

STATE OF FLORIDA  
DEPARTMENT OF BANKING AND FINANCE  
DIVISION OF BANKING

IN RE:

SUSAN D. HENSEL,  
Respondent.

Administrative Proceeding  
No. 3536-B-7/96



**DEFAULT FINAL ORDER REGARDING SUSAN D. HENSEL**

The State of Florida Department of Banking and Finance, Division of Banking, (hereinafter the "Department"), hereby enters this Default Final Order based upon the following:

**FINDINGS OF FACT**

1. On September 17, 1996, the Department issued to Susan D. Hensel (hereinafter the "Respondent"), the Administrative Complaint For Removal and Prohibition With Notice of Rights (hereinafter the "Complaint" and attached as Exhibit "A"), alleging violations of Chapter 655, Florida Statutes, (hereinafter the "Act"), and notifying Respondent that the Department intended to issue an order removing and prohibiting Respondent from future participation in the affairs of any state-chartered financial institution pursuant to Section 655.037, Florida Statutes.

2. Respondent received a copy of the Complaint by certified mail on September 20, 1996. The Complaint fairly and adequately stated the grounds upon which the Department based its proposed action and further advised the Respondent that she had twenty-one (21) days after receipt thereof within which to petition the Department for an administrative hearing concerning the allegations set forth in said Complaint and that failure to do so would constitute a waiver of such right. As of the date hereof, Respondent has not petitioned the Department for an administrative hearing in accordance with Rule 3-7.002, Florida Administrative Code.

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3. The factual allegations set forth in the Complaint are incorporated herein by reference and made apart thereof. Being uncontested, said Findings of Fact are accepted as true and correct and are adopted by the Department as the Findings of Fact of this Default Final Order.

**CONCLUSIONS OF LAW**

4. The Department has jurisdiction over the Respondent and this proceeding and is empowered to enforce the provisions of Chapter 655, Florida Statutes, pursuant to Sections 655.001 and 655.012, Florida Statutes.

5. Respondent having failed to file a Petition for hearing or any other document complying with the Rules of the Florida Administrative Code, has waived her right to an administrative hearing pursuant to Rule 28-5.111(1), Florida Administrative Code. See also City of Punta Gorda v. PERC, 358 So. 2d 81 ( Fla 1st DCA 1978).

6. The Conclusions of Law set forth in the Complaint are incorporated herein by reference and made a part hereof. Said Conclusions of Law being uncontested are therefore accepted as true and correct and are adopted by the Department as the Conclusions of Law of this Default Final Order.

7. Based on the foregoing Findings of Fact the Department concludes as a matter of law that Respondent violated Section 655.037, Florida Statutes, by engaging in conduct which is evidence of a willful and continuing disregard for the safety and soundness of the financial institution and constitutes a breach of her fiduciary duty to the institution.

8. Pursuant to Section 655.037(3), Florida Statutes, the Department may issue an Order removing or prohibiting an officer, director, committee member, employee, or other person from participation in the affairs of the institution or any other financial institution upon finding that the

Respondent violated Section 655.037(1), Florida Statutes. Respondent was a financial institution-affiliated party as a matter of law.

**FINAL ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Respondent, SUSAN D. HENSEL, be hereby prohibited from participating in the affairs of any financial institution and deemed ineligible for election to any official position in or employment by any financial institution in this state except with prior written consent of the Department.

DONE and ORDERED in Tallahassee, Florida, this 7<sup>th</sup> day of January, 1997.

  
**ROBERT F. MILLIGAN** as Comptroller  
of the State of Florida and Head of the  
Department of Banking and Finance

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES (1996 SUPP.). REVIEW PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE 1ST DISTRICT COURT OF APPEAL OR THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BY FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Default Final Order Regarding

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Susan D. Hensel has been furnished by U.S. Mail to Susan D. Hensel, 4700 Rummell Road, St.  
Cloud, Florida 34771 this 7<sup>th</sup> day of January, 1997.



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Robert Alan Fox  
Assistant General Counsel  
Office of the Comptroller  
The Capitol, Suite 1302  
Tallahassee, Florida 32399-0350  
(904) 488-9896

copies to:

Art Simon, Director  
Division of Banking  
Department of Banking and Finance  
Suite 526, The Fletcher Building  
Tallahassee, Florida 32399-0350

STATE OF FLORIDA  
DEPARTMENT OF BANKING AND FINANCE  
DIVISION OF BANKING

IN RE:

SUSAN D. HENSEL,  
Respondent.

Administrative Proceeding  
No. 3536-B-7/96

ADMINISTRATIVE COMPLAINT FOR REMOVAL AND  
PROHIBITION WITH NOTICE OF RIGHTS

The State of Florida Department of Banking and Finance, Division of Banking ("Department"), has statutory authority to administer and enforce Florida Statutes Title XXXVIII, Banks and Banking. The Public Bank, St. Cloud, Florida, by its employee Susan D. Hensel, has engaged in acts and practices which demonstrate a willful and continuing disregard for the safety and soundness of a financial institution and is unfit to hold any office or participate in any manner in the conduct of the affairs of a financial institution. Upon due consideration of the facts set forth below, the Department files this Administrative Complaint for Removal and Prohibition with Notice of Rights, barring Susan D. Hensel from future service as an officer, director, committee member, employee, or other person participating in this conduct of the affairs of a state-chartered financial institution in this state, as set forth fully below:

DEPT. EXHIBIT # A  
DATE: 12/6/96  
INITIALS: RAF

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FINDINGS OF FACT

1. The Department has jurisdiction over state-chartered financial institutions including state-chartered banks and the officers, directors, committee members, employees, and any other persons participating in the conduct of the affairs of a financial institution.

2. At all times material hereto, Public Bank, St. Cloud, Florida, whose principal place of business is 2500 13th Street, St. Cloud, Florida 34769, is a state-chartered federally insured bank.

3. At all times material hereto, Susan D. Hensel was an employee of Public Bank, St. Cloud, Florida, and consequently participated in the conduct and affairs of Public Bank, St. Cloud, Florida.

4. On or about September 20, 1994, Susan D. Hensel, acting in the capacity of head teller, knowingly and willingly made a false entry into the financial books of Public Bank, St. Cloud, Florida, recording in a general ledger account of Public Bank an entry which stated that \$425,000.00 in cash had been shipped to a correspondent bank, Independent Bankers' Bank of Florida, when no such shipment had been made, with the intent to deceive the officers and examiners of the financial institution to conceal a cash shortage in the vault cash maintained by Susan D. Hensel.

5. On or about September 20, 1994, Susan D. Hensel, acting in the capacity of head teller, knowingly and willingly made a

false entry into the financial books of Public Bank, St. Cloud, Florida, recording and causing to be recorded in a general ledger account of Public Bank an entry which stated that Susan D. Hensel had a total of \$672,980.50 cash in the vault when respondent had a total of only \$425,000.00 cash in the vault, with the intent to deceive the officers and examiners of the financial institution to conceal a cash shortage in the vault cash maintained by Susan D. Hensel.

6. On June 5, 1996, Susan D. Hensel appeared in the United States District Court, Middle District of Florida, Orlando Division pursuant to a plea agreement. She entered a plea of guilty to Count One, which charges Susan D. Hensel with making a false entry into the financial books of Public Bank, St. Cloud, Florida, to wit: Susan D. Hensel in violation of 18 U.S.C. S.1005. The elements are set forth below:

- A. That former bank employee Susan D. Hensel was an employee of Public Bank, St. Cloud, Florida; and
- B. That Public Bank, St. Cloud, Florida, was an insured bank; and
- C. That former employee Susan D. Hensel knowingly and willfully made a false entry into the financial books of Public Bank, St. Cloud, Florida; and
- D. That former employee Susan D. Hensel acted with intent to deceive the officers and examiners of Public Bank, St. Cloud, Florida.

7. On June 5, 1996, Susan D. Hensel appeared in the United

States District Court, Middle District of Florida, Orlando Division pursuant to a plea agreement. She entered a plea of guilty to Count Two, which charges the Defendant with recording and causing to be recorded a false entry into the financial books of Public Bank, St. Cloud, Florida, to wit: Susan D. Hensel in violation of 18 U.S.C. S.1005. The elements are set forth below:

- A. That former bank employee Susan D. Hensel was an employee of Public Bank, St. Cloud, Florida; and
- B. That Public Bank, St. Cloud, Florida, was an insured bank; and
- C. That former employee Susan D. Hensel knowingly and willfully made and caused to be made a false entry into the financial books of Public Bank, St. Cloud, Florida; and
- D. That former employee Susan D. Hensel acted with intent to deceive the officers and examiners of Public Bank, St. Cloud, Florida.

8. At all times material hereto, Susan D. Hensel, owed a fiduciary duty to the Public Bank, St. Cloud, Florida and its shareholders and its depositors.

#### CONCLUSIONS OF LAW

9. Section 655.037, Florida Statutes, states in pertinent part:

The department may issue and serve upon any financial institution-affiliated party and upon the state financial institution, subsidiary, or service corporation involved, a complaint stating charges whenever the department has reason to believe that the financial institution-affiliated party is engaging or has engaged in conduct that is:

- (a) An unsafe or unsound practice;
- (b) A prohibited act or practice;
- (c) Willful violation of any law relating to financial institutions;
- (d) A violation of any other law involving fraud or moral turpitude which constitutes a felony;  
....
- (i) An act of commission or omission or a practice which is a breach of trust or a breach of fiduciary duty.

10. Based on the foregoing, the Department concludes as a matter of law, pursuant to Sections 655.001; 655.012; and 655.037, Florida Statutes, that it has jurisdiction over the Respondent and is authorized to take this action. As a matter of law, pursuant to Section 655.005, Fla. Stat., Susan D. Hensel is a financial institution-affiliated party.

11. Officers, directors and employees of financial institutions share an obligation to the institution, its members, depositors and shareholders greater than that of an ordinary prudent person. The standard of care and fidelity are more lofty than those of the market place. Officers, directors and employees of financial institutions owe a fiduciary duty to an institution and to its members greater than that owed all other corporations. First Nat. Bank of LaMarque v. Smith, 436 F. Supp. 824 (S.D. Texas 1977); Gadd v. Pearson, 351 F. Supp. 895 (M.D. Fla. 1972); Fleishacker v. Blum, 109 F. 2d 543 (9th Cir. 1940).

12. Based on the foregoing, the Department concludes as a matter of law that Susan D. Hensel, while employed by the Public Bank, St. Cloud, Florida, was bound by contract and the common law to exercise the highest degree of loyalty, care, and fair dealing with her employer Public Bank, St. Cloud, Florida. In violation of her fiduciary duty, Susan D. Hensel, on or about September 20, 1994 made a false entry into the financial books of Public Bank, St. Cloud, Florida, and on or about September 20, 1994 made and caused a false entry in the financial books of Public Bank, St. Cloud, Florida, her employer.

13. Based upon the foregoing, the Department concludes, as a matter of law, that Susan D. Hensel's acts of commission, more particularly described in paragraphs 1 through 12, constitute an unsafe or unsound practice in violation of Section 655.037, Florida Statutes.

14. Based upon the foregoing, the Department concludes, as a matter of law, that Susan D. Hensel's acts of commission, more particularly described in paragraphs 1 through 12, constitute a prohibited act or practice in violation of Section 655.037, Florida Statutes.

15. Based upon the foregoing, the Department concludes, as a matter of law, that Susan D. Hensel's acts of commission, more particularly described in paragraphs 1 through 12, constitute a willful violation of laws relating to financial institutions in

violation of Section 655.037, Florida Statutes.

16. Based on the foregoing, the Department concludes, as a matter of law, that Susan D. Hensel's acts of commission, more particularly described in paragraphs 1 through 12, constitute violations of law to wit: unsafe or unsound practices; a prohibited act or practice; a willful violation of any law relating to financial institutions; all within the ambit of Section 655.037, Florida Statutes.

17. Section 655.0321, Florida Statutes, states:

The department shall consider the public purposes specified in s. 119.14(4)(b) in determining whether the hearings and proceedings conducted pursuant to s. 655.033 for the issuance of cease and desist orders and s. 655.037 for the issuance of suspension or removal orders shall be closed and exempt from the provisions of s. 286.011, and whether related documents shall be confidential and exempt from the provisions of s. 119.07(1). These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

18. Based upon the foregoing Findings of Fact, the Department concludes as a matter of law that this Administrative Complaint for Removal and Prohibition with Notice of Rights is a public document.

19. Section 655.037(7), Florida Statutes, states, in relevant part:

Any financial institution affiliated party removed from office pursuant to this section is not eligible for reelection to such position or to any official position in any financial institution in this state except with the written consent of the department.

20. Based upon the foregoing, the Department concludes as a matter of law that upon entry of a Final Order Susan D. Hensel is removed from the Bank and prohibited from participation in the affairs of any state-chartered financial institution without the express written consent of the Department.

WHEREFORE, unless a hearing is requested within twenty-one (21) days from the date of service of this Administrative Complaint for Removal and Prohibition in accordance with the attached Notice of Rights, the Department will enter an Order removing Susan D. Hensel from the Public Bank, St. Cloud, Florida, prohibiting Susan D. Hensel from future participation in the affairs of any state-chartered financial institution from the date a Final Order of Removal and Prohibition is entered.

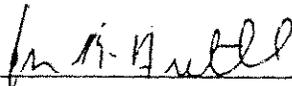
NOTICE OF RIGHTS

The Respondent is advised that within twenty-one (21) days after receipt of the foregoing Administrative Complaint for Removal and Prohibition, the Respondent may request a hearing on this matter under provisions of Section 120.57, Florida Statutes, by filing a petition for hearing in accordance with Rule 3-7.002, Florida Administrative Code, within twenty-one (21) days. The original and two copies of the petition for hearing must be filed with:

Clerk  
Office of the Comptroller, Legal Office  
Department of Banking and Finance  
Suite 526, The Fletcher Building  
101 E. Gaines Street

Tallahassee, Florida 32399-0350  
(904) 488-9896

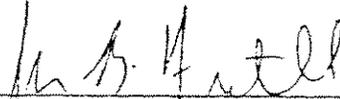
Should the Respondent request a hearing, she is referred to Chapters 3-7, 28-5, 28-6, and 60Q-2, Florida Administrative Code, which operates as the Department's Rules of Procedure in this matter and she is further advised that at such hearing she shall have the right to be represented by counsel or other 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 her behalf. FAILURE TO REQUEST A HEARING WITHIN TWENTY-ONE (21) DAYS AFTER RECEIPT OF THIS NOTICE SHALL CONSTITUTE A WAIVER OF THE RESPONDENT'S RIGHT TO REQUEST A HEARING ON ANY MATTER SET FORTH IN THE FOREGOING AND A FINAL ORDER WILL BE ENTERED. PLEASE BE GOVERNED ACCORDINGLY.

  
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JOHN B. FRETWELL  
Chief Counsel  
Office of the Comptroller  
Suite 526, The Fletcher Building  
101 E. Gaines Street  
Tallahassee, Florida 32399-0350  
(904) 488-9896  
Fla. Bar No: 166680

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the fore-going Administrative Complaint for Removal and Prohibition

with Notice of Rights was sent by Certified U. S. Mail, Restricted Delivery, Return Receipt Requested, to Susan D. Hensel, 4700 Rummell Rd., St. Cloud, Florida 34771, and by Certified U. S. Mail, Restricted Delivery, Return Receipt Requested, to Public Bank through its President Jack A. Shoffner, 2500 13th Street, St. Cloud, Florida 34769 this 17<sup>th</sup> day of September, 1996.



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JOHN B. FRETWELL  
Chief Counsel  
Office of the Comptroller  
Suite 526, The Fletcher Building  
101 E. Gaines Street  
Tallahassee, FL 32399-0350  
(904) 488-1111

s:hensel2.com