FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of	)	DECISION AND ORDER
	)	TO PROHIBIT FROM
ARLENE SHIH,	)	FURTHER PARTICIPATION
	)	
Individually and as an	)	
Institution-affiliated party of	)	
	)	FDIC-10-335e
CHINATRUST BANK (U.S.A.)	)	
TORRANCE, CALIFORNIA	)	
	)	
(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 January 11, 2011, of a Recommended Decision on Default ("Recommended Decision" or "R.D.") by Administrative Law Judge C. Richard Miserendino ("ALJ"). The ALJ recommended that Arlene Shih ("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 ALJ's recommendation was based on undisputed findings that Respondent engaged in misconduct while she served as a manager at Chinatrust Bank (U.S.A.), Torrance, California ("Bank"). 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 notice of the charges against her as set forth in the FDIC's Notice of Intention to Prohibit from Further Participation ("Notice"). R.D. at 1. Respondent failed to file an answer to

the charges included in the Notice, to Enforcement Counsel's Motion for Entry of an Order of Default ("Default Motion"), and to an Order to Show Cause ("Show Cause Order") issued by the ALJ. R.D. at 1. She also failed to file exceptions to the Recommended Decision. R.D. at 2. For the reasons discussed below, the Board affirms the Recommended Decision and issues an Order of Prohibition against Respondent.

II. BACKGROUND

On July 20, 2010, the FDIC issued the Notice against Respondent pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e). The Notice sought Respondent's prohibition from the banking industry based on charges that she engaged in wrongful activity beginning in June 2000 while she served as branch manager of the Bank's City of Industry branch. Respondent was first hired by the Bank as branch manager on June 28, 1996. Respondent retained that title when she was promoted to first vice-president in January 2001. In 2004, Respondent was named first vice-president and team leader of the Bank's small business lending department. In 2006, her title changed to first vice-president and manager of the Bank's small business lending/VIP banking department. In each capacity, Respondent was an institution-affiliated party pursuant to 12 U.S.C. § 1813(u). Respondent resigned from the Bank in December 2007. Notice at ¶ 3-7.

The Notice charged that Respondent engaged in unsafe and unsound practices which constituted a breach of her fiduciary duty as an officer of the Bank. Further, by reason of Respondent's unsafe or unsound practices the Bank suffered financial loss, while the Respondent received financial gain or other benefit. Finally, the Respondent's acts demonstrated a willful disregard for the safety or soundness of the Bank and further evidenced the Respondent's personal dishonesty. Notice at ¶ 31-35.

Specifically, the Notice charged that around June 15, 2000, Respondent opened at the Bank a $1,000,000 line of credit for husband and wife borrowers ("Borrowers"). Notice at ¶¶ 10-11. Within weeks of establishing the line of credit, Respondent surreptitiously arranged a series of unauthorized disbursements for her own financial benefit. Nine times between June and December 2000, Respondent used blank authorization forms pre-signed by the Borrowers to issue cashier's checks in amounts ranging from $30,000 to $270,000. On each occasion, the checks – which totaled $1,000,000 – were deposited into accounts in Respondent's control. Eight of the disbursements were used to issue cashier's checks payable to "C.C.S.", also known as Computer Clearing Services. The remaining disbursement was used to issue a cashier's check payable to "Fire River.Com". Notice at ¶¶ 13-14. Although the line of credit was originally scheduled to mature on June 15, 2001, Respondent extended the maturity date for twelve months and, after the initial renewal, on a yearly basis through June 15, 2008. Notice at ¶¶ 12, 15-16.

Although Respondent resigned from the Bank in December 2007, her misconduct remained undetected until about six months later. Then, in mid-June 2008, in light of the expiration deadline, Bank personnel, expecting to again renew the line of credit, contacted the Borrowers for updated financial information. In response, the Borrowers reported to Bank officials that they had never drawn against the line of credit. Notice at ¶ 18.

At that point, Respondent's scheme quickly unraveled. Within days, Respondent confessed to Bank representatives that she arranged disbursements from the Borrowers' line of credit for her own benefit. In short order, the Bank commenced civil litigation

against Respondent to recover the misappropriated funds. Notice at ¶ 19-20. In a September 9, 2008, sworn deposition in civil litigation brought by the Bank, Respondent testified that she had arranged unauthorized disbursements totaling $1,000,000. She explained that she accomplished each transaction by using blank authorization forms that had been pre-signed by Borrowers. Respondent further testified that she deposited the disbursed funds into accounts for her brother and sister, for which she had signing authority, at Global American Investments. In short, Respondent admitted to using the line of credit for personal investment purposes without the Borrowers' authorizations. Notice at ¶¶ 20-26.

On April 22, 2009, Respondent stipulated to a judgment in favor of the Bank in the amount of $1,000,000. As part of the stipulation, Respondent agreed to pay in monthly installments the sum of $604,000 by December 2009 in exchange for the Bank's agreement to stay entry and execution of the judgment. However, Respondent failed to make any of the promised payments and the Bank has been unable to locate her to obtain payment on the judgment. Notice at ¶¶ 27-30.

On July 28, 2010, pursuant to Rule 308.11(b) of the FDIC's Rule of Practice and Procedure, 12 C.F.R. § 308.11(b) ("FDIC Rules"), FDIC attempted to serve the Notice on Respondent at her residence by certified U.S. mail. R.D. at 1. The certified correspondence was returned by the U.S. Postal Service for failure to secure a delivery signature. R.D. at 1. Subsequently, on August 31, 2010, a process server personally served Respondent with the Notice at her home in San Dimas, California.[1] R.D. at 1.

[1] On November 2, 2010, Enforcement Counsel filed with its Default Motion a supporting declaration from the process server attesting that he personally served the Notice on a woman that matched Respondent's description and that he later observed the same woman exiting Respondent's garage and driving a car registered to Respondent. The process server further confirmed the identity of the woman he served by

The Notice directed her to file an answer within twenty days from the date of service, as required by FDIC Rule 308.19, 12 C.F.R. § 308.19.

Even though FDIC's thwarted attempt to serve Respondent by certified mail and its successful attempt to personally serve Respondent each constituted sufficient notice of the proceedings pursuant to the FDIC Rules, Enforcement Counsel – in an effort to provide service in every manner reasonably possible – on September 27, 2010, again attempted to serve Respondent, this time by Federal Express overnight delivery. This Notice, however, was also returned undelivered to the FDIC. Notably, any one of the three methods used by Enforcement Counsel satisfies the service requirements of Rule 308.11(b). In any event and despite the fact that she had been personally served, Respondent did not respond to the Notice or participate in any manner in these proceedings. R.D. at 1.

On November 2, 2010, Enforcement Counsel moved for an order of default pursuant to FDIC Rule 308.19(c)(1), 12 C.F.R. § 308.19(c)(1). On November 3, 2010, the Default Motion, delivered via Federal Express overnight service, was left at the front door of Respondent's residence. A week later, on November 9, 2010, the ALJ issued a Show Cause Order, directing Respondent to appear and show good cause why a default judgment should not be granted. In accordance with FDIC Rule 308.11(b)(2), 12 C.F.R. § 308.11(b)(2), the Show Cause Order, delivered via United Parcel Service ("UPS") next day air delivery, was left at Respondent's residence on November 10, 2010. R.D. at 2.

Meanwhile, beginning November 6, 2010 and continuing until November 24, 2010, Enforcement Counsel retained a process server, who made multiple attempts to

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providing surveillance photographs to the Bank attorney who had deposed Respondent in the civil litigation. The Bank attorney identified the woman in the surveillance photos as the same woman he deposed, Arlene Shih. *See* Declaration of Keith Redin in Support of Default Motion.

personally serve Respondent first with the Default Motion and later, the Show Cause Order. Despite extensive effort, the process server was unable to serve Respondent personally. As a result, Enforcement Counsel filed a Declaration in Connection with Service of Motion by FDIC for Entry of an Order of Default and Service of Order to Show Cause ("Declaration"). R.D. at 2. A copy of the Declaration, including a written report by the process server, was delivered via UPS next day air and left at the front door of Respondent's residence on December 2, 2010. Again, Respondent did not file a response to any of the motions or orders. R.D. at 2.

In the absence of any response, the ALJ, on January 11, 2011, granted Enforcement Counsel's Default Motion and issued the Recommended Decision. On January 12, 2011, the Recommended Decision was delivered to Respondent's residence via UPS next day air delivery. R.D. at 8.

III. DISCUSSION

The Board concurs in and affirms the ALJ's Recommended Decision. The record reflects that Respondent received actual notice of the proceedings when the Notice was personally delivered to her at her residence on August 31, 2010. R.D. at 1. Although she was personally served, she failed to respond. Respondent also failed to respond to both Enforcement Counsel's Default Motion and the Show Cause Order, despite being served with copies in accordance with FDIC Rule 308.11, 12 C.F.R. § 308.11. R.D. at 1-2.

Moreover, the Board agrees with the ALJ's finding that the undisputed facts in the Notice satisfy the three standards -- misconduct, culpability, and effects -- necessary to sustain a prohibition under section 8(e) of the FDI Act, 12 U.S.C. § 1818(e)(1). R.D. at 2. Specifically, the Board observes that Respondent deliberately and deceptively took advantage of the Bank's and the Borrowers' trust. By exploiting her position at the Bank,

Respondent, without authorization and as if it were her own, drew against the Borrowers' credit nine times over a six month period. All told, she disbursed $1,000,000 for her personal use and had access to the funds for approximately seven years. R.D. 8-9; s*ee, 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). The uncontested allegations establish ample evidence of unsafe and unsound banking practice and a breach of fiduciary duty. R.D. at 6. *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). This type of activity clearly 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. 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, affirms 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 finds that Respondent Arlene Shih, formerly employed by the Bank, engaged in unsafe or unsound banking practices, in violation of her fiduciary duty and caused financial loss to the Bank. The Board further finds that Respondent's actions involved personal dishonesty. The Board hereby ORDERS and DECREES that:

1. Arlene Shih 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. Arlene Shih 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. Arlene Shih 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. Arlene Shih 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.

SO ORDERED.

IT IS FURTHER ORDERED, that copies of this DECISION AND ORDER TO PROHIBIT FROM FURTHER PARTICIPATION shall be served on Arlene Shih, Enforcement Counsel, the ALJ, and the Commissioner, California Department of Financial Institutions.

By direction of the Board of Directors.

Dated at Washington, D.C. this 10th day of May, 2011.

/s/
Robert E. Feldman
Executive Secretary

(SEAL)

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