

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY
WASHINGTON, D.C.

_____)	
In the Matter of)	
)	
ERIC M. CLEVINGER,)	
Former Teller)	
)	OCC AA-EC-2019-63
)	
PNC Bank, N.A.)	
Wilmington, Delaware)	
_____)	

DECISION ON ENTRY OF DEFAULT AND ORDER OF PROHIBITION

This matter is before the Comptroller of the Currency (“Comptroller” or “OCC”) on the Recommended Decision of the Administrative Law Judge (“ALJ”) for entry of default and order of prohibition against Eric M. Clevenger (“Respondent”), a former employee of PNC Bank, N.A., Wilmington, Delaware (“Bank”). A Notice of Charges for Order of Prohibition (“Notice”), issued by the OCC pursuant to section 8(e) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(e), seeks an order prohibiting Respondent from further participating in any manner in the conduct of the affairs of any federally insured depository institution, credit union, agency, or entity referred to in section 8(e) of the Act. 12 U.S.C. § 1818(e). The Respondent did not make an appearance in the case and failed to respond to the Notice. Upon consideration of the pleadings, the ALJ’s Recommended Decision to Prohibit Further Participation (“Recommended Decision”), and the entire record, the Comptroller concludes that (1) by failing to appear or respond to the Notice, the Respondent is in default, and (2) the record supports the conclusion that Respondent should be prohibited from any further participation in

the conduct of the affairs of any institution or entity set forth in section 8(e) of the Act. 12 U.S.C. § 1818(e).

I. FACTUAL SUMMARY AND PROCEDURAL HISTORY

The ALJ's Recommended Decision sets forth the uncontested findings of fact giving rise to this Decision. Among those uncontested findings are the following:

Respondent was employed as a teller at the Symmes Township Bank branch in Cincinnati, Ohio from at least September 1, 2014 to his termination on December 18, 2014. Between September 11, 2014 and December 15, 2014, Respondent removed funds from his teller drawer, over which he had sole control, on eleven (11) separate occasions and in the total amount of \$7,346.23. On or about December 8, 2014,¹ there was an unauthorized transfer of funds from Respondent's teller drawer to Respondent's savings account of \$3,200. On December 16, 2014, Respondent removed \$4,640 in cash from an automated teller machine ("ATM") that was under his sole control. The cash withdrawals from Respondent's teller drawer and from the ATM were not requested or authorized by the Bank or any customer of the Bank. Respondent deposited a total of approximately \$9,900.97 in cash into his checking and savings accounts.

Respondent provided a signed, written statement dated December 18, 2014 to Bank investigators, admitting to the misappropriation of Bank funds that is described above. Due to Respondent's actions, the Bank suffered a total loss of \$11,986. Respondent has not reimbursed the Bank for these losses.

¹ The Notice and Recommended Decision state that on "December 8, 2015," there was an unauthorized direct transfer from Respondent's teller drawer to Respondent's savings account. Based upon the facts as they appear on the record, the most reasonable conclusion is that the reference to "December 8, 2015" is a typographical error, given that the Notice and Recommended Decision state that Respondent was terminated from the Bank almost a year earlier on December 18, 2014, and the actual date is likely "December 8, 2014."

The present proceeding was commenced by the service of the OCC's Notice on August 26, 2019. The Notice was served by the OCC using overnight delivery. The record reflects that the Notice was delivered to Respondent's home address on August 27, 2019. In addition, the record reflects that the Respondent was personally served with the Notice by a process server on September 9, 2019. Respondent was required to file an Answer to the Notice within twenty (20) days from service. *See* 12 C.F.R. §§ 19.12(c)(2), 19.19(a). Respondent failed to file an answer by September 17, 2019. On October 2, 2019, OCC Enforcement Counsel moved for an Order of Default pursuant to 12 C.F.R. § 19.19(c)(1). On October 2, 2019, the ALJ issued an Order to Show Cause requiring Respondent to appear by October 25, 2019, and to show good cause why he did not file an Answer and request for hearing and why default judgment should not be granted. The Order to Show Cause was served on Respondent at the same address as previously used via UPS overnight delivery. Respondent did not reply to the motion or the Order to Show Cause. In an Order of Default and Recommended Decision to Prohibit Further Participation, issued November 13, 2019, the ALJ granted Enforcement Counsel's motion, finding that, by failing to appear, the Respondent had waived his right to appear and contest the allegations in the Notice and had consented to the entry of a final order of prohibition. *See* 12 U.S.C. § 1818(e)(4); 12 C.F.R. § 19.19(c)(1).

II. DECISION

The Comptroller affirms the ALJ's finding that Respondent is in default based upon his failure to appear and respond to the Notice. The Respondent has been provided with more than adequate notice of this proceeding² and was provided several opportunities to appear and respond.

² The Comptroller is satisfied that all reasonable efforts were made to give actual notice to and serve Respondent during the proceedings below. Respondent had actual knowledge of his obligation to respond to the Notice of Charges because he was personally served with that document. The ALJ complied with the relevant regulation for serving the Order to Show Cause at Respondent's last known address via UPS overnight delivery. *See* 12 C.F.R. §

Based on the record of this proceeding, the Comptroller agrees with the ALJ's findings that Respondent was properly served, *see* 12 C.F.R. § 19.11(b), has failed to file an Answer, *see* 12 C.F.R. § 19.19, and is in default, *see* 12 C.F.R. § 19.19(c)(1).

Moreover, the Comptroller affirms the ALJ's conclusion that Respondent's behavior meets the standard for prohibition under section 8(e) of the Act. 12 U.S.C. § 1818(e). Twelve U.S.C. § 1818(e)(1) authorizes the prohibition of an institution-affiliated party³ from participating in the conduct of the affairs of any insured depository institution⁴ when the following three elements are met: (1) the party violated a law, regulation, or order; engaged or participated in any unsafe or unsound practice; or committed or engaged in any act, omission, or practice which constitutes a breach of the party's fiduciary duty; (2) the violation, practice, or breach caused the bank to suffer, or probably suffer, financial loss or other damage; prejudiced the interests of depositors; or resulted in financial gain or other benefit to the party; and (3) the violation, practice, or breach involved personal dishonesty; or demonstrated willful or continuing disregard for the safety or soundness of the insured depository institution. As described below, Respondent's conduct satisfies each of these elements.

Respondent admitted to investigators that, while an employee of the Bank, he removed cash from his teller drawer and withdrew cash from the Bank's ATM without authorization and that he deposited some of this cash into his personal checking and savings accounts. Theft of money from the Bank unquestionably constitutes an unsafe or unsound practice as well as a clear

19.11(c)(2). In addition, Enforcement Counsel reached out to the Assistant District Supervisor for the Kentucky Division of Probation and Parole – the individual who supervised Respondent as a parolee - to ascertain Respondent's last known address.

³ An institution-affiliated party includes an "employee of . . . , or agent for, an insured depository institution." 12 U.S.C. § 1813(u).

⁴ An insured depository institution includes "any bank . . . the deposits of which are insured by the [Federal Deposit Insurance] Corporation." 12 U.S.C. § 1813(c).

violation of law,⁵ notably 18 U.S.C. § 656. As a result of the foregoing misconduct, the Bank suffered a “financial loss or other damage”; the Bank suffered a loss of \$11,986.⁶ Respondent also received a “financial gain or benefit”⁷ as a result of this misconduct, *i.e.*, the successful deposit of Bank funds totaling approximately \$9,900.97 into his own checking and savings accounts.

Finally, Respondent’s misconduct involved personal dishonesty.⁸ He took advantage of his position of trust at the Bank and removed funds from his teller drawer and withdrew cash from the Bank’s ATM, both of which were under his sole control, without authorization. He then took that cash and illegally deposited some of it into his personal checking and savings accounts. In committing this series of thefts Respondent committed multiple acts of personal dishonesty by using his position at the Bank to remove Bank funds without authorization and then depositing some of those funds into his personal checking accounts.

Accordingly, I find that the requirements for entry of an order prohibiting Respondent from participating in any manner in the conduct of the affairs of any insured depository institution have been met.

III ORDER

1. Respondent, Eric M. Clevenger, is hereby prohibited from:
 - a. Participating in any manner in the conduct of the affairs of any institution or agency specified in paragraph (2) of this Order;

⁵ See 12 U.S.C. § 1818(e)(1)(A)(i)-(ii).

⁶ See 12 U.S.C. § 1818(e)(1)(B)(i).

⁷ See 12 U.S.C. § 1818(e)(1)(B)(iii).

⁸ See 12 U.S.C. § 1818(e)(1)(C).

- b. 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 paragraph (2) of this Order;
 - c. Violating any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q); or
 - d. Voting for a director or serving or acting as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u).
2. The prohibitions in paragraph (1) of this Order apply to the following institutions and agencies:
 - a. any insured depository institution, as defined in 12 U.S.C. § 1813(c);
 - b. any institution treated as an insured bank under 12 U.S.C. 1818(b)(3), (b)(4), or (b)(5);
 - c. any insured credit union under the Federal Credit Union Act;
 - d. any institution chartered under the Farm Credit Act of 1971;
 - e. any appropriate Federal depository institution regulatory agency; and
 - f. the Federal Housing Finance Agency and any Federal Home Loan Bank.
3. The prohibitions in paragraphs (1) and (2) of this Order shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the OCC and the institution’s “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D).
4. This Order shall remain effective and enforceable except to the extent that, and until such time as, any provisions have been modified, terminated, suspended, or set aside by the OCC.

SO ORDERED.

Date: April 9 , 2020

//s// Digitally Signed

JOSEPH M. OTTING
COMPTROLLER OF THE CURRENCY