

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION

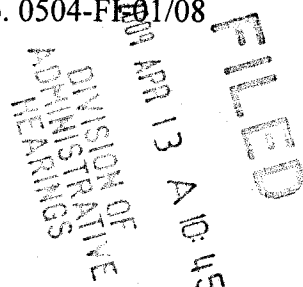


FIRST COMMERCIAL BANK OF TAMPA BAY,
TAMPA, FLORIDA & WESLEY T. SMALL,
Petitioners,

vs.

DOAH Case No. 08-0997
OFR Case No. 0504-FR-01/08

OFFICE OF FINANCIAL REGULATION,
Respondent.



FINAL ORDER

This cause came on for review, consideration and final agency action on April 9, 2009, based on the Recommended Order filed on March 20, 2009, by Administrative Law Judge J. Bruce McKibben, Jr., Division of Administrative Hearings.

SUMMARY OF PROCEEDINGS

On November 21, 2007, the Office of Financial Regulation (“OFR” or the “Office”) received from First Commercial Bank of Tampa Bay (“FCBTB”) a Notice of Change in Executive Officer for Wesley T. Small (“Notice of Change”). This Notice of Change proposed Wesley T. Small (“Mr. Small”) to be an executive vice-president (“EVP”) and chief operating officer (“COO”) for FCBTB. On January 23, 2008, the Office issued a Notice of Disapproval (“NOD”) to FCBTB disapproving FCBTB’s proposed appointment of Mr. Small to the position of EVP and COO. (A copy of the NOD is attached and incorporated herein as Exhibit A.) The NOD stated the basis for the disapproval was pursuant to Section 655.0385, Florida Statutes (F.S.), and Chapter 69U-100, Florida Administrative Code (F.A.C.). Specifically, the NOD listed twenty-seven Findings of Fact and eleven Conclusions of Law that supported OFR’s determination that FCBTB failed to meet the burden of proving that all statutory and regulatory criteria were

met to warrant the approval of the proposed appointment of Mr. Small as an executive officer for FCBTB.

In response to the NOD, Petitioners FCBTB and Mr. Small timely filed a request for an administrative hearing pursuant to Section 120.569(1), F.S. Administrative Law Judge McKibben heard the matter on January 22 and 23, 2009. After consideration of the record, exhibits and argument presented at hearing, the Administrative Law Judge issued his Recommended Order on March 20, 2009. (Attached and incorporated herein as Exhibit B.) The Administrative Law Judge recommended that a final order be entered that affirmed OFR's issuance of the NOD and stated that it was within OFR's "sole discretion" as to whether or not to allow Petitioners' to withdraw the Notice of Change.

No exceptions were filed.

Therefore, after a complete review of the record, including the admitted exhibits and being otherwise fully apprised in all material premises, the Recommended Order is adopted by and incorporated in this Final Order of the Office and

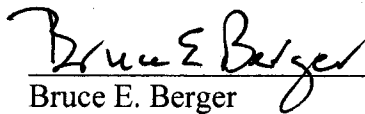
IT IS HEREBY ORDERED that the Findings of Fact of the Administrative Law Judge are adopted and incorporated herein by reference in full as the Office's Findings of Fact, and the Conclusions of Law reached by the Administrative Law Judge are adopted and incorporated herein by reference as the Office's Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Administrative Law Judge is adopted by the Office as follows:

The Notice of Disapproval is affirmed; and

Petitioners shall not be allowed to withdraw the Notice of Change application submitted to the Office in November 2007.

DONE and ORDERED this 10th day of April, 2009.



Bruce E. Berger
Executive Administrative Officer
Office of Financial Regulation

NOTICE OF RIGHTS

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the Agency Clerk for the Office of Financial Regulation, Suite 526, the Fletcher Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0379, and a copy, accompanied by the filing fees as required by law, with the District Court of Appeal, First District, 301 S. Martin Luther King, Jr., Boulevard, Tallahassee, Florida 32399-1850, or with the District Court of Appeal in the appellate district where the party resides. **The Notice of Appeal must be filed within 30 days of the rendition of the order to be reviewed.**

Copies furnished to:

R. Bruce McKibben, Jr.,
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

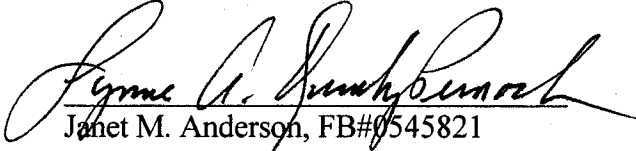
Mark Freund, Esq.
Igler and Dougherty, P.A.
2457 Care Drive
Tallahassee, Florida 32308

Linda B. Charity, Director
Division of Financial Institutions
Office of Financial Regulation
200 East Gaines Street, Suite 624
Tallahassee, Florida 32399

Janet M. Anderson, Esq.
Lynne A. Quimby-Pennock, Esq.
Office of Financial Regulation
200 East Gaines Street, Suite 526
Tallahassee, Florida 32399-0379

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing Final Order with the attachments issued in First Commercial Bank of Tampa Bay & Wesley T. Small, vs. Office of Financial Regulation, DOAH Case # 08-997 & OFR Case # 0504-FI-01/08, has been provided via U.S. Mail to: Mark Freund, Esq., Attorney for Petitioners, Iglar & Dougherty, P.A., 2457 Care Drive, Tallahassee, Florida, 32308; and R. Bruce McKibben, Jr., Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building 1230 Appalachian Parkway, Tallahassee, Florida 32399-3060; and via interoffice delivery to Linda B. Charity, Director, Division of Financial Institutions, Office of Financial Regulation, 200 E. Gaines Street, The Fletcher Building, Suite 624, Tallahassee, Florida, 32399, this 10th day of April, 2009.


Janet M. Anderson, FB#0545821
Lynne A. Quimby-Pennock, FB#394572
Assistant General Counsel



**FINANCIAL SERVICES
COMMISSION**

JEB BUSH
GOVERNOR

TOM GALLAGHER
CHIEF FINANCIAL OFFICER

CHARLIE CRIST
ATTORNEY GENERAL

CHARLES BRONSON
COMMISSIONER OF
AGRICULTURE

DON B. SAXON
COMMISSIONER

OFFICE OF FINANCIAL REGULATION

January 23, 2008

VIA FACSIMILE AND U.S. MAIL

Mr. A. George Igler
Iglar & Dougherty, P.A.
2457 Care Drive
Tallahassee, Florida 32308

Re: First Commercial Bank of Tampa Bay, Proposed Chief Operating Officer - Mr. Wesley T. Small: OFR File No. 0504-FI-01/08

Dear Mr. Igler:

NOTICE OF DISAPPROVAL

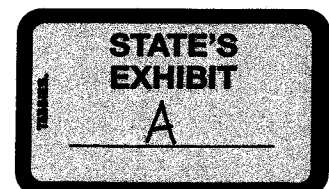
I, Linda B. Charity, Director, Division of Financial Institutions, Florida Office of Financial Regulation ("Office"), have considered the information presented to the Office with regard to the proposed appointment of Mr. Wesley T. Small as the Chief Operating Officer of First Commercial Bank of Tampa Bay. I give notice that the Office hereby disapproves the proposed employment of Mr. Small as Chief Operating Officer and make the following:

FINDINGS OF FACT

- (1) First Commercial Bank of Tampa Bay ("FCBTB") is a Florida state-chartered bank subject to the Florida Financial Institutions Codes, Title 38, Florida Statutes (2007).
- (2) FCBTB is required to notify the Office of the proposed appointment or employment of any individual as an executive officer, or an equivalent position, per Section 655.0385, Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code.
- (3) On November 21, 2007, the Office received notice from FCBTB of the proposed appointment and employment of Mr. Wesley T. Small as the Executive Vice President and Chief Operating Officer ("COO") for FCBTB.
- (4) On November 26, 2007, the Office requested, by facsimile, that Mr. Small submit a completed Addendum to Form OFR-U-10, "Authorization for Release of Confidential Information," Form OFR-U-10-A.
- (5) The Office received Mr. Small's completed Form OFR-U-10-A on November 28, 2007.

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DIVISION OF FINANCIAL INSTITUTIONS
200 E. GAINES STREET, TALLAHASSEE, FL 32399-0371
TEL: (850) 410-9800 • FAX: (850) 410-9548

Affirmative Action / Equal Opportunity Employer



- (6) FCBTB submitted supplemental information concerning Mr. Small's proposed appointment on December 3, 2007, and again on December 7, 2007.
- (7) The correspondence with the supplemental information submitted on December 7, 2007, also requested that Mr. Small be approved on an interim basis for the COO position per Rule 69U-100-03852(4), Florida Administrative Code.
- (8) The Office did not grant approval of the interim appointment request and notified FCBTB's Correspondent of the decision by telephone on December 14, 2007.
- (9) On January 14, 2008, FCBTB submitted additional supplemental information concerning Mr. Small's proposed appointment.
- (10) Mr. Small has approximately 40 years of experience in the banking industry, including experience in director and executive officer positions.
- (11) Mr. Small was employed as the President of Peoples State Bank, Lake City, Florida, from November 1999 through August 2005.
- (12) Mr. Small filed, authorized to be filed, or caused to be filed with the Internal Revenue Service ("IRS"), federal personal income tax returns for 1999, 2000, 2001, 2002, 2003, and 2004 which reported zero income and zero taxes due.
- (13) Mr. Small intentionally and knowingly did not pay any personal income taxes from 1999-2004.
- (14) Peoples State Bank became aware of Mr. Small's failure to pay taxes in July 2005.
- (15) Mr. Small resigned from his positions at Peoples Bank effective on or about August 9, 2005.
- (16) The IRS seized \$27,132.02 in October 2005 from Mr. Small's deposit accounts as a partial payment of back taxes due to the IRS.
- (17) In documents submitted to the IRS in December 2005, Mr. Small stated that he was employed by Apex Lending, Inc., as a branch manager and had been employed with that company since September 20, 2005.
- (18) The Interagency Biographical and Financial Report ("IBFR") for Mr. Small that was submitted to the Office with the notice of proposed appointment does not reflect any employment with Apex Lending, Inc., in response to IBFR Question 2(a) concerning his employment history for the preceding five years.
- (19) In March 2006, the IRS seized \$48,040.04 in proceeds from the sale of Mr. Small's house.
- (20) The IRS filed a tax lien against Mr. Small in June 2006 in the amount of \$108,000.
- (21) The IRS filed an additional tax lien against Mr. Small in September 2007 in the amount of \$9,018.

- (22) Mr. Small and the IRS entered into an installment payment agreement in September 2007. The agreement requires Mr. Small to make payments of \$1,381.00 per month to the IRS. The IRS stated the amount owed by Mr. Small as of September 7, 2007 was \$73,947.97, exclusive of additional accrued penalties and interest.
- (23) Mr. Small filed a Financial Statement with the Office that reports him as having a negative net worth of approximately \$114,200 as of September 30, 2007.
- (24) FCBTB submitted Mr. Small to the Federal Deposit Insurance Corporation ("FDIC") in November 2005 for approval as a proposed COO.
- (25) Mr. Small began working at FCBTB on or about December 2005.
- (26) On or about February 3, 2006, FCBTB withdrew the submission to the FDIC of Mr. Small as the proposed COO.
- (27) Mr. Small has remained employed with FCBTB to date as the Vice President for Operations, a position described by FCBTB as a non-executive officer position.

CONCLUSIONS OF LAW

- (1) Section 655.0385(1), Florida Statutes, provides specified criteria for state financial institutions that mandate prior notification to the Office of any proposed employment of any individual as an executive officer or equivalent position at least 60 days before such appointment.
- (2) FCBTB meets one or more of the specified criteria of Section 655.0385(1), Florida Statutes, and is required to comply with the provisions of Section 655.0385, Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code.
- (3) Section 655.0385(2), Florida Statutes, states:

A state financial institution may not appoint any individual to the board of directors, or employ any individual as an executive officer or equivalent position, if the office issues a notice of disapproval with respect to that person.
- (4) Section 655.0385(3), Florida Statutes, and Rule 69U-100.03852(5)(b), Florida Administrative Code, both state that the Office "shall issue a notice of disapproval if the competence, experience, character, or integrity of the individual to be appointed or employed indicates that it is not in the best interests of the depositors, the members, or the public to permit the individual to be employed or associated with the state financial institution."
- (5) Rule 69U-100.03852(5)(c)6., Florida Administrative Code, further provides in relevant part that unless the proposed individual has shown rehabilitation, a proposed executive officer shall not be eligible for permanent or interim employment if the individual "has demonstrated a lack of responsibility in relation to financial matters."

(6) Section 655.005(1)(f), Florida Statutes, defines "executive officer" as:

[A]n individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the financial institution; the term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by officers other than such individual, whether or not such policy standards have been adopted by the board of directors. The chair of the board, the president, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless any such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein.

- (7) The position at FCBTB proposed for Mr. Small, as the bank's Executive Vice President and Chief Operating Officer, is an executive officer position as defined by Section 655.005(1)(f), Florida Statutes.
- (8) It is FCBTB's responsibility to prove to the Office that all statutory and administrative criteria are met to warrant approval of any request for authority or proposal of appointment. FCBTB has not met its burden of proof to demonstrate to the Office that Mr. Small is qualified to be the COO of FCBTB.
- (9) Mr. Small has demonstrated a lack of responsibility in financial matters by his intentional failure to timely pay income taxes during the period of 1999-2004, current obligation to pay the past due taxes with interest and penalties to the IRS, and a personal financial negative net worth after a long history of employment in the banking industry.
- (10) Given Mr. Small's long history and degree of experience in the highly regulated and legally complex banking industry, his decisions to file, or allow to be filed for him, personal income tax returns that reported zero income and zero taxes due while employed as the President of Peoples State Bank, and failure to timely pay income taxes during the period of 1999-2004, demonstrate that Mr. Small does not possess the necessary judgment, character, integrity, and competence which are required to be an executive officer of a financial institution.
- (11) It is not in the best interests of FCBTB's depositors and the public for Mr. Small to serve as FCBTB's Executive Vice President and Chief Operating Officer.

The submitted proposal for appointment and all supplemental information was evaluated for compliance with the standards set forth in Section 655.0385, Florida Statutes, and Chapter 69U-100, Florida Administrative Code. In addition to the statutory and regulatory criteria which relate specifically to the criteria for disapproval of proposed executive officers of a state financial institution, the Office is also guided by the broader purposes of the Financial Institutions Codes, as stated in Section 655.001, Florida Statutes, including the maintenance of public confidence in financial institutions and the protection of the

Mr. A. George Igler
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interests of the public in the safety and soundness and the preservation of the financial institution system in this state.

FCBTB has failed to meet its burden of proving that all statutory and regulatory criteria have been met to warrant the approval of the proposed appointment of Mr. Small as an executive officer, and the Office therefore disapproves such proposed appointment. Mr. Small may not serve as Chief Operating Officer for First Commercial Bank of Tampa Bay.

If you have any questions, please contact our office at (850) 410-9800.

Sincerely,



Linda B. Charity
Director

LBC/

cc: Board of Directors, First Commercial Bank of Tampa Bay
Federal Deposit Insurance Corporation, Atlanta
Bureau of Bank Regulation, District I
Area Financial Manager, Tampa
Clerk, Financial Institutions

NOTICE OF RIGHTS

Notice is hereby provided that the foregoing Notice of Disapproval is entered pursuant to Section 655.0385, Florida Statutes, and is accordingly effective immediately. Judicial review may be obtained in accordance with Section 120.68, Florida Statutes, as set forth below:

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE (1) COPY OF A NOTICE OF APPEAL WITH:

CLERK
OFFICE OF FINANCIAL REGULATION
200 EAST GAINES STREET
THE FLETCHER BUILDING, SUITE 526
TALLAHASSEE, FLORIDA 32399-0379
(850) 410-9896

AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

You are further advised that you may request an administrative hearing to be conducted in accordance with the provisions of Sections 120.569 and 120.57, Florida Statutes. Requests for such a hearing must comply with the provisions of Rules 28-106.104(2) and either Rule 28-106.201(2) or 28-106.301(2), Florida Administrative Code, and must be filed with:

Clerk
Office of Financial Regulation
200 East Gaines Street
The Fletcher Building, Suite 526
Tallahassee, Florida 32399-0379
(850) 410-9896

within twenty-one days after you receive a copy of this Notice of Disapproval. Failure to respond within twenty-one days of receipt of this Notice of Disapproval shall be deemed to be a waiver of all rights to an administrative hearing. Should you request such a hearing, all parties will have the right to be represented by counsel or other qualified representative; to offer testimony, either written or oral; to call and cross-examine witnesses; and to have subpoenas and subpoenas duces tecum issued on their behalf. Pursuant to Section 120.573, Florida Statutes, you are advised that mediation is not available.