

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____)	
In the Matter of	)	NOTICE OF INTENTION
	)	TO PROHIBIT FROM
ROGELIO IBANEZ, JR., individually,	)	FURTHER PARTICIPATION
and as an institution-affiliated party of)	
	)	AND
)	
BANK OF SOUTH TEXAS	)	NOTICE OF ASSESSMENT OF
MCALLEN, TEXAS	)	CIVIL MONEY PENALTY,
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW, ORDER
	)	TO PAY, AND NOTICE OF
	)	HEARING
)	
(INSURED STATE NONMEMBER BANK)	)	FDIC-10-327e and
_____	)	FDIC-10-328k

The Federal Deposit Insurance Corporation (“FDIC”) has determined that Rogelio Ibanez, Jr. (“Respondent”), individually, as an officer, director, and institution-affiliated party of the Bank of South Texas, McAllen, Texas (“Bank”), violated laws or regulations or engaged or participated in unsafe or unsound banking practices, or that Respondent received a benefit as a result of such violations, practices, and breaches of fiduciary duties; and that such violations or practices demonstrate Respondent’s personal dishonesty or willful or continuing disregard for the safety or soundness of the Bank.

Further, the FDIC has determined that Respondent’s violations of laws or regulations or reckless unsafe or unsound practices were part of a pattern and practice of misconduct and resulted in pecuniary gain or other benefit to Respondent.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an

appropriate ORDER OF PROHIBITION FROM FURTHER PARTICIPATION (“ORDER OF PROHIBITION”) should be issued against Respondent pursuant to the provisions of 12 U.S.C. § 1818(e), prohibiting Respondent from further participation in the conduct of the affairs of the Bank and any other insured depository institution or organization listed in 12 U.S.C. § 1818(e)(7)(A) without the prior written consent of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. § 1818(e)(7)(D).

Further, the FDIC institutes this proceeding for the assessment of civil money penalties pursuant to the provisions of 12 U.S.C. § 1818(i)(2)(B).

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION (“NOTICE TO PROHIBIT”) pursuant to the provisions of 12 U.S.C. § 1818(e), and 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 12 U.S.C. § 1818(i) and 12 C.F.R. Part 308 and alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

1. At all times pertinent to the charges herein, the Bank was a corporation existing and doing business under the laws of the State of Texas, having its principal place of business in McAllen, Texas.

2. At all times pertinent to the charges herein, the Bank has been an insured State nonmember bank, as defined 12 U.S.C. § 1813(e) and, as such, is subject to the Federal Deposit Insurance Act (“Act”) 12 U.S.C. § 1811 *et seq.*, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of Texas.

3. At all times pertinent to the charges herein, Respondent was an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u) and for purposes of 12 U.S.C. §§ 1818(e) and 1818(i).

4. At all times pertinent to the charges herein, the Bank is and has been subject to section 23A of the Federal Reserve Act (“Section 23A”), 12 U.S.C. § 371c, which is made applicable to insured State nonmember banks by section 12 U.S.C. § 1828(j)(1).

5. At all times pertinent to the charges herein, the Bank is and has been subject to 12 U.S.C. § 375b and Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215, (“Regulation O”) made applicable to insured State nonmember banks by 12 U.S.C. § 1828(j)(2), and 12 C.F.R. § 337.3.

6. At all times pertinent to the violations of Regulation O alleged in this proceeding, Respondent was a “director” of the Bank, as that term is defined by 12 C.F.R. § 215.2(d)(1), an “executive officer” of the Bank, as that term is defined by 12 C.F.R. § 215.2(e)(1), and an “insider” of the Bank, as that term is defined by 12 C.F.R. § 215.2(h).

7. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

8. The FDIC is the “appropriate Federal banking agency” with respect to the Bank within the meaning of 12 U.S.C. § 1813(q)(3).

9. At all times relevant to the charges herein, Respondent held the position of Chairman of the Board of Directors of the Bank until his resignation from this position on September 26, 2007.

10. At all times relevant to the charges herein, Respondent was an attorney licensed to practice law in the State of Texas.

11. The Bank is wholly-owned by South Texas Bancorp of Delaware, Inc.
12. On February 15, 2006, ST Banc Corp, McAllen, Texas acquired a 100 percent ownership in South Texas Bancorp of Delaware, Inc.
13. At the time ST Banc Corp, McAllen, Texas purchased South Texas Bancorp, 50 percent of ST Banc Corp, McAllen, Texas was owned by Santo Andrei, Ltd.
14. Santo Andrei, Ltd. (“Santo Andrei”) is a Texas limited partnership owned by Respondent, his wife, and minor children.

VIOLATIONS OF LAWS AND REGULATIONS AND UNSAFE AND UNSOUND PRACTICES

15. Between August 31, 2006, and September 28, 2007, Respondent violated or caused the Bank to violate laws and regulations engaged and participated in unsafe or unsound practices in connection with the Bank as hereinafter described.

Santo Andrei, Ltd Loan

16. Santo Andrei is a Texas limited liability company that was organized by Respondent in 1998.
17. On August 30, 2006, the Bank approved a loan in the amount of \$1,750,000 to Santo Andrei (“Santo Andrei Loan”). The loan was not secured by a first lien on the residence of Respondent.
18. As of June 30, 2006, the Bank’s Call Report reported that the Bank’s capital stock and surplus equaled \$6,108,000.
19. The Santo Andrei Loan had a maturity date of March 1, 2007.
20. Respondent signed the note on behalf of Santo Andrei.
21. Respondent personally guaranteed the Santo Andrei Loan.

22. The Santo Andrei Loan proceeds are considered extensions of credit to Respondent pursuant to 12 C.F.R. § 215.3(a)(7) and are therefore subject to all of the provisions of Regulation O.

23. Receipt of the \$1,750,000 in proceeds from the Santo Andrei Loan caused Respondent to exceed the \$100,000 “other purpose loan” limitations imposed by 12 C.F.R. § 337.3 (c)(2) because the Santo Andrei Loan proceeds brought Respondent’s total “other purpose loans” to in excess of \$100,000.

24. Disbursement of the \$1,750,000 in Santo Andrei Loan proceeds caused the Bank to violate Section 23A (a) (1) (A), 12 U.S.C. § 371c (a) (1) (A), which restricts the aggregate amount of covered transactions between the Bank and a single affiliate to no more than 10 percent of the Bank’s capital stock and surplus.

25. On February 5, 2007, the Texas Department of Banking began an examination of the Bank.

26. During a meeting held with the directors of the Bank on February 28, 2007, the Texas Department of Banking notified Respondent (and the other directors) that the Santo Andrei Loan was made in violation of State and Federal banking regulations.

27. Despite being informed on February 28, 2007, that the Santo Andrei Loan violated State and Federal banking regulations, Respondent caused the President of the Bank to renew the Santo Andrei Loan on March 1, 2007.

28. By Letter dated March 23, 2007, the Texas Department of Banking notified Respondent (and the other directors) that the Bank had 45 days to correct the violations cited in the Texas Department of Banking Report of Examination dated February 5, 2007.

29. The Santo Andrei Loan was cited as a violation in the Texas Department of

Banking Report of Examination dated February 5, 2007.

30. Despite the requirement contained in the March 23, 2007, letter from the Texas Department of Banking Letter to the Bank's Directors that required all loan violations be cured within 45 days, on June 1, 2007, Respondent caused the President of the Bank to again renew the Santo Andrei Loan.

31. On August 20, 2007, the FDIC began an examination of the Bank and discovered that the Santo Andrei Loan violations had not been corrected and that the Santo Andrei Loan had matured and was unpaid.

32. On September 28, 2007, the Santo Andrei Loan was repaid, in full.

33. From August 30, 2006, until September 28, 2007, Respondent caused the Bank to violate Regulation O by permitting the Bank to make extensions of credit to Respondent that exceeded the \$100,000 threshold for "other purpose loans" to executive officers as set forth at 12 C.F.R. § 337.3 (c)(2).

Respondent's Conversion of Customer's Loan Proceeds

34. After ST Banc Corp purchased South Texas Bancorp and gained control of the Bank on February 15, 2006, Respondent required all real estate loans to be closed using the Respondent's law office as the Escrow Agent.

35. Respondent maintained account number*****and styled "The Law Firm of Roy Ibanez Real Estate Trust" ("Ibanez Trust Account") at the Bank.

36. Respondent was the only authorized signatory on the Ibanez Trust Account.

37. On September 5, 2007, the Bank extended two loans ("*****Purchase Loans") totaling \$290,000 to ***** (a non-insider Bank customer) to purchase Lot 16, Lone Star

Plaza, McAllen, Texas (“Property”), from *****, et al.

38. As required by the Respondent, the \$290,000 in proceeds from the *****Purchase Loans was deposited into the Ibanez Trust Account maintained at the Bank on September 6, 2007.

39. As closing agent for the Bank’s loan to *****, Respondent caused the Ibanez Trust Account to issue a check dated September 6, 2007, to *****in the amount of \$274,236.48 as the net amount due to the Seller of the Property (“*****Check”).

40. The *****Check was deposited at another bank.

41. When the depositing bank presented the *****Check for collection on September 12, 2007, the Bank returned the *****Check due to Non Sufficient Funds.

42. At the time the *****Check was presented for collection at the Bank on September 12, 2007, the Ibanez Trust Account had a balance of \$187,257.91.

43. After *****contacted the Bank borrower, the Bank, and Respondent, the Respondent purchased a Cashier’s Check in the amount of \$274,236.48 from the Bank on September 17, 2007 to replace the *****Check.

44. As the only authorized signatory on the account, Respondent converted at least \$86,978.57 of the ***** Purchase Loans for his own use and benefit based on the balance of the Ibanez Trust Account when the*****Check was presented on September 12, 2007.

45. Twelve C.F.R. § 215.6 prohibits an executive officer or a director of a bank from knowingly receiving, directly or indirectly, any extension of credit not authorized under Regulation O. The extension of credit related to this overdraft was not authorized under Regulation O. Respondent knowingly received an extension of credit in violation of Regulation O when he converted at least \$86,978.57 of the ***** Purchase Loans for his own use and

benefit.

Respondent Overdrafts his Checking Account

46. As previously stated, Respondent maintained the Ibanez Trust Account (account number *****) at the Bank.

47. As previously stated, Respondent was the only authorized signatory on the Ibanez Trust Account.

48. On August 27, 2007, Respondent presented a check in the amount of \$40,203.20 drawn on the Ibanez Trust Account and payable to Southern Star Title Company (another company Respondent owned and controlled) to the Bank and requested a Bank Cashier's check in the same amount be issued.

49. The Bank issued the Cashier's Check even though it resulted in an overdraft in the Ibanez Trust Account of \$38,423.78.

50. At the time the Ibanez Trust Account was overdrawn \$38,423.78, Respondent was already in violation of Regulation O by permitting the Bank to make extensions of credit to Respondent that exceeded the \$100,000 threshold for "other purpose loans" to executive officers as set forth at 12 C.F.R. § 337.3(c)(2)

51. Twelve C.F.R. § 215.6 prohibits an executive officer or a director of a bank from knowingly receiving, directly or indirectly, any extension of credit not authorized under Regulation O. The extension of credit related to this overdraft was not authorized under Regulation O. Respondent knowingly received an extension of credit in violation of this section when he overdrawed the Ibanez Trust Account in the sum of \$38,423.78.

Respondent Obtains Additional Credit

52. On August 27, 2007, Respondent cashed a check at the Bank in the amount of

\$3,238.00, payable to the Respondent, and drawn on the Procure Health Services, Inc.

(“Procure”) account maintained at First National Bank, Edinburg, Texas.

53. Procure is another company owned and controlled by Respondent.

54. Procure does not maintain any banking accounts at the Bank.

55. The Bank presented the Procure check for payment, but the check was returned for Non-Sufficient Funds.

56. On September 6, 2007, Respondent caused Procure to tender a Cashier’s Check to the Bank to replace the funds previously paid by the Bank.

57. At the time the Procure check was returned for non-sufficient funds, Respondent was already in violation of Regulation O by permitting the Bank to make extensions of credit to Respondent that exceeded the \$100,000 threshold for “other purpose loans” to executive officers as set forth at 12 C.F.R. § 337.3(c)(2).

58. Twelve C.F.R. § 215.6 prohibits an executive officer or a director of a bank from knowingly receiving, directly or indirectly, any extension of credit not authorized under Regulation O. The extension of credit related to this overdraft was not authorized under Regulation O. Respondent knowingly received an extension of credit in violation of this section when he cashed a check drawn on an account of a company he controlled that did not contain sufficient funds to honor the check.

CONCLUSIONS OF LAW

59. As a result of Respondent’s foregoing acts, omissions, and practices, Respondent has violated and caused the Bank to violate Regulation O and 12 U.S.C. §375b and engaged in unsafe or unsound practices in connection with the Bank.

60. As a result of Respondent’s foregoing acts, omissions and practices, Respondent

has aided, abetted, and / or conspired to violate Section 23A (a) (1) (A), 12 U.S.C. § 371c (a) (1) (A), which restricts the aggregate amount of covered transactions between the Bank and a single affiliate to no more than 10 percent of the Bank's capital stock and surplus.

61. As a result of the violations and practices, specified herein, Respondent has received financial gain or other benefit when Respondent used the proceeds of the Santo Andrei Loan, the****Purchase Loans, the ProCare Check, and the overdraft proceeds from the Ibanez Trust Account, for his own purposes.

62. Respondent's acts, omissions, and practices as set forth herein demonstrate a willful or continuing disregard for the safety or soundness of the Bank and evidence Respondent's personal dishonesty.

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW

63. Paragraphs 1 through 62 are restated and incorporated herein by reference and constitute FINDINGS OF FACT AND CONCLUSIONS OF LAW for the purposes of this NOTICE OF ASSESSMENT.

64. By reason of the allegations contained herein, Respondent committed violations or caused the Bank to commit violations of law or regulations within the meaning of 12 U.S.C. §§ 1818(i)(2)(A)(i) and 1818(i)(2)(B)(i)(I).

65. By reason of the allegations contained herein, Respondent has recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank within the meaning of 12 U.S.C. § 1818(i)(2)(B)(i)(II).

66. By reason of the allegations contained herein, Respondent's practices are part of a pattern of misconduct within the meaning of 12 U.S.C. § 1818(i)(2)(B)(ii)(I).

67. By reason of the allegations contained herein, Respondent's practices and breaches resulted in pecuniary gain or other benefit within the meaning of section 8(i)(2)(B)(ii)(III) of the Act, 12 U.S.C. § 1818(i)(2)(B)(ii)(III).

ORDER TO PAY

68. By reason of Respondent's violations of laws or regulations and reckless engagement in unsafe or unsound practices which were part of a pattern of misconduct and that resulted in pecuniary gain or other benefit to Respondent, as set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to 12 U.S.C. §§ 1818(i)(2)(B)(i) and 1818(i)(2)(B)(ii). After taking into account the appropriateness of the penalties with respect to the size of Respondent's financial resources and good faith, the gravity of the practices, the history of previous unsafe or unsound practices, and other matters as justice may require, it is:

ORDERED, that by reasons of the violations of law or regulation and unsafe or unsound practices that were part of a pattern of misconduct that resulted in pecuniary gain or other benefit to Respondent, a penalty be and hereby is assessed against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) in the amount of \$75,000, and

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed until 20 days after the date of receipt of the NOTICE OF ASSESSMENT by Respondent, during which time Respondent may file an answer and request a hearing pursuant to 12 U.S.C. § 1818(i)(2)(H), and 12 C.F.R. § 308.19.

OPPORTUNITY FOR HEARING

69. Notice is hereby given that a hearing shall commence at McAllen, Texas, sixty (60) days from the date of service of this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION and NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY upon Respondent, or at such place or on such date as the parties to this action and the Administrative Law Judge appointed to hear this matter may agree, for the purpose of taking evidence on the charges herein specified, in order to determine whether a permanent order should be issued to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization enumerated in 12 U.S.C. § 1818(e)(7)(A) without the prior permission of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. § 1818(e)(7)(D). **EXCEPT THAT, WITH RESPECT TO THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, RESPONDENT MUST SPECIFICALLY REQUEST A HEARING WITHIN 20 DAYS PURSUANT TO 12 U.S.C. § 1818(i)(2)(H), 12 C.F.R. § 308.19. IF RESPONDENT FAILS TO FILE A REQUEST FOR A HEARING WITHIN 20 DAYS OF THE SERVICE OF THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY ON HIM, THE PENALTY ASSESSED AGAINST HIM PURSUANT TO THE ORDER TO PAY WILL BE FINAL AND SHALL BE PAID WITHIN 60 DAYS AFTER THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY IS SERVED ON HIM.**

70. The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. § 1811, *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be

held before an Administrative Law Judge appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105.

71. Respondent is hereby directed to file an answer to the NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION within twenty (20) days from the date of service, as provided by 12 C.F.R. § 308.19. An original and one copy of all papers filed in this proceeding shall be served upon the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite D8116, Arlington, VA 22226-3500, pursuant to 12 C.F.R. § 308.10. Copies of all papers filed in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (F-1058), Washington, D.C. 20429; A. T. Dill, III, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and upon Stephen C. Zachary, Regional Counsel (Supervision), Federal Deposit Insurance Corporation, Dallas Regional Office, 1601 Bryan Street, 37th Floor, Dallas, Texas 75201. Pursuant to 12 C.F.R. 308.10(b)(4), all documents required to be filed, excluding documents produced in response to a discovery request pursuant to 308.25 and 308.26, shall be filed electronically with OFIA. Respondent is hereby directed to file any answer electronically with OFIA at OFIA@fdic.gov. Failure to answer within the 20-day time period shall constitute a waiver of the right to appear and contest the allegations contained in this NOTICE and shall, upon the FDIC's motion, cause the Administrative Law Judge or the FDIC to find the facts in this NOTICE to be as alleged and to issue appropriate ORDERS.

Pursuant to delegated authority.

Dated at Washington, D.C., this 3rd day of June, 2011.

/s/ _____
Serena L. Owens
Associate Director
Division of Risk Management Supervision