

**UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.**

_____)	
In the Matter of)	
)	
ADAM L. BENARROCH)	Docket No. 09-052-I-E
)	
A former institution-affiliated party of)	
Midwest Bank and Trust,)	
Elmwood Park, Illinois)	
_____)	

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act (“FDI Act”) in which the Board of Governors of the Federal Reserve System (“Board”) seeks to prohibit the Respondent, Adam L. Benarroch (“Respondent”), from further participation in the affairs of any financial institution based on actions he took while employed as an Assistant Vice President at Midwest Bank and Trust, Elmwood Park, Illinois (“Midwest”).

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision of Administrative Law Judge C. Richard Miserendino (“ALJ”), and orders the issuance of the attached Order of Prohibition.

I. PROCEDURAL HISTORY

On April 14, 2009, the Board issued a Notice upon Respondent that sought an order of prohibition against him based on his fabrication of bank documents and forgery of the signatures of bank officials in connection with origination of loans while he was an Assistant Vice President of Midwest. After several extensions, Respondent appeared *pro se* and filed his Answer on

July 27, 2009. Respondent's Answer does not deny the specific allegations of the Notice. Rather, it concedes that the Respondent made certain "bad decisions while employed at Midwest Bank and Trust Company" and claims that he operated "under tremendous pressure to close loan transactions" as his year-end bonus depended on loan volume. Respondent claims that he lacked the necessary assistance in this position to perform his duties and he apologized "for putting the bank in jeopardy" through the various loan transactions at issue here. Respondent concluded his Answer by requesting a second chance in the banking industry short of a permanent ban, and proposing certain limitations and restrictions on permitted activities (limitations short of prohibition) that would enable him to continue to work in the industry.

On September 16, 2009, Board Enforcement Counsel moved for summary disposition of the proceeding and submitted documentary evidence supporting the allegations of the Notice. Board Enforcement Counsel contended that no genuine issue of material fact existed and that the Board was therefore entitled to the relief sought in the Notice. In his October 7, 2009, response, Respondent conceded the factual assertions set forth in the evidentiary exhibits submitted in support of the motion and again offered apologies for his actions. Respondent also offered further details concerning his personal, professional, and family situation, which he submitted in mitigation of the offenses he otherwise admits.

On October 29, 2009, the ALJ granted the Board's Motion for Summary Disposition because there were no material facts in dispute and the evidence presented by Enforcement Counsel supported an order prohibiting Respondent from further participation in the industry, as provided in section 8(e) of the FDI Act, 12 U.S.C. § 1818(e). On November 30, 2009, Respondent submitted a document entitled "Appeal," in which he specifically states that he "do[es] not deny the specific [allegations] in the Notice" but asks that the decision be modified

for several other reasons, including the fact that he could not afford to hire an attorney to represent him throughout this process.

II. STATUTORY AND REGULATORY FRAMEWORK

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges relating to a proposed order of prohibition. 12 U.S.C. § 1818(e)(4). The ALJ issues a recommended decision that is referred to the Board together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue the requested order. *Id.*, 12 CFR 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: (1) that the individual engaged in identified misconduct, including a violation of law or regulation, an unsafe or unsound practice, or a breach of fiduciary duty; (2) that the conduct had a specified effect, including financial loss to the institution or gain to the respondent; and (3) that the respondent's conduct involved culpability of a certain degree -- either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution. 12 U.S.C. § 1818(e)(1)(A)-(C).

III. FACTS

The undisputed facts of this case show that with respect to fourteen loan transactions handled by Respondent, Respondent forged signatures of bank officers, fabricated documents to make it appear that loans had been properly approved when they had not, and changed the terms of approved loans to the detriment of Midwest, including increasing the amount of the loan and lowering the interest rate and fees. As a result of these actions, Midwest was exposed to additional risk on numerous loans, was deprived of more than \$350,000 in interest and fees, and was forced to write off

\$109,000 in principal. The specific details regarding each of the loan transactions are recounted in the ALJ's Recommended Decision on Summary Disposition. (Rec. Dec., pages 3-16.)

IV. LEGAL CONCLUSIONS

The Board has reviewed the record in this matter and finds that the ALJ properly granted Enforcement Counsel's Motion for Summary Disposition. As explained below, the Board agrees that a prohibition order should be issued.

a. Respondent's Appeal dated November 30, 2009

As previously noted, Respondent filed an Appeal at the point at which exceptions to the ALJ's recommended decision were permitted by the Board's regulations. 12 CFR 263.39(a). The regulation provides that that exceptions must "set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception." 12 CFR 263.39(c)(2). Failure of a party to file exceptions to a finding, conclusion, or proposed order "is deemed a waiver of objection." 12 CFR 263.39(b)(1).

Respondent's Appeal does not conform to any of the requirements of a valid exception. It does not identify the portions of the ALJ's recommendation to which an exception was taken or cite the portions of the record or legal authority in support of its position. Accordingly, the Respondent is deemed to have waived his right to object to any portion of the Recommended Decision.

However, even if Respondent's filing could be considered a valid exception, the Board finds that it raises no meritorious claim. In his Appeal, Respondent does not contest the allegations in the Notice, but requests that the Board modify the final decision because:

(1) Respondent could not afford an attorney during the process and did not have an adequate defense; (2) Respondent misunderstood Enforcement Counsel's statement regarding his fifth amendment right against self-incrimination; (3) Respondent was terminated from employment at a different financial institution because his employer was informed of these public proceedings; and (4) the financial condition of Midwest has significantly deteriorated. None of these issues merits modification of the ALJ's final decision.

First, Enforcement Counsel consented to and the ALJ provided several extensions to permit Respondent time to find counsel to represent him. A respondent in this type of administrative action is not entitled to free counsel, and Respondent's inability to pay for counsel does not taint these proceedings. *See, e.g., Crothers v. Commodities Futures Trading Comm'n*, 33 F.3d 405 (4th Cir. 1994) (sixth amendment rights inapplicable to administrative license revocation proceedings). Second, although it appears that Respondent initially misunderstood Enforcement Counsel's statement regarding his fifth amendment rights and may have believed he did not have to respond to the Notice of Charges, this issue was clarified and he was given additional time to respond. As noted, in his response he did not contest the facts stated in the Notice. Third, the fact that Respondent was terminated from employment at another institution as a result of the pendency of this case does not suggest that a prohibition order should not issue. In fact, Respondent will be prohibited from such employment upon issuance of the order. Finally, the current financial condition of Midwest is irrelevant to these proceedings. Accordingly, even if Respondent's Appeal qualified as an exception, it would be entirely unpersuasive.

b. Prohibition Order

The Respondent does not contest any of the allegations in the administrative record, including Enforcement Counsel's initial Notice or the summary of facts in the ALJ's Recommended Decision. Based on the undisputed evidence in the administrative record, Respondent's actions satisfy the misconduct, effect, and culpability elements required for an order of prohibition.

The Respondent's conduct meets all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). Creating false entries in the books and records of a bank violates 18 U.S.C. § 1005, and constitutes an unsafe or unsound practice. Exposing the bank to additional risk and lowering interest rates and fees breaches a bank employee's fiduciary duty. Respondent's actions caused actual losses to Midwest of over \$460,000. Finally, Respondent's actions also exhibit both personal dishonesty and a willful and continuing disregard for the safety or soundness of Midwest. Accordingly, the requirements for an order of prohibition have been met and the Board hereby issues such an order.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors, this 12th day of March, 2010.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board

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A former-institution affiliated party of)	
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ORDER OF PROHIBITION

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended (“FDI Act”) (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System (“Board”) is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against ADAM L. BENARROCH (“Benarroch”), a former employee and institution-affiliated party, as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)) of Midwest Bank and Trust, Elmwood Park, Illinois (“Midwest”).

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

- (1) In the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the FDI Act (12 U.S.C. § 1818(e)(7)(B)), Benarroch is hereby prohibited:
 - a. from participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured

depository institution, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;

- b. from soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));
- c. from violating any voting agreement previously approved by any Federal banking agency; or
- d. from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)).

- (2) Any violation of this Order shall separately subject Benarroch to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).
- (3) This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

This Order shall become effective at the expiration of thirty days after service is made.

By Order of the Board of Governors this 12th day of March 2010.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board