

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of)	
)	DECISION AND ORDER
)	TO PROHIBIT FROM
CHERYL ANN HIGH,)	FURTHER PARTICIPATION
)	
Individually and as an)	
Institution-affiliated party of)	
)	FDIC-08-291e
Hudson United Bank)	
Union City, New Jersey, n/k/a)	
TD Bank, National Association)	
Wilmington, Delaware)	
)	
(Insured State Nonmember Bank))	

I. INTRODUCTION

This matter is before the Board of Directors (“Board”) of the Federal Deposit Insurance Corporation (“FDIC”) following the issuance on July 14, 2010, of a Recommended Decision on Default (“Recommended Decision” or “R.D.”) by Administrative Law Judge C. Richard Miserendino (“ALJ”). The ALJ recommended that Cheryl Ann High (“Respondent”) 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). The Recommended Decision included an order that would permanently bar Respondent from the banking industry unless the FDIC consented to her further participation.

This is an uncontested proceeding. The record shows that Respondent was served with notice of the charges against her as set forth in the FDIC’s Notice of Intention to Prohibit from Further Participation, Findings of Fact, Conclusions of Law, and Notice of Hearing (“Notice”). R.D. at 1. Respondent failed to file an answer to the charges included in the Notice or respond to

an Order to Show Cause issued by the ALJ. R.D. at 1. She also failed to file exceptions to the Recommended Decision. For the reasons discussed below, the Board adopts the Recommended Decision and issues an Order of Prohibition against Respondent.

II. BACKGROUND

On April 28, 2010, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e). Respondent, at all times pertinent to the charges in the Notice, served as a teller at Hudson United Bank, Union City, New Jersey (“Bank”),¹ and was an institution-affiliated party pursuant to 12 U.S.C. § 1813(u). The Bank fired Respondent on May 31, 2005, as a result of the conduct that was the basis for this removal action. Notice at ¶ 3.

The Notice charged Respondent with engaging in unsafe and unsound practices and violations of law for which she received a financial gain and the Bank suffered a loss. The Notice also alleged that Respondent’s acts, omissions, and practices demonstrated personal dishonesty. Notice at ¶ 28.

Specifically, the Notice charged that on multiple occasions between 1999 and May 2005, Respondent gave checks made payable to “Cash” and drawn on her personal account at the Bank to another Bank teller with instructions to give Respondent cash in the amount of the check, but to delay processing the check until Respondent instructed her to do so. Notice at ¶¶ 10-11. Respondent allegedly failed to instruct the other teller to process some of those checks. Notice at ¶ 12. The Notice also alleged that, during the same period, Respondent regularly skimmed cash from her teller drawer in increments of approximately \$200 to \$300, without authority, for her personal benefit. Notice at ¶¶ 13-14. To conceal these thefts, Respondent routinely falsified her daily proof sheets and other bank records. Notice at ¶¶ 15, 17.

¹ In January 2006, Hudson United Bank was merged into and subsequently operated as part of TD BankNorth, National Association, which is now known as TD Bank, National Association.

On May 31, 2005, after Bank management discovered Respondent's wrongdoing and confronted her with the findings, Respondent admitted in a written statement that between 2003 and 2005 she surreptitiously took from her teller drawer approximately \$50,000. Notice at ¶ 18. On July 21, 2008, Respondent pled guilty to one count of embezzlement by a bank employee in violation of 18 U.S.C. §§ 2 and 656. Notice at ¶ 21. In her plea agreement, Respondent admitted that she knowingly took approximately \$100,000 from Hudson United Bank, without authority, for her personal benefit between 2001 and May 2005. Notice at ¶ 22.

The Notice charged that Respondent's misconduct extended over a longer period of time and involved greater sums of unauthorized withdrawals than she had previously admitted in either her written statement to the Bank or in her plea agreement. According to the Notice, Respondent's Bank statements from 1999 through May 2005 show unexplained deposits into her main account of \$136,772.40 and into her Christmas Club account of \$5,147.04. Notice at ¶¶ 19-20.

On April 29, 2010, the Notice was served on Respondent at her home address. R.D. at 1. The Notice directed Respondent to file an answer within twenty days from the date of service, as required by section 308.19 of the FDIC's Rules of Practice and Procedure ("FDIC Rules"), 12 C.F.R. § 308.19. Notice at ¶ 31. Respondent never responded to the Notice. R.D. at 1.

On June 21, 2010, Enforcement Counsel moved, pursuant to section 308.19 of the FDIC Rules, for Entry of Order of Default.² On the same day, the ALJ issued an Order to Show Cause directing Respondent, by July 6, 2010, to show good cause why a timely answer to the Notice was not filed and why default judgment should not be entered against her. Enforcement Counsel's Motion for Entry of Order of Default and the ALJ's Order to Show Cause were served

² Section 308.19(c)(1) of the FDIC Rules provides that when a respondent fails to timely answer a notice, Enforcement Counsel may move for entry of default judgment, which shall be issued by the ALJ upon a finding that no good cause has been shown.

on Respondent, but she did not respond to either the motion or to the order. R.D. at 1. In the absence of any response, the ALJ, on July 14, 2010, granted Enforcement Counsel's motion and issued the Recommended Decision. The Recommended Decision was served on Respondent at her home address. R.D. at 6.

III. DISCUSSION

The Board concurs in and adopts the ALJ's Recommended Decision. The record reflects that Respondent received actual notice of the proceedings through service of the Notice at her home address. Although she was personally served with the Notice, she failed to respond. Respondent also failed to respond either to Enforcement Counsel's Motion for Entry of Order of Default or to the Order to Show Cause, even though she was served with copies in accordance with section 308.11 of the FDIC Rules. 12 C.F.R. § 308.11. As such, Respondent's conduct clearly indicates an intentional disregard of the FDIC's procedural requirements.

Moreover, the Board agrees with the ALJ's finding that the undisputed facts in the Notice satisfy the three standards necessary to sustain a removal under section 8(e) of the FDI Act (R.D. at 2) – misconduct, culpability, and effects. 12 U.S.C. § 1818(e)(1).³ Specifically, the Board observes that Respondent reaped substantial financial benefits by repeatedly abusing her position as a teller to deliberately and deceitfully misappropriate Bank funds. R.D. 8-9; *see, e.g., In the Matter of Ramon M. Candelaria*, 1997 WL 211341, at *3 (FDIC); *In the Matter of Leuthe*, 1998 WL 438323, at *11 (FDIC), *aff'd*, 194 F. 3d 174 (D.C. Cir. 1999). This type of activity clearly

³ The undisputed violations of criminal law and uncontested allegations of unsafe and unsound banking practices establish ample evidence of Respondent's wrongdoing. Therefore, a specific finding of breach of fiduciary duty was unnecessary to establish misconduct under section 8(e) of the FDI Act, 12 U.S.C. § 1818(e). In this case, however, the ALJ concluded that Respondent – in addition to violating laws and engaging in unsafe and unsound practices – also breached her fiduciary duty to the Bank. R.D. at 4. The Board observes that although the Notice did not specifically charge that Respondent breached her duty to the Bank, the ALJ's conclusion in this regard was not erroneous because Respondent's admitted embezzlement, which was described in the Notice, clearly encompassed such misconduct. *See In the Matter of Michael D. Landry and Alton B. Lewis*, 1999 WL 440608, at *16 (FDIC) (explaining that the use of bank funds by an institution-affiliated party for his own benefit is a form of self-dealing, which is both a breach of fiduciary duty and an unsafe and unsound practice).

warrants a permanent bar from the industry and, in this case, default judgment is appropriate. *In the Matter of Brenda J. Vikre*, 2009 WL 2477750, at *3 (FDIC); *In the Matter of Alex P. Majka*, 2007 WL 4698593, at *2 (FDIC); *In the Matter of Leann Bennett*, 2004 WL 2185944, at *2 (FDIC).

Respondent's default constitutes consent to entry of an order of prohibition and a waiver of her right to contest the allegations in the Notice under section 308.19(c)(1). *In the Matter of Brenda J. Vikre*, at *3; *In the Matter of Alex P. Majka*, at *3; *In the Matter of Leann Bennett*, at *3.⁴ Moreover, Respondent's failure to file exceptions to the Recommended Decision pursuant to section 308.39 of the FDIC's Rules, 12 C.F.R. § 308.39, must be deemed a waiver of any objections to the ALJ's Recommended Decision. *In the Matter of Brenda J. Vikre*, at *3; *In the Matter of Alex P. Majka*, at *3; *In the Matter of Leann Bennett*, at *3.

IV. CONCLUSION

After a thorough review of the uncontested record in this proceeding, the Board, for the reasons set forth above, adopts the Recommended Decision, incorporates herein the Findings of Fact and Conclusions of Law set forth in the Notice, and issues the following order implementing its decision.

ORDER TO PROHIBIT

The Board of the FDIC, having considered the entire record of this proceeding and finding that Respondent Cheryl Ann High, formerly employed as a teller by the Bank, violated 18 U.S.C. §§ 2 and 656 and engaged in unsafe or unsound banking practices causing financial

⁴ This case clearly is distinguishable from *Amberg v. FDIC*, 934 F.2d 681 (5th Cir. 1991), and *Oberstar v. FDIC*, 987 F.2d 494 (8th Cir. 1992), in which default judgments were overturned. In those cases, the courts found that respondents' failure to comply with the FDIC's Rules was merely technical and that the respondents had taken steps indicating an intention to contest the charges against them. Here no intention to contest or otherwise comply with the procedural requirements has been shown by Respondent and, as such, a default order is appropriate.

loss to the Bank, and that her actions involved personal dishonesty, hereby ORDERS and DECREES that:

1. Cheryl Ann High 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. Cheryl Ann High 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 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).
3. Cheryl Ann High 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. Cheryl Ann High 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 service upon Respondent.

IT IS FURTHER ORDERED, that copies of this Decision and Order to Prohibit from Further Participation (“Decision and Order”) shall be served on Cheryl Ann High, Enforcement Counsel, the ALJ, the Commissioner of the New Jersey Department of Banking and Insurance, and the Office of the Comptroller of the Currency.

By direction of the Board of Directors.

Dated at Washington, D.C. this 9th day of November, 2010.

/s/

Robert E. Feldman
Executive Secretary

(SEAL)

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