

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

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In the Matter of:)	
)	
Colleen Adams)	
Mortgage Loan Consultant)	OCC AA-EC-10-12
Wachovia Bank, N.A.)	
Cartersville, Georgia)	
)	
Succeeded in interest by:)	
Wells Fargo Bank, N.A.)	
Sioux Falls, South Dakota)	
_____)	

ORDER OF PROHIBITION

Pursuant to the authority vested in him by section 8(e) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(e), the Comptroller of the Currency hereby ORDERS that:

(1) With respect to the institutions and agencies set forth in paragraph (2), Colleen

Adams (now known as Colleen Hale) shall not:

- (a) participate in any manner in the conduct of their affairs;
 - (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
 - (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q);
- or
- (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u).

(2) The prohibitions in paragraph (1) apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured depository institution under 12 U.S.C. §§ 1818(b)(3), (b)(4) or (b)(5), including, but not limited to, any subsidiary of such institution, or treated as a savings and loan holding company or subsidiary under 12 U.S.C. § 1818(b)(9);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency;
and
- (f) the Federal Housing Finance Board and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) shall cease to apply with respect to a particular institution if Colleen Adams (now known as Colleen Hale) obtains the prior written consent of both the Comptroller and the institution's "appropriate Federal financial institutions regulatory agency," as defined in 12 U.S.C. § 1818(e)(7)(D).

(4) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting Colleen Adams (now known as Colleen Hale), nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(5) The provisions of this Order are effective upon issuance of this Order by the Comptroller and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

IT IS SO ORDERED, this 14th day of November, 2012.

/s/ Thomas J. Curry
Thomas J. Curry
Comptroller of the Currency

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FINAL DECISION AND ORDER

This administrative proceeding, now pending before the Comptroller of the Currency (“Comptroller”), initially arose out of a Notice of Intention to Prohibit Further Participation and Notice of Charges for Issuance of an Order to Cease and Desist Requiring Payment of Restitution (the “Notice”) that was issued by the Office of the Comptroller of the Currency (“OCC”) on September 29, 2010, pursuant to 12 U.S.C. §§ 1818(e) and 1818(b)(6), against Colleen Adams¹ (“Respondent”). Respondent is a former vice president, mortgage loan officer and institution-affiliated party (“IAP”) of Wachovia Bank, N.A., Cartersville, Georgia (“Bank” or “Wachovia”). The Notice seeks to prohibit her from participating in the affairs of any federally insured financial institution and requires her to make restitution in the amount of \$13,311 for losses incurred by Wachovia. On October 20, 2010, Respondent, through counsel,² answered the Notice and asserted that, *inter alia*, as part of a criminal pretrial diversion program under Georgia law, Respondent: (1) entered a negotiated first offender plea; and (2) made full

¹ Colleen Adams is now known as Colleen Hale.

² On January 4, 2011, Respondent’s counsel withdrew and Respondent proceeded *pro se* throughout the remainder of the case.

restitution of the amount set forth in the Notice. In light of the restitution Respondent already made under the pretrial diversion program, OCC Enforcement Counsel withdrew the restitution portion of the Notice. Accordingly, the sole remaining issue outstanding was whether Respondent should be prohibited from further participation in the affairs of any federally insured depository institution or other organization set forth in 12 U.S.C. § 1818(e).

On April 5, 2011, Administrative Law Judge C. Richard Miserendino (“ALJ”) held a hearing on the matter and on May 25, 2011, the ALJ granted Respondent’s request for a 14-day extension of time to file post-hearing submissions. On June 9, 2011, OCC Enforcement Counsel filed proposed findings of fact, conclusions of law, and a post-hearing brief. Despite the extension of time, Respondent failed to file any post-hearing submissions. On August 30, 2011, the ALJ issued a Recommended Decision (“RD”) concluding that the Comptroller should issue an order prohibiting Respondent’s future participation in the affairs of federally insured financial institutions. The RD included a Proposed Order of Prohibition. Neither party filed exceptions to the RD.

For the reasons set forth below, the Comptroller adopts the ALJ’s RD in its entirety, and issues the attached Prohibition Order.

I. The ALJ’s Recommended Decision

The ALJ’s findings of fact and conclusions of law are set forth in detail in the RD. From January 27, 2005 through February 13, 2006, the date of Respondent’s termination from employment, Respondent was a vice president and the sole mortgage loan officer at the Bank’s Cartersville, Georgia branch, where she was responsible for originating mortgage loans throughout 11 branches in Northwestern Georgia. RD 2. In October 2005, Respondent began work on a loan application submitted to the Bank by Scott and Alexandra MacMurdo in

connection with their purchase of a new home. RD 3. The MacMurdos, who were friends and neighbors of Respondent, decided, after consultation with Respondent, to pre-pay one-half of the loan origination fee, \$8,500, to “rate lock” the interest rate at closing. *Id.* Accordingly, the MacMurdos authorized Respondent to debit their checking account in the amount of \$8,500 for the purpose of prepaying the closing costs and locking in the interest rate. *Id.* However, instead of withdrawing the funds by way of an official check and applying the funds toward the mortgage fee, Respondent signed a debit memo and withdrew \$8,500 in cash from the MacMurdos’ account at the Bank’s teller line, in direct violation of the Bank’s policy. *Id.* The funds were never credited to the Bank, and the disposition of the \$8,500 after Respondent made the unauthorized withdrawal remains unknown. The cash has not been recovered. RD 3, 5.

On December 22, 2005, the MacMurdos’ mortgage loan closed. The settlement statement, drafted by Respondent, failed to reflect the \$8,500 rate lock fee as a cost to the borrowers, but instead reflected only the remaining one-half of the original loan fee of approximately \$8,500. RD 5. Moreover, the MacMurdos determined that Respondent incorrectly calculated and reported the loan origination fee at \$17,000 when it should have been approximately \$14,222. *Id.* Believing the loan origination fee was incorrectly calculated based on the contract sales price of the home, instead of the loan amount, the MacMurdos demanded a refund of \$2,811. *Id.* Respondent promised the MacMurdos that they promptly would receive the refund. *Id.*

However, on December 24, 2005, instead of crediting the refund amount due the MacMurdos, Respondent, without the MacMurdos’ knowledge or authorization, signed a debit memo approving a debit from the MacMurdos’ account in the amount of \$2,811 and Respondent exchanged the debit memo for cash at the Bank’s branch teller line, in violation of the Bank’s

policy. *Id.* As with the previous unauthorized withdrawal, the \$2,811 went missing. *Id.* In early January 2006, the MacMurdos noticed the unauthorized debit, and Mrs. MacMurdo confronted Respondent about both the delayed refund and the unauthorized debit. RD 6. Respondent assured Mrs. MacMurdo that the refund was being processed and that the unauthorized debit was a mistake made by Respondent. *Id.* Respondent told Mrs. MacMurdo that she feared losing her job if the mistake was not corrected. Therefore, Respondent asked Mrs. MacMurdo to help cover up the mistake and conceal the fact that the \$2,811 was missing by sending an email to Respondent authorizing a credit to the account in the amount of \$2,811 and authorizing the \$2,811 debit retroactively. *Id.* Mrs. MacMurdo complied with the request. *Id.* When Respondent was questioned by a bank official about the \$2,811 withdrawal, Respondent showed the bank official the email and informed the official that Mrs. MacMurdo authorized the transaction. RD 6-7. Respondent further told the official that the MacMurdos' account had been credited and that the matter was resolved. RD 7.

On January 24, 2006, Respondent caused the MacMurdos' account to be credited in the amount of \$2,811. *Id.* However, the proceeds used to make this credit were traced and determined to be the funds of another bank customer, Gary Bell. RD 8. Bell previously authorized Respondent to withdraw funds from his account to pay fees associated with the refinancing of his home. *Id.*

Based on these uncontested facts, the ALJ recommended that an order issue, pursuant to 12 U.S.C. § 1818(e)(1), prohibiting Respondent from future participation in the affairs of federally insured financial institutions. The RD found that Respondent's unauthorized transactions resulted in a loss to the Bank of \$8,500 in connection with the MacMurdos' mortgage closing and a loss to the Bank of \$2,811 in connection with the withdrawal from the

Bell account. RD 9-10. Because Respondent entered a negotiated first offender plea in response to the criminal prosecution by the state of Georgia, making full restitution to the Bank for the losses suffered, the RD did not order Respondent to pay restitution. RD 10.

II. Decision

Respondent has not filed any exceptions to the ALJ's recommended factual findings, conclusions of law, decision or proposed order. Failure of a party to file exceptions to an ALJ's recommendation is deemed a waiver of any objection thereto. 12 C.F.R. § 19.39(b)(1). Nonetheless, in accordance with 5 U.S.C. § 556(d) and 12 C.F.R. § 19.40(c)(1), the Comptroller has considered the entire record of proceedings in rendering this decision and finds that the ALJ's decision is supported by the preponderance of the evidence.

The oral and documentary evidence of record clearly establishes, *inter alia*, that Respondent made multiple unauthorized cash withdrawals from the accounts of the Bank's depositors, in violation of the Bank's policy. The record establishes that Respondent's actions caused the Bank to suffer financial loss. The record further establishes that Respondent attempted to conceal the unauthorized withdrawals, falsely told bank officers that certain withdrawals were authorized, and made false statements regarding what happened to the missing cash withdrawals. The Comptroller finds that the ALJ's recommended factual findings are based upon the preponderance of the evidence. Accordingly, the Comptroller adopts the ALJ's factual findings in their entirety.

The ALJ's determinations that Respondent's conduct constituted unsafe or unsound banking practices, that she breached her fiduciary duty to the Bank, and that she prejudiced the interests of the Bank's depositors are based upon ample record evidence of Respondent's unauthorized cash withdrawals. The ALJ's determinations that the Bank suffered financial loss

and that Respondent's conduct demonstrated personal dishonesty and a willful, continuing disregard for the safety and soundness of the Bank also are supported by substantial record evidence. Thus, the ALJ's recommendation that an order issue prohibiting Respondent from future participation in the affairs of federally insured financial institutions is based upon record evidence that meets the requirements of 12 U.S.C. § 1818(e)(1). Accordingly, the Comptroller adopts the ALJ's conclusions of law in their entirety.

III. Conclusion

The Comptroller adopts the findings of fact and conclusions of law contained in the RD. A Prohibition Order is attached hereto.

/s/ Thomas J. Curry
Thomas J. Curry
Comptroller of the Currency

11/14/12
Date