

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

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In the Matter of	)	
	)	
<b>JAMES E. GULDI</b> , former Loan Officer	)	OCC AA-EC-2015-62
	)	
FIDELITY BANK OF FLORIDA, N.A.	)	
MERRITT ISLAND, FLORIDA	)	
	)	

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**NOTICE OF CHARGES FOR PROHIBITION AND  
NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY**

Take notice that on a date to be determined by the Administrative Law Judge, a hearing will commence in the Middle District of Florida, pursuant to 12 U.S.C. § 1818(e) and (i), concerning the charges set forth herein to determine whether Orders should be issued against James E. Guldi (“Respondent”), a former Loan Officer at Fidelity Bank of Florida, National Association, Merritt Island, Florida (“Bank”), by the Office of the Comptroller of the Currency (“OCC”), prohibiting Respondent from participating in any manner in the conduct of the affairs of any federally insured depository institution or any other institution, credit union, agency or entity referred to in 12 U.S.C. § 1818(e), and requiring Respondent to pay a civil money penalty.

After taking into account the financial resources and any good faith of Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, as required by 12 U.S.C. § 1818(i)(2)(G), and after soliciting and giving full consideration to Respondent’s views, the Comptroller of the Currency (“Comptroller”) hereby assesses a civil money penalty in the amount of twenty thousand dollars (\$20,000) against Respondent, pursuant to the provisions of 12 U.S.C. § 1818(i). This penalty is payable to the Treasurer of the United States.

The hearing afforded Respondent shall be open to the public unless the Comptroller, in his discretion, determines that holding an open hearing would be contrary to the public interest.

In support of this Notice of Charges for Prohibition and Notice of Assessment of Civil Money Penalty (“Notice”), the OCC charges the following:

## **ARTICLE I**

### **JURISDICTION**

At all times relevant to the charges set forth below:

- (1) The Bank was an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).
- (2) Respondent was an officer of the Bank and was an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof. *See* 12 U.S.C. § 1813(i)(3).
- (3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*
- (4) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this prohibition and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(e) and (i).

## ARTICLE II

### BACKGROUND

(5) Respondent served as a Loan Officer at the Bank for approximately 15 years. Respondent was terminated by the Bank on or about July 21, 2011 for conflicts of interest.

(6) As a Loan Officer, Respondent was obligated to comply with all applicable laws and regulations and to otherwise carry out his duties and responsibilities in a safe and sound manner.

(7) As a Loan Officer, Respondent owed fiduciary duties of care and loyalty to the Bank.

(a) The fiduciary duty of care required that Respondent act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of the Bank, and ensure the Bank's compliance with banking laws and regulations.

(b) The fiduciary duty of loyalty required that Respondent disclose material information to the Bank's Board of Directors ("Board") and refrain from engaging in self-dealing at the expense of the Bank. The duty of loyalty further required Respondent to disclose the existence, nature, and extent of any conflicts of interest with the Bank as well as disclose all material non-privileged information relevant to the Board's decisions on matters where Respondent had a conflict of interest.

### ARTICLE III

#### **RESPONDENT RECKLESSLY ENGAGED IN UNSAFE OR UNSOUND PRACTICES AND BREACHED HIS FIDUCIARY DUTIES WITH REGARD TO LOANS TO COMPANY A**

(8) This Article repeats and realleges all previous Articles in this Notice.

(9) As described herein, Respondent had ownership interests in Company A<sup>1</sup> and one of its projects, had a personal lending relationship with Company A, and served as the Bank's Loan Officer on loans to Company A. Respondent did not disclose his ownership interests or his personal lending relationship with Company A to the Bank's Board and also did not disclose information he knew about Company A that was relevant to the Bank's decisions to make loans to Company A. Respondent's failures to disclose contributed to the Bank ultimately suffering losses on the loans to Company A.

(10) Company A was in the business of building cellular phone towers, which it leased to tenants who were cellular phone carrier companies.

(11) In or around May 2004, Respondent obtained a three percent ownership interest in Company A.

(12) On or about September 12, 2008, Respondent obtained a 50 percent interest in a particular Company A cellular phone tower.

(13) Between approximately December 2003 and January 2010, the Bank made eight loans to Company A, totaling over \$1.8 million. Respondent served as the Bank's Loan Officer to Company A.

(14) As a Loan Officer of the Bank, Respondent's responsibilities included presenting loans to Company A to the Board for approval.

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<sup>1</sup> The names of entities and individuals described by alias herein will be separately disclosed to Respondent.

(15) Around early to mid-2008, Respondent knew or should have known, based on his personal lending relationship with Company A, that Company A was “having cash problems” related to construction expenses.

**Respondent’s Personal Loans to Company A**

(16) Between approximately March 2008 and September 2009, Respondent made, on his own behalf, the following loans to Company A:

- (a) Approximately \$13,700 on or about March 24, 2008;
- (b) Approximately \$60,300 on or about June 9, 2008;
- (c) Approximately \$10,000 on or about July 14, 2008;
- (d) Approximately \$225,000 on or about July 25, 2008;
- (e) Approximately \$200,000 on or about September 12, 2008;
- (f) Approximately \$4,000 on December 12, 2008;
- (g) Approximately \$20,000 on June 11, 2009; and
- (h) Approximately \$154,000 on September 11, 2009.

(17) The purpose of the loan identified in Paragraph (16)(a) was to enable Company A to make payments on its loans from the Bank.

(18) The loan identified in Paragraph (16)(d) was funded with the proceeds of a loan in the amount of approximately \$230,000 that Respondent and Person A obtained from the Bank on or about July 25, 2008. The loan in Paragraph (16)(d) carried a higher rate of interest than Respondent and Person A’s loan from the Bank. Respondent and Person A’s loan from the Bank was secured by the assignment of a promissory note and mortgage from a loan Respondent had previously made to a third party, and its purpose was “cash for investment purposes.” However,

at no time before the Bank made the loan to Respondent did Respondent inform the Board that he would lend a portion of the loan proceeds to Company A.

(19) The loan identified in Paragraph (16)(e) was funded on or about September 12, 2008 (approximately \$110,000) and on or about March 9, 2009 (approximately \$90,000). Company A used at least a portion of the installment of approximately \$90,000 to keep its loans from the Bank current.

(20) The loans identified in Paragraphs (16)(b), (c), (f), (g), and (h) were undocumented personal loans by Respondent to Company A. At no time did Respondent disclose to the Board that he had made undocumented personal loans to Company A.

### **The Bank's Loans to Company A**

(21) Between approximately March 2008 and January 2010, the Bank made the following loans to Company A:

- (a) Approximately \$250,000 on or about April 1, 2008;
- (b) Approximately \$250,000 on or about April 1, 2008;
- (c) Approximately \$270,000 on or about April 24, 2008;
- (d) Approximately \$250,000 on or about December 12, 2008;
- (e) Approximately \$250,000 on or about April 10, 2009; and
- (f) Approximately \$250,000 on or about January 22, 2010.

(22) Respondent served as the Loan Officer for each of the loans identified in Paragraph (21) and received commissions totaling approximately \$6,000.

(23) On or about April 23, 2008, Respondent and the Bank's Chief Executive Officer ("CEO") made a presentation to the Board to obtain Board approval to make loans to Company A up to an aggregate amount of \$1,500,000. The Board provided the approval the same day.

(24) At no time before the Board's approval to make loans to Company A up to an aggregate amount of \$1,500,000, did Respondent inform the Board of his ownership interest in, or personal lending relationship with, Company A or Company A's financial troubles.

(25) At no time before the Bank made any of the loans identified in Paragraph (21) did Respondent inform the Board of his ownership interest in, or personal lending relationship with, Company A or Company A's financial troubles.

(26) Respondent received approximately \$13,700 of the proceeds of the loans identified in Paragraphs (21)(a) and/or (b) as repayment of Respondent's loan of approximately \$13,700 made to Company A on or about March 24, 2008. The purpose of the loans identified in Paragraphs (21)(a) and/or (b) was working capital for business. At no time before the Bank made any of these loans did Respondent disclose to the Board that proceeds from either of these loans would benefit him personally.

(27) At no time before the Bank made either of the loans identified in Paragraphs (21)(d), (e), or (f), did Respondent inform the Board that he held an ownership interest in one of Company A's cellular phone towers.

(28) Company A used the proceeds of the loan identified in Paragraph (21)(d) to pay principal, interest, and late charges on other outstanding loans from the Bank and also to repay Respondent's loan of approximately \$10,000 made to Company A on or about July 14, 2008.

(29) With respect to the loan identified in Paragraph (21)(e):

- (a) The purpose of this loan was stated as “[w]orking capital for business to purchase and install additional cell towers [.]”
- (b) The Loan Presentation Memo indicated that Company A would use the proceeds to pay off a \$63,000 balance on a Bank loan to Company A from 2004.
- (c) Respondent and Person A received approximately \$177,210 of the loan proceeds. Additionally, Person A gave a letter dated April 10, 2009 to the Bank’s CEO indicating that she agreed to accept the approximate \$177,210 amount as complete payoff of a lien with Company A and that she would not pursue a deficiency judgment against Company A.
- (d) The Board approved the loan at a meeting held on or about March 25, 2009, and Respondent was present at the Board meeting.
- (e) At no time before the Board approved the loan did Respondent inform the Board that he would receive a portion of the proceeds or that he held an ownership interest in one of Company A’s towers.

**The Bank’s Losses**

(30) By February 2011, the Bank’s loans to Company A identified in Paragraphs (21)(a), (b), (c), and (f) were still outstanding and each was over 200 days past due.

(31) In or around February 2011, the Bank charged off the combined outstanding balance (as of December 31, 2010) of approximately \$920,524 on the four loans that remained outstanding to Company A identified in Paragraphs (21)(a), (b), (c), and (f).

(32) In 2014, the Bank completed its foreclosure of the property serving as collateral on its loan of approximately \$230,000 to Respondent and Person A identified in Paragraph (18),



and subsequently sold the collateral securing the loan and suffered a net loss of approximately \$58,503.

#### ARTICLE IV

##### **LEGAL BASES FOR REQUESTED RELIEF**

(33) This Article repeats and realleges all previous Articles in this Notice.

(34) By reason of Respondent's misconduct as described in Article III, the Comptroller seeks a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

- (a) Respondent engaged in unsafe or unsound practices in in connection with the Bank and/or breached his fiduciary duties to the Bank as a Loan Officer;
- (b) By reason of Respondent's misconduct, the Bank suffered financial loss or other damage and/or Respondent received financial gain or other benefit; and
- (c) Respondent's unsafe or unsound practices and/or breaches of fiduciary duties involved personal dishonesty and/or demonstrated a willful or continuing disregard for the safety or soundness of the Bank.

(35) By reason of Respondent's misconduct as described in Article III, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2) (B) on the following grounds:

- (a) Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank and/or breached his fiduciary duties to the Bank as a Loan Officer; and

(b) Respondent's practices and/or breaches of his fiduciary duties were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to Respondent, and/or caused more than minimal loss to the Bank.

## ARTICLE V

### ANSWER AND OPPORTUNITY FOR HEARING

(36) Respondent is directed to file a written Answer to this Notice within twenty (20) days from the date of service of this Notice in accordance with 12 C.F.R. § 19.19(a) and (b). The original and one copy of any Answer shall be filed with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite VS-D8113, Arlington, VA 22226-3500. Respondent is encouraged to file any Answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any Answer shall also be filed with the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, HearingClerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to Answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the Comptroller's motion, cause the administrative law judge or the Comptroller to find the facts in this Notice to be as alleged, upon which an appropriate order may be issued.**

(37) Respondent is also directed to file a written request for a hearing before the Comptroller, along with the written Answer, concerning the Civil Money Penalty assessment contained in this Notice within twenty (20) days after date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. § 19.19(a) and (b). The original and one

copy of any request shall be filed, along with the written Answer, with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite VS-D8113, Arlington, VA 22226-3500. Respondent is encouraged to file any request electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any request, along with the written Answer, shall also be served on the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, HearingClerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment to constitute a final and unappealable order for a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i).**

#### **PRAYER FOR RELIEF**

The Comptroller prays for relief in the form of the issuance of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) and an Order of Civil Money Penalty Assessment in the amount of twenty thousand dollars (\$20,000) against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 1<sup>st</sup> day of December, 2015.

S/Michael R. Brickman  
Michael R. Brickman  
Deputy Comptroller for Special Supervision