

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

In the Matter of)	
)	
DERLINE CUNNINGHAM,)	AA-EC-2021-11
Former Retail Branch Manager and Officer)	
)	
Citizens Bank, N.A.)	
Providence, Rhode Island)	
)	

**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 District of Rhode Island, unless the parties agree to another place, pursuant to 12 U.S.C. § 1818(e) and (i), concerning the charges set forth herein to determine whether Orders should be issued against Derline Cunningham (“Respondent”), a former Retail Branch Manager and Officer at Citizens Bank, N.A., Providence, Rhode Island (“Bank” or “Citizens”), 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 seventy-five thousand dollars (\$75,000) 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 a Retail Branch Manager and Officer for 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 is 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) This Article repeats and realleges all previous Articles in this Notice.

(6) Between July 2014 and March 2017, Respondent was an Officer and the Retail Branch Manager at Citizens' Rochester, NY Franklin street branch ("Branch").

(7) Respondent was obligated to comply with all applicable laws and regulations and to otherwise carry out her duties and responsibilities in a safe and sound manner.

(8) Respondent owed fiduciary duties to the Bank.

The Scheme

(9) Between approximately January 2012 and June 2018, Customer 1¹ and Customer 2 perpetrated an investment-based Ponzi scheme ("Scheme") where they defrauded over 1,000 investors of over \$115,000,000.

(10) Between approximately July 2014 to March 2017, Customers 1 and 2 used accounts at Citizens to carry out the Scheme.

(11) The primary reason Customers 1 and 2 banked with Citizens was because Respondent provided material assistance to the Scheme and Customers 1 and 2 understood that Respondent would do anything they requested.

(12) Respondent provided frequent personal service to Customer 3, the Scheme's office manager, helping with wires, transfers, deposits, and removal of check holds.

¹ The names of individuals and entities described by aliases herein will be separately disclosed to Respondent.

ARTICLE III

RESPONDENT KNOWINGLY PROVIDED FALSE INFORMATION TO NATIONAL BANK 1

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

(14) On at least four occasions, Respondent knowingly provided false average deposit account balance information (“AEB”) to National Bank 1 at the request of Customers 1 and 3.

(15) As described herein, Respondent violated the law, including 18 U.S.C. § 1005, engaged in recklessly unsafe or unsound practices, and breached her fiduciary duties by providing this false information.

The Scheme Extensively Utilized Revolving Credit Accounts at National Bank 1

(16) Customer 1 was the primary card holder of the Scheme’s revolving credit accounts at National Bank 1 (“Credit Accounts”).

(17) The Scheme utilized the Credit Accounts to pay the vast majority of business expenses.

(18) Without the Credit Accounts, the Scheme’s ability to pay its expenses would have been impaired.

(19) The Scheme would have ended sooner absent access to the Credit Accounts.

(20) The balance on the Credit Accounts fluctuated but was typically greater than \$100,000 and was often between \$300,000 and \$500,000.

(21) There was no fixed spending limit on the Credit Accounts.

(22) By default, National Bank 1 limited spending on Credit Accounts to approximately \$100,000, or 1.2 times Customer 1’s average payments to National Bank 1.

(23) Customer 1 could increase the spending limit on the Credit Accounts by providing National Bank 1 with his AEB. Under National Bank 1's policies, it would increase the spending limit to approximately thirty percent of his AEB.

(24) National Bank 1 verified Customer 1's AEB information by obtaining his authorization to call his bank and then by calling the bank to obtain the AEB information.

(25) Once National Bank 1 obtained this AEB information, it increased his spending limit for approximately six months before new AEB information was required in order to maintain a spending limit higher than \$100,000, or 1.2 times Customer 1's average payments.

Respondent Knowingly Provided False Information to National Bank 1, Causing a Loss to National Bank 1

(26) At all relevant times, when National Bank 1 contacted Customer 1 regarding verifying his AEB, he would calculate what AEB Respondent would need to provide National Bank 1 in order to get his desired spending limit.

(27) Customer 1 or Customer 3 would then contact Respondent, either over the phone or via text, and direct her to provide a specific AEB to National Bank 1.

(28) At all times during her employment at Citizens, Respondent was able to access the Bank's Mainframe host system that could show an account's AEB for the previous twelve months.

(29) On May 1, 2015, Respondent verified to National Bank 1 that Customer 1's AEB was \$971,000.

(30) In fact, on May 1, 2015, Customer 1's relevant AEB was approximately \$240,000.

(31) On December 4, 2015, Respondent verified to National Bank 1 that Customer 1's AEB was \$980,000.

(32) In fact, on December 4, 2015, Customer 1's relevant AEB was approximately \$200,000.

(33) On May 31, 2016, Customer 1, through a text from Customer 3 to Respondent, directed Respondent to verify his AEB at \$1.19 million. Respondent responded to Customer 3 that she verified Customer 1's AEB.

(34) On May 31, 2016, Respondent verified to National Bank 1 that Customer 1's AEB was \$960,000.

(35) In fact, on May 31, 2016, Customer 1's relevant AEB was approximately \$150,000.

(36) On January 5, 2017, Customer 1, through a text from Customer 3 to Respondent, directed Respondent to verify his AEB at \$1.3 million.

(37) On January 9, 2017, Respondent verified to National Bank 1 that Customer 1's AEB was \$1,200,000. That same day, Respondent confirmed via text to Customer 3 that she verified Customer 1's AEB.

(38) In fact, on January 9, 2017, Customer 1's relevant AEB was approximately \$500,000.

(39) On each of these occasions described in Paragraphs 29-38, Respondent knowingly provided National Bank 1 with false financial information.

(40) Each time Respondent provided National Bank 1 with false AEB information, that information was placed into National Bank 1's records.

(41) National Bank 1 utilized false AEB information from Respondent when providing Customer 1 with larger spending limits than he would have otherwise been entitled to.

(42) Respondent knew or should have known that providing National Bank 1 with false financial information would subject it to an abnormal risk of loss.

(43) On December 4, 2017, National Bank 1 recorded a \$419,882.83 loss on the unpaid balance on the Credit Accounts.

(44) Absent Respondent's false AEB information, National Bank 1 would have limited spending on the Credit Accounts at an amount substantially lower than \$419,882.83.

Respondent Incurred Financial Gain Resulting from Her False Statements to National Bank 1

(45) In March 2016, Respondent requested a loan from Customers 1 and 2.

(46) Respondent had no personal or business relationship with Customers 1 and 2 beyond providing the Scheme with banking services.

(47) On March 16, 2016, in response to Respondent's request, Customer 1 provided her with \$20,000 and Customer 2 provided her with \$26,000.

(48) Customer 1 provided \$20,000 to Respondent because he believed he needed to do so if he wanted Respondent to continue to provide false AEBs to National Bank 1. Upon information and belief, Customer 2 provided \$26,000 to Respondent because he believed he needed to do so if he wanted Respondent to continue to provide assistance to the Scheme.

(49) Respondent did not document the aforementioned loan in any manner, nor did she repay Customers 1 or 2.

ARTICLE IV

RESPONDENT KNOWINGLY MISUSED THE BANK'S MEDALLION SIGNATURE GUARANTEE

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

(51) Between at least approximately September 2016 and February 2017, Respondent assisted the Scheme by improperly providing the Bank's Medallion Signature Guarantee Stamp ("Stamp") at the request of Customers 1 and 3 and in violation of Bank policies.

(52) As described herein, Respondent engaged in recklessly unsafe or unsound practices and breached her fiduciary duties by improperly providing the Stamp.

Respondent Knew of the Bank's Policies Controlling the Stamp

(53) The Bank offered customers the ability to obtain a Stamp on securities documents.

(54) The purpose of the Stamp is to reduce fraud in the transfer of securities.

(55) When the Bank's Stamp is provided, the Bank takes on the risk of liability for fraudulent transactions.

(56) To protect against the misuse of the Stamp, the Bank instituted policies controlling the usage of the Stamp.

(57) Before an employee provided the Stamp, the Bank required the employee to confirm the owner of the security, or legal equivalent, was present, had legal capacity to sign, and signed the document in front of the employee.

(58) Respondent took all relevant Stamp trainings offered by the Bank and was aware of all the Bank's Stamp requirements.

(59) At all relevant times, the Bank's policies prohibited employees from providing the Stamp when the securities owner was not verified—by checking their government ID—as being present or when the securities owner did not sign the document in front of the bank employee.

Respondent's Intentional Violations of Bank Stamp Policy Subjected the Bank to an Abnormal Risk of Loss

(60) From at least September 2016 through February 2017, Respondent, outside the presence of the securities owners, Stamped the Scheme's investors' securities transfer forms.

(61) From time to time, Customers 1 and 2 needed to obtain a Stamp on a document to transfer the money of an investor in the Scheme.

(62) The Scheme's investors were from around the United States and very few lived in or around the Rochester, NY region.

(63) When the Scheme's investors needed a Stamp, Customer 1 faxed pre-signed securities transfer forms, to Customer 3.

(64) Then Customer 3, or her subordinate, brought the pre-signed securities transfer forms to Respondent at the Branch for her Stamp and signature.

(65) Customer 3 or her subordinate brought the pre-signed securities transfer forms to Respondent at the Branch without any securities owners accompanying them.

(66) Respondent Stamped at least nine of the Scheme's investors' pre-signed securities transfer forms without the presence of the securities holder, violating Bank policies and exposing the Bank to abnormal risk of loss of at least \$1,300,000.

LEGAL BASES FOR REQUESTED RELIEF

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

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

- (a) Respondent violated the law, including 18 U.S.C. § 1005, engaged or participated in unsafe or unsound practices, and breached her fiduciary duty;
- (b) By reason of Respondent's misconduct, she received financial gain or other benefit and caused loss to National Bank 1; and
- (c) Such violation, practice, or breach involved personal dishonesty by Respondent and demonstrated a willful or continuing disregard for the safety or soundness of the Bank.

(69) By reason of Respondent's misconduct as described in Articles III and IV, 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 violated the law, including 18 U.S.C. § 1005, engaged in recklessly unsafe or unsound conduct, and breached her fiduciary duties; and
- (b) Such violation or breach was part of a pattern of misconduct, caused or was likely to cause more than a minimal loss to a bank, and resulted in pecuniary gain or other benefit to Respondent.

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 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.**

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 against Respondent pursuant to 12 U.S.C. § 1818(e) and an Order of Civil Money Penalty Assessment in the amount of seventy-five thousand dollars (\$75,000) against Respondent pursuant to 12 U.S.C. § 1818(i).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, this 12th day of March, 2021.

//s/ Digitally Signed, Dated: 2021.03.12

Michael T. McDonald
Deputy Comptroller
Large Bank Supervision