

#2002-22

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

In the Matter of:)
Martin Price)
Director and Vice President)
First Suburban National Bank)
Maywood, Illinois)

STIPULATION, CONSENT, AND ISSUANCE OF AN ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller or OCC) intends to initiate cease and desist and civil money penalty proceedings against Martin Price (Respondent) pursuant to 12 U.S.C. §§ 1818(b)(1), (6), and (7) and § 1818(i)(2) (as amended) for activities detailed in Reports of Examination dated June 30, 1999 and December 31, 1999 (collectively, the ROEs) and a letter from Assistant Deputy Comptroller Donelle Ward to the board of directors (Letter) dated October 17, 2000; 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 to the Issuance of an Order (the Order);

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) First Suburban National Bank (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 times relevant to the activities detailed in the ROEs and in the Letter, Respondent was a Director and Vice President of the Bank 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 cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and (i).

Article II

CEASE AND DESIST ORDER

A. Order Pertaining to Lending Authority:

(1) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b)(1) and (7), the Comptroller hereby orders that

Respondent shall, and Respondent, without admitting or denying any wrongdoing, hereby consents and agrees that:

- (a) Effective immediately, Respondent shall be prohibited from exercising any lending authority at the Bank, including extending or voting to approve or disapprove any loans or loan participations, or negotiating on behalf of the Bank, as opposed to negotiating as an investor or indemnitor, any loans or loan participations. This prohibition does not apply to Respondent's participation as a director of the Bank in the approval or ratification of loans for which the approval of a majority of the full board of directors is required by the Bank's loan policy or by law or regulation.
- (b) Effective immediately, Respondent shall be prohibited from any direct supervisory or managerial involvement in the Bank's lending area. At a minimum, such prohibition shall encompass engaging in the following on behalf of the Bank:
 - (i) monitoring bank loans;
 - (ii) collecting bank loans;
 - (iii) documenting bank loans;
 - (iv) rating loans in accordance with the Bank's internal loan review system;
 - (v) evaluating the performance of bank personnel working in the loan area; and

- (vi) developing bank loan policies, procedures and systems.
- (c) The prohibitions addressed in subparagraphs (a) and (b) above apply to all loans, loan participations, other extensions of credit and lending activities in which the Bank is currently involved or may be involved in the future.

B. Order of Indemnification:

(1) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b)(1) and (7), the Comptroller hereby orders that Respondent shall, and Respondent, without admitting or denying any wrongdoing, hereby consents and agrees that:

- (a) Respondent shall indemnify the Bank for all losses, including principal, interest, attorney's fees and collection costs, incurred after January 1, 2002 on any loans that the Bank has purchased from All-Price Auto, Inc. (All-Price), up to the total amount of thirty thousand one hundred and fifty dollars (\$30,150).
- (b) For the purposes of paragraph (a) above, a loan purchased from All-Price will be considered a loss when a payment becomes past due 120 cumulative days from the contractual due date, in accordance with the Uniform Retail Credit Classification and Account Management Policy of the Federal Financial Institutions Examination Council dated June 12, 2000.
- (c) Prior to execution of this Order, Respondent agrees to execute an Indemnification Agreement, in form and substance acceptable to the OCC and the Bank, which Indemnification Agreement shall be enforceable by the Comptroller,

as a term of this Order pursuant to 12 U.S.C. § 1818(b)(6), as though fully set forth in this Order.

(2) Respondent further agrees that this Order constitutes a final order issued pursuant to 12 U.S.C. §§ 1818(b)(1), (6), and (7), and § 1818(h).

(3) The provisions of this Article are effective upon issuance by this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable until such time as the Comptroller, in his sole and unfettered discretion, elects to modify or terminate such provisions.

Article III

ORDER OF CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of twenty-five thousand dollars (\$25,000.00), which shall be paid upon execution of this Order. Respondent shall make payment in full by check made payable to the Treasurer of the United States and shall be delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. The words, "First Suburban National Bank CMP" should be noted on the check.

(2) 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 obligation to indemnify the Bank against loss pursuant to this Order is 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 indemnification obligation in this Order arises out of acts which result in claims not dischargeable in bankruptcy.

Article V

WAIVERS

- (1) By executing this Stipulation and Consent, Respondent waives:
- (a) the right to the issuance of a Notice under 12 U.S.C. §§ 1818(b) and (i);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (i) 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, 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 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 the payment of any restitution and the civil money penalty under this Stipulation and Consent, or any legal (or other professional) expense relative to the negotiation and issuance of this Stipulation and Consent; 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 Stipulation and Consent constitute a settlement of the cease and desist and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations detailed in the ROEs and the Letter, unless such acts, omissions, or violations reoccur.

(4) 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.

(5) 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/ by Daniel Harrington, ADC acting for

3/18/2002

Bert A. Otto
Deputy Comptroller
Central District Office

Date

/s/

3/12/02

Martin Price

Date