

#2001-99

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

IN THE MATTER OF:)
)
RONALD R. FIRESTONE,)
FORMER EXECUTIVE VICE PRESIDENT)
THE CARLSBAD NATIONAL BANK)
CARLSBAD, NEW MEXICO)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate removal and prohibition proceedings, and civil money penalty proceedings against Ronald R. Firestone (Respondent), former Executive Vice President at the Carlsbad National Bank, Carlsbad, New Mexico (Bank), pursuant to 12 U.S.C. §§ 1818(e) and (i)(2)(as amended) for improper activities that Respondent engaged in while he was employed by the Bank; and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order (Order); and

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

**ARTICLE I
JURISDICTION**

(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) At all relevant times, Respondent was an Executive Vice President at the Bank. During his 15-year career with the Bank, which ended when Respondent resigned on or about December 30, 1999, Respondent also served either as an advisory member, or as a full member, of the Bank’s Board of Directors (Board). Therefore, Respondent is 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 Office of the Comptroller of the Currency (OCC) 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 a prohibition action against him, and to seek the assessment of a civil money penalty against him, pursuant to 12 U.S.C. §§ (e), and (i)(2) (as amended).

ARTICLE II

ORDER OF PROHIBITION

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate

Federal banking agency,” as defined in 12 U.S.C. § 1813(q) (as amended);

(d) or vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u) (as amended).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

(a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);

(b) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9) (as amended);

(c) any insured credit union under the Federal Credit Union Act;

(d) any institution chartered under the Farm Credit Act of 1971;

(e) any appropriate Federal depository institution regulatory agency; and

(f) the Federal Housing Finance Board and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended).

(4) 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(e), (i), (j), and (h) (as amended).

ARTICLE III

ORDER OF CIVIL MONEY PENALTY

(1) Respondent hereby consents to the payment of a civil money penalty in the total amount of two thousand five hundred dollars (\$2,500). Respondent shall pay this civil money penalty according to the procedure and schedule set out in this Order:

(a) Upon execution of this Order, Respondent shall pay the sum of five hundred dollars (\$500);

(b) On or before November 15, 2001, and on or before the fifteenth (15th) day of each successive month through and including June 2003, Respondent shall make a minimum payment in the amount of one hundred dollars (\$100);

(c) Respondent shall make all payments due in connection with this Article by certified check or money order. Respondent shall make each certified check or money order payable to the Treasurer of the United States and deliver it to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150; and

(d) Respondent shall deliver a copy of each certified check or money order to the Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E St., S.W., Washington, DC 20219.

(2) If Respondent fails to make any payment as required by Paragraph # 1 of this Article III, the entire remaining balance of the civil money penalty amount ordered to be paid in this Article shall become immediately due and payable.

(3) 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(h) and (i)(2) (as amended).

ARTICLE IV

BANKRUPTCY

(1) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligations pursuant to this Order to pay the agreed upon civil money penalties are subject to discharge, Respondent will in no manner contest the Comptroller's assertion, pursuant to 11 U.S.C. § 523(a)(7) and (a)(11), or otherwise, that the foregoing obligations arise out of acts which result in claims not dischargeable in bankruptcy.

ARTICLE V

RESPONDENT'S WAIVERS

- (1) By executing this Stipulation and Consent Order, Respondent waives:
- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b), (e), and (i)(2)(as amended) 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, expenses or damages against the Comptroller, or any of his agents or employees, related in any way to, inter alia,: (i) the investigation into Respondent's activities at the Bank; (ii) this Order; or (iii) Respondent's decision to resign from his position as a Senior Vice President at Preston National Bank, Dallas, Texas, whether those claims for fees, costs, expenses or damages arise 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.

(2) Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for, or in connection with, the guarantee against future loss and/or the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order; and, in accordance with 12 C.F.R. § 7.2014, Respondent 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.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Stipulation and Consent 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 and/or to execute this Stipulation.

(4) It is hereby agreed that the provisions of this Stipulation and Consent Order constitute a settlement of all claims that the Comptroller would have brought against Respondent based upon the information developed to date regarding Respondent's conduct at the Bank.

(5) It is further agreed that the provisions of this Stipulation and Consent 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.

(6) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Stipulation and Consent, 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 have hereunto set their hands.

/s/ Leanne G. Britton

11-6-01

Leann G. Britton
Senior Deputy Comptroller
for Mid-Size/ Community
Bank Supervision

Date

/s/ Ronald R. Firestone

10-22-01

Ronald R. Firestone

Date

NOTARY

Subscribed and sworn to before me personally appeared, Ronald R. Firestone on the 22nd, day of October, 2001

My Commission Expires 2-27-04

/s/ Evonne English

Notary Public