

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

IN THE MATTER OF:
Sharonda L. Herndon
Former Employee
Bank of America, National Association
Charlotte, North Carolina

AA-EC-2003-21

DECISION AND ORDER

This matter is before the Comptroller of the Currency (“Comptroller”) on the recommendation of the Administrative Law Judge (“ALJ”) for entry of default against Sharonda L. Herndon (“Respondent”), a former employee of Bank of America, N.A., Charlotte, North Carolina (“the Bank”). The ALJ has also recommended an order requiring restitution in the amount of \$58,296.72 and limitations on Respondent’s activities. After considering the pleadings, the ALJ’s Recommended Decision and the entire record, the Comptroller concludes that Respondent is in default and issues the Order herein.

FACTUAL SUMMARY AND PROCEDURAL HISTORY

Respondent’s Participation in Proceedings

On September 7, 2003, the Office of the Comptroller of the Currency (“OCC”) served on Respondent a Notice of Charges for Issuance of an Order to Cease and Desist for Affirmative Relief and for Restitution (“Notice”). Service was effected by a process server, who delivered the Notice to an individual identifying himself as Respondent’s father and co-tenant. When Respondent did not file an answer, Enforcement Counsel moved for entry of an order of default. Respondent did not respond to this motion, though she was served with a copy via overnight mail. On November 20, 2003, the ALJ issued an Order to Show Cause, requiring Respondent to

file an answer and show good cause for failing to do so previously. Respondent replied to the show cause order on December 8, 2003 with a one-paragraph letter in which she agreed to pay the proposed restitution but did not respond to the allegations in the Notice. Her letter also stated that she did not answer the Notice because she was out of town for a four-month period. In light of Respondent's willingness to make restitution, the ALJ delayed entering a default order so that the parties could negotiate further. Enforcement Counsel sent Respondent a settlement proposal on December 10, 2003.

Having received no response from Respondent by January 30, 2004, Enforcement Counsel refiled the Motion for Default. On February 23, 2004, the ALJ issued a Notice Related to Default, informing Respondent that a default order would issue against her if she did not file an answer and show good cause for her failure to do so previously. Respondent failed to reply either to the refiled motion or to the default notice. Consequently, the ALJ issued a Recommended Decision on March 15, 2004 finding Respondent in default and adopting the relief sought in the Notice.

Respondent's Misconduct

According to the Notice, Respondent, with a group of other individuals, participated in a scheme to defraud the Bank. Over a period of two months, members of the group transported individuals to the Bank branch where Respondent was employed. The individuals presented fraudulent items to Respondent for negotiation and Respondent negotiated these items. The Notice charges Respondent with knowingly or recklessly negotiating 19 fraudulent savings withdrawals, three forged checks, and five stolen United States Treasury checks, and sets forth with specificity the dates on which these illegal transactions occurred. Respondent conducted many of these transactions within hours and/or minutes of one another. Each transaction

involved amounts below \$2,501 because the Bank required tellers to obtain supervisory approval before handling a transaction exceeding \$2,500. The negotiation of all 27 items resulted in a total loss to the Bank of approximately \$58,296.72.

DISCUSSION

The Comptroller finds that Respondent is in default. Under 12 C.F.R. § 19.19(c)(1), Respondent's failure to timely answer constitutes a waiver of her right to appear and contest the allegations in the notice. Under 12 C.F.R. § 19.23(d)(2), Respondent's failure to oppose Enforcement Counsel's motions for default is deemed consent to the entry of an order substantially in the form of the proposed orders accompanying the motions.

Before the ALJ issued the Recommended Decision, Respondent had several opportunities to address the charges against her, and she also had an opportunity to settle this matter without further proceedings. Specifically, Respondent failed to answer the Notice itself, and she failed to respond to two motions for entry of default, a show cause order, and a Notice Related to Default. Her only communication was a brief letter to the ALJ that did not address the allegations in the Notice. Accordingly, the Comptroller adopts the ALJ's findings of fact and conclusions of law, and issues the following Order, which is substantially the same as recommended by the ALJ. Further, the Comptroller is satisfied that the Order's restitution requirements and its limitations on Respondent's activities are authorized under these circumstances by 12 U.S.C. §§ 1818(b)(1), 1818(b)(6) and 1818(b)(7).

ORDER

(1) This Order is based on the entire record of the proceeding, including the Recommended Decision of the ALJ.

(2) The Comptroller finds that Respondent is in default pursuant to 12 C.F.R. §§ 19.19(c)(1) and 19.23(d)(2).

Article I – Affirmative Obligations

(1) If the Respondent is currently an “institution-affiliated party” (as defined in 12 U.S.C. § 1813(u)) of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), Respondent shall immediately provide the chief executive officer of the institution or agency with a copy of this Order.

(2) Within fourteen (14) days from the effective date of this Order, Respondent shall provide written certification of her compliance with paragraph (1) to the Director of the Enforcement & Compliance Division (“Director”). Respondent shall direct this correspondence to Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, D.C. 20219.

(3) Prior to accepting any new position that causes her to become an “institution-affiliated party” (as defined in 12 U.S.C. § 1813(u)) of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), Respondent shall provide the chief executive officer of the institution or agency with a copy of this Order.

(4) Within ten (10) days from and after her acceptance of any position described in paragraph (3), Respondent shall provide written notice of such acceptance to the Director along with a written certification of her compliance with paragraph (3).

(5) In the event Respondent is or ever becomes an “institution-affiliated party” as defined in 12 U.S.C. § 1813(u), she shall comply with the following provisions:

a) Respondent shall at all times comply with all applicable laws and regulations.

- b) Respondent shall avoid engaging in any unsafe or unsound practices (as that term is used in 12 U.S.C. § 1818).
- c) Respondent shall not process, handle, negotiate, or otherwise come in contact with any negotiable instruments, withdrawal slips, checks, money orders, or any other documents relating to the transfer of funds from or to any account or accounts held at an insured depository institution, provided that this paragraph shall not inhibit Respondent from transacting legitimate personal business at an insured depository institution as a customer.
- d) Respondent shall not access, view, or otherwise come in contact with any “nonpublic personal information,” as that term is defined in 12 C.F.R. § 40.3(n)(2003), provided that this paragraph shall not inhibit Respondent from transacting legitimate personal business at an insured depository institution as a customer.
- e) Respondent shall adhere to the written policies and procedures of any insured depository institution or agency with which she may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise.
- f) Respondent shall not breach her duties of loyalty or care owed to any insured depository institution or agency with which she may become affiliated and shall, at all times, avoid placing her own interests above those of the institution.
- g) Respondent shall (among other things):
 - i. be diligent to ensure that - within the scope of Respondent’s duties and

influence at any insured depository institution or agency - customers or other third parties are not using the institution (or the services of the institution) or agency to facilitate or perpetuate fraudulent activity; and

ii. be diligent to ensure that - within the scope of Respondent's duties and influence at any insured depository institution or agency - adequate and appropriate controls are in place and that any employees reporting to Respondent are adequately trained and supervised.

- h) If, at any time, Respondent is uncertain whether a situation implicates paragraphs (1) through (5) of this Article, or if Respondent is uncertain about her duties arising from such paragraphs, she shall obtain, at her own expense, and abide by the written advice of counsel regarding her duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel:
- i. who is in no way affiliated with the institution or agency; and
- ii. who has never been subject to any sanctions by any Federal banking agency, either by agency order or consent.

Article II – Restitution

(1) Respondent shall pay restitution to the Bank in the amount of fifty-eight thousand, two hundred ninety-six dollars and seventy-two cents (\$58,296.72), which shall be paid in annual installments of at least two thousand dollars (\$2,000) on July 1 of each year, beginning with July 1, 2004. If, at any time, the remaining balance of the restitution amount is less than two thousand dollars (\$2,000), Respondent shall pay the remaining balance in its entirety on the next occurring July 1.

(2) Respondent shall make the payments described in paragraph (1) of this Article by check made payable to Bank of America, N.A. The check shall be sent to the Security Recovery Support Unit, Bank of America, N.A., Attention: Susana Cervantes, M02100-19-19, P.O. Box 790087, St. Louis, Missouri 63179-0087.

(3) Respondent shall send a copy of each check to the Director at the address specified in paragraph (2) of Article I.

(4) If Respondent fails to make any payment as provided in this Order, the entire balance of the restitution amount described in paragraph (1) shall become immediately due and payable.

(5) Within fourteen (14) days from the effective date of this Order, Respondent shall notify the Director, in writing, of her social security number, current address, and telephone number.

(6) Until the restitution described in this Order is paid in full, upon each and every subsequent change in address, if any, Respondent shall notify the Director, in writing, of her new address within seven (7) days of such change in address.

Article III – Notice and Closing

(1) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting Respondent, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(2) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Director for good cause, upon written application.

(3) The provisions of this Order are effective at the expiration of 30 days after its service upon Respondent, and shall remain effective and enforceable as provided herein, except to such extent as this Order is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

SO ORDERED, this 20th day of May, 2004.

John D. Hawke, Jr.,
Comptroller of the Currency

Date