

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

May 28, 2020

Lyle W. Cayce  
Clerk

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No. 19-60564  
Summary Calendar

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BANK OF LOUISIANA,

Petitioner,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,

Respondent.

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Petition for Review of an Order of the  
Federal Deposit Insurance Corporation  
FDIC No. 17-0086k

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Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:\*

The FDIC initiated an enforcement action against the Bank of Louisiana, alleging that it had violated the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. After initiating the enforcement action, the FDIC's Enforcement Counsel moved for summary disposition (akin to summary judgment in federal court). The ALJ then issued a detailed decision

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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recommending that the FDIC's Board grant the FDIC's summary disposition motion. On May 28, 2019, the FDIC's Board issued a Final Order concluding that the Bank violated the flood insurance statutes and regulations and assessing a penalty of \$136,100.

The Bank filed its petition for review in this court on July 24, 2019, fifty-six days after it was served the Final Order on May 29, 2019. Instead of filing a brief, the Bank filed a motion to transfer the case to the United States District Court for the Eastern District of Louisiana. The FDIC opposed the motion to transfer, arguing that district courts lack jurisdiction to review or set aside final orders issued by the FDIC Board. The FDIC joined its response with a motion to dismiss the Bank's petition as untimely.

On November 14, 2019, we issued an order carrying the motion to transfer and the motion to dismiss with the case and issued a separate order granting the Bank until December 16, 2019, to file its brief.

The FDIC argues on appeal that the Bank's petition should be dismissed for lack of jurisdiction because it was not filed within the thirty-day deadline imposed by 12 U.S.C. § 1818(h)(2). We agree.

The Federal Deposit Insurance Act provides that a petition for review must be filed within thirty days of service of the FDIC's final order. 12 U.S.C. § 1818(h)(2) ("Any party . . . may obtain a review of any [final] order [by the FDIC] . . . by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located . . . *within thirty days* after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside." (emphasis added)). The statute then conditions the appellate courts' jurisdiction "[u]pon the filing of such petition"—i.e., the statute provides that this court has jurisdiction over the previously-described petition filed within the thirty-day deadline. *Id.* ("Upon the filing of *such petition*, such court shall

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have jurisdiction, which upon the filing of the record shall . . . be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency.” (emphasis added)).

Here, the Bank did not file its petition for review in this court within thirty days after being served the FDIC Board’s Final Order. The Order was served on the Bank on May 29, 2019, but the Bank did not file its petition until July 24, 2019—fifty-six days later.

Under the plain language of the statute, we lack jurisdiction and must dismiss the petition for review. *See Nat. Bank of Davis v. Office of Comptroller of Currency*, 725 F.2d 1390, 1391 & n.1 (D.C. Cir. 1984) (dismissing as untimely per § 1818(h)(2) a petition for review filed after the applicable thirty-day period and further stating that this thirty-day limitation is jurisdictional and cannot be enlarged by the court); *see also Matter of Lacey*, 114 F.3d 556, 557 (5th Cir. 1997) (“A timely notice of appeal is mandatory and jurisdictional . . . and we have no power to enlarge the time for filing a notice of appeal under any circumstances.”) (citing Fed. R. Civ. P. 26(b)).

Although we lack jurisdiction over the petition, we may still consider the Bank’s motion to transfer. *See* 28 U.S.C § 1631 (permitting an appellate court that lacks jurisdiction to transfer to another court that has jurisdiction). *But c.f. Nyffeler Constr., Inc. v. Sec’y of Labor*, 760 F.3d 837, 842 (8th Cir. 2014) (“When a party files an untimely notice of appeal in the wrong court, that court lacks authority to transfer.”). The FDIC contends that the Bank’s motion to transfer must be denied because district courts lack jurisdiction over FDIC enforcement orders. We agree with the FDIC here as well.

Under the applicable statute, courts of appeals have *exclusive* jurisdiction over final orders issued by the FDIC Board. 12 U.S.C. § 1818(h)(1)–(2). In fact, we have already so held in an earlier case involving these same parties. *See Bank of La. v. FDIC*, 919 F.3d 916, 924 (5th Cir. 2019). There, we

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stated that § 1818 “displays Congress’ intent to preclude district court jurisdiction over claims against the FDIC arising out of enforcement proceedings.” *Id.* We further clarified that “[f]ollowing an administrative hearing, the Board reviews the ALJ’s recommendation *de novo* and issues a final order, which is routed for ‘exclusive’ review directly to a federal appellate court.” *Id.*

Because district courts lack jurisdiction to review FDIC enforcement orders, and because 28 U.S.C. § 1631 permits transfer only to a transferee court that would have jurisdiction to hear the case, we deny the Bank’s motion to transfer to the United States District Court for the Eastern District of Louisiana.

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For the foregoing reasons, we DISMISS the Bank’s petition for review for lack of jurisdiction and DENY the Bank’s motion to transfer.