

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____ )	
In the Matter of )	NOTICE OF INTENTION TO
DONALD C. LANCASTER, individually and )	REMOVE FROM OFFICE AND
as an institution-affiliated party of )	PROHIBIT FROM FURTHER
UNION BANK & TRUST COMPANY )	PARTICIPATION, AND NOTICE OF
OXFORD, NORTH CAROLINA )	ASSESSMENT OF CIVIL MONEY
(INSURED STATE NONMEMBER BANK) )	PENALTY, FINDINGS OF FACT AND
_____ )	CONCLUSIONS OF LAW, ORDER
)	TO PAY, AND NOTICE OF HEARING
)	FDIC-16-0018e
)	FDIC-16-0117k
_____ )	

The Federal Deposit Insurance Corporation (“FDIC”) has determined that: DONALD C. LANCASTER (“Respondent”), as an institution-affiliated party of Union Bank & Trust Company, Oxford, North Carolina (“Bank”), has directly or indirectly participated or engaged in unsafe or unsound banking practices or acts, omissions, or practices which constitute breaches of his fiduciary duty as an officer of the Bank; that as a result of such misconduct, the Bank has suffered a loss by reason of such or practices or breaches of fiduciary duty; such practices or breaches of fiduciary duty demonstrate Respondent’s personal dishonesty or his willful or continuing disregard for the safety or soundness of the Bank; and Respondent’s reckless, unsafe or unsound practices or breaches of his fiduciary duty were part of a pattern of misconduct or caused more than a minimal loss to the Bank.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against Respondent under the provisions of section 8(e) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(e), prohibiting Respondent from

further participation in the conduct of the affairs of the Bank, and any other insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D); and determining whether an appropriate order should be issued against Respondent under the provisions of section 8(i) of the Act, 12 U.S.C. § 1818(i)(2) requiring him to pay a civil money penalty.

The FDIC hereby issues this:

NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION (“NOTICE TO PROHIBIT”), under section 8(e) of the Act, 12 U.S.C. § 1818(e), and NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING (“NOTICE OF ASSESSMENT”) under section 8(i) of the Act, 12 U.S.C. § 1818(i), and Part 308 of the FDIC’s Rules of Practice and Procedure (“FDIC Rules”), 12 C.F.R. Part 308.

The FDIC alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Preliminary Allegations

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of North Carolina, having its principal place of business at Oxford, North Carolina.

2. The Bank was, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831aa, the FDIC Rules, 12 C.F.R. Chapter III, and the laws of the State of North Carolina.

3. At all times pertinent to this proceeding, Respondent was Executive Vice President and Chief Banking Officer at the Bank

4. At all times pertinent to this proceeding, Respondent was an “institution-affiliated party” as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

5. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

B. Nominee Loan

6. On September 29, 2011, Respondent made a \$105,126 loan to Stephen Trubilla (“Trubilla”).

7. Respondent prepared a credit memorandum that stated that the loan was for short-term working capital and included a financial analysis of Trubilla’s financial capacity to repay the debt.

8. The loan was actually a loan that was all or partially for the benefit of the Mahoney Company, LLC (“Mahoney”), a company owned and operated by Mack Mahoney.

9. On September 29, 2011, the proceeds of the loan were disbursed as follows: \$120 were designated as fees; \$26,152.57 were used to pay off another Trubilla loan with the Bank; and \$78,847.43 were deposited into Trubilla’s account.

10. Immediately thereafter, Trubilla purchased a cashier’s check payable to Mahoney in the amount of \$52,007.43, which was deposited into Mahoney’s account.

11. On October 6, 2011, Respondent, without authority, provided Trubilla with an agreement to hold Trubilla harmless on the loan.

12. At least eleven payments on the loan were made by Mahoney.

13. Respondent renewed the loan seven times between April 2012 and May 2015.

14. On August 15, 2015, the loan became delinquent and the Bank contacted Trubilla.

15. Trubilla produced the hold harmless agreement that Respondent had given him.

16. As a result, on October 30, 2015, the Bank charged off as “Loss” the \$105,087 outstanding balance of the loan.

F. Grounds for Section 8(e) Prohibition Order

17. As a result of Respondent's foregoing acts, omissions, or practices, Respondent has engaged or participated in unsafe or unsound banking practices in connection with the Bank.

18. As a result of Respondent's foregoing acts, omissions, or practices, Respondent breached his fiduciary duty as Executive Vice President and Chief Banking Officer.

19. By reason of the practices or breaches as specified in paragraphs 6 through 16, the Bank has suffered a loss of \$105,087.

20. The acts, omissions, or practices of Respondent as set forth in paragraphs 6 through 16 evidence Respondent's personal dishonesty or demonstrate a willful or continuing disregard for the safety or soundness of the Bank.

D. Grounds for Section 8(i)(2) Second Tier Civil Money Penalty

21. As a result of the foregoing facts and conclusions, the FDIC concludes that Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

22. Further, as a result of the foregoing facts and conclusions, the FDIC concludes that Respondent breached his fiduciary duty to the Bank.

23. Further, as a result of the foregoing facts and conclusions, the FDIC concludes that Respondent's reckless, unsafe or unsound practices or breaches of fiduciary duty to the Bank

were part of a pattern of misconduct or caused more than a minimal loss to the Bank.

ORDER TO PAY

By reason of the reckless unsafe or unsound practices or breaches of fiduciary duty set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent under section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalties with respect to the size of financial resources and the good faith of Respondent, the gravity of the reckless, unsafe or unsound practices or breaches of fiduciary duty, and such other matters as justice may require, it is:

ORDERED, that by reason of the reckless unsafe or unsound practices or breaches of fiduciary duty set forth in paragraphs 6 through 16 above, a penalty of \$70,000 be, and hereby is, assessed against Respondent Donald C. Lancaster under section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2);

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to Respondent until 20 days after the date of receipt of the NOTICE OF ASSESSMENT by Respondent, during which time Respondent may file an answer and request a hearing under section 8(i)(2)(H) of the Act, 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of the FDIC Rules, 12 C.F.R. § 308.19.

**If Respondent fails to file a request for a hearing within 20 days from the date of receipt of this NOTICE OF ASSESSMENT, the penalty assessed against Respondent under this ORDER TO PAY will be *final and unappealable* and shall be paid within 60 days after the date of receipt of this NOTICE OF ASSESSMENT.**

## NOTICE OF HEARING

Notice is hereby given that a hearing will be held in Raleigh, North Carolina, and will commence 60 days from the date of service of the NOTICE TO PROHIBIT, or on such date and at such place as may be set by the Administrative Law Judge appointed to hear the matter.

The purpose of the hearing will be for the taking of evidence on the charges, findings, and conclusions specified in the NOTICE TO PROHIBIT and to determine whether a permanent order should be issued to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other appropriate federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. § 1818(e)(7)(D).

The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The hearing will be public, and in all respects will be conducted in compliance with the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedures Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308.

Respondent is directed to file an answer to this NOTICE TO PROHIBIT within 20 days from the date of service, as provided by section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

An original and one copy of the answer, request for hearing, and all other documents to be filed or served in this proceeding must be filed in writing with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, Virginia 22226-3500, under section 308.10 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Respondent is also encouraged to file any answer and request for hearing electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov).

Copies of all papers filed or served in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., Washington,

D.C. 20429-9990; A.T. Dill III, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429-9990; and Andrea Fulton Toliver, Regional Counsel, Atlanta Regional Office, Federal Deposit Insurance Corporation, 10 Tenth Street, N.E., Suite 800, Atlanta, Georgia 30309-3906.

Under delegated authority.

Dated this 15th day of December, 2016.

/s/ \_\_\_\_\_  
Patricia A. Colohan  
Associate Director  
Division of Risk Management Supervision