

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

In the Matter of:

CBW BANK
Weir, Kansas

(Insured State Nonmember Bank)

Docket No.:
FDIC-22-0171k

ORDER NO. 15: DENYING MOTION TO STAY PROCEEDINGS

The Federal Deposit Insurance Corporation (“FDIC”) issued a Notice of Charges against Respondent CBW Bank (“Respondent”) in the above-captioned enforcement proceedings on November 19, 2024. On March 26, 2025, Respondent moved for a stay of proceedings (“Motion”) for the *third* time, and Enforcement Counsel for the FDIC (“Enforcement Counsel”) filed an opposition to Respondent’s most recent stay request on April 9, 2025 (“Opposition”).¹

Respondent’s first motion to stay was filed on December 9, 2024, when Respondent sought to stay these proceedings while it pursued a collateral attack on the legitimacy of this Tribunal in federal district court. The undersigned denied the stay request in Order No. 4 on December 30, 2024, and the district court action was subsequently dismissed on jurisdictional grounds.² Respondent’s second motion to stay was filed on February 25, 2025, when Respondent moved for another stay of the proceedings and a recommendation to the FDIC Board of Directors (“FDIC Board”) that the action be dismissed with prejudice due to the alleged unconstitutionality of this Tribunal. The undersigned denied the stay request in Order No. 11 on March 21, 2025. As noted in Order No. 11, Respondent’s second motion for stay was largely based on

¹ The undersigned notes that Respondent’s instant Motion claims that “[b]oth the FDIC and the ALJ presiding over this proceeding have conceded the Tribunal is in fact unconstitutional.” Motion at 3. Enforcement Counsel asserts this is false. Opposition at 3. The undersigned agrees that this is simply false.

² See *CBW Bank v. FDIC*, No. 24-2535-DDC-BGS, 2025 WL 671567 (D. Kansas Mar. 3, 2025) (dismissing case for lack of subject matter jurisdiction under 12 U.S.C. § 1818(i)(1)).

a February 20, 2025 determination by the Department of Justice that “multiple layers of removal restrictions shielding [ALJs] are unconstitutional” and a subsequent filing by FDIC counsel in federal district court on February 24, 2025, notifying the district court judge . . . that the FDIC would no longer defend the constitutionality of ALJ removal restrictions as result.

Order No. 11 at 2. As the undersigned made clear in Order No. 11, Respondent would not be entitled to its desired relief of stay and dismissal of this action *irrespective* of the merits, or lack thereof, of its constitutional argument, because it has not demonstrated—as required under recent Supreme Court and Court of Appeals precedent—that but for the constitutional infirmity it alleges, “the [ALJ presiding over the matter] would have been removed, the [] proceedings against it would not be occurring, or the proceedings would be different in any way.”³

Respondent’s third motion for stay seeks to pause these proceedings pending resolution of Respondent’s subsequent request for interlocutory review of Order No. 11 by the FDIC Board.⁴ Enforcement Counsel’s Opposition contends that Respondent has not demonstrated good cause to place these proceedings on hold. The undersigned agrees with Enforcement Counsel and will deny the instant Motion.

Respondent’s current motion to stay is based on the grounds that merely being subject to the jurisdiction of this Tribunal—which Respondent claims is illegitimate—is an “irreparable injury” that must be remedied immediately while its constitutional claims are being heard.⁵

³ *Leachco, Inc. v. CPSC*, 103 F.4th 748, 753 (10th Cir. 2004); *see also Collins v. Yellen*, 594 U.S. 220, 257-58 (2021); Order No. 11: Denying Motion for Recommendation of Dismissal and Stay at 2-3.

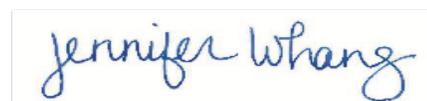
⁴ See “Request for Interlocutory Review of Order No. 11 Denying Motion for Recommendation of Dismissal and Stay” filed on March 31, 2025. Under the Uniform Rules of Practice and Procedure that govern administrative enforcement proceedings before this Tribunal, “[n]either a request for interlocutory review nor any disposition of such a request by the Board of Directors under this section suspends or stays the proceeding unless otherwise ordered by the ALJ or the Board of Directors.” 12 C.F.R. § 308.28.

⁵ Motion at 3; *see also* December 19, 2024 Motion to Stay Proceedings Pending Resolution of Federal Court Action at 1 (arguing that “a stay is required to prevent irreparable harm to [Respondent]: namely, being subject to an adjudicative proceeding that violates [Respondent’s] constitutional rights”); February 25, 2025 Motion for Recommendation of Dismissal and Stay at 6 (asserting that “simply being made to participate in the unconstitutional hearing causes [Respondent] irreparable harm”).

Nothing has changed, and Respondent’s bare assertion of ongoing and irreparable harm through its participation in these proceedings is unpersuasive, not least because the Tenth Circuit—the circuit in which the home office of Respondent is located and thus one of two circuits to which Respondent is entitled to appeal any final decision of the FDIC Board⁶—has specifically held that being subjected to proceedings before an allegedly unconstitutional decisionmaker does not *per se* constitute “compensable harm” without a further showing that—as detailed in Order No. 11—Respondent has not here made.⁷

Moreover, Respondent’s alternative argument—that a stay is justified here because the “time and money” that Respondent is spending in this proceeding would be lost in the event the FDIC Board both grants interlocutory review and then ultimately reverses this Tribunal’s determination in Order No. 11 that dismissal of the action is not merited⁸—is likewise unavailing. As Enforcement Counsel points out, the FDIC Board has held that the ordinary costs of contesting an ongoing enforcement proceeding “are not the type of expense or irreparable injury which the procedures under [12 C.F.R. § 308.28] are designed to avoid.”⁹ Accordingly, Respondent’s Motion to stay these proceedings pending the FDIC Board’s consideration of its request for interlocutory review is hereby **DENIED**.

SO ORDERED.



Jennifer Whang, Administrative Law Judge
Office of Financial Institution Adjudication

Issued: April 10, 2025

⁶ See 12 U.S.C. § 1818(h)(2) (stating that parties subject to enforcement actions under Section 1818(e) may appeal final agency decisions to the D.C. Circuit or to the circuit housing the home office of the depository institution in question).

⁷ See *Leachco*, 103 F.4th at 756; Order No. 11: Denying Motion for Recommendation of Dismissal and Stay at 2-3; accord *Integrity Advance LLC v. CFPB*, 48 F.4th 1161, 1170 (10th Cir. 2022).

⁸ Motion at 4.

⁹ April 9, 2025 Response Opposing Respondent’s Motion to Stay Proceedings at 2 (quoting *In the Matter of Robert S. Catanzaro and John C. Ponte*, Nos. 22-109e, -110k, -112e, -113k, & -143b, at *11 (Aug. 15, 2024) (FDIC decision and order on interlocutory review)).

CERTIFICATE OF SERVICE

On April 10, 2025, I served a copy of this **Order** upon the following individuals via email:

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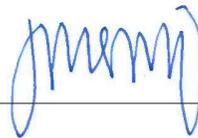
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