

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

In the Matter of)	
)	
BIAGIO MAFFETTONE,)	AA-EC-2020-38
Former Vice President and Home Mortgage Area Manager)	
)	
Citizens Bank, N.A.)	
Providence, Rhode Island)	
)	

**NOTICE OF CHARGES FOR PROHIBITION AND
NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY**

Take notice that on a date to be determined by the Administrative Law Judge, a hearing will commence in the District of Rhode Island, unless the parties agree to another place, pursuant to 12 U.S.C. § 1818(e) and (i), concerning the charges set forth herein to determine whether Orders should be issued against Biagio Maffettone (“Respondent”), a former Vice President and Home Mortgage Area Manager at Citizens Bank, N.A., Providence, Rhode Island (“Bank”), by the Office of the Comptroller of the Currency (“OCC”), prohibiting Respondent from participating in any manner in the conduct of the affairs of any federally insured depository institution or any other institution, credit union, agency or entity referred to in 12 U.S.C. § 1818(e), and requiring Respondent to pay a civil money penalty.

After taking into account the financial resources and any good faith of Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, as required by 12 U.S.C. § 1818(i)(2)(G), and after soliciting and giving full consideration to Respondent’s views, the Comptroller of the Currency (“Comptroller”) hereby assesses a civil money penalty in the amount of one hundred fifty thousand dollars (\$150,000)

against Respondent, pursuant to the provisions of 12 U.S.C. § 1818(i). This penalty is payable to the Treasurer of the United States.

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 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 a Vice President and Home Mortgage Area Manager for 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 is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A) and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*
- (4) 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 and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(e) and (i).

ARTICLE II

BACKGROUND

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

(6) Respondent was hired by the Bank as a Producing Sales Manager in approximately May 2015.

(7) The “producing” nature of his role meant he originated loans and received personal production commissions (“commissions”) on individual loans, similar to the loan officers he supervised.

(8) In approximately June 2017, Respondent was promoted to the role of Vice President and Home Mortgage Area Manager (“Area Manager”). He served as Area Manager until his resignation in October 2018.

(9) The Area Manager position was a supervisory, “non-producing” role, meaning that Respondent could no longer originate loans or receive commissions on individual loans after fully transitioning to the position.

(10) As Area Manager, Respondent was compensated with a base salary plus an “override” payment, which was a percentage of all loans originated by loan officers who reported up through him.

(11) Respondent was obligated to comply with all applicable laws and regulations and to otherwise carry out his duties and responsibilities in a safe and sound manner.

(12) Respondent owed fiduciary duties to the Bank.

(13) At all relevant times, the Bank’s Code of Business Conduct and Ethics prohibited kickbacks or similar payments as well as the use of Bank property, information, or position for personal gain.

ARTICLE III

RESPONDENT SOLICITED AND RECEIVED KICKBACKS FROM A SUBORDINATE

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

(15) From approximately September 2017 to October 2018, Respondent solicited and obtained a series of secret cash payments (“kickbacks”) from his subordinate, Loan Officer-1.¹

(16) As described herein, Respondent violated the law, including 18 U.S.C. § 215(a)(2) and 12 U.S.C. § 2607(a), engaged in unsafe or unsound practices, and breached his fiduciary duty by soliciting and receiving kickbacks from his subordinate.

Respondent Was on Notice That He Could No Longer Originate Loans as Area Manager

(17) The Area Manager position was a non-producing position.

(18) Respondent was on notice that the Area Manager position was a non-producing position.

(a) Respondent’s 2017 mid-year review stated that “[Respondent] is no longer in a producing role.”

(b) The 2017 compensation plan given to Respondent by the Bank was titled “2017 Home Mortgage Retail Sales Non-Producing Incentive Plan Grids.”

(c) On May 23, 2017, Respondent wrote a Senior Vice President at the Bank, “at what point do you suggest I stop originating loans in my name? My thought was to continue until the switch is turned on with HR, ...”

(d) On May 30, 2017, Respondent was instructed in writing by the same Senior Vice President that Respondent “can originate loans until taking the Area Manager Non-Producing position ...”

(19) As part of his transition to the Area Manager position, the Bank required Respondent to assign loans in his “pipeline,” loans on which he had been working but had not yet closed, to another loan officer.

¹ The names of individuals and entities described by aliases herein will be separately disclosed to Respondent.

(20) Respondent requested that the Bank pay him commissions on loans in his pipeline.

(21) The Bank agreed to a transition plan that would pay Respondent commissions on a specified list of loans in his pipeline as of a specified date, May 31, 2017.

(22) The transition plan called for the Bank to pay Respondent the full commission on pipeline loans that closed by June 16, 2017 and 75 percent of the commission on pipeline loans that closed after June 16, 2017. On the latter, the Bank paid the remaining 25 percent of the commission to the assigned loan officer.

(23) After the loans in Respondent's May 31, 2017 pipeline were completed, Respondent could no longer receive commissions from the Bank on individual loans.

(24) The transition plan did not allow Respondent to receive the Area Manager override payment on the same loans for which he received a commission.

(25) In approximately June 2017, Respondent assigned his loan pipeline to his subordinate, Loan Officer-1.

Respondent Solicited and Received Kickbacks from a Subordinate

(26) Prior to his promotion, as Producing Sales Manager, Respondent covered the Chappaqua and Katonah offices of Company-1 on behalf of the Bank.

(27) Company-1 was a large real estate firm and an important source of home loan referrals to the Bank.

(28) Loan Officer-1 and his junior loan officer, Junior Loan Officer-2, had long awaited an assignment to cover an office of Company-1.

(29) Incidental to Respondent's promotion to Area Manager, he relinquished his assignments to cover offices of Company-1.

(30) Respondent assigned Loan Officer-1 to cover Company-1's Chappaqua office and Junior Loan Officer-2 to cover the Katonah office.

(31) Respondent gave Loan Officer-1 and Junior Loan Officer-2 handwritten lists of real estate agents in Company-1's Chappaqua and Katonah offices, respectively, whom Respondent deemed to be part of his "book of business."

(32) Respondent told Junior Loan Officer-2 that he could not pursue loan referrals from any real estate agents on the Katonah list.

(33) Respondent told Loan Officer-1 that he would have to pay Respondent half of any commissions earned on any future loans referred by real estate agents on either list in exchange for the opportunity to close such loans.

(34) Respondent told Loan Officer-1 that if he did not agree to the arrangement, Respondent would consider going back to his role as Producing Sales Manager and keeping the Company-1 office coverage for himself.

(35) Loan Officer-1 reluctantly accepted the kickback arrangement based on, among other things, Respondent's assertion that it would be temporary.

(36) From time to time, Respondent informed Loan Officer-1 that loans referred by certain additional real estate agents were going to be subject to the kickback arrangement.

(37) Respondent also assigned Loan-Officer-1 to the Scarsdale office of Company-1.

(38) Respondent required Loan Officer-1 to pay him half of any commissions earned on loans referred by certain real estate agents in Company-1's Scarsdale office whom Respondent deemed to be part of his previous book of business.

(39) Some of the loans subject to the kickback arrangement were referred by Respondent to Loan Officer-1, while others were referred directly by Company-1 real estate agents to Loan Officer-1.

(40) Respondent did not disclose the arrangement with Loan Officer-1 to the Bank.

(41) Each month, Respondent directed Assistant-1 to find out which of Loan Officer-1's loans were referred by real estate agents at Company-1 or were otherwise related to Respondent's previous book of business.

(42) Respondent did not ask Assistant-1 to do this with respect to any other loan officers.

(43) Respondent held weekly meetings with Assistant-1 and Loan Officer-1 to learn the status of loans subject to the kickback arrangement.

(44) Approximately monthly, Respondent met privately with Loan Officer-1 to communicate the amount Loan Officer-1 was required to pay Respondent.

(45) Respondent calculated the amount Loan Officer-1 was required to pay on a paper and showed that paper to Loan Officer-1.

(46) Respondent insisted on secrecy and did not allow Loan Officer-1 to keep the paper on which the calculations were made.

(47) Respondent insisted the kickbacks be paid in cash.

(48) The kickback payments occurred approximately monthly and were typically paid in the Bank parking lot or otherwise outside of Bank premises.

(49) Respondent and Loan Officer-1 arranged some of the payment drop-offs through text messaging.

(50) At Respondent's request, one payment was dropped off by Loan Officer-1 at Respondent's personal residence.

(51) The kickbacks amounted to approximately half of Loan Officer-1's commissions on loans subject to the arrangement.

(52) The kickback payments occurred over the course of approximately 13 months, from September 2017 to October 2018.

(53) The kickback payments totaled approximately fifty thousand dollars (\$50,000).

(54) At the same time that Respondent was receiving kickback payments from Loan Officer-1, Respondent continued to receive Area Manager override payments from the Bank based on the volume of loans originated by Respondent's subordinates, including loans originated by Loan Officer-1.

The Bank's Investigation and Respondent's Resignation

(55) In or around early 2018, Respondent told Loan Officer-1 that he was displeased with his compensation from the Bank and informed Loan Officer-1 that the kickback arrangement would continue indefinitely.

(56) Subsequently, at different times in 2018, Loan Officer-1 informed two different supervisors at the Bank that he was required to make payments to Respondent.

(57) The Bank initiated an internal investigation into the conduct in or around October 2018.

(58) On or around October 17, 2018, Loan Officer-1 was directed to attend an interview with Bank investigators.

(59) When Respondent became aware of this, he called Loan Officer-1 and told him to "deny, deny, deny."

(60) On October 23, 2018, Respondent was informed in writing that he was “being directed to attend an investigatory review meeting” with a Bank investigator on October 25, 2018.

(61) At Respondent’s request, the investigatory review meeting was moved to October 26, 2018.

(62) On October 25, 2018, Respondent submitted an immediately effective resignation, and he never spoke with Bank investigators.

ARTICLE IV

LEGAL BASES FOR REQUESTED RELIEF

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

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

(a) Respondent violated the law, including 18 U.S.C. § 215(a)(2) and 12 U.S.C. § 2607(a), engaged or participated in unsafe or unsound practices, and breached his fiduciary duty;

(b) By reason of Respondent’s misconduct, he received financial gain or other benefit; and

(c) Such violation, practice, or breach involved personal dishonesty by Respondent and demonstrated a willful or continuing disregard for the safety or soundness of the Bank.

(65) By reason of Respondent’s misconduct as described in Article III, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C.

§ 1818(i)(2)(B) on the following grounds:

- (a) Respondent violated the law, including 18 U.S.C. § 215(a)(2) and 12 U.S.C. § 2607(a), and breached his fiduciary duty; and
- (b) Such violation or breach was part of a pattern of misconduct 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 VS-D8113, 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, Washington, D.C. 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 Comptroller'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 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 VS-D8113, 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 Comptroller prays for relief in the form of the issuance of an Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) and an Order of Civil Money Penalty Assessment in the amount of one hundred fifty thousand dollars (\$150,000) against Respondent pursuant to 12 U.S.C. § 1818(i).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, this 7th day of May 7, 2020.

//s// Digitally Signed, Date: 2020.05.07

Mark D. Richardson
Deputy Comptroller
Large Bank Supervision