

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

Article I

JURISDICTION

(1) Hamilton Bank, N.A., Miami, Florida (closed) (“Bank”) was 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 was an “insured depository institution,” as that term is defined in 12 U.S.C. § 1813(c)(2), at all times relevant to this Order.

(2) Respondent was the chief executive officer and chairman of the board 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) and 12 U.S.C. § 1818(i)(3), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, the Respondent is subject to the authority of the Comptroller to initiate and maintain removal and prohibition, cease and desist, and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b), (e), and (i).

Article II

PROHIBITION AND REMOVAL

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, and without admitting or denying any wrongdoing, the 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); or
- (d) 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), (b)(5) 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

CEASE AND DESIST ORDER FOR RESTITUTION

(1) Without admitting or denying any wrongdoing or liability, Respondent hereby consents to the payment of restitution to or for the benefit of the Federal Deposit Insurance Corporation ("FDIC"), as Receiver for the Bank, in the amount of nine hundred and sixty thousand dollars (\$960,000) ("the Restitution").

(2) The Restitution shall constitute reimbursement to the Bank for seven hundred twenty-four thousand three hundred eighty-seven dollars (\$724,387) of the bonus Respondent received in 1998 and two hundred fifty-three thousand six hundred thirteen

dollars (\$235,613) of the bonus Respondent received in 1999. The Restitution shall be paid as follows:

- (a) The Respondent shall make payment in the amount of one hundred ten thousand dollars (\$110,000), by cashier's check or certified check, upon execution of this Order.
 - (i) The check shall be made payable to the Federal Deposit Insurance Corporation, as Receiver for Hamilton Bank, N.A. The original check shall be delivered to the Director of the Enforcement & Compliance Division ("Director"), Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219 ("Director"). The docket number of this case shall be entered on the check.
- (b) The Respondent shall pay the remaining eight hundred fifty thousand dollars (\$850,000), as follows:
 - (i) Respondent shall make sixty (60) monthly payments, which shall become due and owing on the fifteenth (15th) day of each month, beginning on February 15, 2004. The first payment due on February 15, 2004, shall be made on or before that date and shall be in the amount of fourteen thousand two hundred six dollars (\$14,206). Each monthly payment thereafter shall be made on or before the fifteenth

(15th) day of each successive month and shall be in the amount of fourteen thousand one hundred and sixty-six dollars (\$14,166).

- (ii) Each check shall be made payable to the Federal Deposit Insurance Corporation, as Receiver for Hamilton Bank, N.A., shall be delivered to the Director, and shall be post marked on or before the 15th day of each month. The docket number of this case shall be entered on each check.

(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 (b), (h) or (i) (as amended).

(4) In the event that Respondent fails to make any payment as provided in this Article, such failure shall, in the OCC's discretion, constitute default under this Order, and time being of the essence, the OCC may, after giving five (5) days written notice to Respondent, made by facsimile or electronic mail to Respondent's authorized and duly appointed agent designated pursuant to Article VII of this Order and Respondent's failure to cure the non-payment within that time, declare the entire sum then unpaid immediately due and payable. The OCC will also provide a courtesy copy of the written notice provided pursuant to this paragraph to Respondent at eam88e@aol.com; however, the notice is effective when made upon Respondent's agent.

Article IV

CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing or liability, Respondent hereby consents to the payment of a civil money penalty in the amount of forty thousand dollars (\$40,000), which shall be paid in full upon execution of this Order.

- (a) The Respondent shall make payment by cashier's check or certified 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. The docket number of this case should be entered on the check.
- (b) The Respondent shall deliver a copy of the check to the Director, with reference to the docket number of this case.

(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 V

ACCURACY OF FINANCIAL REPORTING

(1) Prior to the issuance of this Order, and in the interests of settling this matter, Respondent provided the Comptroller with a Personal Financial Statement for the year 2003, including schedules detailing certain assets and liabilities, which Respondent

executed on November 7, 2003 (“Financial Statement”), certifying the accuracy of the Statement under the penalties provided under 18 United States Code 1001.

(2) The Comptroller has relied upon the representations contained in Respondent’s Financial Statement in agreeing to enter into this Order. In the event that the Comptroller determines that any representations made in the Financial Statement were materially false or inaccurate at the time made, the Comptroller may deem the waivers and releases, as set forth in Article X hereof, to be null and void and of no further force or effect, and once having exercised such discretion in writing, the Comptroller may reinstitute cease and desist and civil money penalty proceedings for the full amounts described in the Notices, net of any sums paid by the Respondent as of that date.

(3) For the purposes of this Article, “materially” shall mean:

- (a) With respect to a particular asset or liability, a variance in value of a ten percent (10%) or more; and
- (b) With respect to Respondent’s net worth, an understatement of ten percent (10%) or more.

Article VI

ADDRESS NOTIFICATION

(1) Upon execution of this Order, the Respondent shall notify the Director of his current address on the form attached hereto as Appendix A.

Article VII

APPOINTMENT OF AGENT

(1) Upon execution of this Order, the Respondent shall appoint, on the form attached hereto as Appendix B, an agent physically located in the continental United States, authorized and duly appointed to accept service of process and notices from the OCC on behalf of the Respondent. For so long as the restitution obligations contained in Article III of this Order remain outstanding, Respondent shall maintain such an agent, and he shall timely comply with the requirements of Appendix B, with respect thereto.

Article VIII

BANKRUPTCY

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

Article IX

WAIVERS

(1) By executing this Order, the Respondent waives:

- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b), (e), and (i) 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 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
- (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) The 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 restitution and the civil money penalty under this Order, and, in accordance with 12 C.F.R. § 359.1, 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; and the Respondent shall not use or seek to use the proceeds of any commercial insurance policy or fidelity bond provided by the Bank or depository institution holding company 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 Notices, including the prohibition, cease and desist, and civil money penalty proceedings contemplated by the Comptroller in the Notices. The Comptroller agrees not to initiate proceedings for the acts, omissions, or violations contained in the Notices, unless such acts, omissions, or violations reoccur. The Temporary Cease and Desist Order issued to the Respondent on May 14, 2003, is hereby withdrawn. The Comptroller and Respondent agree to enter into a stipulated order pursuant to Federal Rule of Civil Procedure 41(a)(2) in which (1) the OCC dismisses with prejudice the Respondent as a party from all actions related to the Temporary Cease and Desist Order issued to the Respondent that are pending in the United States District Court for the Southern District of Florida; and (2) the Court Orders Respondent to comply with the terms of this Order, pursuant to 12 U.S.C. § 1818(i)(1).

(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, 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) The Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 03-CV-21431-Gold-O'Sullivan

EDUARDO MASFERRER and
CARLOS BERNACE

Plaintiffs,

v.

OFFICE OF THE
COMPTROLLER OF THE
CURRENCY, TIMOTHY W. LONG,
in his official capacity, and
RONALD SCHNECK, in his
official capacity,

Defendants.

~~(PROPOSED)~~ FINAL ORDER

Upon joint motion by the Office of the Comptroller of the Currency, Timothy W. Long, and Ronald Schneck, (collectively the "OCC"), and Eduardo Masferrer, and upon review of the record of this proceeding, it is hereby ORDERED that pursuant to Federal Rule of Civil Procedure 41(a)(2) the above-captioned case is dismissed with prejudice, with each side to bear its own attorney's fees and costs. It is also FURTHER ORDERED pursuant to 12 U.S.C. § 1818(i)(1) that Mr. Eduardo Masferrer is to comply with the terms of the Consent Order issued to him by the OCC, which is attached hereto and incorporated herein, in conjunction with the settlement of this litigation.

DONE AND ORDERED in Chambers in Miami, Florida, on this 29 day of
Dec., 2003.

_____/s/_____
Alan S. Gold
United States District Judge