

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

IN THE MATTER OF)
)
)
WILLIAM VASA, former employee,)
FIRST NATIONAL BANK) OCC-AA-EC-94-27
OF SOUTHEAST DENVER)
Denver, Colorado)

DECISION AND ORDER

I. Summary

The Office of the Comptroller of the Currency (the "OCC"), pursuant to 12 U.S.C. § 1818(b)(1), imposes an Order to Cease and Desist on Respondent William Vasa ("Respondent"), former vice president and loan officer of First National Bank of Southeast Denver (the "bank"), Denver, Colorado. This Order is based upon findings of fact and conclusions of law that demonstrate that Respondent engaged in unsafe or unsound practices and breached his fiduciary duty to the bank as a result of his origination of eight fictitious loans and his misappropriation of the loan proceeds. Moreover, in connection with his practices, Respondent was unjustly enriched. Accordingly, the Comptroller orders Respondent to cease and desist from engaging in unsafe or unsound practices; to make restitution to the bank in the amount of \$61,548.52, plus a per diem interest charge of \$13.50, from January 1, 1995 until the restitution amount is paid in full; and to provide indemnification to the bank or guarantee the bank against a potential loss of \$4,000.

II. Procedural Background

On June 3, 1994, the OCC issued a Notice of Charges alleging that Respondent, an institution-affiliated party, had engaged in unsafe or unsound practices and had breached his fiduciary duty to the bank as a result of his origination of eight fictitious loans and his misappropriation of the loan proceeds. The Notice scheduled a hearing to determine whether an Order to Cease and Desist should be issued requiring Respondent to cease and desist from engaging in unsafe or unsound practices and to make restitution to the bank.¹

On December 13 and 14, 1995, a hearing was held before Administrative Law Judge Walter J. Alprin ("ALJ") in Denver, Colorado. The OCC was represented by its Enforcement and Compliance Division. Respondent appeared pro se. Following the hearing, the parties filed proposed findings of facts and conclusions of law. On April 4, 1995, the ALJ issued a recommended decision. Neither party filed exceptions to the ALJ's recommendations. On July 12, 1995, the case was submitted to the Comptroller for a final decision.

III. The ALJ's Recommended Decision

The ALJ's findings of fact and conclusions of law are contained in his recommended

¹ On the same date, the OCC also issued to Respondent a Notice of Intention to Prohibit From Further Participation in the Affairs of Federally Insured Depository Institutions, pursuant to 12 U.S.C. § 1818(e), OCC-AA-EC-94-28. The notice to prohibit and the notice to cease and desist were consolidated for purposes of the hearing. Thus, the ALJ's recommended decision addresses the charges in both notices. Following the issuance of the ALJ's recommended decision, pursuant to 12 U.S.C. § 1818(e)(4), the proceeding in OCC-AA-EC-94-28 was certified to the Board of Governors of the Federal Reserve System for a final decision.

decision. Thus, only a brief summary of the ALJ's factual findings and conclusions of law are provided in this decision.

SUMMARY OF ALJ'S FACTUAL FINDINGS

From October 1987 through June 8, 1992, the date of Respondent's termination from employment, Respondent was a vice president and loan officer of First National Bank of Southeast Denver. RD 6.² Under the bank's internal lending policies, Respondent had the authority to originate unsecured loans of \$10,000 or less without review by the loan committee. Id. Written bank lending policy required each loan application to demonstrate that the customer was able to repay the loan and that prior loans had been repaid. RD 7. Unsecured loans were usually offered only to established bank customers. RD 6.

Following an examination of Respondent's loan portfolio, it was discovered that Respondent had originated eight questionable unsecured loans of \$10,000 or less in the names of Frank Young, David Frater, Jack Rowland, Robert Tinner, Mark Jameson, Steven Zerbring, Thomas Robret, and Kyle Dryson. RD 7. Seven of the eight loans were for applicants who had no credit history, who did not reside at the addresses provided in their applications, who had not been employed by the employers identified in their applications, and whose names did not correspond with the Social Security numbers identified in their applications. RD 13-31. The eighth loan was originated in the name of an actual bank customer, Frank Young,

² "RD ___" refers to the ALJ's recommended decision. "CL ¶ ___" refers to the ALJ's conclusions of law.

and personal information concerning Mr. Young that was contained in the bank's records was used to originate this loan. RD 7-13. Mr. Young was unaware that this loan had been issued and he did not receive the loan proceeds. RD 8.

In each case, the loan proceeds were distributed by cashier's checks. RD 12, 14, 16-17, 20, 22, 25, and 27. In all but one case, the Kyle Dryson transaction, the cashier's checks were cashed at the bank. Id. Although a \$4,000 cashier's check representing the loan proceeds of the Kyle Dryson transaction was issued on June 5, 1992, three days before Respondent's termination, this check was never cashed. RD 29-30. In several instances, Respondent was responsible for cashing the cashier's checks that represented the loan proceeds at the bank. RD 12, 14, 16, 22, and 24-25. On some occasions, following his receipt of the cash proceeds from the loan transactions, Respondent deposited substantial amounts of unexplained cash into his bank accounts and made substantial cash expenditures. RD 36-37.

SUMMARY OF ALJ'S CONCLUSIONS OF LAW

The ALJ found that Respondent, as a vice-president and loan officer, had a fiduciary duty to the bank and was an institution-affiliated party as that term is defined in 12 U.S.C. § 1813(u). Moreover, based upon a preponderance of the evidence, the ALJ determined that Respondent's use of fictitious names and pre-existing bank records in the origination of eight bank loans for his personal benefit constituted unsafe or unsound practices, within the meaning of 12 U.S.C. § 1818(b)(1), and a breach of his fiduciary duty to the bank. The ALJ also concluded that Respondent was "unjustly enriched" and that his conduct constituted

a "reckless disregard" for the law, within the meaning of 12 U.S.C. § 1818(b)(6)(A). RD 35-39. CL ¶ 10. The ALJ found that Respondent received an unjust enrichment of principal in the amount of \$48,994.41, and \$12,554.11 in accrued interest up to January 1, 1995, for a total of \$61,548.52. RD 39-40. CL ¶ 10. The ALJ also assessed interest at \$13.50 per day for each day after January 1, 1995. Id.

Accordingly, the ALJ recommended that an order issue requiring Respondent to cease and desist from engaging in unsafe or unsound practices; to make restitution to the bank in the amount of \$61,548.52, plus a per diem interest charge of \$13.50, from January 1, 1995 until restitution is paid in full; and to provide indemnification to the bank or guarantee the bank against a loss of \$4,000 in the event that an outstanding cashier's check issued to Kyle Dryson is negotiated.³ RD 46-47. CL ¶ 10.

IV. The Comptroller's Decision

Respondent has not filed any exceptions or objections to the ALJ's recommended factual findings, legal conclusions, decision, and proposed order. Respondent's failure to raise exceptions may be deemed a waiver of any objection that Respondent may have had to the ALJ's recommendations. 12 C.F.R. § 19.39(b). See Burke v. Board of Governors of the Federal Reserve, 940 F.2d 1360, 1365 (10th Cir. 1991). Nonetheless, in accordance with 5 U.S.C. § 556(d) and 12 C.F.R. § 19.40(c)(1), the Comptroller has considered the entire

³ Although the ALJ's recommendation regarding indemnification or guarantee against loss to the bank is not included in his proposed order, this recommendation is included in the recommended conclusions of law. CL ¶ 10.

record of the proceeding in rendering this decision.

The oral and documentary evidence of record clearly establishes that Respondent violated internal bank lending policies by originating eight unsecured loans based upon fictitious names and pre-existing bank records. The record evidence also establishes that Respondent misappropriated the loan proceeds and utilized the proceeds for his personal gain. The Comptroller finds that the ALJ's recommended factual findings are based upon a preponderance of the evidence. Hence, the Comptroller adopts the ALJ's factual findings in their entirety.

The ALJ's determination that Respondent's conduct constituted unsafe or unsound practices and a breach of his fiduciary duty to the bank is based upon ample record evidence concerning Respondent's origination of the eight fictitious loans. Moreover, substantial record evidence concerning Respondent's misappropriation of the loan proceeds supports the ALJ's determinations that Respondent was unjustly enriched by his deceptive practices and that he acted with a reckless disregard for the law.⁴ The ALJ's recommendation that an order issue requiring Respondent to take affirmative action to correct the conditions resulting from his unsafe or unsound practices is in accordance with the requirements of 12 U.S.C.

⁴ Although in the recommended decision, the ALJ states that Respondent committed "fraud" by his origination of the eight fictitious loans, RD 39, Respondent was not charged with a violation of law, rule, or regulation. Hence, in the recommended conclusions of law, the ALJ does not conclude that Respondent committed fraud in violation of the law.

§ 1818(b)(6). Thus, the Comptroller adopts the ALJ's Conclusions of Law in their entirety.

Accordingly, based upon the entire record of the proceeding, the Comptroller affirms the ALJ's recommended decision that Respondent be ordered to cease and desist from engaging in unsafe or unsound practices, to make restitution, and to provide indemnification or guarantee against loss to the bank.⁵

ORDER

Based upon the entire record of the proceeding and the ALJ's recommended decision, and for the reasons set forth in the accompanying decision, the Comptroller, pursuant to his authority under 12 U.S.C. § 1818, issues the Order recommended by the ALJ with the following amendment:

ARTICLE IV

Respondent shall provide indemnification to the bank or guarantee the bank against a loss of \$4,000 in the event that an outstanding cashier's check dated June 5, 1992, and made payable to Kyle Dryson, is negotiated.

⁵ The indemnification or guarantee requirement of the order concerns an outstanding \$4,000 cashier's check dated June 5, 1992. Although the cashier's check states that it will be invalid 180 days after the date of issuance, the Comptroller believes that indemnification or guarantee is necessary to protect against the possibility that the check will be presented and paid inadvertently. Moreover, since Respondent has failed to raise any exceptions, he may be deemed to have accepted the ALJ's recommendation regarding indemnification or guarantee.

IT IS SO ORDERED, this 7th day of September, 1995.

Eugene A. Ludwig
Comptroller of the Currency