

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

In the Matter of:)
BIEN C. NGUYEN,)
Former ATM Review Specialist,)
Bank of America, National Trust and)
Savings Assn., Charlotte, NC)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate an action against Bien C. Nguyen (“Respondent”) for affirmative relief to provide notice of this action to any insured depository with which Respondent may seek to become associated, pursuant to 12 U.S.C. § 1818(b)(6)(F); and to require Respondent to pay restitution to Bank America National Trust and Savings Association (“Bank”), pursuant to 12 U.S.C. § 1818(b)(6)(A); 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);

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

**Article I
Jurisdiction**

(1) Bank of America National Trust and Savings Association (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 was an ATM Review Specialist who, until March 27, 1997, worked in the Bank's Orange County, California Vault, and 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 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 proceedings against him to obtain the affirmative relief of providing notice of this Order to any insured depository institution in certain circumstances and for payment of restitution to the Bank, pursuant to 12 U.S.C. §§ 1818(b)(6)(F) and 1818(b)(6)(A), respectively.

Article II Alleged Acts Resulting in Loss

(1) Beginning on or about October 30, 1996 and through March 25, 1997, Respondent unlawfully appropriated to his own use various cash deposits made by depositors to the Bank's ATMs and deposited this cash to his own account at the Bank.

(2) Respondent, by so acting, unjustly enriched himself and was in violation of the laws prohibiting theft.

(3) The Bank, after determining that Respondent was the perpetrator of these acts, terminated his employment and appropriated Respondent's account at the Bank and a vehicle belonging to Respondent in an attempt to recover its loss from Respondent's acts.

(4) After liquidating these assets, the Bank, on or about April 17, 1997, determined that its loss on Respondent's unlawful appropriations, as described above, equaled at least \$15,208.

Article III
Required Notice for Certain Future Association

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to take the following affirmative step, pursuant to 12 U.S.C. § 1818(b)(6)(F): If Respondent ever seeks, or is offered, a position as an institution-affiliated party, as defined by 12 U.S.C. § 1813(u), with respect to any insured depository institution, Respondent shall, prior to accepting such position, disclose to such institution the existence of this Order and provide such institution with a complete copy of the Order.

(2) The term “insured depository institution” specified in paragraph (1) of this Article applies to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c), or any subsidiary of such institution;
- (b) any institution treated as an insured bank under 12 U.S.C. §§ 1813(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) Respondent’s possible association as an “institution-affiliated party” with an “insured depository institution,” as specified in paragraph (1) of this Article, means that, with respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent hereby agrees that he shall provide the notice specified in paragraph (1) in connection with his possible association as:

- (a) director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;
 - (b) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under 12 U.S.C. § 1817(j);
 - (c) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case by-by-case) who participates in the conduct of the affairs of an insured depository institution; and
 - (d) any independent contractor (including any attorney, appraiser, or accountant).
- (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(i), (j), and (h) (as amended).

Article IV
Restitution

(1) Without admitting or denying any wrongdoing, Respondent, pursuant to 12 U.S.C. § 1818(b)(6)(A), hereby consents to pay restitution to the Bank in a total amount of \$15,208.

(2) Respondent shall make the above-described payment by certified check or money order payable to Bank of America, NT&S, and sent to Don Meyer, Vice President of Corporate Investigations, Bank of America NT&S, 444 Flower Street, Attention: 40th Floor, Los Angeles, CA 90071-2901. Respondent shall send a copy of this payment to the Office of the Comptroller of the Currency, attention: Director, Enforcement and Compliance Division, 250 E Street, SW, Washington, DC 20219.

(3) Such payment and copy will be delivered within ninety (90) days of the entry of this Stipulation and Consent Agreement.

Article V
Waivers

- (1) By executing this Order, Respondent waives:
- (a) the right to the issuance of a notice of charges under 12 U.S.C. § 1818(b);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and 12 C.F.R. Part 19;
 - (c) all rights to seek judicial review of this Order;
 - (d) all rights in any way to contest the validity of this Order;
 - (e) 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 or this 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
 - (f) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for 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 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) It is hereby agreed that the provisions of this Order constitute a settlement of a proceeding pursuant to 12 U.S.C. § 1818(b)(6) contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations, unless such acts, omissions, or violations reoccur.

(4) 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.

(5) Respondent understands 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.

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(6) 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 and/or to execute this Order.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ James W. McPherson

12/3/02

James W. McPherson
Deputy Comptroller
For Large Bank Supervision

Date

Signed

11/12/02

Bien C. Nguyen

Date