

#2002-33

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

\_\_\_\_\_  
In the Matter of: )  
)  
Donald W. Hakes, )  
Former President, Energy Division, )  
Bay View Franchise Mortgage Acceptance Corp., an )  
Operating Subsidiary of Bay View Bank, N.A. )  
San Mateo, California )  
\_\_\_\_\_

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate a civil money penalty action against Donald W. Hakes (Respondent) pursuant to 12 U.S.C. § 1818(i)(2)(A) (as amended) through the issuance of a Notice of Charges; and

WHEREAS, in the interest of avoiding 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 the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Article I

JURISDICTION

(1) Bay View Bank, N.A., San Mateo, California (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) Beginning on or about November 1, 1999, and pursuant to a merger agreement between Bay View Capital Corp. and Franchise Mortgage Acceptance Corp. (FMAC), FMAC became an operating subsidiary of the Bank operating under the name Bay View Franchise Mortgage Acceptance Corp. (Bay View FMAC). As an operating subsidiary of the Bank, Bay View FMAC became subject to regulation and supervision by the Comptroller. Pursuant to this merger, numerous employees and officers of FMAC, including Respondent, became employees and officers of Bay View FMAC.

(3) At all times relevant hereto, Respondent was the President of the Energy Division of Bay View FMAC 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)).

(4) 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 this civil money penalty action against him pursuant to 12 U.S.C. § 1818(i)(2)(A).

(5) Pursuant to 12 U.S.C. § 1829(a)(1), any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not become, or continue as, an institution-affiliated party with respect to any insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution, except with the prior written consent of the Federal Deposit Insurance Corporation.

(6) Prior to the merger referred to in paragraph (2), above, Respondent served as an officer of FMAC, with one of Respondent's subordinates being Michael Saei. On or about February 11, 1999, Mr. Saei pled guilty to violation of 18 U.S.C. § 1014, for acts committed by Mr. Saei dating back to a period approximately ending in 1992. This crime is covered by the prohibition specified in 12 U.S.C. § 1829(a)(1). Following Bay View FMAC's becoming an operating subsidiary of the Bank on about November 1, 1999, and until on or about August 16, 2000, Mr. Saei continued as an officer of Bay View FMAC, and as a subordinate of Respondent. Mr. Saei's employment at Bay View FMAC was in violation of 12 U.S.C. § 1829(a)(1).

(7) Pursuant to 12 U.S.C. § 1813(v), the term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

## Article II

### CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing concerning the employment and continued employment of Mr. Saei at Bay View FMAC, Respondent hereby consents to the payment of a civil money penalty in the amount of \$3,000, 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 the check shall be delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. "Bay View Bank, N.A., San Mateo, CA Stipulation and Consent" should be entered 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) (as amended).

### Article III

#### WAIVERS

- (1) By executing this Order, Respondent waives:
  - (a) the right to the issuance of a notice under 12 U.S.C. § 1818(i)(2)(E)(i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i)(2)(H) 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 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 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.

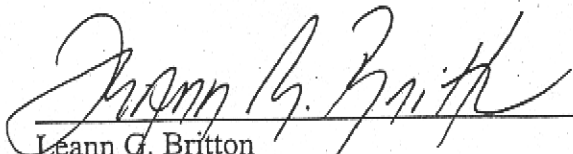
(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this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

(4) It is hereby agreed that the provisions of this Order constitute a settlement of the civil money penalty action contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations alleged in this Stipulation and Consent, or in the September 7, 2001 letter from Ronald G. Schneck, Director, Special Supervision/Fraud at the Office of the Comptroller of the Currency to Respondent, unless such alleged acts, omissions, or violations reoccur.

(5) 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, stop, 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 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 have hereunto set their hands.



---

Leann G. Britton  
Senior/Deputy Comptroller  
for Midsize and Community Bank Supervision

4-10-2002  
Date



---

Donald W. Hakes

MARCH 18, 2002  
Date