

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**  
**DEPARTMENT OF THE TREASURY**

In the Matter of:	)	Adjudicatory Proceeding
LAWRENCE DODGE	)	No.: AP-10-03
Former President, Co-Chief Executive Officer, and Institution Affiliated Party of	)	Effective Date: June 25, 2010
American Sterling Bank Sugar Creek, Missouri OTS Docket No. 15909	)	

**NOTICE OF INTENTION TO PROHIBIT AND  
NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY**

**I. PRELIMINARY STATEMENT**

1. The Acting Director of the Office of Thrift Supervision (OTS), pursuant to Sections 8(e) and 8(i)(2)(B) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. §§ 1818(e) and (i)(2)(B), issues this Notice of Intention to Prohibit and Notice of Assessment of a Civil Money Penalty (Notice). By issuing this Notice, the OTS commences administrative adjudicatory proceedings and assesses civil money penalties against Lawrence Dodge (Respondent or Dodge) a former President, Co-Chief Executive Officer (CEO) of American Sterling Bank, Sugar Creek, Missouri, a Federally chartered savings association (American Sterling or Institution).

2. The OTS charges that Respondent, beginning in the first quarter of 2007 and continuing until December 2008, caused the Institution file materially false and misleading financial reports with the OTS.

3. The OTS charges that Respondent engaged in violations of law and/or regulation and unsafe or unsound practices, and breached his fiduciary duty to American Sterling.

4. The OTS charges that by reason of Respondent's misconduct, American Sterling has suffered or will probably suffer financial loss or other damage and/or Respondent received financial gain and/or other benefit.

5. The OTS charges that Respondent's misconduct involved personal dishonesty on his part and/or a willful disregard for the safety and soundness of American Sterling.

6. The OTS charges that grounds exist to:

(a) prohibit Respondent from further participation in the affairs of other insured depository institutions pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e); and

(b) assess civil money penalties against Respondent, pursuant to section (i)(2)(B) of the FDIA, 12 U.S.C. § 1818(i)(2)(B).

## II. JURISDICTION

7. American Sterling, at all times relevant to this action, had been a federal savings bank with a charter issued under the Home Owners' Loan Act (the HOLA). *See* 12 U.S.C. §§ 1461 *et seq.*

8. American Sterling, at all times relevant to this action, had been subject to examination, supervision, and regulation by the OTS. *See* 12 U.S.C. §§ 1463 and 1464.

9. American Sterling was also an insured depository institution within the meaning of that term in Section 8(e)(1) of the FDIA, 12 U.S.C. § 1818(e)(1), and Section 8(i)(B)(i)(II) of the FDIA, 12 U.S.C. § 1818(i)(B)(i)(II).

10. Respondent, at all times relevant to this action, served as the President and Co-CEO of American Sterling and as Chairman of the Board and controlling stockholder of American

Sterling's holding company, American Sterling Company (ASC), within six (6) years of the filing of the Notice, (see 12 U.S.C. § 1818(i)(3)), and is an "institution-affiliated party" (IAP) of American Sterling. *See* 12 U.S.C. § 1813(u)(1).

11. The Director of the OTS is the "appropriate Federal banking agency" with jurisdiction to initiate and maintain prohibition and civil money penalty proceedings against an IAP. *See* 12 U.S.C. §§ 1818(e) and (i)(2); 1813(q)(4) and 1464(d)(1)(A).

12. Because Respondent is, and at all relevant times, has been an IAP, he is subject to the authority of the OTS to initiate and maintain these administrative proceedings against him pursuant to the provisions of Section 8 of the FDIA, 12 U.S.C. § 1818.

13. Further, OTS brings a civil money penalty action under Section 8(i)(2)(B) of the FDIA, 12 U.S.C. § 1818(i)(2)(B), for: committing a violation of any law or regulation; recklessly engaging in an unsafe or unsound practice in conducting the affairs of such insured depository institution; and/or breaching any fiduciary duty that: is part of a pattern or practice; causes or is likely to cause more than a minimal loss to such depository institution; and/or results in pecuniary gain or other benefit to a party. *See* § 8(i)(2)(B) of the FDIA, 12 U.S.C. § 1818(i)(2)(B).

### **III. FACTUAL ALLEGATIONS AND CHARGES**

14. Subsequent to June 30, 2006, American Sterling began to experience and report declines in its core capital and risk-based capital ratios. As of June 30, 2006, American Sterling reported a core capital ratio of 7.76 percent (7.76%), and a risk-based capital ratio of 16.84 percent (16.84 %), indicating that the Institution was "well-capitalized" as defined in 12 C.F.R. § 565.4(b)(1). By December 31, 2006, however, American Sterling reported that its core and risk-based capital ratios had declined to 5.19 percent (5.19 %), and 8.36 percent (8.36 %), respectively, and that the Institution was "adequately capitalized" as defined in 12 C.F.R. § 565.4(b)(2). During

the five quarters leading to December 31, 2006, net losses of two million dollars (\$2,000,000) and a two million dollar (\$2,000,000) capital distribution to ASC contributed to the decline in capital.

15. On April 10, 2007, American Sterling notified the OTS that ASC had committed to keeping American Sterling “well capitalized”. On April 25, 2007, ASC, by board of director’s resolution, with Respondent present and voting in the affirmative, committed to make sufficient capital contributions necessary to maintain American Sterling’s core capital and risk-based capital at 5 percent ( 5%), and 10 percent (10%), respectively, which is “well-capitalized” as defined in 12 C.F.R. § 565.4(b)(1).

**A. REPUBLICAN PARTY LOAN and MILLENNIUM GATE RECEIVABLE**

16. In alleged fulfillment of its capital commitment, ASC notified American Sterling’s board of directors (BOD) and OTS, on April 25, 2007, that it had provided two capital contributions to American Sterling. These claimed capital contributions were in the form of a two million dollar (\$2,000,000) capital contribution to American Sterling from an ASC loan to the California Republican Party (California Republican Party Loan) and four hundred thousand dollars (\$400,000) from a real-estate investment (Millennium Gate Receivable) owned by non-bank entities within ASC’s holding company structure.

17. Respondent caused the American Sterling Thrift Financial Report (TFR), as of March 31, 2007, for the first quarter of 2007, and all subsequent quarterly TFR reports until the second quarter of 2008, to reflect these two claimed contributions as capital. These two contributions had the effect of reflecting that American Sterling was “well capitalized” as defined in 12 C.F.R. § 565.4(b)(2).

18. At no time, did Respondent inform the BOD or the OTS on that these two claimed capital contributions on April 25, 2007 were actually loan receivables and did not qualify as capital pursuant to generally accepted accounting principles (GAAP). Furthermore, from the time that

Respondent caused these two claimed contributions to be reported as capital on American Sterling's quarterly TFR reports, until they were discovered by the OTS examiners during a 2008 examination, neither of these loans were paid.

19. In fact, American Sterling never received any capital from either the California Republican Party Loan or the Millennium Gate Receivable.

**B. 9800 MUIRLANDS SALE**

20. On January 16, and February 14, 2008, Respondent instructed American Sterling's chief financial officer (CFO) to include a total of seven hundred fifty thousand dollars (\$750,000) as capital of American Sterling. Respondent falsely informed the CFO that the capital was the result of a completed sale of property (9800 Muirlands) by ASC on January 16, 2008, that was being contributed to American Sterling the same day.

21. The phantom 9800 Muirlands capital contribution was actually accomplished by two separate contributions. An initial phantom contribution of four hundred eighty thousand dollars (\$480,000) was booked on the records of American Sterling on January 16, 2008, and a subsequent phantom contribution of two hundred seventy thousand dollars (\$270,000) was booked on February 14, 2008, to enable American Sterling to report itself as "well capitalized", as defined in 12 C.F.R. § 565.4(b)(2), as of December 31, 2007.

22. In fact, American Sterling never received any capital from the 9800 Muirlands sale.

23. Respondent continued to cause the California Republican Party Loan, the Millennium Gate Receivable, and the 9800 Muirlands transaction to be reported a capital on American Sterling's TFR for the second quarter of 2008, as of June 30, 2008, even though Respondent was informed in March 2008, by American Sterling's outside auditor, Meyer Hoffman McCann, PC (MHM), that none of these transactions constituted capital of American Sterling. In

addition, MHM informed Respondent that these transactions were not considered capital under GAAP.

**C. MOUNTAINVIEW MORTGAGE REFINANCING REVENUE**

24. In April 2008, Respondent instructed American Sterling's CFO to include seven hundred six thousand nine hundred forty-nine dollars (\$706,949) in revenue on the books and records of American Sterling from a group of re-financing leads that were provided to American Sterling by an independent third party mortgage company (MountainView). Respondent's decision to include this revenue on the books and records of American Sterling was not disclosed to the BOD at the time it was booked. The BOD discovered this revenue in late December 2008 and requested an outside audit review.

25. In December 2008, MHM performed an audit review of the MountainView revenue transaction and concluded that there was no basis for American Sterling to recognize revenue from this transaction. MHM based its opinion on the fact that the revenue was refinancings of loans for which there were no loan applications, no loan commitments, and no loan customers identified. At the time of the MHM review, Respondent was unable to provide any evidence that loans had been refinanced even though American Sterling had included this revenue as income on its books and records.

26. After the BOD received the MHM audit review of the MountainView revenue transaction by cover letter from MHM dated January 7, 2009, the BOD reported this transaction to the OTS. On January 8, 2009, MHM then suspended their audit engagement for the December 31, 2007 audit citing, among other things, "the pervasiveness of the accounting entries made that were not in conformity with GAAP".

27. The MountainView fee revenue recordation described in paragraphs 24 – 26, had the effect of overstating American Sterling's capital position as "well capitalized" as defined in 12

C.F.R. § 565.4(b)(1) and American Sterling's reported capital ratios on its June 30 and September 30, 2008 TFRs.

**D. CONSEQUENCES OF THE TRANSACTIONS**

28. In January 2009, the BOD asked for and received Respondent's resignation as an officer and director of American Sterling.

29. The false reporting of all of these transactions described in paragraphs 16 – 27, resulted in American Sterling operating with inadequate capital to support its operations in violation of 12 C.F.R. § 563.161.

30. On April 17, 2009, American Sterling was placed into receivership.

**IV. STATUTORY CHARGES UNDER 12 U.S.C. § 1818(e)**

**Respondent has Engaged in Actions that Satisfy the Grounds for an Order of Prohibition Under Section 8(e) of the FDIA.**

31. OTS re-alleges paragraphs 14 through 30. By the actions described above, Respondent has directly or indirectly violated laws and regulations, *see* § 8(e)(1)(A)(i)(I) of the FDIA, 12 U.S.C. § 1818(e)(1)(A)(i)(I), as follows:

(a) Respondent violated 12 C.F.R. §§ 562.1 and 562.2 requiring savings associations to follow OTS regulatory reporting requirements in accordance with TFR instructions, OTS guidance, and GAAP; and

(b) Respondent violated 18 U.S.C. § 1005 by knowingly making false entries on the books and records of American Sterling.

32. In addition, Respondent engaged or participated in unsafe or unsound practices in connection with an insured depository institution or business institution and breached his fiduciary duty to American Sterling. *See* § 8(e)(1)(A)(ii) of the FDIA, 12 U.S.C. § 1818(e)(1)(A)(ii).

33. By reason of Respondent's violation of law and regulation, his unsafe or unsound practices, and his breaches of fiduciary duty: the insured depository institution or business institution has suffered or will probably suffer financial loss or other damage; the interests of the insured depository institution's depositors have been or could be prejudiced; and/or Respondent received financial gain or other benefit. *See* § 8(e)(1)(B) of the FDIA, 12 U.S.C. § 1818(e)(1)(B).

34. Further, Respondent's violation of laws and regulations and/or unsafe and unsound practices involved personal dishonesty on his part and/or a willful or continuing disregard for the safety and soundness of an insured depository institution or business institution. *See* §8(e)(1)(C)(i) and (ii) of the FDIA, 12 U.S.C. § 1818(e)(1)(C)(i) and (ii).

**V. REQUESTED RELIEF AND NOTICE OF HEARING**

35. Notice is hereby given that a hearing will be held in Kansas City, Missouri for the purpose of taking evidence on the charges specified above in order to determine whether an appropriate order of prohibition should be issued under Section 8(e) of the FDIA, 12 U.S.C. § 1818(e), to prohibit the future participation by Respondent in the affairs of, *inter alia*, any insured depository institution, or any holding company thereof.

**VI. STATUTORY CHARGES UNDER SECTION 8(i)(2) of the FDIA**

**Respondent Has Engaged in Actions that Satisfy the Grounds for Assessment of Second-Tier Civil Money Penalties Against Respondent Under Section 8(i)(2)(B) of the FDIA.**

36. OTS re-alleges paragraphs 14 through 35 above.

37. Respondent has engaged in violations of law or regulation, reckless unsafe or unsound practices, and breached his fiduciary duty as recited in paragraphs 30 and 31 *supra*. *See* §8(i)(2)(B)(i)(I) of the FDIA, 12 U.S.C. § 1818(i)(2)(B)(i)(I).



38. Respondent's violation of law and regulation, reckless unsafe or unsound practice, and breach of fiduciary duty has resulted in pecuniary gain or other benefit to Respondent. *See* §8(i)(2)(B)(ii)(III) of the FDIA, 12 U.S.C. § 1818(i)(2)(B)(ii)(III).

#### **Aggregate Amount of Assessed Civil Penalties**

39. Based on the foregoing, the grounds exist, pursuant to 12 U.S.C. § 1818(i)(2)(B), to assess a second-tier civil penalty against Respondent. After taking into account the size of Respondent's financial resources, good faith considerations, the gravity of the violations, the history of previous violations, and such other matters as justice may require, the OTS hereby assesses a civil money penalty of two million five hundred thousand dollars (\$2,500,000) against Respondent.

#### **Civil Penalty Payment Directions and Procedural Matters**

40. It is hereby ordered that Respondent shall forfeit and pay the civil money penalty of two million five hundred thousand dollars (\$2,500,000).

41. The civil money penalties set forth in this Notice are assessed by the OTS pursuant to sections 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2). Except as the OTS may otherwise order in writing, remittance of the payment of the penalties set forth herein shall be made by delivering to the OTS Financial Operations at 1700 G Street, N.W., Washington, D.C. 20552, a cashier's check or official bank check in the amount of two million five hundred thousand dollars (\$2,500,000) payable to the order of the Treasury of the United States.

42. Notice is given, pursuant to section 8(i)(2)(H) of the FDIA, 12 U.S.C. § 1818(i)(2), that Respondent is afforded an opportunity for a formal hearing, if requested, concerning the above assessment of civil money penalties. A hearing will be held with respect to the assessment against Respondent, provided that within twenty (20) days after issuance and service of this Notice on Respondent, Respondent files a written request for a hearing concerning the assessment. Any

request for such a hearing must be filed with the Office of Financial Institution Adjudication (OFIA), 3501 North Fairfax Drive, Suite D8116, Arlington, VA 22226, and with the OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings, ([sandra.evans@ots.treas.gov](mailto:sandra.evans@ots.treas.gov)), 1700 G Street, N.W., Washington, D.C. 20552. **Respondent is encouraged to file any request for a hearing electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov).** Respondent shall also serve a copy of any such request upon Susan L. Chomicz, Deputy Chief Counsel – Enforcement, ([susan.chomicz@ots.treas.gov](mailto:susan.chomicz@ots.treas.gov)), Office of Thrift Supervision, 1700 G St., N.W., Washington, D.C. 20552; upon Gary C. Anderberg, Regional Enforcement Counsel, ([gary.anderberg@ots.treas.gov](mailto:gary.anderberg@ots.treas.gov)), Office of Thrift Supervision, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062-2326; and upon Noelle Kurtin, Senior Attorney, ([Noelle.kurtin@ots.treas.gov](mailto:Noelle.kurtin@ots.treas.gov)), Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

43. Any hearing held concerning the civil money penalty assessments, as described above, shall be combined with the hearing of the other matters set forth in the foregoing Notice, including those concerning the issuance of a prohibition order.

44. If Respondent fails to file a request for a hearing within the aforementioned twenty-day (20-day) period, the above assessment of civil money penalties in the aggregate amount of two million five hundred thousand (\$2,500,000) shall constitute a final and unappealable assessment order of the OTS against Respondent as provided by 12 U.S.C. § 1818(i)(2)(E). *See also* 12 C.F.R. § 509.19(c)(2). Any final and unappealable assessment order may be referred to the United States Department of Justice for collection against the subject of the assessment order.

## **VII. PROCEDURES GENERALLY**

45. The OTS hereby appoints Administrative Law Judge C. Richard Miserendino (ALJ) of OFIA to preside over any hearing held regarding the subject of this Notice. Unless otherwise

set by the ALJ or by agreement of the parties, the hearing should commence on or before sixty (60) days following service of this Notice. The exact time of day and any change in location will be announced at a later time by the ALJ. The hearing will be conducted before the ALJ in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 554-557, as made applicable by 12 U.S.C. § 1818(h) and 12 C.F.R. Part 509.

46. Respondent is directed to file an Answer to this Notice within twenty (20) days with OFIA, Attn: Honorable C. Richard Miserendino, ALJ, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500; with the Secretary for Adjudicatory Proceedings, Office of the Chief Counsel, OTS, 1700 G. Street, N.W. Washington, D.C. 20552; and with the attorneys whose names appear on the accompanying certificate of service, within twenty (20) days from the date of service of this Notice of Charges, in accordance with 12 C.F.R. § 519.19. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov). Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice and shall, upon the OTS's motion, cause the ALJ or the OTS to find the facts in this Notice to be as alleged and to issue an appropriate order.

47. Section 509.10 of the OTS rules, 12 C.F.R. § 509.10, governs the filing of papers in this proceeding. Except as otherwise provided by that rule, any papers required to be filed shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8 1 13, Arlington, VA 22226-3500.

48. Respondent also shall serve a copy of each and every of filing on: OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings, ([sandra.evans@ots.treas.gov](mailto:sandra.evans@ots.treas.gov)), 1700 G St., N.W., Washington, D.C. 20552; Susan L. Chomicz, Deputy Chief Counsel – Enforcement, ([susan.chomicz@ots.treas.gov](mailto:susan.chomicz@ots.treas.gov)), Office of Thrift Supervision, 1700 G. Street, N.W. Washington,

D.C. 20552; Gary C. Anderberg, Regional Enforcement Counsel, ([gary.anderberg@ots.treas.gov](mailto:gary.anderberg@ots.treas.gov)), Office of Thrift Supervision, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062-2326; and Noelle Kurtin, Senior Attorney, ([Noelle.kurtin@ots.treas.gov](mailto:Noelle.kurtin@ots.treas.gov)), Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

49. Within twenty (20) days after service of this Notice, Respondent may file a written request for a private hearing. Section 509.23 of the OTS rules, 12 C.F.R. § 509.33, sets out the requirements for any such request and any replies thereto. The evidentiary hearing of this matter before the presiding ALJ will be open to the public, unless the Director of the OTS, in his sole discretion, determines that an open hearing will be contrary to the public interest. *See* 12 U.S.C. § 1818(u)(2). The Director (or a duly authorized representative) will rule on any request filed under Section 509.33(a), and copies of any such request should be sent to the Acting Director of the OTS, c/o Sandra Evans, Secretary for Adjudicatory Proceedings, Office of Thrift Supervision, 1700 G Street, N.W. – Fifth Floor, M2, Washington, D.C. 20552.

The Office of Thrift Supervision, by its Acting Director (or his duly authorized designee), issues this Notice on this 25 day of June, 2010.

**OFFICE OF THRIFT SUPERVISION**

By: 

Name: Thomas A. Barnes  
Title: Deputy Director Examinations,  
Supervision and Consumer Protection

(Pursuant to delegated authority)