

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

In the Matter of:

**HECTOR HUGO GUTIERREZ, JR.,**  
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-23-0018b

**ORDER NO. 5: RECOMMENDED DECISION GRANTING MOTION FOR ENTRY OF  
AN ORDER OF DEFAULT REGARDING ORDER OF RESTITUTION**

On July 21, 2023, the Federal Deposit Insurance Corporation (“FDIC”) filed a “Notice of Intention to Prohibit from Further Participation, Notice of Charges for an Order for Restitution, Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, Notice of Hearing, and Prayer for Relief” (“Notice”) against Hector Hugo Gutierrez, Jr. (“Respondent”). On July 25, 2023, the undersigned issued “Order No. 1: Notice of Designation and Preliminary Order.” Order No. 1 provides that “Respondent must file an Answer within 20 days of service of the FDIC’s notice” and that “[f]ailure to file a timely Answer will constitute a waiver of Respondent’s right to appear and contest the allegations in the Notice.” See Order No. 1 at 1 (footnotes omitted).

On May 17, 2024, Enforcement Counsel for the FDIC filed a “Notice of Settlement” of the Prohibition and Civil Money Penalty matters along with a “Motion to Stay the Notice of Charges for an Order for Restitution.” Based on these filings, the undersigned issued “Order No. 2: Terminating Prohibition and Civil Money Penalty Actions and Staying Notice of Charges for Order of Restitution.” This left only the Notice of Charges for an order of restitution as a pending charge against Respondent.

On July 1, 2025, Enforcement Counsel filed a “Motion for Entry of an Order of Default” (“Motion”) pursuant to section 308.19(c)(1) of the FDIC’s Uniform Rules of Practice and Procedure (“Uniform Rules”), 12 C.F.R. Part 308. Specifically, Enforcement Counsel asserts that Respondent’s criminal counsel has been unable to reach Respondent regarding Enforcement Counsel’s continued efforts to reach an agreement as to restitution. Motion at 2-3. Therefore, Enforcement Counsel moves for an order of default regarding restitution, pursuant to section 8(b) of the Federal Deposit Insurance Act (“the Act”), 12 U.S.C. § 1818(b), due to Respondent’s failure to file a timely answer. Motion at 4-5. In addition, Enforcement Counsel requests that the undersigned issue an Order to Show Cause why a timely answer to the Notice was not filed and why a default judgment should not be granted, and that in the absence of good cause, an order of default be issued. Motion at 5-6.

Enforcement Counsel served the Notice on Respondent by first class United States mail on July 21, 2023 at Respondent’s last known residence. Motion at 4; see also Exhibit A to Motion. Respondent was required to file an answer to the Notice within twenty days from the date of service. See 12 C.F.R. § 308.19(a). The undersigned finds that Respondent was properly served with the Notice pursuant to the FDIC’s Rules of Practice and Procedure, 12 C.F.R. § 308.11, and that Respondent has failed to file an answer to the Notice pursuant to 12 C.F.R. § 308.19(c)(1). The undersigned further finds that, pursuant to 12 C.F.R. § 308.19(c)(2), Respondent has waived his right to appear and contest the allegations in the Notice, and that no good cause has been shown for Respondent’s failure to file a timely answer. Respondent has had ample opportunity to file an answer and has not shown good cause for his failure to do so.

The undersigned finds it unnecessary to issue an Order to Show Cause. The Notice of Charges was filed more than two years ago, and Respondent has failed to file an Answer. In

addition, Respondent has failed to file a response to Enforcement Counsel's Motion, and the undersigned accepts Enforcement Counsel's representation that Respondent's counsel has been unable to contact him regarding resolution of the restitution matter. Accordingly, Enforcement Counsel's Motion is GRANTED. The undersigned recommends that the Board of Directors of the FDIC enter an order containing the findings and the relief sought in the Notice, namely that Respondent be ordered to pay restitution in the amount of \$23,677.18 pursuant to 12 U.S.C. § 1818(b)(6).

I. Findings of Fact

At all times pertinent to this proceeding:

1. Branch Banking and Trust Company n.k.a. Truist Bank ("the Bank") was a corporation existing and doing business under the laws of the State of North Carolina with its principal place of business in Winston-Salem, North Carolina.
2. On December 6, 2019, Branch Banking and Trust Company merged with SunTrust Banks and the resultant bank named itself Truist Bank with its principal place of business in Charlotte, North Carolina.
3. The Bank was an insured State nonmember bank, subject to 12 U.S.C. §§ 1818-1831aa, 12 C.F.R. Chapter III, and the laws of the State of North Carolina.
4. Respondent was employed as a Community Banking Branch Banker III at the Bank and continued to serve in that capacity from 2017 until he was terminated in 2019. In his capacity as a Community Banking Branch Banker III, Respondent operated in a position of trust.
5. Respondent was an "institution-affiliated party" of the Bank under 12 U.S.C. § 1813(u) and for purposes of 12 U.S.C. § 1818(e)(7), 1818(i) and 1818(j).

6. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.
7. On or about June 8, 2018, an Automatic Teller Machine (“ATM”)/debit card ending in 25744 was issued in the name of a bank customer (“Customer”) and linked to the Customer’s account ending 01074 (“Customer’s Account”) without the Customer’s knowledge or authorization.
8. Customer was approximately 75 years old.
9. On or about August 30, 2018, ATM surveillance cameras captured Respondent using the ATM/debit card ending 25744 to withdraw \$600 from Customer’s Account.
10. From July 22, 2018 through September 24, 2018, Respondent made 41 unauthorized transactions using ATM/debit card ending 25744 to withdraw a total of \$11,384.79 from Customer’s Account, which includes the \$600 withdrawal on or about August 30, 2018.
11. On or about October 4, 2018, an ATM/debit card ending in 58398 was issued in the name of Customer and linked to the Customer’s account without the Customer’s knowledge or authorization.
12. On or about November 8, 2018, ATM surveillance cameras captured Respondent using the ATM/debit card ending 58398 to withdraw \$600 from Customer’s Account.
13. From October 18, 2018 through December 12, 2018, Respondent made 36 unauthorized transactions using ATM/debit card ending 58398 to withdraw a total of \$11,008.96 from Customer’s Account, which includes the \$600 withdrawal on or about November 8, 2018.
14. On or about October 4, 2018, an ATM/debit card ending in 71927 was issued in the name of Customer and linked to the Customer’s account without the Customer’s knowledge or authorization.

15. From October 8, 2018 through October 15, 2018, Respondent made 16 unauthorized transactions using ATM/debit card ending 71927 to withdraw a total of \$1,283.43 from Customer's Account.

16. On or about December 13, 2018, Customer entered the Bank at the Fort Worth, Texas branch to report that funds were missing from her account. Respondent told Customer that too much time had passed to recover the missing funds, but that he would still put in a claim for her. Respondent never put in a claim for Customer's missing funds.

17. On May 24, 2019, the Bank terminated Respondent for reasons unrelated to this matter.

18. On March 9, 2020, Customer filed a claim with the Bank alleging fraudulent withdrawals on her account, which was subsequently amended to include additional alleged fraudulent withdrawals.

19. Upon receipt of Customer's claims, the Bank commenced an investigation and a bank employee identified Respondent in the August 30, 2018 and November 8, 2018 ATM surveillance photos.

20. From July 22, 2018 through December 12, 2018, there were 93 unauthorized transactions from the three ATM/debit cards linked to Customer's Account totaling \$23,677.18.

21. The Bank reimbursed Customer for the unauthorized transfers which occurred during the times pertinent to this proceeding, resulting in a loss to the Bank in the amount of \$23,677.18.

## II. Conclusions of Law

Based on the findings of fact:

1. Respondent engaged in violations or practices in connection with the Bank that involved a reckless disregard for the law or for applicable regulations of the FDIC under 12 U.S.C. § 1818(b)(6)(A)(ii).

2. Respondent was also unjustly enriched in connection with those violations or practices under 12 U.S.C. § 1818(b)(6)(A)(i).

III. Recommended Order

As of this date, Respondent has not filed an answer to the FDIC's Notice, nor responded to Enforcement Counsel's Motion. Accordingly, Respondent failed to file a timely answer to the Notice pursuant to 12 C.F.R. § 308.19(c)(1). A respondent's failure to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the Notice. 12 C.F.R. § 308.19(c)(1). Based on the findings of fact and conclusions of law detailed above, it is recommended that Respondent be required to pay restitution in the amount of twenty-three thousand six hundred seventy-seven dollars and eighteen cents (\$23,677.18), pursuant to 12 U.S.C. § 1818(b)(6).

The record in this matter is hereby filed and certified for decision. This Recommended Decision, along with the Certified Index of Administrative Record, and Proposed Order is being transmitted to the FDIC Board.

**SO ORDERED.**

Issued: August 13, 2025



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Jennifer Whang, Administrative Law Judge  
Office of Financial Institution Adjudication

## CERTIFICATE OF SERVICE

On August 13, 2025 I served a copy of the foregoing **Order** upon the following individuals via email:

Administrative Officer  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
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Enforcement Counsel:

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Respondent:

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