

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____	)	NOTICE OF ASSESSMENT OF
In the Matter of	)	CIVIL MONEY PENALTY,
JON P. SMYTHE, individually and as an	)	FINDINGS OF FACT
institution-affiliated party of	)	AND CONCLUSIONS OF LAW,
STATE BANK OF PARK RAPIDS	)	ORDER TO PAY, AND
PARK RAPIDS, MINNESOTA	)	NOTICE OF HEARING
(INSURED STATE NONMEMBER BANK)	)	FDIC-09-149k
_____	)	

**NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY**

The Federal Deposit Insurance Corporation (“FDIC”) has determined that JON P. SMYTHE (“Respondent”), individually, and as an institution-affiliated party of STATE BANK OF PARK RAPIDS, PARK RAPIDS, MINNESOTA (“Bank”), has breached his fiduciary duty to the Bank. These breaches of fiduciary duty were part of a pattern of misconduct.

The FDIC, therefore, issues this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING (“NOTICE OF ASSESSMENT”), pursuant to section 8(i)(2) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(i)(2), and the FDIC Rules of Practice and Procedure (“FDIC Rules”), 12 C.F.R. Part 308. In support thereof, the FDIC finds and concludes as follows:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Definitions and Jurisdiction**

1. The Bank is a corporation existing and doing business under the laws of the State of Minnesota, having its principal place of business in Park Rapids, Minnesota.

2. The Bank is, and at all times pertinent to this proceeding has been, 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 Minnesota.

3. Respondent was, at all times pertinent to this proceeding, an executive vice president, loan officer, director, and, accordingly, an “institution-affiliated party” of the Bank, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of section 8(i) of the Act, 12 U.S.C. § 1818(i).

4. At all times pertinent to these proceedings, the FDIC was the “appropriate federal banking agency,” as that term is defined in section 3(q) of the Act, 12 U.S.C. § 1813(q), and has jurisdiction over the Bank, the Respondent, and the subject matter of this proceeding.

#### **Respondent’s Misconduct**

5. (a) On June 27, 2007, Respondent, in his capacity as a loan officer, renewed a real estate mortgage loan (Loan #\*\*\*\*\*), in the amount of \$200,000, made to \*\*\*\*\*, husband and wife.

(b) Simultaneously with the renewal of Loan #\*\*\*\*\*, Respondent made a new, unsecured loan (Loan #\*\*\*\*\*) to \*\*\*\*\*, individually, in the amount of \$20,000.

(c) Respondent knew that the proceeds of Loan #\*\*\*\*\* would be used to pay accrued interest on Loan #\*\*\*\*\*.

(d) Respondent also knew that the Bank’s loan policy required the Bank’s Board of Directors to approve loans made for the purpose of capitalizing interest.

(e) Respondent represented to the Bank’s Officers Loan Committee (“Loan Committee”) and Board of Directors that the purpose of Loan #\*\*\*\*\* was “[a]dditional funds

for property improvement.” Respondent knew this representation was false when made.

(f) By concealing the true purpose of Loan #\*\*\*\*\*, which was to capitalize interest on Loan #\*\*\*\*\*, Respondent withheld information from the Bank’s Loan Committee and Board of Directors that was relevant to the true condition of the loan being renewed and the creditworthiness of the borrowers.

(g) Respondent concealed the true purpose of Loan #\*\*\*\*\* and the true condition of Loan #\*\*\*\*\* in order to avoid the close scrutiny and possible disapproval of the proposed loans by the Board of Directors.

6. (a) On July 20, 2007, Respondent, in his capacity as a loan officer, renewed a commercial loan (Loan #\*\*\*\*\*), in the amount of \$158,688.24, made to \*\*\*\*\*, a related interest of \*\*\*\*\*.

(b) Simultaneously with the renewal of Loan #\*\*\*\*\*, Respondent made a new, unsecured loan (Loan #\*\*\*\*\*) to \*\*\*\*\*, individually, in the amount of \$8,625.99.

(c) Respondent knew that the proceeds of Loan #\*\*\*\*\* would be used to pay accrued interest on Loan #\*\*\*\*\*.

(d) Respondent also knew that the Bank’s loan policy required the Bank’s Board of Directors to approve loans made for the purpose of capitalizing interest.

(e) Respondent represented to the Bank’s Loan Committee and Board of Directors that Loan #\*\*\*\*\* was a “[s]hort term loan” and its purpose was “to cover additional surveying & developing costs.” Respondent knew this representation was false when made.

(f) By concealing the true purpose of Loan #\*\*\*\*\*, which was to capitalize interest on Loan #\*\*\*\*\*, Respondent withheld information from the Bank’s Loan Committee

and Board of Directors that was relevant to the true condition of the loan being renewed and the creditworthiness of the borrowers.

(g) Respondent concealed the true purpose of Loan #\*\*\*\*\* and the true condition of Loan #\*\*\*\*\* in order to avoid the close scrutiny and possible disapproval of the proposed loans by the Board of Directors.

### **Breaches of Fiduciary Duty**

7. By reason of Respondent's foregoing acts, omissions, and practices, Respondent breached his fiduciary duty to the Bank.

8. Respondent's multiple breaches of fiduciary duty were part of a pattern of misconduct.

### **ORDER TO PAY**

By reason of Respondent's breaches of fiduciary duty, set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B). After taking into account the appropriateness of the penalty with respect to the size of Respondent's financial resources; the gravity of Respondent's breaches of fiduciary duty; Respondent's history of previous breaches of fiduciary duty, if any; and such other matters as justice may require, it is:

ORDERED, that by reason of Respondent's breaches of fiduciary duty set forth in paragraphs 5 and 6 hereof, a penalty of \$20,000 be, and hereby is, assessed against Jon P. Smythe.

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed until 20 days after the date of service of this NOTICE OF ASSESSMENT, during

which time Respondent 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, 12 C.F.R. § 308.19.

**If Respondent fails to file a request for a hearing within 20 days of service of this NOTICE OF ASSESSMENT, the penalty assessed against Respondent pursuant to this ORDER TO PAY will be final and unappealable and shall be paid within 60 days after the date of service of this NOTICE OF ASSESSMENT.**

### **NOTICE OF HEARING**

IT IS FURTHER ORDERED that, if Respondent requests a hearing with respect to the charges alleged in this NOTICE OF ASSESSMENT, the hearing shall commence 60 days from the date of service of this NOTICE OF ASSESSMENT at Minneapolis, Minnesota, or at such other date or place upon which the parties to this proceeding and the Administrative Law Judge mutually agree.

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, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge to be assigned by the Office of Financial Institution Adjudication (“OFIA”) pursuant to 5 U.S.C. § 3105.

In the event Respondent requests a hearing, Respondent shall also file an answer to the charges in this NOTICE OF ASSESSMENT within 20 days from the date of service of this NOTICE OF ASSESSMENT and NOTICE OF HEARING in accordance with section 308.19 of the FDIC Rules, 12 C.F.R. § 308.19.

An original and one copy of any request for a hearing, answer, and all other papers filed in this proceeding must be filed in writing with OFIA at: Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, pursuant to 12 C.F.R. § 308.10. Respondent is also encouraged to file any answer and request for a hearing electronically with OFIA at [ofia@fdic.gov](mailto:ofia@fdic.gov).

Copies of all documents required to be filed shall also be served upon Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (F-1058), Washington, D.C. 20429-9990; A.T. Dill, III, Assistant General Counsel, Supervision Branch, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (MB-3020), Washington, D.C. 20429-9990; and Arturo A. Vera-Rojas, Regional Counsel, Federal Deposit Insurance Corporation, 2345 Grand Boulevard, Suite 1200, Kansas City, Missouri 64108.

Pursuant to delegated authority.

Dated this 16<sup>th</sup> day of December, 2010.

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