Ford

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

IN THE MATTER OF	)	
	)	
Richard Salmon	)	AA-EC-97-05
	)	AA-EC-97-06
Former Vice President,	)	AA-EC-97-07
Bank of the Desert, N.A.	)	
Indio, California		

DECISION AND ORDER

I. Summary

A. Nature of Proceedings

On June 26, 1997, the Comptroller of the Currency ("OCC") issued three notices of charges against Richard Salmon ("Respondent"), former Vice-President and Loan Administrator at the Bank of the Desert, N.A, Indio, California ("Bank"): a Notice of Intent to Prohibit Further Participation, a Notice of Assessment of Civil Money Penalty, and a Notice of Charges ("Cease and Desist order"or "C&D"). The OCC sought to prohibit Respondent from further engaging in the affairs of a federally insured depository institution, pursuant to 12 U.S.C. § 1818 (e); impose a civil money penalty pursuant to 12 U.S.C. 1818(i); and require restitution in the amount of $813,670.96, pursuant to 12 U.S.C. § 1818(b). In connection with these notices, the OCC charged that, beginning sometime in May 1992, Respondent originated 24 illegal loans to the Bank and converted the proceeds of the loans for his personal use.

B. Decision and Order

Upon consideration of the entire record of the proceedings, the pleadings, and the Recommended Decision of the Administrative Law Judge ("ALJ"), and for the reasons set forth below, the Comptroller of the Currency hereby:

A. Issues an Order to Cease and Desist, with restitution in the amount of $813,670.96. Pursuant to OCC Enforcement Counsels' request, and in accordance with an agreement between the Bank and its subsequent purchaser, any restitution recovered shall be for the benefit of the Bank stockholders prior to its sale.

B. Issues an Order assessing a Civil Money Penalty against Respondent in the amount of $25,000.[1]

II. Procedural Background

Respondent filed Answers to the aforementioned Notices, and a hearing was held before the Administrative Law Judge Walter J. Alprin (the "ALJ") in Santa Ana, California on October 28 and 29, 1997. At the hearing, Respondent failed to present any documentary or testimonial evidence in his defense even though he was given a full opportunity to do so.[2]

At the conclusion of the hearing, pursuant to 12 C.F.R. § 19.20(b), the ALJ granted

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[1] The Board of Governors of the Federal Reserve System will be issuing a Decision and Order regarding the Notice of Intent to Prohibit Futher Participation in the affairs of any federally insured depository institution.

[2] During the hearing, Respondent invoked his right under the Fifth Amendment against self-incrimination by declining to answer any questions or provide any information when called as a witness by OCC's Enforcement Counsel.

Enforcement Counsels' motion to amend the pleadings to conform to the evidence and charge that Respondent violated the Bank's legal lending limit pursuant to 12 U.S.C. § 84, and the restrictions on loans to executive officers, pursuant to 12 U.S.C. §§ 375a and 375b.

On December 16, 1997, Enforcement Counsels filed their post hearing brief, containing Proposed Findings of Fact and Conclusions of Law. Respondent failed to make any post-hearing filings. On March 11, 1998, the ALJ issued his Recommended Decision recommending issuance of the Cease and Desist order, the prohibition action, and the action for a civil money penalty. Neither the OCC nor the Respondent filed exceptions to the ALJ's decision.

III. Factual Background

In this matter the Respondent is charged with misuse of his position as Vice President and loan administrator of the Bank for a period of four years during which he engaged in successive kitings of fictitious loans for his personal financial benefit. Respondent converted the proceeds of successive fictitious loans to reduce or repay his prior fictitious loans and to satisfy personal debts. Beginning in 1992 and ending on May 29, 1996 when he resigned from the institution, Respondent originated 24 fictitious loans complete with imaginary loan histories that resulted in a loss to the Bank of over $800,000.

Respondent was employed at Cal West National Bank prior to being employed by the Bank, where he served as a Vice-President from December 4, 1991 through May 29, 1996. Respondent had access to the books and records of the Bank, including loan files and cashier's checks, while he was employed by the Bank. After Respondent left his position, the Bank

discovered a series of fictitious loans that appear to have been originated by Respondent. The Bank retained a private firm, R. Maslac and Associates, to perform a forensic audit. The investigators discovered 24 fictitious loans, of which sixteen remained open while the first eight loans had been satisfied and closed. The eight closed loans had been repaid from the proceeds of the subsequent loans, in a loan-kite scheme.

The proceeds from the 24 fraudulent loans were traced to Respondent for his personal benefit[3] and were originated without prior approval or authorization and in violation of the Bank's loan policy. All of the loans contained fabricated credit, collateral, and biographical information. Identical credit information was used in connection with the origination of several loans. For example, eight of the loans contained identical credit reports with only the names and addresses altered. Certificates of title and insurance documents for three of the fraudulent loans have the same addresses, space numbers and serial numbers listed for purportedly different units. The fraudulent loans totaled approximately $1,948,997.12. Loan proceeds in that precise amount were traced to Respondent for his benefit.

The Bank charged off sixteen loans with outstanding balances totaling $916,055.52. The Bank recognized a $813,670.96 loss in connection with those fraudulent loans.[4] When the

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[3] The loan proceeds were used to pay Respondent's debts, purchase expensive automobiles, and to pay $95,000 to the former Cal West National Bank in settlement of a lawsuit the bank brought against Respondent in connection with an extension of credit to Respondent and his mother.

[4] The bank lost $916,055.52, but was able to offset this to $813,670.96 with cash from distributed loan proceeds in bogus accounts.

Bank was sold, the sales price of the Bank was reduced from $4,200,000 to $3,294,785 as a result of the fictitious loans, a loss of $906,215. After charging off the fictitious loans, the Bank's capital was reduced from $2,400,000 to $1,475,000, a loss of $925,000.

IV. Standards and Bases for the Administrative Actions

A. Cease and Desist Action

Twelve U.S.C. § 1818(b)(1) provides, in pertinent part, that the appropriate Federal banking agency may issue an Order to Cease and Desist against an institution affiliated party who has engaged in an unsafe or unsound banking practice or who has violated a law, rule or regulation. Even though the statute speaks of one "or" the other grounds, the ALJ found that the Respondent had both engaged in unsafe and unsound banking practices and violated laws, rules and regulations over the course of four years.

During this time, the Respondent forged the signatures of nominee borrowers and fabricated loan information to facilitate the fraudulent loans. These loans were all approved by the Respondent, who personally signed his name on the approval documents. The record establishes that the Respondent was the beneficiary of all 24 of the fictitious loans. The record additionally shows that Respondent engaged in a pattern of loan-kiting by generating fraudulent loans and then paying down the illegal loans with proceeds of subsequent fraudulent loans secured with collateral that either did not exist or was owned by someone else. The Comptroller finds that by practicing this loan-kiting scheme, the Respondent engaged in an unsafe and unsound banking practice. Further, in practicing this scheme, Respondent knew that he was likely to cause financial injury to the Bank.

In addition, Respondent violated the Bank's legal lending limit set forth in 12 U.S.C. § 84 by issuing loans to himself that reflected 38% to 40% of the Bank's unimpaired capital. The aggregate loans to the Respondent exceeded the permissible limits on loans to a single borrower under 12 U.S.C. § 375b. Therefore, Respondent violated section 375b as well. Accordingly, the Comptroller further finds that, under section 1818(b), issuance of a Cease and Desist Order is justified on all grounds because the Respondent both engaged in unsafe and unsound banking practices and violated the law.

The Comptroller orders that the Respondent pay restitution. Subparagraph (6)(A) of section 1818(b) provides for restitution or reimbursement if the institution-affiliated party was either unjustly enriched in connection with the violation or practice or if the violation or practice involved a reckless disregard for the law or regulation. Based on the evidence, there is no question that Respondent personally profited from his fraud and therefore was unjustly enriched. Moreover, by forging signatures, falsifying loan documents, and converting loan proceeds for his personal benefit over a four-year period, the Respondent showed an indifference to the law and safe and sound banking practices that constitutes reckless disregard for the law. Under the facts, the restitution of $813,670.96 requested by the OCC is justified because this represents the Bank's losses.

B. Action for a Civil Money Penalty

Finally, the Comptroller finds that the civil money penalty of $25,000 that the OCC assessed against Respondent is justified pursuant to 12 U.S.C. § 1818(i)(2)(B). The OCC assessed this second tier civil money penalty, finding that the Respondent's conduct more than

satisfies the statutory requirements that: (1) the institution-affiliate party must have violated any law, regulation or final cease and desist order or recklessly engaged in an unsafe or unsound practice in conducting the affairs of the insured depository institution or breaches a fiduciary duty; and (2) the violation, practice or breach is part of a pattern of misconduct or causes or is likely to cause more than minimal loss to such depository institution or results in pecuniary gain or benefit to such party. Based on the foregoing facts, amply substantiated in the record, it is clear that the Respondent satisfies every element. The Comptroller notes that the amount of penalty OCC seeks is far less than it could have requested, considering that multiple violations occurred over a four-year period.

V. Order

Based on the entire record of the proceedings and the Recommended Decision of the ALJ, and for the reasons set forth in the foregoing, the Comptroller hereby:

A. Issues an Order to Cease and Desist, with restitution in the amount of $813,670.96. Pursuant to OCC Enforcement Counsels' request, and in accordance with an agreement between the Bank and its subsequent purchaser, any restitution recovered shall be for the benefit of the Bank stockholders prior to its sale.

B. Issues an Order assessing a Civil Money Penalty against Respondent in the amount of $25,000.

IT IS SO ORDERED this 8th day of July, 1998.

JULIE L. WILLIAMS
Acting Comptroller of the Currency