

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

IN THE MATTER OF)
NOTICE OF CHANGE IN BANK CONTROL)
CROWN CHARTER NATIONAL BANK)
DALLAS, TEXAS)

AA-EC-93-83

DECISION OF THE COMPTROLLER OF THE CURRENCY

This matter is before the Comptroller of the Currency on a motion for entry of default in a proceeding relating to denial of an application for a change in bank control for Crown Charter National Bank, Dallas, Texas (the "Bank"). Upon consideration of the pleadings, the Recommended Decision and Recommended Findings and Conclusions of Law of the Administrative Law Judge, and the entire record, the Comptroller of the Currency concludes that entry of a final default order is appropriate. Accordingly, the Comptroller of the Currency affirms the Recommended Decision and Recommended Findings and Conclusions of Law and grants the motion for an Order of Default and Disapproval of Change in Control Application.

I. FACTUAL SUMMARY AND PROCEDURAL HISTORY

On May 27, 1993, the OCC, acting under authority of 12 U.S.C. § 1817(j), served a notice of disapproval (the "Disapproval") with respect to an application for a change in bank control for Crown Charter National Bank, Dallas, Texas. The Disapproval, which was served on Peter G. Weinstock, Attorney, Dallas, Texas, informed the applicants that to obtain a hearing

on the merits, they must first request a hearing and then, within twenty days (plus three for mailing of service of the Disapproval), file an answer. On June 4, 1993, the OCC received a facsimile letter ("fax") from Mr. Sydney Kim, stating that he was in receipt of the Disapproval and was requesting a hearing pursuant to 12 U.S.C. § 1817(j). Mr. Kim claimed to be a representative of the applicants.

The OCC's Enforcement and Compliance Division ("Enforcement Counsel") accepted the fax as service of a request for a hearing and forwarded it to the OCC Hearing Clerk, and to the Office of Financial Institution Adjudication ("OFIA"). The time period for the filing of an answer expired on June 21, 1993. On June 25, 1993, the OCC, at Mr. Kim's request, orally agreed to extend the due date for the answer to July 2, 1993. As of the close of business August 2, 1993, neither Mr. Kim nor any of the applicants had filed a document purporting to be an answer with the OCC Hearing Clerk's office.

Enforcement Counsel moved, pursuant to 12 C.F.R. § 19.161, for an Order of Default and Disapproval of Change in Control Application. On September 7, 1993, Walter J. Alprin, Administrative Law Judge, issued a Recommended Decision and Recommended Findings and Conclusions of Law ("Recommended Decision"), granting the Enforcement Counsel's application.

II. DISCUSSION

Entry of a default judgment is appropriate in this case because the applicants have not filed an answer. Failure to file

a timely answer constitutes a waiver of a respondent's right to appear and contest the allegations, and so a motion for entry of an order of default is appropriate. See 12 C.F.R. § 19.19(c)(1). In the alternative, the applicants' failure to contest the Administrative Law Judge's Recommended Decision and Proposed Order for Default Judgment is deemed under 12 C.F.R. § 19.23(d)(2) to be consent to the entry of an order substantially in the form of the Proposed Order for Default Judgment.

A. Jurisdiction

(1) The Office of the Comptroller of the Currency ("OCC") served the Disapproval on Mr. Weinstock by regular mail in response to the Change in Bank Control Application for the Bank, OCC application control number 92-SW-11-021 ("Application") (OCC Exhibit A). Mr. Weinstock received the Disapproval as indicated by a facsimile transmission from Mr. Kim to the OCC on or about June 4, 1993 (OCC Exhibit B).

(2) The Bank is a national banking association chartered and examined by the OCC pursuant to the National Bank Act, 12 U.S.C. § 1 et seq.

(3) The OCC is "the appropriate Federal banking agency" regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1817(j).

(4) The OCC has jurisdiction to disapprove applications for changes in the control of national banks pursuant to 12 U.S.C. § 1817(j).

B. Acts of Default

(1) The Disapproval informed the applicants that to obtain a hearing on the merits, they must first request a hearing and then, within twenty days of service of the Disapproval, file an answer (OCC Exhibit A). 12 C.F.R. § 19.12(c) adds three days to the time period when service is by mail.

(2) On June 4, 1993, the OCC received a fax from Mr. Kim which stated that he was in receipt of the Disapproval and was requesting a hearing pursuant to 12 U.S.C. § 1817(j) (OCC Exhibit B).

(3) Enforcement Counsel ("E&C") accepted the fax as service of a request for a hearing and forwarded it to the OCC Hearing Clerk, and to OFIA (OCC Exhibit C).

(4) The twenty-three day time period for the filing of an answer expired on June 21, 1993. On June 25, 1993, the OCC, at Mr. Kim's request, orally agreed to extend the due date for the answer to July 2, 1993.

(5) As of the close of business August 2, 1993, applicants had filed no document purporting to be an answer with the OCC Hearing Clerk's office (OCC Exhibit C).

C. Bases for Disapproval

(1) The Disapproval is hereby incorporated by reference.

(2) Eighteen individuals proposed to acquire 1,584,624 shares of newly-issued common stock in the Bank for \$1,030,000,

resulting in a controlling interest of 77.42 percent of the Bank's voting shares.

(3) Applicants have not demonstrated sufficient financial capacity to support the proposed acquisition and capital injection which is needed to restore the Bank's capital adequacy (OCC Exhibit A).

(a) Applicants informed the OCC that they could raise only \$800,000 of the proposed \$1,030,000 purchase price at the time of the change in control, but could raise the remainder within 90 days of the purchase.

(b) The OCC was unable to verify applicants' capacity to obtain the remaining \$230,000 or applicants' access to the \$800,000 cash they claimed to possess. Applicants informed the OCC that \$750,000 of the group's funds was in escrow at the Bank, but as of May 5, 1993, the OCC could verify an escrow balance of only \$495,000.

(c) The OCC was unable to verify the reported cash balances of two applicants who had pledged to purchase a combined total of \$70,000 in Bank stock.

(4) On April 21, 1993, the OCC asked that all of the required information be submitted to the OCC by May 3, 1993. As of May 7, 1993, applicants still had not furnished the OCC with the following required information:

(a) valid signed stock subscription agreements from each applicant;

(b) a personal financial statement on one of the applicants; and,

(c) verification of cash balances for the applicants referred to in part C(3)(c) of this Decision.

(5) As alleged in the Disapproval, none of the applicants has the necessary banking experience to return the Bank to a sound financial condition (OCC exhibit A, page 2). Applicants, however, plan to replace the present board members with individuals from the applicants' group.

(6) The Bank is operating under a Formal Agreement and is undercapitalized. Present management has caused some improvement in the Bank's condition, but supervision from an experienced board of directors and additional capital are needed to restore the Bank to a sound condition.

(7) Applicants have not demonstrated the financial capacity or depth of banking experience necessary to restore the Bank to a sound condition.

D. No Good Cause for Failure to Answer

(1) In accordance with 12 C.F.R. § 19.161, the OCC's Disapproval notified the applicants of the requirements for requesting a hearing. (OCC Exhibit A).

(2) A June 10, 1993 fax from Mr. Kim stated his intention to hire counsel and meet the "legal requirements" before the due date (OCC Exhibit F).

(3) On June 17, 1993, Enforcement Counsel, by means of a certified letter mailed to Mr. Kim, with a copy to

Mr. Weinstock, informed applicants of the need to file an answer within twenty days of service of the Disapproval in order to obtain a hearing (OCC Exhibits D and E).

(4) On June 25, 1993, following Mr. Kim's receipt of the June 17, 1993 letter (OCC Exhibit E), Enforcement Counsel and Mr. Kim orally agreed to an extension of the answer's due date to July 2, 1993.

(5) As of this date, applicants have failed to file an answer with the OCC Hearing Clerk, and no person has filed a notice of appearance on behalf of the applicants in the administrative hearing process (OCC Exhibit C).

(6) Applicants, upon requesting a hearing, and having been amply notified of the need to file an answer, have failed to file a timely answer.

E. Conclusions of Law

(1) Based upon the above facts, the absence of a showing of good cause by applicants for their failure to file a timely answer, and pursuant to 12 C.F.R. § 19.161(c), the Comptroller of the Currency hereby finds that applicants' failure to file an answer, as required within the time permitted, constitutes a waiver of their right to appear and contest the allegations in the Disapproval.

(2) Based upon the above facts, the Comptroller of the Currency further finds, pursuant to 12 C.F.R. § 19.161(c) and 12 U.S.C. § 1817(j)(7):

(a) the financial condition of the applicants might jeopardize the financial stability of the Bank or prejudice the interests of depositors;

(b) the applicants have failed and neglected to furnish the OCC with all information required by the OCC; and,

(c) the competence and experience of the applicants indicates that it would not be in the best interest of the Bank's depositors or the public to permit applicants to control the Bank.

III. ORDER

The Comptroller of the Currency of the United States of America, based upon the entire record of this proceeding, including the Recommended Decision, finds that the applicants are in default pursuant to 12 C.F.R. §§ 19.19(c)(1) and 19.23(d)(2) (1993). The Disapproval has now become final as a consequence of this default.

This Order shall become effective immediately after its service and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by actions of the Comptroller of the Currency or a reviewing court, in accordance with applicable law and regulation.

So Ordered, this 9th day of December, 1993.

Eugene A. Ludwig
Comptroller of the Currency