STATE OF MICHIGAN

DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation
Petitioner

v

Kenneth Doctor
Respondent

Enforcement Case No. 09-7514
Agency Case No. 10-009-CU

For the Petitioner:

James Westrin
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Kenneth Doctor
[redacted]

Issued and entered
this 31st day of March 2010
by Ken Ross
Commissioner

FINAL DECISION and ORDER OF PROHIBITION

I. Background

Respondent Kenneth Doctor is the former general manager and treasurer of the board of directors of the Muskegon Teachers Credit Union, a state-chartered, federally-insured credit union. In June 2009, the credit union was examined by the Credit Union Division of the Office of Financial and Insurance Regulation. The examination found significant regulatory violations.

The Credit Union Division concluded that Respondent, in his capacity as manager and treasurer, engaged in unsafe and unsound practices that violated his fiduciary obligations and which resulted in financial losses to the Muskegon Teachers Credit Union.

On February 22, 2010, Chief Deputy Commissioner Stephen R. Hilker issued a "Notice of Intent to Permanently Prohibit Kenneth Doctor From Participation in the Conduct of the Affairs of Any Michigan State-Chartered Credit Union." The Notice set forth detailed allegations that Respondent had violated provisions of the Michigan Credit Union Act, MCL 490.101, *et seq.*, ("MCUA") and other standards of conduct applicable to a credit union officer.

Respondent filed a written response to the Notice dated March 14, 2010 in which he stated that he would not stipulate to the allegations in the Notice but would not defend himself in a hearing.

The Petitioner filed a Motion for Final Decision on March 18, 2010. Given the Respondent's decision not to participate in the hearing, the Motion for Final Decision is granted.

II. Findings of Fact and Conclusions of Law

A. Violations of the Michigan Credit Union Act

1. Section 305(1)(a) of the MCUA, MCL 490.305(1)(a), provides that "[a] domestic credit union may maintain specified books and records at a location in this state other than its principal place of business if it gives notice to the commissioner of the location of the specified books and records and can produce those books and records at its principal place of business within 3 business days after the request from the commissioner to examine them."

Respondent maintained documentation offsite without required notification to the Office of Financial and Insurance Regulation ("OFIR"). Such documentation included call reports, cleared checks, and credit union financial data including confidential member information. Respondent failed to provide such offsite information within 3 business days of request. Further, Respondent made misleading statements to examiners regarding which data was

located at his residence, claiming certain documents did not exist, which were produced later from his home.

2. Section 342(2) of the MCUA, MCL 490.342(2), provides that "[a] credit union board has general management of the affairs of the domestic credit union. The credit union board has the authority and responsibility for the general direction of the business affairs, funds, and records of the domestic credit union and is responsible for maintaining its safety and soundness."

Respondent, board treasurer, has violated this section of the MCUA by engaging in unsafe and unsound practices, including financial misstatement and extremely poor recordkeeping, and by improperly using the credit union for personal gain. Further, despite repeated citations, Respondent failed to maintain confidentiality and security of member data by failing to secure visible sensitive information while servicing members during business hours, and by failing to secure data being transported to/from and maintained at his residence.

3. Section 342(7) of the MCUA, MCL 490.342(7), provides that "[i]f a loan made to or cosigned, endorsed, or guaranteed by a director or a member of the supervisory, credit, or other committee is more than 2 months delinquent, the individual is automatically removed from his or her position as director or committee member and he or she is ineligible to serve as a director or committee member for 2 years."

Respondent's loans were more than two months delinquent as of December 31, 2008, however, he continued to serve as director by performing inappropriate file maintenance activity to prevent his loans from being reported as delinquent.

4. Section 353(1) of the MCUA, MCL 490.353(1), provides that "[o]wnership of a share is a condition of membership in a domestic credit union."

Respondent violated this provision of the Act by allowing member accounts to remain overdrawn or below the $5.00 minimum share. At June 30, 2009, Respondent's personal share account balance was zero.

5. Section 382(2) of the MCUA, MCL 490.382(2), provides that "[a] domestic credit union shall follow generally accepted accounting principles in its accounting, unless a different accounting standard is required by state or federal statute; rule, or regulation."

Respondent failed to properly apply generally accepted accounting principles as required. This is evinced by understating delinquency, understating the Allowance for Loan and Lease Losses ("ALLL"), deficient recordkeeping practices, and fraudulent general ledger transactions.

6. Section 383(1) of the MCUA, MCL 490.383(1), provides that "[an] official of a domestic credit union shall discharge the duties of his or her position in good faith and with that degree of diligence, care and skill that an ordinarily prudent person would exercise under similar circumstances in a like position."

Respondent violated this section of the MCUA by engaging in unsafe and unsound practices, and by using the credit union in inappropriate ways for personal gain.

7. Section 386(2) of the MCUA, MCL 490.386(2), provides that "[a] domestic credit union shall establish allowances for loan and lease losses account based on its reasonably foreseeable loan and lease losses and shall maintain the account in accordance with generally accepted accounting principles."

Respondent failed to properly apply generally accepted accounting principles as required. This is evidenced by material understatement of the ALLL.

8. Section 423(4) of the MCUA, MCL 490.423(4), provides that "[a] credit union shall not grant rates, terms or conditions on any loan . . . to an official . . . that are more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members."

By disbursing credit union funds for personal use and delaying entry on the credit union's books, Respondent effectively granted himself many short term loans without application, approval, signed loan contracts or any interest or fees paid. These loan conditions are more favorable than loans granted to the general membership.

9. Section 423(5) of the MCUA, MCL 490.423(5), provides that "[a] credit union shall process a loan to an official or employee in the same manner as a loan to other members, except that the applicant shall not participate in the approval process for his or her loan."

   Section 423(10) of the MCUA, MCL 490.423(10), provides that "[t]he credit union board or credit committee . . . must approve of any loan or other extension of credit to the general manager."

Respondent violated this provision by effectively granting himself multiple loans by taking credit union funds for personal use, delaying withdrawal from his account. These are effectively "no-documentation," "no-interest" loans without authorized approval. .

B. Unsound Practices as Outlined by OFIR Credit Union Bulletins and Violations of Rules of the Michigan Administrative Code

1. Rule 6(1) of the Michigan administrative rules for credit unions, 2005 AACS, R 490.116(1), provides that "[a] credit union shall maintain a monthly delinquent loan report reflecting all loans that are at least 1 month delinquent."

Respondent violated this Rule by failing to properly identify or report loan delinquency. Improper practices were used to understate the amount and degree of delinquency, including his personal loans.

2. Rule 7(1) of the Michigan administrative rules for credit unions, 2005 AACS, R 490.117(1), provides that "[a] credit union shall maintain an allowance for loan and lease loss account at an amount at least equal to the credit union's reasonably foreseeable loan and lease losses. . . ."

Respondent violated this Rule by failing to make realistic appraisals of the collectability of delinquent loans resulting in a material understatement of the ALLL.

3. OFIR Bulletin No. 2005-08-CU provides that "[c]redit applications must contain sufficient information to determine the purpose for the loan, to carefully analyze the character and financial condition of each loan applicant, cosigner and guarantor, and to ascertain their ability to repay fully and promptly. Members must sign credit applications. "

Respondent violated this Bulletin by disbursing loans to members without obtaining a completed and signed application, or performing appropriate underwriting analysis.

4. OFIR Bulletin No. 2005-07-CU provides that "[t]he Board of Directors must maintain the integrity of the credit union by ensuring compliance with applicable laws and regulations. . . . Directors must maintain the highest standards of personal conduct. Directors must demonstrate integrity, dedication, and cooperation."

Respondent violated this Bulletin by engaging in unsafe and unsound practices, and by using the credit union for personal gain. Specific examples include:

a. Maintaining two sets of checks and failing to provide such information to examiners: Handwritten checks were not entered onto the credit union's records timely, and sometimes not at all. Many such transactions were found related to Respondent's personal accounts, including instances where funds were not available in his accounts to cover transactions recorded.

b. Failing to maintain accurate and complete bank reconcilements: Management claimed bank reconcilements presented were complete and without out-of-balance conditions. This proved to be false. Many errors and omissions were found in management's bank reconcilements, evidencing out-of-balance conditions and material unexplained differences.

c. Providing misleading information to examiners regarding the existence of a set of checks written manually, and their usage. Providing misleading information and fictitious explanations regarding specific handwritten checks

d. On multiple occasions, using handwritten checks for personal transactions, delaying entry to the credit union's records, thus delaying withdrawal from his personal deposit accounts until later times when sufficient funds were available in his accounts. The delays ranged from days to months. Other checks were found relating to his personal expenses which

could not be located in any of the credit union's records (as any share withdrawal or expense item).

e. Failing to report his own loans delinquent, through inappropriate file maintenance activity, thus facilitating his remaining as a director of the credit union.

C. Violations of the Muskegon Teachers Credit Union Bylaws

1. Article VII, Section 5 of the Muskegon Teachers Credit Union bylaws requires that the general manager shall "[w]ithin ten days following the close of each month, prepare a financial statement showing the financial condition of the credit union, including the number and amount of delinquent loans, as of the close of the last business day of the month."

Respondent violated this bylaw by not preparing accurate financial statements, failing to maintain documentation supporting the reported financial condition of the credit union and understating delinquency.

III. Applicable Penalties

Section 212(2)-(4) of the Michigan Credit Union Act, MCL 490.212(2)-(4), provides as follows:

> (2) If in the opinion of the commissioner .a director, officer, or employee of a domestic credit union, or another person who participates or has participated in the conduct of the affairs of the domestic credit union, has engaged in conduct or practice with respect to the domestic credit union or another business organization ·that resulted in substantial financial loss or other damage, or is otherwise unfit to participate in the conduct of the affairs of the domestic credit union, the commissioner may serve upon that person a written notice of intention to remove the person from office or to prohibit the person's further participation in any manner in the conduct of the affairs of any domestic credit union.
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> (3) If the commissioner considers it necessary for the protection of a domestic credit union or the interests of its shareholders or depositors that a person served with a notice of intention under subsection (1) or (2) is suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the domestic credit union, the commissioner may serve upon that person a written notice suspending him or her from office or prohibiting him or her from further participation in

> any manner in the conduct of affairs of the domestic credit union. A suspension or prohibition is effective upon service of the notice and unless stayed by a court in a proceeding under section 213 remains in effect until the administrative proceedings against the person are completed and the commissioner dismisses the charges specified in the notice, or until the effective date of the order if an order of suspension or prohibition is issued. The commissioner shall also serve a copy of the notice on the domestic credit union.
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> (4) A notice of intention to remove a person from office or to prohibit participation in the conduct of the affairs of a domestic credit union shall contain a statement of the facts constituting grounds for the removal, and fix a time and place for a hearing. Except as otherwise approved by the commissioner, the hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice. The failure of a person to appear at the hearing in person or by a duly authorized representative is consent to the issuance of an order of removal or prohibition. If the person consents, or if after the hearing the commissioner finds that ally grounds specified in the notice have been established, the commissioner may issue an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the domestic credit union, as appropriate. An order based on the finding of the commissioner is effective on the thirty-first day after service on the domestic credit union and the person concerned. An order by consent is effective at the time specified in the order. An order is effective and enforceable unless it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

Section 213 of the Michigan Credit Union Act, MCL 490.213, provides as follows:

> Within 10 days after the date a person has been suspended from office or prohibited from participation in the conduct of the affairs of any domestic credit union under section 212(3), the person may apply to the circuit court for Ingham county or the circuit court for the county where the principal office of the domestic credit union is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served on the person under section 212(1) or (2).

The Commissioner finds:

1. The actions, omissions and practices set forth above constitute violations of the Michigan Credit Union Act, and the Administrative Rules of the Department of Energy, Labor &

Economic Growth applicable to credit unions. The actions, omissions and practices constitute a breach of fiduciary duty by Respondent.

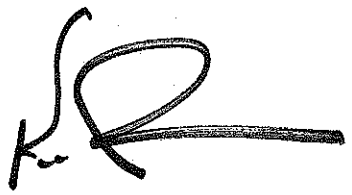
2. As a consequence of Respondent's conduct, the Muskegon Teachers Credit Union suffered substantial financial loss and other damage. The interests of its shareholders, depositors, members, and creditors were seriously prejudiced by the violations of law, unsafe and unsound practices, and breach of fiduciary responsibility.

3. The actions, omissions and practices set forth evidence the personal unfitness of Respondent as a participant in the affairs of Muskegon Teachers Credit Union.

4. The actions, omissions and practices set forth above warrant the immediate prohibition of Respondent from further participation in the conduct of the affairs of a domestic credit union.

IV. Order

Respondent is prohibited from participation in any manner in the conduct of the affairs of any domestic credit union.



Ken Ross
Commissioner