#2006-30

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

In the Matter of: Onyeacholem Moseri Former Employee First North American National Bank Kennesaw, Georgia (Closed)	)	AA-EC-05-72

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 a default judgment in civil money penalty and prohibition proceedings[1] brought against Respondent Onyeacholem Moseri, a former Collections Representative of First North American National Bank, Kennesaw, Georgia ("the Bank"). Upon consideration of the pleadings, the ALJ's Recommended Decision, and the entire record, the Comptroller concludes that Respondent is in default and assesses a civil money penalty of $25,000 against Respondent. As explained below, this Order is final and unappealable.

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 August 31, 2005, the Office of the Comptroller of the Currency ("OCC") commenced an enforcement action to impose a civil money penalty and an order of prohibition against Respondent. The Notice initiating the action set forth the following facts giving rise to the charges. According to the Notice, Respondent's sole responsibility at the Bank was to help the Bank collect funds from delinquent credit card accountholders by

telephoning customers whose accounts were on a Bank-generated list of delinquent accounts. Respondent did not have permission or authority to view or alter the records of any non-delinquent credit card accounts. Nevertheless, Respondent used the Bank's electronic records system to view the personal accountholder records for over six hundred non-delinquent credit card accounts. In addition, Respondent used the electronic records system to alter the account records of nine separate non-delinquent accounts. Specifically, Respondent changed the address and telephone number associated with each of the nine accounts. Respondent altered most of the accounts to reflect Georgia or New York addresses and phone numbers. Additionally, Respondent altered several of the nine accounts so that they shared a common address.

In one case, Respondent changed the address on one of the accounts to that of his own residence in Smyrna, Georgia. A day after this alteration, a person requested via telephone that the Bank issue a new credit card to the account's new address. Several days later, a person telephoned the Bank from a Georgia area code to activate the card. Shortly thereafter, a person called to change the personal identification number on the account and the card was then used to make one or more illegitimate purchases, totaling approximately $302.70.

Another account that Respondent altered had illegitimate amounts totaling approximately $1,057.04 charged to the account shortly after the alteration.

With respect to several accounts that Respondent viewed or altered, individuals telephoned the Bank shortly after Respondent's actions and changed the addresses and phone numbers associated with the accounts or requested that replacement cards be sent to the altered addresses. In the instances when individuals altered the addresses and telephone numbers of accounts by telephone, the individuals used addresses and phone numbers that Respondent

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[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.

previously used when he electronically altered nine credit card accounts at the Bank. Five of the customers whose accounts were affected confirmed to the Bank that they never requested changes to their accounts or replacement credit cards.

The Notice alleged that by the actions summarized above, Respondent committed violations of law or regulation, recklessly engaged in unsafe or unsound banking practices, and breached his fiduciary duty to the Bank. Additionally, the Notice charged that Respondent's violations, practices, and breaches constituted a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank, and resulted in financial gain or other benefit to the Respondent.

According to the record, on August 31, 2005, OCC enforcement counsel served the Notice on Respondent via UPS overnight mail. The record indicates that a process server served an additional copy of the notice upon Respondent's relative and co-resident, at Respondent's residence, on September 22, 2005. However, Respondent failed to file an answer, as required by 12 C.F.R. § 19.19(a). On November 23, 2005, enforcement counsel moved for entry of default pursuant to 12 C.F.R. § 19.19(c). The motion was served on Respondent via UPS overnight mail and U.S. First Class mail. On November 29, 2005, the ALJ issued an Order to Show Cause providing Respondent until December 19, 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 U.S. First Class mail on November 29, 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 December 29, 2005.

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 C.F.R. § 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.

Respondent's unauthorized viewing, alteration, and misuse of account information constituted violations of law or regulation, reckless unsafe or unsound banking practices, and breaches of his fiduciary duty to the Bank. Respondent's misconduct, which involved multiple accounts and took place over a one-month period, constituted of a pattern of misconduct, caused or was likely to cause more than a minimal loss to the Bank, and resulted in financial gain or other benefit to the Respondent. Moreover, the Notice states that the appropriate statutory factors, such as the Respondent's good faith, the gravity of the violations, and the history of previous violations, were taken into account when assessing the penalty against the Respondent. See 12 U.S.C. § 1818(i)(2)(G). Considering Respondent's misconduct, the Comptroller agrees with the ALJ's recommendation to impose a civil money penalty in the amount of $25,000.

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(i)(2), the Comptroller hereby orders Respondent to pay a civil money penalty in the amount of $25,000. 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 30th day of March, 2006.

Signed

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John C. Dugan
Comptroller of the Currency