

**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. 50: DENYING RESPONDENT’S EMERGENCY MOTION FOR
STAY OF ADMINISTRATIVE PROCEEDING**

On October 7, 2024, Respondent John C. Ponte (“Respondent”) moved for an emergency stay of the above-captioned proceedings (“Emergency Motion”) in advance of the hearing set to be held in this case from October 15-25, 2024 in Providence, Rhode Island.¹ Respondent argues that the matter should be stayed to allow motions practice to be resolved in the district court action that Respondent filed in August of 2024 as a collateral attack on these proceedings.

Under the Uniform Rules of Practice and Procedure that govern adjudicatory enforcement proceedings before this Tribunal, such proceedings “will continue without regard to the pendency of” collateral attacks brought in any other court.² As Respondent is also aware, 12 U.S.C. § 1818(i) explicitly divests federal district courts of “jurisdiction to affect by injunction or otherwise” any

¹ Along with the Emergency Motion, Respondent filed a motion to shorten Enforcement Counsel’s time for response, which the undersigned denied on October 7, 2024 (*see* Order No. 48) because it failed to comply with the undersigned’s ground rules. *See* Order No. 5 “Issuance of Ground Rules” (March 21, 2023), Rule 4.1. Respondent then filed an Amended Emergency Motion on October 8, 2024 to note, in compliance with the undersigned’s ground rules, Enforcement Counsel’s opposition to the requested relief. *See* Amended Emergency Motion at 1, 5. Enforcement Counsel then filed its opposition on October 10, 2024.

² 12 C.F.R. § 308.17 (“If an interlocutory appeal or collateral attack is brought in any court concerning all or part of an adjudicatory proceeding, the challenged adjudicatory proceeding will continue without regard to the pendency of that court proceeding.”).

proceedings before this Tribunal.³ Moreover, any “emergency” in the nature of the instant Motion is of Respondent’s own making, as the district court motions practice to which Respondent refers has been ripe for a matter of weeks.⁴ Respondent could have raised this issue at any time since the commencement of that action, including during the telephonic prehearing conference held in these proceedings on September 19, 2024, but failed to do so, and the undersigned will not countenance such an eleventh-hour attempt to derail a long-scheduled hearing on the merits of the claims being asserted against Respondent—particularly when, as noted, Respondent offers no valid basis for doing so under the Uniform Rules.⁵ Accordingly, the Emergency Motion is DENIED.

SO ORDERED.



Issued: October 10, 2024

Jennifer Whang, Administrative Law Judge
Office of Financial Institution Adjudication

³ 12 U.S.C. § 1818(i)(1); *see also, e.g., Axon Enter., Inc. v. FTC*, 598 U.S. 175, 208 (2023) (Gorsuch, J. concurring) (stating that “statutes clearly defining the jurisdiction of the courts must control” and giving Section 1818(i) as example of explicit jurisdiction-stripping) (internal quotation marks and citation omitted); *Ponte v. FDIC*, 673 F. Supp. 3d 145, 150 (D.R.I. 2023) (holding that Section 1818(i) expressly divests district courts of jurisdiction to consider Respondent Ponte’s claim that he is not an institution-affiliated party of Independence Bank and for other declaratory and injunctive relief in the face of FDIC administrative enforcement proceedings); *Ponte v. FDIC*, No. 23-cv-165, 2023 WL 6441976, at *2 (D.R.I. Oct. 3, 2023) (holding that the Supreme Court’s *Axon* decision does not change this result, even if Respondent Ponte is asserting structural constitutional claims, because “Congress . . . was explicit [in Section 1818(i)] that district courts are not to ‘affect’ FDIC enforcement proceedings”).

⁴ *See Ponte v. FDIC*, No. 24-cv-2379 (D.D.C.), Dkt Nos. 13 (Plaintiff’s Reply Memorandum to Defendants’ Opposition to His Motion for a Temporary Restraining Order) (Aug. 30, 2024) & 15 (Federal Deposit Insurance Corporation’s Reply in Support of Motion to Dismiss) (Sep. 13, 2024).

⁵ On October 10, 2024, Respondent filed a letter with this Tribunal reiterating that a petition for injunctive relief was pending before the federal district court and stating that he “is beyond reluctant to participate in any hearing absent a decision in the Federal Action.” October 10, 2024 Letter at 2. The undersigned would like to make it clear to Respondent that the hearing will begin as scheduled on October 15, 2024 with or without Respondent’s participation, given the need for Enforcement Counsel to make an affirmative evidentiary showing regarding the disputed material facts and other issues identified in this Tribunal’s Order No. 41 that presently preclude disposition of the case in either party’s favor. All Respondent will be doing by not participating is depriving himself of the opportunity to cross examine witnesses at the hearing and otherwise present his case. *See* 12 C.F.R. § 308.35(a)(1). If Respondent decides that he does not want to avail himself of that opportunity, the hearing will proceed without him. Further, Respondent will be required to testify when called by Enforcement Counsel whether or not he chooses to otherwise participate, pursuant to 12 U.S.C. § 1818(n), 12 C.F.R. §§ 308(b)(5) & 308.32, and the September 23, 2024 hearing subpoena that has been issued to him.

CERTIFICATE OF SERVICE

On October 10, 2024, I served a copy of the foregoing **Order** upon the following individuals via email:

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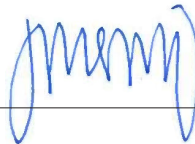
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