

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

IN THE MATTER OF:)
Cynthia Rowe)
Former Employee)
Key Bank, N.A.)
Cleveland, Ohio)

AA-EC-02-13

DECISION AND ORDER

This matter is before the Comptroller of the Currency (“Comptroller”) on the recommendation of the Administrative Law Judge (“ALJ”) for entry of default against Cynthia Rowe (“Respondent”), a former Client Relations and Branch Manager of KeyBank, N.A., Cleveland, Ohio (“the Bank”), and for an order of restitution in the amount of \$40,000 (forty-thousand dollars). In the Notice of Charges that the OCC served on Respondent on October 3, 2002, the OCC asserted, *inter alia*, that Respondent engaged in unsafe and unsound banking practices and violated the law in connection with her employment at the Bank. Upon consideration of the pleadings, the ALJ’s Recommended Decision on Motion for Default, ¹dated December 17, 2002, and the record, the Comptroller concludes that Respondent is in default and in addition the Comptroller orders the Respondent to pay restitution in the amount of \$40,000.

I. FACTUAL SUMMARY AND PROCEDURAL HISTORY

A. RESPONDENT’S PARTICIPATION IN PROCEEDINGS

On October 1, 2002, the OCC issued a Notice commencing an enforcement action to

¹ The OCC submitted the motion for default on November 20, 2002.

impose an order for restitution and an order of prohibition against Respondent.² Under the Rules of Practice and Procedure, a request for hearing and an answer were due on October 24, 2002.³ Although the record indicates that the Respondent acknowledged receipt of the Notice of Charges, Respondent failed to answer it. The OCC served a second copy of the Notice of Charges on October 25, 2002, and Respondent received it on October 30, 2002. The ALJ served an Order on November 13, setting a telephone conference for November 19, 2002.⁴ Respondent did not, however, participate in the conference call established by the Order. Because Respondent had failed to answer the Notice of Charges in a timely manner as required under 12 C.F.R. 19.19(c), on November 20, 2002, the OCC filed a Motion for Entry of an Order of Default. On November 22, 2002, the ALJ sent the Respondent an Order to Show Cause, noting that Respondent had failed to file an answer or to otherwise participate in the proceedings. In the Order to Show Cause, the ALJ noted that on October 21, 2002, Respondent had acknowledged the receipt of the Notice of Charges and sent a short statement that said, “I disagree on some of the Misconduct [sic] allegations,” but she had failed to answer the Notice of Charges with specificity as required by 12 C.F.R. § 19.19(b). The ALJ further noted that Respondent’s short statement in response to the Notice of Charges made no objection to the proposed removal action

² Under the Federal Deposit Insurance Act, the OCC may initiate a prohibition proceeding, but the Federal Reserve Board must make a final determination whether to issue the prohibition. The prohibition action was certified to the Board of Governors of the Federal Reserve System for decision pursuant to 12 U.S.C. § 1818(e). On February 12, 2003, pursuant to section 1818(e), the Board issued an Order of Prohibition against the Respondent. The Order prohibited the Respondent from participating in the conduct of affairs of any Federal financial institution and from voting for a director or serving or acting as an institution-affiliated party as defined by 12 U.S.C. § 1813(u), such as an officer, director, or employee.

³ See 12 C.F.R. §§ 19.19(a), 19.12(a) and(c)(2).

⁴ The Order was sent on November 13, 2002, and received by Respondent at her residence on November 14, 2002.

or the proposed order to pay restitution, which would indicate that she had no objections. Respondent did not answer the Order to Show Cause. Because no answer was filed at all by the December 10, 2002 deadline imposed by the Order to Show Cause, on December 17, 2002, the AU filed a Recommended Decision. In the Recommended Decision the AUJ noted that “to date” Respondent had not filed an answer, which at that point made the answer 54 days overdue.

B. RESPONDENT’S MISCONDUCT

The Notice of Charges stated that Respondent worked for the Bank for approximately nine years, most recently as Client Relations and Branch Manager of the Bank’s branch in Sturgis, Michigan until she was fired on August 21, 1998. During her years at the Bank, Respondent’s duties included supervising tellers at the Bank, reconciling daily cash balances of the tellers who reported to her, and upon occasion, working as a teller herself. For approximately three years before her termination from the Bank, Respondent repeatedly stole cash from the tellers drawers, typically in amounts of \$150 to \$1,000 at a time. She concealed her thefts by making fraudulent entries in the Bank’s books and records to reverse overdrafts to her account at the Bank. These thefts totaled over \$40,000. The Notice of Charges further states that Respondent knowingly and purposefully concealed her actions by making fraudulent entries in the Bank’s books and records, and created fraudulent records in individual accounts so that she could divert funds to cover the shortages in the tellers’ drawers. But for her efforts to conceal the shortages in the tellers’ drawers, the shortages would have been reported in the Bank’s regular management reports. On numerous occasions, Respondent lied to other Bank personnel about the shortages and her actions.

In addition to the thefts she carried out for her own benefit, Respondent knowingly and purposely participated in the thefts of another employee under her supervision and concealed

that employee's thefts by making fraudulent entries in the Bank's books and records and lying to the other Bank employees about the actions of the employee and her supervision of the employee.

Finally, when the Bank discovered her thefts, Respondent attempted to further defraud the Bank by creating a fraudulent money order in the amount of \$44,776.00, which she gave to the Bank purportedly to make restitution for the money that she had stolen.

II. DISCUSSION

A. THE DEFAULT

Under 12 C.F.R. § 19.19(c), the ALJ is to recommend entry of an order of default where (1) the Respondent fails to file an answer in a timely manner and, (2) no good cause has been shown for failure to do so. Respondent failed to file an answer in a timely manner, nor did she show good cause for the failure to submit an answer despite being given ample opportunity to do so. Accordingly, both Enforcement Counsel and the ALJ's Recommended Decision concluded that finding of a default was supportable under 12 C.F.R. § 19.19(c)(1). The Comptroller agrees that under these circumstances, a finding of default is correct.

The ALJ further noted that under section 19.19(c)(1), in the case of a default, the Recommended Decision is to "contain the findings and relief sought in the notice." The Comptroller agrees with the ALJ that because this is a case of a default, it is therefore proper for the ALJ to adopt the Notice of Charges in her Recommended Decision and regard the charges as facts because Respondent has been given the opportunity to challenge the Notice of Charges by filing an answer and appearing at a hearing, but has failed to do so.

B. RESTITUTION

The Comptroller agrees with the ALJ that Respondent's actions warrant an order requiring Respondent to pay \$40,000 in restitution to the Bank. Pursuant to 12 U.S.C. § 1818(b) the first question that must be asked is whether Respondent's actions constituted an unsafe and unsound banking practice. This question must be answered in the affirmative because Respondent knowingly stole cash from the Bank, concealed her actions by making false entries in the Bank's books and records, and concealed the thefts of another Bank employee. Next, restitution is appropriate when one of two requirements is satisfied: (1) the party must have been unjustly enriched in connection with the violation or (2) the actions of the party must indicate that the violation or practice involved a reckless disregard for the law or any applicable regulations. Respondent's action satisfy both statutory requirements. First, Respondent was clearly unjustly enriched by her thefts within the meaning of 12 U.S.C. § 1818(b)(6)(A)(i). In addition, because these violations occurred over a period of years, caused the bank to lose in excess of \$40,000 and involved Respondent in stratagems to conceal both her thefts and those of another employee, Respondent's actions demonstrated a reckless disregard for the law within the meaning of 12 U.S.C. § 1818(b)(6)(A)(ii). Respondent, to date, has made no restitution to the Bank.

III. ORDER

Based on the entire record of the proceeding and the recommended Decision of the ALJ, the Comptroller hereby finds that Respondent is in default pursuant to 12 U.S.C. §§ 19.19(c)(1) and (d)(2) and 19.23(d)(2). Pursuant to the Comptroller's authority under 12 U.S.C. § 1818, the

Comptroller orders Respondent to pay restitution of \$40,000 (forty thousand dollars) to the Bank. Respondent shall make full payment of restitution within 60 days after the effective date of This Order. This order is final and unappealable.

SO ORDERED this 28th day of April, 2003.

/s/ John D. Hawke, Jr

JOHN D. HAWKE, JR.
Comptroller of the Currency