

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

_____)	
In the Matter of)	
)	OCC AA-EC-2019-17
MATTHEW THOMASON , Former Institution-Affiliated)	
Party)	
)	
Northwestern Bank, N.A.)	
Dilworth, MN)	
_____)	

**NOTICE OF CHARGES FOR ORDER OF PROHIBITION, ORDER TO CEASE AND
DESIST REQUIRING INDEMNIFICATION, AND ASSESSMENT
OF A CIVIL MONEY PENALTY**

Take notice that on a date to be determined by the Administrative Law Judge, a hearing will commence in the District of Minnesota, unless Respondent consents to another place, pursuant to 12 U.S.C. § 1818(b), (e) and (i), concerning the charges set forth herein to determine whether Orders should be issued by the Comptroller of the Currency (“Comptroller”) against Matthew Thomason (“Respondent”), former institution-affiliated party at Northwestern Bank, N.A., Dilworth, Minnesota (“Bank”). Such Orders would prohibit 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), require Respondent to indemnify the Bank against any Bank losses incurred on the loan to Individual B¹, and require Respondent to pay a civil money penalty.

A civil money penalty in the amount of ten thousand dollars (\$10,000) is hereby assessed against Respondent, pursuant to the provisions of 12 U.S.C. § 1818(i), after having considered the factors set forth in 12 U.S.C. § 1818(i)(2)(G) and after having solicited and given full

¹ The name of Individual B, as well as all other individuals or entities described by alias herein, will be separately disclosed to Respondent.

consideration to Respondent's views. The 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 Order of Prohibition, Order to Cease and Desist Requiring Indemnification, and Assessment of a Civil Money Penalty ("Notice"), the Office of the Comptroller of the Currency ("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 and/or employee 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. § 1818(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 these prohibition, cease and desist, and civil money penalty actions against Respondent pursuant 12 U.S.C. § 1818(b), (e), and (i).

ARTICLE II

BACKGROUND

(5) This Article repeats and re-alleges all previous Articles in this Notice.

(6) From on or about November 30, 2009, until his resignation, on or about May 26, 2017, Respondent served in various positions at the Bank, including Vice President Business Banking, Senior Vice President – Business Banking, and Executive Vice President.

(7) At all relevant times, Respondent was obligated to comply with all applicable laws, and to carry out his duties and responsibilities in a safe and sound manner.

(8) At all relevant times, 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 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, refrain from discussing, voting, or having any other involvement on matters where Respondent had a conflict of interest, and to place the interests of the Bank ahead of Respondent's own personal interest at all times.

(9) At all relevant times, the Bank's Loan Policy contained a provision on conflicts of interest stating:

As a matter of policy, we avoid making loans where other considerations may affect either the credit judgment exercised or our ability to subsequently employ normal collection techniques. Under no circumstances may a loan officer make a loan to a business associate, to his/her relatives, or to a close personal friend. Application from one of these sources must be passed to another loan officer of the Bank for processing. The original loan officer must not, in any way, attempt to influence the new officer's handling of the application.

(10) At all relevant times, the Bank's Loan Policy listed Respondent as an Executive Officer for purposes of Regulation O, 12 C.F.R. Part 215.

(11) At all relevant times, the Bank's Loan Policy required that "[a]ny loan to an executive officer, principal stockholder or director (or related interest) must meet normal credit party guidelines and must receive prior approval of the majority of the Board of Directors."

(12) A "nominee loan" is a loan issued to a named borrower while proceeds or benefits are transferred to an unnamed third party. Because the Bank does not know the true borrower or true purpose, it cannot assess the risk of the loan accurately, and therefore cannot include proper terms or loan pricing.

(13) During the period from approximately April, 2014 through February, 2016, Respondent was involved in the Bank's issuance of four nominee loans.

(14) Respondent and/or companies associated with Respondent subsequently received at least a significant portion of the loan proceeds from each of the four nominee loans.

ARTICLE III

RESPONDENT VIOLATED THE LAW, ENGAGED IN UNSAFE OR UNSOUND PRACTICES, AND BREACHED HIS FIDUCIARY DUTIES TO THE BANK WITH REGARD TO THE NOMINEE LOAN MADE TO INDIVIDUALS A

(15) This Article repeats and re-alleges all previous Articles in this Notice.

(16) As described herein, Respondent violated the law, including 18 U.S.C. §§ 656 and 1344, engaged in unsafe or unsound practices, and breached his fiduciary duties by causing the Bank to make a nominee loan to Individuals A. Respondent subsequently received at least a significant portion of the loan proceeds, even though he was not identified as a borrower.

(17) Individuals A are members of Respondent's family.

(18) Respondent admitted he asked Individuals A for help consolidating debts he had incurred.

(19) On or about April 11, 2014, the Bank originated a loan in the amount of approximately \$138,000 to Individuals A ("138,000 Loan").

(20) Respondent admitted that he engaged another lender at the Bank to prepare the loan documentation for the 138,000 Loan because it involved his family members.

(21) Respondent was not identified as a borrower on the promissory note, business loan agreement, or the Bank's Boarding Report on the 138,000 Loan, and he did not sign the promissory note or business loan agreement for such loan.

(22) On or about April 11, 2014, Respondent and Individual F pledged personal property as collateral for the 138,000 Loan and signed the commercial security agreement, but Respondent was not identified as a borrower on the loan or a recipient of the loan proceeds.

(23) The \$138,000 Loan's stated purpose was to "consolidate debt." However, the stated purpose was misleading because it did not indicate that the proceeds would be used to consolidate Respondent's debt, or otherwise benefit him.

(24) On or about April 11, 2014, the proceeds of the \$138,000 Loan were deposited into an account at the Bank under the control of Individuals A and Respondent.

(25) On or around April 14, 2014, approximately \$80,000 was transferred from the account under the control of Individuals A and Respondent to an account at the Bank in the name of Respondent and Individual F.

(26) On or about August 14, 2017, Respondent admitted to the Bank President/Chief Executive Officer ("CEO") that he received \$80,000 of the proceeds of the \$138,000 Loan to Individuals A.

ARTICLE IV

RESPONDENT VIOLATED THE LAW, ENGAGED IN UNSAFE OR UNSOUND PRACTICES, AND BREACHED HIS FIDUCIARY DUTIES TO THE BANK WITH REGARD TO THE LOAN MADE TO INDIVIDUAL B

(27) This Article repeats and re-alleges all previous Articles in this Notice.

(28) As described herein, Respondent violated the law, including 18 U.S.C. §§ 656, and 1344, engaged in unsafe or unsound practices, and breached his fiduciary duties by causing the Bank to make a nominee loan to Individual B. Respondent and Company X and Company Y, two companies associated with Respondent, subsequently received at least a significant portion of the proceeds, even though Respondent, Company X, and Company Y were not identified as borrowers.

(29) On or about October 29, 2015, the Bank originated a loan in the amount of approximately \$192,000 to Individual B ("\$192,000 Loan").

(30) For the \$192,000 Loan, Respondent, Company X, and Company Y were not identified as borrowers on the promissory note, disbursement request and authorization, or short form loan/board committee memo, and Respondent did not sign the promissory note or disbursement authorization.

(31) The \$192,000 Loan's stated purpose was to "Purchase Investment Property."

(32) Respondent was listed as the loan officer for the \$192,000 Loan on the Bank's Boarding Report.

(33) The proceeds of the \$192,000 Loan were deposited into Individual B's account at the Bank.

(34) On or around October and November 2015, approximately \$193,000 was transferred from an account in the name of Company Y and an account in the name of Respondent and Individual F into accounts at the Bank belonging to Company X, Company Y, and an account in the name of Respondent and Individual F.

(35) Respondent admitted the \$192,000 Loan's purpose was not properly stated. Respondent admitted to the Bank's President/CEO that Individual B re-loaned him \$190,000 of the \$192,000 Loan.

(36) For the payments made to the Bank on the \$192,000 Loan from at least March 2016 through June 2016, Respondent wrote a check to Individual B corresponding to the amount of the payment.

(37) Respondent admitted that he paid Individual B "rent" as part of the arrangement.

(38) On or about August 2, 2017, Individual B spoke with the Bank President/CEO.

During this conversation:

- (a) Individual B stated that he re-loaned \$191,000 of the \$192,000 Loan proceeds to Respondent.
- (b) Individual B stated that Respondent told him the \$192,000 Loan was approved by the President/CEO and the loan committee.
- (c) The President/CEO told Individual B that Respondent had not discussed with him making the loan to Individual B and receiving the proceeds.

(39) As of March 2019, the \$192,000 Loan remains outstanding, with a balance of approximately \$179,000 as of April 2, 2019.

ARTICLE V

RESPONDENT VIOLATED THE LAW, ENGAGED IN UNSAFE OR UNSOUND PRACTICES, AND BREACHED HIS FIDUCIARY DUTIES TO THE BANK WITH REGARD TO THE LOAN MADE TO INDIVIDUAL C

(40) This Article repeats and re-alleges all previous Articles in this Notice.

(41) As described herein, Respondent violated the law, including 18 U.S.C. §§ 656 and 1344, engaged in unsafe or unsound practices, and breached his fiduciary duties by causing the Bank to make a nominee loan to Individual C. Respondent subsequently received at least a significant portion of the proceeds, even though he was not identified as a borrower.

(42) On or about January 4, 2016, the Bank originated a loan for approximately \$125,000, to Individual C (“\$125,000 Loan”).

(43) Respondent admitted that he engaged another lender at the Bank to prepare the loan documentation because it involved his family members.

(44) For the \$125,000 Loan, Respondent did not sign the promissory note and was not identified as a party to the loan on the Bank’s Boarding Report.

(45) The Bank's Board Report for the \$125,000 Loan stated that the \$125,000 Loan would be used for "business expenses related to [Individual C's] other . . . Company."

(46) Respondent was identified as the loan officer on the Bank's Boarding Report for the \$125,000 Loan. Respondent's written initials appear in the officer column for the promissory note for the \$125,000 Loan.

(47) On or about April 18, 2017, the Bank renewed the \$125,000 Loan ("Renewal").

(48) Respondent was listed as the loan officer on the Bank's Boarding Report for the Renewal. Respondent's written initials appear in the officer column on the promissory note for the Renewal.

(49) Respondent, as a member of the Loan Committee, voted to approve the Renewal.

(50) On or about January 4, 2016, Individual C received \$75,000, the initial advance on the \$125,000 Loan.

(51) On or about August 2, 2017, the Bank President/CEO met with Individual B, Individual C, and Individual E. At this meeting, the Bank President/CEO was told that the \$125,000 loan was "re-loaned" to Respondent to allow Respondent to finance Respondent's purchase of a concrete business from Individual C.

(52) On or about August 14, 2017, Respondent admitted to the Bank President that Individual C loaned him \$75,000 from the initial advance of the proceeds from the \$125,000 loan for Respondent's concrete business.

(53) On a number of occasions between approximately February 2016 and October 2016, Respondent wrote checks from Company Y, or an account at the Bank in the name of Respondent and Individual F, to Individual C for approximately \$343.75, the same amount as the monthly interest payment to the Bank on the \$75,000 initial advance from the \$125,000 Loan.

ARTICLE VI

RESPONDENT VIOLATED THE LAW, ENGAGED IN UNSAFE OR UNSOUND PRACTICES, AND BREACHED HIS FIDUCIARY DUTIES TO THE BANK WITH REGARD TO THE NOMINEE LOAN MADE TO INDIVIDUALS D

(54) This Article repeats and re-alleges all previous Articles in this Notice.

(55) As described herein, Respondent violated the law, including 18 U.S.C. §§ 656 and 1344, engaged in unsafe or unsound practices, and breached his fiduciary duties by causing the Bank to make a nominee loan to Individuals D. Respondent subsequently received at least a significant portion of the loan proceeds, even though he was not identified as a borrower.

(56) Individuals D were members of Respondent's family.

(57) On or about February 11, 2016, the Bank originated a loan to Individuals D for approximately \$100,000 ("\$100,000 Loan").

(58) On or about February 23, 2016, the Bank originated a loan to Individuals D, for \$127,500 ("\$127,500 Loan"), which paid off the \$100,000 Loan.

(59) Respondent was not identified as a borrower on the promissory note or disbursement authorization for either the \$100,000 Loan, or \$127,500 Loan, and he did not sign the promissory note or disbursement authorizations for either loan.

(60) The \$127,500 Loan was secured by property owned by Respondent and Individual F, but Respondent was not identified as a borrower or recipient of the loan proceeds on the Short-Form Loan/Board Committee Memo.

(61) The stated purpose of both the \$100,000 Loan and the \$127,500 Loan on the respective disbursement authorizations indicated that the loans would be used to purchase real estate.

(62) On or about February 24, 2016, \$26,000 of the proceeds from the \$127,500 Loan were disbursed to Individuals D.

(63) In approximately February 2016 and March 2016, Respondent received approximately \$30,000 from Individuals D, including a \$26,000 check deposited an account in the name of Respondent and Individual F at the Bank on or about February 25, 2016, one day after Individuals D received the \$26,000 disbursement from the \$127,500 Loan.

(64) In at least June, July, and August, 2016, Respondent wrote checks from Company Y to Individuals D that corresponded to the exact amount of the monthly loan payments to the Bank made by Individuals D on the \$127,500 Loan.

(65) Respondent admitted that the proceeds from the \$127,500 Loan were used by his company.

(66) On or about August 17, 2017, the Bank wrote off approximately \$1149 in interest on the \$127,500 Loan.

ARTICLE VII

LEGAL BASES FOR REQUESTED RELIEF

(67) This Article repeats and re-alleges all previous Articles in this Notice.

(68) By reason of Respondent's misconduct as described in Articles III-VI, the OCC seeks an Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

- (a) Respondent engaged in unsafe or unsound practices, violated the law (including 18 U.S.C. §§ 656 and 1344), and breached his fiduciary duties;

(b) By reason of Respondent's misconduct, the Bank suffered or was likely to suffer financial loss or other damage and/or Respondent received financial gain or other benefit; and

(c) Respondent's violations of law, breaches of fiduciary duties, and unsafe or unsound practices involved personal dishonesty and/or demonstrated a willful and/or continuing disregard for the safety or soundness of the Bank.

(69) By reasons of Respondent's misconduct as described in Article IV, the OCC seeks an Order to Cease and Desist against Respondent requiring Respondent to indemnify the Bank against any Bank losses ultimately incurred on the \$192,000 Loan to Individual B, pursuant to 12 U.S.C. § 1818(b)(6) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices and/or violated the law (including 18 U.S.C. §§ 656 and 1344); and

(b) By reason of Respondent's conduct he was unjustly enriched and/or the violation of law and unsafe or unsound practices involved reckless disregard for the law.

(70) By reason of respondent's misconduct described in Articles III-VI, the OCC seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated the law (including 18 U.S.C. §§ 656 and 1344).

(71) By reason of Respondent's misconduct as described in Articles III-VI, the OCC 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, violated the law (including 18 U.S.C. §§ 656 and 1344), and/or breached his fiduciary duties; and
- (b) Respondent's violations, practices, and/or breaches of fiduciary duties were part of a pattern of misconduct and/or resulted in benefit to Respondent and/or loss to the Bank.

ANSWER AND OPPORTUNITY FOR HEARING

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 D8115A, 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 OCC'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.**

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 the 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 Institutions Adjudication, 3501 North Fairfax Drive, Suite D8115A, Arlington, VA 22226-3500. Respondent is encouraged to file any request electronically with the Office of Financial Institutions Adjudication at ofia@fdic.gov. A copy of any request, along with the written Answer, shall 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 an assessment to constitute a final and appealable order for a civil money penalty pursuant to 12 U.S.C. § 1818(i).**

PRAYER FOR RELIEF

The OCC prays for relief in the form of the issuance of an Order to Cease and Desist Requiring Indemnification against Respondent pursuant to 12 U.S.C. § 1818(b), an Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e), and an Order of Assessment of a Civil Money Penalty in the amount of \$10,000 against Respondent pursuant to 12 U.S.C. § 1818(i).

The OCC further prays that such Orders requiring assessment of a civil money penalty and indemnification specify that such obligations shall not be dischargeable in any bankruptcy proceeding. *See* 11 U.S.C. § 523(a).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 11th day of April, 2019.

//s// Digitally Signed, Date: 2019.04.11

Michael R. Brickman
Deputy Comptroller for Special Supervision