

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

IN THE MATTER OF)	
)	
BRIAN BONETTI,)	
)	
Former Sales and Service Representative,)	OCC-AA-EC-04-68
)	
National City Bank)	
Cleveland, Ohio.)	

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 Respondent Brian Bonetti, former sales and service representative of National City Bank, Cleveland, Ohio (“the Bank”), in civil money penalty, cease and desist for restitution, and prohibition proceedings.¹ Upon consideration of the pleadings, the ALJ’s Recommended Decision, and the entire record, the Comptroller concludes that Respondent is in default and orders Respondent to pay restitution of \$19,000 to the Bank and assesses a civil money penalty of \$81,000 against Respondent. As explained below, this Order is final and unappealable.

I. FACTUAL SUMMARY AND PROCEDURAL HISTORY

The facts giving rise to this matter are described in the ALJ’s Recommended Decision and are briefly summarized here. On February 3, 2005, the Office of the Comptroller of the Currency (“OCC”) commenced an enforcement action to impose a civil money penalty, an

¹ The prohibition action has been certified to the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 1818(e)(4). This Order does not apply to that action.

order for restitution, and an order of prohibition against Respondent. The Notice initiating the action set forth the facts giving rise to the charges. The Notice alleged that Respondent made, authorized, and/or booked thirteen home equity loans through the Bank over a seven month period in 2001. The Notice charged that Respondent diverted portions of customers' loan proceeds to his own personal use or benefit without the customers' knowledge, consent, approval, or authorization by causing checks to be issued in various amounts to make loan or credit card payments that directly or indirectly benefited Respondent or to make deposits into accounts that were owned or controlled by Respondent or otherwise benefited Respondent. According to the Notice, Respondent falsified internal loan documents to hide from the Bank the fact that Respondent was charging customers broker fees that exceeded the Bank's broker fee cap, and gave customers misleading HUD-1 Settlement Statements that failed to properly disclose the broker fees associated with the loans. The Notice charged that by these actions Respondent committed violations of law or regulation, breaches of fiduciary duty, and unsafe or unsound practices, and by such violations, practices, and breaches caused a loss to the Bank in the approximate amount of \$84,970, obtained personal gain, demonstrated personal dishonesty, and evidenced a willful or continuing disregard for the Bank's safety and soundness. Further, the Notice charged that Respondent's violations or practices evidenced a reckless disregard for the law or any applicable regulations and resulted in Respondent's unjust enrichment in the approximate amount of \$19,273.

According to the ALJ, on February 3, 2005, the OCC served the Notice on Respondent by overnight and First Class mail. Respondent was also personally served on February 26, 2005. However, Respondent failed to file an answer, as required by 12 C.F.R. § 19.19(a). On June 2, 2005, Enforcement Counsel moved for entry of a default pursuant to 12 C.F.R. § 19.19(c) based

on Respondent's failure to appear and file an answer; the motion was served on Respondent by overnight mail. On June 3, 2005, the ALJ issued an Order to Show Cause providing Respondent until June 20, 2005 to answer the Notice and to demonstrate good cause for having failed to do so. The record reflects that the ALJ effected service of the Order to Show Cause by Federal Express and first class mail on June 3, 2005. Respondent did not respond to the default motion or the Order and has never filed an answer to the Notice. The ALJ has now issued a Recommended Decision finding Respondent in default. To date, Respondent has not filed exceptions to the Recommended Decision, which was served by Federal Express and First Class mail on June 29, 2005.

II. DECISION

The Comptroller agrees with the ALJ that Respondent is in default. Under the civil money penalty statute and implementing regulations, the failure to request a hearing converts the notice of assessment into a "final and unappealable order." 12 U.S.C. § 1818(i)(2)(E)(ii); see also 12 C.F.R. § 19.19(c)(2). Moreover, 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)(1); see also 12 C.F.R. § 19.23(d)(2) (failure of a 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 U.S.C. § 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 established that Respondent was properly served with the Notice pursuant to 12 C.F.R. § 19.11. Based on the above, the Comptroller finds that an order entering default against Respondent is warranted in this case.

Over a seven-month period, Respondent diverted funds from thirteen loans he made to

customers of the bank. In each instance, Respondent caused one or more checks to be issued that he used to make loan payments that directly or indirectly benefited him, or to make deposits into accounts in which he had a direct or indirect beneficial interest. In furtherance of this scheme, he falsified loan documents to conceal his misconduct. These acts involved a reckless disregard for the safety and soundness of the Bank, violations of law, and repeated breaches of his fiduciary duty to the Bank. Respondent's misconduct resulted in a loss to the Bank of \$84,970 and personal gain to Respondent in excess of \$19,000.

In setting the amount of the penalty assessed against the Respondent, the Notice addresses each of the statutory factors, including Respondent's good faith, the gravity of the violations, and the history of previous violations. See 12 U.S.C. § 1818(i)(2)(G). Considering Respondent's misconduct and active concealment of his activities from the Bank, the Comptroller agrees with the ALJ's recommendation to impose a civil money penalty in the amount of \$81,000. As Respondent was unjustly enriched by these violations or practices which involved a reckless disregard for law or regulation, the Comptroller also agrees with the ALJ's recommendation to order Respondent to pay \$19,000 in restitution to the Bank.

III. ORDER

Based on the entire record of the proceeding and the Recommended Decision of the Administrative Law Judge, the Comptroller hereby finds Respondent in default pursuant to 12 C.F.R. §§ 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 \$19,000 to National City Bank. The Comptroller also hereby orders Respondent to pay a civil money penalty in the amount of \$81,000. 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:

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

SO ORDERED this 15th day of September, 2005.

Signed _____
John C. Dugan
Comptroller of the Currency