

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

IN THE MATTER OF:)
)
Walter C. “Charlie” Cleveland,)
) OCC-AA-EC-04-47
 Former Director and Senior Vice President,)
)
 First National Bank,)
 Lubbock, Texas.)

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 Walter C. “Charlie” Cleveland (“Respondent”), former director and senior vice president of First National Bank, Lubbock, Texas (“the Bank”) in civil money penalty (“CMP”) and removal proceedings. The prohibition proceeding has been referred to the Board of Governors of the Federal Reserve System for final decision. Regarding the CMP proceeding, the Comptroller, after considering the pleadings, the ALJ’s Recommended Decision and the entire record, concludes that Respondent is in default and assesses a civil money penalty of \$50,000. As noted below, this Order is final and unappealable.

I. DISCUSSION

A. Procedural History

On September 16, 2004, the OCC served upon Respondent a Notice of Charges for Issuance of an Order to Cease and Desist and Notice of Assessment of a Civil Money Penalty (collectively, the “Original Notice”). The Respondent filed a timely answer to the Original

Notice and a request for a hearing. The OCC amended the Original Notice with the First Amended Notice of Charges for Issuance of an Order for Prohibition and Notice of Assessment of a Civil Money Penalty (“Amended Notice”) and served it upon the Respondent on February 28, 2005; this pleading amended the Original Notice, which repeated and added to the facts initially alleged, again requested a \$50,000 civil money penalty, and sought a prohibition order, rather than a cease and desist order.

The Amended Notice was served by overnight delivery upon Respondent’s representative. However, Respondent did not answer the Amended Notice. Furthermore, Respondent has failed to file a prehearing statement, which was due February 7, 2005. Having received no answer from Respondent, Enforcement Counsel sought and obtained an order to show cause pursuant to 12 U.S.C. § 19.19(c) based on Respondent’s failure to file an answer to the Amended Notice. On April 6, 2005, the ALJ issued an Order to Show Cause noting that although Respondent was not in default as to the Original Notice because he had filed an answer to it, the new and unanswered allegations contained in the Amended Notice could form the basis for a default granting the relief sought by the OCC. The order directed 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 facsimile and First Class Mail on April 6, 2004. Respondent did not respond to the Order and has never filed an answer to the Amended 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 on Respondent on April 29, 2005.

B. Factual Background

The facts giving rise to this matter are described in detail in the ALJ's Recommended Decision, and are briefly summarized here. OCC's Amended Notice seeks an order of prohibition and assessing civil money penalties against Respondent based on his conduct between June 2002 and June 2004. The Amended Notice states that Respondent, as both the loan officer and trustee on the deed of trust, engaged in unsafe and unsound lending and loan administration practices and in various acts that breached his fiduciary duty and created a conflict of interest. Among other things, Respondent approved and administered a loan to a family member; he personally benefited from the transaction when he received some of the loan proceeds and applied them to loan closing costs on his personal residence; and, he failed to perfect the Bank's security interest in the property securing the loan for which he was the designated trustee on the deed of trust.

The Amended Notice further alleges that in connection with this insider-related loan, Respondent engaged in various acts of misconduct demonstrating personal dishonesty. For example, he failed to report this insider-related loan in the Bank's records and failed to disclose his financial interest in this loan to the Bank and OCC examiners. Also, to conceal his activities regarding this loan, Respondent not only instructed bank personnel to withhold bank communication from the named borrower, but also personally removed a piece of mail addressed to the borrower from the Bank's outgoing mail. Indeed, the Bank subsequently discovered that Respondent purposely withheld information about the loan from the borrower.

According to the Amended Notice, Respondent recklessly and willfully disregarded the safety and soundness of the Bank, breached his fiduciary duty to the Bank, and demonstrated personal dishonesty.

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 indicates that proper service of the Amended Notice was effected pursuant to 12 U.S.C. § 19.11. In this case, Respondent failed to file an answer despite notice to him of the consequences of such failure, and failed to respond to the ALJ’s Order to Show Cause. Based on the above, the Comptroller finds that Respondent’s failure to file an answer to the Amended Notice constitutes a default.

Respondent’s acts involved a reckless and willful disregard for the safety and soundness of the Bank, a breach of his fiduciary duty to the Bank and personal dishonesty. The amount of penalty imposed in the Notice is appropriate. A review of the CMP matrix indicates that a \$50,000 penalty for the conduct alleged in the Amended Notice is within the bounds of reasonableness. Moreover, the Amended Notice states that the appropriate statutory factors were taken into account when assessing the penalty against the Respondent. *See* 12 U.S.C. § 1818(i)(2)(G). Considering Respondent’s misconduct and active concealment of this loan

from the Bank and the OCC examiners, the Comptroller finds that \$50,000 is a fair and appropriate penalty.

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 and hereby orders Respondent to pay a civil money penalty in the amount of \$50,000. 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 20th day of June, 2005.

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