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

In the Matter of	)	
CHRISTOPHER ASHTON,	)	
A former institution-affiliated party of BARCLAYS BANK PLC London, England, a foreign Bank	)	Docket Nos. 16-015-E-I 16-015-CMP-I

DECISION ON MOTION TO VACATE AND VOID FINAL DECISION, NOTICE OF ASSESSMENT, AND ORDER OF PROHIBITION AND TO DISMISS PROCEEDINGS FOR LACK OF JURISDICTION

Christopher Ashton ("Respondent") moves the Board of Governors of the Federal Reserve System (the "Board") to vacate and void a Notice of Intent to Prohibit and Notice of Assessment of a Civil Money Penalty ("Notice") issued June 30, 2016, a Final Decision ("Decision") issued May 19, 2017, declaring the Notice a final and unappealable order of assessment, and an accompanying Order of Prohibition ("Order") issued May 19, 2017, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act"), 12 U.S.C. § 1818(e). The Board declines to reconsider its prior Decision and Order, and thus denies Respondent's motion.

I. BACKGROUND

Since the Decision contains a detailed procedural history, the Board provides only a short summary here. The Board held that the Notice was properly served in multiple, alternative ways, one of which effected service of the Notice on September 21, 2016. After Respondent failed to respond to the Notice or request a hearing, in December 2016 and January 2017 the Office of Financial Institution Adjudication ("OFIA") served Respondent in multiple ways with an order

to show cause for his failure to respond to the Notice, and in February 2017 the Administrative Law Judge ("ALJ") issued a recommended decision, which was also served on Respondent in multiple ways. The Board issued its final decision on May 19, 2017; it was served on Respondent and was the subject of a public press release. https://www.federalreserve.gov /newsevents/pressreleases/enforcement20170519a.htm. Respondent's present motion is dated August 17, 2017, and was received by the Board five days later.

Respondent, who resides in the United Kingdom, argues that he was not subject to personal jurisdiction in the United States, and that he was not an "institution-affiliated party" of a foreign bank that conducts operations in the United States, and thus could not be subjected to an enforcement action under Section 8 of the FDI Act, 12 U.S.C. § 1818. He also argues that he was not properly served because the Board's rules limit permissible service to the United States and its territories. Alternatively, he argues that the Hague Convention for Service Abroad of Judicial or Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 ("Convention"), which was one of several methods used to serve Respondent with papers in this proceeding, cannot be used to serve process in connection with administrative enforcement proceedings.

II. LEGAL FRAMEWORK

The Board may "in such manner as it shall deem proper, modify, terminate or set aside" its prior orders under section 8 of the FDI Act. 12 U.S.C. § 1818(h)(1). The statute thus permits the Board to entertain a request to reconsider its prior orders under certain circumstances, but does not require it to do so. *Nat'l Bk. of Davis v. O.C.C.*, 725 F.2d 1390, 1391 (D.C. Cir. 1984).[1]

[1] Thus, contrary to Respondent's assertions, Federal Rule of Civil Procedure 60, which applies to district court judgments, does not control the Board's decision on whether to reopen

III. ANALYSIS

The Board declines to reopen this proceeding. Respondent was properly served with process as well as with an order to show cause that gave him an opportunity to explain his failure to respond to the Notice. He was served with a recommended decision by the ALJ, and with the Board's Decision and Order. These documents were served in multiple ways, with significant effort, in order to ensure that Respondent would receive proper notice. Despite that notice, Respondent never requested a hearing, filed an answer, or otherwise responded to the Board's action until his request for reconsideration, itself filed three months after service of the final Decision and Order, and after the period for judicial review had expired. *See* 12 U.S.C. § 1818(h)(2) (30-day time limit for seeking review). Respondent makes no attempt to explain his tardiness, and all of the evidence and arguments he cites were available to him since the start of the proceeding.

Respondent's arguments about the Board's Rules and the Convention fail to demonstrate that he was not properly served. The Board's Rules, specifically 12 C.F.R. § 263.11(e), do not limit service to the United States.[2] Construing the Rules to allow service abroad also avoids an absurd result. Specifically, Congress made the FDI Act's enforcement provisions applicable to "acts[s] or practice[s] outside the United States on the part of . . . any officer, director, employee

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proceedings. Here, in any event, Respondent has not suggested any reason for his complete failure to respond to the Notice. *Cf. Amberg v. FDIC*, 934 F.2d 681 (5th Cir. 1991) (court finds "good cause," under applicable FDIC rule, for setting aside a default where respondents had timely requested a hearing, and their untimely answers were filed only a few days late).

[2] Section 11(e) of the Board's Rules, 12 C.F.R. § 263.11(e), specifically states that service "is effective" if made "on any person as otherwise provided by law." Section 11(c)(2) permits the Board or the ALJ to serve a party who has not appeared in the proceeding by "any other method reasonably calculated to give actual notice." 12 C.F.R. § 263.11(c)(2)(v). Consistent with this language, the Board previously found service by international registered mail to be valid. *In re Agha Hasan Abedi and Swaleh Naqvi*, 80 Fed. Res. Bull. 74, 76 (1994).

or agent" of a foreign bank. 12 U.S.C. § 1818(r)(2). It would defeat Congress's intent to capture this offshore wrongdoing by agents of foreign banks if enforcement proceedings concerning them were entirely dependent upon service in the United States. Respondent's arguments about the Convention are irrelevant, because it was just one of various alternative channels by which he was properly served. *See* 12 U.S.C. § 1818(l) (permitting service in any "manner reasonably calculated to give actual notice").

Thus, Respondent was validly served, yet he makes no attempt to explain his failure to raise his present arguments in a timely manner. Respondent does not claim that he failed to receive actual and timely notification of the original Notice or even any subsequent filings.[3] He similarly fails to assert that he lacked knowledge of any relevant facts and associated arguments that he now asserts as the basis for his motion. Accordingly, the Board sees no reason to reopen proceedings in order to consider Respondent's belated motion.

[3] The two cases Respondent cites in which courts vacated default orders in similar proceedings are not comparable to this case, in which Respondent first contested the Notice eleven months after being served and long after proceedings had concluded. Among other things, the respondents in both cases requested a hearing within the time required by statute while missing the deadline to file an answer under the agency's rules, and in fact filed their answer within days or weeks, and prior to the commencement of default proceedings. *Oberstar v. FDIC*, 987 F.2d 494, 499 (8th Cir. 1993); *Amberg*, 934 F.2d at 682. The courts held that the "trivial delay involved," *id.* at 687, and good cause shown for a "marginally late filing," *Oberstar*, 987 F.2d at 504, made the agency's decisions to enter a default judgment improper.

CONCLUSION

For the foregoing reasons, the Board denies Respondent's motion.

By Order of the Board of Governors this 11th day of January, 2018.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

/s/ Ann E. Misback
Ann E. Misback
Secretary of the Board