

#2000-69

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of:)
HAROLD ESTES, DIRECTOR,) **AA-EC-00-21**
FIRST NATIONAL BANK OF NEWTON,)
NEWTON, TEXAS)

STIPULATION AND CONSENT

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist order proceedings against Harold Estes (“Respondent”) pursuant to 12 U.S.C. § 1818(b), for certain actions, omissions, and violations of law of Respondent while serving as director of the First National Bank of Newton, Newton, Texas (“Bank”), as described in a letter from the OCC to Respondent dated January 18, 2000;

WHEREAS, Respondent desiring to cooperate with the Comptroller, has executed this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation and Consent”), which is accepted by the Comptroller. By this Stipulation and Consent, Respondent has consented to the issuance of a Consent Order (“Order”) by the Comptroller dated August 2, 2000, and incorporated herein by this reference;

NOW, THEREFORE, the Comptroller, through his duly authorized representative, and Respondent stipulate and agree to the following:

ARTICLE I
JURISDICTION OF THE COMPTROLLER

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is a director of the Bank and an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof, *see* 12 U.S.C. § 1818(i)(3).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist order proceedings against him pursuant to 12 U.S.C. § 1818(b).

ARTICLE II
ISSUANCE OF THE ORDER

(4) Respondent, without admitting or denying any wrongdoing, hereby consents to the issuance of the Order by the Comptroller. Respondent further agrees that said Order shall be deemed an “order issued with the consent of the . . . institution-affiliated party” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i)(1) and (2).

ARTICLE III

RESPONDENTS WAIVERS

- (5) By consenting to the execution of this Order, Respondent hereby waives:
- (a) all rights to the issuance of a Notice of Charges, a hearing, and a final agency decision pursuant to 12 U.S.C. § 1818(b), and 12 C.F.R. Part 19;
 - (b) all rights to seek judicial review of this Order;
 - (c) all rights in any way to contest the validity of this Order;
 - (d) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter and/or the Order, whether arising under common law or under the terms of any statute, including but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
 - (e) all rights to assert a double jeopardy claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.
- (6) Respondent agrees that he shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of any legal (or other professional) expense relative to the negotiation and issuance of this Order. In accordance with 12 C.F.R. §§ 7.2014 and 359, Respondent agrees that he shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts.

ARTICLE IV

RESPONDENTS ACKNOWLEDGEMENTS

(7) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made, by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order.

(8) Respondent understands and agrees that this Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(b) (as amended).

ARTICLE V

RELEASE OF CLAIMS

(9) It is hereby agreed that the provisions of this Order constitute a settlement of the actions contemplated by the Comptroller as described in the letter dated January 18, 2000. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations described in the letter unless such acts, omissions, or violations reoccur.

(10) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(11) Respondent understands and agrees that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing

herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned, as authorized by the Comptroller, has hereunto set her hand:

-SIGNED-

Leann G. Britton
Senior Deputy Comptroller
for Bank Supervision Operations

08-02-2000

Date

IN TESTIMONY WHEREOF, Respondent has hereunto set his hand:

-SIGNED-
Harold Estes

07-18-2000
Date

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of:)
HAROLD ESTES, DIRECTOR) **AA-EC-00-21**
FIRST NATIONAL BANK OF NEWTON,)
NEWTON, TEXAS)

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) believes there is a legal and factual basis to initiate cease and desist order proceedings against Harold Estes (“Respondent”) pursuant to 12 U.S.C. § 1818(b), for certain actions, omissions, and violations of law of Respondent while serving as director of the First National Bank of Newton, Newton, Texas (“Bank”);

WHEREAS, Respondent desiring to cooperate with the Comptroller, has executed a Stipulation and Consent to the Issuance of a Consent Order (“Stipulation and Consent”), dated August 2, 2000, which is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated herein by this reference, Respondent has consented to the issuance of this Consent Order (“Order”) by the Comptroller;

NOW, THEREFORE, the Comptroller, through his duly authorized representative, and by virtue of the authority conferred by 12 U.S.C. § 1818(b),

HEREBY ORDERS THAT:

ARTICLE I

RESPONDENTS ACTIONS

(1) While serving as an institution-affiliated party of an insured depository institution, as defined by 12 U.S.C. § 1813(u), Respondent shall at all times:

- (a) Comply with applicable laws and regulations establishing lending limits or limits on extensions of credit to one borrower, including (for national banks) 12 U.S.C. § 84 and 12 C.F.R. § 32, and other similar laws and regulations for other types of insured depository institutions (“legal lending limits”).
- (b) Not cause, participate in, assist, aid or abet any violation of the legal lending limits.
- (c) Not act or agree to act as a nominee borrower nor arrange, approve, or counsel the use of nominee borrowers, regardless of any agreement the nominee may have with the recipient of proceeds of the extension of credit to repay the nominee.
- (d) Make all reasonable efforts to ensure that all extensions of credit or commitments to extend credit that he approves or originates at the insured depository institution with which he is affiliated shall accurately state, to the best of his knowledge, the purpose of the extension of credit.

ARTICLE II

NOTICE TO INSURED DEPOSITORY INSTITUTIONS AND THE OCC

(2) Prior to accepting any position as an institution-affiliated party, Respondent shall provide a copy of this Order to the board of directors of the insured depository institution with which Respondent is to be affiliated.

(3) Respondent shall provide the OCC and the appropriate Federal banking agency with written notice within ten (10) days after his acceptance of any position that would cause him to become an institution-affiliated party. This notice shall include a written certification that Respondent has complied with Article II, paragraph (2).

(4) If, on the date of issuance of this Order, Respondent serves as an institution-affiliated party, Respondent shall provide a copy of this Order to the board of directors of each insured depository institution with which Respondent is affiliated within ten (10) days of the execution of this Order, and promptly thereafter Respondent shall provide to the OCC written certification that he has complied with this paragraph.

ARTICLE III

(5) This Order shall be considered a final, unappealable order issued by the Comptroller pursuant to 12 U.S.C. § 1818(b)(1). The Order shall be deemed an “order issued with the consent of the . . . institution-affiliated party” within the meaning of 12 U.S.C. § 1818(h)(2), and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(b)(1) and (2).

(6) The provisions of this Order shall become effective upon execution of this Order by the Comptroller through his authorized representative, and shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated by the Comptroller through the exercise of his sole discretion.

(7) If at any time the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action involving or

affecting Respondent or the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from doing so.

WITNESS my signature on behalf of the Comptroller:

-SIGNED-
Leann G. Britton
Senior Deputy Comptroller
for Bank Supervision Operations

08-02-2000
Date