

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

IN THE MATTER OF)
)
)
GARY W. FLANDERS,) OCC-AA-SW-00-38
Director and Former Chief Executive Officer,)
MetroBank, N.A.)
Oklahoma City, Oklahoma)

)

ORDER

This matter is before the Comptroller of the Currency (“Comptroller”) on the recommendation of the Administrative Law Judge (“ALJ”) for entry of a default order and the assessment of a civil money penalty (“CMP”) of \$10,000 against Respondent Gary W. Flanders. After considering the entire record and the ALJ’s Recommended Decision, the Comptroller concludes that Respondent is in default and assesses a penalty of \$10,000 against him. As noted below, this order is final and unappealable.

Factual Summary and Procedural History

On August 30, 2000, the Office of the Comptroller of the Currency (“OCC”) issued a Notice of Assessment of a Civil Money Penalty of \$10,000 against Respondent. The record indicates that the notice was not served on Respondent. On November 21, 2000, and then again on February 9, 2001, the OCC issued and served on Respondent a First Amended Notice of Assessment of a Civil Money Penalty (“Amended Notice”) pursuant to 12 U.S.C. § 1818(i)(2). Respondent failed to answer the Amended Notice or request a hearing, and he further failed to reply to motions by the Enforcement & Compliance Division (“E&C”) dated January 23, 2001,

and May 16, 2001, for a default order. On June 27, 2001, the ALJ issued and served upon Respondent an Order requiring Respondent to show cause for his failure to respond to the Amended Notice and subsequent motions. After receiving no answer, the ALJ issued and served upon Respondent a Recommended Decision on September 14, 2001, finding Respondent in default and recommending a CMP of \$10,000 . Neither party has filed exceptions to the Recommended Decision.

The Amended Notice alleges that Respondent, while serving as CEO and director of MetroBank N.A., Oklahoma City, Oklahoma (“Bank”), violated federal law, recklessly engaged in unsafe and unsound practices, and breached his fiduciary duties to the Bank. The Amended Notice further alleges that these violations, practices, and breaches were part of a pattern of misconduct. According to the Amended Notice, Respondent failed to take any action to prevent his fellow director, Sidney R. Carey, from making 94 illegal overdrafts on his demand deposit account at the Bank over a 20 month period. The cumulative total of daily overdraft balances in Cary’s account was about \$29,000. The Amended Notice indicates that Respondent attended board and loan committee meetings where Carey’s overdrafts were reported, and that he had access to Bank records pertaining to the overdrafts. Despite having received this information, Respondent never took any steps to prevent Carey from overdrawing his account at the Bank.

Discussion

A default order imposing the penalty sought in the Amended Notice is appropriate when Respondent has failed to file an answer, request a hearing, respond to motions for default, or file exceptions to the ALJ’s Recommended Decision. Respondent's failure to participate in these proceedings results in his consent to entry of the relief sought in the Amended Notice and motions for default, as well as waiver of any objection to entry of the orders sought. See 12

C.F.R. § 19.19(c) (failure to answer a CMP notice or request a hearing forfeits a respondent's rights to appear and contest the allegations in the notice, makes the notice a final and unappealable order, and confers the respondent's consent upon a final default order issued by the Comptroller); 12 C.F.R. § 19.23(d)(2) (failure of party to oppose a written motion is deemed consent by that party to entry of an order substantially in the form of the order accompanying the motion); and 12 C.F.R. § 19.39(b) (failure of a party to file exceptions to findings of law and fact in the ALJ's recommended decision is deemed a waiver of objection thereto). The record indicates that proper service of the Amended Notice, as set forth in 12 C.F.R. § 19.11, was effected on Respondent on two separate occasions. Furthermore, Respondent verified his receipt of copies of the Amended Notice and E&C's first motion for a default order in telephone conversations with E&C attorneys. See Declaration of David P. Weber. Based on the above, the Comptroller finds that a default order is warranted in this case.

The amount of the penalty imposed in the Amended Notice is appropriate. A review of the CMP matrix indicates that a \$10,000 penalty for the conduct alleged in the Amended Notice is within the bounds of reasonableness. Moreover, the Amended Notice states that the appropriate statutory factors were taken into account when assessing the penalty against Respondent. See 12 U.S.C. § 1818(i)(2)(G). Considering that 12 U.S.C. § 1818(i)(2) authorizes a CMP of up to \$25,000 for a single day of prohibited conduct, and considering the length of time over which the conduct occurred, the Comptroller finds that \$10,000 is a fair and appropriate penalty.

Order

Upon considering the entire record and the ALJ's Recommended Decision, the Comptroller finds Respondent in default and hereby orders Respondent to pay a civil money

penalty in the amount of \$10,000. As provided by statute, 12 U.S.C. § 1818(i)(2)(E)(ii), this assessment constitutes a final and unappealable order. Remittance of the penalty shall be payable to the Treasurer of the United States and be delivered to:

Paul Chism, Hearing Clerk
Chief Counsel's Office
Office of the Comptroller of the Currency
250 E. Street, SW
Washington, DC 20219

SO ORDERED this 30th day of November, 2001.

/s/John D. Hawke, Jr.

John D. Hawke, Jr.
Comptroller of the Currency