

Respondent's views. The penalty is payable to the Treasurer of the United States. Pursuant to 12 U.S.C. § 1818(i)(2)(F), the Administrative Law Judge may recommend and the Comptroller may decide to increase the amount of the civil money penalty assessed herein, consistent with the law and the evidence presented during the proceedings.

The hearing afforded Respondent shall be open to the public unless the Comptroller, in his discretion, determines that holding an open hearing would be contrary to the public interest. In support of this Notice of Charges for Prohibition and Restitution and Notice of Assessment of Civil Money Penalty ("Notice"), the OCC charges the following:

ARTICLE I

JURISDICTION

At all times relevant to the charges set forth below:

- (1) The Bank was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2).
- (2) Respondent was an employee of the Bank, and was an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof (*see* 12 U.S.C. § 1818(i)(3)).
- (3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A).
- (4) Accordingly, the OCC is the "appropriate Federal banking agency" as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this prohibition, restitution, and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(b), (e), and (i).

ARTICLE II
BACKGROUND

(5) This Article repeats and realleges all previous Articles in this Notice.

(6) Respondent was employed by the Bank from approximately July 2014 through his resignation in June 2018.

(7) At all relevant times, Respondent served as a branch manager at the Bank's main office in Chicago.

(8) Respondent's duties as branch manager included supervising the branch's day-to-day operations, overseeing the teller department, and opening and closing the branch.

(9) Respondent's duties also required him to support tellers by processing deposit transactions as needed.

(10) The Bank assigned each employee with teller responsibilities, including Respondent, a unique teller number.

(11) A bank customer owns or controls a chain of stores in the Chicago area.

(12) The bank customer established six separate legal identities (*collectively*, "the Businesses"), including Business A,¹ to conduct business.

(13) Each of the six Businesses has a separate deposit account at the Bank.

(14) At all relevant times, an armored courier service ("Courier Service") collected cash envelopes from the Businesses and delivered those envelopes to the Bank for deposit.

(15) At all relevant times, Bank tellers created a cash-in ticket for each associated cash deposit.

¹ The name of the business described by alias herein will be separately disclosed to Respondent.

(16) On occasion, Bank tellers identified out-of-balance deposits for the Businesses' deposits where the amount reported by the customer on the deposit slip differed from the Bank's count.

(17) At all relevant times, it was standard Bank practice for Bank employees who identified an out-of-balance deposit to credit the deposit slip amount as reported and reflect any overage or shortage on a separate cash-in ticket.

(18) At all relevant times, Bank practice prohibited the modification or alteration of the amount written by any customer on a deposit slip.

(19) Under Bank practice, employees were required to notify a customer by telephone if they identified an out-of-balance deposit.

ARTICLE III

RESPONDENT MISAPPROPRIATED CUSTOMER FUNDS, DEFRAUDED A FINANCIAL INSTITUTION, AND FALSIFIED BANK RECORDS

(20) This Article repeats and realleges all previous Articles in this Notice.

(21) As described in paragraphs (22) through (41), Respondent recklessly engaged in unsafe or unsound practices, breached his fiduciary duty, and violated the law, including 18 U.S.C. §§ 656, 1005, and 1344, when he misappropriated cash deposits from the Businesses and the Bank, and attempted to conceal the misappropriation by creating false Bank records.

(22) Between January 2018 and June 2018, Respondent misappropriated at least \$141,471 from the Businesses' cash deposits delivered to the Bank.

(23) Respondent attempted to conceal the misappropriation by altering at least 160 deposit slips created by the stores and falsifying at least 160 cash-in tickets associated with those cash deposits.

(24) In sworn testimony before the OCC, Respondent asserted his Fifth Amendment right against self-incrimination and refused to answer all substantive questions related to the misappropriation of cash from the Businesses' deposit accounts and the alterations of Bank records.

(25) Between January 2018 and June 2018, Respondent routinely volunteered to count and process the Businesses' cash deposits delivered by the Courier Service.

(26) Respondent did not create any separate cash-in tickets related to the 160 transactions with alterations, as would have been required under Bank practice if Respondent had identified an out-of-balance deposit.

(27) Between January 2018 and June 2018, the bank customer never received any notifications from Respondent regarding out-of-balance deposits.

(28) Between January 2018 and June 2018, Respondent altered at least 160 of the Businesses' deposit slips using a variety of techniques, which resulted in a reduction in the amount deposited into the Businesses' accounts.

(29) The following are illustrative examples of Respondent's alterations:

(a) Store employees created a deposit slip, dated January 15, 2018, to deposit two thousand three hundred and forty-two dollars (\$2,342) into deposit account XXXX90 where the currency and total lines read "2342.00." On January 17, 2018, Respondent crossed out the total line and wrote "\$1442" below. Respondent then credited only one thousand four hundred and forty-two dollars (\$1,442), a difference of nine hundred dollars (\$900).

(b) Store employees created a deposit slip, dated May 18, 2018, to deposit two thousand four hundred and forty-four dollars (\$2,444) into deposit account XXXX80. On

May 21, 2018, Respondent wrote over the original currency line, changing the first “4” to a “0,” to make it appear that \$2,044 was being deposited. Respondent wrote “2044” below the total line. Respondent then credited only two thousand and forty-four dollars (\$2,044), a difference of four hundred dollars (\$400).

(c) Store employees created a deposit slip, dated February 23, 2018, to deposit four thousand two hundred and seventy-nine dollars (\$4,279) into deposit account XXXX90 where the currency and total lines read “4,279.00.” On February 26, 2018, Respondent wrote “\$3780” below the total line. Respondent then credited only three thousand seven hundred and eighty dollars (\$3,780), a difference of four hundred and ninety-nine dollars (\$499).

(d) Store employees created a deposit slip, dated June 16, 2018, to deposit five thousand one hundred and eighty-seven dollars (\$5,187) into deposit account XXXX82. Respondent altered the deposit slip’s currency and total lines with white-out or other similar substance. Respondent wrote three thousand five hundred and twenty-three dollars (\$3,523) in both the currency and total lines. On June 19, 2018, Respondent credited only three thousand five hundred and twenty-three dollars (\$3,523), a difference of one thousand six hundred and sixty-four dollars (\$1,664).

(30) Respondent’s alterations of deposit slips in a single day ranged from a total of four hundred and thirty dollars (\$430) to eight thousand four hundred and forty-one dollars (\$8,441).

(31) Such out-of-balance deposits were well outside what Bank employees considered normal activity for the Businesses.

(32) The transaction stamp on each of the falsified cash-in tickets contained Respondent's teller number.

(33) At all relevant times, Respondent maintained a personal deposit account at another bank.

(34) From January 9, 2018, the date of the first known alteration, through June 2018, Respondent deposited \$157,510 in cash, in addition to his payroll deposits from the Bank, into his deposit account at this other bank.

(35) In sworn testimony before the OCC, Respondent asserted his Fifth Amendment right and refused to answer questions related to the source of this cash.

(36) During the 2017 calendar year, prior to the start of the misappropriation, Respondent's deposit account balance was generally less than \$2,000 and, at times, had a negative balance.

(37) At the time of his resignation at the end of June 2018, Respondent's deposit account balance had ballooned to more than one hundred thousand dollars (\$100,000).

(38) Between January 2018 and June 2018, Respondent made at least one cash deposit into his deposit account on ninety-four percent (94%) of the days on which deposit slips were altered.

(39) Respondent's actions caused the Bank to hire counsel and a private investigator to investigate the loss.

(40) The total confirmed loss associated with Respondent's misappropriation is at least one hundred forty-one thousand four hundred and seventy-one dollars (\$141,471).

(41) Between September 2018 and December 2019, the Bank reimbursed Business A one hundred and four thousand dollars (\$104,000), causing the Bank to suffer a loss of at least that amount.

ARTICLE IV

LEGAL BASES FOR REQUESTED RELIEF

(42) This Article repeats and realleges all previous Articles in this Notice.

(43) By reason of Respondent's misconduct as described in Article III, the OCC seeks a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices in connection with the Bank, breached his fiduciary duty, and violated the law, including 18 U.S.C. §§ 656, 1005, and 1344;

(b) By reason of Respondent's misconduct, the Bank suffered or was likely to suffer financial loss, Bank depositors were prejudiced, and Respondent received financial gain; and

(c) Respondent's misconduct involved personal dishonesty and demonstrated a willful or continuing disregard on his part for the safety or soundness of the Bank.

(44) By reason of Respondent's misconduct as described in Article III, the OCC seeks an Order for Restitution against Respondent pursuant to 12 U.S.C. § 1818(b)(6)(A) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices in connection with the Bank, and violated the law, including 18 U.S.C. §§ 656, 1005, and 1344; and

(b) Respondent's unsafe or unsound practices and violations involved reckless disregard for the law, and resulted in Respondent's unjust enrichment.

(45) By reason of Respondent's misconduct as described in Article III, the OCC assesses a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated the law, including 18 U.S.C. §§ 656, 1005, and 1344.

(46) By reason of Respondent's misconduct as described in Article III, the OCC assesses a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent recklessly engaged in unsafe or unsound practices in connection with the Bank, breached his fiduciary duty, and violated the law, including 18 U.S.C. §§ 656, 1005, and 1344;

(b) Respondent's practices, breaches, and violations were part of a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank, and resulted in pecuniary gain or other benefit to Respondent.

ANSWER AND OPPORTUNITY FOR HEARING

Respondent is directed to file a written Answer to this Notice within twenty (20) days from the date of service of this Notice in accordance with 12 C.F.R. § 19.19(a) and (b). The original and one copy of any Answer shall be filed with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite D8115A, Arlington, VA 22226-3500. Respondent is encouraged to file any Answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any Answer shall also be filed with the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219, hearingclerk@occ.treas.gov, and with the attorney whose name appears

on the accompanying certificate of service. **Failure to Answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the OCC's motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice to be as alleged, upon which an appropriate order may be issued.**

Respondent is also directed to file a written request for a hearing before the Comptroller, along with the written Answer, concerning the Civil Money Penalty assessment contained in this Notice within twenty (20) days after the date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. § 19.19(a) and (b). The original and one copy of any request shall be filed, along with the written Answer, with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite D8115A, Arlington, VA 22226-3500.

Respondent is encouraged to file any request electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any request, along with the written Answer, shall also be served on the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, hearingclerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment to constitute a final and unappealable order for a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i).**

PRAYER FOR RELIEF

The OCC prays for relief in the form of the issuance of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e), and an Order for a Civil Money Penalty Assessment in the amount of thirty-five thousand dollars (\$35,000) against Respondent pursuant to 12 U.S.C. § 1818(i).

Additionally, the OCC prays for relief in the form of the issuance of an Order requiring restitution pursuant to 12 U.S.C. § 1818(b) in the amount of one hundred forty-one thousand four hundred and seventy-one dollars (\$141,471) (“Restitution Amount”), of which one hundred and four thousand dollars (\$104,000) will be made payable to the Bank or its successor in interest, and thirty-seven thousand four hundred and seventy-one dollars (\$37,471) will be made payable to Business A. In the event that the Bank or its successor in interest provides additional reimbursement to the Businesses above the amount outlined in paragraph (41), the Order requiring restitution will instead direct payment as follows: to the Bank or its successor in interest for the total amount of reimbursement it provided to the Businesses, up to the Restitution Amount; and to Business A for the Restitution Amount less all reimbursement received by the Businesses from the Bank or its successor in interest.

Witness, my hand on behalf of the OCC, given at Washington, DC this 6th day of February, 2020.

/s/ Michael R. Brickman

Michael R. Brickman
Deputy Comptroller for Special Supervision