

**FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.**

In the Matter of:

**JOHN C. PONTE,**  
as an institution-affiliated party of

Independence Bank  
East Greenwich, Rhode Island  
(Insured State Nonmember Bank)

Docket Nos.:  
FDIC-22-0109e  
FDIC-22-0143b

**ORDER NO. 46: DENYING RESPONDENT PONTE’S MOTION FOR SANCTIONS  
AND OTHER RELIEF**

On August 14, 2024, Respondent John C. Ponte (“Respondent”) filed a Motion To Adjudge Federal Deposit Insurance Corporation In Contempt, For Imposition Of Sanctions & For Other Related Relief (“Motion”), contending that Enforcement Counsel for the Federal Deposit Insurance Corporation (“FDIC”) has violated a protective order entered in the above-captioned matter “by providing case specific information to a potential witness at trial herein” regarding an order under temporary seal, and asserting that the case against him should be dismissed or the witness precluded from testifying as a result.<sup>1</sup> On August 20, 2024, Enforcement Counsel filed a Response In Opposition To Respondent Ponte’s Motion To Adjudge Federal Deposit Insurance Corporation In Contempt, For Imposition Of Sanctions & For Other Related Relief (“Response”), arguing that the Motion should be denied because Respondent “has neither shown a violation of a prior order nor any other grounds for sanctions under 12 C.F.R. § 308.108.”<sup>2</sup> For the reasons below, the undersigned agrees with Enforcement Counsel.

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<sup>1</sup> Motion at 1.

<sup>2</sup> Response at 1.

## BACKGROUND

On April 4, 2023, Enforcement Counsel and Respondent (“Parties”)<sup>3</sup> filed a proposed protective order to be applied to materials produced during discovery.<sup>4</sup> Upon this request, the undersigned signed Order No. 12: Protective Order (“Order No. 12”) which provided that “all documents obtained from, produced by, or made available for inspection in th[e] proceeding by each of the Parties” were to be designated as “Confidential Documents” and not to be disclosed in any manner inconsistent with the terms of that Order.<sup>5</sup> Order No. 12 specified that it did not apply to filings in this action, “including pleadings, motions, briefs, exhibits, and attachments.”<sup>6</sup>

The following year, Danielle Desrosiers, originally a respondent in this case, entered into a Stipulation And Consent To The Issuance Of Prohibition From Further Participation (“Consent Agreement”) with the FDIC on February 6, 2024, thus settling that portion of this action and resolving the claims against her.<sup>7</sup> As part of the Consent Agreement, Ms. Desrosiers agreed to “cooperate fully and promptly with the FDIC, including providing information, truthful testimony, documents, records, and other tangible evidence, in connection with any administrative proceeding related to the subject matter of this Order.”<sup>8</sup>

On August 8, 2024, the undersigned granted in part and denied in part Enforcement Counsel’s motion for summary disposition on its claims that Respondent had “committed various forms of actionable misconduct, centering around the issuance of improper interim financing . . . and the charging of impermissible fees” related to his referrals of small business loan applicants

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<sup>3</sup> Robert S. Catanzaro and Danielle M. Desrosiers were also respondents at the time and had requested the protective order along with Respondent.

<sup>4</sup> Order No. 12: Protective Order (issued on April 5, 2023).

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> Response Exhibit A, Consent Agreement (Signed on February 6, 2024).

<sup>8</sup> *Id.* at 3.

to Independence Bank (“Order No. 41”).<sup>9</sup> Notably, although all orders and filings in enforcement actions before the Office of Financial Institution Adjudication (“OFIA”) are presumptively public, Order No. 41 was issued under a temporary seal because Respondent had failed to submit proposed public redacted versions of his exhibits, despite multiple email requests from this Tribunal.<sup>10</sup> The Parties were therefore directed to contact the undersigned’s Senior Attorney within seven days of the issuance of Order No. 41 to “give their position as to whether any portion of [the] order should remain under seal,” at which point the undersigned would issue a public version of the order.<sup>11</sup>

The same day that Order No. 41 was issued under temporary seal, FDIC Enforcement Counsel Kent Oz had a conference call with Ms. Desrosiers’ counsel in connection with her obligations under the Consent Agreement.<sup>12</sup> In a sworn declaration submitted with the Response, Mr. Oz states that he informed Ms. Desrosiers’ counsel during this call that Order No. 41 had granted partial summary disposition against Respondent, but avers that he provided no further information or details regarding the contents of the order.<sup>13</sup> There is no indication that Mr. Oz or anyone else ever provided Ms. Desrosiers’ counsel with a copy of Order No. 41, quoted any passages from it, or otherwise disclosed anything else about it (other than, as noted, its surface-level outcome) while it was under temporary seal.

Nevertheless, as a result of these events, Respondent moved for sanctions against Enforcement Counsel, alleging that Enforcement Counsel violated both Order No. 12 and Order No. 41’s seal when Mr. Oz “communicated with [Ms.] Desrosiers’ counsel . . . and intentionally

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<sup>9</sup> Order No. 41: Granting in Part and Denying in Part Enforcement Counsel’s Motion for Summary Disposition (issued on August 8, 2024) at 2.

<sup>10</sup> *See id.* at 7 n.22.

<sup>11</sup> *Id.* at 65. A public version of Order No. 41 was subsequently issued on August 16, 2024, with no redactions.

<sup>12</sup> Response Exhibit B, Declaration of Enforcement Counsel Kent Oz in Support of FDIC’s Response in Opposition to John C. Ponte’s Motion for Sanctions (signed on August 19, 2024) at 2 (“Oz Decl.”).

<sup>13</sup> *See id.*

disclosed what purported to be the substance of Order No. 41.”<sup>14</sup> Although he does not identify what, specifically, was ostensibly disclosed and offers no support for his allegation beyond two emails that are consistent with Mr. Oz’s declaration (see *infra*), Respondent asserts that this violation should result in one or all of the following sanctions: dismissal of the case, prohibiting Ms. Desrosiers from testifying at the upcoming hearing, and attorneys’ fees.<sup>15</sup> Enforcement Counsel contends in return that Order No. 12 does not apply to Order No. 41 and, even if it did, that no violation occurred because Mr. Oz did nothing other than inform Ms. Desrosiers’ counsel of the overall disposition of the summary disposition motion in broad terms.<sup>16</sup> For the same reason, Enforcement Counsel states that Mr. Oz’s communication with Ms. Desrosiers’ counsel did not violate Order No. 41’s temporary seal.<sup>17</sup>

## ANALYSIS

Under the FDIC’s Uniform Rules of Practice and Procedure that govern these proceedings, sanctions may be imposed when:

- (a) . . . any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act . . .
  - (2) Has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney’s fees, prejudicial delay, or otherwise;
  - (3) Is a clear and unexcused violation of an applicable statute, regulation, or order . . .<sup>18</sup>

If appropriate, the administrative law judge may impose sanctions such as “[r]ejecting or striking any testimony,” “[a]ssessing reasonable expenses, including attorney’s fees,” or even dismissal of

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<sup>14</sup> Motion at 3.

<sup>15</sup> *See id.* at 6.

<sup>16</sup> *See* Response at 4-5.

<sup>17</sup> *See id.* at 4.

<sup>18</sup> 12 C.F.R. § 308.108(a).

the case.<sup>19</sup> Respondent claims these sanctions are appropriate not only for Enforcement Counsel's purported order violations, but also because the disclosure of Order No. 41's "substance" to Ms. Desrosiers' counsel would somehow bolster Ms. Desrosiers' future testimony against Respondent, thereby prejudicing him.<sup>20</sup>

Despite Respondent's assertions, the undersigned finds nothing to indicate that sanctions are warranted. *First*, and importantly, Order No. 12 does not apply to orders issued by this Tribunal. The language of Order No. 12 established that it was meant to protect the Parties' documents produced *during discovery*, not filings or orders generally.<sup>21</sup> Therefore, disclosing the contents of Order No. 41, even when sealed, would not violate Order No. 12. *Second*, Respondent offers no evidence that even suggests that Enforcement Counsel disclosed any contents of Order No. 41 to Ms. Desrosiers or her counsel, as distinct from merely the surface result, while that order was temporarily sealed. Respondent provides only two emails as exhibits in support of his Motion. The first simply shows that Ms. Desrosiers' counsel informed her that "the ALJ granted partial summary disposition against Ponte."<sup>22</sup> The second email was sent from Ms. Desrosiers' counsel detailing the topics that Enforcement Counsel wanted to ask about in preparation for the hearing.<sup>23</sup> None of this demonstrates any violation of Order No. 41's seal, let alone the "clear and unexcused violation" required by § 308.108(a). *Third*, because Respondent's prejudice claim hinges on the existence of an order violation, the undersigned finds that Respondent has not been prejudiced by Mr. Oz's communications with Ms. Desrosiers' counsel. *Finally*, even if Enforcement Counsel

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<sup>19</sup> *Id.* § 308.108(b), (c).

<sup>20</sup> Motion at 3-4. The undersigned notes that notwithstanding Respondent's apparent belief that Ms. Desrosiers "has already 'told her story' under oath, and presumptively has nothing to add," *id.* at 4, he has signaled his intention to call her as a witness himself at the upcoming hearing and indicates that his direct examination of her "will last for six hours." September 11, 2024 Joint Witness List at 8.

<sup>21</sup> *See* Order No. 12 at 1-2.

<sup>22</sup> Motion Exhibit 1, FDIC Case follow up email (sent on August 12, 2024).

<sup>23</sup> Motion Exhibit 2, Topics the FDIC would like to discuss email (sent on April 10, 2024).

had violated Order No. 41’s temporary seal in the manner asserted by Respondent, the remedies he seeks are disproportionate. Dismissing the entire case or precluding the testimony of a witness based on the alleged disclosure of information that was never confidential, that was only sealed temporarily because of Respondent’s own failure to abide by the directions of this Tribunal, and that Respondent originally stated should be considered public<sup>24</sup> would be excessive. After all, proportionality is key to the imposition of sanctions.<sup>25</sup> Thus, Respondent’s Motion is denied.

**SO ORDERED.**



Issued: September 13, 2024

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Jennifer Whang, Administrative Law Judge  
Office of Financial Institution Adjudication

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<sup>24</sup> See Response at 4 (noting that “Respondent’s position is even more absurd given that he initially supported release of the temporary seal”); see also Respondent John C. Ponte’s Motion for Interlocutory Review of Order No. 41 by the Federal Deposit Insurance Corporation’s Board of Directors (submitted on August 8, 2024) at 2 n.2 (stating that “Order No. 41 is currently ‘under temporary seal.’ That said, *Ponte has no objection to the same being public.*”) (emphasis added).

<sup>25</sup> See, e.g., *Goya Foods v. Wallack Management*, 344 F.3d 16, 20 (1st Cir. 2003) (noting that sanctions should be “reasonably proportionate to the offending conduct”); see also *In the Matter of First Bank of Jacksonville*, No. 96-155b, 1998 WL 363852, at \*13 (May 26, 1998) (FDIC final decision and order) (finding the ALJ’s sanctions appropriate given the respondent’s unexcused failure to timely comply with the ALJ’s orders and FDIC regulations).

**CERTIFICATE OF SERVICE**

On September 13, 2024, I served a copy of the foregoing **Order** upon the following individuals via email:

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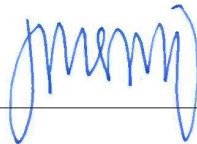
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