

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of:

Jonathan I. Feldman,

**Senior Vice President and
Institution Affiliated Party of**

**Eastern Savings Bank
Hunt Valley, Maryland
OTS Docket No. 08183**

Adjudicatory Proceeding

No.: AP-10-04

Effective Date: June 25, 2010

**NOTICE OF INTENTION TO REMOVE AND PROHIBIT AND NOTICE OF CHARGES
AND HEARING AND NOTICE OF
ASSESSMENT OF A CIVIL MONEY PENALTY**

I. PRELIMINARY STATEMENT

1. The Director of the Office of Thrift Supervision (OTS), pursuant to Sections 8(e) and 8(i)(2)(B) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. §§ 1818(e) and (i)(2)(B), issues this Notice of Charges and Hearing for Removal and Prohibition and Notice of Assessment of a Civil Money Penalty (Notice). By issuing this Notice, the OTS commences administrative adjudicatory proceedings and assesses civil money penalties against Jonathan I. Feldman (Respondent or Feldman) a Senior Vice President and institution-affiliated party (IAP) of Eastern Savings Bank, Hunt Valley, Maryland, a Federally chartered savings association (Eastern).

2. OTS charges that Respondent, in his capacity as a member of The Townhomes at Ivy Ridge, LLC (Ivy Ridge), materially altered loan documents related to four loans totaling \$3.25 million, of which Respondent was a guarantor, made by ESSA Bank & Trust (ESSA) to Ivy

Ridge. Respondent made the alterations to the loan documents without ESSA's knowledge or agreement, and concealed the alterations from ESSA, in an improper attempt to secure a release of Respondent's guarantor liability.

3. OTS charges that Respondent engaged in violations of law and/or regulation and unsafe or unsound practices.

4. OTS charges that by reason of Respondent's misconduct, ESSA has suffered or will probably suffer financial loss or other damage and/or Respondent received financial gain and/or other benefit.

5. OTS charges that Respondent's misconduct involved personal dishonesty on his part and/or a willful disregard for the safety and soundness of ESSA.

6. OTS charges that grounds exist to:

(a) remove Respondent from Eastern and prohibit him from further participation in the affairs of Eastern and other insured depository institutions pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e); and

(b) assess civil money penalties against Respondent, pursuant to section 8(i)(2)(B) of the FDIA, 12 U.S.C. § 1818(i)(2)(B).

II. JURISDICTION

7. Eastern, at all times relevant to this action, has been a federal savings bank with a charter issued under the Home Owners' Loan Act (the HOLA). *See* 12 U.S.C. §§ 1461 *et seq.*

8. Eastern, at all times relevant to this action, has been subject to examination, supervision, and regulation by the OTS. *See* 12 U.S.C. §§ 1463 and 1464.

9. Respondent, at all times relevant to this action, has served as the Senior Vice President of Eastern and is an "institution-affiliated party" of Eastern. *See*, 12 U.S.C. § 1813(u)(1).

10. ESSA, at all times relevant to this action, has been a federal savings bank with a charter issued under the Home Owners' Loan Act (the HOLA), *see*, 12 U.S.C. §§ 1461 *et seq.*, and subject to examination, supervision, and regulation by the OTS, *see*, 12 U.S.C. §§ 1463 and 1464. In addition ESSA is a "business institution" within the meaning of that term as used in Section 8 of the FDIA. *See*, § 8(e)(1)(A)(ii), (B)(i), (C)(ii) of the FDIA; 12 U.S.C. § 1818(e)(1)(A)(ii), (B)(i), (C)(ii). ESSA is also an insured depository institution within the meaning of that term in Section 8(e)(1) of the FDIA, 12 U.S.C. § 1818(e)(1), and Section 8(i)(B)(i)(II) of the FDIA, 12 U.S.C. § 1818(i)(B)(i)(II).

11. The Director of the OTS is the "appropriate Federal banking agency" with jurisdiction to initiate and maintain removal and prohibition and civil money penalty proceedings against an IAP. *See* 12 U.S.C. §§ 1818(e) and (i)(2); 1813(q)(4) and 1464(d)(1)(A).

12. Because Respondent is, and at all relevant times, has been an IAP, he is subject to the authority of the OTS to initiate and maintain these administrative proceedings against him pursuant to the provisions of Section 8 of the FDIA, 12 U.S.C. § 1818.

13. Although Respondent is an IAP of Eastern, the misconduct that is the basis for this action relates to Respondent's conduct, as a member of Ivy Ridge, with ESSA. The fact that this action does not relate to Respondent's conduct at the depository institution in which he serves as an IAP does not affect OTS's jurisdiction to bring the instant action. The IAP misconduct that serves as a basis for a removal and prohibition action under Section 8(e)(1) of the FDIA can be in connection with any insured depository institution or business institution. *See* § 8(e)(1)(A), (B), (C) of the FDIA; 12 U.S.C. § 1818(e)(1)(A), (B), (C). Further, OTS may bring a civil money penalty action under Section 8(i)(2)(B) of the FDIA, 12 U.S.C. § 1818(i)(2)(B), for violation of "any law or regulation" that "results in pecuniary gain or other benefit" to a party. *See* § 8(i)(2)(B)(i)(II) and (ii)(III) of the FDIA, 12 U.S.C. § 1818(i)(2)(B)(i)(II) and (ii)(III) (i)(2)(B).

III. FACTUAL ALLEGATIONS AND CHARGES

14. Ivy Ridge is a Pennsylvania limited liability company formed in 2005. Respondent was one of four members of Ivy Ridge.

15. In 2006, Ivy Ridge planned to acquire 8.55 acres of land located in Smithfield Township, Monroe County, Pennsylvania for the purpose of developing and constructing townhomes.

16. In order to obtain financing for this development project, Ivy Ridge applied for a loan from ESSA. On or about March 20, 2006, ESSA made four commercial loans totaling \$3,249,632.60 to Ivy Ridge to finance the development project (Loans). The maturity date of the Loans was March 20, 2008.

17. As a condition of making the Loans, ESSA required the Respondent and the other three members of Ivy Ridge each to execute personal guaranties for repayment of the Loans. Each member, including Respondent, executed separate documents titled "Commercial Guaranty Agreement" whereby each member personally guaranteed repayment of the Loans (Guaranty).

18. Prior to the March 20, 2008 maturity date of the loans, Ivy Ridge applied for an extension for the Loans. As a condition of the extension, ESSA required that Respondent and the other three members of Ivy Ridge execute a "Restated Commercial Guaranty" (Restated Guaranty) to renew and extend their personal guaranties on the Loans. The purpose of ESSA's requirement for the Restated Guaranty was to ensure that Respondent and the other members of Ivy Ridge remained guarantors of the Loans after the extension.

19. Without the knowledge or consent of ESSA, and contrary to the intention of ESSA, Respondent altered his Restated Guaranty so that instead of restating his personal guaranty of the Loans, the altered Restated Guaranty *released* Respondent from all personal liability for the Loans.

20. Respondent concealed the changes he made to his altered Restated Guaranty by having the changes typed in an identical type size and font as the original Restated Guaranty. In order to conceal the changes further, Respondent duplicated ESSA's internal document management system authentication and identification mark in the original Restated Guaranty in Respondent's retyped altered Restated Guaranty.

21. Respondent made the modifications to his Restated Guaranty without the knowledge, authorization, or approval of ESSA.

22. Respondent returned his altered Restated Guaranty to ESSA without disclosing that he had made modifications to the document that materially changed the legal effect of his Restated Guaranty.

23. With the belief that it had obtained unaltered executed Restated Guaranty documents from each of the members of Ivy Ridge, ESSA approved an extension on the maturity date of the Loans.

24. On or about August 7, 2008, Ivy Ridge defaulted on the Loans.

25. ESSA contacted Respondent to obtain payment on the defaulted Loans pursuant to his Restated Guaranty. For the first time, Respondent disclosed to ESSA the modifications he made to his Restated Guaranty, and informed ESSA that he would not make any payment on the defaulted Loans because his Restated Guaranty, as modified, released him as a guarantor of the Loans.

26. Through his undisclosed, unilateral, and unnegotiated modifications of his Restated Guaranty, and by concealing the modifications, Respondent effectuated a scheme to release himself of any personal liability as a guarantor on the Loans. As a result, Respondent received a financial gain or benefit from his misconduct by avoiding any personal liability for repayment on the defaulted Loans.

27. As a result of Ivy Ridge's default on the Loans, and ESSA's inability to obtain payment from Respondent as a guarantor of the Loans, ESSA's loss on the Loans will be between \$1.0 million to \$1.5 million dollars.

IV. STATUTORY CHARGES UNDER 12 U.S.C. § 1818(e)

Respondent has Engaged in Actions that Satisfy the Grounds for an Order of Removal and Prohibition Under Section 8(e) of the FDIA.

28. OTS realleges paragraphs 14 through 27 above.

29. By the actions described above, Respondent has directly or indirectly violated laws and regulations, *see* § 8(e)(1)(A)(i)(I) of the FDIA, 12 U.S.C. § 1818(e)(1)(A)(i)(I), as follows:

a. Respondent violated 18 U.S.C. § 1014 by knowingly making false statements as to material facts to a federally-insured depository institution for the purpose of influencing the institution's actions on a loan; and

b. Respondent violated 18 U.S.C. § 1344 by knowingly making material misrepresentations and/or concealing material facts as part of a scheme or attempted scheme to defraud a federally-insured depository institution.

30. In addition, Respondent engaged or participated in unsafe or unsound practices in connection with an insured depository institution or business institution. *See* § 8(e)(1)(A)(ii) of the FDIA, 12 U.S.C. § 1818(e)(1)(A)(ii).

31. By reason of Respondent's violation of law and regulation and/or his unsafe or unsound practices, an insured depository institution or business institution has suffered or will probably suffer financial loss or other damage; the interests of the insured depository institution's depositors have been or could be prejudiced; and/or Respondent received financial gain or other benefit. *See* § 8(e)(1)(B) of the FDIA, 12 U.S.C. § 1818(e)(1)(B).

32. Further, Respondent's violation of laws and regulations and/or unsafe and unsound practices involved personal dishonesty on his part and/or a willful or continuing disregard for the safety and soundness of an insured depository institution or business institution. *See* §8(e)(1)(C)(i) and (ii) of the FDIA, 12 U.S.C. § 1818(e)(1)(C)(i) and (ii).

V. REQUESTED RELIEF AND NOTICE OF HEARING

33. Notice is hereby given that a hearing will be held in Baltimore, Maryland for the purpose of taking evidence on the charges specified above in order to determine whether an appropriate order of removal and prohibition should be issued under Section 8(e) of the FDIA, 12 U.S.C. § 1818(e), to remove and prohibit the future participation by Respondent in the affairs of, *inter alia*, any insured depository institution, or any holding company thereof.

VI. STATUTORY CHARGES UNDER SECTION 8(i)(2) of the FDIA

Respondent Has Engaged in Actions that Satisfy the Grounds for Assessment of Second-Tier Civil Money Penalties Against Respondent Under Section 8(i)(2)(B) of the FDIA.

34. OTS realleges paragraphs 14 through 27 above.

35. Respondent has engaged in violations of law or regulation, as recited in paragraph 29 *supra*. *See* §8(i)(2)(B)(i)(I) of the FDIA, 12 U.S.C. § 1818(i)(2)(B)(i)(I).

36. Respondent's violation of law and regulation has resulted in pecuniary gain or other benefit to Respondent. *See* §8(i)(2)(B)(ii)(III) of the FDIA, 12 U.S.C. § 1818(i)(2)(B)(ii)(III).

Aggregate Amount of Assessed Civil Penalties

37. Based on the foregoing, the grounds exist, pursuant to 12 U.S.C. § 1818(i)(2)(B), to assess a second-tier civil penalty against Respondent. After taking into account the size of Respondent's financial resources, good faith considerations, the gravity of the violations, the history of previous violations, and such other matters as justice may require, the OTS hereby assesses a civil money penalty of \$125,000 against Respondent.

Civil Penalty Payment Directions and Procedural Matters

38. It is hereby ordered that Respondent shall forfeit and pay the civil money penalty of \$125,000.

39. The civil money penalties set forth in this Notice are assessed by the OTS pursuant to sections 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2). Except as the OTS may otherwise order in writing, remittance of the payment of the penalties set forth herein shall be made by delivering to the OTS Financial Operations at 1700 G Street, N.W., Washington, D.C. 20552 a cashier's check or official bank check in the amount of \$125,000 payable to the order of the Treasury of the United States.

40. Notice is given, pursuant to section 8(i)(2)(H) of the FDIA, 12 U.S.C. § 1818(i)(2), that Respondent is afforded an opportunity for a formal hearing, if requested, concerning the above assessment of civil money penalties. A hearing will be held with respect to the assessment against Respondent, provided that within twenty (20) days after issuance and service of this Notice, Respondent files a written request for a hearing concerning the assessment. Any request for such a hearing must be filed with the Office of Financial Institution Adjudication (OFIA), 3501 North Fairfax Drive, Suite D8116, Arlington, VA 22226, and with the OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings, (sandra.evans@ots.treas.gov), 1700 G Street, N.W., Washington, D.C. 20552, within twenty (20) days after issuance and service of this Notice on Respondent.

Respondent is encouraged to file any request for a hearing electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. Respondent shall also serve a copy of any such request upon Susan L. Chomicz, Deputy Chief Counsel – Enforcement, (susan.chomicz@ots.treas.gov), Office of Thrift Supervision, 1700 G St., N.W., Washington, D.C. 20552; upon Alan H. Faircloth, Regional Enforcement Counsel, (alan.faircloth@ots.treas.gov), Office of Thrift Supervision, 1475 Peachtree St., NE, Atlanta, Georgia 30309; and upon V. Scott

Bailey, Senior Attorney, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552 (vernon.bailey@ots.treas.gov).

41. Any hearing held concerning the civil money penalty assessments, as described above, shall be combined with the hearing of the other matters set forth in the foregoing Notice, including those concerning the issuance of a removal and prohibition order.

42. If Respondent fails to file a request for a hearing within the aforementioned twenty-day (20-day) period, the above assessment of civil money penalties in the aggregate amount of \$125,000 shall constitute a final and unappealable assessment order of the OTS against Respondent as provided by 12 U.S.C. § 1818(i)(2)(E). *See also* 12 C.F.R. § 509.19(c)(2). Any final and unappealable assessment order may be referred to the United States Department of Justice for collection against the subject of the assessment order.

VII. PROCEDURES GENERALLY

43. The OTS hereby appoints Administrative Law Judge C. Richard Miserendino (ALJ) of OFIA to preside over any hearing held regarding the subject of this Notice. Unless otherwise set by the ALJ or by agreement of the parties, the hearing should commence on or before sixty days following service of this Notice. The exact time of day and any change in location will be announced at a later time by the ALJ. The hearing will be conducted before the ALJ in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557, as made applicable by 12 U.S.C. § 1818(h) and 12 C.F.R. Part 509.

44. Respondent is directed to file an Answer to this Notice within twenty (20) days with OFIA, Attn: Honorable C. Richard Miserendino, ALJ, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, with the Secretary for Adjudicatory Proceedings, Office of the Chief Counsel, OTS, 1700 G. Street, N.W. Washington, D.C. 20552, and with the attorneys whose names appear on the accompanying certificate of service, within twenty days from the date of

service of this Notice of Charges, in accordance with 12 C.F.R. § 519.19. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice and shall, upon the OTS's motion, cause the ALJ or the OTS to find the facts in this Notice to be as alleged and to issue an appropriate order.

45. Section 509.10 of the OTS rules, 12 C.F.R. § 509.10, governs the filing of papers in this proceeding. Except as otherwise provided by that rule, any papers required to be filed shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8 113, Arlington, VA 22226-3500.

46. Respondent also shall serve a copy of each and every of filing on: OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings, (sandra.evans@ots.treas.gov), 1700 G St., N.W., Washington, D.C. 20552; Susan L. Chomicz, Deputy Chief Counsel – Enforcement, (susan.chomicz@ots.treas.gov), Office of Thrift Supervision, 1700 G. Street, N.W. Washington, D.C. 20552; Alan H. Faircloth, Regional Enforcement Counsel, (alan.faircloth@ots.treas.gov), Office of Thrift Supervision, 1475 Peachtree St., NE, Atlanta, Georgia 30309; and V. Scott Bailey, Senior Attorney, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552 (vernon.bailey@ots.treas.gov).

47. Within twenty (20) days after service of this Notice, Respondent may file a written request for a private hearing. Section 509.23 of the OTS rules, 12 C.F.R. § 509.33, sets out the requirements for any such request and any replies thereto. The evidentiary hearing of this matter before the presiding ALJ will be open to the public, unless the Director of the OTS, in his sole discretion, determines that an open hearing will be contrary to the public interest. *See* 12 U.S.C. § 1818(u)(2). The Director (or a duly authorized representative) will rule on any request filed under

Section 509.33(a), and copies of any such request should be sent to the Director of OTS, c/o Ms. Sandra Evans, Secretary for Adjudicatory Proceedings, Office of Thrift Supervision, 1700 G Street, N.W. – Fifth Floor, M2, Washington, D.C. 20552.

The Office of Thrift Supervision, by its Director (or his duly authorized designee), issues this Notice on this 25 day of June, 2010.

OFFICE OF THRIFT SUPERVISION

By: 

Name: Thomas A. Barnes

Title: Deputy Director Examinations, Supervision
and Consumer Protection

(Pursuant to delegated authority)