

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of)	
)	NOTICE OF INTENTION TO PROHIBIT
STUART VOIGT,)	FROM FURTHER PARTICIPATION,
)	NOTICE OF ASSESSMENT OF CIVIL
Individually, and as a former)	MONEY PENALTY, FINDINGS OF FACT
institution-affiliated party)	AND CONCLUSIONS OF LAW, ORDER
of)	TO PAY and NOTICE OF HEARING
)	
FIRST COMMERCIAL BANK)	FDIC-11-565e
BLOOMINGTON, MINNESOTA)	FDIC-11-566k
)	
)	
(Insured State Nonmember Bank))	

The Federal Deposit Insurance Corporation ("FDIC"), has determined that Stuart Voigt("Respondent"), individually and as an institution-affiliated party of First Commercial Bank, Bloomington, Minnesota ("Bank"): (1) has directly or indirectly participated or engaged in violations of law and regulation and unsafe or unsound practices in connection with the Bank and has committed or engaged in acts, omissions, and practices that constitute breaches of his fiduciary duties to the Bank; (2) that the Bank has suffered financial loss and other damage and that Respondent has received financial gain or other benefit by reason of such violations, practices and/or breaches of fiduciary duty; and (3) that such violations, practices and breaches of fiduciary duty demonstrate

Respondent's personal dishonesty and his willful or continuing disregard for the safety and soundness of the Bank.

The FDIC, therefore, institutes this proceeding, pursuant to the provisions of section 8(e) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e), and the FDIC Rules of Practice and Procedure ("FDIC Rules"), 12 C.F.R. Part 308, for the purpose of determining whether an appropriate ORDER OF PROHIBITION FROM FURTHER PARTICIPATION ("ORDER OF PROHIBITION") should be issued prohibiting him from further participation in the conduct of the affairs of any insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other "appropriate Federal financial institutions regulatory agency," as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D).

The FDIC has further determined that Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank and breached his fiduciary duties to the Bank; that these unsafe or unsound practices and breaches of fiduciary duties were part of a pattern of misconduct by Respondent, caused more than a minimal loss to the Bank, and resulted in pecuniary gain to Respondent. The FDIC, therefore, also institutes this proceeding, pursuant to the provisions of section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B), and the FDIC Rules, 12 C.F.R. Part 308, for the assessment of a civil money penalty against Respondent.

In support thereof, the FDIC alleges as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JURISDICTION

1. The Bank is, and at all times pertinent to these proceedings has been, a corporation existing and doing business under the laws of the State of Minnesota, having its principal place of business in Bloomington, Minnesota.

2. The Bank is, and at all times pertinent to these proceedings has been, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1835a, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of Minnesota.

3. In August of 2003, Respondent was employed as a director and Chairman of the Board of the Bank and continued to serve in those capacities until his employment at the Bank was terminated on September 18, 2008.

4. From August 2003 until September 18, 2008, Respondent was 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 sections 8(e) and 8(i) of the Act, 12 U.S.C. §§ 1818(e) and 1818(i), and it has been less than 6 years since Respondent

ceased to be such a party with respect to the Bank in accordance with 12 U.S.C. § 1818(i)(3).

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

MISCONDUCT

6. Respondent violated 12 U.S.C. § 375b and its corresponding regulation 12 C.F.R. Part 215, made applicable to insured State nonmember banks by 12 U.S.C. § 1828(j)(2) ("Regulation O"), by voting in favor of a loan in which he received a tangible economic benefit which was not approved by the entire Bank board and which was made on terms involving more than the normal risk of repayment and which presented unfavorable features. He breached his fiduciary duty by failing to disclose the extent of his involvement with Bank borrower Hennessey Financial, LLC ("Hennessey") and guarantor ***** ("Mr. X**"). His actions were unsafe and unsound to the extent that Respondent was in a position to know that the financial information provided by Mr. X** in connection with his proposed guaranty of a Bank line of credit to Hennessey was inaccurate and he failed to disclose that fact to the Bank loan committee and the Bank Board. Further, he had a conflict of interest with the Bank and put his own interests above the Bank as shown by the fact that during the period that the Bank was advancing

funds on the Hennessey credit, he was receiving payments from Hennessey, Mr. X** and Hennessey-related companies. Furthermore, as an officer of another Hennessey-related company, he executed documents that made it possible for the transfer of Hennessey's assets, which he and the Bank viewed as the Bank's collateral, to another Mr. X**-owned company. This action eliminated Hennessey's repayment ability and the ability of the Bank to attach the transferred collateral. Finally, he formed a company for the purpose of taking a security interest in guarantor Mr.**'s assets to the detriment of the Bank. These actions and failures to disclose resulted in substantial loss to the Bank and in gain to Respondent.

Without limiting the generality of these allegations, it is further alleged as follows:

BACKGROUND

7. Among other things, the Bank extended credit as part of its business operations;

8. In order to ensure that a Borrower was creditworthy, the Bank evaluated certain information about each potential borrower;

9. A subset of the Bank's Board made up the Bank's Loan Committee ("Loan Committee");

10. The Loan Committee reviewed certain commercial loans being considered by the Bank;

11. Respondent was a member of the Loan Committee;

12. As Chairman of the Bank's Board, Respondent led the Loan Committee meetings;

13. As a member of the Bank's Loan Committee, Respondent was assigned responsibility for participating in the review and approval of certain Bank loans;

14. In determining whether or not to approve a loan, the Loan Committee reviewed information summaries containing relevant borrower and guarantor information ("Credit Presentation").

The Bank's Extension of Credit to Hennessey

15. On or about February 11, 2005, Respondent referred Hennessey to the Loan Committee for consideration of extending it a line of credit.

16. Hennessey was a mezzanine real estate lender owned by Mr. X**.

17. The Loan Committee was provided financial information about the initial proposed line of credit to Hennessey in a February 11, 2005 Hennessey Credit Presentation.

18. The information in the 2005 Hennessey Credit Presentation indicated that Respondent referred Hennessey to the Bank, was an investor in Hennessey and that he held non-voting stock of Hennessey.

19. On March 4, 2005, the Bank originated a \$1,000,000 line of credit to Hennessey, with a maturity date of March 4, 2006 and an interest rate of 6.5% ("Hennessey Line of Credit").

20. On or about April 3, 2006, Hennessey requested a renewal and additional credit from the Bank on the Hennessey Line of Credit.

21. The Hennessey Line of Credit was renewed on April 19, 2006 and the amount was increased to \$2,000,000, with a new maturity date of April 19, 2007 and an interest rate of 8.25%.

22. On or about May 1, 2007, Hennessey asked the Loan Committee to again consider changing the terms of the Hennessey Line of Credit.

23. An updated Hennessey Credit Presentation for the Hennessey Line of Credit dated May 1, 2007 was shown to the Loan Committee.

24. The Loan Committee relied on the information about Hennessey's financial condition in the Hennessey Credit Presentations to make its decision to continue to advance credit on the Hennessey Line of Credit.

25. The terms of the Hennessey Line of Credit were changed on May 9, 2007, providing for an extension of the maturity date until April 19, 2008 and changing the interest rate to 8.75%.

26. Additional advances were made on the Hennessey Line of Credit after May 9, 2007.

27. The Hennessey Line of Credit went into default on April 29, 2008.

28. The Bank charged off \$787,956 of the Hennessey Line of Credit.

*Mr. X** Guaranty*

29. In connection with the Hennessey Line of Credit, the Bank took an unsecured guaranty from Hennessey owner Mr. X** as part of its collateral ("Mr. X** Guaranty").

30. The Hennessey Credit Presentations contained a summary of Mr. X**'s financial condition.

31. The Loan Committee relied on the financial information about Mr. X** in the Hennessey Credit Presentations to make its decision to advance credit to Hennessey.

Respondent's Relationships With Hennessey and Hennessey-Related Companies

Respondent's Loan to Hennessey

32. On April 29, 2004, Respondent personally lent Hennessey \$400,000, evidenced by a promissory note which matured on June 29, 2004 and provided for a 15 percent interest rate ("Hennessey/Voigt Loan").

33. On June 29, 2004, the Hennessey/Voigt Loan was amended to extend the maturity date until June 29, 2005.

34. Upon information and belief, a substantial portion of the Hennessey/Voigt Loan was still outstanding in 2005, 2006 and 2007.

*Respondent's Loans to Guarantor Mr. X***

35. On March 1, 2002, Respondent personally originated a \$2,400,000 unsecured loan to Mr. X** (Mr. X**/Voigt Loan 1).

36. Mr. X**/Voigt Loan 1 had a maturity date of August 31, 2005.

37. On December 31, 2005, Respondent renewed Mr. X**/Voigt Loan 1 for the principal amount of \$1,600,000 with a promissory note from Mr. X** to him, payable at 15 percent per annum with interest to begin accruing on January 1, 2007, and maturing December 31, 2009.

38. The renewed Mr. X**/Voigt Loan 1 provided for monthly payments of \$55,464.53 to Respondent.

39. On January 16, 2004, Respondent personally lent Mr. X** \$500,000, evidenced by a promissory note written on Hennessey's letterhead and providing for a 12% rate of interest (Mr. X**/Voigt Loan 2).

40. Mr. X**/Voigt Loan 2 was due January 31, 2007.

41. The repayment covenants of Mr. X**/Voigt Loan 2 specifically stated that Hennessey was an obligor on the note.

42. Mr. X**/Voigt Loan 2 was amended later on that same day, January 16, 2004, to increase the interest rate to 15 percent.

43. There was an outstanding balance on the Mr. X**/Voigt Loan 1 when the Loan Committee was considering the original Hennessey Line of Credit.

44. There was an outstanding balance on the Mr. X**/Voigt Loan 1 when the Loan Committee was considering the 2006 renewal of the Hennessey Line of Credit.

45. There was an outstanding balance on the Mr. X**/Voigt Loan 1 when the Loan Committee was considering the 2007 renewal of the Hennessey Line of Credit.

46. Funds advanced by the Bank on the Hennessey Line of Credit were deposited into a demand deposit account at Wells Fargo Bank ("Hennessey DDA").

47. Respondent was receiving regular monthly payments of \$50,000 from the Hennessey DDA at the time the Loan Committee was considering the initial funding and all extensions and renewals of the Hennessey Line of Credit.

48. In addition, in January of 2007, Respondent began receiving additional payments of \$55,464.53, which corresponds with the payment amount and due date on the Mr. X**/Voigt Loan 2.

49. From January 13, 2005 to December 31, 2007, Respondent was paid at least \$1,400,000 out of the Hennessey DDA.

50. On his 2006 tax return, Respondent reported adjusted gross income of \$*****.

51. Included in Respondent's total reported gross income on his 2006 tax return was \$***** of interest paid by Mr. X**, \$***** paid by Hennessey, and \$***** from Hennessey-related Company Heritage Development, Inc.

52. Based on his 2006 tax return, payments from Hennessey and Mr. X** made up over 42.8% of Voigt's adjusted gross income.

53. On his 2007 tax return, Respondent reported adjusted gross income of \$*****.

54. Included in Respondent's total reported gross income on his 2007 tax return was \$***** of interest paid by Mr. X** and \$***** paid by Hennessey.

55. Based on his 2007 tax return, payments from Hennessey and Mr. X** made up over 104.2% of Voigt's adjusted gross income.

Respondent's Business Relationships with Hennessey

56. In a securities filing for CS Financing Corporation dated July 20, 2006 ("2006 CS Filing"), Voigt is listed as being on the Advisory Board for Hennessey.

57. The 2006 CS Filing states that the company will rely on Hennessey's Advisory Board to assist Hennessey in making credit decisions.

58. According to the 2006 CS Filing, a significant portion of Hennessey's current lending business is conducted with affiliated entities, including Heritage Development, Inc., Argus, LLC, Omni Investment Properties, LLC and Assured Financial, LLC.

59. The 2006 CS Filing states that CS Financing proposes to lend to Hennessey on a secured basis at an interest rate of 15.5%.

Respondent's Business Relationships with Hennessey-related Companies

60. Mr. X** owned a number of companies which conducted business, primarily with each other, from the same location ("Hennessey-related Companies").

HFMI F and HFFM

61. Hennessey-related, Mr. X**-owned company, Hennessey Financial Monthly Income Fund, L.P. ("HFMI F"), provided funds to Hennessey and then later foreclosed upon Hennessey's assets.

62. In a securities offering memorandum for HFMI F dated January 2005 ("2005 HFMI F Offering Memorandum"), Voigt is listed as an Advisory Board member of HFMI F.

63. Respondent was an authorized signatory for HFMIIF.

64. In a March 2008 Confidential Offering Memorandum for HFMIIF ("2008 HFMIIF Offering Memorandum"), Voigt is listed as the "Chief Manager of the Investment Manager" of Hennessey Financial Fund Management, LLC ("HFFM").

65. The 2008 HFMIIF Offering Memorandum further states; "The Investment Manager [HFFM] will be responsible for the day-to-day management and operation of the Fund [HFMIIF] including making loans, purchasing Notes and investment of Idle Funds and Portfolio Securities".

66. Respondent resigned as the Chief Manager of HFFM on May 23, 2008.

Assured Financial

67. Respondent was an investor in Hennessey-related, Mr. X**-owned company, Assured Financial ("Assured").

68. From December 31, 2004 to November 30, 2007, Assured paid Voigt \$1,700,000.

Hennessey Financial Fund General Partner, LLC

69. Respondent signed a February 1, 2005 Securities filing (Form D Notice of Sale of Securities for the sale of limited

partnership units of HFMI F) as the Co-Manager of the General Partner, Hennessey Financial Fund General Partner, LLC.

70. Before December 31, 2008, Hennessey Financial Fund General Partner, LLC became CS Fund General Partner, LLC, the general partner of Capital Solutions Monthly Income Fund, L.P. (formerly Hennessey Financial Monthly Income Fund, LP).

MISCONDUCT

VIOLATION OF LAW - REGULATION O

71. The paragraphs above are re-alleged and incorporated by reference.

72. As a director of the Bank, Respondent was an insider for purposes of Regulation O.

73. Respondent received a tangible economic benefit from the Hennessey Line of Credit.

74. The Hennessey Line of Credit, from which the Respondent benefited, was in excess of the higher of \$25,000 or 5 percent of the Bank's unimpaired capital and unimpaired surplus in connection with the Hennessey Line of Credit.

75. The Hennessey Line of Credit was covered by the restrictions set out in Regulation O which limits extensions of credit to insiders.

Vote

76. Respondent voted in favor of the initial Hennessey Line of Credit on February 24, 2005.

77. Respondent voted in favor of the April 19, 2006 increase in the Hennessey Line of Credit on April 11, 2006.

78. Respondent voted in favor of the May 9, 2007 Change in Term for the Hennessey Line of Credit on May 3, 2007.

No Full Board Approval

79. Material information about Hennessey and Mr. X**'s financial condition was not disclosed to a majority of the full Bank Board in connection with the Hennessey Line of Credit and all modifications, extensions and renewals thereof.

80. A majority of the full Bank Board did not consider the initial 2005 Hennessey Line of Credit.

81. A majority of the full Bank Board did not consider the 2006 renewal and additional extension of credit to Hennessey.

82. Because the terms were not fully disclosed, a majority of the full Bank board did not consider the 2007 Change in Terms and Extension of the Hennessey Line of Credit.

Preferential Terms

83. The terms of the Hennessey Line of Credit and renewals involved more than the normal risk of repayment to the Bank and presented other unfavorable features.

84. Respondent's actions violated 12 C.F.R. Sections 215.3 and 215.4 of Regulation O setting out limitations for extensions of credit to insiders.

UNSAFE OR UNSOUND PRACTICES
AND BREACHES OF FIDUCIARY DUTIES

FAILURE TO DISCLOSE

85. The paragraphs above are re-alleged and incorporated by reference.

Hennessey

86. Respondent was a creditor of Hennessey when the initial Hennessey Line of Credit was made.

87. Respondent was a creditor of Hennessey when the 2006 Renewal and Extension of the Hennessey Line of Credit was made.

88. Respondent was a creditor of Hennessey when the 2007 extension of the Hennessey Line of Credit was made.

89. Respondent had numerous relationships with Hennessey and Hennessey-related companies as described in detail in the paragraphs above.

90. Respondent had a duty to disclose all relevant information to the Loan Committee and the Bank Board in connection with the evaluation of the Hennessey Line of Credit.

91. The information in the Credit Presentation did not disclose that Respondent had any connection to Hennessey other than being an investor and holding non-voting stock;

92. Respondent did not fully disclose his relationships with Hennessey and Hennessey-related companies to the Loan Committee or the Bank Board in connection with the Hennessey Line of Credit and all modifications, extensions and renewals thereof;

93. Respondent did not disclose to the Loan Committee that he would receive economic benefit from the Hennessey Line of Credit.

94. Respondent did not disclose that the Credit Presentation failed to reflect Hennessey's debt to him.

95. Respondent knew or should have known that the financial information in the Credit Presentation relied upon by the Bank Board to make and renew the Hennessey Line of Credit failed to disclose material information about Hennessey's relationship to him.

96. As a result of Respondent's actions and omissions, relevant information about Hennessey's financial condition was not disclosed to the Loan Committee and the Bank's Board of Directors

from approximately March 2005 to October 2008, and the Loan Committee and Bank Board were prevented from considering this relevant information in connection with approving the Hennessey Line of Credit.

97. Respondent misled the Bank Board about the extent of his involvement with Hennessey.

98. Respondent's failure to disclose his full relationship with Hennessey and the Hennessey-related Companies, as well as the terms of his loans to Hennessey was a breach of his fiduciary duty of care and loyalty to the Bank.

99. Respondent's failure to disclose his full relationship with Hennessey and the Hennessey-related Companies, as well as the terms of his loans to Hennessey was an unsafe and unsound practice in connection with Respondent's dealings with the Bank.

100. If disclosed to the Loan Committee or the Bank Board, this information could have caused the Bank not to extend or renew credit to Hennessey, or to renew the credit on different terms.

*Mr. X***

101. Respondent was a creditor of Mr. X** when the initial Hennessey Line of Credit was made.

102. Respondent was a creditor of Mr. X** when the 2006 Renewal and Extension of the Hennessey Line of Credit was made.

103. Respondent was a creditor of Mr. X** when the 2007 extension of the Hennessey Line of Credit was made.

104. Respondent was receiving regular monthly payments of at least \$50,000 from the Hennessey DDA at the time the Loan Committee was considering the initial funding and all extensions and renewals of the Hennessey Line of Credit.

105. In addition to the regular payment of \$50,000, in January of 2007, Respondent was also receiving additional monthly payments of \$55,464.53 (the exact amount of the payments due to Respondent on Mr. X**/Voigt Loan 1) from the Hennessey DDA.

106. This information could have caused the Bank not to extend or renew credit to Hennessey, or to renew the credit on different terms.

107. The information in the Credit Presentation did not disclose that Respondent had any connection to guarantor Mr. X**;

108. The summary of Mr. X**'s financial information in the Credit Presentation did not disclose any debt to Respondent.

109. Respondent did not disclose to the Loan Committee or to the Bank Board that the Credit Presentation failed to reflect Mr. X**'s debt to him.

110. Respondent knew or should have known that the financial information in the Credit Presentation relied upon by the Bank board

to make and renew loans to Hennessey failed to disclose material information about the guarantor's relationship to him.

111. As a result of Respondent's actions and omissions, relevant information about the Mr. X** Guaranty was concealed from the Loan Committee and the Bank's Board of directors from approximately March 2005 to October 2008, and the Loan Committee and Bank Board were prevented from considering this relevant information in connection with approving the Hennessey Line of Credit and renewals.

112. Respondent's failure to disclose his relationship with Mr. X** and the terms of his loans to Mr. X** was a breach of his fiduciary duty of care and loyalty to the Bank.

113. Respondent's failure to disclose his full relationship with Mr. X** and the terms of his loans to Mr. X** was an unsafe and unsound practice in connection with Respondent's dealings with the Bank.

Other Hennessey-related Companies

114. Respondent did not disclose his relationship with HFFM and HFMIIF and other Hennessey-related companies to the Loan Committee or the Bank Board during any of the discussions of the Hennessey Line of Credit.

115. Respondent knew or should have known that the financial information in the Credit Presentation relied upon by the Loan Committee to make and renew the Hennessey Line of Credit failed to disclose material information about his relationship with HFFM and HFMIIF.

116. As a result of Respondent's actions and omissions, relevant information about his relationship with HFMIIF and HFFM was not disclosed to the Loan Committee and the Bank's Board of directors from approximately March 2005 to October 2008, and the Loan Committee and the Bank Board were prevented from considering this relevant information in connection with approving the Hennessey Line of Credit and renewals.

117. This information could have caused the Bank not to extend or renew the Hennessey Line of Credit, or to renew the credit on different terms.

118. Respondent's failure to disclose his relationship with HFMIIF and HFFM was a breach of his fiduciary duty of care and loyalty to the Bank.

CONFLICT OF INTEREST

The paragraphs above are re-alleged and incorporated by reference.

Hennessey

119. Hennessey was a debtor of Respondent at the time the 2005 and 2007 Hennessey Credit Presentations were reviewed.

120. Respondent was receiving interest payments from Hennessey at the time the Hennessey Line of Credit and subsequent extensions and renewals were made.

121. Respondent knew or should have known that Hennessey was having financial difficulty but did not disclose this information to the Loan Committee or the Bank Board.

122. This information could have caused the Bank not to extend or renew the Hennessey Line of Credit, or to renew the credit on different terms.

123. Respondent had a personal interest in Hennessey continuing to receive funds from the Bank on the Hennessey Line of Credit.

124. Respondent put his personal interests above the interests of the Bank.

125. Respondent's actions in approving the Hennessey Line of Credit and subsequent renewals and extensions were a conflict of interest with the Bank.

126. Respondent's actions in approving the Hennessey Line of Credit and subsequent renewals and extensions were a breach of his fiduciary duty to the Bank.

127. Respondent's approval of the Hennessey Line of Credit and subsequent renewals and extensions were unsafe and unsound practices in connection with Respondent's dealings with the Bank.

*Mr. X***

128. Mr. X** had a \$2,400,000 loan outstanding to Respondent at the time the Loan Committee was considering the original Hennessey Line of Credit.

129. Mr. X** had a \$1,600,000 loan outstanding to Respondent at the time the Loan Committee was considering the 2007 renewal of the Hennessey Line of Credit.

130. Respondent was receiving regular monthly payments of at least \$50,000 from the Hennessey DDA at the time the Loan Committee was considering the initial funding and all extensions and renewals of the Hennessey Line of Credit.

131. Respondent was receiving additional regular monthly payments of \$55,464.53 from the Hennessey DDA at the time the Loan Committee was considering the 2007 extension of the Hennessey Line of Credit.

132. Respondent's actions in approving the Mr. X** Guaranty of the Hennessey Line of Credit and subsequent renewals and extensions were a conflict of interest with the Bank.

133. Respondent's actions in approving the Mr. X** Guaranty of the Hennessey Line of Credit and subsequent renewals and extensions were a breach of fiduciary duty to the Bank.

134. Respondent's approval of the Hennessey Line of Credit and subsequent renewals and extensions were unsafe and unsound practices in connection with Respondent's dealings with the Bank.

RamCo 83

135. The Hennessey Line of Credit was secured by a guaranty from Mr. X**.

136. On or before December 31, 2007, Respondent knew or should have known of the declining financial condition of Hennessey and Mr. X**.

137. On or about December 31, 2007, Mr. X** signed a third party pledge agreement pledging his assets to a Minnesota limited liability company called RamCo 83 LLC ("RamCo 83").

138. On January 30, 2008, Respondent signed the articles of incorporation to form RamCo 83.

139. On February 19, 2008, the articles of incorporation of RamCo 83 were filed with the Minnesota Secretary of State's Office.

140. On February 19, 2008, a membership certificate evidencing his interest in RamCo 83 was issued to Respondent.

141. On or about February 20, 2008, Respondent's attorney filed a UCC-1 financing statement on behalf of Respondent securing Respondent's loan to Mr. X**.

142. RamCo 83 was formed for the purpose of transferring Mr. X**'s assets to that company.

143. As a result of Respondent's actions, Mr. X**'s assets were not available to the Bank as collateral.

144. Respondent knew or should have known that his actions to secure Mr. X**'s assets would negatively impact the Bank's position.

145. This information could have caused the Bank to initiate workout steps such as obtaining additional collateral.

146. Respondent took actions to secure his personal debt to Mr. X** to the detriment of the Bank;

147. Respondent put his personal interests above the interests of the Bank.

148. Respondent's actions in taking a security interest in Mr. X**'s assets were a conflict of interest with the Bank.

149. Respondent's actions in taking a security interest in Mr. X**'s assets were a breach of his fiduciary duty to the Bank.

150. Respondent's actions in taking a security interest in Mr. X**'s assets were unsafe and unsound practices in connection with Respondent's dealings with the Bank.

HFFM

151. Respondent was the chief manager of HFFM from at least January of 2005 until May 23, 2008.

152. In connection with the Hennessey Line of Credit, among other collateral, the Bank believed it had taken a security interest in all assets of Hennessey, including certain notes receivable (Notes Receivable);

153. Respondent believed that the Bank had a security interest in the Notes Receivable in connection with the Hennessey Line of Credit.

154. Hennessey owner Mr. X** discovered that the Bank's UCC filing describing its security interest might have misstated the description of the Notes Receivable;

155. Mr. X** discussed the potential security interest error with Respondent a number of times.

156. In December of 2007, as chief manager of HFFM, Respondent signed a document titled Written Action in Lieu of Meeting of the Board of Manager of Hennessey Financial Fund Management, LLC ("Written Action").

157. The Written Action authorized HFMIIF to provide additional funding to Hennessey.

158. Among other things, the Written Action changed HFFM's lending practices to Hennessey from unsecured to secured lending.

159. Upon information and belief, as a result of this action, HFMIIF became a secured lender of Hennessey, secured by the Notes Receivable.

160. Despite the fact that Respondent believed the Bank had a security interest in the Notes Receivable, prior to May 14, 2008, HFMIIF took a security interest in the assets of Hennessey, including the Notes Receivable.

161. On May 14, 2008, Mr. X** sent a letter on behalf of Hennessey advising its investors that its senior lender had discontinued financing and would be seizing all of Hennessey's assets.

162. HFMIIF was the senior lender of Hennessey referenced in the First Foreclosure Letter.

163. At the time the First Foreclosure Letter was sent, Respondent was chief manager of HFFM.

164. HFMIIF foreclosed on the assets of Hennessey, including the Notes Receivable.

165. On June 12, 2008, Mr. X** notified Hennessey investors that they could bid on the assets of Hennessey and Mr. X** at the HFMIIF foreclosure sale for a minimum bid of \$35,000,000.

166. The payment stream from the Hennessey Notes Receivable was Hennessey's primary source of cash flow.

167. The transfer of the Hennessey Notes Receivable to HFMIIF substantially impaired Hennessey's ability to pay the Bank.

168. Despite the belief that the Bank had a security interest in the Notes Receivable, Respondent took actions which led to the transfer of the Notes Receivable to HFMIIF.

169. Respondent had a duty to disclose the security interest error to the Bank when it was discovered.

170. This information could have caused the Bank to initiate workout steps such as obtaining additional collateral.

171. Respondent's actions harmed the Bank by, among other things, denying it the opportunity to correct an error in its security documents or pursuing earlier workout remedies with Hennessey;

172. The transfer of the Hennessey assets to HFMIIF was detrimental to the Bank because it made those assets unavailable to the Bank;

173. Respondent's actions in participating in arranging for HFMIIF to take a security interest in the assets of Hennessey were a conflict of interest with the Bank.

174. Respondent assisted HFMIIF in gaining possession of Hennessey's assets, thereby usurping a corporate opportunity for the Bank to improve its collateral position on the Hennessey Line of Credit.

175. Respondent's actions participating in arranging for HFMIFF to take a security interest in the assets of Hennessey were a breach of his fiduciary duty to the Bank.

176. Respondent's actions participating in arranging for HFMIFF to take a security interest in the assets of Hennessey were unsafe and unsound practices in connection with Respondent's dealings with the Bank.

NOTICE OF INTENTION TO REMOVE FROM OFFICE AND
TO PROHIBIT FROM FURTHER PARTICIPATION

177. Paragraphs 1 through 176 are re-alleged and incorporated herein by reference.

178. At all times pertinent to the charges herein, the Respondent exercised a controlling influence over the management, policies and practices of the Bank, including those involved in making extensions of credit.

179. By means of the Respondent's foregoing acts, omissions and/or practices, Respondent has violated and/or has caused the Bank to violate laws, rules and regulations as recited herein.

180. Further, as a result of Respondent's acts, omissions and/or practices, Respondent has, directly or indirectly, engaged in unsafe or unsound practices in connection with the Bank.

181. Further, as a result of Respondent's acts, omissions and/or practices, Respondent has breached his fiduciary duty as a director of the Bank.

182. By reason of Respondent's violations, practices and/or breaches as outlined above, the Bank has suffered financial loss and other damage.

183. By reason of Respondent's violations, practices and/or breaches as outlined above, Respondent has received financial gain or other benefit.

184. The violations of law, unsafe or unsound practices and/or breaches of fiduciary duties committed by Respondent involve personal dishonesty and demonstrate a willful and continuing disregard for the safety and soundness of the Bank.

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY

185. Paragraphs 1 through 184 are re-alleged and incorporated herein by reference and constitute FINDINGS OF FACT AND CONCLUSIONS OF LAW for the purposes of this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY.

186. Respondent's acts, omissions and/or practices constitute reckless unsafe or unsound practices in conducting the affairs of the Bank and breaches of his fiduciary duties to the Bank.

187. Respondent's violations of law and regulation, unsafe or unsound practices and/or breaches of fiduciary duty were part of a pattern of misconduct by Respondent and caused, or were likely to cause, more than a minimal loss to the Bank.

188. As a result of the violations, practices and/or breaches as specified above, the Bank has suffered or will probably suffer financial loss or other damage.

189. As a result of the violations, practices and/or breaches as specified above, Respondent has received financial gain or other benefit.

190. The acts, omissions and/or practices of the Respondent as set forth in paragraphs above demonstrate a willful or continuing disregard for the safety or soundness of the Bank and/or evidence the Respondent's personal dishonesty.

ORDER TO PAY

By reason of Respondent's reckless unsafe or unsound practices and breaches of fiduciary duties set forth in the above NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, 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 the financial resources and good faith of Respondent;

the gravity of Respondent's violations, unsafe or unsound practices and/or breaches of fiduciary duties; Respondent's history of previous violations, unsafe or unsound practices and/or breaches of fiduciary duties, if any; and such other matters as justice requires, it is:

ORDERED, that by reason of Respondent's violations, unsafe or unsound practices and/or breaches of fiduciary duties, a civil money penalty in the amount of one hundred and twenty five thousand and 00/100 dollars (\$125,000) be, and hereby is, assessed against Respondent.

IT IS 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 OF CIVIL MONEY PENALTY by Respondent, 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.

NOTICE OF HEARING

Notice is hereby given that a hearing shall commence sixty (60) days from the date of service of this NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION upon Respondent, or on such other date as may be set by the Administrative Law Judge

assigned to hear this matter, at Minneapolis, Minnesota, or at such other place as the parties to this proceeding and the Administrative Law Judge may agree, for the purpose of taking evidence on the charges herein specified, in order to determine whether an 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 section 8(e)(7)(A) of the 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 Act, 12 U.S.C. § 1818(e)(7)(D).

With respect to the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, Respondent must specifically request a hearing within 20 days of the service of the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY on him, 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 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 unappealable and shall be paid within 60 days after the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY is served on him. If Respondent timely requests a hearing with respect to the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, it shall be held at the same time and in the same place as the hearing with

respect to the NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION.

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1835a, 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 appointed by the Office of Financial Institution Adjudication ("OFIA") pursuant to 5 U.S.C. § 3105. The exact time and precise location of the hearing will be determined by the Administrative Law Judge.

Respondent is hereby directed to file an answer to the NOTICE OF INTENTION TO REMOVE FROM OFFICE AND TO PROHIBIT FROM FURTHER PARTICIPATION within twenty (20) days from the date of service and, if Respondent desires a hearing with respect to the NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, to file an answer and request for hearing with respect thereto within twenty (20) days, as provided by section 308.19 of the FDIC Rules, 12 C.F.R. § 308.19. All documents required to be filed, excluding documents produced in response to a discovery request pursuant to 12 C.F.R. §§ 308.25 and 308.26 of the FDIC Rules, shall be filed electronically with OFIA, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, via electronic mail at ofia@fdic.gov, and shall be served upon opposing counsel in accordance with section 308.11 of the FDIC Rules, 12 C.F.R. § 308.11.

