed both Mount Prospect loans during 2000 and 2001 including one renewal on December 5, 2000, just weeks before they pledged what turned out to be a duplicate CFC certificate # 3 to secure the United Trust loan. Each time, they signed a pledge renewing the stock as collateral and warranting that they had "not and will not, sell, assign, transfer, encumber or otherwise dispose" of the stock. FOF ¶¶ 157-259. This first double pledge of CFC certificate # 3 continued for eight months until August 2001 when, after the Mount Prospect loans were restructured, Mount Prospect released the original certificate. FOF ¶¶ 281-283.

Immediately after Mount Prospect released the original certificate and while the duplicate certificate remained pledged as collateral for the $700,000 United Trust loan, Respondents pledged and tendered original CFC certificate # 3 to secure a $1.5 million personal loan from Cole Taylor Bank ("Cole Taylor loan"). They used part of the proceeds from the Cole Taylor loan to pay down the Mount Prospect loans. FOF ¶ 281. As they did with the first double pledge, Respondents again misrepresented the ownership, validity and lien status of the certificate. The second double pledge lasted approximately 11 months until FDIC examiners discovered it in June 2002. FOF ¶¶ 276-320.

D. The Galioto Nominee Loan/ Vogay Credit Line

In addition to the Harvey Hotel transaction, Respondents approved and originated from the Bank a nominee loan to John Galioto ("Galioto"), without his knowledge or consent and without disclosing to the Bank that the true purpose of the loan was to finance Respondents' acquisition of a coveted office building. As described in detail in the Recommended Decision and summarized below, Respondents, with deceit, engineered a series of deliberately difficult to trace title swaps funded by the Galioto nominee loan. Thus, by dishonestly circumventing insider lending restrictions, Respondents were able to acquire the property with Bank financing.

The events leading up to the origination of the Galioto nominee loan began during the summer of 2001 when Respondents had an opportunity to purchase from Bank One in foreclosure an office building located at 4201 West Irving Park in Chicago ("W. Irving building"). The W. Irving building, offered at $210,000, was next door to a commercial property Respondents already owned. In August 2001, G. Michael signed a contract to purchase the W. Irving building, but complications in the foreclosure proceedings delayed closing until spring 2002. In the meantime, G. Michael began renovation work on the W. Irving building and Respondents' company, Michaels Realty, rented office space in the building to two tenants. However, Respondents were unable to obtain financing by the time that the deal was to close in May 2002. By the end of the month, after Respondents missed three scheduled closing dates, Bank One warned them that it was withdrawing its offer of sale. Faced with losing their substantial investment in the W. Irving property, Respondents scrambled to find financing elsewhere. FOF ¶¶ 321-369.

Meanwhile, a few months earlier, R. Michael approached Galioto, a friend and business acquaintance, seeking to raise capital for the Bank. Galioto did not have cash to contribute, but offered instead an unencumbered residential property that he owned on Vogay Lane ("Vogay house"). Soon afterwards, Galioto assumed management of the Harvey Hotel's food and beverage operations and, with R. Michael's approval, began extensive and costly renovations to convert the hotel lounge into an adult nightclub. FOF ¶¶ 338-342.

To pay for the renovations, Galioto sought refinancing from the Bank for two other residential properties that he owned -- one in Naperville, Illinois and one in

Rosemont, Illinois. On May 24, 2002, Galioto signed what he thought were documents pertaining to the Naperville and Rosemont refinancings but were actually documents mortgaging and opening a $216,000 Bank line of credit on the Vogay house (Vogay credit line or Galioto nominee loan) including blank authorizations to draw on the Vogay line. A few days later, R. Michael's secretary, without the knowledge or consent of Galioto, filled in one of the signed authorization forms to purchase from the Bank a $210,000 cashiers check drawn against the Vogay credit line. FOF ¶¶ 358-359, 371-373.

Galioto received none of the proceeds from the Bank's cashiers check. Instead, the $210,000 Bank check, dated May 28, 2002, was made payable to Bank One, the seller of the W. Irving building. The same day, a second Bank check -- this time drawn on the Michaels R&G Properties' account -- in the amount of approximately $6000 was also made payable to Bank One. Thus, Respondents, by surreptitiously originating and drawing on the Vogay credit line and without revealing to the Bank that they were the true beneficiaries of the loan proceeds, were able to close on the W. Irving property. At that point, the promissory note, mortgage and guarantees were conveyed to R&G Properties. FOF ¶¶ 338-377.

Galioto did not learn that Respondents had opened and drawn on the Vogay credit line until more than a year later when he decided to sell the Vogay residence. When he discovered that the Bank had a lien on the property, Galioto confronted R. Michael. R. Michael admitted to Galioto that he had obtained a loan collateralized by the Vogay house but promised to repay Galioto within four to six weeks. In the meantime, when he sold the Vogay house in August 2003, Galioto used the proceeds to pay down the balance of approximately $215,500 drawn on the Vogay credit line. FOF ¶¶ 415-418.

In the interim, Respondents, until October 1, 2002, held the paper on the W. Irving building. During that period, they managed the property and collected rent. At the same time, Galioto, who had no involvement with the W. Irving property, continued his work on the Harvey Hotel nightclub which he expected to open in October. Consistent with his plan, on October 1, 2002, Galioto signed, at R. Michael's request, what he thought were sublease papers for the Harvey Hotel lounge but were, in fact, assignments from R&G Properties to him of the W. Irving mortgage, note, and guarantees. FOF ¶¶ 383-392.

All the while, however, Respondents continued to manage and collect rents on the W. Irving building. In July 2003, at R. Michael's behest, Galioto signed a real estate sale contract to sell the W. Irving building to Respondents for $400,000. The contract initially required Respondents to pay earnest money of $40,000 but was later amended to increase the deposit to $100,000. To purchase the property from Galioto, Respondents obtained a $320,000 loan from First Commercial Bank. Respondents did not disclose to First Commercial that they had existing business and personal relationships with Galioto, that the $400,000 sale price was not a negotiated price for the transaction or that they had originally purchased the property for approximately half that price. FOF ¶¶ 426-433, 461, 482.

On September 11, 2003, the W. Irving property was transferred from Galioto to G. Michael. Galioto, who testified that he knew nothing about the sale, did not appear and was not represented by counsel at the closing. G. Michael signed Galioto's name to the deed. Respondents did not make an earnest money payment of either $40,000 or $100,000 to Galioto in connection with the sale. At the September 11, 2003 closing, Respondents used proceeds from the First Commercial loan to issue to Galioto a $214,000 check to reimburse him, as promised by R. Michael a month earlier, for paying off the Vogay credit line. Proceeds from the First Commercial loan were also used to issue checks in amounts of $15,396 and $66,994 to G. Michael and to R & G Properties, respectively. FOF ¶¶ 415-418, 483, 490. Thus, by secretly originating and drawing on the Galioto nominee loan, Respondents, with Bank financing, added the W. Irving building to their commercial property portfolio. They received additional benefits by borrowing against the property at an inflated price, as they transferred title back and forth among themselves, their business entities, and Galioto.

IV. ANALYSIS

A. Prohibitions Are Warranted

As noted in the Recommended Decision, Enforcement Counsel -- to meet its burden in a prohibition action -- must show that Respondents engaged in prohibited conduct (misconduct), the effect of which was to cause the Bank to suffer financial loss or damage, to prejudice or potentially prejudice the Bank's depositors, or to provide financial gain or other benefit to the Respondents (effects). Enforcement Counsel must also demonstrate that such misconduct evidences personal dishonesty or a willful or continuing disregard for the safety and soundness of the Bank (culpability). 12 U.S.C. § 1818(e)(1); R.D. at 21; See *In the Matter of Ramon M. Candelaria*, 1997 WL 211341, at *3 (FDIC) *aff'd. mem., Candelaria v. FDIC*, 134 F. 3d 382 (10th Cir. 1998) (unpublished decision); *In the Matter of Leuthe*, 1998 WL 438323, at *11 (FDIC), *aff'd mem.*, 194 F.

3d 174 (D.C. Cir.1999). As discussed below, the Board finds that the activities of Respondents during the pertinent time period overwhelmingly satisfy the three standards necessary to impose a prohibition.

Misconduct

Misconduct under section 8(e) encompasses violations of law and regulation as well as participation in activity deemed to be an unsafe and unsound banking practice or in breach of a party's fiduciary duty. 12 U.S.C. § 1818(e)(1)(A). The record clearly establishes Respondents' misconduct: multiple violations of law, unsafe and unsound practices and breaches fiduciary duty. The FDIC has interpreted "violations of law" as including violations of state lending or credit concentration restrictions as well as credit extended in violation of Regulation O. *See In the Matter of Charles F. Watts*, 2002 WL 31259465, at *6 (FDIC); *In the Matter of Roque de la Fuente II*, 2000 WL 34479990, at *13, *granted in part, denied in part, remanded, De La Fuente v. FDIC,* 332 F. 3d 1208 (9th Cir. 2003), *aff'd after remand, In the Matter of Roque de la Fuente II,* 2004 WL 614659, at *3 (FDIC) *aff'd Fuente v. FDIC*, 156 Fed. Appx. 44 (9th Cir. Nov 29, 2005) (unpublished decision); *In the Matter of Wayne Lowe*, 1990 WL 711070, at *2 (FDIC), *aff'd*, 958 F. 2d at 1526 (11th Cir. 1992). Regulation O, which is made applicable to state nonmember banks by section 18(j) of the FDI Act, 12 U.S.C. § 1828(j) and section 337.3 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.3, governs the permissible lending relationships between a financial institution and its executive officers, directors, principal shareholders and their related interests. Regulation O prohibits a bank from making an extension of credit to one of the above-described categories of persons and related interests unless the extension of credit falls within limits permitted by the regulations. As director, executive officer and principal shareholder of the Bank, Respondent R. Michael was an insider under Regulation O. Respondent G. Michael, a director and principal shareholder, was also a Bank insider pursuant to Regulation O. 12 C.F.R. § 215.2(h). FOF ¶¶ 5-7.

The record amply establishes Respondents' violations of multiple provisions of Regulation O in connection with the Harvey Hotel and W. Irving building transactions. For example, the Bank's $2.9 million loan to Harvey Hospitality was a prohibited extension of credit in violation of the "tangible economic benefit rule" established in section 215.3(f) of Regulation O that because among other things, Respondents did not disclose to the Bank's board that they had a $2.1 million personal interest in approval of the loan, that Harvey Hospitality had defaulted on the Installment Agreement, or that the stated $3.95 million sale price was not a negotiated arms length transaction. Respondents also caused the Bank to violate section 215.4(b)(1) of Regulation O because the Harvey Hospitality loan exceeded capital and surplus thresholds and lacked the approval of a majority of the Bank's board. In addition, Respondents knowingly received from the Bank, via the Harvey Hospitality loan, an extension of credit far in excess of the limits on borrowings to insiders in violation of section 215.5 and 215.6 of Regulation O. FOF ¶¶ 82-97; R.D. at 25-31. Respondents further violated and caused the Bank to violate many of these same provisions of Regulation O when they secretly arranged and directly participated in the approval of the Galioto nominee loan without revealing to the board that they intended to use the proceeds to fund R&G Properties' acquisition of the W. Irving building. FOF ¶¶ 347-382; R.D. at 60-62.

Respondents' misconduct that caused the Regulation O violations also encompasses breaches of their fiduciary duties to the Bank. By orchestrating and carrying out their plan to profit from the Harvey Hotel transaction and by arranging the Galioto nominee loan to complete their purchase of the W. Irving building, Respondents committed a serious breach of their fiduciary duties to the Bank and its depositors – another form of misconduct under section 8(e). *See, e.g., Seidman v. Office of Thrift Supervision*, 37 F.3d 911, 928 n.34, 935 (3d. Cir. 1994) ("A fiduciary's duty of candor is encompassed within the duty of loyalty. The duty of candor requires corporate fiduciaries to disclose all material relevant to corporate decisions from which they may derive a personal benefit."); *Candelaria,* 1998 WL 43167, at *5; *De La Fuente v. FDIC*, 332 F. 3d at 1222-24; *Lowe v. FDIC*, 958 F. 2d at 1535-36.

Moreover, Respondents involvement in the Harvey Hotel transactions, the double stock pledges and the Galioto nominee loan demonstrate unsafe and unsound practices which also satisfy the misconduct element under section 8(e). *See, e.g., Hendrickson v. FDIC*, 113 F. 3d 98, 103 (7th Cir. 1997) (affirming Board's conclusion that bank president who backdated tax records to mislead IRS engaged in unsafe and unsound conduct warranting removal); *Van Dyke v. Bd. of Governors of the Fed. Reserve Sys.,* 876 F. 2d 1377, 1380 (8th Cir. 1989) (affirming Federal Reserve Board's conclusion that bank president's check-kiting scheme constituted an unsafe practice warranting removal); *Simpson v. Office of Thrift Supervision*, 29 F.3d 1418, 1425 (9th Cir. 1994); (An unsafe practice is "one which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds and that it is a practice which has a reasonably direct effect on an association's financial soundness."). *See also, Green County Bank v. FDIC*, 92 F. 3d 633, 636 (8th Cir. 1996); *De La Fuente v. FDIC*, 332 F.3d at 1223); *See In the Matter of Michael D. Landry and Alton B. Lewis*, 1999 WL 440608, *petition for review denied, Landry v. FDIC*, 204 F.3d 1125 (D.C. Cir.), *cert. denied*, 531 U.S. 924 (2000).

For example, Respondents' deceitful conduct toward Galioto and their failure to disclose to the Bank's board critical details regarding their interests in the Harvey Hospitality and Vogay loans demonstrated unsafe and unsound conduct contrary to prudent banking practices. In the Board's view, nominee loans and the diversion of proceeds under these circumstances clearly constitute unsafe and unsound conduct. "The FDIC has a significant history of removing officers and directors from banking for making loans to individuals who are nominee borrowers and for their own benefit." *Candelaria*, 1998 WL 43167, at *3 n.4; *Watts* 2002 WL 31259465, at *6 (diversion of loan proceeds which personally benefitted officer was both a breach of fiduciary duty and an unsafe and unsound practice). *See also, Seidman v. OTS*, 37 F.3d at 928 ("Obliging one's institution to transactions that might be illegal is not in accord with 'generally accepted standards of prudent operation.'") R.D. at 32-33, 61-62. In addition, Respondents' double pledges of CFC stock for two extended periods of time -- resulting in insufficiently collateralized loans -- posed an abnormal risk of loss to Mount Prospect Bank, United Trust Bank and Cole Taylor Bank. R.D. at 41-43.

Moreover, self-dealing breaches of fiduciary duties by bank officials are inherently unsafe and unsound practices. *Hoffman v. FDIC*, 912 F.2d 1172, 1174 (9th Cir. 1990). In this case, Respondents, by taking advantage of their position as directors and principals of the Bank and putting their own interests ahead of the interest of the Bank, devised and perpetuated a tangled series of transactions to guarantee their enrichment from the Harvey Hotel and W. Irving transactions. *Id.* at 1174; *see also First National Bank of Lamarque v. Smith*, 610 F. 2d 1258, 1265 (5th Cir. 1980); *Independent Bankers Ass'n of America v. Heimann*, 613 F. 2d 1164, 1168 (D.C. Cir. 1979), *cert. denied,* 449 U.S. 823 (1980).

Effects

The record also establishes satisfaction of the "effects" test. As a direct result of the Regulation O violations, Respondents and their related interests received substantial financial benefits. R.D. at 3412-14; FOF 319-401. A loan made in violation of law to an institution-affiliated party or his related interest, like those to Respondents, has been held to be a benefit in and of itself. *See Leuthe,* 1998 WL 438323, at *15; *In the Matter of Wayne Lowe*, 1990 WL 711070, at *8 (FDIC), *aff'd*, 958 F.2d at 1536. Thus, Respondents' conduct in connection with the Harvey Hospitality loan and the Vogay credit line resulted in a gain or benefit to Respondents for purposes of section 8(e).

Specifically, Respondents used proceeds from the Harvey Hospitality loan to repay their $1.4 million loan to First Bank and to pay down and restructure their $700,000 United Trust Loan. FOF ¶ 127. In the same manner, they drew approximately $216,000 on the Vogay credit line to complete the purchase of the W. Irving building. FOF ¶ 369. As the Board noted in *Leuthe*, "[i]t has been a substantial benefit to Respondent to be able to go repeatedly to the till for funds, without ever giving a thought to lending limit restrictions, approval requirements, collateral requirements, reporting requirements and other statutory and regulatory requirements created to protect depositors from just these abuses." 1998 WL 438323, at *17.

Respondents also received a financial benefit when they double pledged their CFC stock to secure the $700,000 United Trust loan to fund their purchase of the Harvey Hotel. By the same token, they received a financial gain when they tendered the same CFC stock certificate as collateral for the $1.5 million Cole Taylor loan which they used, in part, to pay down the Mount Prospect loans. Moreover, because they had the use of the funds in the interim, Respondents benefited from their misconduct regardless of whether they ultimately repaid any of the wrongfully obtained loans. *See Candelaria*, 1996 WL 880606, at *7 (even though respondent reimbursed the bank for entire amount of two straw loans, ALJ found that he had nonetheless received financial gain as result of misconduct). At the same time, they placed other financial institutions at risk by offering collateral that they knew to be of diminished value. *See*, e.g., *De La Fuente*, 332 F.3d at 1223.

Culpability

The term "personal dishonesty" as it is used in 12 U.S.C. § 1818(e)(1) has been held to mean "a disposition to lie, cheat, defraud, misrepresent, or deceive." It also includes "a lack of straightforwardness and a lack of integrity." *See In the Matter of Allan Hutensky*, 1994 WL 812351, at *26 (FDIC), *aff'd,* 82 F.3d 1234 (2nd Cir. 1996). The Board finds the record filled with illustrations of Respondents' deceitful behavior in connection with each of the three transactions recounted above. For example, when they facilitated the Harvey Hospitality loan, Respondents knew full well that they would be receiving a portion of the loan proceeds, that the stated $3.9 million consideration never changed hands, and that Harvey Hospitality had defaulted on its obligations under the Installment Agreement, yet they did not disclose any of this material information to the Bank board. Respondents similarly failed to notify the Bank board of their interest in the Vogay credit line. Also, by lying to Galioto about the nature of documents that he was signing, forging his signature on other records, and failing to disclose to him that they had encumbered the Vogay residence, Respondents fraudulently and deceitfully enlisted Galioto to fund their acquisition of the W. Irving building. In addition, by double pledging the CFC stock certificate, Respondents knowingly misrepresented to the lending banks the true value of the collateral. *See, e.g., De La Fuente,* 332 F.3d at 1226 (Ninth Circuit specifically affirmed conclusion that insider's failure to disclose to bank's board his substitution of inferior collateral evidenced personal dishonesty under "culpability" requirement under section 8(e)).

The Board finds too that Respondents' conduct demonstrates "willful or continuing disregard." Although proof of either willful or continuing disregard is enough to meet the culpability threshold for purposes of section 8(e) of the FDI Act, in this case Respondents' conduct meets both tests. *See, e.g., Brickner v. FDIC,* 747 F. 2d 1198, 1202-03 (8th Cir. 1984). "'Willful disregard' means 'deliberate conduct which exposed the bank to abnormal risk of loss or harm contrary to prudent banking practices.'" *De La Fuente v. FDIC,* 332 F.3d at 1223 (*quoting Grubb v. FDIC*, 34 F.3d 956, 961-62 (10th Cir. 1994)). Respondents took deliberate steps – including arranging and facilitating the Harvey Hospitality and Galioto nominee loans while misrepresenting or failing to disclose facts to the Bank to conceal their related interests – and, in so doing, benefited from the Regulation O violations. Respondents, both Bank directors as well as sophisticated businessmen, knew very well that their activities were illegal but "turned a blind eye" to the Bank's interests so that they could pursue their own agenda. *See Cavallari v. OCC*, 57 F.3d 137, 145 (2nd Cir. 1995). *See also De La Fuente v. FDIC,* 332 F.3d at 1226-27 ("We also cannot help but note that De La Fuente's use of [the bank] as his personal piggy bank was in shocking disregard of sound banking practices and the law to the detriment of depositors, shareholders, and the public.").

"Continuing disregard" refers to that conduct which is voluntarily engaged in over time, with heedless indifference to the possible consequences. *See Grubb v. FDIC*, 34 F.3d at 962; *In the Matter of Henry P. Massey*, 1993 WL 853749, at *21 (FDIC); *In the Matter of Constance C. Cirino*, 2000 WL 1131919, at *51-52 (FDIC). For nearly three years, beginning in 2000, when they first began planning, negotiating, and arranging the financing for the acquisition of the Harvey Hotel and continuing through the fall of 2003 when the West Irving transaction was completed, Respondents marched steadfastly toward their goal of enriching themselves and increasing the value of their business interests. Moreover, the Harvey Hospitality loan and the Galioto loan each remained on the Bank's books for more than a year. *See, e.g., Candelaria*, 1997 WL 211341, at *6 ("continuing disregard" found by two nominee loans over a period of six months); *In the Matter of Frank E. Jameson*, 1990 WL 711218, at *8 (FDIC), *aff'd*, 931 F.2d 290 (5th Cir. 1991) (two incidents of falsifying loan records to hide self-serving transactions occurring within three months held to be "continuing disregard"). In fact, the record shows that as time went on, Respondents stepped up their dishonest behavior. Starting first with acts of omission such as concealing from the Bank's board material facts regarding the Harvey Hotel transaction, Respondents' activities escalated to outright fraud as they forged signatures and deliberately lied to secure sufficient financing to acquire the W. Irving building. In fact, it is unclear exactly how long Respondents would have continued tapping into the Vogay credit line had Galioto not discovered it when he arranged to sell the encumbered residence during the summer of 2003. Likewise, Respondents' use of the same stock certificate to secure separate loans only ceased when regulators discovered the double pledges.

B. The CMP Assessments Are Appropriate.

One of the statutory tools provided to the FDIC to make certain that bank directors comply with their fiduciary obligations is the imposition of CMPs for their violations of law or regulation. Pursuant to section 8(i)(2)(A) of the FDI Act, 12 U.S.C. § 1818(i)(2)(A), the FDIC has authority to impose CMPs by tiers in terms of the severity of the penalty or gravity of the offense. As set forth in the Recommended Decision, and in the discussion above related to the prohibition action, the evidence in the record amply establishes the statutory elements for the imposition of both first and second tier CMPs. The Board briefly summarizes the factors below.

Statutory Threshold

The Notice alleged and the ALJ found that Respondents' activities with respect to the Harvey Hotel and Galioto nominee loan warrant the assessment of a first and second tier CMP in the amount of $100,000 for R. Michael and $75,000 for G. Michael. Notice ¶¶ 105-110; R.D. at 63-65. The imposition of a first tier CMP requires proof that Respondents violated any law or regulation. 12 U.S.C. § 1818(i)(2)(A). A second tier CMP is a remedy which requires two elements of proof: (1) misconduct in the form of a violation of any law or regulation or final order, or breach of a fiduciary duty, or recklessly engaging in an unsafe or unsound practice in connection with the Bank; and (2) effects which include either a pattern of misconduct, or conduct which caused or was likely to cause more than minimal loss to the institution, or which resulted in a gain or benefit to the respondent. 12 U.S.C. § 1818(i)(2(B); *see, e.g., Leuthe,* 1998 WL 438323, at *13-14. Under the statute, a first tier CMP carries a penalty of up to $7,500 per day and a second tier CMP carries a penalty of up to $37,500 per day for each day the violation continues.

Before assessing the CMPs, the ALJ, as required under section 8(i)(2)(G) of the FDI Act, 12 U.S.C. §§ 1818(i)(2)(G), and section 308.132(b) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.132(b), evaluated -- as mitigating factors -- the financial resources and good faith of the Respondents, the gravity of the violations, Respondents' history of previous violations, and other matters as justice may require. Looking first to the size of Respondents' financial resources, the ALJ concluded that the Michaels were men of substantial means with ready access to credit. The ALJ found that Respondents' flagrant disregard of Regulation O restrictions, abuse of their management roles to further their personal financial interests, and inconsistent testimony evidenced their lack of good faith. With respect to the gravity of the offenses, the ALJ determined that Respondents exposed the Bank to an abnormal risk of loss by failing to fully disclose to the board their interest in the transactions and by participating in the loan approvals. So far as the history of previous violations, the ALJ found that the FDIC and state regulators had earlier warned the Bank about Regulation O violations and careless recordkeeping. Finally, the ALJ also noted Respondents' practice of enlisting Bank officers and employees to assist them in advancing their personal investment objectives against the interest of the Bank. R.D. at 65-66.

The ALJ also evaluated the evidence in connection with the 13-factor analysis found in the Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies. 63 Fed. Reg. 30,226 (June 3, 1998) (Interagency Policy).[2] Regarding those factors set forth in the Interagency Policy, the ALJ determined, among other things, that Respondents intentionally violated Regulation O and breached their fiduciary duties to the Bank. He noted, too, that the Bank had already been subject to C&D Order imposed by the Illinois regulators to prevent future Regulation O violations. Finally, the ALJ observed that in view of the totality of the evidence, Respondents had demonstrated their disposition toward engaging in prohibited conduct. R.D. at 67. Accordingly, based on his evaluation of the statutory mitigating factors and the analysis under the Interagency Policy, the ALJ concluded that a

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[2] The 13 factors contained in the Interagency Policy are:

1. Whether the violation was committed with a disregard for the law or the consequences to the institution;
2. The frequency or recurrence of the violations and the length of time the violation has been outstanding;
3. The continuation of the violation after the Respondent became aware of it;
4. Failure to cooperate with the agency in effecting an early resolution of the problem;
5. Evidence of concealment of the violation or its voluntary disclosure;
6. Threat of or actual loss or other harm to the institution;
7. Evidence that participants or their associates received financial or other gain; or benefit or preferential treatment as a result of the violation;
8. Evidence of restitution by the participants in the violation;
9. A history of similar violations;
10. Previous criticism of the institution for a similar violation;
11. The presence or absence of a compliance program and its effectiveness;
12. The tendency to create unsafe or unsound banking practices or a breach of fiduciary duty; and
13. The existence of agreements, commitments, or orders to prevent the violations.

CMP in the amount of $100,000 was appropriate as to R. Michael and a CMP in the amount of $75,000 was appropriate against G. Michael. R.D. at 67.

The Amount Assessed is Appropriate and Consistent with Policy Goals

A CMP serves two basic policy goals—(1) to adequately sanction an offender, and (2) to create a deterrent to others who may consider engaging in improper activities. *See* Interagency Policy; *Leuthe*, 1998 WL 438323, at * 14. The Interagency Policy also advises that in cases where the wrongdoer has economically benefited from his misconduct, removal of the economic gain may be insufficient by itself to promote the statutory goals behind CMP assessments.

In this case, the Board observes that the frequency and duration of the misconduct justify CMPs far in excess of the amount imposed. As the ALJ noted, the Harvey Hospitality loan, which was on the Bank's books for approximately a year and a half, could generate a penalty of at least $2.7 million. Likewise, the Galioto nominee loan, outstanding for 15 months, could result in penalties as high as $2.25 million. R.D. at 65. However, the Board also notes that neither party filed exceptions to the ALJ's recommended CMP assessments of $100,000 and $75,000. Moreover, the amounts assessed by the ALJ were the amounts sought in the Notice. Thus, after considering the complete record, the Board finds that the ALJ evaluated the pertinent factors as required by law and reasonably concluded that the CMP assessment sought was appropriate. As such, the Board finds that the CMPs imposed will adequately achieve the goals of the statute.

C. Respondents' Exceptions

Respondents filed 200 exceptions to the Recommended Decision ("exceptions") challenging virtually every aspect of this proceeding including the factual findings, legal conclusions and many of the ALJ's evidentiary rulings. Respondents also attack the integrity and competence of the ALJ and the credibility of FDIC witnesses. Although Respondents' exceptions purport to offer a point by point rebuttal to each of the ALJ's factual findings -- regardless of its relative significance -- they consist almost entirely of unsupported assertions amounting to little more than an alternative narrative casting Respondents as innocent victims of incompetent regulators and a biased ALJ. The Board concludes that Respondents' exceptions are, by and large, frivolous, repetitious, and, in some instances, merely reargue issues raised below and adequately disposed of by the ALJ. Although none of Respondents' exceptions justify further analysis, the Board will address briefly the two primary themes that emerge from Respondents' exceptions: (1) objections to specific findings of fact, and (2) challenges to various aspects of the proceedings including the ALJ's impartiality, legal conclusions, and evidentiary rulings. Any exceptions not specifically discussed are denied.

Objections to Specific Finding of Facts

Respondents raise dozens of specific exceptions to the ALJ's findings of fact. However, most of them require no discussion because they consist of nothing more than contradictory conclusions either lacking specific references to the record or relying on evidence outside the record. *See, e.g.,* Exceptions 1-14, 15-24, 26, 43-52, 54-60, 65-65, 68-69, 71-73, 75-77, 79-85, 87-88, 91-102, 104-116, 118-123, 126-129, 131-143, 145-166, 168-200. In addition, many pages of Respondents' exceptions focus on alleged factual errors in the Recommended Decision such as referring to certain Bank employees by the wrong job title, mischaracterizing the primary line of business of one of Respondents' businesses, and citing an incorrect start date for a building renovation irrelevant to the transactions at issue. Respondents' exceptions also included a discussion regarding the significance of typographical errors in the Recommended Decision. *See, e.g.,* Exceptions 2, 4, 24, 27, 144, 166. Because, none of these alleged factual inaccuracies is material to this case, they require no further consideration. *See Landry*, 1999 WL 440608, at *30.

Challenges to the Proceedings

Respondents argue in their exceptions that bias on the part of the ALJ, credibility issues with the FDIC's witnesses, improper evidentiary rulings and faulty legal analyses resulted in due process violations infecting the entire proceedings. *See* Exceptions 1, 7, 18, 26, 29, 39, 67, 84-85, 108, 120, 124, 128, 145-147, 154, 172. However, the Board finds that these largely unsupported allegations have no merit and require only a brief discussion.

First, although Respondents liberally charge throughout their exceptions that the ALJ was biased against them, they identify no credible evidence supporting their claim of partiality. Instead, Respondents assert, as proof of bias, the ALJ's acceptance of FDIC witnesses' credibility, rejection of Respondents' view of the case, and evidentiary rulings with which they disagreed. Respondents even go so far as to suggest that proofreading errors in the Recommended Decision demonstrate the ALJ's alleged partiality. Exceptions 84, 144. In distilled form, Respondents claim that because the ALJ ruled against them, he had to have been biased. The Board concludes that Respondents' charge of bias lacks any colorable legal basis. *See De La Fuente*, 2000 WL 34479990 at *7.

Similarly unpersuasive is the claim that the ALJ erroneously relied on the testimony of FDIC examiners in concluding that Respondents' activities constituted misconduct under section 8(e). At one point, Respondents refer to the testimony of retired FDIC Field Office Supervisor Tom Wilkes and Assistant Regional Director David Mangian as "non sense." Exception 105. Courts have long recognized that bank examiners' unique experience leads to the conclusion that their determinations are entitled to great deference and cannot be overturned unless shown to be arbitrary and capricious or outside a "zone of reasonableness." *Sunshine State Bank v. FDIC*, 783 F.2d 1580, 1582-83 (11th Cir. 1986). The Board too has repeatedly recognized the great deference due the opinions and conclusions of FDIC examiners. *See, e.g., In the Matter of First Bank of Jacksonville*, 1998 WL 363852 at *11 (FDIC), *aff'd mem., First Bank of Jacksonville v. FDIC,* 180 F. 3d. 269 (11th Cir. 1999); *In the Matter of Bank 1st, Albuquerque, New Mexico*, 2010 WL 1936984, at *3 (FDIC); *In the Matter of American Bank of the South, Merritt Island, Florida,* 1992 WL 813377, at *12-13 (FDIC). At the hearing, Enforcement Counsel offered expert testimony of no less than three highly experienced FDIC examiners offering their expert unequivocal opinions that Respondents' acts and omissions constitute violations of Regulation O, breaches of fiduciary duty and unsafe and unsound practices. FOF ¶¶ 497-500. Under the standard described above, the findings, conclusions and predictive judgments of the FDIC's expert witnesses are entitled to considerable weight and deference in determining whether the Respondents engaged in misconduct under section 8(e). Accordingly, the Board finds that the ALJ, in reaching his conclusions, accorded appropriate deference and properly relied on the testimony of FDIC examiners.

The Board finds equally unpersuasive Respondents' claims that the cumulative effect of the ALJ's evidentiary rulings, adverse legal findings, and, again misspellings or typographical errors, amount to a denial of their due process rights. *See, e.g.,* Exception 144. Initially, the Board observes that FDIC Rule 308.5 confers upon the ALJ broad powers to conduct hearings in a fair, impartial and efficient manner. 12 C.F.R. § 308.5. Accordingly, it is within the ALJ's discretion to make evidentiary rulings regarding the admission of evidence and the credibility of testimony. Moreover, the Board observes that although the ALJ is not bound by the Federal Rules of Evidence, Respondents' insistence that the proceedings were tainted because the ALJ violated evidentiary rules and relied on impermissible evidence is unfounded. *See, e.g., De La Fuente II*, 2000 WL 34479990, at *14 (hearsay is admissible in administrative proceedings). In fact, to find removal warranted, the ALJ only needed to find the three essential elements under section 8(e). In this case, as discussed above, the great weight of the evidence supports the ALJ's findings that Respondents deliberately engaged in pervasive misconduct at risk to the Bank and to other institutions. However, the uncontested fact that Harvey Hospitality did not pay $3.9 million to purchase the hotel coupled with the abundant and unambiguous evidence that Respondents did not disclose to the Bank's board their interest in the $2.9 million Bank loan, are alone sufficient to support removal. FOF ¶¶ 88, 95, 127-128, 144, 153.

In further dispute of the ALJ's conclusions of law, Respondents assert, as they did below, that they must be held blameless for the double stock pledges because they were unsophisticated novices who relied on the advice and representations of other bankers. Exceptions 150, 153. As the ALJ correctly concluded, a basic principle of agency law is that the knowledge of an agent is imputed to its principal. R.D. at 46. Thus, even if the Board accepts that Respondents -- bank directors and sophisticated real estate investors -- either did not know what they were signing or chose the path of willful ignorance, their culpability does not disappear. As we have found in the past, directors are liable for violations which they should have been aware of regardless of whether they had actual knowledge. *See, e.g., Landry*, 1999 WL 440608, at *21 (Directors cannot merely state that they did not know what was going on in a bank); *Leuthe,* 1998 WL 438323, at *13 ("The greater the authority of the director or officer, the broader the range of his duties; the more complex the transaction, the greater the duty to investigate, verify, clarify and explain."). The Board finds it axiomatic that if bank directors may not ignore shortcomings at their own bank, they similarly cannot disregard what they represent and warrant to other insured lenders.

Finally, the Board rejects Respondents' argument, also raised and disposed of below, that the Harvey Hospitality loan was a bona fide arms length transaction and therefore, exempt from the "tangible economic benefit" rule under Regulation O. 12 C.F.R. § 215.3(f)(2). As found by the ALJ, it is abundantly clear to the Board that far from being an appropriate arms-length transaction, the entire Harvey Hotel transaction was engineered by Respondents through deliberate omission and outright deceit for the benefit of themselves and entities they controlled. R.D. at 25-26. Among other things, the Harvey Hospitality loan involved parties with an undisclosed pre-existing relationship, written provisions that neither party ever intended would be performed, and undocumented material terms. Because the transactions lacked fairness and full disclosure, the exception to Regulation O does not apply. *See De La Fuente II*, 2000 WL 34479990 at *6 (transactions not bona fide due to insider misrepresentations to the bank in connection with loan origination).

V. CONCLUSION

After a thorough review of the record in this proceeding, and for the reasons set forth above, the Board finds that an Order of Prohibition and Assessment of a CMP is warranted against each Respondent. In this case, the record plainly shows that Respondents, over a period of years, exploited their management positions and put the Bank and other financial institutions at risk by engaging in a series of prohibited insider transactions and improper lending practices. Ignoring their responsibilities to the Bank and its depositors, Respondents dishonestly pursued potentially lucrative business opportunities regardless of whether they had sufficient funding. In clear abuse of their role as Bank directors and by various means of deceit, Respondents secured the financing that they needed to expand their real estate empire and enrich themselves. In view of Respondents' repeated transgressions and serious breach of their fiduciary duties, the Board is persuaded that they should be permanently barred from the banking industry. Moreover, although the Board finds abundant evidence in the record supporting Respondents' misconduct as to each of the three wrongful transactions that form the basis for Respondents' removal, the Board finds that Respondents' complicity in any one of them is alone sufficient to support removal. Moreover, in light of the entire record, the Board finds that the CMPs imposed are appropriate and consistent with the statute's intended effects.

Based on the foregoing, the Board affirms the Recommended Decision of the ALJ and adopts in full the conclusions of law and Findings of Fact incorporated therein; and issues the following Orders implementing its Decision.

ORDER TO PROHIBIT

The Board of the FDIC, having considered the entire record of this proceeding and finding that Respondent Robert Michael, formerly the chairman of the board of directors and a principal shareholder of the Bank through his ownership of CFC stock, and Respondent George Michael, formerly a board member and principal shareholder of the Bank through his ownership of CFC stock engaged in violations of law, unsafe or unsound banking practices and breaches of their fiduciary duties resulting in a personal benefit to each of them, and that their actions involved personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank, hereby ORDERS and DECREES that:

1. Robert Michael and George Michael shall not participate in any manner in any conduct of the affairs of any insured depository institution, agency or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).
2. Robert Michael and George Michael shall not solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent or authorization with respect to any voting rights in any financial institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12

3. Robert Michael and George Michael shall not violate any voting agreement with respect to any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).
4. Robert Michael and George Michael shall not vote for a director, or serve or act as an institution-affiliated party, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), of any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).
5. This ORDER shall be effective thirty (30) days from the date of its issuance.

ORDER TO PAY CIVIL MONEY PENALTY

The Board, having considered the entire record in this proceeding, and taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of each Respondent, the gravity of the violations and such other matters as justice may require, hereby ORDERS and DECREES that:

1. A civil money penalty is assessed against Robert Michael in the amount of $100,000 pursuant to 12 U.S.C. § 1818(i).
2. A civil money penalty is assessed against George Michael in the amount of $75,000 pursuant to 12 U.S.C. § 1818(i).
3. This ORDER shall be effective and the penalties shall be final and payable thirty (30) days from the date of its issuance.

The provisions of these ORDERS will remain effective and in force except to the extent that, and until such time as, any provision of these ORDERS shall have been modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED that copies of this Amended Decision and Order to Prohibit From Further Participation and Assessment of Civil Money Penalties shall be served on Robert Michael, George Michael, FDIC Enforcement Counsel, the ALJ, and the Director, Division of Banking, Illinois Department of Financial and Professional Regulation.

By direction of the Board of Directors.

Dated at Washington, D.C. this 10th day of August, 2010.

/s/________________________
Valerie J. Best
Assistant Executive Secretary

(SEAL)

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