

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of:)	Adjudicatory Proceeding
)	
GREG L. DIAZ)	No.: AP 09-03
)	
Person Subject to Final Prohibition Order)	
Issued Pursuant to 12 U.S.C. § 1818(e))	Dated: December 28, 2009
And Former Institution-Affiliated Party of)	
Central Federal Savings & Loan Association))	
Cicero, Illinois)	
OTS Docket No. 01567)	

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES

I. PRELIMINARY STATEMENT

1. The Director of the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(i)(2), issues this Notice of Assessment of Civil Money Penalties (Notice). By issuing this Notice, the OTS commences administrative adjudicatory proceedings and assesses civil money penalties against Greg L. Diaz (Respondent), a person subject to a final and outstanding Order of Prohibition issued by the OTS pursuant to 12 U.S.C. § 1818(e) and a former institution affiliated party of Central Federal Savings & Loan Association, Cicero, Illinois, OTS Docket No. 01567 (Central).

2. The OTS charges that Respondent, while employed by the financial institution consulting firm Thomas Compliance Associates (TCA), engaged or participated in violations of law and a final order by participating in the conduct of the affairs of insured depository institutions after Respondent was subject to a final and outstanding Order of Prohibition, OTS

Order No. ATL-2004-08, dated March 4, 2004, (Prohibition Order) issued by the OTS pursuant to 12 U.S.C. § 1818(e), and after Respondent entered a guilty plea on August 29, 2005 to one count of Embezzlement (18 U.S.C. § 656) all in violation of Section 8(e) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(e), and Section 19 of the FDIA, 12 U.S.C. § 1829.

3. The OTS charges that grounds exist to assess civil money penalties against Respondent, pursuant to Section 8(i)(2)(A) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(i)(2)(A) for his violations of the OTS Prohibition Order, Section 8(e)(7)(C) of the FDIA, 12 U.S.C. § 1818(e)(7)(C), and Section 19 of the FDIA, 12 U.S.C. § 1829.

II. JURISDICTION

4. Until October 16, 2003, Respondent was an employee and institution affiliated party of a “savings association” within the meaning of 12 U.S.C. §§1462(4) and 1813(b).

5. Since March 4, 2004, Respondent has been a person subject to a final and effective Prohibition Order issued by the OTS pursuant to 12 U.S.C. § 1818(e).

6. From approximately January 5, 2004 through approximately July 31, 2008, Respondent was an employee of the financial institution consulting firm, Thomas Compliance Associates, Inc. (TCA), Chicago, Illinois and participated in the conduct of the affairs of insured savings associations as an institution affiliated party.

7. Pursuant to 12 U.S.C. § 1813(q)(4), the Director of the OTS is the “appropriate Federal banking agency” to initiate and maintain a civil money penalty proceeding against Respondent pursuant to 12 U.S.C. § 1818(i)(2) for violations of an Order it has issued pursuant to 12 U.S.C. § 1818(e).

8. Because Respondent at all relevant times to these charges has been an institution-affiliated party, he is subject to the authority of the OTS to initiate and maintain this

administrative proceeding against him pursuant to the provisions of Section 8 of the FDIA, 12 U.S.C. § 1818.

III. FACTUAL ALLEGATIONS AND CHARGES

9. On or about October 16, 2003, Central terminated Respondent for embezzling \$9,800 from a dormant Central customer account.

10. On March 4, 2004, the OTS issued a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) and a cease and desist order which required Respondent to make restitution to Central pursuant to 12 U.S.C. § 1818(b).

11. The Prohibition Order and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e), broadly prohibit Respondent from “participating in any manner in the conduct of the affairs of any insured depository institution without obtaining the prior written consent of the OTS or the appropriate Federal financial institution regulatory agency of the institution”.

12. On June 21, 2005, Respondent was indicted on federal criminal charges of embezzlement, theft, misapplication and bank fraud for embezzling funds from Central.

13. On August 29, 2005, Respondent entered a guilty plea to one count of Embezzlement, 18 U.S.C. § 656.

14. Respondent’s criminal conviction of Embezzlement described in Paragraph 13 subjects Respondent to prohibitions contained in Section 19 of the FDIA, 12 U.S.C. § 1829.

15. Section 19(a)(1) of the FDIA, 12 U.S.C. § 1829(a)(1)(A), prohibits anyone who is convicted of a criminal offense involving personal dishonesty from “participating directly or indirectly in the conduct of the affairs of any insured depository institution” without prior written consent of the Federal Deposit Insurance Corporation (FDIC).

16. Section 19(a)(2) of the FDIA, 12 U.S.C. § 1829(a)(2)(B), with regard to violations of 18 U.S.C. § 656, prohibits the FDIC from giving consent for at least ten (10) years, unless the court entering the conviction or plea grants an exception by order, and only on motion by FDIC.

17. At all times relevant, Respondent neither requested permission nor did the FDIC give Respondent written consent to allow Respondent to participate directly or indirectly in the affairs of an insured depository institution.

18. From approximately January 4, 2004 through approximately July 31, 2008, Respondent was an employee of the financial institution consulting firm TCA and participated in the conduct of the affairs of insured depository institutions.

19. While employed by TCA, Respondent conducted over 50 onsite lending and compliance audits or reviews in over 20 savings associations.

20. While employed by TCA, Respondent had access to confidential bank customer information, credit reports, loan files, and deposit and cash shipment records. Moreover, Respondent was allowed to and did take audit papers, which included confidential customer information, to his residence.

21. While employed by TCA, Respondent reviewed savings association documents and processes.

22. While employed by TCA, Respondent proffered advice and direction to management and staff of savings associations concerning their banking transactions and risk management procedures and policies. The procedures and policies included lending policies, electronic funds transaction, check kiting procedures, and procedures concerning TCA clients'

procedures for handling closed but not yet purged customer accounts, the same types of accounts from which Respondent embezzled funds at Central.

23. While employed by TCA, Respondent also conducted Bank Secrecy Act and Anti-Money Laundering (BSA/AML) independent testing and training for the savings associations' staff and assessed suspicious activity reporting by TCA's insured depository institution clients.

24. Pursuant to 12 C.F.R. § 563.177(c)(2), savings associations must conduct independent testing of compliance with its BSA/AML program. A savings association may choose whether to rely on in-house personnel or hire a third party, but regardless of the choice, it is the savings association's obligation to ensure that independent testing is performed and performed effectively.

25. Prior to his employment with TCA, Respondent never obtained the OTS' written consent to participate in the conduct of the affairs of insured depository institutions.

26. By virtue of Respondent's conduct described in Paragraphs 18 through 23, Respondent engaged in or participated in the conduct of the affairs of insured depository institutions. Therefore, Respondent was an IAP pursuant to Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

27. Section 8(e) of the FDIA, 12 U.S.C. § 1818(e) and the Prohibition Order require Respondent to obtain prior written permission of the OTS, the agency that issued the Prohibition Order, before acting as an IAP or participating "in any manner in the conduct of the affairs of insured depository institution" and other specified institutions and agencies.

28. Section 19 of the FDIA, 18 U.S.C. § 1829, requires anyone who is convicted of a criminal offense involving personal dishonesty, such as embezzlement (18 U.S.C. § 656), obtain

the FDIC's prior written permission before participating "directly or indirectly in the conduct of the affairs of any insured depository institution".

29. By virtue of, proffering both advice and direction to TCA's savings association clients concerning their banking transactions, risk management and compliance procedures and policies, Respondent continued his participation in the affairs of savings associations despite the final and outstanding Prohibition Order.

IV. STATUTORY CHARGES UNDER 12 U.S.C. § 1818(i)(2)

Assessment of Civil Money Penalties

Civil Money Penalties Assessed Against Respondent Under Section 8(i)(2)(A) of the FDIA Act, 12 U.S.C. § 1818(i)(2)(A) based on the Violations of the Prohibition Order and Violations of Sections 8 and 19 of the FDIA

30. Each of the foregoing paragraphs, specifically Paragraphs 18 through 26, are incorporated herein by this reference.

31. Civil money penalties can be assessed against an institution affiliated party pursuant to 12 U.S.C. § 1818(i)(2)(A) for any violation of law or any violation of a final order.

32. Therefore, civil money penalties are assessed against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) for violations of Section 8(e)(7)(C) of the FDIA, 12 U.S.C. § 1818 (e)(7)(C), for violation of a final order, and in violation of Section 19 of the FDIA, 12 U.S.C. § 1829, as alleged in the above Paragraphs.

Amount of Assessed Civil Penalties

33. Based on the foregoing, the grounds exist, pursuant to 12 U.S.C. § 1818(i)(2)(A), to assess civil money penalties against Respondent. After taking into account the size of Respondent's financial resources, good faith considerations, the gravity of the violations, the

history of previous violations, and such other matters as justice may require, the OTS hereby assesses a civil money penalty \$2,500 against Respondent.

V. CIVIL PENALTY PAYMENT DIRECTIONS AND PROCEDURAL MATTERS

34. It is hereby ordered that Respondent shall forfeit and pay the civil money penalties of \$2,500.

35. The civil money penalties set forth in this Notice are assessed by the OTS pursuant to Section 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2). Except as the OTS may otherwise order in writing, remittance of the payment of the penalties set forth herein shall be made by delivering to OTS Financial Operations at 1700 G Street, N.W., Washington, D.C. 20552, a cashier's check or official bank check in the amount of \$2,500 payable to the order of the Treasurer of the United States.

36. Notice is given, pursuant to Section 8(i)(2)(H) of the FDIA Act, 12 U.S.C. § 1818(i)(2)(H), that Respondent is afforded an opportunity for a formal hearing, if requested, concerning the above assessment of civil money penalties. A hearing will be held with respect to the assessment against Respondent, provided that within twenty (20) days after issuance and service of this Notice, Respondent files a written request for a hearing concerning the assessment. Any request for such a hearing must be filed with the Office of Financial Institution Adjudication (OFIA), 3501 North Fairfax Drive, Suite VS-D8116, Arlington, VA 22226, and with OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings (sandra.evans@ots.treas.gov), 1700 G Street, N.W., Washington, D.C. 20552, within 20 days after issuance and service of this Notice on Respondent. **Respondent is encouraged to file any request for a hearing electronically with OFIA at ofia@fdic.gov.** Respondent shall also serve a copy of any such request upon Susan L. Chomicz, Deputy Chief Counsel - Enforcement

(susan.chomicz@ots.treas.gov), and Margaret E. McPartlin, Senior Attorney - Enforcement (meg.mcpartlin@ots.treas.gov), OTS, 1700 G Street, N.W., Washington, D.C. 20552.

37. If Respondent fails to file a request for a hearing within the aforementioned twenty-day (20-day) period, the above assessment of civil money penalties in the amount of \$2,500 shall constitute a final and unappealable assessment order of the OTS against Respondent as provided by 12 U.S.C. § 1818(i)(2)(E). *See also* 12 C.F.R. § 509.19(c)(2). Any final and unappealable assessment order may be referred to the United States Department of Justice for collection against the subject of the assessment order.

VI. PROCEDURES GENERALLY

38. The OTS hereby appoints Administrative Law Judge C. Richard Miserendino (ALJ) of OFIA to preside over any hearing held regarding the subject of this Notice. Unless otherwise set by the ALJ or by agreement of the parties, any hearing, if requested, should commence sixty (60) days following service of this Notice. The exact time of day and any change in location would be announced at a later time by the ALJ. Any hearing, if requested, would be conducted before the ALJ in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557, as made applicable by 12 U.S.C. § 1818(h) and 12 C.F.R. Part 509.

39. Respondent is directed to file an Answer to this Notice within twenty (20) days of service. *See* 12 C.F.R. § 509.19. Section 509.10 of the OTS Adjudicatory Rules, 12 C.F.R. § 509.10, governs the filing of papers in this proceeding. Except as otherwise provided by that rule, any papers required to be filed shall be filed with OFIA, Attn: Honorable C. Richard Miserendino, ALJ, 3501 North Fairfax Drive, Suite VS-D8116, Arlington, VA 22226. The

requirements of the Answer and the consequences of failing to file an Answer are set forth at 12 C.F.R. § 509.19(c). **Respondent is encouraged to file any answer electronically with OFIA at ofia@fdic.gov.** Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations set forth in this Notice and shall, upon the OTS's motion cause the ALJ or OTS to find the facts in this Notice to be as alleged and to issue an Order of Assessment.

40. Respondent also shall serve a copy of each and every of its filings on the OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings (sandra.evans@ots.treas.gov), 1700 G Street, N.W., Washington, D.C. 20552, and on Susan L. Chomicz, Deputy Chief Counsel – Enforcement (susan.chomicz@ots.treas.gov), and Margaret E. McPartlin, Senior Attorney-Enforcement (meg.mcpartlin@ots.treas.gov), OTS, 1700 G Street, N.W., Washington, D.C. 20552.

41. Within twenty (20) days after service of this Notice, Respondent may file a written request for a private hearing. Section 509.33 of the OTS Adjudicatory Rules, 12 C.F.R. § 509.33, sets out the requirements for any such request and any replies thereto. The evidentiary hearing of this matter before the presiding ALJ will be open to the public, unless the Director of OTS, in his or her sole discretion, determines that an open hearing will be contrary to the public interest. *See* 12 U.S.C. § 1818(u)(2). The Director (or a duly authorized representative) will rule on any request filed under Section 509.33(a), and copies of any such request should be sent to the Director of OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings (sandra.evans@ots.treas.gov), OTS, 1700 G Street, N.W., Washington, D.C. 20552.

The OTS, by its Director (or his duly authorized designee), issues this Notice on this
28 day of December, 2009.

OFFICE OF THRIFT SUPERVISION

By: _____/s/_____

Name: Thomas A. Barnes

Title: Deputy Director Examinations, Supervision
and Consumer Protection

(Pursuant to delegated authority)