

UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

ON CERTIFICATION OF THE DEPARTMENT)	
OF THE TREASURY--OFFICE OF THE)	
COMPTROLLER OF THE CURRENCY)	
)	
In the Matter of a Notice to)	
Prohibit Further Participation)	
Against KAYE G. HILL,)	DOCKET NO. OCC-AA-EC-00-24
)	
Former Employee,)	
BARNETT BANK, N.A.)	
JACKSONVILLE, FLORIDA)	

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act (FDI Act) in which the Office of the Comptroller of the Currency of the United States of America ("OCC") seeks to prohibit the Respondent, Kaye G. Hill ("Respondent"), from further participation in the affairs of any financial institution because of her conduct as an employee of Barnett Bank, N.A., Jacksonville, Florida (the Bank). Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition.

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision ("RD") of Administrative Law Judge Ann Z. Cook (the ALJ), and orders the issuance of the attached Order of Prohibition.

I. STATEMENT OF THE CASE

A. Statutory and Regulatory Framework

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges. 12 U.S.C. ' 1818(e)(4). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. Id.; 12 C.F.R. ' 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: 1) that the respondent engaged in identified misconduct, including a violation of law or regulation, an unsafe or unsound practice or a breach of fiduciary duty; 2) that the conduct had a specified effect, including financial loss to the institution or gain to the respondent; and 3) that the respondent's conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution. 12 U.S.C. ' 1818(e)(1)(A)-(C).

An enforcement proceeding is initiated by the filing of a notice of charges which is served on the respondent. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice. 12 C.F.R. ' ' 19.19(a) and 263.19(a). Failure to file an answer constitutes a waiver of the respondent's right to contest the allegations in the notice, and a final order may be entered unless good cause is shown for failure to file a timely answer. 12 C.F.R. ' ' 19.19(c)(1) and 263.19(c)(1).

B. Procedural History

On April 6, 2000, the OCC issued a Notice initiating an enforcement action that sought an order of prohibition due to Respondent's actions in taking \$5000 from two customer accounts at the Bank. The Notice directed Respondent to file an answer within 20 days, and warned that failure to do so would constitute a waiver of her right to appear and contest the allegations. The record shows that the Respondent received a copy of the Notice by certified mail. Nonetheless, Respondent failed to file an answer within the 20-day period. Consequently, on May 22, 2000, the ALJ issued an Order directing Respondent to show cause for her failure to file an answer. Respondent did not respond to the Order.

On November 30, 2000, the ALJ issued a Recommended Decision finding Respondent in default and adopting as her factual findings the allegations in the Notice. On the basis of those findings, the ALJ recommended that an order of prohibition be entered against the Respondent.

II. DISCUSSION

The OCC's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the Rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the Notice." 12 C.F.R. § 19.19(c). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file . . . a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to file a timely answer is deemed to be issued by consent. *Id.*

In this case, Respondent failed to file an answer despite notice to her of the consequences of such failure, and also failed to respond to the ALJ's Order to show cause. Respondent's failure to file an answer constitutes a default.

Respondent's default requires the Board to consider the allegations in the Notice as uncontested. The Notice alleges, and the Board finds, that Respondent made an unauthorized withdrawal of \$3000 from one customer account, and closed another, reopening it the same day with \$2000 less in the reopened account. This conduct meets all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It is a violation of law and an unsafe or unsound practice for a bank employee to embezzle customer funds. Respondent's actions caused gain to herself as well as loss to the Bank. Finally, Respondent's actions involved personal dishonesty in taking property not her own. The requirements for an order of prohibition having been met, the Board has determined that such an order will issue.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By Order of the Board of Governors, this ___ day of _____, 2000.

**BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM**

Jennifer J. Johnson
Secretary of the Board

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Jacksonville, Florida)	
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ORDER OF PROHIBITION

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "Act") (12 U.S.C. ' 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against KAYE G. HILL ("HILL"),

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (12 U.S.C. ' 1818(e)), that:

1. In the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the Act (12 U.S.C. ' 1818(e)(7)(B)), Hill is hereby prohibited:

(a) from participating in the conduct of the affairs of any bank holding company, any insured depository institution or any other institution specified in subsection 8(e)(7)(A) of the Act (12 U.S.C. ' 1818(e)(7)(A));

(b) from 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 subsection 8(e)(7)(A) of the Act (12 U.S.C. ' 1818(e)(7)(A));

(c) from violating any voting agreement previously approved by the appropriate Federal banking agency; or

(d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the Act, (12 U.S.C. ' 1813(u)), such as an officer, director, or employee.

2. This Order, and each provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

This Order shall become effective at the expiration of thirty days after service is made.

By Order of the Board of Governors, this ____ day of _____, 2000.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Jennifer J. Johnson
Secretary of the Board