

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

In the Matter of:

DERRICK ALAN SMITH,
an institution-affiliated party of

Branch Banking and Trust Company n.k.a.
Truist Bank
Charlotte, North Carolina

(Insured State Nonmember Bank)

Docket Nos.:
FDIC-23-0007e
FDIC-23-0096b
FDIC-23-0095k

**ORDER NO 2: ORDER OF DEFAULT AND RECOMMENDED DECISION FOR PROHIBITION FROM
FURTHER ACTIVITIES, RESTITUTION, AND ASSESSMENT OF CIVIL MONETARY PENALTY**

This order 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) filed on March 6, 2025 by Federal Deposit Insurance Corporation (FDIC) Enforcement Counsel (EC) following the failure of respondent, Derrick Alan Smith, to file a timely answer to the Notice of Charges (NOC).¹ Derrick Smith, a community branch banker at Branch Banking and Trust Company n.k.a. Truist Bank and an institution affiliated party (IAP), admitted to a bank investigator to forging counter checks withdrawing substantial sums from customers' accounts, including the accounts of two elderly bank customers in their 90s. EC seeks a prohibition against Smith from further participation in banking activities, an order of restitution for \$24,315.00, and a civil monetary penalty of \$35,000. Notwithstanding being served at four known addresses of residence by certified mail, Smith failed to file a timely answer to the NOC or a response to the Default Motion.

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 banking activities, an order of restitution in the amount of \$24,315.00, and the assessment of a \$35,000 civil monetary penalty against the respondent, Derrick Alan Smith.

I. Derrick Smith 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.² The record shows that on April 22, 2024, EC served Derrick Alan Smith the Notice of Charges by certified mail at no less than *four* known

¹ EC filed the NOC with the Office of Financial Institution Adjudication (OFIA) on April 23, 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 12 CFR § 308.19(c)(1) (2025).

addresses.³ The NOC stated that, under the applicable rules, Smith was required to file an answer within 20 days of being served if he wished to contest the allegations against him. To date, Derrick Smith has not filed an answer to the Notice of Charges.⁴ The ALJ finds that Derrick Smith 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, Smith waives his right to appear and contest the allegations in the NOC.

II. The FDIC has jurisdiction over Derrick Smith

The FDIC's jurisdiction is uncontested. Branch Banking and Trust Company n.k.a. Truist Bank, Charlotte, North Carolina (Truist Bank) is a North Carolina corporation with its principal place of business in Winston-Salem. Truist Bank is an insured state nonmember bank.⁵ Derrick Smith, as a former employee of Truist Bank, is an IAP.⁶ Accordingly, the FDIC has jurisdiction over this matter.

III. Uncontested Factual Findings

Derrick Smith does not contest the allegations in the NOC that, from April 23 to October 7, 2019, he forged counter checks to withdraw money from the accounts of four customers without their knowledge. On September 10, 2019, Truist Bank initiated an investigation of Customer 1's account after he reported a September 9, 2019 unauthorized withdrawal from his account in the amount of \$3,100.⁷ The withdrawal was made using a counter check. Surveillance video showed that Derrick Smith cashed the counter check at issue.⁸ On October 8, 2019, an investigator with Truist Bank interviewed Smith, at which time he admitted to processing, without consent, the counter check for Customer 1's account. Smith also admitted to processing three more counter checks for Customer 1's account (\$1,300 on July 5, \$1,400 on July 19, and \$2,900 on August 26), bringing the total unauthorized withdrawal to \$8,700.⁹

Smith's admissions to making unauthorized withdrawals from customer accounts did not end there. Smith further admitted to forging counter checks to withdraw money from the accounts of three more customers.¹⁰ From April 23 to October 7, 2019, he used 10 counter checks to withdraw money from Customer 2's account (\$1,865.15 on April 23, \$900 on May 23, \$1,500 on May 29, \$1,500 on June 6, \$800 on June 18, \$850 on July 5, \$600 on July 19, \$1,300 on August 26, \$800 on September 20, and \$500 on October 7).¹¹ On October 1, 2019, he processed a counter check for an unauthorized withdrawal of \$4,500 from Customer 3's account.¹²

³ NOC Certificate of Service, *see also* Default Motion, Exhibit A, *Affidavit of Sloane Y. Mills*, dated March 5, 2025.

⁴ As with the NOC, Smith was served a Notice of Designation and Preliminary Order in these proceedings at *four* known addresses. *See* Order No. 1: Notice of Designation and Preliminary Order, dated April 24, 2024.

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

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

⁷ NOC at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.*

And during an October 11, 2019 interview with a Truist Bank investigator, Smith admitted that on June 10 that year, he processed a counter check for \$500 from Customer 4's account without consent.¹³ Thus, Derrick Smith admitted to Truist Bank to altogether 16 unauthorized withdrawals from four accounts (two of which were joint accounts) affecting six individuals, five of whom were seniors (three in their 60s and two in their 90s).¹⁴ Based on the results of the investigation, Truist Bank terminated Derrick Smith on October 8, 2019.¹⁵ Smith subsequently pled guilty on October 14, 2021 to three counts of misdemeanor forgery under South Carolina law.¹⁶ Truist Bank reimbursed its customers in total \$24,315.15, leading to a loss to the bank and a gain to Derrick Smith in that amount.¹⁷

IV. The misconduct merits an order of prohibition.

EC alleges that Derrick Smith, an IAP, engaged in unsafe and unsound banking practices that led to a \$24,315.15 loss to the bank and a gain to himself in the same amount. Because of Smith'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) effect, and (3) culpability.¹⁸ EC may demonstrate IAP misconduct by showing that the IAP has:

- “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.”¹⁹

EC may prove the effect of the IAP's misconduct by demonstrating either (1) that 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.”²⁰ 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.”²¹

In the instant case, the ALJ finds that IAP Derrick Smith's misconduct satisfies all three elements of 12 U.S.C. § 1818(e)(1) because he recklessly engaged in unsafe and unsound practices that led to a \$24,315.15 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

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 12 U.S.C. § 1818(e).

¹⁹ *Id.* § 1818(e)(1)(A).

²⁰ *Id.* § 1818(e)(1)(B).

²¹ *Id.* § 1818(e)(1)(C).

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.”²²

Smith engaged in misconduct demonstrated by his guilty plea to misdemeanor forgery under South Carolina law.²³ His underlying conduct constitutes unsafe and unsound practices by using forged counter checks to withdraw funds from depositors’ accounts without permission. Smith’s misconduct had the effect that Truist Bank suffered a loss of \$24,315.15 when reimbursing their account holders.²⁴ Finally, Derrick Alan Smith demonstrated culpability through his admitted personal dishonesty of forging counter checks.²⁵ Accordingly, the ALJ finds that an order of prohibition is merited in this case.

V. The misconduct merits an order of restitution.

EC asserts that an order of restitution is appropriate in this matter because Derrick Smith “was unjustly enriched through his misconduct and his violations and practices involved a reckless disregard for the law under 12 U.S.C. § 1818(b)(6).”²⁶ 12 U.S.C. § 1818(b)(6)(A) provides, in relevant part, that to merit an order of restitution, EC must demonstrate that an IAP, like Derrick Smith, “was unjustly enriched in connection with such violation or practice” *or* “the violation or practice involved a reckless disregard for the law or any applicable regulation[.]”²⁷ In the instant case, the uncontested facts show that Derrick Smith’s violations of 12 U.S.C. § 1818(e) and (i)(2) and the South Carolina criminal code²⁸ led to his unjust enrichment. Derrick Smith’s forgery of counterchecks to make unauthorized withdrawals from the accounts of elderly bank customers led to him unjustly receiving \$24,315.15 pursuant to applicable federal banking regulations and state criminal law. Accordingly, the ALJ finds that an order of restitution is merited in this case.

VI. The misconduct merits the imposition of a civil penalty.

The record shows that Derrick Alan Smith waived his right to appear and contest the assessment of a civil monetary penalty. Smith failed to timely request a hearing as required by the applicable statute and regulations in the civil monetary penalty part of these proceedings.²⁹ Accordingly, Derrick Smith’s failure to request a hearing on the civil money penalty assessment

²² *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”); *see also, e.g., In the Matter of Donald V. Watkins, Sr.*, Nos. 17-154e & -155k, 2019 WL 6700075, at *7 (Oct. 15, 2019) (FDIC final decision) (applying the definition provided in the Horne memorandum).

²³ NOC at 6.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 7.

²⁷ 12 U.S.C. § 1818(b)(6)(A)(i)-(ii).

²⁸ S.C. Code Ann. § 16-13-10.

²⁹ 12 U.S.C. § 1818(i)(2)(E), (H); 12 C.F.R. § 308.19(c)(2) (2025).

within the time provided under the statute and regulations means that the notice of assessment constitutes a final and unappealable order.³⁰

While it is sufficient under the statute and regulations to assess Smith a civil monetary penalty for failing to timely request a hearing,³¹ the record demonstrates that the assessment of a civil monetary penalty is appropriate under the circumstances regardless. In order for an ALJ to recommend a civil money penalty, EC must prove the IAP engaged in misconduct which may be satisfied by a violation of law, regulation, or a final cease-and-desist order,³² a breach of fiduciary duty, or recklessly engaging “in an unsafe or unsound practice.”³³ EC must further prove that the IAP’s misconduct was “part of a pattern of misconduct,” that the misconduct “cause[d] or is likely to cause more than a minimal loss to such depository institution,” *or* that the misconduct “result[ed] in pecuniary gain or other benefit to such party.”³⁴ EC, however, must weigh the appropriateness of the civil penalty amount by considering mitigating circumstances like good faith on the part of the IAP, the seriousness of the misconduct, and any “other matters as justice may require.”³⁵

As discussed in section IV of this Recommended Decision, Derrick Smith engaged in recklessly unsafe and unsound practices by issuing unauthorized counter checks to embezzle money from depositors’ accounts. The same conduct was found to violate South Carolina law. An important consideration under the statute, Smith made these unauthorized withdrawals, not as a one-time offense, but as part of his active engagement in an established pattern of misconduct. Over a period of six months, targeting mainly seniors, Smith made 16 withdrawals from four accounts, affecting six individuals, using forged counter checks.³⁶ The misconduct also resulted in pecuniary gain for Smith. Accordingly, the ALJ finds that the assessment of a civil monetary penalty is appropriate.

³⁰ 12 C.F.R. § 308.19(c)(2) (2025).

³¹ 12 U.S.C. § 1818(i)(2)(E), (H); 12 C.F.R. § 308.19(c)(2) (2025).

³² The misconduct elements of both Sections 1818(e) and 1818(i) can also be satisfied by the violation of a condition imposed in writing by a federal banking agency or any written agreement between such an agency and the depository institution in question. *See id.* §§ 1818(e)(1)(A)(i), (i)(2)(A). The FDIC does not allege such violations in this case.

³³ *Id.* § 1818(i)(2)(B)(i).

³⁴ *Id.* § 1818(i)(2)(B)(ii); *see also In the Matter of John Richard Lamm*, Nos. 12-052e, 12-053k, & 15-274b, 2018 WL 2297269, at *4 (Mar. 20, 2018) (FDIC final decision) (referring to this as the statute’s “effects” prong); *accord In the Matter of Douglas V. Conover*, Nos. 13-214e & -217k, 2016 WL 10822038, at *27 (Dec. 14, 2016) (FDIC final decision).

³⁵ 12 U.S.C. § 1818(i)(2)(G); *see also In re Sealed Case (Administrative Subpoena)*, 42 F.3d 1412, 1416 (D.C. Cir. 1994) (“In assessing money penalties, Congress requires [banking] agencies to consider several mitigating factors.”); *accord, e.g., In the Matter of William R. Blanton*, No. AA-EC-2015-24, 2017 WL 4510840, at *27 (July 10, 2017) (OCC final decision), *aff’d on other grounds sub nom. Blanton v. OCC*, 909 F.3d 1161 (D.C. Cir. 2018).

³⁶ NOC at 6.

A. 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 banking activities, an order of restitution in the amount of \$24,315.00, and the assessment of a \$35,000 civil monetary penalty against the respondent, Derrick Alan Smith.

SO ORDERED.

Issued: March 31, 2025



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

CERTIFICATE OF SERVICE

On March 31, 2025, I served a copy of the foregoing **Order** upon the following individuals via email:

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