

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

_____)	
IN THE MATTER OF:)	
)	
KENNETH L. COLEMAN,)	
)	OCC-AA-EC-04-43
Former Employee)	
PNC Bank)	
Pittsburgh, Pennsylvania)	
)	
Mellon Bank, N.A.)	
<u>Pittsburgh, Pennsylvania.</u>)	

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 Kenneth L. Coleman (“Respondent”), a former employee of PNC Bank, Pittsburgh, Pennsylvania and of Mellon Bank, N.A., Pittsburgh, Pennsylvania (hereinafter “the Banks”). The proceeding was initiated when Respondent was served with a Notice of Intention to Prohibit Further Participation and Notice of Charges (“Notice”), seeking a prohibition under 12 U.S.C. §1818(e) and restitution under 12 U.S.C. §1818(b)(6). The prohibition proceeding has been referred to the Board of Governors of the Federal Reserve System for final decision. Regarding the restitution proceeding, the Comptroller, after considering the pleadings, the ALJ’s Recommended Decision and the entire record, finds that Respondent is in default and issues the Order below.

I. DISCUSSION

A. Factual Background

The facts giving rise to this matter are described in detail in the ALJ's Recommended Decision, and are briefly summarized here. On July 28, 2004, the OCC filed the Notice seeking an order of prohibition and restitution against Respondent based on his misconduct while employed at two different banks. The Notice alleges that while employed at PNC Bank, Respondent stole money on October 14, 1999, November 26, 1999, and December 1, 1999, by inflating the amount of customers' deposits and subsequently depositing the surplus, totaling \$2,570, amount into his own account. Furthermore, while employed at Mellon Bank, he stole \$810 in a cash overage that he produced by improperly processing a transaction. According to the Notice, Respondent's misconduct caused a gain to himself, as well as a total loss of \$3,380 to these two banks. (Respondent paid restitution in the amount of \$979.77 to PNC Bank; therefore, PNC Bank's loss of \$1,590.23 remains outstanding.) Respondent's acts allegedly involved a willful disregard for the safety and soundness of the Banks, a breach of his fiduciary duty to the Banks and personal dishonesty.

B. Procedural History

On July 27, 2004, the OCC served the Notice by overnight delivery to the last known address for Respondent. However, Respondent failed to file an answer within the 20-day period specified in the Notice. On September 21, 2004, the OCC sent a copy of the Notice to Respondent by first-class mail, and, on November 22, 2004, a process server served Respondent with a copy of the Notice and a letter. Both the Notice and the letter explained Respondent's obligation to file an answer to the Notice, directed him to file his answer within 20 days, and

warned that failure to do so would constitute a waiver of his right to appear and contest the allegations.

Having received no answer from Respondent, on January 3, 2005 Enforcement Counsel moved for entry of a default pursuant to 12 U.S.C. § 19.19(c) based on Respondent's failure to appear and file an answer. On January 4, 2005, the ALJ issued an Order to Show Cause directing Respondent to appear and demonstrate why the ALJ should not grant the default motion. The record reflects that the ALJ effected service of the Order to Show Cause by overnight and first-class mail on January 4, 2005. Respondent did not respond to the Order and has never filed an answer to the Notice. The ALJ has now issued a Recommended Decision finding Respondent in default.

II. DECISION

The Comptroller agrees with the ALJ that Respondent is in default. Under OCC's Rules of Practice and Procedure, a party's failure to oppose a motion "is deemed a consent by that party to the entry of [the proposed default order accompanying the default motion.]" 12 C.F.R. § 19.23(d)(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). If 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 facts and conclusions of law. Under the regulation, the Comptroller's order below "is deemed to be an order issued upon consent." Id.

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 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 \$1,590.23 to PNC Bank and \$810 to Mellon Bank.

SO ORDERED this 2ND day of March, 2005.

/s/ Julie L. Williams
JULIE L. WILLIAMS
Acting Comptroller of the Currency