STATE OF NEW YORK

7428

2023-2024 Regular Sessions

IN ASSEMBLY

May 19, 2023

Introduced by M. of A. HUNTER -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to removal and prohibition of directors, trustees, officers, members or partners of certain entities; and to repeal certain provisions of such law related thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 41 of the banking law is REPEALED and a new section 41 is added to read as follows:

§ 41. Removal and prohibition. 1. Grounds for enforcement action. Whenever the superintendent has reason to believe that any director, trustee, officer, member or partner, or, in the case of a foreign banking corporation, the person in charge, or an officer, of a branch or agency (for purposes of this section, each a "covered individual"), of any bank, trust company, limited purpose trust company, private bank, savings bank, safe deposit company, savings and loan association, credit union, investment company, bank holding company (as such term is defined in article three-A of this chapter), foreign banking corporation, licensed lender, licensed casher of checks, budget planner, mortgage banker, mortgage loan servicer, mortgage broker, licensed transmitter of money or student loan servicer (for purposes of this section, each a "covered entity") has, directly or indirectly: (a) caused, facilitated, permitted or participated in any violation by a covered entity of a law or regulation, order issued by the superintendent or any written agreement between such covered entity or covered individual and the superintendent; (b) engaged or participated in any unsafe or unsound practice in connection with any covered entity; or (c) engaged or participated in any willful material act or omitted to take any material act that directly contributed to the failure of a covered entity; the superintendent may serve a statement of the charges against such covered individual, either personally or, upon a finding that such individual cannot be

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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served personally within this state, by registered mail at the last address of such individual shown on the department's records, and a notice of an opportunity to appear before the superintendent to show cause why such covered individual should not be removed from office. A copy of such notice shall also be sent to any affected covered entity.

2. Hearing. If such covered individual waives a hearing, or fails to appear in person or by a duly authorized representative without good cause shown at the time and place set for the hearing or, if after a hearing, the superintendent finds that the covered individual has engaged in conduct described in subdivision one of this section, the superintendent may issue an order removing the covered individual from office and prohibiting the covered individual's employment or the performance of any contractual agreements with the covered entity. Any covered individual subject to an order issued pursuant to this subdivision shall be prohibited from participating, in any manner, in the conduct of the affairs of any covered entity.

3. Suspension pending determination of charges. Upon, or at any time after service of written notice pursuant to subdivision one of this section, the superintendent may suspend, pending the determination of the charges, a covered individual from office or prohibit such individual from participating in any manner in the conduct of the affairs of any covered entity for a period of up to one hundred eighty days if the superintendent has reason to believe that by reason of the conduct described in subdivision one of this section: (a) a covered entity has suffered or will probably suffer financial loss; (b) the interests of the depositors at a covered entity have been or could be prejudiced; or (c) the covered individual demonstrates willful disregard for the safety and soundness of a covered entity; the superintendent may extend the suspension for additional periods of up to one hundred eighty days if the hearing is not completed within the prior suspension period due to the request of the covered individual.

4. Effect of order for removal or suspension. Such order and the findings of fact upon which it is based shall be effective upon service on such covered individual personally or, upon a finding that such individual cannot be served personally within this state, by registered mail, and may not be made public or disclosed to anyone, except as provided in subdivision ten of section thirty-six of this article or in connection with proceedings for a violation of this section. Any covered individual who thereafter, without permission of the superintendent, participates in any manner in the management of a covered entity shall be guilty of a misdemeanor.

5. Manner of review. Any order issued pursuant to this section shall become effective upon service as provided for in subdivision four of this section and shall remain in effect, unless it is amended or rescinded by the superintendent or a court of competent jurisdiction, or replaced by an order issued pursuant to subdivision three of this section. Such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

§ 2. This act shall take effect immediately.