

UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, DC

)
ON CERTIFICATION OF THE DEPARTMENT)
OF THE TREASURY – OFFICE OF THE)
COMPTROLLER OF THE CURRENCY)
)
In the Matter of a Notice to Prohibit)
Further Participation Against)
STEPHANIE EDMOND,)
)
Former Customer Service Representative and Teller)
First Tennessee Bank, NA)
Memphis, Tennessee)
and)
Former Teller)
Bank of America, NA)
Charlotte, North Carolina)
_____)

OCC-AA-EC-03-24

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act (“FDI Act”) in which the Office of the Comptroller of the Currency of the United States of America (“OCC”) seeks to prohibit the Respondent, Stephanie Edmond (“Respondent”), from further participation in the affairs of any financial institution

based on her conduct while she was employed at First Tennessee Bank, NA, Memphis Tennessee (“First Tennessee”), as well as Bank of America, NA, Charlotte, North Carolina (“BoA”), both national banking associations. Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition.

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision (“Recommended Decision”) of Administrative Law Judge Arthur L. Shipe (the “ALJ”), and orders the issuance of the attached Order of Prohibition.

I. STATEMENT OF THE CASE

A. Statutory and Regulatory Framework

Under the FDI Act and the Board’s regulations, the ALJ is responsible for conducting proceedings on a notice of charges. 12 U.S.C. § 1818(e)(4). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. *Id.*; 12 C.F.R. § 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. In order to issue such an order, the Board must make each of three findings: (1) that the respondent engaged in identified misconduct, including a violation of law or regulation, an unsafe or unsound practice, or a breach of fiduciary duty; (2) that the conduct had a specified effect, including financial loss to the institution or gain to the respondent; and (3) that the respondent’s conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution. 12 U.S.C. § 1818(e)(1)(A)-(C).

An enforcement proceeding is initiated by the filing of a notice of charges which is served on the respondent. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice.

12 C.F.R. §§ 19.19(a) and 263.19(a). Failure to file an answer constitutes a waiver of the respondent's right to contest the allegations in the notice, and a final order may be entered unless good cause is shown for failure to file a timely answer.

12 C.F.R. §§ 19.19(c)(1) and 263.19(c)(1).

B. Procedural History

On September 24, 2003, the OCC issued a Notice initiating an enforcement action that sought an order of prohibition against Respondent based on her actions while employed at two different banks. The Notice directed Respondent to file an answer within 20 days, and warned that failure to do so would constitute a waiver of her right to appear and contest the allegations. The OCC sent the Notice by overnight delivery to the two last known addresses for Respondent. On September 25, 2003, a "Ms. Edmond" signed for receipt of the Notice at one of these addresses. However, Respondent failed to file an answer within the 20-day period specified in the Notice.

On November 4, 2003, Enforcement Counsel for the OCC moved for entry of an order of default based on Respondent's failure to appear and file an answer. On November 24, 2003, the ALJ issued an Order to Show Cause, noting that Respondent had not replied to the OCC's motion, and directing Respondent to appear and demonstrate why the ALJ should not grant the default motion.

From approximately December 16, 2003 through the beginning of February 2004, a private process server hired by the OCC made nine attempts to personally serve Respondent with the Order to Show Cause at the address where the Notice had been sent and received. However, residents at this address refused to acknowledge the process server when he attempted service. The OCC confirmed in a January 2004 telephone conversation with Respondent's mother that Respondent resided at this address. The record reflects that the process server ultimately posted the Order at this address on February 11, 2004. Respondent did not respond to the Order to Show Cause and has never filed an answer to the Notice.

II. DISCUSSION

The OCC's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the notice." 12 C.F.R. § 19.19(c). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file . . . a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to timely answer is deemed to be issued by consent. *Id.*

The record establishes that at a minimum, the OCC used methods "reasonably calculated to give actual notice" in its efforts to notify Respondent of the pendency of this case. 12 C.F.R. § 19.11(c)(2)(v). The OCC identified two last known addresses for the Respondent. On September 25, 2003, a "Ms. Edmond" signed for receipt of the overnight delivery of the Notice at one of these addresses. By telephone conversation following receipt of the Notice, Respondent's mother, Mary Edmond, confirmed that the

address to which the Notice had been sent was her address, and that her daughter, the Respondent, resided with her at that address. Finally, on February 11, 2004, a process server delivered the Order to Show Cause to this same address. Nonetheless, Respondent failed to file an answer despite notice to her of the consequences of such failure, and also failed to respond to the ALJ's Order to Show Cause. Respondent's failure to file an answer constitutes a default.

Respondent's default requires the Board to consider the allegations in the Notice as uncontested. The Notice alleges, and the Board finds, that while employed at First Tennessee, Respondent fraudulently benefited from a First Tennessee installment loan by, among other things, providing false information on loan documents and forging the name and signature of a cosigner. Respondent's fraudulent loan subsequently went into default. Also while employed at First Tennessee, Respondent took out a loan in the name of a First Tennessee customer, without the customer's knowledge or consent, and by forging the customer's signature on the loan application. Respondent used the proceeds of this loan for her own benefit. Furthermore, while employed at BoA, Respondent executed a cash-out ticket without posting a corresponding ticket. This conduct meets the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It is a violation of law, a breach of fiduciary duty, and an unsafe or unsound practice for a bank employee to fraudulently obtain and benefit from loans issued by a bank at which she is employed. Moreover, it is an unsafe or unsound practice for a bank employee to fail to maintain proper record-keeping of the transactions she executes. Respondent's actions caused gain to herself, as well as a total loss of \$22,346 to these two banks. Finally, Respondent's

acts involved both personal dishonesty and a willful disregard for the safety or soundness of the banks at which she was employed.

In sum, all the elements necessary for the issuance of a prohibition order are presented in this case.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors, this 17th day of June 2004.

**BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM**

(Signed)

Jennifer J. Johnson
Secretary of the Board

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ORDER OF PROHIBITION

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against STEPHANIE EDMOND ("Edmond"), a former employee and institution-affiliated party, as defined in Section 3(u) of the FDI Act (12 U.S.C § 1813(u)), of First Tennessee Bank, NA, Memphis, Tennessee, and Bank of America, NA, Charlotte, North Carolina.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

1. In the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the Act (12 U.S.C. § 1818(e)(7)(B)), Edmond is hereby prohibited:

(a) from participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured depository institution, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;

(b) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));

(c) from violating any voting agreement previously approved by any Federal banking agency; or

(d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)).

2. Any violation of this Order shall separately subject Edmond to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).

3. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

This Order shall become effective at the expiration of thirty days after service is made.

By Order of the Board of Governors, this 17th day of June 2004.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board

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 19.23(d)(2). Pursuant to the Comptroller's authority under 12 U.S.C. § 1818(b)(6), the Comptroller orders Respondent to pay restitution of \$18,436 to First Tennessee and \$4,000 to Bank of America.

SO ORDERED this 14th day of July, 2004.

Signed

JOHN D. HAWKE, JR.
Comptroller of the Currency