

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

In the Matter of:

MARTIN FERNANDEZ, JR.,
an institution-affiliated party of

International Bank of Commerce
Laredo, Texas

(Insured State Nonmember Bank)

Docket No.:
FDIC-23-0118e

**ORDER NO 2: ORDER OF DEFAULT AND RECOMMENDED DECISION FOR PROHIBITION FROM
FURTHER ACTIVITIES**

This matter arises under a Motion for Entry of an Order of Default (Default Motion) pursuant to 12 C.F.R. § 308.19(c)(1)-(2) (2024)¹ filed by Federal Deposit Insurance Corporation (FDIC) Enforcement Counsel (EC) for the failure of respondent, Martin Fernandez, Jr., to file a timely answer to the Notice of Charges (NOC). From July 19, 2019 to August 13, 2021, Martin Fernandez, Jr., an international sales representative and an institution affiliated party (IAP) with International Bank of Commerce in Laredo, Texas, made multiple unauthorized transfers from two customer bank accounts to those of three individuals associated with him.² Fernandez's unauthorized transfers totaled \$123,563.³ Having been properly served at his home address, Fernandez failed to file a timely answer to the NOC.

For the reasons set forth below, the Default Motion is **GRANTED** and the Administrative Law Judge (ALJ) recommends that the Board of Directors of the FDIC enter an order of prohibition from future activities against the respondent, Martin Fernandez, Jr.

I. Martin Fernandez, Jr. has not demonstrated good cause for failure to file an answer.

The Uniform Rules of Practice and Procedure provide that, by failing to file a timely answer without good cause to the allegations in the notice of charges, a respondent waives the right to appear and contest those allegations.⁴ The record shows that on July 11, 2024, EC served Martin Fernandez, Jr. the NOC at his home address through Veritext Legal Solutions.⁵ To date, Fernandez has not filed an answer to the NOC. The ALJ finds that Martin Fernandez, Jr.

¹ EC filed the NOC with the Office of Financial Institution (OFIA) on June 24, 2024. New Uniform Rules of Practice and Procedure (Uniform Rules) for OFIA proceedings went into effect on April 1, 2024. 88 FR 89820, 89820-89821 (Dec. 28, 2023). Accordingly, this proceeding is governed by the new Uniform Rules.

² As a result of respondent's failure to file an answer in these proceedings, all allegations in the NOC are taken as true. 12 CFR § 308.19(c)(1) (2024).

³ NOC at 3.

⁴ 12 CFR § 308.19(c)(1) (2024).

⁵ Motion for Entry of Default, Exhibit A.

has failed to file a timely answer to the NOC pursuant to 12 C.F.R. § 19.19(a), and has not demonstrated good cause for not doing so. Accordingly, Martin Fernandez, Jr. waives his right to appear and contest the allegations in the NOC.

II. The FDIC has jurisdiction over Martin Fernandez, Jr.

The FDIC's jurisdiction is uncontested by default. International Bank of Commerce is a Texas corporation with its principal place of business in Laredo, Texas. International Bank of Commerce is an insured state nonmember bank.⁶ Martin Fernandez, Jr., as an employee of International Bank of Commerce until his resignation on August 13, 2021, is an IAP.⁷ Accordingly, the FDIC has jurisdiction over this matter.

III. Uncontested Findings of Fact

By failing to file an answer, Martin Fernandez, Jr. does not contest the allegations in the NOC. On July 19, 2019, a day after assisting an International Bank of Commerce customer with opening an account and making a transfer, Fernandez commenced a series of unauthorized transfers from customers' accounts to those of people associated with him. The first unauthorized transfer from the initial customer's account was for \$3,000.⁸ Up to March 31, 2020, Fernandez made more transfers from that customer's account to the accounts of two of Fernandez's associates.⁹ In July 2020, Fernandez began making unauthorized transfers from the account of a second customer of International Bank of Commerce.¹⁰ From then until August 13, 2021, Fernandez made multiple unauthorized transfers from both customers' accounts to that of a third person associated with Fernandez.¹¹ In total, International Bank of Commerce reimbursed its customers \$123,563 taken without their permission by Martin Fernandez, Jr.¹² For his part, on October 19, 2023, Fernandez pled guilty to theft under Texas law.¹³

IV. The misconduct merits an order of prohibition.

EC alleges that Martin Fernandez, Jr., an IAP, violated laws and engaged in unsafe and unsound banking practices that led to a \$123,563 loss to International Bank of Commerce and a gain to himself in the same amount. Because of Fernandez's misconduct, the NOC requests an order of prohibition from future activities in the banking industry. To obtain a prohibition from future activities, EC must prove the IAP's conduct satisfies the distinct elements of (1) misconduct, (2) effects, and (3) culpability.¹⁴ EC may demonstrate IAP misconduct by showing that the IAP has:

⁶ 12 U.S.C. §§ 1811-1831aa, 12 C.F.R. Chapter III (2024), and the laws of the State of North Carolina.

⁷ 12 U.S.C. § 1813(u) and for purposes of 12 U.S.C. §§ 1818(e)(7), 1818(i), and 1818(j).

⁸ NOC at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ 12 U.S.C. § 1818(e).

- “directly or indirectly violated any law or regulation [or] any cease-and-desist order which has become final,”
- “engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution,” *or*
- “committed or engaged in any act, omission, or practice which constitutes a breach of such party’s fiduciary duty.”¹⁵

EC may prove the effect of the IAP’s misconduct by demonstrating that either (1) the financial institution “suffered or probably will suffer financial loss or other damage,” (2) that depositors’ interests “have been or could be prejudiced,” *or* (3) that the IAP “received financial gain or other benefit.”¹⁶ Finally, culpability is demonstrated when the IAP’s misconduct either “involves personal dishonesty” *or* “demonstrates willful or continuing disregard . . . for the safety or soundness of [the] insured depository institution.”¹⁷

The uncontested facts in the NOC demonstrate that Martin Fernandez, Jr.’s actions constitute misconduct under multiple prongs of 12 U.S.C. § 1818(e)(1). First, Fernandez violated a law as demonstrated by his plea of guilty to theft under Texas law.¹⁸ Next, Martin Fernandez, Jr. engaged in unsafe and unsound practices that directly led to a \$123,563 loss to the bank and a corresponding pecuniary gain to himself. An “unsafe or unsound practice” is “any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds.”¹⁹ His misconduct constitutes unsafe and unsound practices by transferring funds from customers’ accounts without permission to those of three of his associates.

Fernandez’s misconduct affected International Bank of Commerce because the bank suffered a loss of \$123,563 from reimbursing its account holders, thus satisfying the effect element of 12 U.S.C. § 1818(e)(2). The two customers whose accounts were at issue also suffered direct prejudice through the unauthorized withdrawals from their bank accounts notwithstanding the bank’s reimbursement. Finally, Martin Fernandez, Jr. demonstrated culpability in the form of personal dishonesty under 12 U.S.C. § 1818(e)(3) through his admission to theft in Texas district court.²⁰ Accordingly, the statutory requirements for an order of prohibition against Martin Fernandez, Jr. are satisfied.

¹⁵ 12 U.S.C. § 1818(e)(1)(A).

¹⁶ *Id.* at § 1818(e)(1)(B).

¹⁷ *Id.* at § 1818(e)(1)(C).

¹⁸ NOC at 6.

¹⁹ In the Matter of Patrick Adams, No. AA-EC-11-50, 2014 WL 8735096, at *3 (Sept. 30, 2014) (OCC final decision) *quoting* Financial Institutions Supervisory Act of 1966: Hearings on S. 3158 Before the House Comm. on Banking and Currency, 89th Cong., 2d Sess. 49 (1966) (statement of John H. Horne, Chairman of the FHLBB), 112 Cong. Rec. 26,474 (1966) (“Horne memorandum”).

²⁰ NOC at 6.

V. Conclusion and Recommended Remedies

For the foregoing reasons, the ALJ recommends that the Board of Directors of the FDIC enter an order of prohibition from future activities against the respondent, Martin Fernandez, Jr.

SO ORDERED.

Issued: September 18, 2024



C. Scott Maravilla
Administrative Law Judge
Office of Financial Institution Adjudication

CERTIFICATE OF SERVICE

On September 18, 2024, I served a copy of the foregoing **Order** upon the following individuals via email:

Administrative Officer
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
ESSenforcementactiondocket@fdic.gov

Enforcement Counsel:

Seth P. Rosebrock, Asst. General Counsel
(srosebrock@fdic.gov)
Sam Ozeck, Supervisory Counsel
(sozeck@fdic.gov)
Frank C. Salamone, Senior Counsel
(fsalamone@fdic.gov)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Dean T. DeCandia, Senior Attorney
(ddecandia@fdic.gov)
Stephen C. Zachary, Regional Counsel
(szachary@fdic.gov)
Federal Deposit Insurance Corporation
600 North Pearl Street, Suite 700
Dallas, Texas 75201

and via Certified Mail to:

Respondent

Martin Fernandez, Jr.
4902 Marcella Avenue, Apt 9
Laredo, TX 78041-6313



Jason Cohen, Esq.
Office of Financial Institution Adjudication
3501 N. Fairfax Drive, Room D-8111
Arlington, VA 22226-3500
jcohen@fdic.gov, (571) 216-5308