

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

IN THE MATTER OF)	
)	
Garfield C. Brown, Jr.,)	
Former Employee)	AA-EC-03-11
)	
Mellon Bank, N.A.)	
Pittsburgh, Pennsylvania)	

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 Garfield C. Brown, Jr. (“Respondent”), a former employee of Mellon Bank, N.A. (“Bank”), in a proceeding seeking restitution under 12 U.S.C. § 1818(b)(6) and a prohibition under 12 U.S.C. § 1818(e). The prohibition proceeding has been referred to the Board of Governors of the Federal Reserve System for final decision. With respect to the restitution proceeding, the Comptroller, after considering the pleadings, the ALJ’s Recommended Decision and the entire record, concludes that Respondent is in default and issues the Order below.

FACTUAL SUMMARY AND PROCEDURAL HISTORY

The facts giving rise to this matter are described in detail in the ALJ’s Recommended Decision, and are briefly summarized here. On June 6, 2003, the Office of the Comptroller of the Currency issued and served on the Respondent a Notice of its intention to prohibit his further

participation in the industry and to require him to pay restitution. The Notice alleged that Respondent made unauthorized cash advances against bank customers' credit cards for the benefit of a third party and received some of the funds for his participation in the fraudulent transactions. According to the Notice, the Bank reimbursed the two cardholders whose credit cards were charged for the cash advances and, consequently, the Bank suffered a loss of \$15,000. Among other things, the Notice alleged that by these actions Respondent engaged in unsafe and unsound banking practices, breached his fiduciary duty to the Bank, acted in reckless regard for the law, and was unjustly enriched.

When Respondent failed to file an answer within 20 days as required by 12 C.F.R. § 19.19(a), Enforcement Counsel moved for entry of an order of default. On July 29, 2003, the ALJ issued an Order to Show Cause, which required Respondent to file an answer and to show good cause for having failed to do so previously. When Respondent again failed to answer by the specified date, the ALJ issued a Recommended Decision finding Respondent in default.

DECISION

The Comptroller agrees with the ALJ that Respondent is in default. Under 12 C.F.R. § 19.19(c)(1), Respondent's failure to file an answer within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the Notice. When Enforcement Counsel moves for default and the ALJ finds no good cause for Respondent's failure to answer, the ALJ is required to file with the Comptroller a recommended decision containing the findings and the relief sought in the Notice. Accordingly, the Comptroller adopts the ALJ's findings of fact and conclusions of law, and issues the Order below.

ORDER

Pursuant to 12 U.S.C. § 1818(b), the Comptroller orders Respondent to pay restitution to the Bank in the amount of \$15,000.

SO ORDERED, this 6th day of November, 2003

/s/

John D. Hawke, Jr.
Comptroller of the Currency