

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

STATE BANKING BOARD

IN THE MATTER OF THE IMMEDIATE)
 SUSPENSION OF BRADY)
 TORGERSON FROM EMPLOYMENT)
 OR PARTICIPATION IN THE)
 AFFAIRS OF ANY BANK, CREDIT)
 UNION, FINANCIAL INSTITUTION, OR)
 ANY OTHER ENTITY LICENSED BY)
 THE DEPARTMENT OF FINANCIAL)
 INSTITUTIONS.)

FINAL ORDER OF
 SUSPENSION AND
 REMOVAL

WHEREAS, the North Dakota Department of Financial Institutions (“Department”) has, under N.D.C.C. § 6-01-01, charge of the execution of all laws relating to state banks, trust companies, credit unions, and other financial corporations and institutions.

WHEREAS, the State Banking Board (“Board”) has the authority under N.D.C.C. § 6-01-04 to make and enforce such orders as, in its judgment, may be necessary or proper to protect the public and the depositors or creditors of state financial corporations and institutions.

WHEREAS, the Department is authorized under N.D.C.C. § 6-01-04.1 to initiate removal proceedings against any current or former officer, director, or employee of a state-chartered bank if the individual is engaging, or has

engaged, in any of the following conduct:

- a. Violating any law, regulation, board order, or written agreement with the board.
- b. Engaging or participating in any unsafe or unsound practice.
- c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

WHEREAS, Federal law, specifically 18 U.S.C. § 1005, further sanctions various illegal activities by officers, directors, agents or employees of financial institutions.

WHEREAS, the North Dakota State Banking Board alleges against Brady Torgerson (“Respondent”) as follows:

1. On or about July 10, 2017, Respondent was hired by First Security Bank – West, a bank with assets of \$72 million located in Beulah, North Dakota (“Bank”), a bank chartered by the Department.
2. On or about July 10, 2017, Respondent was appointed as President of the Bank.
3. On or about September 1, 2017, Respondent was appointed to the Board of Directors of the Bank.

4. On or about January 19, 2021, Respondent resigned his position as President and from the Board of Directors of the Bank.
5. During the term of Respondent's employment, Respondent, directly or indirectly, participated or engaged in unsafe or unsound practices in connection with the Bank and breached fiduciary duties owed to the Bank. Respondent's practices and breaches were part of a pattern of misconduct and caused the Bank to suffer or probably suffer financial loss or other damage. Respondent's practices and breaches involved personal dishonesty and demonstrates Respondent's willful and continuing disregard for the safety or soundness of the Bank. Respondent's conduct resulted in violations of Federal regulation and State law.
6. On November 10, 2020, Respondent originated a loan ("Loan A") to a Bank director's related interest in the amount of \$2,408,187.10, which resulted in the following violations of law and unsound practices:
 - a. Loan A exceeded the Bank's legal lending limit. The Bank's September 30, 2020, legal lending limit was \$2,139,250. Loan A exceeded the legal lending limit by \$268,937.10. This is a violation of N.D.C.C. § 6-03-59.

- b. Loan A exceeded the Federal Reserve Regulation O insider lending limit. The Bank's September 30, 2020, insider lending limit was \$1,375,200. Loan A exceeded the insider lending limit by \$1,032,987.10. This is a violation of Section 215.4(c) of the Federal Reserve Board Regulation O, made applicable to insured nonmember banks by Section 337.3(a) of the Federal Deposit Insurance Corporation's Rules and Regulations.
- c. Loan A did not receive prior approval by the Bank's Board of Directors. This is a violation of Section 215.4(b) of the Federal Reserve Board Regulation O, made applicable to nonmember insured banks by Section 337.3(a) of the Federal Deposit Insurance Corporation's Rules and Regulations.
- d. Loan A was made on more favorable terms than that available to other commercial loan customers. Loan A's interest rate of 2.50 percent was more than 200 basis points below the Bank's reported average yield of 4.67 percent on September 30, 2020, and 4.47 percent on December 31, 2020. This is a violation of Section 215.4(a) of the Federal Reserve Board Regulation O, made

applicable to insured nonmember banks by Section 337.3(a) of the Federal Deposit Insurance Corporation's Rules and Regulations.

- e. Respondent advanced the Loan A funds on October 15, 2020, prior to the promissory note dated November 10, 2020, and prior to the loan being entered into the bank's computer system 77 days later on December 31, 2020, when the opening advance was effectively backdated to November 10, 2020. This is an unsafe and unsound practice. Acceptable standards of banking dictate that loans must not be funded prior to promissory note execution and must be entered into the bank's system immediately. Respondent breached his fiduciary obligation by manipulating the Bank's system when backdating the opening advance.
- f. Respondent exceeded his Board-authorized lending limit. The individual approval limit for Respondent set by the Board of Directors was \$200,000 for commercial secured loans. Respondent acknowledged this limit most recently on January 23, 2020, when he signed the Bank's credit policy certification. Respondent exceeded this limit by \$2,208,187.10. This is a breach of trust and fiduciary duty.

7. Respondent improperly manipulated the Bank's computer system demonstrating personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank. Respondent improperly modified loan limit amounts in the Bank's system above the originally stated loan amounts, advanced funds above the original loan amounts for at least two borrowers on three different loans, and improperly modified maturity dates beyond the original maturity dates on at least two loans as detailed below:

- a. Respondent modified the loan limit amount and original loan amount for Borrower A from \$190,050 to \$900,000 on September 30, 2020. Funds were advanced above the original loan amount on various dates between September 30, 2020, and January 29, 2021. Respondent also modified the loan limit amount and original loan amount of another loan to Borrower A from \$100,050 to \$461,500, and advanced funds above the original note amount on August 31, 2020. On November 30, 2020, Respondent also modified the original maturity date from November 1, 2020, to February 15, 2021. Respondent made these changes without legally modifying the loan documents, receiving prior approval from the credit committee or

Board of Directors, and again advanced loans in excess of his Board-authorized lending limit.

- b. Respondent modified the loan limit amount and original amount for Borrower B from \$48,050 to \$375,000 on November 30, 2020. On November 30, 2020, he also modified the maturity date from September 1, 2020, to December 31, 2020. Funds were advanced above the original loan amount on November 30, 2020. Respondent made these changes without legally modifying the loan documents, receiving prior approval from the credit committee or Board of Directors, and again advanced loans in excess of his Board-authorized lending limit.

- 8. Respondent failed to underwrite loans in compliance with the Board of Director's approved policy standards and contrary to accepted standards of banking operations, demonstrating a breach of his fiduciary duty to the Bank:

- a. Respondent failed to secure liens or failed to obtain financial information on borrowers to demonstrate their ability to repay the debt on at least 91 loans totaling \$12.7 million.

- b. Due to the Respondent's weak loan underwriting and manipulation of the Bank's computer system, the Respondent willfully distorted the Bank's financial position on the quarterly Reports of Condition and Income ("Call Reports"). This is a violation of N.D.C.C. § 6-03-70.
 - c. Due to the Respondent's weak loan underwriting, the Bank had to make a loan loss provision of \$1,021,500 to cover expected losses. This effectively eliminates the Bank's annual earnings, which averaged \$1,026,000 the last five years.
9. Respondent issued Bank money orders without properly crediting or funding the corresponding general ledger account, which is contrary to accepted standards of banking operations. On January 25, 2021, following his resignation, Respondent returned to the Bank's Robinson branch, 20 missing Bank copies of money orders with dates ranging from December 10, 2019, to January 8, 2021, totaling \$724,558.48, along with a cashier's check for \$724,558.48 from another financial institution.

WHEREAS, Respondent engaged in unsafe and unsound practices and performed acts of commission or omission or practices which are a

breach of trust or a breach of fiduciary duty. Respondent's practices involved personal dishonesty and demonstrated willful and continuing disregard for the safety and soundness of the Bank.

WHEREAS, the State Banking Board has determined that Respondent's employment or participation in the affairs of any bank, credit union, financial institution, or other entity licensed by the Department of Financial Institutions would jeopardize the interests of its depositors, shareholders, members, or creditors.

WHEREAS, Respondent was suspended on July 8, 2021 and afforded the opportunity to request a hearing in accordance with N.D.C.C 38-32.

WHEREAS, Respondent did not request a hearing within 20 days of being served with the suspension order.

THEREFORE, IT IS HEREBY ORDERED that Brady Torgerson's suspension remains in effect, and Brady Torgerson is not eligible to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the North Dakota Department of Financial Institutions while this Order is in effect, pursuant to North Dakota Century Code Section 6-01-04.1(5).

Dated this 18th day of November 2021.

Lise Kruse

Lise Kruse, Chair
State Banking Board