

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

In the Matter of:)
Downey M. Gray, III)
Former Senior Vice President)
Bank One, Kentucky, N.A.)
Louisville, Kentucky)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (Comptroller) intends to initiate cease and desist proceedings against Downey M. Gray, III (Respondent) pursuant to 12 U.S.C. §1818(b); 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 the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Article I

JURISDICTION

(1) Bank One, Kentucky, N.A. (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 the Senior Vice President of the Bank until October 2000 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 proceedings against him pursuant to 12 U.S.C. § 1818(b).

Article II

FINDINGS OF FACT

The OCC makes the following finding of fact, which Respondent neither admits nor denies:

(1) For the approximately two years preceding October 2000, Respondent caused false debit and credit entries to be made so that a customer’s demand deposit accounts appeared to reflect positive balances despite the fact that the accounts were overdrawn.

Article III

PRIOR NOTICE

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

(1) Prior to accepting any position that causes him to become an “institution-affiliated party” (as defined in 12 U.S.C. § 1813(u)) of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), Respondent shall provide the chief executive officer of the institution or agency with a copy of this Order.

(2) Within ten (10) days from and after his acceptance of any position described in paragraph (1), Respondent shall provide written notice of such acceptance to the Director of the Enforcement and Compliance Division along with a written certification of his compliance with paragraph (1).

Article IV

DUTIES AND RESPONSIBILITIES

It is further ordered that in the event Respondent becomes an “institution-affiliated party” as defined in 12 U.S.C. § 1813(n), he shall comply with the following provisions:

- (1) Respondent shall at all time comply with all applicable laws and regulations.
- (2) Respondent shall avoid engaging in any unsafe or unsound practices (as that term is used in 12 U.S.C. § 1818).
- (3) Respondent shall adhere to the written policies and procedures of any insured depository institution or agency with which he may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise.
- (4) Respondent shall not breach his duties of loyalty or care owed to any insured depository institution or agency with which he may become affiliated and shall, at all times, avoid placing his own interests above those of the institution.
- (5) To comply with paragraphs 1 through 4 of this Article, Respondent shall (among other things):

- (a) be diligent to ensure that – within the scope of Respondent’s duties and influence at any insured depository institution or agency – customers or other third parties are not using the institution (or the services of the institution) or agency to facilitate or perpetuate fraudulent activity; and
- (b) be diligent to ensure that – within the scope of Respondent’s duties and influence at any insured depository institution or agency – adequate and appropriate controls are in place and that any employees reporting to Respondent are adequately trained and supervised.

(6) If, at any time, Respondent is uncertain whether a situation implicates paragraphs 1 through 5 of this Article, or if Respondent is uncertain about his duties arising from such paragraphs, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel:

- (a) who is in no way affiliated with the institution or agency; and
- (b) who has never been subject to any sanctions by any Federal banking agency, either by agency order or consent.

Article V

WAIVERS

- (1) By executing this Order, Respondent waives:
 - (a) the right to the issuance of 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 the acts which form the basis for issuance of this Order.

(2) 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.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of the cease and desist proceeding contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations at issue, 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.

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

/s/ Douglas W. Roeder

9-18-02

Douglas W. Roeder
Senior Deputy Comptroller
Large Bank Supervision

Date

Signed

Downey M. Gray, III

9/6/02

Date