

Order No. 2019-032

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
CONSUELO “CONNIE” MARTINEZ	§	COMMISSIONER OF TEXAS
	§	
MISSOURI CITY, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

ORDER PROHIBITING FURTHER PARTICIPATION

On this day, the matter of CONSUELO “CONNIE” MARTINEZ, Missouri City, Texas, (Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

I. Findings of Fact

A. Jurisdiction

1. Respondent is a former employee of Prosperity Bank (the Bank). Prior to her retirement on December 31, 2018, Respondent held the position of Customer Service Representative in the Bank’s branch located at 1070 Highway 6 South, Houston, Texas 77077.
2. The Bank is chartered in Texas under license number 2390-02 and is insured by the Federal Deposit Insurance Corporation (FDIC).
3. The Bank and Respondent are, and at all times pertinent to the allegations in this proceeding were, subject to the provisions of the Texas Banking Act, Texas Finance Code (Finance Code) Title 3, Subtitle A.
4. The Commissioner is authorized to issue this Order Prohibiting Further Participation (Order) pursuant to Finance Code §35.003.
5. The Commissioner has jurisdiction over Respondent and the subject matter of this proceeding.

B. Background

6. On July 11, 2019, following Respondent's retirement from the Bank, the Bank identified irregularities with a personal checking account and two Certificates of Deposit (CDs). The checking account is co-owned by a husband and wife (A.A. and M.A.1) who live outside the United States. The CDs were owned by an elderly husband and wife who are now deceased, with the husband (N.F.) owning one of the CDs and the wife (M.F.) owning the other.
7. Respondent opened the checking account for A.A. and M.A. on June 12, 1997 with an initial deposit of \$10,000. Shortly after the account was opened, the couple deposited a settlement check in excess of \$80,000 into the account. Since A.A. and M.A. live outside the United States, they never requested debit cards for the account. Nevertheless, Respondent ordered a debit card and began using it for her own personal transactions without the couple's knowledge or consent. Bank records show that all the debit card activity in the account occurred in the Missouri City area of Texas where Respondent lives.
8. A.A. and M.A. did not know the funds in their checking account were being used because Respondent altered their account statements. For example, on July 10, 2016 Respondent sent A.A. and M.A. a statement that was altered to show a balance of \$62,595.57 in the account. Bank records show there was only \$62.51 in the account on that date.
9. Respondent opened the CD for N.F. on July 17, 2008 with an initial deposit of \$46,336.92. The CD was opened without a Payable on Death (POD) designation. Between July 7, 2010 and April 20, 2012, Respondent completed 20 unauthorized transfers totaling \$48,300 from N.F.'s CD to the checking account owned by A.A. and M.A. These transfers drained most of the funds from the CD. After Respondent's last transfer in April 2012, the balance remaining in the CD

¹ Initials are used throughout this Order to preserve privacy.

was approximately \$375. N.F. had no knowledge of Respondent's use of the funds in his CD. He died in January 2018.

10. Respondent opened the CD for M.F. on October 21, 2002 with an initial deposit of \$115,691.18. This CD was also opened without a POD designation. After draining the CD belonging to M.F.'s husband N.F., Respondent began transferring funds from M.F.'s CD to the checking account belonging to A.A. and M.A. Between May 4, 2012 and May 16, 2017, Respondent completed 12 transfers totaling \$57,900. One of these transfers was done to cover a wire requested by A.A. and M.A. On May 11, 2017, the couple requested that \$25,000 be wired out of their checking account. Since there were not enough funds in the account to cover the wire, Respondent transferred \$25,000 from M.F.'s CD to the checking account to complete the wire.
11. After her death in June 2019, M.F.'s family noticed the withdrawals from her CD and contacted the Bank to determine the purpose of the withdrawals. On July 11, 2019, the Bank discovered that Respondent had embezzled a total of \$138,743.06 from the checking account and two CDs. The Bank absorbed the loss and returned the funds, along with the interest lost and penalties accrued as a result of the unauthorized withdrawals, to the appropriate accounts as follows:
 - a. a total of \$32,543.06 was credited back to the personal checking account belonging to A.A. and M.A.;
 - b. a total of \$50,355.89, which includes \$48,300 in principal and \$2,055.89 in interest, was credited back to the CD belonging to N.F. Since there was no POD designation on the CD, the funds were distributed to N.F.'s estate; and

- c. a total of \$60,129.85, which includes \$57,900 in principal, \$2,067.11 in interest and \$162.74 in penalties, was credited back to the CD belonging to M.F. Since there was no POD designation on the CD, the funds were distributed to M.F.'s estate.

12. In July 2019, the Bank contacted Respondent for an explanation of the apparently unauthorized withdrawals and transfers. Respondent declined to speak with the Bank.

II. Conclusions of Law

13. Pursuant to Finance Code §35.003, the Commissioner has grounds to remove or prohibit a present or former officer, director or employee of a state bank from office or employment in, or prohibit a controlling shareholder or other person participating in the affairs of a state bank from further participation in the affairs of, a state bank or any other entity chartered, registered, permitted or licensed by the Commissioner if the Commissioner determines from examination or other credible evidence that:

- a. the person intentionally violated an applicable state or federal law; conducted business in an unsafe or unsound manner; or made false entries in the records of a financial institution; and
- b. because of the action by the person, the financial institution suffered financial loss; the interests of the depositors or shareholders were prejudiced; or the person received financial gain by reason of the action; and
- c. the action involved personal dishonesty on the part of the person or demonstrated willful or continuing disregard for the safety or soundness of the financial institution.

14. Respondent violated state and federal law by making false entries in the records of the Bank. Specifically, Respondent altered the statements of a personal checking account to reflect larger balances than were actually in the account. Finance Code §33.108(b)(1) makes it a criminal

offense to make a false entry in a book, record, report or statement of a bank, and 18 U.S.C. §1005 prohibits an employee of an insured bank from making false entries in any book, report or statement of a bank with an intent to deceive any officer or regulator of the bank or to defraud such bank. Respondent altered the statements with the intent to deceive and defraud the Bank. In addition, Respondent violated 18 U.S.C. §656, which prohibits an employee of an insured bank from embezzling, abstracting, purloining or willfully misapplying any of the moneys, funds or credits of such bank or branch, or any moneys, funds, assets or securities entrusted to the custody or care of such bank or branch. Respondent used her position at the Bank to embezzle \$138,743.06 from a personal checking account and two CDs.

15. Unsafe and unsound activity is any action or lack of action that is contrary to generally accepted standards of prudent operation, the possible consequences of which if continued would be abnormal risk of loss or damage to the Bank, its shareholders or the FDIC. Respondent engaged in unsafe and unsound activity when she embezzled funds and altered statements to hide her actions. Because of Respondent's actions, the Bank lost \$138,743.06 and the interests of the Bank's depositors and shareholders were prejudiced. Moreover, by use of a debit card on an account belonging to someone else, Respondent received \$138,743.06 in personal gains.

16. Respondent demonstrated personal dishonesty by embezzling funds and altering statements to hide her actions. Respondent's disregard for safety and soundness was not an isolated incident but was willful and continuous over many years.

17. The Commissioner has considered the matter and determined that the statutory requirements for the issuance of a prohibition order as set forth in Finance Code §35.003 have been met. In particular, the Commissioner determines from credible evidence that:

- a. Respondent abused her position as a Bank employee to embezzle funds from customer accounts and, in doing so, violated state and federal law, conducted business in an unsafe and unsound manner, and made false entries in the records of the Bank; and
- b. because of Respondent's actions, the Bank suffered financial loss, the interests of the Bank's depositors and shareholders were prejudiced, and Respondent received financial gain by reason of her actions; and
- c. Respondent's actions involved personal dishonesty and demonstrated a willful and continuing disregard for the safety and soundness of the Bank.

III. Order of Prohibition

It is, therefore, ORDERED, ADJUDGED and DECREED that, pursuant to Finance Code §§35.003 and 35.007, CONSUELO "CONNIE" MARTINEZ may not:

18. serve as a director, officer or employee of a state bank, state trust company or holding company of a state bank, or as a director, officer or employee with financial responsibility of any other entity chartered, registered, permitted or licensed by the Commissioner under the laws of this state;
19. directly or indirectly participate in any manner in the management of such an entity;
20. directly or indirectly vote for a director of such an entity; or
21. solicit, procure, transfer, attempt to transfer, vote or attempt to vote a proxy, consent or authorization with respect to voting rights in such an entity.

IV. Effective Date

22. This Order against CONSUELO "CONNIE" MARTINEZ is effective 21 days after mailing, unless Respondent requests a hearing in writing before that date. After taking effect, this Order will be final, non-appealable and of perpetual duration. The provisions of this Order will

remain effective and in force except in the event that, and until such time as, this Order shall have been modified, terminated, suspended or set aside in accordance with Finance Code §35.0071.

It is so ORDERED.

Signed this 24th day of October, 2019.

/s/ Charles G. Cooper
Charles G. Cooper
Banking Commissioner of the State of Texas

CERTIFICATE OF SERVICE

This Order is served on CONSUELO “CONNIE” MARTINEZ as follows: By first-class mail and by certified mail, return receipt requested, sent on October 25, 2019 to:

Consuelo “Connie” Martinez
2302 Maplecrest Drive
Missouri City, Texas 77459

/s/ Alice E. Geyer
Alice E. Geyer
Assistant General Counsel
Texas Department of Banking