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 MASSIMILIANO LOCCI, FORMER EMPLOYEE, ISTITUTO BANCARIO SAN PAOLO DI TORINO, NEW YORK, NEW YORK	DOCKET NO. AA-EC-97-01

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, Massimiliano Locci ("Locci") from further participation in the affairs of any financial institution because of his conduct as an employee of the Federal branch of Istituto Bancario San Paolo di Torino, New York, New York ("the Branch"). Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a Federal branch of a foreign 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 ALJ's Default and Recommended Decision ("Default Decision") and orders the issuance of the attached Order of Prohibition.

I. STATEMENT OF THE CASE

A. Statutory Framework

The OCC's regulations governing administrative hearings specify that if a respondent does not file an answer within 20 days of service of the notice, the respondent is deemed to have waived the right to appear and contest the allegations in the notice. 12 C.F.R. § 19.19(c)(1). Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting an administrative hearing on a notice of charges. Following the hearing, 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 a prohibition order sought by the OCC.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official an order of prohibition from further participation in banking. In order to issue such an order, the Board must make each of three findings: 1) that the respondent engaged in identified conduct, including 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; 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.

B. Procedural History

The record before the Board reflects the following short procedural history in the administrative proceeding regarding Locci.[1/]

On April 21, 1997, the OCC initiated a Notice of Removal, Notice of Assessment of Civil Money Penalty, and Notice of Charges ("Notice") against Locci. The Notice alleged that Locci engaged in unsafe and unsound banking practices and breached his fiduciary duty during his tenure as an employee of the Branch. The OCC alleged that Locci, who traded foreign currency options for the Branch, caused the Branch to sustain a loss of over $10 million in foreign exchange option trading in the Italian Lira over the period from January 18 through March 24, 1995. Over this period, Locci's trading exceed the Branch's written trading policy limits and ignored the Branch's warnings about market instabilities in foreign currency options. Locci attempted to hide his trading losses from the Branch by causing false entries to be made in the Branch's books that provided inaccurate information to the Branch about its foreign exchange option exposure and its income and loss. As a result, the Branch was unaware that it had sustained substantial trading losses. The

[1/] The record before the Board was certified by the ALJ to constitute the entire record relating to Locci. It consists of: the Notice issued by the OCC on April 21, 1997; OCC Enforcement Counsel's Motion for Entry of an Order of Default with supporting exhibits, dated June 11, 1997; the ALJ's Order to Show Cause, issued on July 11, 1997; and the ALJ's Default Decision, issued on August 15, 1997. Because the record contains no responsive pleadings or exceptions to the Default Decision, the facts set forth are uncontested.

OCC alleged that the conduct caused a financial loss to the Branch, and evidenced Locci's personal dishonesty and willful or continuing disregard for the Branch's safety or soundness.

The Notice expressly warned of the consequences of default by the Respondent. The Notice stated that Locci was required to file an answer to the charges within 20 days of the service of the Notice, and that failure to file an answer would constitute a waiver of his right to appear and contest the allegations in a hearing.

On April 23, 1997, the OCC send the Notice by Federal Express to Locci at two known addresses in Torino, Italy. Locci signed for the Notice on April 30, 1997. When he failed to respond, OCC Enforcement Counsel filed a Motion for Entry of An Order of Default with the ALJ on June 11, 1997. On July 11, 1997, the ALJ issued an order requiring that Locci respond to the OCC's Motion for Default by July 28, 1997, sending the order by Federal Express to Locci's known address in Torino, Italy. Locci did not respond to the order.

On August 15, 1997, the ALJ granted OCC Enforcement Counsel's Motion for Default, finding that Locci had failed to file a timely answer. Accordingly, the ALJ issued a Default Decision that incorporated the findings and relief set out in the Notice, including the order of prohibition sought by the OCC.[2/]

[2/] The ALJ also entered a default as to Locci in regard to the civil money penalty and restitution elements of the OCC's Notice. On November 13, 1997, the OCC adopted the ALJ's recommendation imposing a $50,000 civil money penalty, but (continued...)

II. DISCUSSION

The scope of the Board's review in a case where an uncontested finding of default has been made by an administrative law judge is limited to a determination that the record supports a finding of default and that the allegations in the notice support the relief sought. In the circumstances here under review, the Board finds that the allegations contained in the OCC's Notice meet the statutory criteria for the issuance of an order of prohibition. Locci's conduct alleged in the Notice breached his fiduciary duty to the Branch. He caused the Branch to sustain substantial losses through foreign exchange option trading in Italian Lira that exceeded the Branch's written trading policy limits and ignored the Branch's warnings about market instabilities in foreign currency options. Locci attempted to hide these trading losses from the Branch by causing false entries to be made in the Branch's books. This conduct demonstrated personal dishonesty, as well as a willful disregard for the safety or soundness of the Branch. Finally, the Branch lost over $10 million as a result of Locci's actions. Moreover, the Board finds that the OCC has established the basis for a default order of prohibition under the terms of the statute since Locci failed to respond either to the Notice or the Order to Show

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[2] (...continued)
remanded the matter for further proceedings regarding the recommendation that Locci pay $10,700,000 in restitution to the Branch.

Cause despite service reasonably calculated to give him notice of the action.

CONCLUSION

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

By Order of the Board of Governors, this 8th day of December, 1997.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

William W. Wiles

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Secretary of the Board

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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 MASSIMILIANO LOCCI ("Locci");

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)), Locci 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 8th day of December, 1997.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

William W. Wiles

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Secretary of the Board