

FEDERAL RESERVE press release



For immediate release

December 16, 1998

The Federal Reserve Board announced the issuance of a Final Decision and Order of Prohibition and Restitution against Ricardo Carrasco, former employee of the New York Branch of BankBoston International, Coral Gables, Florida. The Order prohibits Mr. Carrasco from participating in the conduct of the affairs of any financial institution or holding company and requires him to make restitution of \$73 million to reimburse BankBoston International for losses he caused in connection with certain overdraft accounts.

A copy of the Final Decision and Order is attached.

Attachments

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

_____)		
In the Matter of)	Docket Nos.	98-013-E-I
RICARDO CARRASCO)		98-013-B-I
)		
An Institution-Affiliated Party of)		
)		
BANKBOSTON INTERNATIONAL,)		
Coral Gables, Florida)		
_____)		

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act (“FDI Act”) stemming from the actions of respondent Ricardo Carrasco (“Respondent”) while an employee of the New York branch (the “Branch”) of BankBoston International, Coral Gables, Florida (“BBI”), an Edge corporation subject to the Board’s supervision under section 25(a) of the Federal Reserve Act, 12 U.S.C. 611 et seq. On May 13, 1998, the Board issued a Notice of Intent to Prohibit from Participation and a Notice of Charges and of Hearing in which it alleged that Respondent violated the law, breached his fiduciary duty, and engaged in unsafe or unsound banking practices in connection with certain overdraft accounts he opened in the name of a BBI customer, Oldemar Carlos Barriero (“Barriero”). Despite a number of efforts at service of the Notice, Respondent failed to file an answer. Accordingly, he has waived his right to appear and contest the allegations, and the Board has determined to issue the attached Order of Prohibition and Restitution.

I. STATEMENT OF THE CASE

A. Statutory and Regulatory Framework

The Board'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. § 263.19(c). The Board's regulations also identify how service of a notice must be made. Papers required to be served by the Board, including the initial notice, upon an individual who has not yet appeared in the proceeding must be served by (i) personal service; (ii) delivery to a person “of suitable age and discretion” at the respondent's residence or place of employment; (iii) registered or certified mail addressed to the person's last known address; or (iv) “any other method reasonably calculated to give actual notice.” 12 C.F.R. § 263.11(c)(2).

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 a violation of law or regulation, an unsafe or unsound banking 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).

The FDI Act also provides the substantive basis for a cease and desist order requiring restitution. Among other things, a cease and desist order may be entered if the Board finds that a respondent has engaged in an unsafe or unsound practice or has violated any law, rule, or

regulation. 12 U.S.C. § 1818(b)(1). The cease and desist order may require restitution if the respondent was unjustly enriched by the violation or practice, or if the violation or practice involved reckless disregard for the law or regulations. 12 U.S.C. § 1818(b)(6)(A).

B. Procedural History

As noted above, the Notice was issued by the Board on May 13, 1998. On May 21 and again on June 23, 1998, the Notice was mailed by first-class mail to Respondent's last known address. A copy of the Notice was also taped to the door of his apartment on June 22, 1998.

Respondent was a citizen of Uruguay and a fugitive from justice, having failed to respond to a criminal complaint and arrest warrant filed against him in the Southern District of New York. The Board therefore took additional steps to restrain dissipation of his property in the United States pending the outcome of this administrative proceeding. In May 1998 the Board filed an action in Federal district court pursuant to section 8(i)(4) of the FDI Act, 12 U.S.C. § 1818(i)(4), to obtain a preliminary injunction to prevent Respondent from withdrawing or transferring assets pending the outcome of the administrative action against him. As part of that suit, and pursuant to the direction of the district court judge, the Board published notice of a hearing in district court on the Board's motion for a temporary restraining order in the New York Times, the Wall Street Journal, the Miami Herald, and the Los Angeles Times. Respondent failed to appear at the hearing, and the district court entered a preliminary injunction restraining Respondent's use of his property on May 26, 1998.

On July 23, 1998, Board Enforcement Counsel filed a Motion for Default in this administrative action. The motion was sent by certified mail to Respondent's last known address. No opposition was filed. Subsequently, on September 8, 1998, the ALJ issued an Order to Show

Cause requiring Respondent to respond and provide good reason as to why he failed to file a timely answer to the Notice. That Order was sent to Respondent's last known address by registered mail, return receipt requested. No response was received.

On October 8, 1998, the ALJ granted Enforcement Counsel's Motion for Default, finding that Respondent had failed to file a timely answer and that no good cause had been shown. Accordingly, the ALJ issued a recommended decision that incorporated the findings and relief set out in the Notice, including the order of prohibition and the cease and desist order calling for restitution to BBI in the amount of \$73 million.

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 Notice meet the statutory criteria for the issuance of an order of prohibition and a cease and desist order including restitution. According to the Notice, Respondent opened at least 26 accounts for and in the name of Oldemar Carlos Barriero over a three-year period without preparing necessary documentation evidencing Barriero's relationship to and control over the accounts. During this period, Respondent caused the accounts to accumulate approximately \$73 million in overdrafts. BBI policy required all overdraft lines of credit to be fully secured, and Respondent obtained his supervisor's authorization for the overdrafts by falsely documenting that the overdraft lines were fully collateralized by liquid assets. The assets identified as security for the Barriero accounts were assets in the accounts of other Branch customers who had not given

Respondent authority to pledge those assets as collateral for the Barriero accounts. Respondent used the proceeds from the overdrafts for his own use, and BBI has not been able to collect any of the \$73 million in overdrafts.

Respondent's conduct alleged in the Notice constituted a violation of law, an unsafe or unsound banking practice, and a breach of Respondent's fiduciary duty. He put his interests before the Branch's and cause substantial and unreimbursed losses to the Branch by creating and using overdrafts in the Barriero accounts. He obtained approval for the overdraft accounts by submitting false documentation indicating that the overdrafts were secured by liquid assets. This conduct demonstrated personal dishonesty as well as a willful disregard for the safety or soundness of the Branch. In addition, his actions constituted violations of several criminal provisions, including misapplication of bank funds and making false entries in the books of a bank, and showed a reckless disregard for the law. Finally, the Branch lost \$73 million as a result of Respondent's actions, and Respondent was unjustly enriched by the use of the proceeds of the overdraft accounts.

Moreover, the Board finds that record establishes the basis for a default order under the terms of the statute because Respondent failed to respond either to the Notice or the Order to Show Cause despite service reasonably calculated to give him notice of the action. In addition to the copies of the Notice mailed to his last known address and taped to his apartment door, Respondent was also notified of the charges against him through the notices published in newspapers of wide circulation as required by the U.S. district court judge. While such extraordinary measures are by no means required to establish utilization of a “method reasonably

calculated to give actual notice,” 12 C.F.R. § 263.11(c)(2)(v), they are certainly sufficient to meet that standard.

CONCLUSION

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

By Order of the Board of Governors, this 16th day of December, 1998.

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

(signed)

Jennifer J. Johnson
Secretary of the Board

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

_____)	
In the Matter of)	
)	Docket Nos. 98-013-E-I
RICARDO CARRASCO)	98-013-B-I
)	
An Institution-Affiliated Party of)	Order of Prohibition and Order
)	of Restitution Issued Pursuant to
BANKBOSTON INTERNATIONAL,)	the Federal Deposit Insurance Act,
Coral Gables, Florida)	as Amended
_____)	

ORDER OF PROHIBITION AND RESTITUTION

WHEREAS, pursuant to sections 8(b) and 8(e) of the Federal Deposit Insurance Act, as amended, (the "Act")(12 U.S.C. §§ 1818(b) and (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 and Restitution should issue against RICARDO CARRASCO ("Carrasco");

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to sections 8(b) and 8(e) of the Federal Deposit Insurance Act, as amended (12 U.S.C. §§ 1818(b) and 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)), Carrasco is hereby prohibited:

(a) from participating in any manner in the conduct of the affairs of any institution or agency specified in subsection 8(e)(7)(A) of the Act (12 U.S.C. § 1818(e)(7)(A)),

including, but not limited to, any depository institution, any bank or savings association holding company, or any branch or agency of a foreign bank;

(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. (a) Carrasco shall make restitution in the amount of \$73 million to BBI;

(b) the restitution shall be remitted in full, payable to the “Board of Governors of the Federal Reserve System” and forwarded to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, who shall make remittance of the same to BBI.

3. Any violation of this Order shall separately subject Carrasco to appropriate criminal or civil penalties or both under section 8 of the Act (12 U.S.C. § 1818).

4. 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.

5. Pursuant to section 263.19(c) of the Board's Rules of Practice for Hearings, 12 C.F.R. § 263.19(c), this Order is deemed to be an order issued upon consent for purposes of sections 8(b)(2), (e)(4), and (h) of the Act (12 U.S.C. §§ 1818(b)(2), (e)(4), and (h)). The provisions of this Order are effective immediately.

By Order of the Board of Governors, this 16th day of December, 1998.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board