

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

Department of Insurance and Financial Services,

Petitioner

v

Docket No. 20-023298

Case No. 20-1059

Finacristoc Bank,

Respondent

For the Petitioner:

Gary Grant
Joseph Garcia
Department of Insurance and Financial Services
530 W. Allegan Street, 8th Floor
Lansing, MI 48933
grantg1@michigan.gov; garciaj7@michigan.gov

For the Respondent:

Finacristoc Bank
145 Ionia Avenue, NW
Grand Rapids, MI 49703

**Issued and entered
this 5th day of April 2021
by Randall S. Gregg
Senior Deputy Director**

FINAL DECISION AND ORDER TO CEASE AND DESIST

I. INTRODUCTION

On February 24, 2021, Administrative Law Judge Stephen Goldstein (Judge Goldstein) issued a Proposal for Decision (PFD). Judge Goldstein recommended that the Director issue a final decision to cease and desist consistent with the Findings of Fact and Conclusions of Law as outlined in the PFD. The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. In addition, neither party filed exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not

raised. *Attorney General v. Public Service Comm'n*, 136 Mich App. 52 (1984); see also MCL 24.281. For these reasons, and as set forth below, the PFD is adopted in full.

II. FINDINGS OF FACT

The Findings of Fact in the PFD are adopted in full and made part of this Final Decision.

III. CONCLUSIONS OF LAW

The Conclusions of Law are adopted in full, made part of this Final Decision, and restated, with supplementation, as follows:

1. The burden of proof is on the Petitioner to prove by a preponderance of the evidence that grounds exist for the imposition of sanctions upon the Respondent.
2. Section 72(3) of the Administrative Procedures Act, MCL 24.272(3), does not require a full evidentiary hearing when all alleged facts are taken as true. See *Smith v Lansing School District*, 428 Mich 248 (1987).
3. The Petitioner has established, by a preponderance of the evidence, that Respondent violated MCL 487.11105 and MCL 487.11106, as alleged in the Petitioner's October 30, 2020, Notice of Charges and Temporary Order to Cease and Desist.
4. Pursuant to MCL 487.12304(1), because Respondent failed to appear at the December 8, 2020 hearing, Respondent is considered to have consented to the issuance of a cease and desist order.

IV. FINAL ORDER TO CEASE AND DESIST

Therefore, it is ORDERED that:

1. The PFD is adopted in whole and made part of this Final Decision.
2. Respondent Finacristoc Bank shall immediately cease and desist from operating its website, <https://finacristoc.com>; from conducting any and all business operations as Finacristoc Bank; and from committing any acts in violation of the Code.

3. This Order is effective on the date it is issued and entered and shall remain in effect until terminated, modified, or set aside in writing by the Director.



Randall S. Gregg
Senior Deputy Director and General Counsel

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 20-023298

**Department of Insurance and
Financial Services,
Petitioner**

Case No.: 20-1059

**Agency: Department of Insurance
and Financial Services**

v

**Finacpristoc Bank,
Respondent**

Case Type: DIFS-Banking Code

Filing Type: Cease & Desist

**Issued and entered
this 24th day of February 2021
by: Stephen B. Goldstein
Administrative Law Judge**

PROPOSAL FOR DECISION

Background and Procedural History

This proceeding is held under the authority of the Banking Code of 1999, 1999 PA 276, as amended, MCL 487.11101 *et seq.* (hereafter 'Code').

On October 30, 2020, the Department of Insurance and Financial Services (Petitioner) issued a Notice of Charges, Notice of Hearing, and Temporary Order to Cease and Desist, alleging violations by Finacpristoc Bank (Respondent) of Section 1105 of the Code, MCL 487.11105 and Section 1106 of the Code, MCL 487.11106.

On November 2, 2020, this matter was referred to the Michigan Office of Administrative Hearings and Rules (MOAHR) to schedule a contested case hearing.

On November 4, 2020, MOAHR issued a Notice of Hearing scheduling a hearing for December 8, 2020, at 9:00 a.m.

The December 8, 2020, hearing was held as scheduled. Petitioner was represented by Gary Grant, Attorney at Law. Respondent failed to appear. After a finding by the Tribunal that Respondent was properly served with notice, the hearing proceeded in Respondent's absence, pursuant to Sections 72 and 78 of Michigan's Administrative Procedures Act,

MCL 24.271 *et seq.* (APA) and the Michigan Administrative Hearing System Rules (MAHS Rules), 2015 AACS R 792.10101 – R 792.110903.

Issue(s)

Has Respondent violated the Code, as alleged in the October 30, 2020 Notice of Charges and Temporary Order to Cease and Desist?

Applicable Law

MCL 487.11105(1) provides, in relevant part:

Sec. 1105. (1) A person shall not engage in the business of banking in this state unless authorized by this act, the laws of another state, the national bank act, the international banking act of 1978, or if engaged in the business of banking on the effective date of this act under former 1969 PA 319.

MCL 487.11106 provides, in relevant part:

Sec. 1106. The use of the word “bank”, “banker”, or “banking” or any foreign language words of similar meaning as a designation or name, or part of a designation or name under which business is or may be conducted in this state, is restricted to a national bank, a bank subject to this act, an out-of-state bank, a bank holding company registered under the bank holding company act, a foreign bank agency, a foreign bank branch, a savings and loan holding company as defined in 12 C.F.R. 583.20, or a savings bank that is lawfully conducting business in this state, unless that designation or name, taken as a whole, would not imply a banking business. Use of the term “mortgage banker” or “mortgage banking” in the name or assumed name of a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, does not violate this section.

Findings of Fact

Based on a preponderance of the evidence, the Tribunal finds, as material fact:

1. Respondent, Finacpristoc Bank, is either currently or has in the past maintained an internet website at the URL of <https://finacpristoc.com>. On this website, Respondent purports or purported to be a bank headquartered at 145 Ionia Avenue NW, Grand Rapids, MI 49703. The website contains a series of pages and subpages designed to create the appearance that Respondent is a legitimate

authorized bank that offers banking and crediting services, inclusive of savings and checking accounts, loans, and credit cards.

2. Respondent's website invites consumers to apply for an account by clicking on a link on its website which opens a form that requires the entry of personal information, including the applicant's social security number. Consumers are required to complete the form and submit it through the online portal on Respondent's website. Recently, consumer MM began the online application process but discontinued it after he became suspicious about its legitimacy. MM did not click the "submit" button for his application but was unable to delete his personal information prior to exiting the website. Subsequently, he made several phone calls to the telephone number listed on Finacpristoc's website in an attempt to ensure that his personal information was deleted, but the line was answered each time by a pre-recorded message.
3. DIFS investigation determined that Finacpristoc Bank is not located at the address listed on its website and DIFS was otherwise unable to identify any physical location whatsoever for Finacpristoc Bank. Moreover, DIFS investigators were unable to make contact with any bank representatives by using the telephone number listed on Finacpristoc's website. The only evidence that DIFS was able to uncover regarding the existence of Finacpristoc Bank is the website described above.
4. Respondent is not a domestic bank authorized to commence business in the state of Michigan pursuant to Sections 3101-3108 of the Code, MCL 487.13101-13108.
5. Respondent is not a foreign bank authorized to commence business in the state of Michigan pursuant to Section 5101 of the Code, MCL 487.15101.
6. Respondent is not authorized as a national bank or under the International Banking Act of 1978.
7. Respondent is operating as a bank in the state of Michigan without authorization, in violation of Section 1105 of the Code, MCL 487.11105.
8. Respondent is using the word, "bank" in its business name in the state of Michigan, in violation of Section 1106 of the Code, MCL 487.11106.

Analysis and Conclusions of Law

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Petitioner to prove by a preponderance of the evidence that grounds exist for the imposition of sanctions upon the Respondent.

Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich. 248 (1987).

The evidence establishes, by a preponderance, that Respondent violated MCL 487.11105 and MCL 487.11106, as alleged in the October 30, 2020, Notice of Charges and Temporary Order to Cease and Desist.

PROPOSED DECISION

Based on the above Findings of Fact and Conclusions of Law, the Tribunal proposes that the Director or the Director's designee issue a Final Order to Cease and Desist.

EXCEPTIONS

Pursuant to MCL 24.281, 2015 AACRS R 792.10132, and 2015 AACRS R 792.10608, a party may file exceptions to this proposal for decision within 21 days after the proposal for decision is issued. An opposing party may file a response to exceptions within 14 days after exceptions are filed. File exceptions and responses with Randie Swinson (SwinsonR@michigan.gov), Department of Insurance and Financial Services, Office of General Counsel, PO Box 30220, Lansing, Michigan, 48909, and send a copy to the other parties.



Stephen B. Goldstein
Administrative Law Judge